

Rabbinic Perspectives:
Rabbinic Literature
and the
Dead Sea Scrolls

Edited by

STEVEN D. FRAADE,

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Rabbinic Perspectives

Studies on the Texts of the Desert of Judah

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Steven D. Fraade, Aharon Shemesh &
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PREFACE

The papers in this volume were originally presented at the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature at the Hebrew University of Jerusalem, 7–9 January, 2003. The theme around which the symposium was organized is the question of what can be learned from the Dead Sea Scrolls relative to early rabbinic literature, and from rabbinic literature relative to the Dead Sea Scrolls. Stated differently, what lines of continuity and discontinuity connect and differentiate the two literary corpora and their respective religious cultures and social structures? However, beyond the matter of determining the specific relations of the Dead Sea Scrolls to early rabbinic Judaism is the broader comparative/contrastive question of how to view the varieties of Second Temple Judaism from the perspective of their successors, following the destruction of the Second Temple in 70 CE, and vice versa, since for much of modern scholarship, that event marks not only a historical watershed, but a divide of scholarly interests and competencies.

In the more than fifty years since the first discoveries of the Dead Sea Scrolls, many conferences and resulting volumes have been devoted to the relationship of the Dead Sea Scrolls to the Hebrew Bible, Second Temple history and literature, and the New Testament/early Christianity. So far as we are aware, this is the first such conference and volume devoted solely to the relation of the Scrolls to early rabbinic Judaism. It is not necessary here to speculate on the reasons for previous relative inattentiveness to this perspective, but we do note the resulting large gap that the studies included herein seek partly to fill. In fact, given the enormous possibilities for considering the many ways that the two bodies of literature might elucidate one another (e.g., in matters of language, liturgy, scriptural interpretation, legal and social history, theology, and eschatology), the following papers only begin to scratch the surface. Nevertheless, they do so in very important regards; some focus on specific case studies with broader implications (Fraade, Noam, Schiffman, Schremer, and Shemesh), while others raise far-reaching issues of historical and comparative methodology (Baumgarten, Doering, Regev, and Werman). It will be noted that most of the studies deal with questions of sectarian and rabbinic law (*mishpat* for the former,

halakhah for the latter). This area itself has been relatively avoided in much of previous Dead Sea Scroll scholarship, but it has more recently been rendered unavoidable by the publication of increasing numbers of legal texts from Qumran (e.g., the *Temple Scroll*, 4QMMT, the Cave Four fragments of the *Damascus Document*), with their interesting lines of concordance with and discordance from the legal substance and rhetoric of early rabbinic texts. While much more remains to be investigated and debated in this regard, we hope that the following studies will model the questions and directions that need to be pursued.

We should note that some of the papers presented at the original symposium, those by David Weiss Halivni, Menahem Kister, Paul Mandel, and Moshe Tur-Paz, are for various reasons *not* included in this volume. For the full program, with abstracts of symposium papers, see <<http://orion.mssc.huji.ac.il/symposiums/8th/main.shtml>>.

We would like to thank Esther Chazon and the Orion Center staff for organizing and hosting the conference. Co-editor Ruth Clements copy-edited the volume and prepared the indices; research assistant Nadav Sharon prepared and checked the Hebrew text; and Orion Intern Jeremy Penner helped proofread the manuscript. Neither the symposium nor this volume would have been possible without the generous support of the Orion Foundation, the Sir Zelman Cowan Universities Fund, and the Hebrew University of Jerusalem. Finally, we owe our appreciation to Florentino García Martínez, the editor of the STDJ series, and to the editorial staff of Brill Academic Press, especially Wilma de Weert and Mattie Kuiper, for ushering this volume into print.

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ABBREVIATIONS

AB	Anchor Bible
ABRL	Anchor Bible Reference Library
AGJU	Arbeiten zur Geschichte des antiken Judentums und des Urchristentums
<i>AJSR</i>	<i>Association for Jewish Studies Review</i>
AOAT	Alter Orient und Altes Testament
ASOR	American Schools of Oriental Research
<i>BA</i>	<i>Biblical Archaeologist</i>
BETL	Bibliotheca ephemeridum theologiarum lovaniensium
BHT	Beiträge zur historischen Theologie
<i>Bib</i>	<i>Biblica</i>
BJS	Brown Judaic Studies
<i>BZ</i>	<i>Biblische Zeitschrift</i>
CBET	Contributions to Biblical Exegesis and Theology
ConBNT	Coniectanea neotestamentica or Coniectanea biblica: New Testament Series
<i>CBQ</i>	<i>Catholic Biblical Quarterly</i>
CRINT	Compendia rerum iudaicarum ad Novum Testamentum
CSJH	Chicago Studies in the History of Judaism
CSCO	Corpus scriptorum christianorum orientalium
DJD	Discoveries in the Judaean Desert
<i>DSD</i>	<i>Dead Sea Discoveries</i>
EBib	Etudes bibliques
<i>EDSS</i>	<i>Encyclopedia of the Dead Sea Scrolls</i> . Edited by L. H. Schiffman and J. C. VanderKam. 2 vols. Oxford and New York, 2000
<i>EJ</i>	<i>Encyclopedia Judaica</i>
<i>HAR</i>	<i>Hebrew Annual Review</i>
HBS	Herders biblische Studien
HSS	Harvard Semitic Studies
<i>HTR</i>	<i>Harvard Theological Review</i>
<i>JAOS</i>	<i>Journal of the American Oriental Society</i>
<i>JAAR</i>	<i>Journal of the American Academy of Religion</i>
<i>JBL</i>	<i>Journal of Biblical Literature</i>
<i>JJS</i>	<i>Journal of Jewish Studies</i>

JLCRS	Jordan Lectures in Comparative Religion Series
<i>JANES</i>	<i>Journal of the Ancient Near Eastern Society of Columbia University</i>
<i>JQR</i>	<i>Jewish Quarterly Review</i>
<i>JSJ</i>	<i>Journal for the Study of Judaism in the Persian, Hellenistic and Roman Periods</i>
JSJSup	Journal for the Study of Judaism: Supplement Series
JSNTSup	Journal for the Study of the New Testament: Supplement Series
<i>JSOT</i>	<i>Journal for the Study of the Old Testament</i>
JSOTSup	Journal for the Study of the Old Testament: Supplement Series
JSPSup	Journal for the Study of the Pseudepigrapha: Supplement Series
<i>JSQ</i>	<i>Jewish Studies Quarterly</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>
LCL	Loeb Classical Library
<i>LTK</i>	<i>Lexicon für Theologie und Kirche</i>
LSJ	Liddell, H. G., R. Scott, H. S. Jones, <i>A Greek-English Lexicon</i> 9th ed. with revised supplement. Oxford, 1996
<i>MGWJ</i>	<i>Monatschrift für Geschichte und Wissenschaft des Judentums</i>
NovTSup	Novum Testamentum Supplements
NTAbh	Neutestamentliche Abhandlungen
<i>NTS</i>	<i>New Testament Studies</i>
NTTS	New Testament Tools and Studies
<i>OTP</i>	<i>Old Testament Pseudepigrapha</i> . Edited by J. H. Charlesworth. 2 vols. New York, 1983, 1985
OTS	Old Testament Studies
<i>PAAJR</i>	<i>Proceedings of the American Academy of Jewish Research</i>
<i>PEQ</i>	<i>Palestine Exploration Quarterly</i>
<i>RB</i>	<i>Revue biblique</i>
<i>RevQ</i>	<i>Revue de Qumrân</i>
<i>RGG</i>	<i>Religion in Geschichte und Gegenwart</i> . Edited by K. Galling. 7 vols. 3d ed. Tübingen, 1957–1965
SBLEJL	Society of Biblical Literature Early Judaism and its Literature
SBLMS	Society of Biblical Literature Monograph Series
SBLSymS	Society of Biblical Literature Symposium Series
SBS	Stuttgarter Bibelstudien
ScrHier	Scripta Hierosolymitana
SJLA	Studies in Judaism in Late Antiquity

<i>SJOT</i>	<i>Scandinavian Journal of the Old Testament</i>
<i>SPhilo</i>	<i>Studia Philonica Annual</i>
STDJ	Studies on the Texts of the Desert of Judah
<i>TRE</i>	<i>Theologische Realenzyklopädie</i> . Edited by G. Krause and G. Müller. Berlin, 1977–
TRENT	Traditions of the Rabbis from the Era of the New Testament
TSAJ	Texte und Studien zum antiken Judentum
<i>VF</i>	<i>Verkündigung und Forschung</i>
<i>VT</i>	<i>Vetus Testamentum</i>
VTSup	Vetus Testamentum Supplements
WUNT	Wissenschaftliche Untersuchungen zum Neuen Testament

TANNAITIC HALAKHAH AND QUMRAN—A RE-EVALUATION

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With the publication of the known “halakhic” Qumran fragments now complete, scholarly attention may be expected to focus on the broader contribution of the Scrolls to the study of early rabbinic law. Some of the controversies between the Qumran legists and the contemporary Pharisaic sages, designated *דורשי הלכות* in the sectarian literature, are already well known. The corresponding references in the Mishnah to debates between *פרושים* and *צדוקים* (perhaps also a rabbinic designation for the Qumran *בני צדוק*) have been identified. These findings provide significant illustrations of the antiquity of rabbinic halakhot pertaining to purity and the Temple. However, it is in my view important to explore not only the confrontations between Qumran ritual law and prerabbinic halakhah, but also the areas of congruence in the elaboration of biblical antecedents. In another context I offer an initial sampling of more than twenty instances of substantive agreement in the interpretation of religious laws not apparent from biblical sources.¹ For convenience I arranged them according to the six orders of the Mishnah. In this paper I would first like to direct attention to common elements in the elaboration of *טהרות* (the laws of purity), notwithstanding the polemics on particular issues found in the Scrolls. Secondly, an evaluation of the approach to *דיני נפשות* (capital penalties) in the two legal complexes is appropriate. Finally, the fundamental controversy concerning the lunar versus the solar calendar requires new evaluation in the light of more recent publications.

Before proceeding with these issues, it is appropriate to say a word about the significance of the now available “halakhic” fragments for the hypothesis that identifies the Qumran community with the Essenes.

¹ See, “Early ‘Halakhic’ Traditions in the Dead Sea Scrolls” (Jerusalem: Yad Izhak Ben-Zvi, forthcoming [Hebrew]).

In 1991 I listed seven details of Essene practice described by Josephus which were also documented at Qumran:²

1. The Essene avoidance of anointing with oil (*JW* 2.123) is now known to stem from the role of liquids as potent transmitters of impurity (CD 12:16, *11QTemple* 49:11).
2. The Essene loin cloth worn during ritual immersion (*JW* 2.161) is specified in 4Q512: **וכסה את בגדיו**.
3. The ban on spitting at public assemblies (*JW* 2.147) is mentioned in 1QS 7:13.
4. Essene Sabbath strictness is exemplified by the requirement that all food be prepared beforehand and by the prohibition against moving any utensil (*JW* 2.147; cf. CD 10:22 and 11:17).
5. Married Essenes avoided intercourse during pregnancy (*JW* 2.161; cf. 4Q270 2).
6. The Essenes insisted on fulfilling their binding oaths even in the face of death (*JW* 2.161). This is likewise the teaching of CD 16:7–8 **עד מחיר מות אל יפדהו**.
7. The Essenes banned commercial transactions between members of the order, who were expected to supply each other's needs without payment (*JW* 2.127). The same rule is applied to the Qumran sectarians, perhaps neophytes, designated Sons of Dawn, in CD 13:14–15: **איש מכל באי ברית אל אל ישא ואל יתן לבני השחר כי אם כף לכף**.

The identification of the Qumran covenanters with the Essenes emerged as a persuasive hypothesis based on multiple organizational parallels at the very beginning of Scrolls research. However, some literary students of Josephus and proponents of the Sadducean connection prefer to remain agnostic, or even deny the validity of the Essene hypothesis. Pointing to Qumranic data which Josephus did not share with his Greek readers, they dismiss the salient communal and theological similarities derived from the **סרך היחד** as too general for any conclusion. In this regard we should consider that the foregoing halakhic congruities are well-documented details, which can hardly be ignored by the historian.

² See J. M. Baumgarten, "The Disqualifications of Priests in 4Q Fragments of the *Damascus Document*: A Specimen of the Recovery of Pre-Rabbinic Halakha," in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March, 1991* (ed. J. Trebolle Barrera and L. Vegas Montaner; 2 vols.; STDJ 11; Leiden: Brill, 1992), 2:503–13, pp. 503–5.

Moreover, to our list of Essene peculiarities found at Qumran we may now add their scruples about covering excrement with the hatchet given to all members. 4QHalakha C is a small fragment with a somewhat faded text that the editor read למכסי צו.³ The editor observes that the reading צו is certain, but the previously proposed translation “as a cover for the commandment” is hardly intelligible. צו is the short form for צואה as in Ugaritic and Akkadian, and the phrase למכסי צו refers to the Essene care to cover excrement. It is also likely that שליש in the following line refers to the utensil used for digging the trench mentioned by Josephus.

So much for details, not significant in themselves, but crucial in the aggregate for positive identification. Before leaving the Essene hypothesis, we may note a general link characterizing the Essene library and that found at Qumran. I am not sure whether, in the abundant scholarly literature on Josephus and the Scrolls, attention has focused on the fact that the Essenes were versed not only in “holy books” and the writings of the prophets (JW 2.159), but had their own ancestral prayers (JW 2.128) and sectarian books (JW 2.142). This would likewise be an appropriate description of the library found at Qumran. As far as we know, such a library contrasts with the unwritten Pharisaic transmission of their ancestral teachings.

Having reaffirmed the continuing adherence to the Essene hypothesis which I advocated in my 1954 dissertation,⁴ I now turn to the exploration of common elements in Qumran and prerabbinic halakhah. Some may question whether these two enterprises are compatible. Suffice it to say at this point that, despite different methods of transmitting their teachings, the existence of a body of Jewish common law shared by the Essenes of Qumran as well as the Pharisees should not *a priori* be left out of consideration. Let us weigh the evidence.

A. *Tohorot*

As we learn from the “halakhic” scrolls and the Mishnah, the Qumran legists were in dispute with prerabbinic authorities over a number of purity issues, including the eligibility of a טבול יום to burn the red cow

³ T. Elgvin, “472a. 4QHalakha C,” in *Qumran Cave 4.XXV: Halakhic Texts* (ed. J. Baumgarten et al.; DJD 35; Oxford: Clarendon, 1999), 155–56.

⁴ J. Baumgarten, “The Covenant Sect and the Essenes” (Ph.D. diss., The Johns Hopkins University, 1954).

and sprinkle the water containing its ashes.⁵ The Pharisees apparently wished to use this central purification rite as a way of publicizing their teaching that immersion alone without waiting for sundown was effective for purification outside the sphere of the Temple.⁶ The *בני צדוק* of Qumran, perhaps called *צדוקים* in *m. Yād.* 4:6–7, insisted that the priest performing this rite must wait for sundown after his immersion. Yet they, too, agreed that immersion by itself was effective after contamination to allow a person to eat non-sacred food.⁷ As Milgrom suggests, the initial cleansing removed a layer of impurity, but further purification was needed for sacred purposes.⁸ The Rabbis, on their part, agreed that the *טבול יום* could not enter the Temple precincts (*m. Kelim* 1:8). Thus the parameters of this dispute, despite its intensity, were rather limited.

Both sides agreed that the maintenance of purity by laymen and the eating of non-sacred food *על טהרת הקודש* were praiseworthy. Tannaitic sources describe the rules governing *haberim* who pledged to follow higher standards of purity. Prof. Lieberman early on noted similarities between the terminology in the tannaitic sources describing the *haberim* and the *Serek haYahad*.⁹ One of the substantive similarities was the greater restriction of access to liquid as compared to solid foods, as explicated in the *Community Rule* and *m. Demai* 2:3. This was due to the fact that liquids were more potent transmitters of impurity, as noted above with regard to the avoidance of oil by the Essenes.

The standards of purity obligatory for different individuals were not uniform. This is well illustrated by the *Temple Scroll's* elaboration of the biblical law concerning vessels found in a tent with a corpse. According to Num 19:15 “any open vessel with no lid fastened down” becomes impure, from which one may deduce that a covered vessel and its contents are not susceptible. The *Temple Scroll*, however, limits the protective function of the cover to ordinary Jews, *לכול אדם מישראל*. For those emulating more stringent purity, *לכול איש טהור*, any covered

⁵ *M. Parah* 3:7; 5:4; and *Sifre Num.* on Num 19:9 (*Sifre 'al Sefer Ba-Midbar ve-Sifre zuta* [ed. S. Horovitz; Jerusalem: Shalem, 1992]), 157.

⁶ See the discussion in Baumgarten, “274–278. 4QTohorot A–C: Introduction,” in Baumgarten et al., DJD 35.81–83.

⁷ See 4Q514 1 i, in M. Baillet, *Qumrân grotte 4.III (4Q482–4Q520)* (DJD 7; Oxford: Clarendon, 1982), 296–298.

⁸ J. Milgrom, “First Day Ablutions in Qumran,” in Trebolle Barrera and Vegas Montaner, *The Madrid Qumran Congress*, 2:561–70.

⁹ S. Lieberman, “The Discipline in the so-called Dead Sea Manual of Discipline,” *JBL* 71 (1952): 199–206.

earthen vessel and its contents were considered contaminated (11QT 49:8–10). Interestingly, a somewhat similar stringency was advocated by the school of Shammai with regard to utensils within the earthen vessel, even if the latter was covered by a lid (*m. Eduyot* 1:14).¹⁰ These departures from the literal implication of Num 19:15 may reflect the more stringent concern with ritual purity among pietists in the Second Temple period.¹¹

Both Second Temple literature and rabbinic sources indicate that purification before prayer was widely practiced. This likewise emerges from the description of the prayer of Levi in the *Aramaic Levi Document* and accords with Cave 4 fragments from Qumran. I have summarized the evidence elsewhere.¹²

As to the forms of purification, one of the innovative aspects of Second Temple practice was the use of pools, **מקוואות**, for immersion. It was not obligatory to go to the sea or to rivers, **ימים ונהרות**, but, as the *Community Rule* adds in its enumeration of means of lustration, one may have recourse to **מי רחץ** (1QS 3:4–5), stationary pools of channeled rainwater such as those discovered at Qumran. The water must be sufficient to cover a man who immerses in it (CD 10:11). This requirement was likewise the basis for the tannaitic minimum measure of forty *seah* for a *miqweh*.¹³ The archaeological features of six Qumran *miqwa'ot* have been found by Ronny Reich to resemble those of the standard Jerusalem type, though the former are considerably larger.¹⁴ This is another significant congruity in the practice of purity.

B. Avoidance of Capital Penalties

In view of the general tendency of Qumran law toward greater rigor one might have expected that the sect would also be more severe in

¹⁰ The reason given for the stringency is that the unclean vessel of an *Am ha-Aretz* cannot protect its contents; but Maimonides (**הלכות טומאת מת כג,א**) extends the rule to the vessels of learned people as well.

¹¹ **בוא וראה עד היכן פרצה טהרה** (*t. Shabb.* 1:7).

¹² "Some 'Qumranic' Observations on the Aramaic Levi Document," in *Sefer Moshe: The Moshe Weinfeld Jubilee Volume: Studies in the Bible and the Ancient Near East, Qumran, and Post-Biblical Judaism* (ed. C. Cohen, A. Hurvitz, and S. M. Paul; Winona Lake: Eisenbrauns, 2004), 393–401.

¹³ See the sources cited by C. Albeck, *Shisha Sidre Mishnah, Seder Tohorot* (Jerusalem: Dvir, 1959), 337.

¹⁴ R. Reich, "Miqvaot," *EDSS* 1:560–63.

carrying out capital punishment. Indeed, A. Shemesh has noted the multiple additions to the list of biblical capital offenses in *Jubilees* and to some degree in the *Temple Scroll*.¹⁵ However, in order to assess the place of capital punishment in a legal system one must evaluate the procedural rules as well as the penal code. In rabbinic law the requirement of **התראה**, warning the offender, through two witnesses, of the consequences of his contemplated crime, is recognized as a factor leading to the practical elimination of the biblical death penalty. The source of this requirement may be, as suggested by Shemesh, the meaning of the term **עדים** in Deut 19:6 (“by the mouth of two or three witnesses”), the verb **העד** having both the sense of ‘to testify’ and ‘to warn’. This is likewise in accord with the Qumran rule in CD 9:16–20:

Any trespass committed by a man against the Torah, which is witnessed by his neighbor—he being but one—if it is a capital matter, he shall report it before his eyes with reproof to the Examiner. And the Examiner shall write it down with his hand until he does it again before one who again reports it to the Examiner. If he is again caught in the presence of one, his judgment is complete.

Most of the scholarly discussion of this requirement of three witnesses has concerned the problem of how to reconcile the requirement of three with the biblical rule, confirmed in the *Temple Scroll*, that two witnesses to a single crime suffice to establish a capital indictment. I am inclined to believe that the Qumran legists would have concurred that two simultaneous witnesses were sufficient with regard to capital crimes, such as murder, adultery, and treason, involving other persons. Our passage, however, deals with religious sins: **אשר ימעל איש בתורה**, “that a man desecrates the Torah”; here, three repeated violations were required by Qumran exegetes for a capital indictment. The nominal basis for this leniency was Deut 19:15, **על פי שני עדים או על פי שלשה**, **על פי שני עדים יקום דבר**, where ‘two’ and ‘three’ were taken to refer, not to the number of witnesses seeing one offense, but to the number of times

¹⁵ A. Shemesh, “‘These are Sentenced to Death’: *Mishnah Sanhedrin* and the *Book of Decrees* of the Sadducees,” *Tarbiz* 70 (2001): 17–33, pp. 22–29 (Hebrew).

¹⁶ **מעל** is used for wronging another person in Lev 5:20, but in Qumran usage it regularly denotes violations of the divine covenant; cf. CD 1:3; 15:12–13; 20:23, and 1QH 12:34. The fact that **דבר מות** in this context does not refer to criminal assault is further evident from the requirement that the witness who observes it must not report it to the authorities without first chastising the perpetrator in the presence of the supervisor (CD 9:2–6). Such a concern for proper procedure would hardly be appropriate where the safety of a victim is threatened.

the offense was repeated. This tendentious interpretation hardly fits the literal sense of the passage, but, in my view, reflects a desire to minimize the scope of capital punishment.

