
The Synoptic Jesus and the Law

Conflicts and Agreements in Comparison with other Contemporary Debates

A. INTRODUCTION

§1. In the pages that follow I shall discuss the points of Jewish law which appear in the synoptic gospels. In most of the passages Jesus is in conflict with others, though in some instances he is in agreement. The aim of this study is to describe the range of opinion in first-century Judaism about the law in question, and especially to note debates about it, so that we shall have grounds for saying, 'this was a very serious conflict' or 'this disagreement is relatively insubstantial'.

For the purpose of this study I shall for the most part work on the basis of two assumptions which I do not actually hold: that all the material which is attributed to Jesus in fact goes back to him, and that he was a Rabbi who studied the law and intended to stake out his own position on numerous aspects of it.

In *Jesus and Judaism* I brushed aside the disputes about sabbath, purity and food as being probably inauthentic, and I have not changed

my mind. Some of the sayings within the passages may well be authentic, but the settings are contrived: Pharisees following Jesus and his disciples through grain fields on the sabbath, or making a special trip from Jerusalem to Galilee to check on whether or not his disciples washed their hands (Mark 2.23–24; 7.1–2). Scholars seem still not to see how determinative of meaning the setting is; but once the setting is seen to be ‘ideal’—that is, in Bultmann’s terms, both symbolic and imaginary—our ability to establish the meaning of the saying with precision vanishes.¹ Further, sabbath and food were major points of debate in the early church, which makes it unlikely that Jesus had directly opposed observance of these laws. In the minds of many, however, the argument of smoke and fire remains compelling: since sabbath is mentioned so frequently as a point of debate, Jesus must have had some sort of dispute with the Pharisees over it. Without being persuaded by this argument, I feel its force, and I see why it does persuade some. They then, however, proceed to what I consider a worse historical judgment: they think that these conflicts led to Jesus’ death, or at least played an important role in the growth of animosity which resulted in it. That judgment is based in part on the assumption that the Pharisees rigidly controlled first-century Palestine and could enforce compliance with their interpretation of the law, and in part on lack of knowledge of the range of legal debate. I shall not discuss in this chapter the question of pharisaic control,² but shall attempt to make a contribution only on the last point: the range of disagreement over various aspects of the law. I shall ask, Even on the assumption that this debate is authentic, is it a substantial one, or relatively trivial?

At various points I shall drop the pretence that the passages are verbatim records of disputes from the lifetime of Jesus, and in one or

1. On ‘ideal’ scenes, see Rudolf Bultmann, *History of the Synoptic Tradition*, rev. ET 1968, p. 39. Bultmann’s intuition that synoptic sayings are often earlier than their settings may not be correct; but if it is correct, it still results in uncertainty, since a saying without a context is usually ambiguous. Dismissing Bultmann’s scissors-and-paste approach, however, does not lead to the conclusion that entire passages are now to be considered ‘authentic’. On the contrary, those who will not attempt to probe behind the passages as we have them must be more uncertain of their historical reliability than Bultmann was. See on this Sanders and Davies, *Studying the Synoptic Gospels*, 1989, chs 8, 20–22.

2. It is touched on occasionally below. See ‘Pharisees, role and influence of’ in the Index.

two cases I offer a sketch of a historical reconstruction. These instances are intended to encourage the reader to consider various possibilities with regard to the historical Jesus and to serve as a reminder of the difference between synoptic exegesis and historical assessment.

