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Thomas Kazen

Scripture, Interpretation, or Authority?

Motives and Arguments in Jesus' Halakic Conflicts

Mohr Siebeck

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In memory of my father

Roland Kazen

1936–2009

and a vision of restoration
for the marginalized

Preface

A book on motives and arguments in Jesus' conflicts with his contemporaries about various halakic issues is not really too much of a departure in view of my earlier studies on purity and impurity. In my dissertation (*Jesus and Purity* Halakhah, 2002; corrected reprint edition 2010; see also *Issues of Impurity in Early Judaism*, 2010) I asked questions not only about what Jesus did or did not do, but also about his attitudes. Attitudes undeniably have to do with motives and purposes.

The idea of this specific topic was born in 2006 when Peter Tomson invited me to respond to a paper by Friedrich Avemarie on Jesus and purity at a Leuven conference. Our conclusions differed, which is, of course, nothing new in the scholarly world, but a well known phenomenon that some consider part of the game and others take as proof that the task of history is hopeless and beyond redemption. This happened, however, in spite of the fact that I believe we shared a basically similar outlook, expecting Jesus to fit well into his contemporary Jewish milieu, not being in any way in opposition to the Torah as such. As it turned out, our disagreement had mainly to do with whether or not Jesus objected to post-biblical halakah in favour of Scripture.

This is in a sense a question of motives. Why did Jesus come into conflict with some of his contemporaries about legal issues? It is hardly possible to claim that he had no disagreements at all – when it came to halakic interpretation and practice most Jewish groups had disagreements. We rather have to ask: with whom did he agree and with whom did he disagree? And the natural follow-up is, *why?*

A number of possible motives have suggested themselves throughout the history of research on the historical Jesus. Some suggestions are clearly outdated. I will not spend much time in refuting ideas of Jesus opposing or “abrogating” Jewish law in principle; the ghosts of some of the “new questers” have been adequately laid by others. There are other suggestions, however, such as Jesus defending Scripture against halakic elaborations or favouring spiritual matters over cultic concerns, or the idea of a personal authority, often bound up with messianic or christological implications, all of which deserve more attention. As will become clear through this study, I am suspicious of these suggestions as explanations of

the motives of the *historical* Jesus, often finding that they mirror early Christian reflection on the *theological meaning* of the Jesus tradition.

Certain interpretations seem to reflect confessional concerns; while Stephen Westerholm's *Jesus and Scribal Authority* is still a valuable piece of research and has served as a point of departure for a number of students – I remember devouring it as a young undergraduate – its description of Jesus as viewing God's will not as statutory commands but as something only to be fulfilled "by a heart in tune with the divine purposes," now seems rather pietist and suspiciously anachronistic. In the end, however, I will suggest that there is something about Jesus' view of torah which, combined with a prophetic outlook and a utopian vision of inclusive restoration, results in an attitude focused on the priority of human need and the pragmatics of human welfare. I will also suggest that such a vision was borne and supported by popular understanding and expectation, and that the authority associated with Jesus' stance is best explained by its collective and prophetic underpinnings.

The present volume builds to some extent on a paper presented in 2007 at the Annual Meeting of the Society of Biblical Literature in San Diego. While that was no great performance – at least I hope it was my last speed-reading exercise ever – I am grateful to Bob Webb who overlooked that and not only kindly made me realize that this was an outline for a book rather than an article, but also encouraged me to write it.

My writing then partly took a different turn, when I encountered Aharon Shemesh's recent book on halakic development (*Halakhah in the Making*, 2009). Here I found tools that were extremely useful, not only for Shemesh's purposes, but also for analyzing those parts of the Jesus tradition that are relevant to this book. Shemesh, along with other scholars, such as Daniel Schwartz, Adiel Schremer, and Vered Noam, to name but a few, are carrying on a discussion of the development of halakah, which is based to a large extent on close analyses of the Qumran texts and has a bearing on the issue of dating rabbinic traditions – in fact it is crucial in certain areas. These insights provided me with sharper tools to continue the task that I had already begun: to disentangle various motives and assign them to those places along a trajectory of ideas where they were most likely to belong. The reader will have to decide how far my attempts have been successful, and to what extent success, or a lack thereof, is due to the methods employed.

As will become evident to the reader, I do not attempt to offer anything like a full history of research or lengthy bibliographies; they are provided by other scholars and there is no point in repeating what is already known and recorded simply for the sake of producing a thicker book, if additional pages do not display anything new in outlook. The content and quality of

the argument will have to show whether or not I have interacted with relevant research.

For the sake of simplicity, I often speak of the gospel texts as if of persons: Matthew, Mark, Luke and John, or in the course of discussion, sometimes only as “he.” As should be clear from the wider discussion, this convenient shorthand says little about my view of the authorship of the gospels, their tradition history, or various possible levels of redaction.

