

III

CONFERENCE REPORT: “THE TALMUD YERUSHALMI’S CIVIL LAW IN ITS ANCIENT LEGAL CONTEXT: RABBINIC LAW – ROMAN LAW – HELLENISTIC LAW”, MARBURG, 23 – 26 JUNE 2024

Laura Gold and Lisa Nardone*
(University of Marburg)

From 23 – 26 June 2024, the University of Marburg hosted an international and interdisciplinary conference as part of the project “Rabbinic Civil Law in the Context of Ancient Legal History: A Legal Compendium to the Bavot Tractates of the Talmud Yerushalmi”, led by Catherine Hezser (SOAS, University of London) and Constantin Willems (Marburg). In the ambit of the conference, entitled “The Talmud Yerushalmi’s Civil Law in Its Ancient Legal Context: Rabbinic Law – Roman Law – Hellenistic Law”, participants from Israel, Italy, Switzerland, Germany, and the United Kingdom presented on various topics of rabbinic and Roman law, focusing on comparing both legal traditions. The aim was to make out differences and similarities within the field of rabbinic, Roman and Hellenistic law, especially by comparing the solutions each discipline presented on selected problems in the area of tort law, status law, property law, contract law, family law, and inheritance law. For this purpose, mainly references from the Talmud Yerushalmi tractates Neziqin and Qiddushin, the Roman legal sources, and selected papyri were discussed. The speakers then focused on substantive legal problems and theories on how to contextualise rabbinic legal tradition and Roman law.

The first panel was chaired by Angela Standhartinger (Marburg). Yair Furstenberg (Hebrew University, Jerusalem) initiated the conference with a lecture on “Traces of the Constitutio Antoniniana in Later Rabbinic Law-Making”. Using selected examples from the Yerushalmi, he showcased how Roman conceptualisations might have found entry in rabbinic discussions and thus law-making with a special focus on the time after Caracalla’s Edict. Additionally, he displayed how these influences can be traced within the rabbinic sources at hand. Following this presentation, Martin Avenarius (Cologne) gave a paper on “Care for Day Labourers in the Talmud Yerushalmi – Ideas of Justice and Practice in the Mediterranean Region”. Using textual sources on Roman and rabbinic law, he established that both legal fields dealt with the question on whether and to which extent the day laborers needed additional care besides their daily monetary compensation. He demonstrated that Roman law developed the institution of *locatio conductio*, whilst rabbinic law drew on local customs as a solution.

The second panel, chaired by Lisa Nardone (Marburg), was opened by Catherine Hezser (SOAS, University of London). Talking on “Women and Property in Rabbinic, Hellenistic, and Roman Law”, Hezser focused on the dependency relationship between women and their husbands respectively fathers and the question of how this influenced women’s ability to own and utilise property. To illustrate this, various problems centered in family and inheritance law were discussed that can be found in rabbinic, Roman and Hellenistic Law. Subsequently, Francesco Lucrezi (Salerno) gave a paper entitled “Three Ways. The Acquisition and Release of Wives, Animals, and Things in Talmud Yerushalmi Qiddushin”. Lucrezi demonstrated that whilst the Talmud often stipulates that these positions can be acquired in three and released in two ways, there might be even more varied ways that can be found within the Talmud. Following this observation, he critically examined whether these modes of acquisition and loss are to be seen as sub-categories of the aforementioned number of ways or rather have to be understood as new possibilities. Lastly, Lucrezi juxtaposed the regulations in Roman law regarding *in manu* marriage and “acquisition” of women via *usus*, *coemptio* and *confarreatio*.

* Research assistants at the University of Marburg, Germany, chair for Private Law and Roman Law (Prof. Dr. Constantin Willems). The contribution has been written in the ambit of the project “Rabbinic Civil Law in the Context of Ancient Legal History: A Legal Compendium to the Bavot Tractates of the Talmud Yerushalmi”. Funded by the Deutsche Forschungsgemeinschaft (DFG) – project number 508015204.

Chaired by Kai Ruffing (Kassel), the third panel started with a presentation by Mariateresa Amabile (Salerno). In her paper, “Some Remarks about Levirate Marriage in Yerushalmi Qiddushin 1:1 and CTh.3.12.2, C.I. 5.5.5: A Comparative Examination”, Amabile presented a comparative study on the provisions on a levirate marriage between the widow and the brother of the deceased as regulated in the Talmud Yerushalmi Qiddushin and Cod. Th. 3.12.2 (355 CE) and Cod. Iust. 5.5.5 (387 CE): While the rabbis permitted this procedure and even provided ways to enforce the marriage, the Roman emperors of the 4th century CE prohibited levirate marriage. In her presentation, Amabile explained the different interests involved and how they intertwine. Subsequently, Doris Forster (Geneva) presented a paper titled “‘What is the Bardelas?’ and Other Inquiries into Animal Liability.” In her analysis, Forster demonstrated that the Talmud Yerushalmi Baba Qamma bases animal liability on the degree of risk, while Roman law applies a principle of strict liability. However, parallels to Roman liability concepts appear in rabbinic sources regarding the treatment of inherently dangerous animals like leopards (*pardalis* in Greek). The term *bardelis* in the Mishnah later became unclear to rabbis in the Persian Empire, who, lacking Greek knowledge, asked openly “What is the *bardelas*?”. The Roman *edictum de feris* instead refers to *panthera*, a term understood in a broader sense to include various types of predatory cats.

The fourth and final panel was chaired by Laura Gold (Marburg). Constantin Willems (Marburg) gave a paper on “Casting out the Beam? Roman Law on *tignum iunctum* and *inaedificatio* and its Reflections in the Talmud Yerushalmi”. Willems compared the treatment of building using someone else’s materials and building on someone else’s land in the Tosefta, in Talmud Yerushalmi Baba Qamma, and in the Roman legal sources, showing that in essence, both Roman jurists and rabbis discussed the same constellations and came to similar conclusions. Interestingly, the rabbinic discussion from the 2nd century CE acknowledges of the criterion of (lacking) consent of the landowner, which later is attested for (*sine nostro permissu*) in Epit. Gai. 2.1.4, i.e. in the so-called West Roman vulgar law of the 5th century CE. The last paper was given by Orit Malka and Yakir Paz (both Hebrew University, Jerusalem): “*Si servus transfugerit ad hostes*: Slaves and Captivity in Roman and Rabbinic Law”. The speakers concluded that, by using different interpretational approaches towards the Mishnah, both Talmuds, Yerushalmi and Bavli, pursued different purposes in regard to returning the slaves to their owner. This was explained in more detail by placing Tryph., Dig. 49.25.12 and Paul., Dig. 49.15.19.4–5 in context and consequently illustrating that this problem also existed in Roman Law and could have influenced the rabbis.

In summary, the participants referred to various parallels between rabbinic and Roman law and their legal sources. During the concluding roundtable talk, the participants suggested that a reinforced dialogue between both disciplines would be helpful to better understand the sources and their possible interplay. Not only could this be helpful to better understand rabbinic law in its context of local law used in a Roman province, but also to get insights how Roman law in the provinces might have been applied in a time for which, due to the interventions of Justinian’s compilers, we only possess very little primary evidence.