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978-1-107-04781-5 - Biblical Narrative and the Formation of Rabbinic Law

Jane L. Kanarek

Excerpt

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## I

**Introduction***Law, Narrative, and Exegesis*

“Said Rav Hamnuna: ‘How many important laws there are to be derived from these verses of Hannah!’”<sup>1</sup> Winding its exegetical way through Hannah’s tale, the Babylonian Talmud transforms this story about one barren woman’s plea for a child and her encounter with a priest into a source for ongoing legal norms: how to behave during prayer, how to reprove one’s fellow for wrongdoing, and how to right false accusations.<sup>2</sup> Although the biblical version of Hannah’s story does not contain any explicit statement that it is to be read for law, later rabbinic interpreters of this text do so without hesitation. By the time the Bavli is done with Hannah’s tale, it has become a story that teaches law. This brief passage provides a straightforward and concise formulation of this book’s premise: biblical narrative is embedded in the heart of the rabbinic lawmaking enterprise and is, in fact, inseparable from it.

Nevertheless, the relationship between biblical narrative and rabbinic law is not quite as simple or straightforward as Rav Hamnuna’s statement would have it appear. For while the Bavli certainly reads biblical narrative as law, it remains to be seen exactly how it reads, what is at stake in these readings, and what

<sup>1</sup> B. Berakhot 31a.

<sup>2</sup> See B. Berakhot 31a–b for the Bavli’s complete reading of the Hannah narrative. The aforementioned laws are derived from 1 Samuel 1:13–17.

is at stake in the transformation of narrative genre into law. In fact, although it has become commonplace in rabbinic scholarship to describe the transformation biblical narrative undergoes when it becomes rabbinic narrative,<sup>3</sup> the same attention has not been given to the transformation of biblical narrative into rabbinic law – in other words, how biblical narrative becomes a rabbinic legal text. Indeed, an examination of how biblical narrative becomes rabbinic law touches on a number of questions that loom large in the field of rabbinic scholarship: the extent to which rabbinic midrash results from internal textual motivations or is a product of external cultural influences,<sup>4</sup> the construction of rabbinic authority,<sup>5</sup> the role of law as a cultural practice,<sup>6</sup> and the intersection of law and narrative.<sup>7</sup>

<sup>3</sup> On the exegetical story, see Yonah Fraenkel, “Mekomah Shel Ha-Halakhah be-Sipurei Ha-’Aggadah,” in *Mehqerei Talmud: Talmudic Studies* 1, ed. David Rosenthal and Yaacov Sussmann (Jerusalem: Magnes Press, 1990), 205–215; Yonah Fraenkel, *Darkhe Ha-’Aggadah Ve-Ha-Midrash*, vol. 1 (Giv’atayim: Yad la-Talmud, 1991), 287–322; Joshua Levinson, *A Twice Told Tale: A Poetics of the Exegetical Narrative in Rabbinic Midrash* (Hebrew) (Jerusalem: Magnes Press, 2005); Ofra Meir, *The Darshanic Story in Genesis Rabbah* (Hebrew) (Israel: Ha-Kibbutz Ha-Me’uchad, 1987).

<sup>4</sup> See Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Bloomington: Indiana University Press, 1990); Michael A. Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Oxford University Press, 1985); Christine Elizabeth Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot From Tractate Avodah Zarah* (New York: Oxford, 1997).

<sup>5</sup> See Michael S. Berger, *Rabbinic Authority* (New York: Oxford University Press, 1998); Beth A. Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (New York: Oxford University Press, 2006); Chaya T. Halberstam, *Law and Truth in Biblical and Rabbinic Literature* (Bloomington: Indiana University Press, 2009).

<sup>6</sup> See Barry Scott Wimpfheimer, *Narrating the Law: A Poetics of Talmudic Legal Stories* (Philadelphia: University of Pennsylvania Press, 2011).

