

## Introduction

This book explores the concept of divine law. To be more precise, this book labors to make sense of the explosive confrontation of radically diverse conceptions of divine law in the Mediterranean and Near Eastern world in the thousand-year period prior to the rise of Islam. This labor emerges from the firm conviction that the Western conversation about the nature of law and law's claims upon us has been unable or unwilling to escape the consequential paradigms generated by that confrontation—paradigms that remain as powerful today as they were two millennia ago.

The questions that animated so much of the premodern discussion of divine law—whether it is grounded in reason or in will, whether it expresses universal principles or the command of a sovereign, whether its claim to our fidelity lies in its inherent qualities or in its external mechanisms of enforcement, whether law addresses us as rational creatures with virtues to be cultivated or as defective creatures with impulses that must be constrained—are questions that eventually entered the realm of secular law, where they continue to animate discussions of the nature and purpose of law to this day.

These questions are not inevitable, and the specific forms they have taken over the centuries are historically contingent. But for those of us who live in the West, they are—for better or worse—our inheritance. Understanding the story of how and why these questions came to be our inheritance affords us a measure of control over the next chapter of the story. And it opens the possibility that we might better negotiate or overcome the dichotomous dead ends that lie at their base.

### WHAT'S SO DIVINE ABOUT DIVINE LAW?

What does it mean to say that law is divine? Attributing divinity to a set of norms would appear to establish its authority and justify our fidelity to it, but *how* and *why* does it do so? What *constitutes* divine law's divinity? When we say that law is divine, what claims are we making on its behalf? What traits do we suppose a law possesses when we refer to it as divine, and why do we suppose

## 2 | INTRODUCTION

that those traits will establish its authority and justify our fidelity? What is it about divine law that is so “divine”?

Divine law can be minimally defined as the idea that the norms that guide human actions are somehow rooted in the divine realm (Brague 2007, viii)—a concept common to Judaism, Christianity, and Islam. This is not an inevitable idea. Chinese civilization, for example, has never thought of law as being connected with the divine (ibid., 14). In ancient Near Eastern cultures, the gods are guardians of justice who authorize kings by establishing them and conferring upon them the principles of justice and the wisdom essential to their rule, but the *laws* of the land are produced by the kings themselves and are known by their names. A robust notion of divine law—in which divinity applies in some manner *to the law itself*—first appears in ancient Greece and in the Hebrew Bible (or Old Testament).

Here is where our story begins, and this is *why* it begins: the Greek and the biblical conceptions of the divine are radically different. To the extent that the two cultures conceived of the divine in radically different ways, their notions of divine law would also diverge dramatically, a fact with serious consequences for those who feel compelled to negotiate the claims of both traditions.

### PART I—TWO CONCEPTIONS OF DIVINE LAW

In much Greek thought, divine law is divine “because it expresses the profound structures of a permanent natural order” (Brague 2007, 18).<sup>1</sup> On this view, divine law does not refer to a law of the gods. Divine law is an element operating within the physical world and our natures, rather than something imposed upon the world by a god from without. Many ancient Greeks would have answered the question “What’s so divine about divine law?” by asserting that divine law is divine *by virtue of certain qualities inherent in it*, first and foremost its rationality, which entails its truth value, its universality, and its static unchanging character.

By contrast, according to biblical tradition, the law is divine not by virtue of an inherent quality but “because it emanates from a god who is master of history” (Brague 2007, 18). Divine law is not the expression of an impersonal natural reason, the rational order of the cosmos; rather, it is the expression of a personal divine being’s *will*, which can take the form of detailed written instruction and legislation. Ancient adherents to biblical tradition would have answered the question “What’s so divine about divine law?” by pointing to its origin in a divine will, a will expressed in history rather than nature. And while adherents to biblical tradition may have assumed that their god was good and his law was good, beyond establishing its point of origin the attribution of divinity did not in itself *necessarily and essentially* confer upon the law specific

<sup>1</sup> This somewhat reductive description will be complicated in due course.

qualities such as rationality and its various entailments. The specific character of the law is thus something to be discovered.