In surveying each point, I shall deal almost exclusively with primary material. Scholarship has long been divided between the view that conflict with the Pharisees over the law was a cardinal element in the hostility which led to Jesus' death, and the opposite: that such conflicts were minor and would not have been seriously regarded. It is noteworthy that Christian scholars have become increasingly confident of the first view, while Jewish scholars for several generations have held the opposite view. Eduard Schweizer, for example, proposed that

there can be no doubt that Jesus, through his entire conduct, again and again ostentatiously transgressed the Old Testament commandment to observe the Sabbath and had little concern for the Old Testament laws relating to ritual purity.³

Many other scholars, such as Geza Vermes, have found no instances in which Jesus broke a biblical commandment, though he clashed with others over 'customs'.⁴ It is not difficult to judge between these positions: Schweizer's is without foundation, Vermes' is hard to fault. A major biblical purity law which figures in the synoptics is that governing leprosy, and here Jesus acts in general conformity with the law (Mark 1.40–44). One suspects that Schweizer shares the common failing of not knowing what the biblical purity laws are, much less how they were developed and modified in various parts of first-century Judaism.

My concern, however, is not to referee between contending scholars, but to get to the nitty-gritty of first-century debates about individual points of law. What sorts of things did others argue about, and what range of disagreement was tolerated? When we turn to the synoptic passages, one may imagine a range of scholarly opinion, some

3. Eduard Schweizer, *Jesus*, ET 1971, p. 32.

4. Geza Vermes, *Jesus the Jew*, 1973, p. 35.

holding that the conflict led to mortal enmity, some that it was not very serious, some that it was serious but not fatal.

The primary evidence surveyed often includes the Greek-speaking Diaspora, though I have canvassed Diaspora material less thoroughly than Palestinian. There are two reasons for including the Diaspora in a discussion of the synoptic Jesus and the law. One is simply that I wish this study to provide a survey of numerous points of law and to serve as an introduction to the more detailed treatment of difficult aspects in chapters II–IV. The second is that some or all of the gospels were written in the Diaspora. The pretence that the synoptic debates are ‘authentic’ is not so thorough that I wish to ignore information which may be relevant to the context in which the gospels were written.

The discussion of a series of legal points may make it sound as if Jesus was a teacher of the law. It has often been proposed that we should think of him as a ‘Rabbi’, one who studied the law, considered the parties’ positions on it, gathered disciples, and taught them his own view on the points then under debate. This, it seems to me, leads us astray. For one thing, ‘Rabbi’ was an occupation which, as such, did not lead to death in first-century Judaism. Yes, I know that some ideas are perceived as dangerous to society, but the entirety of our evidence for first-century Palestine indicates that ideas led to death only if they inspired someone to hostile action in public or aroused ‘the crowds’ too much. The probably pharisaic teachers, Matthias and Judas, who, about 4 BCE, taught the young that death in defence of the law was noble, were executed only because finally they inspired their students to tear down the golden eagle which Herod had put up over the entrance to the temple (Josephus, *War* 1.648–655; *Antiq.* 17.149–167).⁵ Teaching them not to divorce would not have had the same result—revolutionary though that idea is (see further pp. 84–89 below).

Jesus is better seen as a charismatic—either (with Vermes) a charismatic healer like Hanina ben Dosa and Honi the Circle-Drawer or (with Hengel, Theissen and others) a charismatic prophet.⁶ I incline

5. Josephus was a Jewish priest, born in CE 37. He fought against Rome in the Jewish revolt which began in 66, surrendered, and lived to be its historian (*The Jewish War*). He subsequently wrote *The Jewish Antiquities*, *The Life*, and *Against Apion*.

to the second view,⁷ but in either case the important point is that a charismatic does not set out to take a stance on a series of legal questions, though he may bump up against them now and then. It is in theory possible that a charismatic might stumble into serious questions about the law, and into quite serious offences against it, though I know of no evidence that this happened in Jesus' case. I do not, however, wish to anticipate the discussion which follows, but at this point only to warn the reader that the present discussion, in which one legal point after another is taken up, may make it sound as if Jesus worked his way through the law in just this way, which I would regard as being a misleading depiction of him.