This study has been through a lengthier process than any of my previous work. It would not have been possible, were it not for the Stockholm School of Theology, which encourages scholarship by offering considerable time for research, and for Owe Kennerberg’s generous pragmatism when it comes to research leave. I have had several opportunities to present parts of this material, both in fairly premature form (Åbo/Turku and Uppsala, Oct 2010) and towards the end of the process (Cambridge, Oct 2012; Durham, April 2013). Aharon Shemesh read an earlier draft of the first two chapters, and I have enjoyed several stimulating conversations with Lutz Doering. I have also received grants from the following Swedish research funds: Gunvor och Josef Anér’s stiftelse, Helge Ax:son Johnsons stiftelse, Stiftelsen Lars Hiertas Minne, Birgit och Gad Rausings stiftelse, SKY stipendiefond, and C E Wikströms minne. These have made possible several shorter periods of research leave, during which most of this book was written. Travel grants from Kungliga Vitterhetsakademien (Swedish Royal Academy of Letters) financed several shorter trips to Cambridge, where superior library resources have speeded up research and writing. A sabbatical grant from the Wenner-Gren foundation made a longer stay possible, during which I was able, among other things, to complete this manuscript. For all of this I am grateful. I would also like to thank Jim Kelhoffer for suggesting Mohr Siebeck as publishers and, finally, Jörg Frey and Henning Ziebritzki for accepting the manuscript for the WUNT series.

As with my previous book on emotions in biblical law, Naomi Hallan has corrected my English. Her accuracy and patience are exceptional; all remaining flaws are entirely my own responsibility.

This book is dedicated to the memory of my father, Roland Kazen, who died all too suddenly from cancer in January 2009, the year in which I began to work seriously on this study. His services in training leprosy surgeons across Africa were and are still badly needed. While largely unknown, reconstructive leprosy surgery provides physical restoration and human dignity to some of the most marginalized and despised people in the world. Such engagement is a question of motives, too.

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Chapter 1

Introduction: the historical Jesus and halakic development

1.1 The problem: whose motives?

In the gospels, Jesus is portrayed as being involved in conflicts regarding legal practice and interpretation, and this is true of all strata. While the gospel of John associates such conflicts with extraordinary claims of authority and divinity, such a framework is less clear in the Synoptics. In spite of this it has often been taken for granted also by modern interpreters. Not only do we encounter suggestions that Mark, Matthew, or Luke made christological use of these conflicts in their narrative constructs; we also find that the historical Jesus is frequently assigned a self-understanding which somehow places him in a position superior to the law, or even outside the law. A concern with authority, with or without divinity, is often combined with an interest in Jesus as a teacher, who is thought either to have advocated God's plain law over against human traditions, or else to have argued for another halakic interpretation than those of his adversaries.

The problem is, of course, that the Jesus who argues in favour of Scripture, interprets it differently, or exercises his authority, is, in the first place, the Jesus of Mark, Matthew and Luke. Indeed, sometimes he is not even that, but rather the modern Markan, Matthean, or Lukan scholar's Jesus, since the theologies of the gospel authors can be quite subtle and implicit, needing modern scholars to identify and expound them. And even when their theologies seem clear enough, the Synoptic authors are using prior traditions, whether written or oral, which may have had their own agendas that have partially spilled over into the texts as we now have them. We thus find a number of explicit or implicit motives associated with Jesus' conflicts on legal issues, which may be variously assigned to the modern interpreter, the history of interpretation, the author of a particular gospel, early sources (whether written or oral), or the historical Jesus. This is the problem addressed by the present book and its aim is to disentangle motives that may with some degree of probability be assigned to the historical Jesus from those that are more likely to have originated

with early tradition, the Synoptic authors, or their respective communities, or even as later interpretations with little foothold in the texts themselves.¹

In my dissertation on purity halakah more than a decade ago, I tried to ask questions about the place of Jesus in his environment: “[w]here did he differ, how did he differ and, if possible, why did he differ”?² That study gave emphasis to non-conflict narrative traditions. Although I still find this to be a valid approach, especially for analyzing Jesus’ stance on that particular question, the present study differs in its aims by giving more emphasis to the *why* question, and by approaching the issue from a slightly different angle, examining the conflict stories in particular. Why all these conflicts around legal issues? This is very much a question of motives. Various answers suggest various motives, but whose motives are they?

One of the ideas that was common among the “new questers,” was that Jesus opposed or “abrogated” Jewish law in principle.³ I consider that idea not only to have been repeatedly refuted, but also to be incompatible with the contemporary presuppositions of historical Jesus research; hence it will receive little attention in this study.

Related ideas of Jesus opposing certain laws by virtue of his own authority,⁴ usually bring with them implicit or explicit christological claims. Even John P. Meier, who repeatedly warns against both christological interpretations and any expectation of a clear principle underlying Jesus’ stance on various issues, still speculates that we could explain Jesus’ attitude by his charismatic authority; Jesus simply experienced a pipeline access to the divine will.⁵ Such a view, however, belongs to a tradition that understands Jesus’ attitude as a result of his individual inherent authority, which I doubt as a plausible explanation for the behaviour of the historical Jesus. I rather think that such claims must be related to a textual level that primarily reflects early Christian redaction and has a christological intent. This does not mean that the issue of authority is irrelevant in discussing the legal attitude and practice of the historical Jesus. As will become clearer below, however, I think that with regard to the historical Jesus the

¹ By “motives” I mean underlying reasons for taking a particular stance or behaving in a particular way. Motives may seem close to arguments, but the concept is broader. I consider an argument to be an explicitly expressed reason for a standpoint or a behaviour. A motive can be expressed in an argument, but it can also be implicit in it, or concealed behind it. Arguments are rhetorical means. Motives are convictions, attitudes, and reasons for particular behaviour.

² Kazen 2002 (now in corrected reprint 2010): 34.