In support of the foregoing thesis I have called attention to a fragmentary, but very interesting Qumran text that explicates the avoidance of the death penalty as a juridical principle.¹⁷ 4Q275 contains a fragment which requires the participants in the annual covenant renewal ceremony to be admonished prior to the **יום המשפט** [י], in the [seventh] week (**השבוע השביעי**).¹⁸ On this **יום המשפט** [י], transgressors within the community were to be judged, by a general assembly of the **רבים**. The **רבים** were particularly admonished to be conscious of the value of human life. Lest they incline toward excessive harshness in punishment, they were made to “solemnly vow not to put any man to death,” **ונדרו לא להמית איש**. As it stands, this vow appears to be an unqualified rejection of any death penalty regardless of the guilt of the accused.¹⁹ Whatever its scope, 4Q275 witnesses both to a judicial principle and to an aspect of judicial process that, like rabbinic **התראה**, intervene to establish a practical limitation to the application of capital punishment.

C. Solar-Lunar Calendar Reckoning at Qumran

Since the publication of the first Qumran scrolls more than half a century ago, the schematic 364-day solar year of *Jubilees* has been posited as a major factor in the schism between the Qumran community and mainstream Judaism.²⁰ This is best illustrated by the Yom Kippur

¹⁷ J. Baumgarten, “The Avoidance of the Death Penalty in Qumran Law,” in *Reworking the Bible: Apocryphal and Related Texts at Qumran. Proceedings of a Joint Symposium by the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature and the Hebrew University Institute for Advanced Studies Research Group on Qumran, 15–17 January, 2002* (ed. E. G. Chazon, D. Dimant and R. A. Clements; STDJ 58; Leiden: Brill, 2005), 31–38, pp. 36–37.

¹⁸ “275. 4QCommunal Ceremony,” ed. P. S. Alexander and G. Vermes, in idem, *Qumran Cave 4.XIX: Serekh Ha-Yahad and Two Related Texts* (DJD 26; Oxford: Clarendon, 1998), 209–16. The admonishment of the **רבים** here before a capital trial may be compared with the admonition (**איתם**) given to the witnesses about the unique value of human life in *m. Sanh.* 4:5.

¹⁹ The extant text breaks off after **איש** and it may conceivably have been followed by some qualifier that would limit the scope of the vow, such as **נקי** or **צדיק**, which are found in Exod 23:7: “An innocent and righteous man you shall not kill.”

²⁰ See very early on, S. Talmon, “Yom Hakkipurim in the Habbakuk Scroll,” *Bib*

confrontation with the Wicked Priest, who came to suppress the sect's observance of the fast on a date in conflict with the prevalent lunar calendar. The thesis of S. Talmon, a pioneer in the study of the Qumran calendar, is that the sect, like *Jubilees*, viewed the observation of the moon as leading to corruption of the ideal 364-day calendar in which the holidays and all dates were perpetually fixed to particular days of the week.²¹ Whether and how the sect made corrections for the annual deficit of one and one quarter days is not known, but it is presumed by Talmon they had only disdain for the arbitrary methods of lunar intercalation.

With the publication of Qumran calendrical texts now complete, it is natural to ask how this thesis holds up in the light of new Cave 4 fragments. In his general introduction to *Qumran Cave 4: Calendrical Texts*, Talmon surveys this assortment of texts that testify to the centrality of the 364-day calendar in community life and to the practical aspects of its implementation.²² The *Damascus Document*, one of the foundational works of the community, does indeed make reference to the chronological system of the *Book of Jubilees*, and as Talmon demonstrated long ago, the *mishmarot* lists of annual festivals on fixed days of the week presuppose the schematic 364-day solar calendar. However, as illustrated by the early astronomical portion of the *Book of Enoch*, not all proponents of the 364-day year were oblivious to the need for synchronization with the lunar calendar. In fact, in this volume, Talmon publishes 4Q320, which, as he puts it "is intended to achieve a concordance of the divergent 354-day lunar year with this 'ideal' ephemeris" (p. 33). 4Q320 and 321 together designate two days in each solar month, one around the middle of the lunar month, with the obscure designation דוקה, and the other, not named (Talmon designates it X), around the end of the month. The nature of these two days is still the subject of much conjecture among scholars. M. Wise deduces from another Qumran text that *duqah* refers to the full moon, while the X day was probably the last day of its

32 (1951): 549–63; idem, "The Calendar of the Covenanters of the Judean Desert," in *Aspects of the Dead Sea Scrolls* (ed. C. Rabin and Y. Yadin; ScrHier 4; Jerusalem: The Hebrew University Magnes Press, 1958), 162–99.

²¹ Concisely put in S. Talmon, "Calendar Controversy in Ancient Judaism: The Case of the 'Community of the Renewed Covenant,'" in *The Provo International Conference on the Dead Sea Scrolls: Technological Innovations, New Texts, and Reformulated Issues* (ed. D. W. Parry and E. Ulrich; STDJ 30; Leiden: Brill, 1999), 379–95, especially 385–91.

²² In *Qumran Cave 4.XVI: Calendrical Texts*, (ed. S. Talmon, J. Ben-Dov, U. Glessmer; DJD 21; Oxford: Clarendon, 2001), 1–36.

visibility.²³ Talmon and I. Knohl have suggested that *duqah* was the night after the full moon when it begins to wane, while X was the last day of the lunar month.²⁴ In their opinion the purpose of recording these days inclining toward lunar darkness was to warn the members of the sect about the sinister influence of the moon.

This “baleful” lunar hypothesis contrasts sharply with 4Q503, a Qumran liturgical text which sets forth prayers to be recited daily in accordance with the varying portions of light and darkness in the moon, a method of measuring lunation also described in *Enoch*. As I have had occasion to point out, 4Q503 shows that lunar calculation was used for liturgical purposes at Qumran, despite the anti-lunar polemics of *Jubilees*.²⁵ In his learned but non-committal evaluation of the evidence, U. Glessmer maintained that the moon and the “lots of darkness” occur only in passages reconstructed by the editor.²⁶ This is not quite accurate, as one can verify by looking at the phrase גורלות חושך visible on plate XLI fig. 39 of M. Baillet’s edition. Furthermore, in 4Q503, as well as elsewhere in the sectarian literature, the day begins with the evening as in the traditional lunar-solar Jewish calendar.

Thus, with regard to 4Q320/321, it seems more plausible to suppose that the two days designated each month were intended for synchronization with the lunar calendar rather than as a warning against it. This option appears to be recognized by Talmon as at least a possibility once a comprehensive study of the entire Qumran calendrical corpus is completed.²⁷

It is clear that much work on the use of the solar and lunar calendars at Qumran remains to be done. At present the evidence points to the continuation of the efforts already found in *Enoch* to synchronize the schematic 364-day calendar with the schematic reckoning of light and

²³ M. O. Wise, “Second Thoughts on דוק and the Synchronistic Calendar,” in *Pursuing the Text: Studies in Honor of Ben Zion Wacholder on the Occasion of his Seventieth Birthday* (ed. J. C. Reeves and J. Kampen; JSOTSup 184; Sheffield: Sheffield Academic Press, 1994), 98–120.

²⁴ S. Talmon and I. Knohl, “A Calendrical Scroll from a Qumran Cave, 4Q321,” in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom* (ed. D. P. Wright, D. N. Freedman, and A. Hurvitz; Winona Lake: Eisenbrauns, 1995), 267–302.

²⁵ J. Baumgarten, “4Q503 (Daily Prayers) and the Lunar Calendar,” *RevQ* 12 (1986): 399–407.

²⁶ U. Glessmer, “Calendars in the Qumran Scrolls,” *The Dead Sea Scrolls after Fifty Years: A Comprehensive Assessment* (ed. P. W. Flint and J. C. Vanderkam; 2 vols.; Leiden: Brill, 1998–1999), 2:252–55.

²⁷ Talmon, Ben-Dov, and Glessmer, DJD 21.36.

darkness in the lunar cycle. What sets these solar-lunar calculations apart from the rabbinic calendar is that the latter delegates authority to the discretion of the court to declare new moons and leap years, while the sect believed in fixed times ordained in the heavenly tablets. This view of the calendar is intrinsically harmonious with the deterministic character of Qumran Essene theology.²⁸

Summation

This paper explores substantive links between Qumran and early rabbinic halakhah in three areas: purity, capital penalties, and the calendar. We have elsewhere identified a considerable number of other congruities in the elaboration of halakhah beyond what is implicit in pentateuchal law. Two of the subjects treated here, purity and the calendar, are known to have involved particular controversies between Qumran and Pharisaic teachings. For this very reason it is important to delineate agreements which may hypothetically reflect common Jewish traditions of the Second Temple period.

I prefaced this presentation with a list of recent findings which tend to strengthen the premise identifying the Qumran community with the Essenes. It is worth noting in this connection that the two ancient authors to whom we owe most of our external knowledge of the Essenes both depict them in a decidedly favorable fashion. Philo, a leading spokesman for Alexandrian Jewry, named the Essenes “athletes of virtue,” without any critique of their unique life-style. We do not know how much Philo knew about the differences between the Jewish groupings in the land of Israel in his time. Wolfson has argued persuasively that Philo was not unaware of the Pharisaic concept of the authority of the “unwritten law,” albeit this term originated in Greek sources as a designation for the law of nature.²⁹ In any case, the Qumran Essenes appear to have ascribed authority to written sources only, but this did not prevent Philo from praising them lavishly. Josephus likewise admired the Essenes greatly as “men of the highest character” (*Ant.* 18.19) although he

²⁸ The Essene reputation for foretelling the future and the concern of Qumran wisdom with determining the horoscope (מולד) of individuals are other manifestations of a predestinarian orientation.

²⁹ H. A. Wolfson, *Philo* (Cambridge: Harvard University Press, 1947), 1:189–94.

himself accepted the rules of the Pharisees when he was nineteen years old (*Life* 12).

The polemics against the “interpreters of smooth things” in the Scrolls reflect some of the Qumran conflicts with the Pharisees. The Yom Kippur confrontation apparently resulted from the efforts of Temple authorities to suppress the dissident sectarian calendar. Yet, this should not lead us to suppose that these disputants had nothing in common. It is a well-known historical phenomenon that the intensity of conflict between religious groups is proportional to the proximity of their ideologies. This paper tries to identify a core of substantive agreement in three areas of religious practice.

PARALLELS WITHOUT “PARALLELOMANIA”:
METHODOLOGICAL REFLECTIONS ON COMPARATIVE
ANALYSIS OF HALAKHAH IN THE DEAD SEA SCROLLS

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As is well known—and has been impressively confirmed by this conference—comparative analysis of halakhah in the Dead Sea Scrolls has gained increasing interest in the last decades.¹ After the rather isolated voices of Solomon Schechter, Chanoch Albeck and especially Louis Ginzberg,² in the desert of pre-Qumran scholarship, and after a regrettable lack of interest during the initial phase of Qumran studies—with some notable exceptions³—it was especially the pioneering work of

¹ I employ the term “halakhah” for the body of laws held to be normative within a given Jewish group. This *functional* use of the term allows for its application also to texts and traditions other than rabbinic ones; however, it is in rabbinic texts that the noun seems to have appeared for the first time explicitly, at least in the sense under discussion here. Cf. J. P. Meier, “Is There *Halaka* (the Noun) at Qumran?” *JBL* 122 (2003): 150–55.

² S. Schechter, *Documents of Jewish Sectaries I: Fragments of a Zadokite Work* (Cambridge: Cambridge University Press, 1910); C. Albeck, *Das Buch der Jubiläen und die Halacha* (Bericht der Hochschule für die Wissenschaft des Judentums 47; Berlin: Hochschule für die Wissenschaft des Judentums, 1930); L. Ginzberg, *Eine unbekannte jüdische Sekte, T. 1* (New York: [privately published], 1922; repr. Hildesheim: Olms, 1972), 148–220. This was originally published as a series of articles in *MGWJ* 55–58 (1911–1914); ET: *An Unknown Jewish Sect* (Moreshet 1; New York: The Jewish Theological Seminary of America, 1976).

³ Cf. C. Rabin’s notes in his *The Zadokite Documents* (2d rev. ed.; Oxford: Clarendon, 1958); further, idem, *Qumran Studies* (Scripta Judaica 2; Oxford: Oxford University Press, 1957); S. Lieberman, “Light on the Cave Scrolls from Rabbinic Sources,” *PAAJR* 20 (1951): 395–404 (repr. in idem, *Texts and Studies* [New York: Ktav, 1974], 190–99); idem, “The Discipline of the So-called Manual of Discipline,” *JBL* 71 (1952): 199–206 (repr. in idem, *Texts and Studies*, 200–207); J. Licht, *The Rule Scroll: A Scroll from the Wilderness of Judaea. IQS, IQSa, IQSb—Text, Introduction and Commentary* (Jerusalem: Bialik Institute, 1965), esp. 294–303 (Hebrew). Cf. further a few Christian scholars, e.g., H. Braun, *Spätjüdisch-häretischer und frühchristlicher Radikalismus: Jesus von Nazareth und die essenische Qumransekte* (2 vols.; BHT 24; Tübingen: Mohr [Siebeck], 1957); idem, *Qumran und das Neue Testament* (2 vols.; Tübingen: Mohr [Siebeck], 1966); H. Bietenhard, “Sabbatvorschriften von Qumran im Lichte des rabbinischen Rechts und der Evangelien,” in *Qumran-Probleme*

Joseph Baumgarten and Lawrence Schiffman⁴ that provided the basis for the transformation of comparative research on the Scrolls' halakhah into a veritable field of studies. Other scholars have followed their lead and contributed to increasing research and publication activity in this area.⁵ This development was greatly advanced by the publication of the *Temple Scroll* in 1977 (1983), of *4QMMT* in 1994, and more recently of DJD 35 *Halakhic Texts* (1999).⁶ In view of this increased prominence of the comparative approach, surprisingly little attention has been given to the *methodology* of halakhic comparison. Thus, preparing this article, I have found that none of the various "golden jubilee" volumes of Scrolls research contains a single article devoted specifically to comparative methodology, at least in the realm of halakhah.⁷ Neither have I noted

(ed. H. Bardtke; Schriften der Sektion für Altertumswissenschaft 42; Berlin: Akademie-Verlag, 1963), 53–74.

⁴ Of the numerous publications of these two scholars I will mention only the following: J. M. Baumgarten, *Studies in Qumran Law* (SJLA 24; Leiden: Brill, 1977); idem, *Qumran Cave 4.XIII: The Damascus Document (4Q266–273)* (DJD 18; Oxford: Clarendon, 1996); idem et al., *Qumran Cave 4.XXV: Halakhic Texts* (DJD 35; Oxford: Clarendon, 1999); L. H. Schiffman, *The Halakhah at Qumran* (SJLA 16; Leiden: Brill, 1975); idem, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code* (BJS 33; Chico, Calif.: Scholars Press, 1983); both volumes were incorporated as updated versions into idem, *Law, Custom, and Messianism in the Dead Sea Sect* (ed. and trans. T. Ilan; Jerusalem: Merkaz Zalman Shazar, 1993 [Hebrew]); see further idem, *Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the Lost Library of Qumran* (foreword by C. Potok; Philadelphia: Jewish Publication Society, 5755 = 1994).

⁵ Initial bibliography can be found in E. Qimron and J. Strugnell, *Qumran Cave 4.V: Miqsat Ma'ase ha-Torah* (DJD 10; Oxford: Oxford University Press, 1994), 124–30. The following collections are devoted especially to the study of halakhic texts: J. Kampen and M. J. Bernstein, eds., *Reading 4QMMT: New Perspectives on Qumran Law and History* (SBLSymS 2; Atlanta: Scholars Press, 1996); M. J. Bernstein, F. García Martínez, and J. Kampen, eds., *Legal Texts and Legal Issues: Proceedings of the Second Meeting of the IOQS, Cambridge 1995. Published in Honour of J. M. Baumgarten* (STDJ 23; Leiden: Brill, 1997); and the special issue, "Studies in Qumran Law," of *DSD* 6 (1999) (pp. 109–237 = no. 2). Taking stock 50 years after the discovery of the texts at Qumran is H. K. Harrington, "Biblical Law at Qumran," in *The Dead Sea Scrolls after Fifty Years: A Comprehensive Assessment* (ed. P. W. Flint and J. C. VanderKam; 2 vols.; Leiden: Brill, 1998–1999), 1:160–85.

⁶ Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: Israel Exploration Society, 1977 [Hebrew]; ET 1983); Qimron and Strugnell, DJD 10; Baumgarten et al., DJD 35.

⁷ S. E. Porter and C. A. Evans, eds., *The Scrolls and the Scriptures: Qumran Fifty Years After* (JSPSup 26 = Roehampton Institute London Papers 3; Sheffield: Sheffield Academic Press, 1997); Flint and VanderKam, *The Dead Sea Scrolls after Fifty Years*; R. A. Kugler and E. M. Schuller, eds., *The Dead Sea Scrolls at Fifty: Proceedings of the 1997 Society of Biblical Literature Qumran Section Meetings* (SBLJL 15; Atlanta: Scholars Press, 1999); L. H. Schiffman, E. Tov, and J. C. VanderKam, eds., *The Dead Sea Scrolls: Fifty Years after their Discovery 1947–1997. Proceedings of the Jerusalem Congress, July 20–25, 1997* (Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000).

characteristic title formulations pertinent to this issue in the two most recent bibliographies⁸ or in the recent encyclopedia.⁹

It seems that the time is ripe for assessing what has been done in this respect, what may be learned from other efforts in associated disciplines, and what may be requirements for future research.

1. *An Outline of a Method*

The most detailed outline of a method of comparative analysis so far has been provided by Lawrence Schiffman. In his 1975 study, *The Halakhah at Qumran*, he devoted a ten-page paragraph to a reflection on sources for comparison (Bible, Apocrypha and Pseudepigrapha, Philo, Josephus, rabbinic literature, and texts by other Jewish groups).¹⁰ On the method of comparison proper one finds only some initial remarks.¹¹ In *Sectarian Law in the Dead Sea Scrolls* (1983), Schiffman expanded these remarks into a valuable description of a method.¹² This, in turn, has been incorporated, together with the reflections on comparative sources, into a 1993 update, published in Hebrew under the title הלכה, הליכה ומשיחיות בכתב מדבר יהודה.¹³ Schiffman describes his method as “both philological and historical, both synchronic and diachronic. Each text is understood first as an individual passage, then within the context of its document and of the Qumran corpus in general. It is then compared to other Jewish legal texts and traditions in an effort to provide a wider background for its explanation and in order to fix its place in the history of Jewish law.”¹⁴ This method starts by establishing the text from the manuscript evidence. One then moves to philological issues, such as “explanation of the linguistic usages, legal terminology, and parallel passages in the Hebrew Bible.”¹⁵

⁸ F. García Martínez and D. W. Parry, *A Bibliography of the Finds in the Desert of Judah 1970–95: Arranged by Author with Citation and Subject Indexes* (STDJ 19; Leiden: Brill, 1996); A. Pinnick, *The Orion Center Bibliography of the Dead Sea Scrolls (1995–2000)* (STDJ 41; Leiden: Brill, 2001).

⁹ L. H. Schiffman and J. C. VanderKam, eds., *The Encyclopedia of the Dead Sea Scrolls* (2 vols.; Oxford: Oxford University Press, 2000).

¹⁰ Schiffman, *Halakhah at Qumran*, 9–19.

¹¹ Schiffman, *Halakhah at Qumran*, 2–3.

¹² Schiffman, *Sectarian Law*, 17–19.

¹³ Schiffman, *Law, Custom, and Messianism*, 34–44.

¹⁴ Schiffman, *Sectarian Law*, 17; cf. *Law, Custom, and Messianism*, 34–35.

¹⁵ Schiffman, *Sectarian Law*, 18; cf. *Law, Custom, and Messianism*, 35.

The last is especially important for Schiffman, since he thinks that halakhah at Qumran originated in inspired exegesis of the biblical text. However, this view has been contested or at least qualified by others, which merits at least a few excursive remarks. Due to spatial limitations I wish to point out here only that a view of halakhah at Qumran essentially as “exegesis” of biblical “texts” disregards both (a) the complexities involved in establishing halakhah and (b) the way the texts present their rulings.¹⁶ (a) Regarding the former, Karlheinz Müller has highlighted the impact of the exigencies of daily life on the creation of halakhah. According to Müller, early Jewish halakhic compositions draw on biblically grounded *subjects* rather than on biblical *texts*.¹⁷ While this may be somewhat overstated, Müller’s emphasis on the exigencies of life is apposite. (b) Regarding the self-presentation of legal texts, Steven Fraade has pointed out the lack of legal midrash at Qumran. According to Fraade, even when biblical interpretation was involved in halakhic discourse, the *yahad* concealed the techniques employed; instead, “their rules are regularly described as having been *revealed*.”¹⁸ With a different emphasis, Aharon Shemesh has suggested for the *Damascus Document* that the contents and sequence of several laws have been evoked by scriptural texts, without these having been made explicit. While Shemesh would call this procedure “midrashic” in character,¹⁹ he, too,

¹⁶ See, for an earlier and fuller critical evaluation of different views on this subject, as well as a mediating proposal, L. Doering, “Überlegungen zum Ansatz der Halacha in den Qumrantexten,” in *Qumran kontrovers: Beiträge zu den Textfinden vom Toten Meer* (ed. J. Frey and H. Stegemann; Einblicke 6; Paderborn: Bonifatius, 2003), 89–113, esp. 93–98. Cf. now S. Metso, “Creating Community Halakah,” in *Studies in the Hebrew Bible, Qumran, and the Septuagint Presented to Eugene Ulrich* (ed. P. W. Flint, E. Tov and J. VanderKam; VTSup 101; Leiden: Brill, 2006), 279–301, who argues with respect to the oath to be sworn upon entry into the community that “some of the community legislation seems to have been derived not from Scripture, but simply from the exigencies of communal life, and only secondarily argued as resting on scriptural authority” (p. 279).

