""Not like Our Rock Is Their Rock" (Deut 32:31): Rabbinic Perceptions of Roman Courts and Jurisdiction"

Katell Berthelot

KATELL BERTHELOT

"NOT LIKE OUR ROCK IS THEIR ROCK" (DEUT 32:31)

RABBINIC PERCEPTIONS OF ROMAN COURTS AND JURISDICTION*

Introduction

For the Palestinian rabbis in the 2nd and 3rd centuries CE, Roman law clearly was one of the forms taken by Roman power, and rabbis sometimes explicitly characterized the Roman court as a place of violence, assimilating the tribunal to the arena of the amphitheater and other places where people were violently put to death.[1] Nevertheless, as both Martin Goodman and Hannah Cotton have emphasized, few tannaitic texts reject non-Jewish (including Roman) courts, and tannaitic sources contain very few examples of a concrete conflict of jurisdiction.[2] Moreover, rabbinic statements concerning the safekeeping of documents such as wills in the archives of the Roman authorities reveal a great deal of leniency in that matter, showing how essential those archives were.[3] It seems at first glance that as far as Roman courts and archives were concerned, the rabbis adopted a pragmatic and accommodationist attitude.

Yet this view requires refinement. First, we must understand what possibilities there were for settling disputes in Roman

* This study was funded by the European Research Council (ERC) under the European Union's 7th Framework Program (FP/2007–2013)/ERC Grant Agreement no. 614,424. It was conducted as part of the ERC project Judaism and Rome, under the auspices of the Centre national de la recherche scientifique (CNRS) and Aix-Marseille University, UMR 7297 TDMAM (Aix-en-Provence, France).

[1] See esp. m. Avodah Zarah 1:7 (on which see below).

[2] Goodman 2000, p. 155; Cotton 1993, p. 102; Cotton 1998, p. 170-171.

[3] See Goodman 2000, p. 164-165. On the importance of archives in rabbinic sources, see e.g. m. Gittin 1:5 (and discussion in y. Gittin 1:4, 7a); t. Avodah Zarah 1:8. This importance is corroborated by the testimony of the documents from the Judean Desert; see Cotton 1998, p. 169-170.

Palestine. There must have been local Jewish courts in Jewish towns and villages during the 2nd and 3rd centuries, even though the Romans would have considered the judicial activity of these courts a form of arbitration – which in fact it was.[4] The documents from the Judean Desert mention only the governor's court, but as Cotton underlines, "It would be absurd to claim that the Roman government took it upon itself to deal with all civil cases in the province of Judaea/Syria Palaestina".[5] On the other hand, that Jews resorted to non-Jewish courts is shown by the papyrological evidence from Egypt and the documents from the Judean Desert, and indirectly attested in rabbinic literature itself.[6] The scale of Jews' use of Roman or non-Jewish courts in Palestine is debated among scholars, but there is no doubt that some Jewish litigants took their disputes to Roman courts even when both parties were Jewish.[7]

However, in view of the prohibition in Leviticus 18:3 against following the statutes of the Egyptians and Canaanites, turning to a non-Jewish court was religiously problematic. Thus the second point we need to clarify is what the rabbis really thought of seeking redress from a non-Jewish court. In this paper, I shall briefly review the few sources that reflect the rabbis' ambiguous rejection of Roman or non-Jewish courts in the tannaitic period. I then shall consider the underlying religious rationale for this rejection by introducing another set of texts. I shall argue that at least some rabbis conceived of Roman tribunals as linked to idolatry, but avoided explicitly discussing this topic for two main reasons: first, because of the political consequences of explicit and comprehensive

[4] The Jewishness of these courts does not imply that they were rabbinic; see Goodman 2000, p. 157-159; Dohrmann 2003, p. 93-100, and her chapter in this volume; Harries 2003; Harries 2010, p. 86; Lapin 2012, p. 98-125.

[5] Cotton 1999, p. 231.

[6] Cotton 2003, p. 51. Jews' attraction to other legal systems is suggested by a passage in Sifra, Aḥarei Mot, 9.13.11 (on Lev 18:4), which expresses anxiety about the possibility that Jews might think that real laws are to be found only among non-Jews, a concern that probably stemmed from the efficiency of the Roman legal system. On this passage, see Dohrmann 2015, p. 201, who rightly recreates the sentiment: "Roman law is an attractive nuisance (it is nicer than ours), but worse, without sanction, is rabbinic law even law at all?"

[7] See e.g. Goodman 2000, p. 155-171, who thinks that Galilean Jews rarely resorted to Roman courts. Contrarily, Dohrmann 2013, p. 75, takes such participation for granted: "Jews – rabbis not excepted – knew and participated in the Roman legal systems. For rabbinic Jews, the Roman court stood not only as a palpable manifestation of Roman authority but was also a galling competitor, *since the majority of Jews evidently found it attractive and effective*. That Jewish provincials used Roman legal institutions over more convenient local Jewish venues is evident from the sources" (emphasis added). Unlike Goodman, Dohrmann does not limit her statement to Galilean Jewry.

rejection of Roman courts (this would have amounted to sheer rebellion, and after three failed revolts, that was not an option), and second, because it was unrealistic to imagine that they could prevent Jews from going to non-Jewish courts.

During the early centuries of the common era, any rabbinic attempt to prevent Jews from bringing disputes to Roman courts would have marginalized the rabbis and their disciples and limited rabbinic influence over more mainstream Jews. And after the Edict of Caracalla granting Roman citizenship to most free persons in the empire (in 212), such an attempt would have made no sense at all. Moreover, there was a risk that such actions would be reported to the governor.[8] Thus no matter how distasteful it may have been to the rabbis, politically and religiously, to see Jews resort to non-Jewish and especially Roman tribunals, they had to refrain from actively preventing Jews from using non-Jewish courts and from declaring that doing so amounted to an act of idolatry (*'avodah zarah*). Rabbinic literature therefore reflects both rejection and accommodation of Roman jurisdiction.[9] Ultimately, though, it maintains the Bible's covenantal understanding of Torah, and strongly correlates Jewish – or rabbinic – jurisdiction with God's law and justice.