This book traces the distinctive discourses of divine law that emerged in these two ancient sources of Western civilization—discourses that collided head-on after Alexander's conquest of the eastern end of the Mediterranean, creating a cognitive dissonance that the West has been grappling with ever since. This book examines the way various ancient adherents to biblical tradition struggled to resolve the cognitive dissonance between biblical discourses of divine law and the very different discourses of their Greek (and, later, Roman and then Christian) neighbors. Their struggles gave rise to new and complicated synergies and spawned conceptual categories that continue to inform both the way we think and talk about law and the way we read Scripture to the present day.

Part I contains two chapters that inventory the various discourses of divine law that arose in antiquity. Chapter 1 describes biblical discourses of divine law. The dominant biblical discourse of the divine law revealed to Moses and the Israelites at Sinai grounds that Law and its authority in the will of a divine sovereign rather than a natural order. The divinely revealed Law is explicitly particular and at times arbitrary, subject to modification, and coercively enforced. The ideal human type to which the Law is addressed is the obedient servant. However, a secondary biblical discourse not only gestures toward the idea of a moral order in creation but also associates the Mosaic Law with wisdom and instruction. On this account, the ideal human type to which the Law is addressed is an educable being capable of moral reasoning. A third biblical discourse grounds this Law and its authority not in will or wisdom but in the shared narrative of a historical community. The inflection of a primary will-based discourse with discourses centered on reason and history creates a rich and multidimensional biblical conception of divine law that defies easy categorization according to contemporary theories of law. And yet, it is precisely the messy multidimensionality of biblical divine law discourse that will enable subsequent readers to claim a biblical pedigree for radically different constructions of divine law in response to the confrontation with Greco-Roman discourses of divine law.

Chapter 2 lays out ten different discourses and practices of law in ancient Greek and Roman sources (referred to as G-R 1, 2, etc. throughout the book). A critical feature of all of these discourses and practices is their presumption of a dichotomy between the unwritten natural or divine law on the one hand and positive human law on the other (a dichotomy not immediately apparent in biblical discourse where the Law of God *is* the written law of the community). Thus, all Greco-Roman constructions of divine law begin with a common premise: divine law and human law possess different and usually diametrically opposed traits. The divine or natural law—in addition to being unwritten—is generally portrayed as rational and universal, corresponding to truth, conducive to virtue, and static or unchanging. By contrast, human positive law takes

#### 4 | INTRODUCTION

the form of concrete rules and prohibitions that can be set in writing. It does not of *necessity* possess any of the characteristics that are inherent in the very concept of divine law: it will contain arbitrary elements that do not correspond with truth, and it must be enforced coercively; it is particular and subject to variation, and its ability to produce virtue is a matter of considerable debate.

It should be immediately apparent that there is a severe incongruity between the Greek and the biblical conceptions of divine law. The divine law of biblical tradition possesses many of the features that Greek thought attributes to *human* positive law and only a few of the features Greek thought attributes to *divine* law, and one may be forgiven for asking: to which category does it belong? This is not a modern question. The incongruity between Greek and biblical conceptions of divine law was as apparent in ancient times as it is today. Those espousing one view of divine law were well aware that others espoused a very different view of divine law, as indicated by the scornful and mocking remarks that each directed toward the other. Rémi Brague (2007, 22–23) writes:

When Rome and Hellenism combined forces, they both considered (or would have considered) ridiculous the Jewish idea of the gods dictating a path of action to be followed and behavior to be observed—the *hal-akhah* of the Jews or the *sharia* of Islam—as a matter of principle and in all circumstances. In the third century Galen mocked, not the content of the laws of Moses, but the manner in which Moses gave them to the Jews, without offering the simplest proof, simply stating: “This is what the Lord has commanded” (Ex 35:4).

