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INHERITING THE CROWN IN JEWISH LAW:
THE STRUGGLE FOR RABBINIC
COMPENSATION, TENURE, AND
INHERITANCE RIGHTS

By Jeffrey I. Roth. University of South Carolina
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The State of Israel is a modern state with an electoral system of government, yet the posts of certain public officials, who happen to be rabbis, are inherited from father to son like the thrones of ancient monarchs. The historical developments responsible for this apparent anomaly are explained by law professor Jeffrey I. Roth in *Inheriting the Crown in Jewish Law: The Struggle for Rabbinic Compensation, Tenure, and Inheritance Rights*.¹ Roth's study surveys the legal history of the rabbinic profession from its inception to the present day and demonstrates how Jewish law evolved over time in response to changing historical conditions. Although material rewards for rabbis were initially frowned upon, if not forbidden, by Jewish legal authorities, valuable benefits were eventually won by practitioners. As the study shows, the vigorous legal debates over granting compensation, tenure in office, and inheritance rights to rabbis, which began long before the modern State of Israel was created, continue today in Israel's rabbinical courts.

Roth cites the Mishnah's Rabbi Zadok (1st cent. C.E.) as one of the first influential figures to speak on the issue of rabbinic

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¹ JEFFERY I. ROTH, *INHERITING THE CROWN IN JEWISH LAW: THE STRUGGLE FOR RABBINIC COMPENSATION, TENURE, AND INHERITANCE RIGHT* (University of South Carolina Press 2006).

compensation. According to Zadok, a scholar should never use his knowledge of the Torah as a “crown for self-glorification nor as a spade for digging.”² From this maxim, the Talmudic sages derived two fundamental principles in early Jewish law: first, knowledge of the Torah must not be used to place the scholar on a pedestal, as a means of self-glorification; and second, one must not use his knowledge of the Torah to derive any material benefits. Accordingly, it was initially thought that rabbis (or their scholarly predecessors, the Talmudic sages) were forbidden to accept compensation for performing their religious and legal duties, whether teaching, preaching, or judging. However, over time, this general prohibition grew muddled with exceptions and arguably necessary adaptations to the changing times.

Early on, during the Talmudic period (c. 200-500 C.E.), it was generally accepted in Jewish communities that, as prestigious servants of the Lord who were well-respected within their communities, rabbis were entitled to several economic preferences and exemptions which were not available to those outside the profession. Roth cites many of these preferences that rabbis were entitled: a right to priority in the marketplace for the rabbi who engaged in commerce, permitting him to sell his entire daily inventory before any competing merchants were allowed to open their stalls; priority in the courthouse, consisting of a right to have his legal disputes heard by the court before any other litigants; and exemption from communal taxation.³ Additionally, sages and rabbis were also entitled to collect a “suspension fee” in certain circumstances. For example, when a rabbi maintained a secular trade in addition to his rabbinical duties, he could collect a “suspension fee” to recoup any proven lost wages he would have earned from his secular trade were it not for the time spent performing his rabbinical duties. Ultimately, the suspension fee would engender much debate as it inevitably came to provide one of the leading rationales used to justify rabbinic salaries. However, the suspension fee did enjoy underlying support in Talmudic texts and, as a result, accepting the fee was not deemed improper in later eras so long as the rabbi’s lost wages could be proven.

In due course, rabbis began receiving substantially larger payments and gifts from their communities. For instance, in the Muslim era (600-1000 C.E.), the heads of the rabbinical colleges, the *Geonim* of Sura and Pumpedita in Iraq, were endowed with lavish salaries for their services. This practice infuriated those in the Jewish

² *Id.* at 6.

³ *Id.* at 7-8.

community, like Moses Maimonides, also known as the Rambam, (1135-1204 C.E.), who admired the sages of the Talmudic era and called for a return to their self-effacing values. Maimonides viewed the substantial gifts the geonim received with disdain and called upon the sages to reject gifts and charity from the public. He saw no place for a full-time rabbinate, proper religious life combined salaried, secular employment with gratuitous rabbinic duties. Maimonides endorsed the Talmudic tax exemption and the marketplace priority accorded rabbis from ancient times, but did not approve of the suspension fee for anyone but part-time judges. It is likely that Maimonides would have agreed with the famous quote of Rabbi Israel Isserlein (1390-1460 C.E.), head of the Talmudical academy in Neustadt, that “these [rabbinic] fees are an embarrassment to us.”⁴ Isserlein, like Maimonides, felt that accepting fees was embarrassing to the rabbis, because the fees lacked any solid legal foundation under *halakhah* and contravened the purpose behind a rabbi’s mission, namely, the transmission of Torah knowledge to the public free of charge.

