

RBL 07/2003

Sandberg, Ruth N.

Development and Discontinuity in Jewish Law

Lanham, Md.: University Press of America, 2001.

Pp. ix + 270. Paper. \$37.00. ISBN 076182166X.

Dvora E. Weisberg

Hebrew Union College-Jewish Institute of Religion

Los Angeles, CA 90007

The Torah, the first five books of the Hebrew Bible, serves as the basis for all subsequent Jewish law. While the source of Jewish law is thus ancient, interpretation is an ongoing process. In *Development and Discontinuity in Jewish Law*, Ruth N. Sandberg argues that interpretation of law in Judaism in fact comprises two processes, which she calls “development” and “discontinuity.” Sandberg defines development as the process by which a provision of the law is “enlarged upon and expanded, so that the commandment’s observance involves an ever-increasing number of equally obligatory legal details and requirements” (2). In contrast, discontinuity is a process by which the observance of a law may be “contracted, truncated, restricted, limited, or even eliminated entirely” (2). Sandberg claims that these two processes may occur at the same time in response to the same text; development and discontinuity are then two avenues of interpretation that exist side by side in the Jewish legal system.

Sandberg lays out her thesis and goals in the first chapter of her book. This chapter also includes a brief introduction to some of the primary sources of Jewish law. The bulk of Sandberg’s work (chs. 2–11) is devoted to a cataloguing of ten biblical laws and some of their later legal interpretation. Sandberg discusses the laws of obeying a prophet (Deut 13:2–6; 18:15–22) in chapter 2; not removing a landmark (Deut 19:14) in chapter 3; preserving trees during wartime (Deut 20:19–20) in chapter 4; executing a rebellious son (Deut 21:18–21) in chapter 5; proper attire for men and women (Deut 22:5) in chapter 6; dismissing a mother bird from the nest before taking the young (Deut 22:6–7) in chapter 7; building a parapet around one’s roof (Deut 22:8) in chapter 8; military deferment for a bridegroom (Deut 24:5) in chapter 9; not muzzling an ox during threshing

(Deut 25:4) in chapter 10; and corporal punishment for causing an indignity (Deut 25:11–12) in chapter 11. In each of these ten chapters Sandberg discusses the biblical law and explores its evolution through early rabbinic texts (*Sifre* Deuteronomy, Mishnah, and Babylonian Talmud) and later codes (Maimonides' *Mishneh Torah* and Joseph Caro's *Shulhan Arukh*).

Each of the ten chapters that make up the core of Sandberg's book is organized along the same lines. Sandberg offers a brief introduction to the law under discussion. She then translates and explains the biblical verses that contain the law. Sandberg references modern biblical scholarship to explain verses in what may have been their original context. Sandberg then discusses classical rabbinic sources and medieval codes that rely on the biblical section, indicating how different aspects of a law are expanded upon or restricted. Each chapter concludes with a summary that outlines how the texts cited demonstrate development or discontinuity in the evolution of the law.

The book concludes with a series of charts that summarize the findings of chapters 2–11. Sandberg offers minimal analysis of her findings, simply reiterating her thesis that development and discontinuity have always been essential parts of the Jewish legal system.

Sandberg describes her work as “essentially one of translation and commentary” (ix). Her book is most useful insofar as it provides collections of traditions stemming from specific biblical laws. One cannot fail to appreciate the work Sandberg has done in collecting and translating source material.

What is sometimes frustrating about this book is what it does not do. While Sandberg asserts that “differing historical, sociological, and political situations in each period of Jewish civilization affect how Jewish law is either developed or discontinued” (2), she rarely follows up on her assertion. Is it significant that the classical rabbis “discontinue” the rule concerning a rebellious son at a time when Roman law gave fathers extensive control over their children? Would a discussion of building styles in different periods inform our study of the law of building a parapet on the roof? Sandberg's compilation is most intriguing when it deals with laws that are “developed” and “discontinued” in the same texts. One would assume that the simultaneous expansion of some aspects of a law and contraction of other aspects may reflect shifts in the cultural milieu in which the law is practiced. If development and discontinuity are, at least in part, responses to changing circumstances, can we fully appreciate the trends Sandberg notes without considering the context?

Sandberg's thesis, that Jewish law sometimes involves expanding on the laws of the Torah and sometimes involves limiting the application of the law, is widely accepted. What is new here is Sandberg's decision to see the latter process as "discontinuity." One could argue that what Sandberg labels discontinuity is in fact development, insofar as the legal system is itself developing, albeit by restricting the scope of explicit Torah laws.

Ordinarily, when one hears the word "discontinue," one assumes that the item being discontinued will no longer be produced. When practices are discontinued, they cease to be, and the community may eventually forget them or relegate them to the past. In contrast to this definition of discontinuity, "discontinued" commandments are never completely removed from the legal system. While the Talmud contains an assertion that "the case of a rebellious son never arose nor will it ever arise" (*b. Sanh.* 71a), Maimonides still includes the law in his code. In fact, what Sandberg calls "discontinuity" is, in some cases, a legal strategy necessitated by the rabbis' insistence that the Torah is the word of God and thus an eternally valid source of law. Commandments in the Torah cannot be discarded or excised from the text. Instead, the rabbis use exegesis to limit the scope of the law, preserving it in theory while ensuring that it cannot be implemented. While this process does involve restricting the application of the law, it is as much development as is the expansion of a biblical law.

What Sandberg sees as "discontinuity" may, in fact, actually promote observance of or a positive attitude toward a biblical law. For example, Deut 25:5–10 prescribes a levirate union between the widow and the brother of a childless man. Early rabbinic texts restricted this law in a variety of ways. *Sifre* Deuteronomy reads "*ben*" as child rather than son, exempting a widow and her brother-in-law from levirate marriage if the deceased left a daughter or even a grandchild (*Sifre* Deut 248). The Mishnah exempts a man from marrying any of his brother's widows if a single one of the widows is related to him (*m. Yeb.* 1:1–2). It also exempts a brother from levirate marriage if he was born after the death of his childless brother (*m. Yeb.* 2:1–2). The Mishnah assigns the property of the deceased to his brother when the latter performs levirate marriage (*m. Yeb.* 4:7); this assignment effectively undermines the goal of levirate marriage, the engendering of an heir to a man's name and estate. All of these rabbinic rulings represent "discontinuity." However, they also respond to some of the most troublesome aspects of levirate marriage: the hint of incest involved in marrying one's brother's widow, the burden of caring for another man's property and children, and the reluctance to father children who would not be counted as

one's own heirs. One might argue that in this case, it is "discontinuity" rather than development that preserves to some extent the biblical law.

Clearly the evolution of the Jewish legal system is a complex phenomenon. Sandberg reminds us that even the evolution of a single biblical law is worthy of notice. As Sandberg notes, this process involves not only expansion but also restriction of the law. Through her presentation of sources, Sandberg has provided students of Jewish law a useful place to begin. Her work forces us to consider whether certain biblical commandments lent themselves more naturally to expansion or restriction and whether and how changing circumstances may have encouraged one of these strategies or the other. This book should be especially helpful to beginning students of Jewish law and to teachers looking for resources.