In addition to these caveats, I should point out a substantial limitation of the present study. Although the gospels agree in presenting Jesus as in fairly active and serious conflict with his contemporaries, especially with the Pharisees, over the law, each gospel has its own way of both highlighting and nuancing these conflicts, and a full account would have to treat each gospel separately. I shall not attempt a redactional study of the role of the disputes in each gospel, but rather I shall deal with individual passages as posing actual or possible disputes between the historical Jesus and Jewish legal experts of his day. Those which appear in the triple tradition I shall usually consider in their Markan form.

§2. I do not wish to presuppose that the reader of this essay has read my book *Jesus and Judaism*, but I also do not wish to repeat at length what I wrote there. I shall here very briefly summarize the main points with regard to the law, and also include them in the conclusion. A more detailed discussion of Divorce, Burying the Dead and Associating with Sinners will be found in *J&J*.

We noted above that many scholars regard the disputes over the law as serious and important, while a few hold that they were relatively minor. I joined the minority and argued that most of the conflicts are historically dubious and that, even if authentic, they would not have

6. Geza Vermes, *Jesus the Jew*; Martin Hengel, *The Charismatic Leader and His Followers*, ET 1981, Gerd Theissen, *The First Followers of Jesus*, ET 1978.

7. *Jesus and Judaism*, 1985, ch. 8.

been serious. Thus they fell out of consideration, since two of the main points of the book were to deal only with 'bedrock' and to search for serious conflicts.

Three points, however, I did take to be part of the bedrock information about Jesus: the prohibition of divorce, the accusation of associating with sinners, and the command to one would-be disciple to 'let the dead bury the dead' in order to follow the master.

(a) I proposed that the association with sinners (e.g. Matt. 11.19) was fairly (not very) serious, provided that the conflict is correctly understood: Jesus offered the kingdom to those who were outside the law, even though they remained outside, rather than repenting and becoming observant (J&J, ch. 6). In this context, by 'repenting' I meant 'repenting in the prescribed way', and by 'becoming observant' I meant 'becoming observant of the law' (esp. pp. 203, 206).

(b) The command to the prospective disciple to leave his dead father (Matt. 8.21f. and par.) was in direct conflict with the commandment to honour father and mother, but it seems to have been a one-time-only requirement, at least as a specific demand. There is other anti-family material in the synoptics (Matt. 10.35–37 and par.; Mark 3.31–35 and parr.; Mark 13.12 and parr.), but it does not give the impression that Jesus studied the laws on family relationships (e.g. Deut. 21.18–21) and decided to oppose them. The passage on the burial of the father shows, rather, that he was prepared in one instance to put following him above observance of one of the ten commandments (pp. 252–255).

(c) The prohibition of divorce, especially the long form (Matt. 19.3–9//Mark 10.2–9) is radical in a way similar to the *Covenant of Damascus*, where divorce is also prohibited (a parallel which has often been noted), but it is not against the law, since staying married is not a transgression: the person who remains married will never transgress Deut. 24.1–4. Jesus' prohibition implies that the Mosaic code is not strict enough, and thus that it is not wholly adequate, at least for the time which he envisaged (pp. 256–260). That time was 'the eschatological period', which he seems to have conceived vaguely as 'other-worldly' in that God would bring it to pass miraculously, but

‘this-worldly’ in that it would have a recognizable social order. (On this form of future expectation, see *J&J*, pp. 228–237.)

§3. Only one other preliminary point needs to be made: In this discussion I shall consider as pharisaic the rabbinic passages which Jacob Neusner assigned to the Pharisees in *The Rabbinic Traditions about the Pharisees before 70* (1971), and for the most part I shall cite only those which are in the Mishnah. The majority of these passages are discussions between the ‘Schools’ or ‘Houses’ of Hillel and Shammai: not Hillel and Shammai themselves, but their followers, one or even two generations later. That is, some of the Houses passages are post-70, but probably from the generation of scholars born before 70, and presumably representative of pre-70 discussions. The dating and use of these are discussed in ch. III below, as is the question of whether or not the earliest rabbinic passages represent the Pharisees rather than some nameless group.⁸ I shall make no effort to date the passages more precisely. The ones used here have been culled from Neusner’s *Rabbinic Traditions*, but I have compared the discussions in his later *History of the Mishnaic Law*. It is possible that we should include more passages or fewer, but at present this restriction of material is the best available. When post-pharisaic rabbinic passages are cited, the purpose is either to ask what they reveal about earlier practice or to show continuity with earlier evidence.