¹⁷ K. Müller, “Anmerkungen zum Verhältnis von Tora und Halacha im Frühjudentum,” in *Die Tora als Kanon für Juden und Christen* (ed. E. Zenger; HBS 10; Freiburg: Herder, 1996), 257–91, esp. 265.

¹⁸ S. D. Fraade, “Looking for Legal Midrash at Qumran,” in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls. Proceedings of the First International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 May, 1996* (ed. M. E. Stone and E. G. Chazon; STDJ 28; Leiden: Brill, 1998), 59–79, p. 76 (original emphasis). Cf. the earlier study by J. M. Baumgarten, “The Unwritten Law in the Pre-Rabbinic Period,” in idem, *Studies*, 13–35.

¹⁹ A. Shemesh, “Scriptural Interpretations in the Damascus Document and their Parallels in Rabbinic Midrash,” in *The Damascus Document: A Centennial of Discovery. Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 4–8 February, 1998* (ed. J. M. Baumgarten, E. G. Chazon and A. Pinnick; STDJ 34; Leiden: Brill, 2000), 161–75, p. 175.

agrees that “halakhic *derashah* as a genre,” i.e., “midrash characterized by dialectical processes and exegetical negotiation,” “is absent from the Dead Sea Scrolls.”²⁰ While scriptural predisposition and support thus must be taken seriously, the establishment of halakhah should not be considered a predominantly exegetical enterprise.

Schiffman rightly argues that preparing the philological notes on a passage constitutes one of the most important analytical steps. The next step would then be to understand the particular ruling “in the context of the wider document in which it appears. . . . Then it may be illuminated by additional material from the other documents of the sect.”²¹ In the Hebrew update Schiffman adds that, in case of differences in content or form that emerge in comparison with other Qumran documents, one should reckon with the possibility of halakhic development or with different currents in the thought of the sect.²² After this step, each passage is compared “with other corpora of Jewish law. . . . Most relevant will be the Second Commonwealth and talmudic sources, especially those which can be dated to the tannaitic period.”²³

2. *Putting the Method in Context: Historico-Legal Comparison* (“*Halachageschichtlicher Vergleich*”)

It seems to me that in an overall evaluation this method can claim to be sound. I would think that many of us work from similar methodological guidelines. In my own work on Sabbath law and practice—not only in the Dead Sea Scrolls, but in Second Temple Judaism in general and in the New Testament—I have adopted a modification of Schiffman’s approach, dubbing it “halachageschichtlicher Vergleich,” recalling the more familiar exegetical terms “Religionsgeschichte” and “Traditionsgeschichte” (“historico-legal comparison” may be an appropriate English equivalent).²⁴ By this I wanted to make clear (a) that,

²⁰ A. Shemesh and C. Werman, “Halakhah at Qumran: Genre and Authority,” *DSD* 10 (2003): 104–29, p. 128 with n. 54.

²¹ Schiffman, *Sectarian Law*, 18; cf. *Law, Custom, and Messianism*, 35.

²² Cf. Schiffman, *Law, Custom, and Messianism*, *ibid.*

²³ Schiffman, *Sectarian Law*, 18; cf. *Law, Custom, and Messianism*, 35.

²⁴ Cf. L. Doering, *Sabbat: Sabbathalacha und -praxis im antiken Judentum und Urchristentum* (TSAJ 78; Tübingen: Mohr Siebeck, 1999), 13–16. This suggestion for an English equivalent follows R. P. Booth, *Jesus and the Laws of Purity: Tradition History and Legal History in Mark 7* (JSNTSup 13; Sheffield: JSOT Press, 1986), who speaks of “historico-legal criticism” (e.g., pp. 19, 115, 217) or “legal history” (thus the subtitle).

first of all, we are dealing with a historical method, not with a purely documentary approach; and (b) that such a comparative method, as it concerns both the Scrolls and halakhah, could not stand as a method *sui generis*, totally idiosyncratic within the methodological universe of the humanities. This is true even despite the fact that pioneers like Baumgarten and Schiffman had to work almost from scratch in developing their approach. Nevertheless, such a method should be integrated into the broader context of methodological discourse within the humanities.

I am aware that in this respect there may be different areas of intersection, such as the comparative approach in jurisprudence or the discipline of comparative literature, “which compares literary works (and traditions) beyond the confines of one particular country and language.”²⁵ However, while appreciating insights of these disciplines, I wish to concentrate, in what follows, mainly on another field: namely, on *comparative methods in religious and biblical studies*, not only since this is the discipline of my own training (and it is from here that I have taken the models for my labeling of the method), but also because I think the material, historical, and literary problems of the Scrolls call for especially close attention to the methods developed in these fields.²⁶ In recent years there have been two main focal points of methodological discussion in this field with an impact on our subject, which should, in my view, be thoroughly assessed. The first concerns the *nature of comparison*, the second the *importance of synchronic methods of analysis*. I think that these two issues, rather neglected by current comparative work on the Scrolls’ halakhah, can help us clarify our methodologies and in consequence will contribute to additional refinement of our methods.

²⁵ Thus the short definition provided by B. Cozjensen, “A Critical Contribution to the Corpus Hellenisticum Novi Testamenti: Jude and Hesiod,” in *The Use of Sacred Books in the Ancient World* (ed. L. V. Rutgers et al.; CBET 22; Leuven: Peeters, 1998), 79–109, p. 83, with some basic bibliography in n. 18.

²⁶ Besides the literature discussed below, the following titles deserve special mention: S. Talmon, “The ‘Comparative Method’ in Biblical Interpretation—Principles and Problems,” in *Congress Volume: Göttingen 1977* (VTSup 29; Leiden: Brill, 1978), 320–56; M. Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (AOAT 227; Neukirchen-Vluyn: Neukirchener Verlag, 1990); as well as B. S. Jackson, *Essays in Jewish and Comparative Legal History* (SJLA 10; Leiden: Brill, 1975); and more recently by the same author, studies of the impact of semiotics on legal theory, e.g., *Semiotics and Legal Theory* (London: Routledge & Kegan Paul, 1985).

3. Reflections on “Comparison”

Ever since Samuel Sandmel, in 1961, charged biblical scholarship with “parallelomania,” i.e., the excessive piling up of ancient parallels, overdoing their similarity with biblical texts, and supposing some direct connection between the two,²⁷ scholars in the field have tried to rectify the methodological flaw correctly identified by Sandmel.²⁸ It is obvious that many of Sandmel’s charges do not apply to the way the study of halakhah in the Scrolls is normally carried out today, for example his accusation that scholars work from collections of “parallels,” such as Strack-Billerbeck, instead of from the sources themselves. And it is also clear that Sandmel’s own application of the term “parallelomania” was aimed mainly at New Testament studies and the way Jewish sources in particular were piled up in this discipline; nevertheless, Sandmel himself suggested wider implications of his critique for biblical scholarship in general,²⁹ and the term had been used before with respect to “parallels” between the Wisdom of Solomon and Greek philosophy, as well as Philo of Alexandria.³⁰

²⁷ S. Sandmel, “Parallelomania,” *JBL* 81 (1962): 1–13. A somewhat less “psychiatric” diagnosis has been given by Cozijnsen, who speaks of “comparisonitis,” “Critical Contribution,” 93.

²⁸ Some aspects of the treatment of “parallels” in New Testament scholarship are now reviewed by L. M. White and J. T. Fitzgerald, “*Quod est comparandum*: The Problem of Parallels,” in *Early Christianity and Classical Culture: Comparative Studies in Honor of A. J. Malherbe* (ed. J. T. Fitzgerald, T. H. Olbricht and L. M. White; NovTSup 110; Leiden: Brill, 2003), 13–39 (the Latin title of this article seems, however, somewhat odd, and its translation at the very end by “Thus should it be compared,” infelicitous).

²⁹ Cf. Sandmel, “Parallelomania,” 1: “I shall not exhaust what might be said in all areas which members of this Society [the Society of Biblical Literature (LD)] might be interested in, but confine myself to the areas of rabbinic literature and the gospels, Philo and Paul, and the Dead Sea Scrolls and the NT.”

³⁰ Sandmel, *ibid.*, states that he has adopted the term “parallelomania” from “a French book of about 1830, whose title and author I have forgotten, in a context in which there were being examined certain passages in the Pauline epistles and in the Book of Wisdom.” He is aware (*ibid.*, n. 1) that A. T. S. Goodrick, *The Book of Wisdom: With Introduction and Notes* (London: Rivingtons, 1913), 405, attributes the expression to a book by P. Menzel, but Sandmel is apparently unable to verify this. In fact, Menzel introduced the term in the German text of his dissertation, which appeared under the Latin title, *De Graecis in libris קהלת et Σοφια* [sic] *vestigii* (Halle: C. A. Kaemmerer, 1888), and was subsequently republished under the title, *Der griechische Einfluss auf Prediger und Weisheit Salomos* (Halle: C. A. Kaemmerer, 1889), with respect to (then) recent endeavors to list specific parallels between the Book of Wisdom and Greek philosophy: “In unserer Zeit ist aber auch diese Methode bis zu einer solchen Parallelomanie (*sit venia verbo!*) vorgeschritten, dass man gegenwärtig bereits ein und fast ein halbes Hundert philosophischer loci herzuzählen weiss, die entweder Anklänge

Moreover, I think the methodological problems of comparison faced by Scrolls scholars are different only in degree from those of the field criticized by Sandmel. Notably, the nature of “parallels” and the end to which we compare are problems that occur in all kinds of comparative study in biblical scholarship and related fields, and consequently they need our attention, too.³¹

Scholars in the fields of the history of religion and comparative religion have offered some ideas on these problems in the last decades. A prominent position has been voiced by Jonathan Z. Smith in his Jordan Lectures in Comparative Religion, published in 1990 under the title *Drudgery Divine*. Of general interest is especially the foundational chapter “On Comparison.”³² Smith argues that comparison is properly used neither when it is intended to demonstrate the *uniqueness* of a religious phenomenon—as has been typical for Protestant scholarship in the past—nor when it is intended to prove full *identity* of two phenomena. Both strategies, according to Smith, miss the essence of comparison, which consists of a mixture of identity and difference, i.e., *analogy*. Therefore, “all comparisons are properly analogical.”³³ This notion is clearly indebted to the Aristotelian tradition of defining the analogous as the “middle” (μέσσον) between the univocal and the equivocal; this tradition had in its turn developed further the Pythagorean mathematical definition of analogy: Analogy is a correspondence of different proportions with respect to the same logos (ὄνὰ λόγον).³⁴ Thus, every

oder zum Teil Entlehnungs-Stellen zu gewissen Stellen der Sophia sein sollen. Ob eine derartige Exegese gerade als gesund bezeichnet werden darf, ist eine andere Frage” (p. 40 in both editions).

³¹ Cf. K. Berger and C. Colpe, eds., *Religionsgeschichtliches Textbuch zum Neuen Testament* (Göttingen: Vandenhoeck & Ruprecht, 1987), 18: “noch immer werden die Kategorien des Vergleichens oft sachfremd und unreflektiert verwendet”; cf. also p. 11 with n. 1, where comparison is portrayed as an essential part of biblical exegesis (a revised English edition of this work is M. E. Boring, K. Berger and C. Colpe, eds., *Hellenistic Commentary to the New Testament* [Nashville: Abingdon, 1995], 23, 19 with n. 1).

³² J. Z. Smith, *Drudgery Divine: On the Comparison of Early Christianities and the Religions of Late Antiquity* (JLGRS 14; CSHJ; Chicago: University of Chicago Press, 1990), 36–53.

³³ Smith, *Drudgery Divine*, 51 (italics in the original).

³⁴ Cf. W. Pannenberg, “Analogie,” *RGG*, 1:350–53; E. Przywara, “Analogia entis (Analogie),” *LTK*, 2d ed., 1:468–73; J. Track, “Analogie,” *TRE* 2:625–50. The earliest witness for the (apparently older) Pythagorean notion of analogy is Archytas of Tarent (first half of fourth century BCE); cf., e.g., Diels-Kranz 47 B 2: H. Diels, *Die Fragmente der Vorsokratiker: Griechisch und deutsch* (ed. W. Kranz; 3 vols.; 18th ed.; Zürich: Weidmann, 1989), 1:436. For Aristotle’s concept of analogy as the “middle” between univocation and equivocation, cf. (in the context of distributive justice) *Eth. nic.* 5:3 1131b 11: τὸ γὰρ ἀνάλογον μέσσον; cf. also *Met.* 4:6 1016b 34–35, where a relation κατ’ ἀναλογίαν

analogy necessarily prompts the question, *with respect to what* is identity and difference being noted? At the same time, Smith insists that all comparisons "are the result of mental operations," since "we are comparing *relations and aspects* and not things." This means that "[s]imilarity and difference are not 'given,'" but in a controlled way created in the scholar's mind.³⁵ Thus, according to Smith, a comparison "is a disciplined exaggeration in the service of knowledge."³⁶

These seem to be helpful remarks. They match well the growing approval of the view that there is an element of fictionality in any historical work, without surrendering, however, to excessive fancifulness, relativism, or skepticism.³⁷ However, Smith's apparent preference for explaining comparable issues in religion in terms of analogy rather than direct dependence should, in my view, not lead us to abandon the latter perspective completely. Since we attempt both a synchronic *and* a diachronic understanding of the Scrolls and the other varieties of ancient Judaism,³⁸ we cannot be content with a purely phenomenological comparison. Apart from this, it may be contended that even directly dependent phenomena should be considered analogous in one sense, since they belong to different times and contexts while having common features. What may be learned from Smith, however, is the need to dissociate the question of historical relationship from comparison proper and treat the establishment of historical relationship as a methodical step of its own.³⁹ Thus, the *first* step of comparison should treat alleged "parallels" as analogies. Only at the *second* step should we then proceed to ask about the genesis of these "parallels": Is their relationship one of *analogy* or is their similarity mediated through direct *dependence*? It follows that the term "analogy" is used here in two different or, *cum grano salis*,

is specified as ὡς ἄλλο πρὸς ἄλλο "as one (literally: other) to the other," pointing to a relation of mutual divergence. The later controversy about the Aristotelian-Thomistic notion of analogy in metaphysics, denying a univocal kernel in analogy, need not interest us here; it does not stand in modern theories of language, cf. Track, "Analogie," 646.

³⁵ Quotations from Smith, *Drudgery Divine*, 50–51 (original emphasis).

³⁶ Smith, *Drudgery Divine*, 52.

³⁷ Suffice it to point to the balanced position of R. J. Evans in his discussion of postmodern approaches to history in idem, *In Defence of History* (London: Granta, 1997).

³⁸ For the relation between synchronic and diachronic approaches see below, § 5.

³⁹ Cf. G. Seelig, *Religionsgeschichtliche Methode in Vergangenheit und Gegenwart: Studien zur Geschichte und Methode des religionsgeschichtlichen Vergleichs in der neutestamentlichen Wissenschaft* (Arbeiten zur Bibel und ihrer Geschichte 7; Leipzig: Ev. Verlagsanstalt, 2001), 299–300. Cf. already my remarks in *Sabbat*, 14–16.

analogous ways: first, as a heading for all possible “parallels,” describing a phenomenological enterprise;⁴⁰ and second, as a judgment concerning *one* possible option of historical relationship between “parallels.”⁴¹

The implications of this second question have been initially reflected upon by Adolf Deissmann in his *Licht vom Osten*.⁴² Deissmann writes that in every comparison the question must be asked: “Is it analogy or is it genealogy?” His general rule is that where “it is a case of inward emotions and religious experiences . . . , I should always try first to regard the particular fact as ‘analogical.’ Where it is a case of a formula, a professional liturgical usage, or the formulation of some doctrine, I should always try first to regard the particular fact as ‘genealogical.’”⁴³ These indicators are, of course, hardly tenable,⁴⁴ and they do not help much in halakhic comparison.

The distinction between “analogy” and “genealogy,” however, has proved to be of some importance for subsequent scholarship, although the binary opposition in which Deissmann formulated it has been refined. An example of extreme differentiation is the vast catalogue of categories provided by Klaus Berger and Carsten Colpe in their *Religionsgeschichtliches Textbuch zum Neuen Testament* (1987). They distinguish between categories recording contrast and categories recording similarity; the first group consists of ten categories, the second one of no less than fourteen.⁴⁵ While many of their details are valuable, Berger

⁴⁰ This is the way the term “analogy” was handled by Georg Heinrici, the founder of the project *Corpus Hellenisticum Novi Testamenti*, who greatly emphasized the value of analogies. See Seelig, *Religionsgeschichtliche Methode*, 157–72, who does not conceal Heinrici’s dogmatic interests in posing “Unableitbarkeit” on the part of Christianity.

⁴¹ Interestingly, the term “parallel,” too, has been used in a double way: as a general term, and—especially in older research—as a claim to literary dependence. Note that the original meaning of Greek παράλληλος is “being, etc. side by side,” emphasizing both the same direction and some distance, which would rather match the first, more “phenomenological” usage.

⁴² *Licht vom Osten: Das Neue Testament und die neuentdeckten Texte der hellenistisch-römischen Welt* (4th ed.; Tübingen: Mohr, 1923); ET: *Light from the Ancient East: The New Testament Illustrated by Recently Discovered Texts of the Graeco-Roman World* (trans. L. R. M. Strachan; rev. ed.; London: Hodder and Stoughton; New York: Doran, 1927).

⁴³ Deissmann, *Light from the Ancient East*, 265. Cf. *Licht vom Osten*, 226: “Wo es sich um innerreligiöse Stimmungen und Erlebnisse handelt . . . , da würde ich zuerst immer versuchen, die ermittelte Einzelheit als Analogie zu begreifen. Wo es sich um die kultische Formel, den kunstgerechten liturgischen Brauch und die doktrinäre Formulierung handelt, da würde ich zuerst immer versuchen, die ermittelte Einzelheit als Genealogie zu begreifen.” Pertinent is also the continuation of the passage (pp. 265–66; German, pp. 226–27).

⁴⁴ Thus also Seelig, *Religionsgeschichtliche Methode*, 323–24.

⁴⁵ Cf. Berger and Colpe, *Religionsgeschichtliches Textbuch*, 18–26 (rev. ET 23–32).

and Colpe have rightly been criticized for providing too complex a catalogue, which is hardly manageable and contains some idiosyncratic definitions that do not facilitate its use.⁴⁶ Nevertheless, they have justly pointed out the complexities of comparison.

Other scholars have been more modest. Thus, Hans-Josef Klauck distinguishes, as far as pure *analogies* are concerned, between (a) archetypal constellations, (b) anthropological universalities, and (c) parallel endogenous developments. For the assumption of *genealogical dependence*, however, he demands stricter standards. According to Klauck, the possibility of historical transmission of an item must be shown. This calls, among other things, for reflection on the chronological and geographical location of the texts or traditions under discussion.⁴⁷ Karlheinz Müller, a former Würzburg colleague of Klauck and an expert both in New Testament and Jewish Studies, concurs with this stringency.⁴⁸ He offers four categories describing direct historical relationship: (a) *adoption* without modification; (b) *adaptation* within certain limits; (c) *reorganization* of the material; and (d) its traceable *rejection*.⁴⁹ An update and refinement of Klauck's and Müller's proposals has been recently provided by Gerald Seelig in his monograph *Religionsgeschichtliche Methode in Vergangenheit und Gegenwart* (2001).⁵⁰ In my own work on the Sabbath I have further distinguished, besides regulations related to one another by pure analogy, between participation in common tradition and immediate dependence of a literary nature.⁵¹ I have argued that for participation in common

Categories of contrast are: "metamorphosis," "adoption with the contrary tendency," "intentional contrast," "implicit antithesis," "reversal of relations," "abolition," "divergence," "borrowing that generates an alien sense," "transposition," and "elaboration or reduction." Categories of similarity are: "presupposition," "reference," "parallels," "faint similarity," "convergence," "witnesses for a common basis," "borrowing," "imitation," "adaptation," "common conventions," "allusion or quotation," "common wisdom traditions," "topoi," and "catalytic presence."

⁴⁶ Cf. in detail Seelig, *Religionsgeschichtliche Methode*, 305–11.

⁴⁷ Cf. H.-J. Klauck, *Herrenmahl und hellenistischer Kult: Eine religionsgeschichtliche Untersuchung zum ersten Korintherbrief* (NTAbh n.s. 15; Münster: Aschendorff, 1982), 3.

⁴⁸ Cf. K. Müller, "Die Religionsgeschichtliche Methode: Erwägungen zu ihrem Verständnis und zur Praxis ihrer Vollzüge an neutestamentlichen Texten," *BZ* n.s. 29 (1985): 161–92, p. 191.

⁴⁹ Cf. Müller, "Religionsgeschichtliche Methode," 190. Here he builds on F. Hahn, "Methodenprobleme einer Christologie des Neuen Testaments," *VF* 2 (1970): 3–41, p. 12. The last category is absent from Hahn's article.

⁵⁰ Cf. Seelig, *Religionsgeschichtliche Methode*, esp. 312–33. He returns (see preceding note) to a total of three categories: *adoption*, *adaptation*, *reorganization* (pp. 331–32).

⁵¹ Cf. Doering, *Sabbat*, 15–16. A similar distinction is now made by Seelig; cf. *Religionsgeschichtliche Methode*, 316–19, who, however, reserves the "traditio-historical nexus"

tradition one has to hypothesize, or better, discern, “turntables” of transmission. As long as the ways of transmission are not at least basically clear, one has to reckon with the possibility of analogy.⁵²

The paradigm of “analogy or genealogy” has recently been criticized altogether by Bert Cozijnsen, in a contribution to a long-range comparative enterprise in New Testament studies, the *Corpus Hellenisticum Novi Testamenti*.⁵³ In addition to other criticism, Cozijnsen states that this paradigm has failed to overcome the troublesome concept of “influence,” which assumes a one-sided, causal explanation of the relationships between texts; the model does not sufficiently account for overlaps between “analogy” and “genealogy” which result particularly from “the common education and common knowledge shared by all members of a given culture.”⁵⁴ As a viable alternative, Cozijnsen proposes that scholars look for “cultural codes” and the “horizon of expectations.” In his concept of cultural codes he follows especially the Dutch literary scholar D. W. Fokkema who distinguishes between the linguistic code (enabling a reader to receive a text in a given language), the literary code (predisposing a reader to take the text as a literary text), the generic code (activating expectations suggested by the genre of the text), the author’s idiolect (i.e., their particular speech habits), and—most relevant for our purposes—the sociocode (directing a reader to activate “shared cultural beliefs and convictions, attitudes and manners, tastes and fashions, and so forth”).⁵⁵ According to Cozijnsen, this last

for “coined” elements (“sprachliche und stoffliche Prägung”: 317), while labeling somewhat more subtle relationships “motif” and “notion” (“Motiv;” “Vorstellung”: 318).