³ Cf. Käsemann 1964 (1954): 39–40; Lambrecht 1977: 76–77; Schweizer 1971 (1967): 70–77, 145–147, 151–52, 234.

⁴ Cf. Banks 1975: 262–63.

⁵ Meier 2009: 5–8, 415.

issue of authority in a sense belongs in an eschatological kingdom context, while the emphasis on personal authority betrays Christian interpretation.⁶

Similar considerations apply to ideas of Jesus emphasizing compassion rather than cult. This line of reasoning finds its roots in arguments of classical prophecy against social injustice and personal greed. Quotations from the prophets were often used by early Christ-believers to defend their “liberal” practice or non-observance against Jewish opponents.⁷ While this type of argument in the Jesus tradition must often be classified as redactional, too, especially when utilized to denounce legal observance in general, it does typically represent Jewish attitudes during the Second Temple period, when taken in a relative sense. A good deal of halakic discussion, as reflected in later rabbinic texts, deals with prioritizing between weightier matters of law relating to human need and danger of life, and more mundane rules, when they come into conflict with one another. Is it likely that Jesus would have been part of such discussion, and that some of the friction between him and those opposing him was due to different ways of setting those priorities? Here, too, I will suggest that his particular type of restorative vision played a decisive role; the priority of the kingdom utopia at times relativized other concerns.

Diverging views between various Jewish groups depended on the interpretation and application of Scripture to various realities of life. One option, not infrequently argued for by scholars, is that Jesus defended the plain meaning of Scripture against the *paradosis*, the traditional interpretation, the halakah, of his opponents.⁸ This can be argued in certain cases that will be dealt with more in detail below. But here, too, we may expect to see the results of early Christian interpretative activity, from a time and an environment in which negligence of halakic observance was defended with reference to the teachings of Jesus. In this study I will argue that at the level of the historical Jesus, Scripture versus tradition is rarely, perhaps never, the issue. Since there is seldom any plain meaning, in practical life everyone needs some sort of halakah.⁹ Although as a hermeneutical insight, this might seem a fairly modern statement, the truth of it is nevertheless apparent in the Jesus tradition.

⁶ Or, to be more specific, an underlying urge to prove Jesus’ uniqueness and ultimately to ground it ontologically.

⁷ Typical examples are the use of Hos 6:6 by Matthew (Matt 9:13; 12:7), and the reference to Isa 29:13 in Mark 7:6–7. Cf. how various allusions to Isa 29 were generally used in early Christian polemics (e.g. Rom 9:20; 11:8; 1 Cor 1:19; Col 2:22); see Westerholm 1978: 76.

⁸ This view is fairly common; for an example, see Avemarie 2010.

⁹ One convincing explanation for the evolution of halakah is simply the exigencies of life. See Doering 2006: 16; Doering 2012: 452–54, in particular note 20 (p. 453) with further references.

While it will be argued that disagreement between Jesus and his opponents in many regards was an issue of conflicting halakic interpretations, this is not the whole picture. Conflicts may also have concerned scriptural commands in themselves. We cannot avoid questions about Jesus possibly opposing or modifying rules of the Torah, although without any notion of “abrogation.” This phenomenon comes to the surface in discussions where some kind of “creation principle” is used as an argument against the express words of Scripture. It is also evident when humanitarian concerns are understood as taking priority over legal precepts. As we will see, these ways of arguing are in no way “un-Jewish.” Also, we should not necessarily expect to find one single principle governing all issues. We may well find evidence for Jesus’ motives and arguments varying from case to case.

The textual basis for my investigation consists mainly of the Jesus tradition in the Synoptic gospels. I will refer to some extra-canonical sources, although in most cases they add little new and are often thought to be secondary, even if some of them might possibly provide independent attestation. I will not be using the gospel of John to any extent, except for occasional references, although I admit that it contains certain material with a historical background. This is not because of any belief in the Synoptics being historical while John is theological; the Jesus traditions are all thoroughly dyed with theological and christological ink. John, however, goes beyond the narrative christology of the Synoptics, by making Jesus’ supremacy over the Jewish law an interpretative framework, which not only structures the narrative but also informs the sermons, all with the effect to demonstrate Jesus’ ontology. Such a Jesus hardly needs any motives other than his own self, making even John’s *view* of Jesus’ motives difficult to retrieve.

The time when Jesus could be construed apart from his Jewish environment is (almost) gone. Most scholars today are very conscious of past misinterpretations and envisage Jesus in a historical context that is thoroughly Jewish.¹⁰ One might think that such changes would make a great difference to the portraits of Jesus that are painted. Interestingly enough this is not necessarily the case. There is another important factor involved, namely the role or type or root model assumed for the figure of Jesus.¹¹ This model works as a lens through which much other evidence is interpreted. It makes a great deal of difference whether Jesus is envisaged primarily as a teacher, a prophet or a charismatic. All three are equally possi-

¹⁰ This has been one of the characteristics of the so-called third quest, exemplified in the titles of some of the seminal works since the 1970s, such as Vermes 1973, followed by several books; Sanders 1985; Crossan 1991; Meier 1991; 1994; 2001; 2009; Fredriksen 2000; Freyne 2004.