The prohibition of non-Jewish tribunals

First, a passage in the Mishnah (Gittin 9:8) rejects the involvement of non-Jewish legal courts in lawsuits between Jews in matters of divorce (*gittin*). The passage states:

> A bill of divorce given by force, if by Israel, it is valid, if by the nations, it is not valid. But [it is valid if] gentiles force him [the husband] and say to him: "Do as the Israelite [authorities] tell you".[10]

This text warrants several comments. First, it implies that there were indeed cases in which Jews received Jewish divorces at non-Jewish courts. In light of the documentation from Egypt and the Judean Desert, it is possible to imagine for example that at the beginning of the 2nd century, there were Jewish women who

[8] Cf. the story of Tamar, a woman who complained to the governor of Caesarea about a decision by the rabbis (y. Megillah 3:2, 74a). See Oppenheimer 2005, p. 179.

[9] On rabbinic accommodation, and even integration into the Roman legal system, see Yair Furstenberg's article in this volume. My paper aims to shed some complementary light on the complex dynamics at work in the rabbinic corpus. In my opinion, it would be misleading to see our approaches as conflicting, as rabbinic responses to the Roman legal system were multifaceted.

[10] Trans. Dohrmann 2003, p. 91 (based on MS Kaufmann).

took the initiative to seek a divorce and in case of conflict, went to non-Jewish courts.[11] As far as the evidence from the papyri is concerned, whether these women sought a Jewish divorce backed by a sympathetic non-Jewish judge, or another kind of divorce (depending of course on the nature of the marriage contract), must be determined on a case-by-case basis. Many aspects of marriage law seem to have been fluid in the 2nd century. As Hannah Cotton remarks with regard to the documents from the Judean Desert, at least until 135 CE, "there was no normative, authoritative and uniform marriage contract which Jews knew that they had to use". She further adds: "Obviously the Jews who wrote these documents felt free to use the legal instrument that seemed to them most effective".[12]

Second, it seems that the rabbis were particularly keen to control marital and family law. This makes sense, because marriage laws are crucial for determining the status of a person. It was also politically expedient, insofar as control over family structures is crucial for achieving control over society as a whole.[13] How greatly control over marital and family law mattered to the rabbis is corroborated by t. Yevamot 12:13, which deals with *ḥalitzah* (the procedure to be followed if a man declines to marry his childless brother's widow; see Deut 25:5-10).[14] The Tosefta asserts that a *ḥalitzah* performed under compulsion is valid if performed at an Israelite court, but invalid at a gentile court, unless the gentiles compel the man and say to him: "Do what Rabbi *X* bids you". The formulation is very similar to that of m. Gittin 9:8, except that here the vague term "Israel" (or "the Israelites") is replaced by the more explicit "Rabbi *X*" (*rabbi peloni*). What is at stake is thus not merely Jewish control, but rabbinic control.

Intriguingly, the texts from both the Mishnah and the Tosefta reject the authority of gentile courts even as they accept it if it is used to force Jews to comply with Jewish (that is, rabbinic) law and legal decisions. In practice then, the Roman legal system may be accepted even in matters of divorce if it serves the rabbinic legal system – if it is, in a way, subservient to it.

[11] For the evidence concerning the divorce of a Jewish woman in Alexandria at a non-Jewish court, see *CPJ* 2, p. 10-12, no. 144 (13 BCE) – though whether the husband in that case was Jewish is unclear. For the evidence from the Judean Desert, see Cotton 1998 and 1999. On Papyrus Se'elim 13, see esp. Ilan 1996; Cotton – Qimron 1998; Brewer 1999.

[12] Cotton 1998, p. 177.

[13] See also Hezser's comments in this volume on the issue of married women's ownership of property.

[14] Lieberman 1967, p. 44. See also Goodman 2000, p. 156.

The rule formulated in Mishnah Gittin is echoed in Mekhilta de-Rabbi Ishmael (MRI), a tannaitic midrash on the Book of Exodus. Commenting on Exod 21:1 (which starts with the words "And these are the ordinances [*mishpatim*]"), the midrash reports the following opinion expressed by Rabbi Eleazar ben Azariah (a tanna active in the late 1st and early 2nd centuries):

> Rabbi Eleazar ben Azariah says: Now whenever the gentiles were to judge according to the laws of Israel, I might think that their decisions are valid. Scripture says: *And these are the ordinances* [*which you shall set before them*] – You may judge theirs but they may not judge yours. On the basis of this interpretation they [the Sages] say: "A bill of divorce given by force, if by Israel, it is valid, if by the nations, it is not valid. But [it is valid if] gentiles force him [the husband] and say to him: 'Do as the Israelite [authorities] tell you'" [quoting m. Gittin 9:8].[15]

This text has been analyzed in depth by Natalie Dohrmann,[16] and I will limit myself to emphasizing two points. First, Rabbi Eleazar ben Azariah generalizes the prohibition found in m. Gittin. While the Mishnah dealt with the very limited case of a bill of divorce given under compulsion, the statement of Rabbi Eleazar in MRI has far-ranging implications. In theory, it implies that Jews should never be judged by a non-Jewish court, even if the non-Jewish judges would rule according to the laws of Israel. All the more so, this statement implies, if they judge according to Roman law, or any non-Jewish law. Jewish judges, however, may judge non-Jews, a point one could describe as a mimicry of the universal jurisdiction of the Romans within the empire. This passage therefore reflects something very different from the Mishnah and could be described as a fantasy of jurisdiction over non-Jews, including Romans.

Second, it is important to highlight that it is not the *content* of the laws involved in the judgment that is the issue here. I can think of at least two ways to understand Rabbi Eleazar's statement. He may be admitting that in some cases, non-Jewish and Jewish laws and verdicts converge and therefore look quite similar. Alternatively, he may be saying that in some cases, in civil matters, non-Jewish tribunals use the laws of the Jews (perhaps classified as customs) in trials involving Jews.[17] Whatever the exact scenario contemplated by Rabbi Eleazar, his point is that a non-Jewish court

[15] MRI Neziqin (Mishpatim) 1, trans. Dohrmann 2003, p. 85, based on the edition of Horowitz – Rabin 1970, p. 246. See also Lauterbach 2004, vol. II, p. 355-356.

[16] Dohrmann 2003. See also her article in this volume.

[17] This interpretation is corroborated by the reading *be-diney Israel*, found in one MS, as opposed to *ke-diney Israel*. On custom in Roman law, see Humfress 2011.

lacks legitimacy to judge the people of Israel, even if it would judge according to the laws of Israel. For Jews, the non-Jewish court is illegitimate per se.[18] Only when it merely enforces the legal decision of an Israelite court can its intervention be accepted.