⁵² An example of the ambiguity here are explanations of the Sabbath conduct within the group led by the Babylonian brothers Asinaios and Anilaios (Josephus, *Ant.* 18.322–325, 355–356). It is not at all clear whether the initial reservations within this group against self-defense on the Sabbath and the subsequent decision to fight are directly dependent on options advocated in Palestine, or whether they represent merely analogous positions. Cf. Doering, *Sabbat*, 563.

⁵³ Cozijnsen, “Critical Contribution,” esp. 81–95. For information about the history and aims of the *Corpus Hellenisticum* cf. N. Walter, “Zur Chronik des *Corpus Hellenisticum* von den Anfängen bis 1955/58,” in *Frühjudentum und Neues Testament im Horizont Biblischer Theologie: Mit einem Anhang zum Corpus Judaeo-Hellenisticum Novi Testamenti* (ed. W. Kraus and K.-W. Niebuhr, with the collaboration of L. Doering; WUNT 162; Tübingen: Mohr Siebeck, 2003), 325–44; see also in the same volume K.-W. Niebuhr, “Das *Corpus Hellenisticum*: Anmerkungen zur Geschichte eines Problems,” 361–82 (bibliography). The Jewish-Hellenistic part of the project is currently being re-established in an international effort coordinated by Prof. K.-W. Niebuhr, the Chair in New Testament at the University of Jena.

⁵⁴ Cozijnsen, “Critical Contribution,” 88.

⁵⁵ Cozijnsen, “Critical Contribution,” 90–91. Cf. D. W. Fokkema, *Literary History*,

category matches well the concept of "horizon of expectations," a key notion adopted from the "manifesto of reception history" which had been developed by the German literary scholar H. R. Jauß already in 1967. Cozijnsen states:

The original reception of a work depends upon its relation to the system or *horizon of expectations* "that arises for each work in the historical moment of its appearance, from a pre-understanding of the genre, from the form and themes of already familiar works, and from the oppositions between poetic and practical language." The new work may satisfy the expectations of its first audience, but it may also surpass, disappoint or refute these expectations. . . . All processes of reception beyond the first will depend on an ever-changing horizon of expectations that a given work enters, part of which may be engendered by the history of previous responses.⁵⁶

Such a theory, according to Cozijnsen, allows above all for a reconstruction of the ancient readers' horizon of expectations and for a placement of "parallels" in the contemporary context of such readers. It further provides a salient corrective to the pitfall of historicism with its quasi-objectifying quest for meaning as intended by the author of a text. Finally, it is not only apt for dealing with parallels, but also with "antiparallels," insofar as a new work "may also deviate from established conventions, so that the expectations of the first readers are surpassed, disappointed or even refuted."⁵⁷

While the term itself appears only in a footnote in Cozijnsen's article, we may add that an approach like that of Cozijnsen or Jauß interacts heavily with concepts of *intertextuality*. As over against radically subjectivist notions of intertextuality, represented by post-structuralist approaches like deconstructionism and its various forerunners,⁵⁸ allowing for an infinitude of interplay with all kinds of "texts" within the scholar's mind, Jauß's conception of (historically describable) horizons of expectations

Modernism, and Postmodernism (Utrechtse Publikaties voor Algemene Literatuurwetenschap 19 = The Harvard University Erasmus Lectures, Spring 1983; Amsterdam and Philadelphia: Benjamins, 1984), esp. 5–18.

⁵⁶ Cozijnsen, "Critical Contribution," 91–92 (original emphasis). Cf. H. R. Jauß, *Literaturgeschichte als Provokation der Literaturwissenschaft* (Konstanzer Universitätsreden 3; Konstanz: Universitätsverlag, 1967); ET: *Toward an Aesthetic of Reception* (trans. T. Bahti; Theory and History of Literature 2; Minneapolis: University of Minnesota Press, 1982), 3–45 (the quotation given by Cozijnsen is from p. 22). For a recent application of this theory in Qumran studies see below, nn. 66, 114.

⁵⁷ Cf. Cozijnsen, "Critical Contribution," 92–94 (quotation p. 94).

⁵⁸ Cozijnsen mentions R. Barthes's position as foreshadowing "radical intertextuality": "Critical Contribution," 94 n. 63.

shows much greater affinity with text-analytically informed theories of intertextuality that ask for historically possible and plausible conditions of text reception.⁵⁹ The crucial advantage of such an approach over the “analogy or genealogy” paradigm as traditionally handled seems to be the shift from “influence” to “conditions of reception.” Within the latter, however, one still has to distinguish between *different modes of reception*, and in this respect I would disagree with Cozijnsen’s dismissal of the choice between “analogy” and “genealogy” (and, within the latter, between “common tradition” and “literary dependence”). It may be added that Cozijnsen’s remarks are directed towards a comparison of texts and cultures which may be quite different from one another at various points (the New Testament and Greco-Roman literature). By contrast, comparative analysis of the halakhah in the Scrolls is dealing with much more closely related texts and traditions, allowing for, and demanding, a somewhat stricter grid of comparison.

4. Corollaries for Comparative Analysis of Halakhah in the Dead Sea Scrolls

How can methodologically reflective work on comparative analysis of the Scrolls’ halakhah profit from this review of the current methodological debate? Is the nature of sources investigated in these diverse contexts too divergent for any lesson to be learnt? Admittedly, both the religious-cultural contexts and also the genres of the texts and traditions in

⁵⁹ Since Julia Kristeva, in a discussion of the work of Mikhail Bakhtin, coined the term “intertextuality” (“A la place de la notion d’intersubjectivité s’installe celle d’*intertextualité*, et le langage poétique se lit, au moins, comme *double*”: eadem, *Sémeïotiké: Recherches pour une sémanalyse* [Paris: Seuil, 1969], 146, original emphasis), different notions of it have been developed. H. F. Plett, “Intertextualities,” in *Intertextuality* (ed. H. F. Plett; Research in Text Theory 15; Berlin and New York: de Gruyter, 1991), 3–29, distinguishes three groups of scholars reacting to the term: *progressive* intertextualists (associated with post-structuralism), *traditional* intertextualists (with various tactics for bringing the concept into line with existing approaches), and *anti-intertextualists* (pp. 3–5). R. Lachmann, “Ebenen des Intertextualitätsbegriffs,” in *Das Gespräch* (ed. K. Stierle and R. Warning; Munich: W. Fink, 1984), 133–38, distinguishes three levels of the term: the *text-theoretical* level (investigating how textuality and intertextuality relate), the *text-analytical* level (describing specific strategies of intertextuality and their functions), and the *literary-critical* and *culture-critical* level (questioning existing concepts of literature). Cf. also the useful introduction, with circumspect argumentation in favor of a focus on Lachmann’s second level in biblical studies, by A. Merz, *Die fiktive Selbstausslegung des Paulus: Intertextuelle Studien zur Intention und Rezeption der Pastoralbriefe* (NTOA/SUNT 52; Göttingen: Vandenhoeck & Ruprecht, 2004), 5–71. See further below, n. 112.

historico-legal comparison are much more closely related than they are in the fields of comparative religion or history of religions. At least it is fair to say that in historico-legal comparison all texts and traditions deal somehow with "Jewish law." Nevertheless, when we compare the Scrolls' regulations with, say, Philo or some other Jewish-Hellenistic author, we enter a sort of *interpretatio graeca* of Judaism that implies both heavy conceptual intersection with Greek popular philosophy and genre-related intersection with Hellenistic literature.⁶⁰ And when we compare Dead Sea texts with rulings in the New Testament or ancient Christian literature, there may well be both a religious-cultural difference due to the integration of non-Jews into the churches, and a genre difference due to the fact that these rulings are not generally presented as the authors' or their communities' halakhah.⁶¹ They often appear, for instance, in conflict stories, reports about alleged Jewish practice, or "spiritualizations" of the Torah (as in the *Epistle of Barnabas*). It should be emphasized that the relative number of Greek sources contemporary or almost contemporary with the Scrolls is significant, and their inclusion in comparative analysis of the Scrolls' halakhah is important.⁶² Halakhic comparison, at least in this respect, participates in some of the notorious methodological problems of comparative religion and the history of religions. However, we will immediately see, in the course of our discussion, that even comparison with compositions in Hebrew or Aramaic is similarly affected by some of the methodological difficulties mentioned.

⁶⁰ For various aspects of Philo's portrayal of Jewish law cf. recently J. Leonhardt, *Jewish Worship in Philo of Alexandria* (TSAJ 84; Tübingen: Mohr Siebeck, 2001); M. Niehoff, *Philo on Jewish Identity and Culture* (TSAJ 86; Tübingen: Mohr Siebeck, 2001); D. T. Runia, G. E. Sterling and H. Najman, eds., *Law Stamped with the Seal of Nature: Law and Nature in Hellenistic Philosophy and Philo of Alexandria* (Atlanta: Society of Biblical Literature, 2003 = *SPhilo* 15); and cf. I. Heinemann's classic *Philons griechische und jüdische Bildung: Kulturvergleichende Untersuchungen zu Philons Darstellung der jüdischen Gesetze* (Breslau: Marcus, 1932; repr. Hildesheim: Olms, 1962, 1973).

⁶¹ It is unclear with regard to which texts one can aptly speak of Christian "halakhah" and how it relates to Christian "ethics." The matter requires further study. Some aspects have recently been dealt with by M. Bockmuehl, *Jewish Law in Gentile Churches: Halakhah and the Beginning of Christian Public Ethics* (Edinburgh: T & T Clark, 2000).

⁶² Besides Jewish-Hellenistic literature in the narrow sense, special attention should be paid to the *Septuagint*, where legal terms and concepts may already have undergone a shift through translation from Hebrew to Greek, which in turn may or may not have had an impact on Jewish writings in Greek dealing with legal issues.

1) *The Nature of Comparison*

The first issue to be investigated is the *nature of comparison*, as suggested by the debate sketched above. This implies that comparative halakhah, too, deals first of all with *analogical* entities, which are neither completely identical with nor totally divergent from one another (provided the respective regulations can be compared at all). It is to be granted that the notion of predominant *variance*, typically utilized by New Testament scholars who employ the so-called “criterion of dissimilarity” to emphasize the difference between Jesus and early Judaism, has been rightly criticized and is less frequently found today.⁶³ However, we should also avoid the trap of simply *equating* issues; in our case, halakhic issues. This trap is especially alluring when we compare the Scrolls with rabbinic literature. To be sure, halakhic regulations have a somewhat more restricted semantic range than, e.g., statements in the field of beliefs and ideas. Compared with the Greco-Jewish examples mentioned above, there is also more correspondence in genre between halakhic texts from Qumran and rabbinic sources such as the Mishnah, the Tosefta, the halakhic midrashim, and the Talmudim—although one should pay due attention to the genre differences within the rabbinic texts, within the Scrolls, and in comparison of both. Finally, one may add the doubtlessly correct observation that a common language in both the Scrolls and rabbinic literature greatly facilitates comparison.

Thus, ‘to carry out’ (סוּף *hiph.*) on the Sabbath is likely to have the same lexical meaning both in the Scrolls (CD 11:7–8; 4Q251 1–2 4–5; 4Q265 6 4–5) and in rabbinic literature (*m. Shab.* 7:2, etc.). However, this term does not appear in isolation, but within a given syntax and in combination with other expressions having their own semantic impact. This may lead, in fact, to different alignments and associations, and thus to different “conceptualizations” of this term in the various sources, an issue I will take up again below (§ 4.2). Therefore, one should always be aware of the possibility that halakhic expressions or issues *do not fully correspond*. In fact, methodologically speaking, they are not expected to be completely identical since they appear in different contexts and come from different times and thus bear a certain mark of distinction. They are therefore at best *analogical* in the first sense mentioned before.⁶⁴

⁶³ Cf. for the field of halakhic comparison T. Kazen, *Jesus and Purity Halakhah: Was Jesus Indifferent to Impurity?* (ConBNT 38; Stockholm: Almqvist & Wiksell, 2002), 25–34.

⁶⁴ A variation of what I call the “analogical” relation of “parallels” (in the first sense

Even if single terms appear to be identical or almost identical, a *full-scale linguistic analysis* is needed in order to determine correspondence as well as divergence. In biblical studies this procedure has become a matter of course. In Qumran scholarship, too, the importance of such analysis is beginning to be considered. Thus, Yaakov Elman has questioned the plain linguistic equation of מוצקות in 4QMMT B 55–58 with the rabbinic expression נצוק (*m. Yad.* 4:7 and elsewhere) and has called more specifically for a *systemic* analysis of the pertinent regulations.⁶⁵ Even if his material results were to be contested at the end of the day, his methodological contribution should still be welcome. I shall come back to this in my final paragraph (§ 5).

2) *Determining Historical Relationships*

A second consequence of the methodological debate is the concern for *historical relationship*. This starts with the question, in what way does a halakhic statement from the Scrolls relate to the Hebrew Bible? I have pointed out above that the creation of halakhah should not simply be conceived of as textual exegesis. With the notions of “cultural codes,” “horizon of expectations” and “intertextuality” we are now in a position to appreciate more aptly the formative role of the Hebrew Bible in the development of halakhah, without, however, falling back on a simplistic “exegetical” understanding of halakhah. Biblical subjects, language, and texts were present in the world of the people of the Scrolls,⁶⁶ a fact which *may* or *may not* become evident in the formulation of rulings. What should be attempted in each case is a careful determination of the interrelationships between biblical heritage, hermeneutical processes, and the exigencies of life in the creation of halakhah.

The problem in analysis of the Scrolls is, of course, that many—if not most—of the sources adduced for comparison are to be dated *later* than the Scrolls. I think this fact should be taken more seriously than is sometimes done. Again, something may be gleaned from the field of

developed in § 3) was suggested by Prof. A. I. Baumgarten in the discussion following the presentation of this paper at the symposium. Baumgarten rightly pointed to the *heuristic* value of “parallels,” which consists in opening one’s eyes to aspects of a passage one would otherwise hardly have seen.

⁶⁵ Y. Elman, “Some Remarks on 4QMMT and the Rabbinic Tradition: Or, When is a Parallel Not a Parallel?” in Kampen and Bernstein, *Reading 4QMMT*, 99–128.

⁶⁶ Recently, Robert Kugler has applied Jaub’s concept of “horizon of expectations” in a study of 4Q225 (4QPs.-Jub”), see below, n. 114.

biblical studies and its reaction to Sandmel's charges of "parallelomania." There, the uncritical piling up of later "parallels," especially gnostic and rabbinic, has largely been given up in favor of a critical assessment of what may justifiably be used for comparison. In this respect there is not much of a difference between Klauck's and Müller's insistence on chronology and Cozijnzen's sensitivity to the contemporary horizon of expectations.

Applying such a stringency to analysis of the Scrolls calls (a) for drawing *distinctions among the Dead Sea Scrolls themselves*, partitioning them into compositions of the *yahad* ("sectarian documents")⁶⁷ and compositions that are either not specifically related to the *yahad* (like Tobit or Sirach, which may be termed "non-sectarian" documents) or belong to some parent group of the *yahad* (which might be called "presectarian" or even "protosectarian" documents).⁶⁸ Recently, Charlotte Hempel has correctly insisted that a plain classification as "sectarian" or "non-sectarian" is too schematic, since there is evidence that texts from the *yahad*'s parent group(s) have been taken over by the *yahad*, both as complete compositions and as material subject to further redaction.⁶⁹ Thus, besides pre-/protosectarian *writings*, such as the *Book of Jubilees* or the *Temple Scroll*,⁷⁰ one can also discern pre-/protosectarian *strata* of

⁶⁷ I use the term "sect" (and therefore also "sectarian") in the sense prevailing in English-speaking scholarship on the Scrolls, treating it as virtually synonymous with "the (Qumran) community," "the *yahad*." For the present purpose, I do not wish to evoke any theory—Weberian, Wilsonian or otherwise—of "Großkirche" and "Sekte," or of "center" and "margins." C. Hempel has pointed out that the common equivalent of "sectarian" in German speaking Qumran scholarship is "essenisch," briefly discussing the weaknesses of each terminology (and the difficulty in finding any better); cf. her "Kriterien zur Bestimmung 'essenischer Verfasserschaft' von Qumrantexten," in Frey and Stegemann, *Qumran kontrovers*, 71–85.

⁶⁸ Cf. for attempts at such a differentiation, e.g., C. Newsom, "Sectually Explicit Literature from Qumran," in *The Hebrew Bible and its Interpreters* (ed. W. H. Propp, B. Halpern and D. N. Freedman; Biblical and Judaic Studies from the University of California, San Diego 1; Winona Lake: Eisenbrauns, 1990), 167–87; E. G. Chazon, "Is *Divrei Ha-me'erot* a Sectarian Prayer?" in *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant and U. Rappaport; STDJ 10; Leiden: Brill; Jerusalem: The Hebrew University Magnes Press and Yad Izhak Ben-Zvi, 1992), 3–17; D. Dimant, "The Qumran Manuscripts: Contents and Significance," in *Time to Prepare the Way in the Wilderness: Papers on the Qumran Scrolls by Fellows of the Institute for Advanced Studies of the Hebrew University, Jerusalem, 1989–1990* (ed. D. Dimant and L. H. Schiffman; STDJ 16; Leiden: Brill, 1995), 23–58; and recently A. Lange, "Kriterien essenischer Texte," in Frey and Stegemann, *Qumran kontrovers*, 59–69; C. Hempel, "Kriterien."

⁶⁹ Cf. Hempel, "Kriterien," esp. 80–85.

⁷⁰ According to H. Stegemann, *Die Essener, Qumran, Johannes der Täufer und Jesus: Ein Sachbuch* (4th ed.; Freiburg: Herder, 1994), 137–38 (ET *The Library of Qumran: On the*

sectarian compositions, e.g., in the *Damascus Document*.⁷¹ This implies that the two bodies of halakhic material *most closely* related to prescriptions in halakhic documents redacted by the *yahad* are other, especially earlier, strata within these documents and pre-/protosectarian documents, like *Jubilees* and the *Temple Scroll*. For both groups *immediate textual reception* in the *yahad* is evident, either in literary or perhaps also oral form. Thus, in these cases comparison proper can be supplied by methods of *redaction criticism* (in the case of pre-/protosectarian strata) and/or *tradition history*. It can further be shown that both pre-/protosectarian and sectarian documents basically follow a *common halakhic approach*, which shows some affinities with the approach of the “Sadducees” or “Boëthusians” recorded in rabbinic literature (see further below). Nevertheless, the significant differences between the minutiae of halakhah in all these materials should not be glossed over. Although some achievements have been made in this respect, especially regarding the relationship between *Jubilees* and the *Temple Scroll*,⁷² there remains much work to do on these most closely related texts and traditions, in order to achieve a more nuanced description of stances and trajectories in sectarian halakhah and its forerunner(s).

On the other hand such critical reasoning urges (b) *more caution* as to the employment of *later sources*. To make it plain: Every *historical* comparison with a later text is a somewhat risky enterprise. This is especially true for rabbinic texts, since they are—somehow in inverse proportion to their linguistic and thematic aptness—among the latest sources considered fit

Essenes, Qumran, John the Baptist, and Jesus [Grand Rapids: Eerdmans, 1998], 96), the *Temple Scroll* should be dated to about 400 BCE, while J. Maier, *Die Tempelrolle vom Toten Meer und das “Neue Jerusalem”* (3d ed.; Munich and Basel: E. Reinhardt, 1997), 47–51, suggests a pre-Maccabean redaction early in the second century BCE. Other scholars prefer a date later in the second century BCE, some of them basing their claim on the hypothesis that the law of the king (11QT^a 56:12–59:21) is a polemic against a Hasmonean ruler; cf. the overview in S. D. Fraade, “The Torah of the King (Deut 17:14–20) in the Temple Scroll and Early Rabbinic Law,” in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity: Papers from an International Conference at St. Andrews in 2001* (ed. J. R. Davila; STDJ 46; Leiden: Brill, 2003), 25–60, p. 31 n. 16. Nevertheless, the differences between the *Temple Scroll* and the “sectarian” writings are now usually acknowledged.

⁷¹ For the laws of the *Damascus Document*, see C. Hempel, *The Laws of the Damascus Document: Sources, Tradition and Redaction* (STDJ 29; Leiden: Brill, 1998); specifically for its Sabbath code, see Doering, *Sabbat*, 124–32.

⁷² Suffice it to refer to L. H. Schiffman, “The Sacrificial System of the Temple Scroll and the Book of Jubilees,” *Society of Biblical Literature 1985 Seminar Papers* (SBLSP 24; Atlanta: Scholars Press, 1985), 217–33.

for comparison (leaving the medieval Samaritan, Karaite, and Falasha sources aside here). To be sure, most scholars studying the Scrolls' halakhah are quick to stress that they draw especially on *tannaitic* texts, but this is hardly enough by critical standards. These texts themselves may well be 300 years later than the Scrolls they are being compared with!

Thus, this situation calls for a *source-, form-, tradition-, and redaction-critical analysis* of Mishnah, Tosefta, and early midrashim, as well as an assessment of baraitot and individual traditions in the Talmudim. There have been several attempts of this kind. Some of these are more in line with traditional rabbinic scholarship, such as the works of Jacob N. Epstein, David Weiss-Halivni and others.⁷³ A considerably different method has been developed by Jacob Neusner, more specifically in his work during the 1970s and 1980s, in which he made use of the logical development of halakhah in dating rabbinic traditions and considered the attribution of sayings to a named authority as indicative of the latter's generation.⁷⁴ However we assess Neusner's work (and style) in general, I doubt that it will benefit scholarship if we ignore his earlier methodological contributions, which have been developed further or critically modified by other scholars⁷⁵ and may provide scholarship on legal texts from Qumran, too, with important suggestions.