Maimonides’ position was not without critics, among them Rabbi Simon Duran (1361-1444 C.E.), chief rabbi of Algiers, who argued that changing times had rendered the older practices of the Talmudic sages impracticable. In his view, there was no longer a place for a part-time rabbi who held a secular job as well. Duran felt that without a full-time, compensated rabbinate, hard-pressed Jewish communities would lack Torah teaching altogether.⁵

Following the calamitous fourteenth century and the devastating effect of the Black Death on the training and recruitment of rabbis, it appeared that circumstances within the Jewish community had changed and that salaries were now warranted to recruit and retain rabbis in their posts. For instance, where formerly a new rabbi would simply settle in a town and serve, the more standard practice came to be the formal invitation of a candidate to fill a vacant rabbinic chair by the town’s lay leadership.⁶ When a community invested much time and effort in recruiting scarce rabbinic manpower, protecting his salary appeared to be more than acceptable. Halakhic reasoning was duly brought to bear to achieve this result.

A related issue was the residence ban (*herem hayishuv*) enforced by medieval Jewish communities in order to keep the community both Jewish and sustainable. For example, if a given town had a blacksmith

⁴ *Id.* at 38.

⁵ *Id.* at 26.

⁶ *Id.* at 37-38.

in place, a newcomer-blacksmith could be excluded from the community because his trade would reduce the other's business and would not ultimately produce an overall positive result. At first, rabbinic scholars were thought to be exempt from the residence ban since "the envy [competition] of scholars increases wisdom."⁷ Scholars did not trade in a tangible medium, and the Jewish community could never have too much Torah knowledge or too many teachers and scholars. But this perception changed as rabbis began to receive salaries. Rabbi Moses Isserles, also known as the Rema, (1520-1572 C.E.) recognized, as Isserlein perhaps did not, that by the sixteenth century the rabbi's livelihood warranted a degree of legal protection. Isserles ruled that a new rabbi may encroach on the first rabbi's business "to a certain extent only."⁸ Over time, a custom developed that required rabbis to refrain from competing with each other over fees. Because custom in Jewish law is afforded equivalent authority as codified law, the rule of no competition slowly calcified.⁹

In the end, with just one rabbi per town, the rabbi's work could be likened to that of the other paid tradesmen, such as the blacksmith, whose livelihoods were protected from the competition of newcomers. By the time of Rabbi Moses Schreiber, also known as the *Hatam Sofer* (1762-1839 C.E.), rabbis had completely overcome any embarrassment over their fees and anyone who encroached on a rabbi's business to any extent was considered an evildoer.¹⁰ Rabbi Yechiel Epstein (1829-1908 C.E.) went further to say that anyone who infringes on a rabbi's fee base is "no better than an outright thief."¹¹ Thus, as the newcomer-rabbi was increasingly excluded, leaving room for just a single rabbi in each town, the argument against competition only strengthened over time.

With salaries granted and insulated from competition, rabbis strove for additional benefits. These were chiefly lifetime tenure in office and a right to pass their posts by inheritance to qualified heirs. As Professor Roth shows, despite occasional communal opposition, the halakhah was found to accommodate their desires to a remarkable degree. As a result, the pendulum has never truly swung back to where Maimonides would have liked.

⁷ *Id.* at 45.

⁸ *Id.* at 46.

⁹ *Id.* at 49-50.

¹⁰ *Id.* at 51.

¹¹ *Id.*

In modern times, and especially following the foundation of the State of Israel in 1948, two different legal approaches to the rabbinic profession developed, one in Israel and the other in the Jewish Diaspora. Outside of Israel, the rabbi came to be considered an employee of the congregation, school, or agency that employed him. The candidate for a position negotiates with his future employer to set the terms of his contract, including duration of employment, duties, compensation and benefits package. Under Jewish law, ordinary employees lack the status of a leader and hence the right to compare themselves to ancient monarchs. It follows that heirs do not inherit their positions. By contrast, in Israel, disappointed sons, seeking to occupy the rabbinic chairs their deceased fathers previously held, turned to rabbinic tribunals and claimed that rabbis ought to be compared to the ancient kings of Israel whose sons inherited their thrones. Here, Roth provides a detailed analysis of the rabbinic court opinions that decided the issue in the heirs' favor and explains that Israel's mixed legal system, which incorporates elements of Jewish law selectively, permits this result.¹²

Prof. Roth's study operates on two tracks. It surveys an important chapter in the history and development of the rabbinic profession, in which the legal rationales for awarding rabbis a variety of valuable material rewards for their services were tried and tested. It also demonstrates the process of change and evolution in Jewish law. Roth cites the halakhah's "innate ability to change in light of changing historical conditions when the rabbis themselves recognize and appreciate the need for change."¹³

This is a story not often told and Roth tells it well.

¹² *Id.* at 118-21.

¹³ *Id.* at 123.