<sup>7</sup> See Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993); Steven Fraade, *Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians* (Leiden: Brill, 2011); Halberstam, *Law and Truth*; Yair Lorberbaum, *Image of God: Halakhah and Aggadah* (Hebrew) (Israel: Schocken Publishing House, 2004); Jeffrey L. Rubenstein, *Stories of the Babylonian Talmud* (Baltimore: The Johns Hopkins University Press, 2010); Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012); Wimpfheimer, *Narrating the Law*.

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While Rav Hamnuna and the Bavli take us to the book of Samuel, at the core of this book lies another biblical book – Genesis. Genesis is a particularly fitting site through which to explore rabbinic uses of scriptural narrative for law. Of the five books of the pentateuch, it is the least legal in nature. It is, in fact, primarily narrational, telling the tale of God’s creation of the world and the ancestral saga of the Israelites. While Genesis does contain isolated laws, such as the commandment to circumcise all males at the age of eight days (Genesis 17:10–14), and references to legal norms, such as the Israelite practice of not eating the thigh muscle (Genesis 32:33), these laws are not central to the book’s genre.<sup>8</sup> By and large, it does not codify practices (or prescribe punishments for disobeying these practices) for a present community or for imagined future generations. In contrast, this prescriptive tendency is central to the law codes of Exodus, Leviticus, Numbers, and Deuteronomy. While Genesis provides paradigmatic tales, these tales do not, at least explicitly, prescribe how Israel is subsequently meant to enact or to live within them. Genesis is thus best understood as a book that presents us with the ancestral history of an almost-born nation.<sup>9</sup> My choice to begin with Genesis has in turn influenced my choice of classical rabbinic texts – the amoraic midrash *Genesis Rabbah* (redacted fifth century CE)<sup>10</sup> on the book of Genesis and the two central texts of rabbinic literature: the Palestinian Talmud (*Yerushalmi*; redacted c. 380 CE) and the Babylonian Talmud (*Bavli*; redacted seventh century CE).<sup>11</sup>

<sup>8</sup> That Genesis is not a legal code is recognized in the well-known comment of Rabbi Shlomo ben Yitzhak (Rashi, 1040/1–1105) to Genesis 1:1 (s.v. בראשית), which asks why the pentateuch does not begin with the first communal commandment in Exodus 12:2. The comment assumes that the primary purpose of the Torah is to be a book of commandments and thus puzzles over the narrational nature of the book of Genesis.

<sup>9</sup> On the birth of Israel as a collective nation, see Ilana Pardes, *The Biography of Ancient Israel: National Narratives in the Bible* (Berkeley: University of California Press, 2000).

<sup>10</sup> See Hermann L. Strack and Günter Stemberger, *Introduction to the Talmud and Midrash*, transl. and edited Markus Bockmuehl (Minneapolis, MN: Fortress Press, 1996), 276–283.

<sup>11</sup> For these dates and a summary of recent scholarship on the dating of the two Talmuds, see Alyssa M. Gray, *A Talmud in Exile: The Influence of Yerushalmi*

Yet even ancestral history that is primarily nonlegal – as is true of that recorded in the book of Genesis – can both hint at law and become a source for law. The work of James Bruckner and Calum Carmichael on biblical law lays the groundwork for understanding this process. Bruckner distinguishes between law that is formulated as a set of legal principles or codes and implied law, law that is embedded in a narrative and implicitly teaches what ought and ought not be done. Thus, although Genesis does not present law as a subject, it nevertheless references law. Law can be uncovered through a close reading of a narrative's vocabulary, its use of technical legal terminology, and references to a courtlike procedure.<sup>12</sup> In other words, a text need not be easily classified as law in order to be read as reflecting law. In reading law from narrative, rabbinic texts thus draw on biblical precedent. But they differ in the explicitness of their model. Whereas law is not, for the most part, clearly embedded within biblical narratives from the book of Genesis,<sup>13</sup> rabbinic texts locate explicit law in the center of some of these biblical tales.