⁷³ Cf. J. N. Epstein, *Introduction to Tannaitic Literature: Mishna, Tosephta, and Halakhic Midrashim* (ed. E. Z. Melamed; Jerusalem: The Hebrew University Magnes Press; Tel Aviv: Dvir, 1957 [Hebrew]); D. Weiss-Halivni, *Sources and Traditions: A Source-Critical Commentary on the Talmud* (Hebrew). *Seder Nashim* (Tel Aviv: Dvir, 1968); *Seder Moed: Yoma-Hagigah* (Jerusalem: The Jewish Theological Seminary of America, 1975); *Šabbat* (Jerusalem: The Jewish Theological Seminary of America, 1982); *Erubin-Pesahim* (Jerusalem: The Jewish Theological Seminary of America, 1982); *Baba Qamma* (Jerusalem: The Hebrew University Magnes Press, 1993); *Baba Meš'a* (Jerusalem: The Hebrew University Magnes Press, 2003); idem, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, Mass.: Harvard University Press, 1986).

⁷⁴ Among the innumerable books by Neusner, I take as summary and culmination of this phase his *Judaism: The Evidence of the Mishnah* (2nd augmented ed.; BJS 129; Atlanta: Scholars Press, 1988), here 17–21.

⁷⁵ Cf. A. J. Saldarini, "Form Criticism' of Rabbinic Literature," *JBL* 96 (1976): 257–74; Booth, *Jesus and the Laws of Purity*, 130–50; K. Müller, "Zur Datierung rabbinischer Aussagen," in *Neues Testament und Ethik: Für Rudolf Schnackenburg* (ed. H. Merklein; Freiburg: Herder, 1989), 551–87. Cf. further the methodological remarks in G. Stemberger, *Einleitung in Talmud und Midrasch* (8th ed.; Munich: Beck, 1992), 59–65, 67–69; ET: *Introduction to the Talmud and Midrash* (trans. M. Bockmuehl; 2d ed.; Edinburgh: T & T Clark, 1996), 49–55, 57–59. For consideration of Neusner's earlier work together with other approaches cf., e.g., J. Klawans, *Impurity and Sin in Ancient Judaism* (Oxford: Oxford University Press, 2000), 92–93 with 196 n. 11–12, and, with considerable optimism

However, even when we attain a reasonable stratigraphy of tannaitic literature we still have no contemporary *texts*. What we do have is a limited number of *pre-70*—thus roughly contemporary—*traditions* for comparison with the Scrolls. Among these are reliable attributions to *pre-70* named authorities⁷⁶ as well as traditions about the “Houses” of Hillel and Shammai.⁷⁷ Also traditions datable to the Yavnean period can cautiously be adduced as still close in date, albeit with an eye towards possible transformations generated by the situation after 70 CE. As generally in rabbinic literature, we should not normally expect the *ipsissima verba* of sages,⁷⁸ and we should account for a fair amount of formal standardization and redactional adjustment.

(c) *Undatable rabbinic traditions* whose positions seem to be presupposed or rejected in the Scrolls may also be adduced, but we should constantly be aware of the hypothetical character of the exact form, date, and context of possible earlier stages of such traditions. This also holds true for the famous *controversies between “Pharisees” and “Sadducees/Boëthusians,”* recorded later in tannaitic literature, which seem especially apt for consideration in comparative analysis since they deal with problems and halakhic stances similar to those recorded in the Scrolls.⁷⁹ Although the halakhic points of view assigned to both parties in these controversies seem generally trustworthy,⁸⁰ some critical sensitivity is nevertheless necessary. First, one should be aware that these conflict stories are not historical “reports,” but short narratives, to a certain degree comparable with the *chreiai* of Hellenistic literature.⁸¹ Thus, they have been shaped

regarding the recovery of *pre-70 CE* traditions, D. Instone-Brewer, *Prayer and Agriculture* (TRENT 1; Grand Rapids: Eerdmans, 2004), 28–40.

⁷⁶ However, the fictionality in attributions to some of the oldest masters should be recognized; cf. Stemberger, *Einleitung*, 73–74 (ET 63–64).

⁷⁷ While a fair number of attributions to the “Houses” seem reliable, there are also pseudepigraphical imitations; cf. Neusner, *Judaism*, 20–21; Stemberger, *Einleitung*, 75 (ET 66).

⁷⁸ Stemberger, *Einleitung*, 69 (ET 59), reserves recovery of *ipsissima verba* for exceptional cases only.

⁷⁹ J. M. Baumgarten, “The Pharisaic-Saducean Controversies about Purity and the Qumran Texts,” *JJS* 31 (1980): 157–70; L. H. Schiffman, “The New Halakhic Letter (MMT) and the Origins of the Dead Sea Sect,” *BA* 53 (1990): 64–73; “Pharisaic and Saducean Halakhah in Light of the Dead Sea Scrolls: The Case of the ‘Tevul Yom,’” *DSD* 1 (1994): 285–99.

⁸⁰ For a concise critical discussion of the controversies cf. Stemberger, *Pharisäer, Sadduzäer, Essener* (SBS 144; Stuttgart: Katholisches Bibelwerk, 1991), 46–62.

⁸¹ Stemberger, *Pharisäer*, 61, speaks (for *t. Hag* 3:35) of an “Apophtegma-artigen Text.”

for pragmatic purposes, among which is certainly *not* that of conveying purely historical information about Pharisees and Sadducees. It should further be considered whether there are traits of tendentious styling by the rabbis, who clearly sympathized with the “Pharisees.”⁸² In this respect it should also be carefully observed that the “Pharisees” figure explicitly only in a small number of controversies, while the other texts mention the *‘amme ha-’areš*, the whole people, the *ḥakhamim* or the like as opponents of the Sadducees/Boëthusians. Joseph Baumgarten is certainly right in pointing out that these conflict stories, as well as the pertinent polemics in the Scrolls, “show an awareness of each other’s existence.”⁸³ However, this should be taken, above all, as a statement referring to *comparable positions and counter-positions*, and not as a historical judgment concerning the identity of Jewish groups.

Whether there is any *historical* connection between the rivals in the Scrolls and in rabbinic literature is open to debate. The proponents of positions rejected in the Scrolls need not in every instance have been historical Pharisees, since often “Pharisaic” laws have been shared by people other than Pharisees (e.g., Philo of Alexandria or Flavius Josephus, to name but two known individuals).⁸⁴ Neither is it clear whether the “Pharisaic” position endorsed by the rabbis was the same as the stance of the “historical” Pharisees, that is, whether the difference between the two—implied in any comparison, see § 3 and 4.1—would consist merely of affiliation with different circumstances, or whether also other modifications (e.g., retrojections of rabbinic concepts, see below) would have to be assumed. Regarding the other party in these controversies, it is hotly debated whether there is any immediate link between the Scrolls and the rabbis’ “Sadducees” or “Boëthusians,” and if so, how it may

⁸² Stemberger, *Pharisäer*, 47, 60–61, observes that the polemic in these texts is generally moderate; only in narrations in the Tosefta passages is the victory of the Pharisaic (and rabbinic) position extensively highlighted.

⁸³ J. M. Baumgarten, “Recent Qumran Discoveries and Halakhah in the Hellenistic-Roman Period,” in *Jewish Civilization in the Hellenistic-Roman Period* (ed. S. Talmon; JSPSup 10; Sheffield: Academic Press, 1991), 147–58, p. 156.

⁸⁴ Philo has been claimed to be a Pharisaic halakhist, Palestinian allegorist, and Alexandrian mystic by S. Belkin, *Philo and the Oral Law: The Philonic Interpretation of Biblical Law in Relation to the Palestinian Halakha* (HSS 11; Cambridge, Mass.: Harvard University Press, 1940), 27, but the claims as to his Pharisaism are hardly tenable; cf., e.g., Doering, *Sabbat*, 315–86, esp. 316–24, 384–86. For Josephus cf. S. Mason’s interpretation of *Vita* 12, according to which Josephus followed the Pharisaic party only as far as his public career (πολιτεύεσθαι) was concerned: idem, *Flavius Josephus on the Pharisees: A Composition-Critical Study* (StPB 39; Leiden: Brill, 1991), 342–56.

be perceived. Though suggestions as to an overall halakhic worldview, which propose a strong affinity between Qumran and Sadducean law as compared with rabbinic halakhah,⁸⁵ are of some heuristic value, certain differences, e.g., in the respective attitudes of these groups towards the Temple or in the type of calendar used, should prevent us from a simple identification of the *yahad* with "Sadducees/Boëthusians." It is also unclear how much congruence is really to be found even in the most similar rulings, which provokes the question, whether the respective positions are indeed *materially* connected or rather determined by way of *analogy* within the scope of a closely related cultural horizon—influenced by their common biblical heritage, a comparable hermeneutical outlook, and similar legal problems faced in daily life. Thus, it is open to debate whether the Boëthusians' attitude to the cutting of the 'Omer is a material inheritance from a *Jubilees*-/Qumran-like position—but then in the context of a different calendar⁸⁶—or merely a similar position reached by analogous understanding of *ממחרת השבת* ("on the morrow of the Sabbath") in Lev 23:11. It is not even clear if in both cases the anti-"Pharisaic" position resulted in determining the *same* Sunday relative to the Passover week for bringing the 'Omer.⁸⁷ Consequently, there are a number of scholars who would rather dissociate the people of the

⁸⁵ Cf. D. R. Schwartz, "Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law," in Dimant and Rappaport, *The Dead Sea Scrolls: Forty Years*, 229–40; J. L. Rubenstein, "Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment," *DSD* 6 (1999): 157–83; H. K. Harrington, "The Halakah and Religion of Qumran," in *Religion in the Dead Sea Scrolls* (ed. J. J. Collins and R. A. Kugler; Grand Rapids: Eerdmans, 2000), 74–89; Doering, "Überlegungen," esp. 98–113. But see Eyal Regev's paper in this volume, distinguishing as well between the worldviews of the Scrolls and the Sadducees.

⁸⁶ Cf. for a review of current scholarship on the question of calendars in Second Temple Judaism, as well as for a balanced defense of the antiquity of the 364-day calendar, M. Albani, "Zur Rekonstruktion eines verdrängten Konzepts: Der 364-Tage-Kalender in der gegenwärtigen Forschung," in *Studies in the Book of Jubilees* (ed. M. Albani, J. Frey and A. Lange; TSAJ 65; Tübingen: Mohr Siebeck, 1997), 79–125. Cf. also J. C. VanderKam, *Calendars in the Dead Sea Scrolls: Measuring Time* (London: Routledge, 1998). For a different assessment cf., e.g., J. M. Baumgarten, "The Calendar of the Book of Jubilees and the Bible," in idem, *Studies*, 101–14.

⁸⁷ Cf. Doering, *Sabbat*, 518–22, where I tended to see a basic congruence between the Scrolls and the Boëthusians, as well as to assume some material connection. But cf. E. Regev's recent conclusion that the Boëthusians relate "the morrow of the Sabbath" not to the Sabbath *after*, but *within* the Passover week: idem, *The Sadducees and Their Halakhah: Religion and Society in the Second Temple Period* (Jerusalem: Yad Izhak Ben-Zvi, 2005), 83–90 (Hebrew); cf. already J. Le Moyne, *Les Sadducéens* (EBib; Paris: Lecoffre, 1972), 183.

Scrolls and the Sadducees, claiming only partial agreement between the two.⁸⁸

(d) Apart from these problems, attention should also be paid to possible *differences of halakhic concepts and logic* among the texts and traditions compared. Especially, *e silentio* suppositions of the presence of rabbinic categories and conceptualizations⁸⁹ in the Scrolls (and maybe also in the system of their early opponents) should be avoided. To give some examples from the field of Sabbath law: (1) One should not, to my mind, presuppose a concept identical to rabbinic *piqquah nepeš* in the Scrolls. Rather, the regulation in 4Q265 6 6–7 (“and if it is a human being that falls into the water/[on the day of] the Sabbath, let him cast his garment to him to raise him up therewith, but an implement he may not carry”) systemically points to a different solution: allowing for the use of something that is *not* considered an instrument, a position that rather contrasts with rabbinic provisions for such a case.⁹⁰ (2) Another example is the category of *muqseh*, which we see at best only in its nascence in the Scrolls, i.e., in the prohibition against preparing anything that is to be drunk or eaten (*Jub.* 2:29; CD 10:22 המוכן; cf. Exod 16:5); however, as an explicit category, we do not (yet?) see this prohibition extended to other areas of “preparation.”⁹¹ (3) Even such seemingly simple things as the well-known “domains” for carrying (rabbinic *rešut ha-yahid* and *rešut ha-rabbim*) have been conceptualized differently in Second Temple sources. *Jubilees* (*Jub.* 2:29) specifies the doors of the house as the boundary between domains; in consequence, it prohibits carrying from house to

⁸⁸ Cf. A. I. Baumgarten, *The Flourishing of Jewish Sects in the Maccabean Era: An Interpretation* (JSJSup 55; Leiden: Brill, 1997), 76–78; Regev, *Sadducees*, 209–215, who in his evaluation of commonalities and differences goes so far as to deny that both belong to the same halakhic “school.”

⁸⁹ Cf. for these now L. Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (TSAJ 89; Tübingen: Mohr Siebeck, 2002).

⁹⁰ Cf. L. Doering, “New Aspects of Qumran Sabbath Law from Cave 4 Fragments,” in Bernstein, García Martínez, and Kampen, *Legal Texts and Legal Issues*, 251–74, esp. 264–73; idem, *Sabbat*, 201–4, 232–35, 566–68. This reading is *contra* Schiffman’s harmonization with the rabbinic ruling in his *Reclaiming the Dead Sea Scrolls*, 279–81. My proposal, initially laid out in a paper at the 1995 Cambridge meeting of the IOQS, has gradually gained wider acceptance during recent years; cf. J. M. Baumgarten, “The Laws of the Damascus Document—Between Bible and Mishnah,” in Baumgarten, Chazon and Pinnick, *The Damascus Document*, 17–26, p. 23 with n. 6.

⁹¹ Cf. Doering, “New Aspects,” 267 n. 77; idem, *Sabbat*, 70–72, 155–58. Baumgarten, “The Laws,” 22, claims a closer connection between the notions of “preparing” and “moving vessels,” basing himself on *Jub.* 50:8 and Josephus, *War* 2.147; cf., however, my reservations in *Sabbat*, 78–79, 187–88, where I called the regulations in *Jubilees* and the Scrolls a “qualified predecessor of the concept of *muqseh*” (p. 188).

house (2:30). As in *Jubilees*, the rubrics in CD (11:7–9) are the house and the outside, whereas *Miscellaneous Rules* (4Q265 6 4–5) mentions the tent, obviously also a dwelling equivalent to (or metaphorically denoting) the house.⁹² The tannaitic concept of the “domains” (cf. *m. Šabb.* 1:1; 7:2), on the contrary, allows for carrying into both a shared courtyard *between* houses (thus also from house to house) and a cul-de-sac, under the condition that an *‘erub hašerot* has been prepared; in addition, tannaitic law incorporates not only dwellings, but also wells and orchards, into the “private domain” (*m. ‘Erub.* 2). In all this, I do not wish to deny the similarities, which present a clear sign of comparable agendas; and the tannaitic texts, in terms of thematic relevance, provide the best arena of comparable agendas for the Scrolls. But these are nevertheless similarities with a certain degree of divergence in detail, and this divergence should not be glossed over.

5. *A Word on Synchronic Exegesis*

I have already several times touched upon the issue of synchronic exegesis. I would like to close with a few considerations on this issue that are rather aimed at inviting further debate than presenting firm solutions. Two aspects require, to my mind, some further attention.

1) *The Relation between the Diachronic and the Synchronic*

How these perspectives relate to one another remains quite obscure in current scholarship. While the synchronic viewpoint—justly, to my mind—is increasingly brought into play in historically oriented studies, there is a branch of synchronically working scholars who deem both aspects incompatible with one another. Diachronic exegesis is questioned from different sides: from the standpoint of mainly literary-documentary analysis; from purely comparative approaches; from the various kinds of structural or literary-critical exegetical perspectives; by champions of post-structuralist approaches such as deconstructionism.⁹³ It may be

⁹² Doering, “New Aspects,” 256–64; *Schabbat*, 75–79, 178–82, 229–31, 572–73; *contra* Schiffman, *Reclaiming the Dead Sea Scrolls*, 277 (“virtually identical” to rabbinic law).

⁹³ Cf. B. W. R. Pearson, “New Testament Literary Criticism,” in *Handbook to Exegesis of the New Testament* (ed. S. Porter; NTTS 25; Leiden: Brill, 1997), 241–66.

conceded that, despite several intriguing attempts,⁹⁴ a satisfactory full-fledged theoretical integration of the synchronic and the diachronic viewpoint has not yet been achieved in biblical studies, as far as I can see.⁹⁵ Part of the problem is that “synchrony” may be defined in at least two different ways: as relating either to *the interpreter’s own present* or to a *given “time” in history*. Moreover, it may be asked if the Saussurean distinction between synchrony and diachrony, originally developed for the investigation of *language*, must not necessarily be modified when applied to the investigations of *literary texts*.⁹⁶ Thus, James Barr has pointed out that strictly synchronic study (in the first sense) in exegesis “is available to us only for what is contemporary,” and that even here the interpreter regularly depends “on diachronic information.”⁹⁷ Barr, whose book *The Semantics of Biblical Language* (1961) was among the first to make familiar the notions of synchrony and diachrony within biblical studies,⁹⁸ therefore discards the illusion of pure synchrony and prefers a notion of synchrony in the sense of *looking at a respective “time” in history*, the length of which he estimates between ten and 30 years.⁹⁹ Synchrony in this view stands, in sharp contrast to the anti-historical notion attached to it by some critics, as an eminently *historical* enterprise. Such a view ties in well with Jauß’s theory of reception history considered above.¹⁰⁰

⁹⁴ See, e.g., P. Ricoeur, “Du conflit à la convergence des méthodes bibliques,” in *Exégèse et herméneutique* (ed. R. Barthes et al.; Paris: Seuil, 1971), 35–53. Specifically for New Testament exegesis cf. H. Frankemölle, “Kommunikatives Handeln in Gleichnissen Jesu: Historisch-kritische und pragmatische Exegese,” *NTS* 28 (1982): 61–90; W. Egger, *Methodenlehre zum Neuen Testament: Einführung in linguistische und historisch-kritische Methoden* (Freiburg: Herder, 1987); ET: *How to Read the New Testament: An Introduction to Linguistic and Historical-Critical Methodology* (trans. P. Heinegg; Peabody, Mass.: Hendrickson, 1996). For Old Testament exegesis, see esp. *Synchronic or Diachronic? A Debate on Method in Old Testament Exegesis* (ed. J. C. de Moor; OTS 34; Leiden: Brill, 1995); C. Hardmeier, *Textwelten der Bibel entdecken: Grundlagen und Verfahren einer textpragmatischen Literaturwissenschaft der Bibel* (2 vols.; Gütersloh: Gütersloher Verlagshaus, 2003–2004).

⁹⁵ Whether such integration is necessary may be debated. But even if one tended to a rather eclectic use of various methods, some reflections on the general compatibility of the methods employed would seem appropriate.

⁹⁶ In a similar vein C. Rico has recently urged that we leave this dichotomy behind us, in favor of a richer appraisal of the dimension of time; cf. his “Synchronie et diachronie: Enjeu d’une dichotomie. De la linguistique à l’interprétation de la Bible,” *RB* 108 (2001): 228–65.

⁹⁷ J. Barr, “The Synchronic, the Diachronic and the Historical: A Triangular Relationship?” in de Moor, *Synchronic or Diachronic?* 1–14, p. 7.

⁹⁸ Cf. J. Barr, *The Semantics of Biblical Language* (London: Oxford University Press, 1961), esp. 139–40.

⁹⁹ Cf. Barr, “Synchronic,” 3.

¹⁰⁰ Cf. Jauß, *Literaturgeschichte*, esp. 57–62 (ET 36–39).

Another helpful reflection is offered by Klauck, who operates with a *theory of "context"*,¹⁰¹ that is, meaning is in part dependent on the context in which an expression appears. "Context" starts, synchronically, with the closer linguistic context, i.e. the immediate combination of words, sentences and texts,¹⁰² and opens in concentric circles to farther remote contexts such as non-verbal, situational, and socio-cultural ones. "Context" in this sense also comprises the historical context and diachronic aspects of semantics. Thus, such a method amply considers the synchronic viewpoint, but at the same time, it also asks for history and trajectories; with the necessary caution employed, this seems especially appropriate when dealing with halakhic texts from Qumran, which allow for diachronic depth of focus.

2) *The Range of Synchronic Methods*

Looking for an approach that integrates diachronic and synchronic analysis, I think synchronic methods could and should be employed more consciously and more extensively in halakhic comparison. Thus, what has been termed "philological" analysis, looks to me sometimes too much like a purely lexicographical sort of work. However, as early as Barr's influential study, biblical scholars were reminded that "syntactical relations... and groupings of words... [are] just as important for the bearing of significance as the more purely lexicographical aspects of the single word."¹⁰³ So why don't we do more of that sort in halakhic Qumran studies, too? In certain areas of biblical scholarship a broad range of synchronic methods is already being applied. In particular, the application of *text linguistics*—also known as "*discourse analysis*"—seems apt for consideration in biblical and Jewish studies,¹⁰⁴ and in recent years even staunch advocates of historico-critical exegesis have adopted

¹⁰¹ Cf. Klauck, *Herrenmahl und hellenistischer Kult*, 3 (–4).

¹⁰² The *textual* context is sometimes called "co-text"; cf., e.g., G. Brown and G. Yule, *Discourse Analysis* (Cambridge: Cambridge University Press, 1983), 46–50.

¹⁰³ Cf. Barr, *Semantics*, 222.