¹¹ Cf. my discussion in Kazen 2008a.

ble within a thoroughly Jewish context during the Second Temple period. There are, of course other possibilities and more nuances, but these three function as a starting-point. Jesus the teacher is easily seen in the light of subsequent rabbinic Judaism as a teacher of law, a maker of halakah, a responsible and reasonable discussion partner of Shammaites, Hillelites, Sadducees and even Essenes, although the latter are only possibly alluded to in the gospel tradition.¹² Jesus the prophet is plausibly understood as a fierce and divinely commissioned critic of the establishment, including the religious authorities and the cult, representing an archaic, theocratic, or perhaps popular perspective on legal tradition and interpretation.¹³ Jesus the charismatic does not necessarily have to be so critical, but on the other hand moves about quite independently, allowing himself and others certain liberties by virtue of his personality and inherent authority.¹⁴ We find that Scripture, interpretation, and authority are key elements relating to the roles or root models through which Jesus is regularly interpreted.

Although Käsemann's interpretation of Jesus as "striking at the presuppositions and the plain verbal sense of the Torah and at the authority of Moses himself"¹⁵ meets little acceptance today, the tension between a rabbinic and a charismatic Jesus is difficult to avoid. Käsemann's alternative to "the widely current picture of the pious Jew ... studying the Scriptures day and night," namely, a Jesus who "felt himself in a position to override, with an unparalleled and sovereign freedom, the words of Torah and the authority of Moses,"¹⁶ may still seem attractive, even if exaggerated. Doesn't the prophet Jesus criticize the law? Doesn't even the rabbi Jesus stretch legal interpretation beyond borders? And Jesus, the charismatic man of God, what licence does he need to deviate from all sorts of norms if an overriding authority is located in his own person? The latter role especially may easily produce christological motives for Jesus' conflicts on legal issues, which become implausible when assigned to the Jesus of history. Many scholars, however, have a peculiar tendency to resort to claims of inherent authority, in order to explain Jesus' stance on various issues and the conflicts evidenced by the gospel tradition. An autonomous and

¹² For studies emphasizing Jesus as teacher or rabbi, or else emphasizing his activity as legal interpreter, see among others Sigal 2007 (1986); Byrskog 1994; Chilton 2000.

¹³ Many scholars regard Jesus as a prophetic figure, without developing the idea to any extent. Some emphasize his apocalyptic or eschatological prophetic role; see for example Allison 1998; Ehrman 1999; Hägerland 2011. For studies taking various perspectives on a prophetic and critical Jesus, see for example Herzog II 2005; Horsley 2011; 2012; Casey 2010.

¹⁴ See for example Vermes 1973; Craffert 2008. A combination of the prophet and the charismatic is found in Borg 1984.

¹⁵ Käsemann 1964 (1954): 39.

¹⁶ Käsemann 1964 (1954): 40.

authoritative Jesus is attractive and explanations from uniqueness easily take over when motives for Jesus' conflicts are proposed.¹⁷

The Torah and its interpretations were being constantly negotiated and at times also rewritten by various groups in Second Temple Judaism. Authority was being claimed, denied and reclaimed through continuous debates and conflicts. Aharon Shemesh has recently outlined three areas of dissent around which much intra-Jewish discussion revolved: one is the relationship between divine revelation and human exegesis, another is the role of tradition or custom in relation to the explicit words of Scripture, and a third concerns the divine will as an expression of the nature of reality and the order of creation, as opposed to an arbitrary decree.¹⁸ All of these cases relate to questions of authority, but none of them demands an extraordinary type of authority being claimed by an individual and autonomous leader figure. They suggest other motives, however, soon to be explored more in detail. These are motives that are very similar to those suggested by the Jesus tradition. The conflict narratives in the Synoptic gospels imply or refer to issues such as divine will, the order of creation, scripture, interpretation, tradition and authority, all of which are identical with, or very similar to, the principal points of dissent identified by Shemesh as underlying the development of halakah. We thus find a high degree of correspondence between motives that figure in the Synoptic conflict stories and these intra-Jewish conflicts and discussions during the late Second Temple period and Tannaitic times. This also means that the difficulties in disentangling Jesus' motives from those ascribed to him by later followers involve two large methodological issues, neither of which is close to being settled or embraced by anything near consensus: evaluating the Jesus tradition and dating halakic traditions. Although the same issues of interpretation and authority figure both in the gospels and in other types of early Jewish literature, we are speaking of a period that covers several centuries. The need to distinguish early from late and to discern levels of textual and ideological development is a challenging task, which will be addressed further below.

1.2 The background: Jesus and the law

The relationship of Jesus to Jewish law has been discussed since the New Testament texts took shape. This is a result of the Christian church attempting to negotiate its relationship with its mother religion, on whose

¹⁷ Cf Meier 2009: 415 as already mentioned above, and similarly, but much earlier, Westerholm 1978.

¹⁸ Shemesh 2009.

Bible it is dependent. It soon became clear that an increasingly Gentile church related differently from the main body of Judaism to Pentateuchal law as well as to those subsequent interpretations that were continuously added and some of which were systematically shaped into texts from the time of the Mishnah and onwards.

The church came to explain and justify these differences by distinguishing between ritual and ethical commands. Ritual commands, including sacrificial laws as well as laws of purity, were rejected with the help of christological or soteriological arguments; Jesus was simply understood to have “fulfilled” these parts of the mosaic law. Ethical principles, however, were still regarded as binding, although their application often depended on re-interpretation.