It is the claim of this book that this incongruity between the biblical and the Greco-Roman conception of divine law was obvious and troubling to ancient Jews to different degrees and prompted three general categories of response. Moreover, each of these responses relied on strategies for interpreting Scripture that would ensure the success of its approach by highlighting the dimensions of biblical divine law discourse most compatible with it.

#### PARTS II AND III—THREE RESPONSES

In very broad terms, the first response—an apologetic response found in Second Temple and Hellenistic Jewish writings—sought to emphasize the similarity or identity of biblical and Greek conceptions of divine law in order to bridge the gap between them. The second response—found in the letters of Paul—emphasized the differences between the two and created an unbridgeable gulf between them. These two responses are examined in chapters 3 and 4 of part II. A third response, that of classical rabbinic literature explored in part III of this volume, resisted the Greco-Roman dichotomy of divine and human law altogether. The somewhat scandalous portrait of divine law found in the literature of classical rabbinic Judaism has not been fully excavated by scholars

of ancient Judaism. It is the goal of this book to give a full account of the rabbinic construction of divine law as a crucial, if often overlooked, partner in the Western conversation about law.

Part II—Mosaic Law in the Light of Greco-Roman Discourses of Law:  
Ancient Jewish Responses to the End of the First Century CE

The texts examined in part II bring us to the end of the first century CE. These texts show us how various adherents to biblical tradition—all of them ancient Jews—responded to the cognitive dissonance engendered by the encounter of biblical and classical conceptions of divine law. Chapter 3 focuses on Hellenistic Jewish writings and Second Temple period texts that to various degrees accept the Greek dichotomy between natural law and conventional law. We examine Hellenistic Jewish writings that try to bridge the gap between biblical and Greco-Roman conceptions of divine law by applying the latter's discourses of natural law to biblical divine law. This apologetic effort culminates in the writings of Philo, who identifies the Mosaic Law with the natural law and confers upon it the attributes of rationality, truth, universality, and fixity. We also examine Second Temple period writings that bridge the gap between biblical and classical conceptions of divine law by moving in the opposite direction: these writings transfer some of the attributes of biblical divine law to the laws that govern the natural world. In 1 Enoch and Jubilees, the laws of the cosmos are recast as the positivistic decrees of God that can be transgressed by "sinful" heavenly bodies. And finally, at Qumran, the correspondence of the Mosaic Law with the natural order finds expression in a realist approach to divine law.

Chapter 4 focuses on Paul, a first-century CE Jew. Like the authors of the texts examined in chapter 3, Paul accepts the basic Greco-Roman dichotomy between divine natural law on the one hand and human positive law on the other hand. However, his response to the incongruity between the biblical and classical conceptions of divine law is the opposite of Philo's. Philo bridged the divide by equating the Mosaic Law with the divine natural law and transferring to it the characteristic attributes of divine natural law. Paul made the opposite move, and applied to Mosaic Law various motifs from Greco-Roman discourses of human positive law. Paul represents the Mosaic Law as particular, temporary, nonrational, and not conducive to virtue. I argue that Paul's representation of the Mosaic Law in positive law terms was a *strategic accommodation to his audience*. His audience consisted of Gentiles for whom divine law must possess certain characteristics that the Mosaic Law does not clearly possess. Particularizing the Mosaic Law enables Paul to argue that it does not obligate Gentiles, whose entry into God's community—required if the end-time visions of the prophets are to be fulfilled—is effected through faith. Paul's strategic adoption of positive law discourse in connection with Mosaic Law would set the stage for a Christian discourse of denigration and delegitimation of the Mosaic Law; it would also allow Christianity's full embrace of natural law as an ontologically

6 | INTRODUCTION

primary mode for God's communication of the norms that obligate universal humankind. How to situate positive human norms and their claim to our fidelity in light of the universal divine law revealed in nature is a problem that Christianity acquires for itself and, indeed, for the modern West. Since that is a story that has been told by others more expert than I, I turn in part III to a different story that has not yet been fully told.