In a way, Rabbi Eleazar's stance can be compared to that of Paul in the 1st Epistle to the Corinthians (6:1-2, 5-6).[19] Just as Paul rejects judgment of believers by nonbelievers, so too Rabbi Eleazar cannot accept that Israel be judged by *goyim*.[20] In both cases, the rationale is covenantal: people who are parties to a covenant with God should be judged within the framework of this covenant – implicitly, according to the laws given by God – and by judges who themselves are parties to the covenant.

The final text often quoted in connection with the rabbis' rejection of non-Jewish tribunals is a baraita in b. Gittin 88b containing a saying attributed to Rabbi Tarfon, a 3rd-generation tanna (early 2nd century CE), which is quoted in a discussion of the aforementioned m. Gittin 9:8. Rabbi Tarfon teaches, in a way that is reminiscent of Rabbi Eleazar ben Azariah in MRI:

> In any place where you find gentile courts (*agorayot*), even though their laws are law like the Israelite laws, it is not permitted to resort to them, since it says: *And these are the ordinances which you shall set before them* (Exod 21:1). *Before them*, and not before gentiles (*goyim*). (my translation, based on MS Vaticanus 130)

[18] An alternate interpretation of this text would have Rabbi Eleazar prohibit recourse to a non-Jewish court especially – or only? – when the law being applied is a Jewish law, in which case the intention behind the prohibition would be to prevent Jews from confusing the two legal systems. Recourse to a Roman court in matters falling under non-Jewish law would then remain permitted. Yet the rabbis' interpretative work seems to aim to establish the Torah as a body of rules codifying every aspect of Jewish life, leaving very little room for the use of non-Jewish laws in situations involving Jews only. The rabbis' concern about confusion between seemingly similar legal rulings is an important point, as the baraita in b. Gittin 88b also shows, yet Rabbi Eleazar's statement that "You may judge theirs but they may not judge yours" seems to point to the covenant and to the related idea, commonplace in rabbinic literature, of Israel's superiority to the nations. From this perspective, the problem is not merely that the non-Jewish court uses Jewish law, but the fact that it is a non-Jewish tribunal, with the underlying problems of the nature or source of judicial authority and the connection between the non-Jewish court and idolatry (on which see below).

[19] 1 Cor 6:5-6 NRSV: "Can it be that there is no man among you wise enough to decide (διακρῖναι) between members of the brotherhood, but brother goes to law against brother, and that before unbelievers?"

[20] On the pair Israel – *goyim* in rabbinic literature and its connection with Paul, see Rosen-Zvi – Ophir 2015. On the comparison between MRI and 1 Corinthians, see also Berkowitz 2017, p. 133.

According to this text, Rabbi Tarfon concurs with Rabbi Eleazar ben Azariah in prohibiting resort to non-Jewish courts in general, not merely in specific matters. Again, Jews are warned not to be misled by the apparent similarity between their laws and those of the gentiles. The reason for the prohibition of going to gentile courts, based on Exodus 21:1, is that Israel has received laws that pertain to Jews alone. In other words, Israel has its own legal system, which contains God-given laws, and should seek recourse from this system alone.

Association of non-Jewish courts with idolatry and impiety

Legal documents and conflict of authority

Again with regard to bills of divorce, we read in m. Yadayim (4:8):

> A Galilean *min* [heretic or deviant person] said: I cry out against you, O Pharisees, for in a bill of divorce (*get*) you write [the name of] the ruler together with [the name] of Moses. The Pharisees say: We cry out against you, O Galilean *min* [heretic, deviant], for you write the Name [of God] together with [the name of] the ruler on the [same] page and, in addition, you write [the name of] the ruler on top, and the Name [of God] below. [As it is written:] *And Pharaoh said: Who is the Lord, that I should heed him and let Israel go?* [*I do not know the Lord, and I will not let Israel go*] (Exod 5:2). But when he was smitten what did he say? *The Lord is righteous!* (Exod 9:27). (my translation, based on MS Kaufmann)

This text implies that in order to be valid (probably in the eyes of the Roman authorities), a bill of divorce written by Jews had to include a reference to the ruler (*moshel*) in charge at the time of the divorce. The term *moshel* may refer to the governor or, more likely, the consuls in office. We know from the private archive of the Sulpicii, from the 1st century CE, that private commercial contracts were dated by reference to the consuls in power ("under the consuls *X* and *Y*").[21] From the Principate onward, one of these consuls would have been the emperor. The Mishnah probably refers to his name, which would appear on the Jewish bill of divorce alongside a reference to the Law of Moses. The Galilean *min* accuses the Pharisees of putting Moses and the emperor (the "ruler") on the same footing. The reference to the Pharisees indicates that this imaginary dialogue is set before the destruction of

[21] Rowe 2005. See also Rowe 2014, including an example of dating in reference to the consuls, p. 313.

the Temple, rather than in the tannaitic period, and it is possible that the *min* should be identified as a Zealot.

Meanwhile, viewed through the prism of the final redaction of the Mishnah, this text prompts an additional observation. As the emperor's place in the Roman legal system became increasingly prominent with the development of rescripts – that is, direct imperial responses to cases brought to his attention – the parallel between him and Moses became all the more meaningful, and for at least some Jews living in the Roman empire, could raise the question: who is the true lawgiver, and what is the law by which Jews should abide?

The Pharisees' answer is a counterattack with an ironic twist: they accuse the *min* of writing the name of the emperor and the name of God (rather than Moses) on the same document, not even side by side, but the former above the latter, as if the Roman emperor were above God. The bill of divorce thus becomes a symbolic display of the hierarchy between two legal systems and two types of authority. Through the voice of the Pharisees, the Mishnah states that the highest and only true authority and source of law, or sovereignty, is God, not the emperor, and that reversing this hierarchy is impious and blasphemous.

The connection between the courts of the nations and idolatry

Reaffirming that the authority of the God of Israel is superior to that of a gentile sovereign is one thing. Claiming that bringing a case to a gentile court is tantamount to breaking the covenant and committing idolatry is another. On this point, I would like to draw attention to a well-known passage in m. Avodah Zarah (1:7):

> None may sell them bears or lions or anything that can do harm to the people. None may help them to build a basilica, a *gradus* (platform),[22] a stadium,[23] or a tribunal; but one may help them to build public baths or bathhouses; yet when they have reached the vaulting where they set up the idol it is forbidden [to help them] to build.[24]

This passage sharply criticizes Roman justice by assimilating the very locations where it took place – the basilica and the

[22] On the *gradus* as a platform on which the convict was questioned and occasionally tortured or put to death, see Lieberman 1944; Sperber 1984, p. 76-78; Hayes 1995, esp. p. 158.