We turn now to successive points of law, beginning with legal practices which were of most importance within first-century Judaism in general. All the laws were in theory on the same plane of importance, since they were all given by God,⁹ but it is nevertheless possible to single some out as standing at the head of the list. Since keeping or transgressing the law is mostly a question of action or inaction, those laws are in some sense most important which cover frequent activities. Further, some laws cover behaviour which is readily observable, and these serve as identity markers: acting in a certain way shows that one is pious and sometimes points to a sub-

8. This question is raised by Neusner; see p. 123 below.

9. ‘To transgress the law in matters either small or great is of equal seriousness, for in either case the law is equally despised’ (IV Macc. 5.20f.); cf. Aboth 4.2.

category of piety, such as Pharisaism. The definition of importance will of course vary from time to time and group to group, and I do not want to make too much of the sequence in which topics are discussed. I have tried, however, to give most attention to the most contentious issues and those which would stand high if one wished to evaluate Jesus' overall obedience or disobedience.

To repeat the point of the exercise: I wish to compare the synoptic passages which involve the law (except for those mentioned in §2) with discussions of the same legal point in more-or-less contemporary literature, and I shall focus especially on disputes either between other Jewish groups or within them. This should allow us to test the question of whether the synoptic debates are trivial or substantial, an issue on which people have often taken sides without the advantage of a detailed comparison with other disputes.

B. SABBATH

§1. In the post-biblical period, both insiders and outsiders singled out observance of the sabbath as one of the most striking aspects of standard Jewish practice. It figures large in pagan and Christian comments on the Jews,¹⁰ and it is a major topic in Jewish literature. The general requirement to keep the sabbath as a day of rest is one of the ten commandments (Ex. 20.8–11; Deut. 5.12–15). Both lists apply the commandment not only to Israelites (adult males and, in this case, females) but also to children, servants, foreigners and animals. Short forms of the sabbath requirement appear in Ex. 34.21 and Lev. 19.3. There is a lengthy reiteration in Ex. 31.12–17, which stipulates execution and 'cutting off' as the penalty for transgression. Numbers 15.32–36 introduces as a law previously unknown the penalty of stoning for deliberate transgression.

10. Most conveniently, see Molly Whittaker, *Jews and Christians: Graeco-Roman Views*, 1984, pp. 63–73. The full texts of passages from pagan literature are in Menahem Stern, *Greek and Latin Authors on Jews and Judaism*, 3 vols, 1976–1984. In *Dialogue with Trypho* 46, Justin Martyr has Trypho the Jew say that the commandments which can still be kept in the post-70 period are sabbath, circumcision, months, and some of the laws about washing. It is curious that this list omits food, but otherwise it is what one would expect.

Most passages in the Pentateuch simply prohibit ‘work’ but there are some specifications. Exodus 34.21 explicitly requires that the day of rest be kept during plowing time and harvest, thus ruling out the appeal to the pressure of work to justify non-observance. Gathering food, cooking and making a fire are prohibited in Ex. 16; 35.2f. On the other hand, one form of work is required: the sabbath offerings (Num. 28.9). Jeremiah opposed bearing a burden through the gates of Jerusalem or even carrying it out of one’s own house on the sabbath (Jer. 17.19–27).