Carmichael takes a different approach than does Bruckner and begins with the law codes of Exodus, Leviticus, and Deuteronomy. Carmichael argues that these codes are best viewed as responses to “the legends, sagas, and etiological myths”<sup>14</sup> of Genesis through 2 Kings and not as responses to contemporaneous historical events

*Avodah Zarah on the Formation of Bavli Avodah Zarah* (Providence, RI: Brown Judaic Studies, 2005), 2 and n. 4. See also Yaacov Sussmann, “Ve-Shuv Le-Yerushalmi Nezikin,” in *Mehqerei Talmud: Talmudic Studies 1*, ed. David Rosenthal and Yaacov Sussmann (Jerusalem: Magnes Press, 1990), 101–106, 132, n. 87.

<sup>12</sup> See James K. Bruckner, *Implied Law in the Abraham Narrative: A Literary and Theological Analysis* (London and New York: Sheffield Academic Press, 2001), 14–20, 68, 76, 124–125. See also David Daube, *Studies in Biblical Law* (New York: Ktav Publishing House, 1969), 1–73.

<sup>13</sup> Within the bible, law is often bracketed or enclosed by narrative. Thus, the decalogue and the ensuing laws are bracketed by the story of revelation on one side and the story of the Golden Calf on the other.

<sup>14</sup> Calum Carmichael, *The Spirit of Biblical Law* (Athens: University of Georgia Press, 1996), 2. See also Calum Carmichael, *Illuminating Leviticus: A Study of Its Laws and Institutions in the Light of Biblical Narratives* (Baltimore: The Johns Hopkins University Press, 2006), viii.

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or societal problems. Biblical law thus grows directly out of biblical narrative. While Carmichael overstates his case in the biblical realm,<sup>15</sup> his methodology of law reading narrative is nevertheless useful for rabbinic sources. For in contrast to scripture, rabbinic literature reveals its seams. We are thus not forced to posit a hypothetical narrative source based on thematic or linguistic similarities. Rabbinic literature simply reveals the verse it interprets, in this case earlier biblical narrative for later rabbinic law.

Just as Bruckner and Carmichael follow linguistic and literary allusions in their biblical work, a scholar of rabbinics must also trace literary allusions and other exegetical uses of the originally cited verse. This process reveals that while one verse may be explicitly cited, it often references a much wider story, a path of exegetical connections that need to be traced in order to comprehend a larger referential web of woven meaning. In addition, as the rabbis read the chosen verse, they transform its meaning. Much as scholars of inner-biblical interpretation have noted the ways in which the bible reads itself,<sup>16</sup> so too the rabbis read themselves when they declare law.

Of course, the Bavli, Yerushalmi, and Genesis Rabbah are not the first literary works to connect the book of Genesis with explicit law. One of the more prominent and earlier texts to do so is the second century BCE book of Jubilees, a retelling of the pentateuch from Genesis 1 through the middle of Exodus. Classified within the genre of rewritten bible,<sup>17</sup> Jubilees weaves

<sup>15</sup> See Jane Kanarek, "Calum, Carmichael, Illuminating Leviticus: A Study of Its Laws and Institutions in Light of Biblical Narratives," *Henoch* 30, no. 1 (2008), 188–191 and Bernard Levinson, "Calum Carmichael's Approach to the Laws of Deuteronomy," *Harvard Theological Review* 83, no. 3 (1990), 227–257.

<sup>16</sup> On inner-biblical exegesis, see Fishbane, *Biblical Interpretation*; Benjamin D. Sommer, *A Prophet Reads Scripture: Allusion in Isaiah 40–66* (Stanford, CA: Stanford University Press, 1998).

<sup>17</sup> The term "rewritten bible" stems from Géza Vermes. See Géza Vermès, *Scripture and Tradition in Judaism: Haggadic Studies* (Leiden: Brill, 1973), 228–229. On the strengths and weaknesses of the term "rewritten bible," see Fraade, *Law and Narrative*, 382–383; Hindy Najman, *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (Leiden: Brill, 2003), 7–8; Michael Segal, "Between Bible and Rewritten Bible," in *Biblical Interpretation At Qumran*, ed. Matthias Henze (Grand Rapids, MI: Eerdmans, 2005), 10–28.