[23] In this case, *istariah*, which Jastrow 1950, p. 92, characterizes as "a cacophemistic appellation of all kinds of gentile sports," probably stands for *istadion*. Lapin 2012, p. 130, writes that the latter was "specifically invoked as a venue for execution of convicts".

[24] Trans. Danby 1933, p. 438, slightly modified.

bēma – to the stadium, which here refers to the arena in which criminals were killed, as well as the *gradus*, also associated with executions.[25] The common denominator between the four places is bloodshed, as well as spectacle.[26] In her study of courts in the city of Rome, Leanne Bablitz points out that "the Roman courtroom, like the theater or arena, brought together individuals from every social group of the population".[27] The comparison she makes in passing between the court and the theater or arena is meaningful in many ways and should remind us that the exercise of justice was also a kind of spectacle. Clifford Ando similarly emphasizes the visibility of the governors' assize and trials, which attracted a great crowd. These legal performances were meant to materialize the idea of Roman law and justice in the provinces, but apparently the rabbis did not buy into it.[28]

Yet how are these places connected with idolatry? Most scholars see no connection at all. Commenting on this mishnah, Hayim Lapin writes that "the authors of these passages are able to selectively disaggregate what is neutral and permissible from the tainted local workings of the Roman state, which could be construed as implicating the participant in murder".[29] Ishay Rosen-Zvi rightly notes that "Lapin downplays the severity of this text" and that "these Mishnah units attack the basic features of the Roman Empire, not simply 'local workings'".[30] Rosen-Zvi adds: "All four monuments are equally considered by this Mishna as places of bloodshed, and one is thus forbidden from participating in their construction, *even though no law of idolatry is involved*".[31]

But is it really so? Maybe we should relate seriously to the context of the mishnaic statement (its location in tractate Avodah Zarah), and consider the possibility that the redactors of the Mishnah implicitly characterized the Roman court as a place of not only bloodshed, but also idolatry.[32] Here the comparison with the bathhouse – introduced by the Mishnah itself – is telling. Whereas Jews are completely forbidden from participating in the building of

[25] See n. 23.

[26] On the arbitrariness and brutality of governors in the time of the Republic, see Urch 1929. See also Lieberman 1944. On "spectacles of death" in the Roman empire, see Kyle 1998.

[27] Bablitz 2007, p. i.

[28] Ando 2000, p. 375-378. See also his contribution in this volume.

[29] Lapin 2012, p. 131. See also Hadas-Lebel 1990, p. 357.

[30] Rosen-Zvi 2017, p. 241 n. 102. He refers to m. Avodah Zarah 1:7 and another mishnah rejecting the Roman calendar.

[31] Rosen-Zvi 2017, p. 241-242. The emphasis is mine.

[32] Idolatry and bloodshed went hand in hand from a rabbinic perspective, though this does not of course mean that one automatically implied the other.

courts, the Mishnah specifies that Jews are allowed to participate in the construction of bathhouses up to the point where "they have reached the vaulting where they set up the idol". In other words, construction is forbidden as soon as some idolatrousness is clearly present. Logically, in the context of this passage, one may understand that the other types of structures that Jews are forbidden to build are also associated with idolatry.

A related passage in the Tosefta – t. Avodah Zarah 2:5-7 – forbids going to the stadium (*istariah*, the same term as in m. Avodah Zarah 1:7), as well as attending the theater.[33] According to Rabbi Meir, going to the theaters of the gentiles (*goyim*) constitutes an act of idolatry (*'avodah zarah*). The sages, however, agree with this characterization only if a sacrifice is performed in the theater. They forbid the theaters altogether, but for a different reason: because attending entails "the company of the insolent". The stadium, the amphitheater, and other places are forbidden for the same reason and because they cause Jews to neglect the study of the Torah, but the stadia are also prohibited on account of their association with murder, an argument that underlies the prohibition of participating in building a stadium in the Mishnah as well. The passage in the Tosefta discusses exceptions to the rule, though, and allows going to the theater or the stadium "for the state's requirements" (probably when a civic assembly gathers in the theater) or in order to save lives (in the stadium). The positions reflected in the Tosefta are thus diverse and nuanced. Yet it is striking that at least in Rabbi Meir's view, places of leisure are comparable to places of idolatry. Although the theater is not mentioned as such in m. Avodah Zarah 1:7, the discussion between Rabbi Meir and the rest of the sages is illuminating, because it shows that there was debate among the rabbis as to whether a sacrifice had to be performed for a venue to be characterized as a place of idolatry.

In the Mishnah, the rabbis not only discuss the construction of a bathhouse, but also explicitly address the issue of statues placed in public baths after construction, and develop a strategy to neutralize the idolatrous aspect of the bathhouse, though in this context no sacrifice is involved.[34] However, to the best of my

[33] On this text, see Berkowitz 2009, p. 138-141; Berkowitz 2012, p. 93-96. On rabbinic attitudes toward the stadium, theater, etc., see Weiss 2014. For a short presentation of these issues, see also Rosen-Zvi 2012, p. 219-222.

[34] This topic has been studied extensively by modern scholars, notably in connection with the encounter of Proklos and Rabban Gamaliel at Aphrodite's bath (m. Avodah Zarah 3:4). See Halbertal 1998, p. 159-172; Schwartz 1998; Schwartz 2001; Yadin 2006; Lapin 2012, p. 127-132, who writes (p. 128): "Unlike the Babylonian characterization of second-century rabbinic debate, Palestinian rabbinic texts, and particularly tannaitic legal texts, do not generally treat bath

knowledge, rabbinic texts hardly discuss the religious aspects of a court hearing, such as the oaths taken by litigants and witnesses, or the images found in the court hall. The issue of religious rituals, language, and objects at the tribunal has received surprisingly little attention in scholarly works on Greco-Roman courts, perhaps due to a lack of sources.[35] Yet the documents from Egypt and the Judean Desert show that in a legal context, Jews could have to swear by the emperor, or the emperor's *tychē* (i.e., *genius*), and Alexander Fuchs rightly emphasizes that even if the emperor was not a god, the oath implied his superhuman character.[36] According to m. Sanhedrin 7:6, he who takes a vow or swears in the name of an idol – anyone or anything that is worshiped – violates a negative commandment. Moreover, with images of the emperor and the gods set up in a place where justice was supposed to be meted out, the stakes were much higher than in a bathhouse containing statues.[37] In the context of the court, one could not eliminate the problem by arguing, as with the statue of Aphrodite in the bathhouse, that people urinated in front of the statue and therefore did not consider it a deity. The lack of rabbinic discussion of these issues is conspicuously strange, but it has hardly attracted any scholarly attention, and the contrast in m. Avodah Zarah 1:7 between the bathhouse and the court has not been seriously investigated.