‘Work’ requires a good deal more definition. One could imagine a society of stock brokers in which reading the paper was considered work (since it might contain news relevant to investments), but digging up dandelions was not. Or the reverse, in a society of gardeners. Ancient society did not pose as many such problems as would modern society, but there were some. The need of definition is clear in Nehemiah, where there are several new restrictions. According to Neh. 10.31 [Heb. v. 32] the Israelites pledged themselves not to buy things from Gentiles on the sabbath, as well as to let the land lie fallow and not to claim debts in the seventh year. Nehemiah 13.15–22 narrates the governor’s strong measures to prevent trading on the sabbath, both by Jews and Gentiles. To do this he shut the gates of Jerusalem and posted Levites as guards.

Later in the second temple period there are further signs of a tendency—possibly sporadic—to heighten the sabbath law by extending the domain of ‘work’. The most famous story comes from the early days of the Maccabean revolt. Many of the pious were killed because they would not defend themselves when attacked on the sabbath. This comes as a surprise, since the sabbath seems not to have interfered with Jewish warfare during the pre-exilic period. The story probably reflects how the sabbath law had grown in force and scope during the peaceful years of the Persian period and the Hellenistic monarchies—peaceful, that is, for the Jews. The result of this superb display of obedience to the sabbath, and its tragic consequence, was a resolution to fight in self-defence, but not otherwise (I Macc. 2.29–41).

Josephus' stories about keeping the sabbath seem to be less well known. They show that both during the years of independence and in the Roman period the sabbath was generally observed very strictly and that the resolution to fight only in self-defence characterized not only the specially pious, but most Jews.

An early Hasmonean, John Hyrcanus (135–104 BCE), broke off an important siege because of the coming of the sabbath year (*War* 1.157–160). In 63 BCE, when the Roman general Pompey had hemmed up the Jewish defenders in Jerusalem, he took advantage of Jewish adherence to the law by raising earthworks on the sabbath, while refraining from firing missiles. The Jews could have responded to missiles, a direct attack, but not to the building of earthworks. Josephus explains that 'the Jews fight only in self-defence', which they interpreted to mean only when directly attacked. The consequence was that the Roman battering rams could be brought into service in perfect safety (*War* 1.145–147). During the siege the temple area was controlled by the followers of Aristobulus II, while his brother Hyrcanus II and his supporters occupied the rest of the city. Both Jewish factions seem to have kept the same sabbath law. We cannot consider that they were all super pious. Aristobulus II, for example, was a friend of 'the eminent', not of the Pharisees (*Antiq.* 13.411). When his supporters refused to attack the Romans on the sabbath they were simply following standard Jewish law.

That strict observance of the sabbath was the rule is, finally, proved by the fact that Rome recognized that sabbath law kept Jews from serving in the imperial armies (*Antiq.* 14.237; earlier see *Antiq.* 13.252). It accords with this that Julius Caesar exempted Judaea from tribute in the seventh year (*Antiq.* 14.202). All the laws governing days, years and seasons seem to have been faithfully kept. The *prosbul*, which is attributed to Hillel, also presupposes that the sabbath years were kept.¹¹

11. The *prosbul* was a legal device for securing the repayment of loans in the sabbath year. It was necessary, because otherwise moneylenders would hesitate to make loans in the sixth year of the seven-year cycle, since debts could not be collected in the seventh year (Neh. 10.31 [Heb. v. 32]). The *prosbul* is attributed to Hillel in *Sifre Deut.* 113; cf. *Shebiith* 10.3–4, where the wording is less