However, this picture is far too simple. While certain practices, such as circumcision, were soon abandoned, at least by Gentile Christians, other customs and rules were held on to much longer and a number of ritual rules were spiritualized, rather than discarded. Which parts of the law were considered to be valid, and in what manner, could be a matter of discussion. The definition of ethical in contrast to ritual rules is, moreover, bound to be somewhat arbitrary; our understanding of ritual versus morality, or convention/custom versus ethics, is context- and culture-dependent, as we are increasingly realizing today.¹⁹

In addition to abandoning, selecting and re-interpreting inherited rites and rules, Christians soon developed their own. Sometimes, Jesus’ own attitude and behaviour would be appealed to as part of the motivation for this development, or at least to explain the process. This has been the case with theological paradigms that combine christological, soteriological and supercessionist views to the effect that Jesus is understood to break with, supercede or fulfil the Jewish law in one way or another, thus making it obsolete. Such understandings lie behind many past attempts by biblical scholars to deal with “Jesus and the law.” Today the field is changing. While it is generally acknowledged that Jesus had conflicts with his contemporaries over issues of law or legal interpretation, many no longer regard them as so serious as to have caused his condemnation and death, and few would today suggest that Jesus rejected the Torah in principle.

The Jesus tradition gives no easy answer to the question of Jesus attitude to Jewish law. According to Matthew’s gospel, Jesus says that he has come not to abolish the law but to fulfil it. He also claims that no part of the law will pass away before everything has happened.²⁰ The meaning of these sayings is hardly obvious, since no explicit interpretation is given. Furthermore, in the Sermon on the Mount, these words are followed by the

¹⁹ For further discussion, see Kazen 2011: 20–31.

²⁰ Matt 5:17–18.

so-called antitheses, in which Jesus quotes Torah commandments as well as halakic rules, followed by “But I say to you.”²¹ This has been understood to mean anything from a common Jewish manner of discussing legal interpretation to an abrogation of law in principle or an implicit claim for divinity.

Regardless of how these words are interpreted, they are part of the Gospel of Matthew and thus reflect Matthean redaction and theology. From what we know of Matthew’s eclectic and thematic way of construing his text from previous traditions, we must acknowledge that the overall picture that is given is his own, regardless of whether these particular words originate with the historical Jesus in whole or in part; in Jesus’ own context their meaning need not have been the same as in Matthew’s gospel.²² The gospels of Mark and Luke give somewhat different pictures of Jesus using partly the same or similar material. All three seem to view him as a “Christian” although to varying degrees as a Jew, too. It was this Jewish identity that more or less faded away from Christian consciousness as time went by.

The history of scholarship on Jesus and the law follows to a large extent the development of the quest for the historical Jesus – a story that has been told and retold enough times not to be repeated again here, apart from a few relevant observations. In many of the “lives” of Jesus from the nineteenth century, Jesus is portrayed as a liberal, in contrast to legalistic Pharisees and enthusiastic apocalypticists. His Jewish traits are hardly visible. Albert Schweitzer is usually thought of as striking a decisive blow against this era of Jesus research by his seminal study in 1906.²³

In spite of the fact that the first half of the 20th century is sometimes called the “no-quest” period,²⁴ we do find scholars working on the historical Jesus during this time, too. Some of the most prominent of these, such as Claude Montefiore,²⁵ Joseph Klausner²⁶ and B. H. Branscomb, consciously interpret Jesus *within* Judaism. The two former are often mentioned as examples of Jewish scholars who, unfortunately, were not given much of a hearing in their time. It is interesting, however, to see how much of Branscomb’s treatment also actually predates or prefigures what has since then become a major approach in the so-called Third Quest. Says Branscomb:

²¹ Matt 5:21–48.

²² For a thorough and decidedly theological study on the Torah in Matthew, with a focus on Matt 5:13–20, see Deines 2004.

²³ Schweitzer 2000 (1906).

²⁴ Cf. Wright 1996: 21–25.

²⁵ Montefiore 1927.

²⁶ Klausner 1925.

The divergence of alleged sayings of Jesus concerning the law preserved in the Synoptic Gospels is well known. Not only does one find expressed both extreme positions but a number of intermediate ones as well. One can construct a sort of chromatic scale made of sayings of Jesus in which all the notes are struck from the complete rejection of the law to its complete affirmation. ... the answer to the problem cannot be gained by easy generalisations nor a priori opinions. One must see clearly the point of view as to the law which was accepted unquestionably in Jesus' day, recover the particular bias of our several Gospel writers, and then patiently examine in detail the evidence as to Jesus' position which has been preserved.²⁷

After having surveyed the place of the law in contemporary legal thought and Jesus' attitude to the law in the synoptic gospels, including Q, Branscomb concludes that "Jesus' teachings come from the main stream of Jewish religious life,"²⁸ but that he anticipated in time the rabbinic movement,²⁹ and opposed some of the halakic developments or priorities of his time. Branscomb suggests that Jesus neglected certain rules when they interfered with human need, since he regarded them as "subordinate to that primary duty."³⁰ His attitude towards written and towards oral Torah was similar, which brought him into conflict with the Pharisees, although he was equally in conflict with the Sadducees, and the latter should be seen as responsible for his death.³¹ Branscomb emphasizes that Jesus' strengthening of the ethical aspect of Judaism "did not rest upon any opposition toward the formal or ritual side of the religion"; he did not attack ritual practices,³² nor did the earliest Christians attack the law, although they might have been careless about it.