Another text goes one step further than m. Avodah Zarah 1:7 by explicitly comparing resort to gentile courts and judges to idolatry. This text comes from Midrash Tannaim on Deuteronomy, a work that is dated to the tannaitic period, but is not without problems, since it was reconstructed by its modern editor, David Hoffmann, from several sources. The passage quoted below is identified by Hoffmann as stemming from the original Mekhilta Deuteronomy, attributed to the school of Rabbi Ishmael.[38] Drawing upon Deut 16:18, "You shall appoint judges and officers in all your towns

as an artifact of empire imposed upon an admiring or resistant population. Baths and bathing appear instead as an almost entirely naturalized aspect of the material practice of daily life".

[35] Concerning oaths at court, see Guérin 2015, p. 114-117, who states that witnesses could not give evidence without swearing by Jupiter.

[36] See *CPJ* 2, p. 213-214, no. 427; see also Cotton 1998, p. 167-168.

[37] Ando 2000, p. 212: "The function of imperial images in daily life, from their supervision of markets and lawcourts to their cohabitation of temples and sanction of oaths, and their power in the popular imagination, in turn, both created and relied on a belief in some direct relationship between emperor and observers"; p. 250: "Portraits that embodied the emperor's power to extend asylum or concretized his oversight of markets and lawcourts might well receive and propitiously acknowledge honors in the emperor's stead".

[38] On the problems raised by Midrash Tannaim and Mekhilta Deuteronomy, see Kahana 2006, p. 100-103.

which the Lord your God gives you, according to your tribes; and they shall judge the people with righteous judgment," the midrash states:

> Concerning what it says: *You shall appoint* [lit.: *give*] (Deut 16:18): this teaches that judges have been given to Israel alone, and [this is said] to teach you that whoever goes to a judge among the nations of the world, it is as if he was practicing idolatry (*'avodah zarah*). Indeed [Scripture] says: *You shall appoint judges and officers* (Deut 16:18), and afterwards it is written: *You shall not pervert justice* (Deut 16:19), *Justice, and only justice, you shall follow* (Deut 16:20), *You shall not plant any tree as an Asherah* [*beside the altar of the Lord your God which you shall make*] (Deut 16:21). Not only that, but whoever leaves aside the judges of Israel and goes before [the judges of] the nations of the world, he denies the Holy One Blessed be He from the start, as it is said: *For their rock is not as our Rock,* [*that*] *our enemies* [*be*] *judges* (Deut 32:31). Why? Because their laws are not good. (my translation, based on Hoffmann 1909, p. 96)

The affirmation that "whoever goes to a judge among the nations of the world, it is as if he was practicing idolatry" is based on the juxtaposition in Deuteronomy 16 of a verse dealing with the appointment of judges and the exercise of justice within Israel and another pertaining to the prohibition of idolatry (symbolized by *asherah*, a word that designates a cultic tree in the Hebrew Bible). Though in chapter 16 of Deuteronomy, these laws are simply juxtaposed, the midrash sees the adjacency as meaningful, following an exegetical technique frequently utilized in rabbinic midrash.

Further developing their point, the redactors of the midrash provide additional evidence by affirming that leaving aside the judges of Israel and going instead to the judges of the nations is tantamount to denying the God of Israel. The justification lies in Deut 32:31, which reads *ki lo ke-tzurenu tzuram we-oyvenu plilim*, a somewhat ambiguous text. It is generally translated as: "For their rock is not as our Rock, even our enemies themselves being judges" (KJV), meaning: "even our enemies testify to it". A more sensible translation is: "For their rock is not as our Rock; however, our enemies [are] judges" (during Israel's oppression). It seems, though, that the midrash understands the verse in yet a third way: "For their rock is not as our Rock, [that] our enemies [be] judges [over us]". Put differently: because their rock (their gods) is not as our Rock (the God of Israel), our enemies have no right to be appointed as judges over us. By going to a non-Jewish judge, a Jew violates the covenant and rejects not only the judges of Israel, but God himself. The midrash, in its theoretical radicality, does not consider the possibility that a Jewish court might be unavailable, or powerless to enforce its decisions. The strategy of the midrash is the opposite of that in the story of Aphrodite's bath: instead of

offering a way to neutralize idolatry, it explicitly affirms the idolatrousness of recourse to a non-Jewish court.

Let us now return to the baraita in b. Gittin 88b, which merely stated: "In any place where you find gentile courts, even though their laws are law like the Israelite laws, it is not permitted to resort to them, since it says: 'And these are the ordinances which you shall set before them' (Exod 21:1). 'Before them,' and not before gentiles". Admittedly, there is no reference here to idolatry as such. However, the rationale behind Rabbi Tarfon's statement is similar to that of Midrash Tannaim on Deut 16:18. In both cases, the issue is the covenant between God and Israel: Israel's laws are not laws like those of other nations, but ordained by God, divinely inspired, and good, whereas those of the nations are not good and, we may guess, not given by God, even when they resemble the laws of Israel. Jews must adhere to Israel's laws and judges, because they are part of the covenant between God and Israel. Conversely, participation in the legal systems of the nations implies recognition of the authority of a different "rock," and a breach of the covenant between Israel and God. It seems that from this perspective, every legal system is assumed to have religious backing: just as Jewish judges and laws have a divine foundation in the God of Israel, similarly the judges and laws of the nations have a religious foundation in the gods of the nations.