law into its retelling of the ancestral narratives, transforming them into etiological stories that either anticipate later Mosaic law or justify the actions of a biblical character that appear to violate post-Sinaitic law.<sup>18</sup> The binding of Isaac (Genesis 22) is presented as an etiology for the Passover festival, the seven-day holiday paralleling the seven days of the Akedah – a three-day journey to the mountain, the day of the event, and a three-day return trip (Jubilees 18:18–19).<sup>19</sup> Judah is not punished for having sexual intercourse with his daughter-in-law Tamar (Genesis 38; Leviticus 18:15) either because he did so mistakenly and then repented (Jubilees 41:23–26) or because Tamar was a virgin (Jubilees 41:27) and therefore was not legally his daughter-in-law.<sup>20</sup> Since Jubilees reads law as an integral aspect of the Genesis narrative, the very fact of rabbinic literature's locating explicit law within the book of Genesis should not in and of itself startle. Rabbinic texts are not, after all, the first to make this move. However, the manner in which they do so and the laws they choose should give us pause.

Again, Jubilees is instructive. In contrast to the pentateuch where most of the law collections appear after the Sinaitic revelation and as independent units (albeit surrounded by a narrative frame), Jubilees contains almost no independent legal units.

<sup>18</sup> See Michael Segal, *The Book of Jubilees: Rewritten Bible, Redaction, Ideology and Theology* (Hebrew) (Jerusalem: Magnes Press, 2007), 5, 215–216 and Fraade, *Law and Narrative*, 417.

<sup>19</sup> See Samuel Sandmel, "Philo's Place in Judaism, Part II," *Hebrew Union College Annual* 26 (1955), 166 and James C. VanderKam, *The Book of Jubilees* (Sheffield: Sheffield Academic Press, 2001), 106–107.

<sup>20</sup> These are only a few examples among many. Some, but not all, of the other instances are: Jubilees 2:25–33 (Sabbath); 3:8–14 (impurity after childbirth); 4:2–6 (murder); 4:31–32 (retaliation); 6:15–22 (Shavuot); 16:20–31 (Sukkot); 21:7–17 (sacrifice); 21:6, 18–20 (blood prohibitions); 28:6–7 (marriage). See VanderKam, *Jubilees*, 100–109. Extending the parallel between the Akedah and the Exodus, the sparing of Isaac's life from the Prince of Mastema, ruler of the evil realm, parallels God's later saving of the Israelites from Mastema at the time of the Exodus (Jubilees 47:9–19). See VanderKam, *Jubilees*, 53. On Mastema marking the Akedah as a folktale, see Eli Yassif, *The Hebrew Folktale: History, Genre, Meaning*, 2nd ed. (Hebrew) (Jerusalem: The Bialik Institute, 1994), 59–60. On Tamar and Yehuda, see Najman, *Seconding Sinai*, 49 and Segal, *Jubilees*, 216.

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It both reads these post-Sinaitic laws into the Genesis framework and connects them with specific stories.<sup>21</sup> Jubilees is thus similar to classical rabbinic literature in the fact of its integration of law into Genesis narrative. However, the formal methodology through which it achieves that integration differs from that of rabbinic texts.<sup>22</sup> While Jubilees rewrites the Genesis narrative by blurring and even effacing the boundaries between scripture and commentary, rabbinic literature reveals its seams. This difference in formal technique reflects an ideological difference: in Jubilees, law is presented as emerging through revelation to Moses by an angel of the presence rather than through exegesis, as it does in rabbinic literature.<sup>23</sup> The combination of the emergence of law through revelation and the seamless way in which Jubilees integrates its version of revelation into Genesis and Exodus signals an important program of Jubilees: to stand alongside scripture with at least the same authority.<sup>24</sup> As Hindy Najman argues, the use of Moses as amanuensis for the transcription of Divine

<sup>21</sup> Segal, *Jubilees*, 215–216. The two exceptions to Jubilees' lack of independent legal units are the Passover laws (Jubilees 49) and the Sabbath laws (Jubilees 50:6–13a).