Branscomb has earned his place as a forerunner of attitudes and interpretations that did not get a proper hearing until several decades later. To some extent, however, Branscomb does see in Jesus "an attitude which was not characteristic of Judaism"³³ and in the end he understands the difference between Jesus and Pharisaism as a difference between regarding the Torah in terms of binding law, which Jesus at least implicitly denied, and understanding it as a set of overarching principles.³⁴ There are similarities between this view and some early Third Quest approaches, such as those of Robert Banks or Stephen Westerholm,³⁵ approaches that are severely criticized by others. Philip Sigal, for example, accuses Banks for

²⁷ Branscomb 1930: 2–4.

²⁸ Branscomb 1930: 256.

²⁹ Branscomb 1930: 261.

³⁰ Branscomb 1930: 264.

³¹ Branscomb 1930: 265–66.

³² Branscomb 1930: 266.

³³ Branscomb 1930: 252.

³⁴ Branscomb 1930: 268–71.

³⁵ Banks 1975; Westerholm 1978.

clinging to a fruitless and faulty conception of a legalistic Judaism, in which all requirements would have been considered as of equal importance, in spite of the fact that Banks begins with an outline of torah as “instruction” requiring interpretation and expansion.³⁶ This aspect surfaces in Westerholm’s study, too, which concludes that Jesus did not regard the Torah as statutory law. In Westerholm’s case, the alternative is, however, rather one of inner disposition.³⁷

I have always been hesitant about the claim that the 1970s and 1980s brought a completely new turn in historical Jesus research. At least with regard to how exegetes approach early Judaism it is difficult to see clear demarcations between one period and another. The more recent phase of scholarship on the historical Jesus grew out of previous phases, and New Quest assumptions and prejudices were sometimes taken over, at least initially.

However, we are going too fast. In spite of their almost prophetic character, early attempts to interpret Jesus within the Judaism of his time had little influence on the New Quest, at least in its German *Gestalt*. With Käsemann’s famous lecture as its starting point, the New Quest was characterized from 1950 onwards by a strong dependence on the criterion of dissimilarity for distinguishing “authentic” words of Jesus from layers of tradition and redaction. This approach resulted almost by definition in pictures of Jesus in *opposition* to Judaism.³⁸ While scholars like David Daube and W. D. Davies during the 1950’s explored and emphasized the relationship between the New Testament and Rabbinic Judaism,³⁹ and although James Robinson, in 1959, suggested the presence of a considerable material “whose historicity is conceivable in terms of Jesus’ Jewish Palestinian background,”⁴⁰ many scholars tended to interpret Jesus *against* Judaism rather than *within* it. These were predominantly post-Bultmannian German exegetes, for whom Jesus did not ground his ethics in biblical law, but rather in the immediate will of God, which he claimed to know, and by which every biblical command should be tested.⁴¹ The present volume will make no attempt to trace the history of this theological trajectory

³⁶ Sigal 2007 (1986): 17–23.

³⁷ Westerholm 1978: 128–32. As we will see in the final chapter, an interpretation of Jesus’ attitude as based on an understanding of torah more as instruction or guidance and less as “binding” or “statutory” law, can be argued. This, however, is nothing uncharacteristic of Judaism, as Sigal points out. For a discussion of the process of “re-characterization” of torah in Second Temple Judaism, see LeFebvre 2006.

³⁸ Cf. Holmén 1999; Theissen and Winter 2002 (1997).

³⁹ Cf. Daube 1956; Davies 1955.

⁴⁰ Robinson 1959: 104.

⁴¹ Banks 1975: 5, referring to Kümmel 1934, Schoeps 1950, and Niederwimmer 1966; cf. Bultmann 1952 (1948): 11–22.

any further or to analyze its various components. Suffice it to say that ideas of the historical Jesus opposing or abrogating the Torah in principle,⁴² assume an understanding of law that is to a large extent abstract. When we deal with the relationship of the historical Jesus to Jewish law, we are discussing very concrete matters, such as tithing, vows, fasting, Sabbath observance, purity and divorce rules, which involve both biblical law and subsequent interpretative tradition.⁴³

In spite of earlier attempts, it was not until the 1970's that new studies that emphasized Jesus' Jewishness managed to make a decisive impact on a considerable number of biblical scholars. Geza Vermes, with his books on Jesus, beginning with *Jesus the Jew* in 1973, argued for Jesus as a Galilean *ḥasid*. E. P. Sanders' studies, first in *Paul and Palestinian Judaism* in 1977, then followed by *Jesus and Judaism* in 1985, were crucial in promoting the idea of a non-antagonistic Jesus within a non-legalistic Judaism.⁴⁴ Others continued on the same track, and the compass needle has swung, although in a number of disparate directions. Influenced by sociology and cultural anthropology, biblical scholars have painted pictures of Jesus as a Galilean cynic, a counter-cultural sage, a Mediterranean peasant, a marginal Jew, an eschatological prophet, a charismatic healer, a Pharisee and a Rabbi, to name but a few.⁴⁵ Most of these pictures appeal in one way or another to Jesus' Jewishness. Most of them have been accused of being nothing more than theological constructs.⁴⁶ Some more obviously than others seem to suit a modern agenda. Some only superficially relate Jesus to the world of Second Temple Judaism.⁴⁷ Many do, however, seriously attempt to place Jesus somewhere within the Jewish diversity found in first century Palestine, a diversity that later coalesced, after the war and during the second century, into Rabbinic Judaism.⁴⁸

One important approach to the diversity of early Judaism is the study of halakah. Although this is a rabbinic term, the study of apocryphal and apocalyptic texts, as well as of Philo and Josephus, has long since made it clear that aspects of legal interpretation and practice were discussed and

⁴² Käsemann 1964 (1954): 38–45; cf. Lambrecht 1977: 76–77.