¹⁰⁴ Cf. Egger, *Methodenlehre zum Neuen Testament*; Hardmeier, *Textwelten der Bibel*; J. T. Reed, "Discourse Analysis," in Porter, ed., *Handbook*, 189–217. See S. E. Porter, "Discourse Analysis and New Testament Studies: An Introductory Survey," in *Discourse Analysis and Other Topics in Biblical Greek* (ed. S. E. Porter and D. A. Carson; JSNTSup 113; Sheffield: Sheffield Academic Press, 1995), 14–35, particularly pp. 24–34, for an overview of what he calls four "schools" of (general) discourse analysis (the *Summer Institute of Linguistics*; the British, the continental European, and the South African "school").

certain features of linguistic analysis.¹⁰⁵ According to a convenient subdivision going back to C. W. Morris,¹⁰⁶ the tasks of text linguistics can be specified as *textual grammar* (i.e., linguistic-syntactic analysis), *semantics*, and *pragmatics*.¹⁰⁷ Since recent text linguistics theories tend to broadly emphasize the pragmatic aspects of a text, that is, the text's interaction with its author and its audience,¹⁰⁸ they are well suited for consideration in an exegetical enterprise that does not confine itself to strictly "work-immanent" interpretation, but asks for the broader context, as suggested by Klauck.

In short, I would call for *more methodological refinement in using synchronic analysis* for comparative analysis of the Scrolls' halakhah. In what follows I would like to briefly identify some relevant areas of research and illustrate with a few examples of work already being carried out in the field how some of the new methodological possibilities address the problems I have raised in this paper. First, in the area of *semantics*: While the "word field" is an important factor in determining meaning,¹⁰⁹ it is also necessary in halakhic study to ask how a specific term functions within the sequence of a regulation, of a text or of a halakhic system in general. Thus, *systemic analysis* of the kind Elman has proposed should also be considered.¹¹⁰

Second, when we move from semantics to *pragmatics*, we come to analyses of *narrativity* (which may be classified either with semantics or pragmatics) and of *rhetoric*. The relevance of these areas has recently been highlighted by Steven Fraade. Drawing on discourses in legal theory and philosophy, he urges special attention to the "complex *cultural*

¹⁰⁵ E.g., U. Schnelle, *Einführung in die neutestamentliche Exegese* (5th ed.; Göttingen: Vandenhoeck & Ruprecht, 2000), 54–62.

¹⁰⁶ C. W. Morris, *Foundation of the Theory of Signs* (12th ed.; Chicago: University of Chicago Press, 1970 [1938]).

¹⁰⁷ This classification is especially common in the continental European "school" of text linguistics/discourse analysis (see above, n. 104); cf., e.g., K. Brinker, "Zur Gegenstandsbestimmung und Aufgabenstellung der Textlinguistik," in *Text vs Sentence: Basic Questions of Text Linguistics* (ed. J. S. Petöfi; Papers in Textlinguistics 20.1; Hamburg: H. Buske, 1979), 3–12 (speaking of "Textthematik" instead of semantics); B. Sowinski, *Textlinguistik: Eine Einführung* (Stuttgart: Kohlhammer, 1983), 54–55, 64–124. For applications in (New Testament) exegesis cf. Egger, *Methodenlehre zum Neuen Testament*, 77–146 (ET 69–137), and Schnelle, *Einführung*, 54–62.

¹⁰⁸ Suffice it to refer here to Brinker, "Zur Gegenstandsbestimmung und Aufgabenstellung der Textlinguistik," 7–8; Sowinski, *Textlinguistik*, 64.

¹⁰⁹ For examples in NT exegesis cf. Egger, *Methodenlehre zum Neuen Testament*, 110–19 (ET 101–11).

¹¹⁰ See above, n. 65.

contexts in which legal discourse is embedded and of which it is a *rhetorical* articulation." Comparison should not be limited to single regulations, always in danger of atomistic isolation, but rather be extended to the fabrics, at times even narrations, of their architecture and presentation. "Legal systems are no more *functional* systems of order and control than they are *fictive* systems of meaning and imagination. They need to be compared and contrasted along both lines."¹¹¹ Employing more classical historico-critical terminology, one would arrive, not too far from Fraade's suggestion, at the comparison of *genres* of halakhic texts and their pragmatic as well as cultural implications.

Finally, moving from text to reader, there are some approaches worth further exploration. The significance of *intertextuality*, particularly of its text-analytical aspect, has already briefly been pointed out above (§ 3 and 4.2). Located at the interface between text and reader, intertextuality is important both for recognizing the "tissue" of a text and for reconstructing the ancient readers' horizon. Somehow biblical and related scholarship has always asked for intertextual relations, but the new approaches provide a more consistent and well thought out methodology. In addition to pertinent work in biblical studies,¹¹² there have been initial reflections by Scrolls scholars, too, most explicitly by James Charlesworth, though not with reference to legal intertexts.¹¹³ Working in the field of *reception history* and drawing particularly on Jauß's theory discussed above (§ 3), Robert Kugler has recently approached the "religious imagination" of the Qumran community by investigating "the likely effect of 4Q225 (Pseudo-Jubilees^a) on the community's horizon of expectation."¹¹⁴ Although what remains of this text is not

¹¹¹ Fraade, "Torah of the King," 25, 26 (emphases in the original).

¹¹² Cf., e.g., the collections, *Intertextuality in Biblical Writings* (ed. S. Draisma; Kampen: Kok, 1989); *Reading Between Texts: Intertextuality and the Hebrew Bible* (ed. D. N. Fewell; Louisville: Westminster John Knox, 1992); *The Scriptures in the Gospels* (ed. C. M. Tuckett; BETL 131; Leuven: Leuven University Press and Peeters, 1997), with the critical evaluation by M. Rese, "Intertextualität: Ein Beispiel für Sinn und Unsinn 'neuer' Methoden," *ibid.* 431–39; *The Quest for Context and Meaning: Studies in Biblical Intertextuality in Honor of James A. Sanders* (ed. C. A. Evans and S. Talmon; BIS 28; Leiden: Brill, 1997); and *Intertextuality in Ugarit and Israel* (ed. J. C. de Moor; Leiden: Brill, 1998); as well as Merz, *Die fiktive Selbstausslegung des Paulus*, as a programmatic study of intertextuality in the Pastoral Letters.

¹¹³ J. H. Charlesworth, "Intertextuality: Isaiah 40:3 and the *Serek ha-Yahad*," in Evans and Talmon, *Quest for Context and Meaning*, 197–224.

¹¹⁴ R. A. Kugler, "Hearing 4Q225: A Case Study in Reconstructing the Religious Imagination of the Qumran Community," *DSD* 10 (2003): 81–103, p. 88.

mainly halakhic in nature, there may nevertheless be some legal issues in the severely damaged parts.¹¹⁵ It seems likely that reader and reception-oriented approaches could also help reformulate and deepen our study of the predominantly *legal* texts among the Scrolls, contributing to our knowledge about the addressees of these halakhic regulations and how the latter may have been received—but this must be left to further enquiry.

¹¹⁵ At the mutilated top of fig. 2 i 1-2 appears the phrase: תכרת הנ[פש] ההיא [מקרב ע]מיה [“that per[son] will be cut off/[from among] his [peo]ple.” Kugler briefly suggests a rule for Passover observance, cf. *ibid.*, 102–3 nn. 57–58, presumably picking up an intertextual reference to the “cutting off” formula at Exod 12:15, 19, while VanderKam, though he mentions these two passages, considers a reference to circumcision, in line with the “cutting off” formula in Gen 17:14; cf. J. C. VanderKam, “The *Aqedah*, *Jubilees*, and *Pseudo Jubilees*,” in Evans and Talmon, *Quest for Context and Meaning*, 241–61, pp. 251–52.

LOOKING FOR NARRATIVE MIDRASH AT QUMRAN

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1. *Introduction*

One of the most important fields of study in which the Dead Sea Scrolls and early rabbinic literature have shed light on one another is that of scriptural interpretation, or *midrash*, as the term is variously employed in both textual corpora. Whereas in the early days of their initial discovery, the *pesharim* were thought to characterize Qumran scriptural interpretation, now, with a more complete view of the Dead Sea Scrolls, we appreciate not just the *volume* of texts that stand in an interpretive relation to what was to become canonical Scripture, but, even more importantly, the great *variety* of types and methods of scriptural interpretation found at Qumran, even within single texts. While there is dispute as to precisely which of these texts and types of scriptural interpretation are specific to the sectarian Qumran community and which circulated more broadly among Jews of the Second Temple period,¹ there is reason to believe that the variety itself is characteristic of both the Qumran community and the larger cultural context of Second Temple Judaism.

Since early rabbinic literature, beginning with the so-called “tannaitic” textual collections, likewise displays a great volume of texts and variety of types of scriptural interpretation, comparisons between the two corpora both in their general contours and specific forms and contents have been undertaken from the beginnings of Dead Sea Scrolls scholarship until the present, without abatement, notwithstanding their chronological separation. It is not my intent here to survey those efforts, but rather to focus on one aspect of the comparison that has not been

¹ See, for example, C. Newsom, “‘Sectually Explicit’ Literature from Qumran,” in *The Hebrew Bible and Its Interpreters* (ed. W. H. Propp, B. Halpern, and D. N. Freedman; Biblical and Judaic Studies from the University of California, San Diego; Winona Lake: Eisenbrauns, 1990), 167–87.

sufficiently noted. However, before doing so, I shall enumerate several guiding principles of the comparative enterprise more generally:²

1. Since phenomena are only worthy of comparison to the extent that they are neither fully identical nor entirely different, comparisons that admit only to characteristics of congruence or of incongruence are inherently misleading and self-serving. It is precisely in light of similarities that differences warrant notice and explanation, and in light of differences that similarities bear significance. In other words, similarity and dissimilarity are mutually instructive, and to acknowledge one without the other is to distort the comparative endeavor.³
2. Even if we could exhaustively list in one column the many points of similarity and in another column the many points of difference between the two corpora, we should not hope to be able to tally the two columns and come up with an overall score, triumphantly declaring similarity or dissimilarity to be the winner. Such an exercise would more likely be driven by ideological motivations than any ability to weight, score, and tally the list in an objective and non-reductive manner. As much comparative insight can be gained from difference as from similarity. Here much can be cautiously learned from some previous attempts, largely theologically driven and exaggerated, to comparatively link the New Testament and early Christianity to the Dead Sea Scrolls.⁴
3. In comparing and contrasting the two textual corpora, we need to attend not only to their *contents*, but also to their textual *forms*, hermeneutical *strategies*, and rhetorical *functions*; that is, not only to

² For a fuller methodological treatment, with more extensive bibliography on comparison, see the contribution by Lutz Doering in this volume.

³ For the most recent attempts to emphasize the similarities, rather than differences, between rabbinic midrash and Qumran interpretation, see P. Mandel, "Midrashic Exegesis and its Precedents in the Dead Sea Scrolls," *DSD* 8 (2001): 149–68; L. H. Schiffman, "Biblical Interpretation in the Dead Sea Scrolls," in *Encyclopaedia of Midrash: Biblical Interpretation in Formative Judaism* (ed. J. Neusner and A. J. Avery-Peck; 2 vols.; Leiden: Brill, 2005), 1:40–54.

⁴ See most recently: G. J. Brooke, "The Scrolls and the Study of the New Testament," in *The Dead Sea Scrolls at Fifty: Proceedings of the 1997 Society of Biblical Literature Qumran Section Meetings* (ed. R. A. Kugler and E. M. Schuller; SBLJL 15; Atlanta: Scholars Press, 1999), 61–76; J. A. Fitzmyer, *The Dead Sea Scrolls and Christian Origins* (Grand Rapids: Eerdmans, 2000), 1–40; J. VanderKam and P. Flint, *The Meaning of the Dead Sea Scrolls: Their Significance for Understanding the Bible, Judaism, Jesus, and Christianity* (San Francisco: Harper San Francisco, 2002), 311–78, including additional bibliography.

the shared traditions but to the *morphological* means by which those traditional understandings of Scripture are performatively both connected to Scripture and communicated to their respective studying communities. Traditions are never communicated or engaged by their tradents apart from ideologically freighted and socially formative rhetorical embodiments. The medium may not alone be the message, but it certainly contributes mightily to it.⁵

4. In comparing the two corpora we need to resist the impulse to connect them in direct linear, evolutionary succession or development;⁶ that is, to seek in the Dead Sea Scrolls the missing links between rabbinic literature and its prerabbinic antecedents, as if these two corpora were the only shows in town. Aside from the Dead Sea Scrolls, the vast majority of Second Temple Jewish writings of which we know have only survived because one or more Christian churches deemed them worthy of preservation and transmission, subject to varying degrees of translation and editing, for their own self-serving interests. We have little way of knowing how much more extensive and diverse the forms of Second Temple Jewish interpretive creativity might actually have been. Therefore, it is better to engage, at first, in *analogical* comparisons and contrasts between the textual corpora that have survived, than to assume any *genetic* relations between them. How does each one cast the others in sharper comparative and contrastive relief? We need to ask not only, what are the *common* denominators that emerge, but what are the *distinctive* features of each, and how can those common *and* distinctive features *together* be critically understood?

At the first Orion Symposium in 1996, I offered a modest contribution to this comparative enterprise entitled “Looking for Legal Midrash at Qumran,” subsequently published in the proceedings of that con-

⁵ For further argumentation along these lines, see S. D. Fraade, “‘Comparative Midrash’ Revisited: The Case of the Dead Sea Scrolls and Rabbinic Midrash,” in *Minchat Yonah: Festschrift for Prof. Yonah Fraenkel* (ed. Y. Elbaum, J. Levinson, and G. Hasan-Rokem; Jerusalem: The Hebrew University Magnes Press, forthcoming), 261–84 (Hebrew); idem, “Midrashim,” in *EDSS* 1:549–52. For further references to the sorts of previous studies against which I am arguing, see my “Looking for Legal Midrash at Qumran,” in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls. Proceedings of the First International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 May 1996* (ed. M. E. Stone and E. Chazon; STDJ 28; Leiden: Brill, 1998), 59–79, p. 62 n. 7.

⁶ See below, n. 54.

ference.⁷ In that paper, I argued that notwithstanding the strong likelihood that Qumran law derived from Scripture, at least in part through a process of exegesis which in many cases can be reconstructed, the sectarian Dead Sea Scrolls do not, in the main, preserve or transmit their rules in exegetical form. That is, they frame their legal discourse in terms of its legal *product* rather than its exegetical *process*. Thus, what we would recognize in form as *midrash halakhah* from the “tannaitic” midrashic collections of commentary is generally not to be found, with some notable exceptions, at Qumran. These formal and rhetorical differences, I argued, should not be dismissed as merely incidental to the textual practices and, hence pedagogical purposes, of these writings. Rather, they are keys to our understanding of their differing attitudes toward scriptural text and authority on the one hand, and of their functional roles among their respective textual communities on the other. In what follows, I will ask a similar set of questions deriving from an initial comparison between early rabbinic *midrash aggadah* and forms of narrative interpretation in the Dead Sea Scrolls, without pretending to be the least bit exhaustive of either.

2. *Defining* Midrash Aggadah

In looking for *midrash aggadah* at Qumran, I have something more specific in mind than simply the interpretation of non-legal scriptural verses, of which there is obviously much. Rather, I wish to consider a particular and prominent aspect of rabbinic narrative midrash and ask why it is relatively absent from the Dead Sea Scrolls. In so doing, I will focus on our earliest rabbinic midrashic collections (*Mekilta* to Exodus, *Sifra* to Leviticus, *Sifre* to Numbers and Deuteronomy), usually referred to as either “tannaitic midrashim” or “*midreshe halakhah*,” both of which designations are recognized as misnomers.⁸ Although many characteristic features of *midrash aggadah* only become prominent in later midrashic collections, those features are generally recognizable,

⁷ See n. 5 above.

⁸ The first term is misleading since these collections, while containing earlier traditions, were produced in their present form by amoraic editors (most likely in the mid- to late-third century). The second term is imprecise since, while concentrating on the legal sections of the Torah, these collections contain large sections of narrative midrash, especially in the case of the *Mekiltas* and the *Sifre to Deuteronomy*, which are approximately half *midrash aggadah*.

albeit sometimes in more nascent forms, in the so-called “tannaitic midrashim.”

Here I wish to highlight three features of *midrash aggadah* in its textual embodiments, the first two of which are shared by *midrash halakhah* in the same collections, even if in varying degrees: 1) These midrashim take the structural form of running commentary; that is, formal citation of a base lemma followed by its explication, whether simple or complex. 2) They are dialogical and intertextual in their articulation, e.g., through the rhetoric of questions and answers, the interpretation of one verse by using others from elsewhere in Scripture, the adducing of multiple interpretations, and the editorial staging of exegetical disputes, often unresolved, between named or anonymous sages. 3) In seeking to resolve seeming contradictions, ambiguities, repetitions, and gaps within the narrative text being explicated, they often construct a more replete version of the biblical narrative, the latter referred to by scholars of midrash as the *sippur darshani*, or exegetical story: a “rewritten” biblical story produced through the explicit process of scriptural interpretation.⁹ While each of these traits finds some degree of antecedent in Second Temple forms of scriptural interpretation, including those in the Dead Sea Scrolls, their *combination*, I would argue, is unique to rabbinic *midrash aggadah*.

3. *Contrasting Midrash Aggadah to Second-Temple Forms of Narrative Interpretation*

To overly simplify the matter, Second Temple forms of scriptural interpretation can be divided roughly into two categories: expositional and compositional.¹⁰ The first, usually in the form of a commentary,

⁹ For the most recent and sophisticated analysis of the rabbinic exegetical story, with ample references to scholarly antecedents, see J. Levinson, *The Twice Told Tale: A Poetics of the Exegetical Narrative in Rabbinic Midrash* (Jerusalem: The Hebrew University Magnes Press, 2005 [Hebrew]). On the relation of “rewritten” Bible to rabbinic midrash as commentary, see S. D. Fraade, “Rewritten Bible and Rabbinic Midrash As Commentary,” in *Current Trends in the Study of Midrash* (ed. C. Bakhos; JSJSup 106; Leiden: Brill, 2006), 59–78.

¹⁰ I adapt this categorization from D. Dimant, “Use and Interpretation of Mikra in the Apocrypha and Pseudepigrapha,” in *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity* (ed. M. J. Mulder; CRINT 2.1; Assen: Van Gorcum; Philadelphia: Fortress, 1990), 382–83. For a broader survey of the variety of forms of scriptural interpretation in the Dead Sea Scrolls, with reference to

begins with a biblical text and explicates its very language according to the progression of Scripture. The clearest and most extensive examples are Philo's allegorical commentaries and the Qumran continuous *pesharim*.¹¹ Sometimes, smaller units of explicit citation and explication may be embedded for thematic reasons in a larger text whose form is not that of a commentary, as in the case, most notably, of the *Damascus Document*.

The second, and more widely evidenced form of scriptural interpretation, both in Second Temple Jewish literature in general and in the Dead Sea Scrolls in particular, is most commonly referred to by the term "rewritten Bible," a designation not without problems. These writings retell scriptural narratives (or laws), weaving together biblical language with paraphrastic clarifications and/or extensive expansions, and so producing a self-contained composition in which the line between base Scripture and its retelling is blurred if not effaced.¹² The most extensive examples are the biblical parts of Josephus's *Jewish Antiquities* (1–11), Pseudo-Philo's *Biblical Antiquities*, the *Book of Jubilees*, parts of *1 Enoch* (especially chaps. 11–16 of the Book of the Watchers), and the *Genesis Apocryphon*. The last three are well-evidenced among the Dead Sea Scrolls (although generally not thought to have been produced exclusively by or for that community), as are many more fragmentary works, such as *4QReworked Pentateuch*, which were unknown prior to the discovery of the Scrolls.¹³ To what degree such works of "rewritten

earlier literature, see M. J. Bernstein, "Interpretation of Scriptures," *EDSS* 1:376–82; idem, "Scriptures: Quotation and Use," *EDSS* 2:839–42.

¹¹ For a comparison of Philo and the *pesharim* with early rabbinic midrashic commentary, see my book, *From Tradition to Commentary: Torah and its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 1–23.

¹² For a recent survey of this group of writings, see G. J. Brooke, "Rewritten Bible," *EDSS* 2:777–81; as well as idem, "Between Authority and Canon: The Significance of Reworking the Bible for Understanding the Canonical Process," in *Reworking the Bible: Apocryphal and Related Texts at Qumran. Proceedings of a Joint Symposium by the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature and the Hebrew University Institute for Advanced Studies Research Group on Qumran, 15–17 January, 2002* (ed. E. G. Chazon, D. Dimant, and R. A. Clements; STDJ 58; Leiden: Brill, 2005), 85–104. On the problems with this nomenclature and on the ways in which these works understood themselves as revelation, see H. Najman, *Secoding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (JSJSup 77; Leiden: Brill, 2003), 7–8, with further bibliography in notes. A preferable designation, "parabiblical literature," was suggested by H. L. Ginzberg (*Theological Studies* 28 [1967]: 574), but never caught on.

¹³ On *Reworked Pentateuch* (4Q158, 364–367), see S. W. Crawford, "Reworked Pentateuch," *EDSS* 2:775–77. For *1 Enoch* 11–16 as an exegetical retelling of Gen 6:1–4, see D. Dimant, "1 Enoch 6–11: A Fragment of a Parabiblical Work," *JJS* 53 (2002): 223–37.

Bible” found *only* among the Dead Sea Scrolls are narrowly sectarian in their provenance is unclear, but sectarian roots are certainly not to be presumed. At the very least, we can say that the prominent presence of these works among the Dead Sea Scrolls suggests that such narrative paraphrases and expansions were familiar to, and most likely met with approval from, the members of the sectarian community.

These writings vary widely in the extent to which they produce a close paraphrase of the underlying biblical text or an expanded, selected, and/or rearranged narrative composition; varying degrees of paraphrase and expansion may be combined within a single work. However they were understood to relate to what had or was to become canonical Scripture, they generally display no *explicit* relation to that Scripture and its authority. In other words, since they are not textually structured in relation to the words of Scripture (as in a commentary), their self-conscious relation to Scripture—whether as complement, supplement, replacement, successor, or esoteric accompaniment—is generally not evident from the text on its own. In some instances, paraphrastic retellings of Scripture may be combined with bits of *pesher*-like commentary (e.g., 4Q252), but such crossovers are not common.¹⁴

Where we do have *explicit* interpretation of non-legal scriptural verses in the Dead Sea Scrolls, they tend to be of two types: 1) Interpretation of narrative sections of Scripture to provide backing for normative practice, as understood and lived within the Qumran community.¹⁵ 2) Interpretation of narrative verses, prophetically understood, to reveal their eschatological fulfillment in the history and imminently expected vindication of the community.¹⁶ In other words, biblical narratives, to the extent that they are formally and explicitly engaged via interpretation, are most commonly understood to address either proper divinely commanded conduct in the present, or imminent eschatological expectations for the future, or, we might say, the former in preparation for the latter.