<sup>22</sup> See Fraade, who argues insightfully for the importance of clarity about what one is comparing when evaluating rabbinic scripture in light of its antecedents: for example, interpretive methods or interpretive traditions (content); rhetorical structures or underlying assumptions and claims to interpretive authority. Fraade, *Law and Narrative*, 402.

<sup>23</sup> See Segal, "Between Bible and Rewritten Bible," 21. As Steven Fraade argues, differences in the forms through which a culture transmits its knowledge also signal different cultural self-conceptions. Thus, the Qumran community's understanding of its esoteric legal writings as the product of Divine revelation to a covenantal few (and not as a result of legal midrash) signals its understanding of its own teachers as the chosen and Divinely inspired heirs to Moses. Fraade, *Law and Narrative*, 145–167, in particular 163–167. Within rabbinic culture, the shift from knowledge through revelation to knowledge through exegesis marks the rabbinic recognition of the loss of prophecy and the transition to textual interpretation as the mark of rabbinic authority. For a recent example of this point see Dina Stein, "Rabbinic Interpretation," in *Reading Genesis: Ten Methods*, ed. Ronald S. Hendel (New York: Cambridge University Press, 2010), 119–135.

<sup>24</sup> See Sidnie White Crawford, *Rewriting Scripture in Second Temple Times* (Grand Rapids, MI: Eerdmans, 2008), 62, 81–82 and Najman, *Seconding Sinai*, 43–50.

revelation emphasizes three points: one, that the pre-Sinaitic texts of Genesis and the beginning of Exodus have legal implications; two, that the laws recorded in Jubilees have the authority of the Torah of Moses; and three, that the Torah's authority stems from a heavenly tradition known to certain chosen individuals from the beginning of time.<sup>25</sup> Jubilees alerts us to the fact that the act of reading explicit law into the heart of narrative (narrative where law has not, for the most part, been central) is not simply a matter of blurring genre boundaries. Instead, attentiveness to the specific ways in which law and narrative are woven together teaches us both about the measure of law's authority within a particular culture as well as *how* law gains authority within that culture.<sup>26</sup>

#### LAW AND NARRATIVE

Observing the interconnections between law and narrative, and even the ways in which narrative can prescribe behavior, still does not necessitate entirely abrogating the differences between these two genres. Indeed, a distinction, even one that is blurry, remains useful in the realm of rabbinic texts, much as in biblical and Second Temple ones. To this point, however, I have discussed both law and narrative without defining my terms. Before moving any further in my argument, I turn to definitions.

The search for a precise definition of the term "law" has perplexed legal theorists. Is law the command of a sovereign as the positivists would define it, or does law, inseparable from justice, exist in an autonomous realm, as the natural law theorists would have it?<sup>27</sup> I begin (but do not conclude) with a definition

<sup>25</sup> Najman, *Seconding Sinai*, 66.

<sup>26</sup> Contrast Jubilees with the work of another exegete from the Second Temple period, Philo of Alexandria. While Jubilees reads law into Genesis and the first half of Exodus, Philo interprets these narratives as having hidden philosophical content. The author of Jubilees responds to the cultural problem of the nonlegal character of Genesis and (part of) Exodus by weaving in law. Philo, living in a profoundly Hellenistic milieu, seeks to authorize Judaism by identifying Greek philosophical ideas in the Torah. He thus reads in philosophy. See Najman, *Seconding Sinai*, 70–83.

<sup>27</sup> See James Boyd White, *The Legal Imagination*, Abridged ed. (Chicago: University of Chicago Press, 1985), xii.



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of law that sidesteps these ultimately unresolvable philosophical questions and instead focuses on a commonality within these larger debates: Law refers to generalized prescriptions for normative behavior. These prescriptions do not apply to one person at one particular time, but rather are meant to set expectations of conduct across time and place. Halakhah is the rabbinic, Hebrew term for law. This simplified definition of law (and halakhah) does not aim to describe how law operates in society or how law should operate. Rather, it aims to name one of law's most basic functions: to prescribe behavior.