⁴³ Cf. the topics discussed by Westerholm 1978.

⁴⁴ Sanders 1977; 1985.

⁴⁵ This is not the place to list examples and categorize the flood of historical Jesus literature. See major comprehensive works, such as Theissen and Merz 1998 (1996), or Dunn 2003.

⁴⁶ Cf. Henaut 1997.

⁴⁷ See the criticism of Meier 2009: 40–47.

⁴⁸ For a seminal discussion of the “coalition” that emerged out of the diversity of the Second Temple period, see Cohen 1984. For discussions of Jewish sectarianism and diversity, see for example Saldarini 1988; Baumgarten 1997; Grabbe 2000, especially 183–209.

developed all through the Second Temple period, long before the formation of rabbinic texts. Since the Dead Sea Scrolls were found and published, it has become increasingly obvious that alternative forms of what could rightly be called halakah were present at an early time,⁴⁹ and since the delayed publication of the numerous Cave 4 fragments it is also evident that in some areas such interpretation and instruction was present in advanced stages of development, although different in form and genre as compared to the Mishnah.⁵⁰

The prospects for studying gospel traditions about Jesus from a halakic point of view have thus increased, and any study of the historical Jesus and the law needs to take into consideration concrete issues of legal interpretation. Within the context of Second Temple Judaism, a Jesus in sharp opposition to either torah or halakah in general or in principle would simply be an irrelevant figure. We would rather expect Jesus in this context to have participated in such intra-Jewish conflicts over various issues of torah and halakah as are known from other ancient sources.

A number of studies of Jesus' attitude to various points of halakah have been published during the last decades. Not all of these will be reviewed here; an excellent 70-page research overview has recently been provided by Peter Tomson.⁵¹ Some of the most relevant studies from the latest decades will, however, be discussed in the subsequent chapters on the Sabbath, purity, and divorce. The most recent study dealing with Jesus' legal conflicts is John P. Meier's fourth volume of *A Marginal Jew*.⁵² Meier discusses four topics: divorce, oaths, Sabbath observance and purity, as well as the love commandment. As with all of Meier's work, this is a comprehensive and detailed study, leaving little aside. However, my interpretation differs from Meier's on a number of points. Most importantly, I do not find the classical approach to the historical Jesus by way of criteria nearly as reliable as does Meier. Although he has developed the New Quest criteria, mainly by employing a criterion of "embarrassment" as a useful tool,⁵³ his methodology in a sense still belongs to an earlier phase of historical Jesus research. As will become clearer below, I find a differ-

⁴⁹ For a discussion of the presence of halakah during Second Temple times, see Meier 2003a; Meier 2009: 39–40, 63–67 (notes 62, 63); Tomson 2010a: 137–40.

⁵⁰ Previously published texts, such as the *Damascus Document* (CD), the *Community Rule* (1QS) and the *Temple Scroll* (11Q19), were complemented by texts with primarily halakic contents, e.g. 4Q251, 4Q274–278 (4Q Tohorot), and not least 4QMMT, which has been crucial for understanding halakic diversity and the character of ongoing halakic discussion among various groups, well before the fall of the temple and Yavnean developments. See *Qumran Cave 4, V* (DJD 10) and *Qumran Cave 4, XXV* (DJD 35).

⁵¹ Tomson 2010a.

⁵² Meier 2009.

⁵³ For further discussion, see below, section 1.4.

ent approach, also involving a more precise understanding of the halakic development during the end of the Second Temple period, more fruitful for judging the relevant Jesus traditions, and for relating them to the historical context and to early Christian interpretation and gospel redaction.

1.3 The conditions: prospects of history

The nature of history and historiography is a subject constantly under debate.⁵⁴ I gave this some thought in my book on Jesus and purity halakah,⁵⁵ and will try not to repeat myself too much here, although this cannot be entirely avoided.

History has never been a matter of isolating purported facts only. History is an unavoidable narrativization of past events. Human beings are dependent on narrativizing their existence – without narrative, disconnected experiences would become quite meaningless to us. This is true of history, too; it needs a narrative framework. We can ask questions about single details, whether they are reasonably historical, traditional, redactional, legendary or mythical. But even simple components of the past consist of a number of still pictures being joined into an “event” by a rudiment of narrative, inherent in our language or thinking. Without narrative there is no communication of meaning. History is “a narrative account ... that we historians write to express an understanding of past events ... based upon our interpretation of the traces ... that have survived from those past events,” as Robert Webb puts it.⁵⁶

We thus have to be pragmatic in dealing with history. It must be possible to ask and attempt to answer factual questions about singular details, but also to provide plausible explanations for chains of events within particular contexts. We must allow ourselves to deal with both, since only through historical narrative are we able to suggest the meaning of events.