¹⁴ For 4Q252, generally considered a composite work drawn from a variety of sources, see *Qumran Cave 4.XVII: Parabiblical Texts, Part 3* (ed. G. J. Brooke, et al.; DJD 22; Oxford: Clarendon, 1996), 185–207, prepared and introduced by G. J. Brooke. See also the introduction by J. L. Trafton in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 6B: Pesherim, Other Commentaries and Related Documents* (ed. J. H. Charlesworth et al.; Tübingen: Mohr Siebeck; Louisville: Westminster John Knox, 2002), 203–7. On its mixed nature, see M. J. Bernstein, “4Q252: From Re-Written Bible to Biblical Commentary,” *JJS* 45 (1994): 1–27.

¹⁵ E.g., CD 4:20–5:1.

¹⁶ E.g., CD 6:2–11.

Although both of these aspects of narrative interpretation are abundant in early rabbinic *midrash aggadah*, they by no means characterize it. Rather, what is striking about early rabbinic *midrash aggadah*, by contrast with narrative interpretation in the Dead Sea Scrolls, is the extent to which the former persistently combines and integrates explicit scriptural commentary with retold-biblical narrative composition. In the Dead Sea Scrolls, whether of sectarian provenance or not, these two forms are almost always kept separate. I shall give two examples of this contrast, selected simply from two more extensive, recent studies of mine.¹⁷

4. *Example 1: Blessings and Curses Renewed*

The Deuteronomic account of a covenantal ceremony of “blessings” and “curses,” to be performed by the Israelites upon crossing the Jordan River and arriving at Mts. Gerizim and Ebal (Deuteronomy 27–28), is famously difficult to understand, largely because several rituals or varied accounts of a single ritual appear to have been editorially combined. Precisely which blessings and curses, or rewards and punishments, were recited by whom upon whom, when and where, and in what manner, is hard to decipher from the composite biblical narrative. All traditional interpreters, beginning with inner-biblical readers, have sought to resolve these textual difficulties by integrating and harmonizing the various biblical traditions with one another.¹⁸

Josephus takes a crack at retelling the biblical account so as to produce a coherent narrative, as does the Mishnah, even though their accounts differ from one another according to the aspects of the biblical account they each choose to emphasize.¹⁹ By contrast, the Qumran community,

¹⁷ S. D. Fraade, “Rhetoric and Hermeneutics in Miqṣat Ma‘aṣe Ha-Torah (4QMMT): The Case of the Blessings and Curses,” *DSD* 10 (2003): 150–61; idem, “Moses and the Commandments: Can Hermeneutics, History, and Rhetoric Be Disentangled?” in *The Idea of Biblical Interpretation: Essays in Honor of James L. Kugel* (ed. H. Najman and J. H. Newman; JSJSup 83; Leiden: Brill, 2004), 399–422.

¹⁸ The relevant biblical passages are Deut 11:26–30; 27:11–13, 14–26; 28; Josh 8:30–35; cf. Lev 26:3–46. The account in Joshua would appear to be an inner-biblical attempt to make sense of the Deuteronomic passages by narrating the ritual that they prescribe. For further discussion of the interpretive challenges posed by the biblical texts, see Fraade, “Rhetoric and Hermeneutics,” 7–8.

¹⁹ Josephus, *Ant.* 4.305–308; 5.68–70; *m. Soṭah* 7:5. Cf. *t. Soṭah* 8:9–11; *Sifre Deut.* 55, to be treated below.

for whom the Deuteronomic blessings and curses were clearly significant to their covenantal and sacro-historical self-understanding, evidences no interest in the biblical narrative of the blessings and curses as a past event per se; that is, they produce no direct interpretation of Deuteronomy 27–28 as depicting an historical event. Rather, the sectarians appear to have seen the one-time biblical ceremony as a *model* for the community's own annual ceremony of covenantal renewal and confirmation of new members,²⁰ and for its understanding of how the scriptural blessings will finally and redemptively play out for the elect “returnees” in the pending “end of days,” as predicted by Deut 30:1–3 (in combination with Deut 4:30). Interestingly, but not surprisingly, while the priests are largely absent from the biblical ceremony of blessings and curses, with the Levites reciting the curses of Deut 27:14–26,²¹ the *Community Rule* assumes that if the Levites recite the curses, the priests must recite the blessings, thereby giving the latter the lead role in the sectarian ceremony (1QS 1:18–2:19):

ובעוברם בברית יהיו הכוהנים והלויים מברכים את אל ישועות ואת כול מעשי אמתו וכול העוברים בברית אומרים אחריהם אמן אמן [vacat] והכוהנים מספרים את צדקות אל במעשי גבורתם ומשמיעים כול חסדי רחמים על ישראל והלויים מספרים את עונות בני ישראל וכול פשעי אשמתם וחסאתם בממשלת בליעל [וכן] העוברים בברית מודים אחריהם לאמור נעוינו [פשענו]... והכוהנים מברכים את כול אנשי גורל אל ההולכים תמים בכול דרכיו ואומרים יברככה בכול טוב וישמורכה מכול רע... והלויים מקללים את כול אנשי בליעל וענו ואמרו ארוך אתה בכול מעשי רשע... וכול העוברים בברית אומרים אחר המברכים והמקללים אמן אמן... ככה יעשו שנה בשנה כול יומי ממשלת בליעל...

On entering the Covenant, the Priests and Levites shall bless the God of salvation and all His faithfulness, and all those entering the Covenant shall say after them, “Amen, Amen!” Then the Priests shall recite the favours of God manifested in His mighty deeds and shall declare all His merciful grace to Israel, and the Levites shall recite the iniquities of the children of Israel, all their guilty rebellions and sins during the dominion of Belial. And after them, all those entering the Covenant shall confess and say: “We have strayed! We have [disobeyed!]...” And the Priests shall bless

²⁰ See 1QS 1:16–2:18. That this annual ceremony most likely occurred in conjunction with the festival of Shavuot is indicated by 4Q266 (4QD^a) 11 16–18 (= 4Q270 7 ii 11–12). For a messianic battle version of the ceremony, see 1QM 13:1–6. For an overview of ritual texts of blessings and curses at Qumran, see Bilhah Nitzan, “Blessings and Curses,” *EDSS* 1:95–100.

²¹ In Josh 8:30–35, Joshua recites the blessings and curses. In 1QM 13:1–6, the priests, Levites, and elders together recite the blessings and curses.

all the men of the lot of God who walk perfectly in all His ways, saying: "May He bless you with all good and preserve you from all evil! . . ." And the Levites shall curse all the men of the lot of Belial, saying: "Be cursed because of all your wickedness! . . ." And after the blessing and cursing, all those entering the Covenant shall say, "Amen, Amen!" . . . Thus shall they do, year by year, for as long as the dominion of Belial endures. . . .²²

Thus, the Qumran interest is not in interpretively engaging the biblical narrative as scriptural text and past, but in appropriating a blend of scriptural language so as to extend and reenact scriptural covenantal language and practice within their own time and place, thereby impressing upon the sectaries the urgency of repentant preparation for the ultimate and imminent fulfillment of those prophetically construed blessings and curses.

Even though such Qumran texts as the *Community Rule*, *Miqṣat Ma'ase Ha-Torah*, the *Temple Scroll*, and the *War Scroll* ingeniously appropriate the language of the blessings and curses of Deuteronomy 27–28 (as well as Leviticus 26 and the Priestly Blessing of Num 6:24–26), together with many other scriptural passages (e.g., Deut 17:14–20), they never directly and exegetically engage the texts of Scripture, even though the reworking of those texts reveals an anterior exegetical process.²³ Rather, these Qumran texts creatively employ scriptural language and allusion for their own purposes of informing communal practice and eschatological self-understanding.

By contrast, the Mishnah's narrative retelling of the one-time ritual of blessings and curses at Shechem includes four explicit scriptural citations,²⁴ while the Tosefta's includes three, but with more dialogical language and argument.²⁵ In neither of these accounts, by contrast to

²² Hebrew text from E. Qimron and J. H. Charlesworth, "Rule of the Community," in *Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 1: The Rule of the Community and Related Documents* (ed. J. H. Charlesworth; Tübingen: Mohr [Siebeck]; Louisville: Westminster John Knox, 1994), 9–10. Translation from G. Vermes, *The Complete Dead Sea Scrolls in English* (New York: Penguin, 1997), 99–100.

²³ See especially 4QMMT C 21, **שכתוב בספר משה**. The closest to a direct scriptural citation is in 4QMMT C 12–16, introduced by **וכתוב**, where Deut 30:1–3 is selectively paraphrased, with the insertion of **באחרית הימים** from Deut 4:30. For discussion of 4QMMT's use of Scripture, see Fraade, "Rhetoric and Hermeneutics," 2–3, with reference to earlier treatments in 11 n. 29.

²⁴ *M. Sotah* 7:5, citing Deut 11:30; Gen 12:6; Josh 8:33; Deut 27:15.

²⁵ *T. Sotah* 8:9–11, citing Josh 8:33; Deut 27:15, 26.

the *Community Rule*, do the priests have a speaking role distinct from that of the Levites.²⁶ Let us look at *m. Soṭah* 7:5:²⁷

ברכות וקללות כיצד? כיון שעברו ישראל את הירדן ובאו אל הר גרזים ואל הר עיבל שבשומרון שבצד שכם, שאצל אלוני מורה, שנאמר: הלא־המה בעבר הירדן וגו' ולהלן הוא אומר: ויעבר אברם עד מקום שכם עד אלון מורה—מה אלון מורה האמור להלן: שכם, אף אלון מורה האמור כאן: שכם. ששה שבטים עלו לראש הר גרזים, וששה שבטים עלו לראש הר עיבל, והכהנים והלויים והארוני עומדים למטה באמצע, הכהנים מקיפין את הארון, והלויים את הכהנים, וכל ישראל מכאן ומכאן שנאמר: וכל־ישראל וזקניו ושטריו ושפטיו עמדים מזה ומזה לארון וגו'. הפכו פניהם כלפי הר גרזים ופתחו בברכה: ברוך האיש אשר לא יעשה פסל ומסכה, ואלו ואלו עונין אמן. הפכו פניהם כלפי הר עיבל ופתחו בקללה: ארור האיש אשר יעשה פסל ומסכה, ואלו ואלו עונין אמן, עד שגמרין ברכות וקללות.

What is/was the manner of the Blessings and the Curses? When Israel crossed the Jordan and came to Mt. Gerizim and to Mt. Ebal in Samaria, alongside Shechem, by the terebinths of Moreh,²⁸ as it is said, “Are they not beyond the Jordan [...by the terebinths of Moreh]” (Deut 11:30). Elsewhere it says, “And Abram passed through the land as far as the site of Shechem, at the terebinth of Moreh” (Gen 12:6). Just as the terebinth of Moreh mentioned there (Gen. 12:6) is [at] Shechem, so too here (Deut 11:30) the terebinth of Moreh is [at] Shechem. Six tribes went up to the top of Mt. Gerizim and six tribes went up to the top of Mt. Ebal, and the priests and Levites and the Ark stand²⁹ below in the middle. The priests surround the Ark and the Levites [surround] the priests, with all of Israel on either side, as it is said, “And all of Israel and its elders and its officers, and its judges stand on either side of the Ark,” etc. (Josh 8:33). They turned their faces toward Mt. Gerizim and began with the blessing, “Blessed is the person who does not make a graven or molten image.” And both these and these respond, “Amen!” They turned their faces toward Mt. Ebal and began with a curse, “Cursed is the person who makes a graven or molten image” (Deut 27:15). And both these and these respond, “Amen!”, until they complete the Blessings and Curses.

²⁶ In *S. 'Olam Rab.* 11, “Israel said blessings and curses.”

²⁷ Hebrew text is from C. Albeck, *Shishah Sidre Mishnah* (6 vols.; Jerusalem: Bialik Institute, 1958), 3:249–50, checked against MS Kaufmann. English translation is my own.

²⁸ From this point until the mention of the “six tribes” the text makes an exegetical digression to identify the site of the covenantal ceremony with Shechem, which is not otherwise identified in MT as the location for this ceremony. The Samaritan Pentateuch adds to Deut 11:30: מול שכם (“opposite Shechem”). Cf. *Sifre Deut.* 56; *b. Soṭah* 33b; *y. Soṭah* 7:3 (21c), where the tone is more polemical: the Samaritan scribes did not need to change the biblical text since the same identification could be achieved through scriptural exegesis.

²⁹ The verbs here change from perfects to participles, and will switch again.

Although the mishnaic retelling of the scriptural ceremony is quite paraphrastic, filling in and smoothing over many gaps and ambiguities in the scriptural narrative, its explicit but selective citation of scriptural language, in contrast to the Qumran texts, conveys the impression of being linked to its scriptural base text, yet without dependence for all of its narrative detail on direct scriptural interpretation.

By further contrast, the midrash *Sifre to Deuteronomy* (§55), which directly explicates Deut 11:29, is even more intertextual and dialogical, as befits the nature of its scriptural commentary:³⁰

ונתת את הברכה על הר גריזים וגו', וכי מה בא הכתוב ללמדנו שהברכה על הר גריזים והקללה על הר עיבל והלא כבר נאמר אלה יעמדו לברך את העם על הר גריזים ואלה יעמדו על הקללה בהר עיבל מה ת"ל ונתת את הברכה על הר גריזים שיכול שיהיו כל הברכות קודמות לקללות [תלמוד לומר ונתת את הברכה על הר גריזים ברכה קודמת לקללה ואין כל הברכות קודמות לקללות] אלא להקיש קללות לברכות מה קללות בלויים אף ברכות בלויים מה קללות בקול רם אף ברכות בקול רם מה קללות בלשון הקודש אף ברכות בלשון הקודש מה קללות בכלל ופרט אף ברכות בכלל ופרט מה קללות אלו ואלו עונים ואומרים אמן אף ברכות אלו ואלו עונים ואומרים אמן כשהפכו פניהם בשעת ברכה אל הר גריזים ובשעה קללה אל הר עיבל.

“You shall pronounce the blessing on Mount Gerizim [and the curse on Mt. Ebal]”: Was it necessary for Scripture to come to teach us that the blessing is on Mt. Gerizim and the curse on Mt. Ebal? Is it not said elsewhere, “These shall stand on Mt. Gerizim for the blessing of the people... and these shall stand on Mt. Ebal for the curse” (Deut 27:12–13)? Why then does Scripture say, “You shall pronounce the blessing on Mt. Gerizim”? Since it would [otherwise] be possible [to think] that all the blessings [as a group] precede the curses. Hence Scripture says “You shall pronounce the blessing on Mt. Gerizim.” A [single] blessing precedes a [single] curse, and the [group of] blessings do not precede [the group of] curses. Also to draw an analogy between curses and blessings: Just as the curses are recited by the Levites, so too the blessings are recited by the Levites. Just as the curses are recited aloud, so too the blessings are recited aloud. Just as the curses are recited in the holy tongue, so too the blessings are recited in the holy tongue. Just as the blessings are general and particular, so too

³⁰ Since *Sifre Deut.* does not comment directly on Deuteronomy 27–30, it retells the ritual of the blessings and curses through its commentary on 11:29. The text is from *Siphre ad Deuteronomium* (ed. L. Finkelstein; Berlin: Gesellschaft zur Förderung der Wissenschaft des Judentums, 1939; repr. New York: Jewish Theological Seminary, 1969), 122–23, checked against MS Vatican 32. English translation is my own. Compare “*Mekilta ledevarim parashat re’eh*,” ed. S. Schechter, in *Tiferet Yisrael: Festschrift zu Israel Lewy’s sebzigstem Geburtstag* (ed. M. Brann and J. Elbogen; Breslau: Marcus, 1911), 189–90; S. Lieberman, *Tosefta Ki-Fshutah: A Comprehensive Commentary on the Tosefta* (New York: Jewish Theological Seminary of America, 1973), 8:700–701.

the curses are general and particular. Just as to the curses, both groups answered “Amen,” so too to the blessings, both groups answered “Amen,” turning to face Mt. Gerizim for the blessings and toward Mt. Ebal for the curses.

A retold biblical narrative is here constructed, in its specifics much like that of the more coherent narrative of the Mishnah and Tosefta; but this retelling emerges now more gradually through the shuttle between Scripture and commentary, that is, in expressly expository form, employing intertextual hermeneutics and dialogical rhetoric. Although, in contrast to Qumran usage, the reconstructed biblical narrative in both Mishnah and midrash tells clearly of a one-time *past* event in scriptural time, with no contemporary practical consequence, its participial verbal forms denote the perpetual present of the commentary itself. If the performative aspects of the Qumran accounts of an annual, eschatological ceremony of blessings and curses have the effect of extending scriptural texts and events into the communal present and eschatological future, the performative aspects of the midrashic commentary have the effect of dialogically drawing its rabbinic auditors into scriptural text and time. Even if the net effect of temporal connectivity is comparable, the very different performative strategies employed by each form of interpretive textuality can be illuminatively contrasted, revealing thereby different attitudes toward and approaches to scriptural text and time.

5. *Example 2: Revelation Retold*³¹

Both the Dead Sea Scrolls and early rabbinic literature place great emphasis on the claims that their respective traditions are the successors to what was revealed to Israel via the Torah of Moses.³² At Qumran, many works of “rewritten Bible,” some previously known, such as

³¹ See above, n. 17. I have previously dealt with midrashic re-presentations of the Sinaitic revelation in *From Tradition to Commentary: Torah and its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 25–68; “‘The Kisses of His Mouth’: Intimacy and Intermediacy as Performative Aspects of a Midrash Commentary,” in *Textual Reasonings: Jewish Philosophy and Text Study at the End of the Twentieth Century* (ed. P. Ochs and N. Levene; London: SCM Press, 2002), 52–56.

³² For the “Torah of Moses,” see: 1QS 5:8; 8:22; CD 15:2–9, 12; 16:2, 5; 4Q266 (4QD^a) 11 6. For “commanded by the hand of Moses,” see 1QS 8:15; 1QM 10:6; 1QH 17:12; 4Q504 (4QDibHam^a) 1–2 v 14. For “by the hand of Moses and the prophets,” see 1QS 1:3; CD 5:21. For the “Book of Moses,” see 4Q174 (4QFlor) 1 i 2–3 (restored); 4QMMT C 10, 17, 21; 4Q247 1 verso. For “Moses said,” see CD 5:8; 8:14 (= 19:26).

Jubilees, and some previously unknown, such as the *Temple Scroll* and other, more fragmentary works of “Mosaic pseudepigraphy,” echo Josephus’s attribution to the Essenes of great reverence for Moses the lawgiver.³³ These texts of esoteric knowledge either explicitly or implicitly claim to have been revealed at Mt. Sinai, presumably alongside the Torah, to the spiritual elite. Curiously, however, the Dead Sea Scrolls contain hardly any direct exegetical engagement with biblical passages narrating the revelation at Mt. Sinai as a way of exegetically linking their revelatory self-understanding to that central scriptural event.³⁴ Perhaps the Dead Sea Scrolls’ emphasis on continuous revelation, especially in the recent history and present time of the community via its prophetic teachers, produces little interest in elucidating the revelatory narrative of Mt. Sinai.

By contrast, our earliest “tannaitic” midrashim, especially the *Mekiltas* to Exodus and the *Sifre to Deuteronomy*, embrace a rich assortment of exegetical retellings, some substantially expansive, and often in

³³ Josephus, *JW* 2.145. For overviews of attitudes to Moses and of writings associated with him in the Dead Sea Scrolls, see D. K. Falk, “Moses,” *EDSS* 1:576–77; idem, “Moses, Texts of,” *EDSS* 1:577–81. The surviving texts of “rewritten Bible” dealing with Moses appear more interested in Moses’s farewell orations of warning to Israel at the end of the Book of Deuteronomy, understood to be prophecies, than in his role in narratives of the exodus from Egypt or the revelation at Mt. Sinai. For examples of both, see 1Q22 (*Words of Moses*); 4Q368 (*Apocryphal Pentateuch A*); 4Q377 (*Apocryphal Pentateuch B*). For fragmentary texts retelling the exodus from Egypt, see 4Q374; 4Q422 col. 3. On the broader phenomenon of “Mosaic discourse” in Second Temple Jewish literature, see H. Najman, *Seconding Sinai*.