Part III—The Rabbinic Construction of Divine Law

Part III addresses the distinctive rabbinic conception of divine law. While Philo and Paul arrive at radically different conclusions as to whether the biblical divine law (i.e., the Mosaic Law) possesses the characteristic features of the divine law of nature or of positive human law, they are at least united in this: both accept and employ the Greco-Roman dichotomy of divine law and human law as conceptually distinct and distinctive constructs, and seek to assimilate the Mosaic Law to one or the other pole of this dichotomy. In part III, I argue that the rabbis of the talmudic period take a different path, resisting the divine law–human law dichotomy as characterized by classical tradition and constructing a portrait of divine law in defiance of that dichotomy's constraints.

The first three chapters demonstrate that the rabbinic construction of biblical divine law (i.e., the Torah) challenges classical assumptions about divine law and its attributes, specifically the attributes of conformity to truth, universal rationality, and stasis. Each of these attributes is treated in a separate chapter. Chapter 5 considers the attribute of truth and argues that rabbinic texts do not represent Torah as necessarily conforming to or self-identical with truth according to three measures of "truth" invoked in rabbinic sources themselves; indeed, at times Torah confronts and defeats truth. Chapter 6 considers the attribute of universal rationality and argues that the Torah is not consistently represented in rabbinic texts as *intrinsically* rational or universally accessible by reason. Chapter 7 considers the attribute of stasis or inflexibility and shows that the rabbinic conception of Torah assumes its susceptibility to moral critique and modification as the very mark of its divinity.

The representation of Torah as susceptible to moral critique and modification raises a critical question: does moral critique of the law commit the rabbis to the existence of a standard of value *external* to the Torah? In other words, do the rabbis subscribe to a version of natural law *distinct from the Torah* and according to which there are moral goods embedded in nature, rationally accessible and universally obligating? Chapter 8 takes up this question by examining sources that discuss normativity prior to the revelation of Torah, including sources that deal with the so-called Noahide laws. I conclude that the sources are best utilized not as evidence for or against a rabbinic concept of natural law distinct from the Torah, but as evidence that the rabbis were aware of natural law conceptions and, for the most part, rejected them.

The chapters in part III demonstrate that the rabbis of the talmudic era did not shy away from attributing to the divine Torah features considered by others in antiquity to be unfailing indicators of human positive law. In that respect, they resembled Paul more than they did Philo. But the rabbis also insisted on the divinity of the Torah. In that respect, they resembled Philo more than they did Paul. In a third respect they resembled neither Philo nor Paul: insofar as they constructed a portrait of divine law whose very divinity was enhanced rather than impugned by its divorce from truth, its particular and arbitrary character, and its susceptibility to moral critique and modification, they were entirely unique.

They were also entirely scandalous. To those who accept the Greco-Roman conception of divine law, the idea that divine law is not self-identical with truth, is not rational, universal, and unchanging, is shocking, indeed laughable. An important thread that weaves its way through the argument in part III is that the rabbis knew this. The rabbis' construction of divine law was undertaken *in full awareness of what was at stake and how they appeared to others who did not share their view*. The rabbis understood that by constructing divine law in terms directly opposed or (to borrow a term from Shaye Cohen that will be explicated in part III) *antipodal* to the Greco-Roman conception of divine law, they exposed themselves to ridicule. Two primary pieces of evidence can be adduced for this claim.

First, the rabbis explicitly represent their conception of divine law as inspiring ridicule and mockery on the part of various external and internal "others." The rabbis' ability to articulate the alternative view of their opponents and to represent the latter's critique of their own view is strong evidence that their construction of divine law entailed both a familiarity with and a conscious rejection of the alternative view. Second, the rabbis employ dueling strategies of disclosure and concealment in their construction of Torah, indicative of a *conscious* effort to navigate the tension between these competing conceptions of divine law. Thus, alongside a rhetoric of disclosure that openly signals and embraces their unique conception of divine law in the face of mockery and ridicule, the rabbis sometimes adopt a rhetoric of concealment. This rhetoric masks and even modulates their unique conception of divine law in light of a critique that, at times, hits home. These two strategies—disclosure and concealment—are different but fully *self-aware* approaches to managing the tension between the rabbinic conception of divine law and its alternative conception.