Few people today believe in total objectivity, and this has ultimately to do with our understanding of the human condition, i.e., our capacity for interpreting the world at large. We receive all input via our sense-perceptions, and depend on our bodily experiences and mental frames of reference in order to interpret anything, which means that each interpretation is contextual.⁵⁷ Hence there is no pure objectivity, as most people

⁵⁴ For a recent and more comprehensive discussion, see Webb 2009: 12–38.

⁵⁵ Kazen 2010a (2002): 34–40.

⁵⁶ Webb 2009: 13–19; quote from p. 16.

⁵⁷ This is the kind of general understanding that lies behind Le Donne’s three premises: that perceptions must be interpreted in order to be remembered, that this takes place

today will admit. We have no pure experiences and individual perceptions are always treacherous. Nevertheless, they are our only avenue to conscious reflection, our only connection to the outside world. Our experience tells us that in spite of their weaknesses our sense-perceptions are generally reliable, since we test them and confirm them in constant interaction with each other. In *Jesus and Purity* I referred to Mark Bevir's way of expressing this situation, which I find quite helpful: objectivity should be understood as criticizing and comparing "rival webs of interpretations in terms of agreed facts." These facts are to be understood as pieces of evidence accepted by most people.⁵⁸ Objectivity simply becomes a matter of intellectual honesty, engaging in honest discourse about the explanatory value of various hypotheses and the validity of presuppositions and data. This process will never become a closed circle as long as such a discourse is upheld. It is thus reasonable to embrace a common-sense "practical realism," which strives for accuracy, while fully acknowledging the tentative character of all knowledge.⁵⁹

This applies not least to historical knowledge. The nature of historiography is a field of its own and cannot be discussed in full, only touched upon briefly. Most historians would probably agree with Edward Carr's basic understanding of history as a constant dialogue between past and present,⁶⁰ or with John Gaddis' view that we somehow must derive past processes from present structures by combining logic and imagination.⁶¹ In doing this, we must remind ourselves that it is not the past events themselves, but the surviving traces of these events, that we interpret by those narrative accounts that we call "history."⁶²

Such awareness influences the way in which we relate to the past and the type of claims we make for historical interpretations, now that post-modernism has made innocence impossible. There is no way back to Ranke's "wie es eigentlich gewesen,"⁶³ but does this mean that we are no longer trying to understand what happened, how it happened or why it

at every stage of the tradition, and that historians can never interpret an uninterpreted past. Le Donne 2009: 17–39.

⁵⁸ Bevir 1994: 332–33.

⁵⁹ Appleby, Hunt and Jacob 1994: 247–51, referring to Hilary Putnam. See also Webb's discussion of critical realism (2009: 28–32).

⁶⁰ Carr 1961: 74.

⁶¹ Gaddis 2002: 41. Gaddis suggests that historians, like geologists and paleontologists, must deduce irreproducible processes from surviving structures, and like biologists and astro-physicists, have to deal with contradictory or ambiguous evidence. Logic and imagination are the tools of all scientists who work outside of laboratories, for conducting thought experiments. Cf. Wedderburn 2010: 22.

⁶² Webb 2009: 14–16.

⁶³ Ranke 1874 (1824): vii.

happened? As long as people are engaged in the historical enterprise, it will not do to offer arbitrary narratives of possible pasts. That is a task for fiction or fantasy.

There are some related debates that when boiled down might turn out to be straw men. They mostly concern the use of language. One is the use of the term “re-construction,” which by some scholars is thought to be misleading when describing historiographical activity. In the field of historical Jesus studies this has been argued by, among others, Jens Schröter, who distinguishes reconstruction from *construction* of history; the latter, not the former, is the goal of historical research.⁶⁴ As Alexander Wedderburn has pointed out in a thorough discussion of Schröter’s view on history,⁶⁵ reconstruction in Schröter’s mind seems to come close to the German “Wiederherstellung” or the English “restoration.” Wedderburn compares it to a police investigation, which by no means aims at re-creating the past, even when a “reconstruction” of the crime is enacted. No one would imagine themselves to be seeing the original event, only a hypothetical interpretation of it. Similarly with historical reconstruction: who would seriously think that historians attempt to re-create the past? Gaddis suggests that representations in the form of narratives are a kind of simulation:

They’re reconstructions, assembled within the virtual laboratories of our minds, of the processes that produced whatever structure it is we’re seeking to explain. They vary in their purposes, but not in their methods. For in all of them, we ask ourselves: “How could this have happened?” We then proceed to try to answer the question in such a way as to achieve the closest possible fit between representation and reality.⁶⁶

Wedderburn also suggest that dropping the “re” in “reconstruction” in fact causes more problems than it solves, since this “re” is what refers the historian’s construction back to history, “with the claim that it is meant to be an account of that past and not some fanciful invention at the historian’s whim.”⁶⁷ I have never fully understood the objections to the use of the term “reconstruction” and Wedderburn provides convincing arguments for keeping it. Why should anyone have to associate “reconstruction” with a naïve or thoughtless view of history when the word is mostly used with discrimination in so many other contexts?

Another discussion, also focusing on language but this time on prepositions, asks whether historical enquiry takes us *behind* the texts or rather moves *in front of* them. Again, the debate is well illustrated by Wedderburn’s analysis of Schröter, although the latter is, just as in the previous

⁶⁴ Schröter 2002: 166–68; 2007: 37–54.

⁶⁵ Wedderburn 2010: 13–32.

⁶⁶ Gaddis 2002: 105.

⁶⁷ Wedderburn 2010: 26.

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