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## Review of Fraade, *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages*

by MERMELS on MAY 22, 2014 · [LEAVE A COMMENT](#)

Review of Steven D. Fraade, *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages*. Leiden: Brill, 2011. 628 pp. \$261.00.

By Jon Kelsen

Steven Fraade's *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages* (Brill, 2011) derives its title from an appreciation of the multiple convergences of legal and narrative literatures. First, Fraade contends, legal literature, like narrative literature, plays a rhetorical function in the creation of "nomo-narrative worlds." Conversely, Fraade highlights the legal import which even narrative literatures often carry. Furthermore, Fraade presents a sustained appreciation of the ways in which legal literature 're-narrativizes' earlier material, as in Philo's Special Laws, Josephus' *politeia*/constitution, the Damascus Document, and the Mishnah (see, e.g., pgs. 21-26. I would add, *inter alia*, that the same applies to how modern works such as Bialik and Ravnitsky's *Sefer haAggadah* re-narrativizes more standardly defined narrative material by removing them from earlier redacted contexts and reorganizing them; these new organizations themselves qualify as commentary). To take the last example, while the Mishnah is not a work of narrative per se (notwithstanding the narratives and legal *ma'asim* therein, and bracketing even *Avot* 1:1), its very reorganization of earlier legal material into its orders, tractates, and chapters effectively frames the contents differently.

Somewhat analogously, regarding debates surrounding whether midrashic texts are primarily the result of oral or written production, Fraade points out that most positions share the common assumption that oral productions represent an earlier (and more popularized) mode of production than the written, formalized, and elitist mode. Yet, Fraade argues, the relationship is not a purely linear one: "given rabbinic literature's "conceit" of orality, the oral elements of its rhetoric are signposts not so much of an oral stage that lies *behind* their extant textualities, as of the oral stage that lies *before* them, the stage upon which their rabbinic scripts remain to be played..." (pg. 379, emphasis in original). In other words, the line between the oral and the written becomes blurred when we pay attention to the uses of literary productions beyond investigating only their redactional history.

In short, therefore, Fraade (playing off of Robert Cover's celebrated essay "Nomos and Narrative") prefers to speak of *nomos as narrative*, complicating the distinction between these two genres. "It is not just a question of how

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accompanying laws and narratives frame, justify, and authorize one another, but how their two modes of discourse interpenetrate one another...we can speak of the normative force of narrative and the narrativity of law..." (pg. 12).

*Legal Fictions* is divided into three primary sections: the first set of studies focuses on the Dead Sea Scrolls proper; the second set is a collection of studies comparing the scrolls and Rabbinic literature; and the third focuses on Rabbinic literature itself. Unlike his previous book (*From Tradition to Commentary: Torah and its Interpretation in the Midrash Sifre to Deuteronomy*), a systematic analysis of a one midrashic work, *Legal Fictions* is an anthology of essays written by the author over a long period of time. (Nonetheless, many textual examples in *Legal Fictions* draw on deuteronomistic material and their interpretive histories). These essays address a wide range of mostly particular (or what Fraade terms 'anecdotal') case-studies, such as philological investigations of individual terms, and comparative interpretations of biblical passages. Some of the essays reach beyond the particular, addressing larger issues such as rabbinic polysemy and pluralism, the affinities and distinctions between the genres of "re-written Bible" and midrash, and the extent to which Second Temple period biblical interpretation may or may not be said to foreshadow or linearly lead one into rabbinic interpretation. Yet even these more ambitious topics are tackled via ever careful, close readings of particular texts, local instantiations, and case studies. The method is one of induction rather than deduction, and Fraade is always careful to avoid making claims or introducing sweeping categorizations that cannot be fully sustained by the source material, even (or especially) when other prominent scholars have attempted to do so.

It is unclear that *Legal Fictions* succeeds as a cohesive, unified work. Since each chapter was originally its own essay, they each begin with their own introductions, many of which are repetitive. This can make it a bit disorienting to read the book straight through. However, this is mitigated by extensive footnoting and cross-referencing, allowing the reader to locate each point and essay within the matrix of the work as a whole. This allows for, first, an appreciation of the way this master scholar connects disparate data points and insights in constructing larger arguments, and secondly for an appreciation of core themes of Fraade's many writings. Nonetheless, in an undergraduate or graduate course setting, it might be more useful to assign individual chapters for reading rather than the work as a whole.

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