The connection between the tradition in Midrash Tannaim and that in b. Gittin 88b is clearly perceived by Rashi (1040–1105) who draws on them in his commentary to Exod 21:1:

> *Before them*: But not before gentiles. Even if you know that they judge a certain law similarly to the laws of Israel, do not bring it to their courts, for one who brings Jewish lawsuits before gentiles profanes the [Divine] Name and honors the name of idols by giving them importance, as it is said: *For their rock is not as our Rock,* [*that*] *our enemies* [*be*] *judges* [*over us*] (Deut 32:31). When [we let] our enemies judge [us], this is a testimony to the ascendancy of their deities. (my translation)[39]

Rashi combines the two traditions and makes the underlying rationale behind the rabbinic texts even clearer by stating that going before gentile judges is equivalent to recognizing the authority of their gods. The implicit idea, it seems to me, is that every legal system has a transcendent foundation, which in Antiquity and the Middle Ages was both religious and political, and came to the fore

[39] Rashi knows a later formulation of the tradition found in Midrash Tannaim, that of Midrash Tanḥuma, Mishpatim 3:2.

in particular in the oaths sworn by participants or the display of certain objects or symbols.[40]

In short, it seems that from the perspective of some rabbis at least, there was a connection between non-Jewish courts and idolatry. However, our sources do not point to specific idolatrous objects or practices at court. Rather, they suggest that going to a non-Jewish court constituted a breach of the covenantal regime. Because law lies at the heart of the covenant between God and Israel, it is the least neutral space conceivable.

The association of Jewish or rabbinic jurisdiction with the Jerusalem Temple and with God himself

I now would like to examine the association of Jewish or rabbinic jurisdiction with the Jerusalem Temple, the holiest place in Judaism, and with God himself.[41] Such an association, which should not be taken for granted, could indicate that the legitimizing strategy of the rabbis, as legal experts, was to emphasize the superior, transcendental nature of the Law in which they claimed expertise (though they also claimed that this Law was now in their hands and no *bat qol* or divine intervention was to be expected, as in the famous story of Akhnai's oven).

Going back to MRI Neziqin, I would like to draw attention to the passage immediately preceding that quoted above. Here, at the end of Ba-Ḥodesh, § 11, the midrash comments on the juxtaposition of Exod 20:26, "You shall not go up by steps to my altar, that your nakedness be uncovered on it," with the verse that follows: "And these are the ordinances which you shall set before them". As in the case of the above passage from Midrash Tannaim, the midrash sees the juxtaposition of these two verses as significant:

> *That your nakedness be* [*not*] *uncovered on it. And these are the ordinances which you shall set before them*. We can thus learn that the place for the Sanhedrin is alongside of the altar. Although there is no proof for it, there is a suggestion of it in the passage: *And Joab fled into the tent of the Lord and caught hold of the horns of the altar* (1 Kings 2:28).[42]

[40] Humfress 2009, p. 391, writes of the time of Justinian: "In AD 530 the emperor Justinian ordered the placing of gospel books in every Roman law court where cases were heard according to Roman law (Cod. Iust., 3.1.14, 1-3). The presence of the holy gospel text was intended to guarantee the presence of God at every trial".

[41] The association of a court with the Temple may actually be seen as a consequence of the association of judges with God.

[42] Trans. Lauterbach 2004, vol. II, p. 354 (cf. Horovitz – Rabin 1970, p. 245). This tradition is echoed in y. Makkot 2:4, 31d, and repeated by Rashi in his above commentary.

As Jacob Lauterbach explains, "The proximity of the laws about the altar and about justice suggests that the altar and the tribunal of justice, i.e., the Sanhedrin, should actually be adjacent".[43] The exegetical method is similar to that found in Midrash Tannaim, and aims to make a similar point that goes beyond spatial location: justice and cult are closely related. This is what the spatial proximity between the Sanhedrin and the altar symbolizes.

The most important Jewish court, the Sanhedrin, is thus associated with the particular sanctity of the Jerusalem Temple and the court of the priests, where the altar stood. Similarly, according to m. Sotah 7:8, when the king of Israel is seated on a *bēma*, like a judge, to read the Law in front of the people on the Festival of Tabernacles every 7th year (Deut 31:10), that *bēma* is located within the Temple court. Note that the term *bēma* is rare in the Mishnah, and refers both to the place where Roman verdicts are pronounced, which is implicitly associated with idolatry (m. Avodah Zarah 1:7), and to the place, associated with the particular holiness of the Temple, where God's Law is made known to Israel.

What these passages show, in short, is that in tannaitic literature, the legal instances of ancient Israel are given further legitimacy by association with the Temple and the cult of the God of Israel.

Finally, I would like to bring into the discussion a passage from y. Sanhedrin 1:1, 18a, involving Rabbi Aqiva, that addresses the role of the rabbis as legal actors (be it only as arbitrators):

> Rabbi Aqiva, when someone sought to litigate before him, would say to him: "Know before whom you are standing. [You are standing] before Him who spoke and brought the world into being, as it is said: *Then both parties to the dispute shall appear before the Lord* (Deut 19:17 NRSV) – and not before Aqiva ben Joseph!" (my translation, based on MS Leiden)

The biblical verse cited is worth quoting in full: "Then both parties to the dispute shall appear before the Lord, before the priests and the judges who are in office in those days". The verse notably associates priests and judges, reflecting the association of the Sanhedrin and the altar in MRI. What is more, the biblical verse itself states that when the litigants stand in front of the priests and judges, they are actually standing before God.[44] Rabbi Aqiva, implicitly identifying himself with "the judges who are in office in those days," similarly recalls that the authority of the judge is

[43] Lauterbach 2004, vol. II, p. 354, n. 7.

[44] Cf. b. Berakhot 28b, where Rabbi Eliezer exhorts his disciples: "When you pray, know before whom you are standing". On the importance of the standing posture in both human interaction and human – divine interaction, see Ehrlich 1998.

backed by that of God himself. Behind the rabbinic judge or arbitrator lies the very presence of "Him who spoke and brought the world into being," who is the ultimate judge.[45] According to this passage (and similar statements that follow, 18b), rabbinic jurisdiction has a superior transcendent foundation and legitimacy, grounded in the authority of God himself.

Conclusion

Provided attributions to specific rabbis can be trusted, there seems to be a difference of perspective between the anonymous position in the Mishnah and the position of tannaim such as Rabbi Eleazar and Rabbi Tarfon. Whereas in m. Gittin 9:8 the authority of a non-Jewish court is explicitly rejected only in matters of divorce, leaving the prohibition of involving a non-Jewish court in other legal matters implicit, Rabbi Eleazar and Rabbi Tarfon condemn resort to a non-Jewish court per se, at least in matters governed by Jewish law. The rationale behind such a condemnation is covenantal: Jews have their own legal system, which is God-given; their laws therefore have a different status from those of non-Jews, and only Israelite judges can legitimately judge Israel.