Similarly, a precise definition of “narrative” is not as straightforward as it may seem. The groundbreaking scholars Robert Scholes and Robert Kellogg defined narrative as referring to “all those literary works which are distinguished by two characteristics: the presence of a story and a storyteller.”<sup>28</sup> Shlomith Rimmon-Kenan's later work on narrative fiction further elucidated this earlier definition. Narrative fiction depicts a series of events that contain three basic elements: story, text, and narration. “‘Story’ designates the narrated events, abstracted from their disposition in the text and reconstructed in their chronological order, together with the participants in these events.”<sup>29</sup> In other words, story is a subset of narrative. While a narrative is tied to the form of the text, a story is the sequence of events that may be abstracted from that narrative telling.<sup>30</sup> In fact, later rabbinic texts do take biblical narratives and write their own stories – their own retold sequences of events – from them.

Like law, then, stories – or the telling of stories – can transcend particular times and places. However, unlike law, while a story may prescribe normative behavior, it need not contain any such prescriptions. Although I have distinguished narrative and story

<sup>28</sup> R. Kellogg, and R. Scholes, *The Nature of Narrative* (New York: Oxford University Press, 1966), 4.

<sup>29</sup> Shlomith Rimmon-Kenan, *Narrative Fiction: Contemporary Poetics* (London: Routledge, 2002), 3.

<sup>30</sup> See also Moshe Simon-Shoshan's work on stories in the Mishnah. Shoshan defines a story as, “any representation of a sequence of at least two inter-related events that occurred once and only once in the past.” Simon-Shoshan, *Stories of the Law*, 20.

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definitionally, since many scholars use the terms “story” and “narrative” interchangeably when writing about biblical narrative/story, I too will use these terms interchangeably. Indeed, in reformulating a narrative’s events into their own rabbinic story or law, rabbinic texts create new narratives from which a new sequence of events can then be abstracted.

A misnomer for biblical narrative, *aggadah* is the commonly used term for rabbinic narrative. The Aramaic form of the Hebrew *haggadah*, it derives from the root “to tell.” Often defined in opposition to *halakhah* – in terms of what it is not – *aggadah* is used as a catchall phrase that refers to all nonlegal passages in rabbinic literature. However, in a more positive definitional vein, *aggadic* passages contain within them legends, stories, folklore, and theology. As the term is used in Palestinian tannaitic and amoraic sources, *aggadah* is consistently related to scripture, even though such passages do not always engage in scriptural exegesis. *Aggadah* thus refers to both subject matter and a particular method of study. In the medieval period, *aggadah* comes to be used as a name for collections of midrash.<sup>31</sup> Given that this book focuses on biblical narratives and their uses for rabbinic law, when discussing relevant biblical passages, I use the term “narrative,” and not *aggadah*. Law and *halakhah* will remain the terminologies of choice within the rabbinic legal context.<sup>32</sup>

<sup>31</sup> Marc Hirshman, “Aggadic Midrash,” in *The Literature of the Sages: Second Part: Midrash and Targum, Liturgy, Poetry, Mysticism, Contracts, Inscriptions, Ancient Science and the Languages of Rabbinic Literature*, ed. Shmuel Safrai, Zeev Safrai, Joshua Schwartz, and Peter J. Tomson (Assen, Netherlands, Philadelphia: Van Gorcum Fortress Press, 2006), 113–115. See, however, Marjorie Lehman who distinguishes between *aggadah* and midrash *aggadah*, with midrash *aggadah* as a specifically exegetical commentary that explicates scripture either verse by verse or by weekly Torah lection. *Aggadah*, in contrast, encompasses material that is neither legal nor exegetical. Since the two genres can exist side-by-side in rabbinic literature, the distinction between the two genres has often become blurred. Marjorie Lehman, *The En Yaaqov: Jacob Ibn Habib’s Search for Faith in the Talmudic Corpus* (Michigan: Wayne State University Press, 2011), 52–53.

<sup>32</sup> Classical rabbinic texts are the first to terminologically distinguish between *halakhah* and *aggadah*. See Fraade, *Law and Narrative*, 26–27.