§2. Although standard Jewish observance of the sabbath was very high, pious groups elaborated the sabbath laws and made them stricter yet. According to Josephus the Essenes would not light a fire, remove a vessel ‘or even go to stool’ (*War* 2.147).¹² The *Covenant of Damascus*, which speaks for a group of town-dwelling and non-celibate Essenes, contains a long list of sabbath laws (CD 10.14–11.18), which are neatly summarized by Vermes: the sectarian sabbath began early, ‘when the sun’s orb is distant by its own fullness from the gate’ behind which it would set. Not only was the conduct of business forbidden, so was speaking about work. One should not walk more than 1,000 cubits from home (approx. 500 yards or 450 metres), edible fruit and other food could not be picked up, water could not be carried, a beast could not be struck, servants could not carry children, perfume could not be worn—and so on. Perhaps most striking, CD stipulates that if an animal gave birth in such a way that the offspring dropped into a cistern or pit, it could not be lifted out.¹³ In view of pharisaic debates (see below), it is instructive to note that the *Covenant of Damascus* prohibits any sacrifice on the sabbath except the sabbath offering (CD 11.17–18). That is, when a festival fell on the sabbath, only the sabbath offerings were to be sacrificed, not the festival offerings as well.

We can seldom comment directly on Sadducean practice, but in the present case there is some evidence. We noted above that Aristobulus II was the friend of the ‘eminent’; these probably included Sadducees, and we must assume that they shared the common view that fighting on the sabbath must be limited to defence against direct assault. A passage in the Mishnah points towards Sadducean strictness in observing the sabbath law. One of the pharisaic ‘traditions’ got around some of the anti-social consequences of a strict application of the law. Jeremiah, we noted above, forbade vessels to be carried out of one’s house on the sabbath. The Pharisees decided that the construction of

likely. That the prosbul (whether because Hillel proposed it or not) was actually used is clear in a text from the Judaean desert. In a document dated the second year of Nero (13 Oct. 55–12 Oct. 56), a borrower promises to repay a loan, plus interest of one-fifth, ‘even if it is a year of rest’ (*Discoveries in the Judaean Desert* II, pp. 100–104, no. 18).

12. On rules about defecation, see Yigael Yadin, *The Temple Scroll*, ET 1983, I, pp. 294–304.

13. Vermes, *The Dead Sea Scrolls. Qumran in Perspective*, 1977, pp. 101–102; CD 11.13–14 and elsewhere.

doorposts and lintels at the entrances to alleys or courtyards allowed all the houses in the alley or court to become one house, and thus vessels could be carried within the entire area.¹⁴ This ‘fusion’ or ‘interweaving’ (*êrûb*) of houses permitted communal dining on the sabbath (Erubin 6.6). The Mishnah relates a story by Rabban Gamaliel II about his father, Simeon b. Gamaliel, who was active in the middle of the first century. A Sadducee lived in the same alley, and Simeon b. Gamaliel told his family to put their vessels into the alley before the Sadducee put his there, which would prevent their using it. That is, Sadducees did not agree with the pharisaic tradition about eruv, and they could prevent Pharisees from making use of it in alleys which they shared (see the general rule to this effect in Erubin 6.1). There are reasons to think that the story has been misattributed,¹⁵ but there is no reason to doubt the substantial point. Sadducees believed in upholding the written law, they opposed pharisaic traditions which got around it, and they must have regarded most Pharisees as transgressors of the sabbath law.

In other ways the Pharisees elaborated sabbath observance. The Mishnah tractate Shabbath contains numerous prohibitions which are extra-biblical, such as giving Gentiles work which they cannot finish before the sabbath begins (since the Jew would then be encouraging work on the sabbath) (Shabbath 1.8, the House of Shammai). There were debates between the House of Shammai and the House of Hillel over whether or not work which had been set in train before the sabbath could proceed if no further human effort was required:

The House of Shammai say: Bundles of flax may not be put in an oven unless there is time for them to steam off the same day; nor may wool be put into a [dyer’s] cauldron unless there is time for it to absorb the colour the same day. And the House of Hillel permit it. The House of Shammai say: Nets may not be spread for wild animals, birds, or fishes unless there is time for them to be caught the same day. And the House of Hillel permit it. (Shabbath 1.6)

14. There were debates about precisely what had to be constructed: e.g. Erubin 1.2.

15. See Neusner, *Rabb. Trads.* I, pp. 379f.