In the medieval and modern periods, the rabbinic conception of divine law was overshadowed in the West. The Greco-Roman dichotomy of natural law and positive law became controlling paradigms in the conception of divine law in the West, and its attendant discourses were embraced by the three biblical religions, though in different ways and to widely varying degrees. But the rabbinic conception was far from extinguished. It is the goal of this book to

8 | INTRODUCTION

bring its claims and contours into sharper focus in order to trouble the too-comfortable dichotomies that continue to shape the Western conversation about law, about the divine, and about what it means for law to be divine.

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Writing this book forced me to confront a terminological challenge: what language should we adopt when referring to the divine? The undifferentiated term “God” obscures the great diversity in our sources’ conception of the divine and, relatedly, their conception of divine law. My imperfect solution to this problem is as follows. In chapter 1, I adopt the various modes of reference for the divine being employed by the Hebrew Bible itself, usually *El*, *Elohim*, or *Yahweh*. I take this approach in the hope that it provides a relatively unmediated representation of the conception of the divine in ancient Israel. At the very least, I do not substitute the term “God” for any of these names. The translation “God” causes readers to confuse the deity of the Hebrew Bible with the deity constructed by the much later tradition of Western theology, a deity commonly referred to in English as “God” (with a capital “G”). The biblical character *El*, or *Elohim*, or *Yahweh* is not consistently represented by the biblical writers as possessing the attributes assigned to the deity referred to as “God” by the later tradition of Western theology (for example, in many narratives the biblical deity lacks the attributes of omniscience and immutability). Since our goal is to identify the characteristic features of divine law in biblical tradition, we would do well to avoid labels for the biblical deity that incline us to assume that this deity and this deity’s Law possess certain traits (such as immutability) rather than others.

My translations also faithfully replicate the designations of the deity employed in rabbinic sources—usually “the holy one, blessed be he,” but sometimes “*Elohim*” and sometimes “the creator.” However, when summarizing and discussing the sources in my own voice, I employ the term *God* for the sake of convenience. I ask the reader to indulge this usage and to resist the temptation to attribute to this deity qualities and traits often associated with the term “*God*.”

Finally, despite reservations about the term “law” as a translation for the Hebrew term *torah* and the Greek term *nomos*, I adopt this translation for lack of a better alternative and because it signals normativity, which is an important aspect of both *torah* and *nomos* and a central concern in this book. Where relevant, I adopt the convention of using a lowercase “*l*” to refer to law generally and a capital “*L*” to refer to the divine law of Israel (the Mosaic Law). This occurs mostly when I am discussing texts that themselves attest to a conceptual distinction between the two (for example, the letters of Paul)—a distinction that must be marked in some way. Thus, the phrase “divine law” refers to divine law of any description (Greco-Roman natural law as well as the Mosaic Law) while “divine Law” refers specifically to the Mosaic Law. In adopting this convention, I do not mean to invoke dated assumptions about the opposition of

INTRODUCTION | 9

Law and faith or of Law and grace. In part III, “Law” and “law” indicate the Torah of Moses and *halakhah* (both as an individual law and as Jewish law generally), respectively.

Translations of the Hebrew Bible are based on the Jewish Publication Society’s translations as found in *The Jewish Study Bible*, but adjusted to more accurately reflect divine nomenclature and to illuminate the exegetical interventions of later sources. Translations of the New Testament are taken from the New Revised Standard Version unless otherwise indicated. The translations used for the Greco-Roman sources cited in chapter 2 and the Second Temple and Hellenistic Jewish sources cited in chapter 3 are listed in the bibliography or indicated as they arise. Translations of all rabbinic sources are my own after consultation with manuscript evidence. Significant variants are discussed in the notes.