The tannaitic stance toward non-Jewish and specifically Roman courts was ambivalent and complex. Rarely was there clear rejection of the Roman legal system as implied by the statements of Rabbi Eleazar and Rabbi Tarfon; most rabbis seem to have been willing to accommodate it to some extent, at least in practice. By allowing intervention by non-Jewish legal authorities in certain cases (notably when those authorities helped establish rabbinic power), these rabbis neutralized the idolatrousness of the gentile courts. However, some rabbis emphasized the connection between non-Jewish courts and idolatry, and conversely the godly dimension of Jewish, especially rabbinic, courts and verdicts. True, the association of non-Jewish jurisdiction with idolatry in the above texts is not explicitly based on the pagan trappings, such as statues and oaths, liable to be encountered at court, but appeals to a covenantal rationale. However, these two approaches are not mutually exclusive, but complementary. The silence of rabbinic sources does not prove that religious oaths, rituals, or objects at the court were not at issue, and oaths must have been particularly problematic in the rabbis' eyes, as indicated in m. Sanhedrin 7:6.

[45] For God as the ultimate judge, see, e.g., t. Hullin 2:24.

Drawing inspiration from Moshe Halbertal, Beth Berkowitz has emphasized neutralization of idolatry as a key strategy in the institutionalization of rabbinic authority. She has also demonstrated that there are two tendencies at work in the tannaitic midrash Sifra in interpreting Lev 18:3, where a passage from the school of Rabbi Aqiva tends to neutralize the idolatrousness of gentile practices, yet a strategy of antineutralization is evident in Mekhilta de-Arayot, a section from the school of Rabbi Ishmael later inserted in the Sifra.[46]

Berkowitz did not address the issue of courts, but I believe that the same two tendencies are present in the sources examined here. The rabbis neutralized the idolatrous dimension of non-Jewish courts by permitting Jews to participate in trials held there and by allowing intervention by non-Jewish legal authorities in certain cases, such as to enforce a rabbinic decision concerning divorce. Here too, the pragmatic strategy of neutralization would have served the interests of the early rabbis who sought to broaden their juridical authority. Nevertheless, their refusal to see legal systems as something neutral and separate from religion probably also proved crucial to institutionalizing rabbinic authority. The rabbis, continuing the biblical tradition, opted for a position that was deeply countercultural in the Roman world: contrary to Roman legal tradition, which progressively separated law from religion as an independent field of its own, the rabbis kept the two intimately connected. This positioning helped them to acquire for themselves and the legal tradition they elaborated a legitimacy that they could claim owed nothing to Roman power, but everything to God.

Katell Berthelot
CNRS – Aix-Marseille University –
berthelot@mmsh.univ-aix.fr

[46] See Berkowitz 2009, p. 122; Berkowitz 2012, p. 110.

Bibliography

Primary sources

CPJ 2 = V. Tcherikover, A. Fuks (ed.), *Corpus Papyrorum Judaicarum, Volume 2*, Cambridge, Harvard University Press, 1960.
Danby 1933 = H. Danby (ed.), *The Mishnah*, Oxford, Oxford University Press, 1933.
Hoffmann 1909 = D. Hoffmann (ed.), *Midrash Tannaim*, Berlin, Yitzkovski, 1909.
Horowitz – Rabin 1970 = H.S. Horovitz, I.A. Rabin (ed.), *Mechilta D'Rabbi Ismael cum variis lectionibus et adnotationibus*, Jerusalem, Wahrmann Books, 1970 (2nd ed.).
Lauterbach 2004 = J.Z. Lauterbach (ed.), *Mekhilta de-Rabbi Ishmael*, Philadelphia, Jewish Publication Society, 2004.
Lieberman 1967 = S. Lieberman (ed.), *Tosefta*. III.1. *Nashim*, New York, JTS, 1967.

Secondary sources

Ando 2000 = C. Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire*, Berkeley, 2000.
Bablitz 2007 = L. Bablitz, *Actors and Audience in the Roman Courtroom*, London, 2007.
Berkowitz 2009 = B.A. Berkowitz, *The Limits of "Their Laws": Ancient Rabbinic Controversies about Jewishness (and Non-Jewishness)*, in *Jewish Quarterly Review*, 99-1, 2009, p. 121-157.
Berkowitz 2012 = B.A. Berkowitz, *Defining Jewish Difference from Antiquity to the Present*, New York, 2012.
Berkowitz 2017 = B.A. Berkowitz, *Approaches to Foreign Law in Biblical Israel and Classical Judaism*, in C.E. Hayes (ed.), *The Cambridge Companion to Judaism and Law*, Cambridge, 2017, p. 128-156.
Brewer 1999 = D.I. Brewer, *Jewish Women Divorcing Their Husbands in Early Judaism: The Background to Papyrus Ṣe'elim 13*, in *Harvard Theological Review*, 92-3, 1999, p. 349-357.
Cotton 1993 = H. Cotton, *The Guardianship of Jesus Son of Babatha: Roman and Local Law in the Province of Arabia*, in *Journal of Roman Studies*, 83, 1993, p. 94-108.
Cotton 1998 = H. Cotton, *The Rabbis and the Documents*, in M. Goodman (ed.), *Jews in a Graeco-Roman World*, London, 1998, p. 167-179.
Cotton 1999 = H. Cotton, *The Languages of the Legal and Administrative Documents from the Judaean Desert*, in *Zeitschrift für Papyrologie und Epigraphik*, 125, 1999, p. 219-231.
Cotton 2003 = H. Cotton, *"Diplomatics" or External Aspects of the Legal Documents from the Judaean Desert: Prolegomena*, in Hezser 2003, p. 49-61.
Cotton – Qimron 1998 = H. Cotton, E. Qimron, *XHev/Se ar 13 of 134 or 135 C.E.: A Wife's Renunciation of Claims*, in *Journal of Jewish Studies*, 49, 1998, p. 108-118.

Dohrmann 2003 = N.B. Dohrmann, *The Boundaries of the Law and the Problem of Jurisdiction in an Early Palestinian Midrash*, in Hezser 2003, p. 83-103.

Dohrmann 2013 = N.B. Dohrmann, *Law and Imperial Idioms: Rabbinic Legalism in a Roman World*, in N.B. Dohrmann, A.Y. Reed (ed.), *Jews, Christians and the Roman Empire: The Poetics of Power in Late Antiquity*, Philadelphia, 2013, p. 63-78.

Dohrmann 2015 = N.B. Dohrmann, *Can "Law" Be Private? The Mixed Message of Rabbinic Oral Law*, in C. Ando, J. Rüpke (ed.), *Public and Private in Ancient Mediterranean Law and Religion*, Berlin, 2015, p. 187-216.

Ehrlich 1998 = U. Ehrlich, *"When You Pray Know before Whom You Are Standing" (bBer. 28b)*, in *Journal of Jewish Studies*, 49-1, 1998, p. 38-50.

Goodman 2000 = M. Goodman, *State and Society in Roman Galilee, A.D. 132–212*, London, 2000 (1st ed. 1983).

Guérin 2015 = C. Guérin, *La voix de la vérité. Témoin et témoignage dans les tribunaux romains du Ier siècle avant J.-C.*, Paris, 2015.

Hadas-Lebel 1990 = M. Hadas-Lebel, *Jérusalem contre Rome*, Paris, 1990.

Halbertal 1998 = M. Halbertal, *Coexisting with the Enemy: Jews and Pagans in the Mishnah*, in G. Stanton, G.G. Stroumsa (ed.), *Tolerance and Intolerance in Early Judaism and Christianity*, Cambridge, 1998, p. 159-172.

Harries 2003 = J. Harries, *Creating Legal Space: Resolving Disputes in the Roman Empire*, in Hezser 2003, p. 63-81.

Harries 2010 = J. Harries, *Courts and the Judicial System*, in C. Hezser (ed.), *The Oxford Handbook of Jewish Daily Life in Roman Palestine*, Oxford, 2010, p. 85-101.

Hayes 1995 = C.E. Hayes, *Amoraic Interpretation and Halakhic Development: The Case of the Prohibited Basilica*, in *Journal for the Study of Judaism*, 26-2, 1995, p. 156-168.

Hezser 2003 = C. Hezser (ed.), *Rabbinic Law in Its Roman and Near Eastern Context*, Tübingen, 2003.

Humfress 2009 = C. Humfress, *Law in Practice*, in P. Rousseau (ed.), *A Companion to Late Antiquity*, Chichester, 2009, p. 377-391.

Humfress 2011 = C. Humfress, *Law and Custom under Rome*, in A. Rio (ed.), *Law, Custom, and Justice in Late Antiquity and the Early Middle Ages*, London, 2011, p. 23-47.

Ilan 1996 = T. Ilan, *On a Newly Published Divorce Bill from the Judaean Desert*, in *Harvard Theological Review*, 89-2, 1996, p. 195-202.

Jastrow 1950 = M. Jastrow, *A Dictionary of the Targumim, the Talmud Bavli and Yerushalmi, and the Midrashic Literature*, New York, 1950.

Kahana 2006 = M. Kahana, *The Halakhic Midrashim*, in S. Safrai *et al.* (ed.), *The Literature of the Sages – Second Part: Midrash and Targum, Liturgy, Poetry, Mysticism, Contracts, Inscriptions, Ancient Science and the Languages of Rabbinic Literature*, Assen, 2006, p. 3-105.

Kyle 1998 = D.J. Kyle, *Spectacles of Death in Ancient Rome*, London, 1998.

Lapin 2012 = H. Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 CE*, Oxford, 2012.

Lieberman 1944 = S. Lieberman, *Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum*, in *Jewish Quarterly Review*, 35, 1944, p. 1-57.

Oppenheimer 2005 = A. Oppenheimer, *Jewish Penal Authority in Roman Judea*, in N. Oppenheimer (ed.), *Between Rome and Babylon: Studies in Jewish Leadership and Society*, Tübingen, 2005, p. 173-182.

Rosen-Zvi 2012 = I. Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash*, Leiden, 2012.

Rosen-Zvi 2017 = I. Rosen-Zvi, *Rabbis and Romanization: A Review Essay*, in M. Popović, M. Schoonover, M. Vandenberghe (ed.), *Jewish Cultural Encounters in the Ancient Mediterranean and Near Eastern World*, Leiden, 2017 (*SJSJ*, 178), p. 218-245.

Rosen-Zvi – Ophir 2015 = I. Rosen-Zvi, A. Ophir, *Paul and the Invention of the Gentiles*, in *Jewish Quarterly Review*, 105-1, 2015, p. 1-41.

Rowe 2005 = G. Rowe, *Roman Law in Action: The Archive of the Sulpicii* (TPSulp), 2005, unpublished paper.

Rowe 2014 = G. Rowe, *The Roman State: Laws, Lawmaking, and Legal Documents*, in C. Bruun, J. Edmondson (ed.), *The Oxford Handbook of Roman Epigraphy*, Oxford, 2014, p. 299-318.

Schwartz 1998 = S. Schwartz, *Gamaliel in Aphrodite's Bath: Palestinian Judaism and Urban Culture in the Third and Fourth Centuries*, in P. Schäfer (ed.), *The Talmud Yerushalmi and Graeco-Roman Culture*, I, Tübingen, 1998, p. 203-217.

Schwartz 2001 = S. Schwartz, *The Rabbi in Aphrodite's Bath: Palestinian Society and Jewish Identity in the High Roman Empire*, in S. Goldhill (ed.), *Being Greek under Rome: Cultural Identity, the Second Sophistic, and the Development of Empire*, Cambridge, 2001, p. 335-361.

Sperber 1984 = D. Sperber, *A Dictionary of Greek and Latin Legal Terms in Rabbinic Literature*, Ramat Gan, 1984.

Urch 1929 = E.J. Urch, *Procedure in the Courts of the Roman Provincial Governors*, in *The Classical Journal*, 25-2, 1929, p. 93-101.

Weiss 2014 = Z. Weiss, *Public Spectacles in Roman and Late Antique Palestine*, Cambridge, 2014.

Yadin 2006 = A. Yadin, *Rabban Gamaliel, Aphrodite's Bath, and the Question of Pagan Monotheism*, in *Jewish Quarterly Review*, 96-2, 2006, p. 149-179.