³⁴ See *The Texts From the Judaean Desert: Indices and an Introduction to the Discoveries in the Judaean Desert Series* (ed. E. Tov et al.; DJD 39; Oxford: Clarendon, 2002), 115–64, A. Lange, “Annotated List of the Texts from the Judaean Desert,” where many “parabiblical texts” are listed for the Book of Genesis, and many texts apocryphally attributed to Moses, but nothing devoted to the narratives of Exodus-Deuteronomy. The closest would seem to be 4Q377 2 ii. Similarly, under “Exegetical Texts,” there are several “commentaries” to Genesis (4Q252–254, on which see above, n. 14), and *pesharim* to the prophetic books, but nothing on Exodus-Deuteronomy or the early prophets. For the centrality of Sinai in the self-understanding of the Qumran community, see J. C. VanderKam, “Sinai Revisited,” in *Biblical Interpretation at Qumran* (ed. M. Henze; Studies in the Dead Sea Scrolls and Related Literature; Grand Rapids: Eerdmans, 2005), 44–60, who states that “Israel at Sinai was the template for the Qumran fellowship” (48). However, as VanderKam notes elsewhere (“The Interpretation of Genesis in *1 Enoch*,” in *The Bible at Qumran: Text, Shape, and Interpretation* [ed. P. W. Flint; Studies in the Dead Sea Scrolls and Related Literature; Grand Rapids: Eerdmans, 2001], 142), the revelation at Mt. Sinai is absent from *1 Enoch* (see 85–90), and is not narrated in the *Book of Jubilees*, both of which were probably considered authoritative at Qumran. Note also the argument of M. Segal (“Between Bible and Rewritten Bible,” in Henze, *Biblical Interpretation at Qumran*, 22) that the missing first column of the *Temple Scroll* would have contained a retelling of the first part of Exodus 34, with its renewal of the covenant after the golden calf incident.

multiple versions, of the giving of the Torah to Israel at Mt. Sinai, and of Moses's intermediary role therein. For example, we may recall the well-known rabbinic accounts according to which God first offered the Torah unsuccessfully to the other nations, exegetically linked to biblical passages in Exodus and Deuteronomy.³⁵ To give a very crude representation of this disproportionate attention, in all of the nonbiblical Dead Sea Scrolls, the proper name "Sinai" appears in only five places, in two of which the text is too damaged to know the context, and in none of which is the text clearly of sectarian provenance.³⁶ Even if we add to that count one other place of unlikely sectarian provenance (*4QReworked Pentateuch*, where the word is restored);³⁷ three instances of the word restored in Hebrew fragments of the *Book of Jubilees*;³⁸ and one instance restored in an Aramaic fragment of *1 Enoch*,³⁹ the evidence is still paltry, especially considering the centrality in other respects of Moses and Mosaic revelation to the Qumran community's prophetic self-understanding. By contrast, whereas the word "Sinai" occurs 35 times in all of the Hebrew Bible, 8 times in the Mishnah, and eleven times in the Tosefta, it appears 228 times in the "tannaitic" midrashim.⁴⁰ Clearly, the tannaitic midrashim evidence much more exegetical engagement with the biblical narrative of the Sinaitic revelation than do the Dead Sea Scrolls (or the Mishnah/Tosefta).⁴¹

³⁵ For texts and treatment, see S. D. Fraade, *From Tradition to Commentary*, 32–44. See as well the following collection of rabbinic interpretations of the Sinaitic revelation: S. Y. Agnon, *ʿAtem Re'item, Sefer Rishon. Parashat Matan Torah: Peshatim u-derashim* (Jerusalem: Shoken, 1959); *Present at Sinai: The Giving of the Law. Commentaries selected by S. Y. Agnon* (trans. M. Swirsky; Philadelphia: Jewish Publication Society, 1994).

³⁶ 1Q22 1 i 4 (rewritten Bible based mainly on Deuteronomy); 4Q365 26a–b 4 (Num 1:1); 4Q374 2 i 7 (isolated word); 4Q377 2 ii 6 (rewritten Bible on Sinaitic revelation); 4Q547 9 4 (isolated Hebrew phrase in Aramaic document, perhaps dealing with Moses at Mt. Sinai). To find these five instances, I consulted M. G. Abegg's "Concordance of Proper Names in the Non-biblical Texts from Qumran," DJD 39.275; which I confirmed by searching *The Dead Sea Scrolls Electronic Reference Library, Volume 2* (ed. E. Tov; prepared by the Foundation for Ancient Research and Mormon Studies and its Center for the Preservation of Ancient Religious Texts at Brigham Young University, Provo, Utah; Leiden: Brill, 1999).

³⁷ 4Q367 3 14 (*Reworked Pentateuch* for Lev 27:34).

³⁸ 4Q216 (4QJub^a) 1 i 3, 8, 15 (= *Jub.* Prologue; 1:2, 5).

³⁹ 4Q201 (4QEn^a) 1 i 5 (= *1 Enoch* 1:4).

⁴⁰ These numbers derive from computerized searches using the *Bar Ilan Responsa Project Judaic Library on CD-ROM* (version 12).

⁴¹ It should be noted, but cannot be investigated here, that other Second Temple Jewish writings also give slight attention to the *narrative* of the Sinaitic revelation. For example, the *Book of Jubilees*, with all of its emphasis on being the product of Sinaitic revelation and its being narratively framed by that event (Prologue; 1:1–5; 4:26; 48:2;

We shall examine one limited example. Exodus 19, in describing preparations for the revelation at Mt. Sinai, contains several narrative gaps, repetitions, and inconsistencies that midrashic interpreters must address in filling out that narrative. One such apparent inconsistency noted by the two *Mekiltas* to Exodus occurs in Exod 19:10–12, where God instructs Moses: “Go to the people and warn them to stay pure today and tomorrow. Let them wash their clothes. Let them be ready for the third day; for on the third day the Lord will come down, in the sight of all the people, on Mount Sinai.” Yet several verses later (19:14–15), the narrative states: “Moses came down from the mountain to the people and warned the people to stay pure, and they washed their clothes. And he said to the people, ‘Be ready for the third day: do not go near a woman.’” Rabbinic exegetes confronted two inconsistencies here: first, are the people to remain pure for two or three days prior to revelation; and second, why does Moses add to God’s instructions to be pure (which might denote only ablutions) the separation (of the men) from the women, understood to denote sexual abstinence?⁴²

At Qumran, we find no exegetical engagement with these seeming narrative inconsistencies, or for that matter with any of the others in the Sinaitic narrative. However, it is generally understood that this narrative is the basis of the *Temple Scroll*’s requirement of three days of sexual purity as a precondition to entering any part of the Temple after a nocturnal seminal emission or any part of the Temple city after sexual intercourse, in contrast to Lev 15:16–18 and Deut 23:11–12, which would seem to require bathing and at most a one-day wait (11QT^a 45:7–12):⁴³

50:2), ends its retelling of the Bible just short of Sinai (after forty-nine jubilees from Adam; 50:4). Similarly, Philo, while devoting a whole treatise to the *Life of Moses*, extolling Moses as the ideal lawgiver, hardly discusses the event of revelation itself (cf. *Decal.* 32–49). See above, n. 33, as well as S. D. Fraade, “Moses and the Commandments,” 420 n. 51. In each instance, this relative inattention to the Sinaitic narrative can be explained in specific theological terms; e.g., for *Jubilees* and Philo, the projection of law-giving or law-abiding into the pre-Sinaitic, patriarchal period, while for the Dead Sea Scrolls, the emphasis on continuing post-Sinaitic esoteric revelation within the sectarian community. My argument, however, is that there is a larger comparative pattern that demands explanation. See above, n. 34.

⁴² Compare Pseudo-Philo, *L.A.B.* 11:2–3, in which sexual abstinence is part of God’s instruction to Moses, but not Moses’s to the people.

⁴³ *The Temple Scroll* (ed. Y. Yadin; 3 vols.; Jerusalem: Israel Exploration Society, 1983), 2:191–92 for text, translation, and notes; and 1:287–89 for discussion. The following Hebrew text and English translation are from Yadin.

וא[יש] כי יהיה מקרה לילה לוא יבוא אל כול המקדש עד אשר [יש]לים שלושת ימים וכבס בגדיו ורחץ ביום הראשון וביום השלישי יכבס בגדיו (ורחץ) ובאה השמש אחר יבוא אל המקדש ולוא יבואו בנדת טמאתמה אל מקדשי וטמאו [vacat] ואיש כיא ישכב עם אשתו שכבת זרע לוא יבוא אל כול עיר המקדש אשר אשכין שמי בה שלושת ימים:

And if a ma[n] has a nocturnal emission, he shall not enter into any part of the Temple until [he will com]plete three days. And he shall wash his clothes and bathe on the first day, and on the third day he shall wash his clothes (and bathe,) and when the sun is down, he may come within the Temple. And they shall not come into my Temple in their *niddah*-like uncleanness and defile it. And if a man lies with his wife and has an emission of semen, he shall not come into any part of the city of the Temple, where I will settle my name, for three days.

Since the Temple city was considered analogous not only to the wilderness camp, but especially to Mt. Sinai, people entering it needed to be in the same state of ritual purity as those approaching Mt. Sinai in order to receive divine revelation; hence, the three-day (שלושת ימים) stringency of the *Temple Scroll* is understood to derive from Exod 19:15. That the Qumran community applied the same understanding to themselves, ideally at least, can be seen from 1QSa (1Q28a) 1:25–27:

ואם תעודה תהיה לכול הקהל למשפט או לעצת יחד או לתעודת מלחמה וקדשום שלושת ימים להיות כול הבא עת[יד ל]הנה.⁴⁴

And when the whole assembly is summoned for judgment, or for a Council of the Community, or for war, they shall sanctify them for three days that every one of its members may be prepared.⁴⁵

Since the Qumran community understood itself to be in a state of ongoing revelatory reception, and since (according to 4QMMT) they understood the “sanctuary” to be the functional equivalent of the “tent of meeting” (a revelatory locus), and the “city of Jerusalem” to be the functional equivalent of the “camp,”⁴⁶ they would have assumed that an idealized Jerusalem, like an idealized covenantal community, would be, in a sense, a perpetual Mt. Sinai, to which entry would have required three prior days of sexual separation. While we can readily reconstruct

⁴⁴ The Hebrew text is according to *Qumran Cave I* (ed. D. Barthélemy and J. T. Milik; DJD 1; Oxford: Clarendon, 1955), 110. Others restore the final word as לעצה (“for the council”).

⁴⁵ Translation is from Vermes, *The Complete Dead Sea Scrolls*, 159. For discussion, see L. H. Schiffman, *The Eschatological Community of the Dead Sea Scrolls: A Study of the Rule of the Congregation* (SBLMS 38; Atlanta: Scholars Press, 1989), 29–32.

⁴⁶ 4QMMT B 29–33, 60–62; cf. CD 11:21–12:2.

the interpretive connection between Exod 19:14–15 and these practical and ideological purity applications, nowhere is such a link made explicit in the Scrolls themselves. Whatever the exegetical process by which the Exodus passage was linked to entry into the community as the site of continuous revelation, the Dead Sea Scrolls show no interest in engaging their readers in the process.

By contrast, let us look briefly at the *Mekilta of R. Ishmael's* commentary to the same verses (*Bahodesh* 3):⁴⁷

ויאמר אל העם היו נכונים לשלשת ימים. אבל לא שמענו שאמר המקום לפרוש מן האשה, אלא היו נכונים—והיו נכונים לגזירה שוה, מה היו נכונים האמור כאן, לפרוש מן האשה, אף והיו נכונים האמור להלן, לפרוש מן האשה. רבי אומר, ממקומו הוא מוכרע, לך אל העם וקדשתם היום ומחר, ואם על ענין טבילה, יטבול בחמישי ויהי טהור כמו הערב שמש ומה ת"ל לך אל העם אלא שאמר המקום למשה, לפרוש מן האשה.

“And he said to the people, be ready for three days; [do not go near a woman]”: But we did not hear God say to separate from women! But “be ready” (19:15) “and let them be ready” (19:11) form an analogy: Just as the expression “be ready” used here (19:15) means to separate from women, so too “and let them be ready” used there (19:11) means to separate from women. Rabbi (Judah the Patriarch) says: It can be proved from its own context. “Go to the people and sanctify them today and tomorrow” (19:10): If this only referred to immersion, one could immerse on the fifth day (of the week) and be pure around sunset. Why then does it say “Go to the people [and sanctify them today and tomorrow]”? Since God told Moses that they should separate from women.

The midrash is explicitly attentive to the subtle but significant differences between God’s instructions to Moses to prepare the people for revelation and Moses’s instructions to the people. As expressly stated in the *Mekilta of R. Simeon bar Yohai*, and elaborated in later midrashim, “Is it possible for Moses to have said this on his own,” that is, to have revised God’s instructions to the people, adding a requirement of sexual abstinence not specified by God?⁴⁸ While several later midrashic traditions celebrate

⁴⁷ The Hebrew text is from *Mekilta d’Rabbi Ismael* (ed. H. S. Horovitz and I. A. Rabin; 2d ed.; Jerusalem: Wahrman, 1970), 213–14; with minor variants, *Mekilta de-Rabbi Ishmael* (ed. J. Z. Lauterbach; 3 vols.; Philadelphia: Jewish Publication Society, 1933–35), 2:216–17. Cf. *Mekhila d’Rabbi Sim’on b. Jochai* (ed. J. N. Epstein and E. Z. Melamed; Jerusalem: Mekize Nirdamim, 1955), 142. The English translation is my own.

⁴⁸ Note as well *Sifre Num.* 103 (*Siphre ad Numeros adjecto Siphre zutta* [ed. H. S. Horovitz; Leipzig: Gustav Frock, 1917; repr. Jerusalem: Wahrman, 1966], 101), where Moses’s own separation from his wife from the time of Sinai on is said to have been at God’s express command, whereas in later sources this is said to have been at Moses’s own (commendable) initiative. Cf. *Tg. Ps.-J.* to Num 12:8; Rashi on Num 12:8. Other

Moses's initiative here, and have God concur with him after the fact, our midrash avers that Moses simply made explicit what had been implicit in God's words to him. Two different hermeneutical arguments are given to prove that in fact God's words and Moses's words are congruent: 1) the use of analogous language; and 2) a contextual inference, presumably drawn by Moses, from God's instructions (the three-day wait could only be required in the case of sexual abstinence, and not with regard to general purification through immersion).⁴⁹ Note again the dialogical rhetoric, the multiplicity of interpretive strategies, and the prominence of participial verbal forms.

The midrash here hermeneutically and dialogically engages both the words of the Torah and its own textual auditors so as to resolve a seeming difficulty in scriptural narrative coherence. In arguing that Moses was correct in deducing from God's words the requirement of sexual abstinence as a prerequisite for the purification necessary to be recipients of revelation, the midrash projects rabbinic methods and contestations of hermeneutical argumentation onto the scriptural narrative itself. As I have shown elsewhere, this is not unusual for the tannaitic midrashim: in interpreting the scriptural narrative of Sinaitic revelation, these texts project the very activity of human (rabbinic) interpretation of divine speech back onto the originary moment of revelation itself. They thereby implicitly claim and performatively enact the very converse: i.e., that rabbinic interpretive practice is itself an extension of Sinai into the perpetual present of its studying community.⁵⁰ Much the same can be said for the Qumran projection of Exodus 19 onto the construction of an idealized Temple city and eschatological community, as perhaps enacted in the communal study of the textual embodiments of those constructions, with the critical difference that at Qumran, hermeneutical

rabbinic traditions indicate that Moses's innovation was in adding a day to the two specified by God. See *b. Šabb.* 87a (*baraita*); *b. Yebam.* 62a (*baraita*); *ʿAbot R. Nat.* A2, B2; *Pirqe R. El.* 41, 46 (according to God's command); פסיקתא חדתא לחג השבועות (in A. Jellinek, *Bet ha-Midrash* [3d ed.; 6 vols. in 2; Jerusalem: Wahrman, 1967], 6:41); *Exod. Rab.* 19:3.

⁴⁹ See the continuation of the *Mekilta of R. Ishmael*. Semen remains virile within a woman for three days. Thus, to insure that she not discharge virile semen from previous intercourse just prior to revelation, and thereby be rendered impure and contagious to others, she must abstain from sexual intercourse for three days prior to revelation. Cf. *m. Miqwe.* 8:3; *m. Šabb.* 9:3. On the addition of R. Judah the Patriarch's argument here, see M. Kahana, "'Marginal Annotations' of the School of Rabbi in the Halakhic Midrashim," in *Studies in Bible and Talmud: Papers Delivered at the Departmental Symposia in Honour of the Sixtieth Anniversary of the Institute of Jewish Studies* (ed. S. Japhet; Jerusalem: Hebrew University of Jerusalem, 1987), 69–85 (Hebrew).

⁵⁰ See above, n. 31.

and dialogical engagement with the scriptural *text* of Exodus 19 does not appear to have occupied the same performative place as it did among the early rabbinic sages.

6. *Conclusions*

While the variety of forms of scriptural interpretation in the Dead Sea Scrolls is enormous, and provides an indispensable window into the richness of that variety which must have existed more broadly in Second Temple Jewish culture, we find relatively little by way of direct and explicit exposition of narrative Scriptures. Most interpretation of scriptural narrative that we find in the Dead Sea Scrolls, whatever its sectarian provenance, is what has been called, for want of a better term, “rewritten Bible,” which interpretively glosses and expands those narratives without explicitly engaging their language exegetically. The Scriptures that are the focus of such interpretive “rewriting” are especially those of Genesis (as *Urzeit*) and the end of Deuteronomy (as pointing to *Endzeit*).⁵¹ This is by no means to diminish the interpretive and compositional creativity of such scrolls, nor of their ideational significance. To the extent that we encounter explicit expositions of scriptural narrative verses in Qumran sectarian texts, they are for purposes of scripturally grounding either the community’s rules or its eschatological expectations and self-understandings. This is somewhat surprising given the admonitions of some sectarian writings to “study (carefully)” not just “the book of Moses and the books of the Prophets,” but “the (writings of) David [and the] [events of] ages past.”⁵² With very few exceptions, the interpretive modes of scriptural exposition and para-scriptural composition are kept textually separate in the Dead Sea Scrolls, both sectarian and non-sectarian.

By contrast, our earliest rabbinic midrashic collections contain extensive sections of commentary that *combine* direct scriptural exposition

⁵¹ See above, n. 34.

⁵² 4QMMT C 10–11: [כתב]נו אליכה שתבין בספר מושה [ו]בספר [י הנ]ביאים. Text and translation are from *Qumran Cave 4. V: Miqsat Ma’ase Ha-Torah* (ed. E. Qimron and J. Strugnell; DJD 10; Oxford: Clarendon, 1994), 58–59. My argument is not dependent on questionable claims made by others that we have here evidence for a three- (or four-) fold scriptural canon. See E. Ulrich, “The Non-attestation of a Tripartite Canon in 4QMMT,” *CBQ* 65 (2001): 202–14. Cf. Deut 32:7: בהבינכם במעשי דור ודור: 21:2 (4QD^c) 270:2; בינו שנות דור ודור.

with expansively retold scriptural narratives, although not in the form of “rewritten Bible.”⁵³ Although they share interpretive traditions, hermeneutical presuppositions, terminology, and exegetical methods with the Dead Sea Scrolls and Second Temple Jewish writings more generally, their formal and rhetorical modes of communication, in particular their explicit employment of dialogical and intertextual commentary, differentiate them from their extant antecedents.

Describing these differences is one thing, accounting for them is quite another. Since space does not allow me to do justice to such an accounting, I shall sketch several possible explanatory trajectories, by no means mutually exclusive, that would need to be considered. My point, in part, is that complex cultural-historical phenomena, especially when comparatively viewed, do not submit to *singular* explanations, as convenient and satisfying as they may be.

1. One approach would be to argue that these differences are the product of time; that is, since rabbinic midrashim are significantly later, in their redacted forms, they represent an evolutionary progression from their Qumran antecedents. Such a progression might be occasioned internally by the unfolding of earlier exegetical potentialities, externally by changed historical circumstances, or by a combination of the two. For example, to what extent would the progressive closing and fixing of the Hebrew biblical canon have required a more “postbiblical” attitude to the biblical text and its authority, thereby necessitating that narrative retellings be explicitly anchored in the actual words of that text, from which they would derive their authority, rather than from pseudepigraphic attributions or charismatic claims to prophetic knowledge?⁵⁴ While this progression in canonical scriptural status is

⁵³ However, in Byzantine and early medieval times, *midrash aggadah* became increasingly narrativized. See Y. Elbaum, “From Sermon to Story: The Transformation of the Akedah,” *Prooftexts* 6 (1986): 97–116. In modern times, Louis Ginzberg reconstituted much of ancient midrash into a “retold Bible.” See D. Stern, “Introduction to the 2003 Edition,” in L. Ginzberg, *Legends of the Jews* (2d ed.; 7 vols. in 2; Philadelphia: Jewish Publication Society, 2003), xv–xxiv, esp. xix. For further discussion of “rewritten Bible” within early rabbinic midrashic commentary, see my essay, “Rewritten Bible and Rabbinic Midrash As Commentary,” cited above, n. 9.

⁵⁴ See, in particular, M. Kister, “A Common Heritage: Biblical Interpretation at Qumran and its Implications,” in Stone and Chazon, *Biblical Perspectives*, 102–11. For a comparison of Kister’s position with my own, see A. Shemesh, “Scriptural Interpretations in the Damascus Document and Their Parallels in Rabbinic Midrash,” in *The Damascus Document: A Centennial of Discovery. Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 4–8 February, 1998* (ed. J. M. Baumgarten, E. G. Chazon, and A. Pinnick; STDJ 34; Leiden: Brill, 1999),

a *necessary* precondition for rabbinic *midrash aggadah*, it is not alone a *sufficient* explanation. Otherwise, we would have to presume that had the Qumran community survived past 68 CE, its texts of scriptural exegesis would have evolved to approximate rabbinic midrash, and that the Pharisaic antecedents to rabbinic midrash would have resembled the forms of scriptural interpretation found at Qumran.

2. Another approach would be to link these dissimilarities to different understandings of the character of continuous revelation among the Qumran and rabbinic communities, especially with regard to the relation between ongoing revelation and revelation at Mt. Sinai. In simple terms, the rabbis considered the Oral Torah to have originated in the revelation at Sinai to all of Israel, and to have exegetically accompanied the Written Torah from then and ever since. By contrast, the Qumran community considered their esoteric teachings to be the most recent installment of revelations begun with Moses, continued with the prophets, and renewed, after a hiatus, among the sectarian covenantal “remnant” through the Teacher of Righteousness and his successors.⁵⁵ Thus, differing approaches to the interpretation of biblical narratives (and laws) reflect not simply progressive stages in the developing status and authority of those scriptural texts (previous point), but fundamentally different ideologies of the chronology and anthropology of continuing revelation across time.

3. Any comparison of Qumran and rabbinic forms of interpretation must take into account differences between their intended audiences. How did their differing textual practices, as “speech acts,” seek rhetorically and performatively not just to inform, but to *privilege* and to *transform* their very different kinds of readers or auditors in very different social settings. How was the very process of study not just understood, but *experienced* as a form of divine service or worship? In other words, do the dialogical differences between these corpora reflect differences in their pedagogical methods and purposes, especially considering the rabbinic emphasis on the master-disciple relationship and circle, and

162–63. Note the remark of G. Brooke at the conclusion to his discussion of “Rewritten Bible” (see above, n. 12): “Once both the form and content of the biblical books were fixed in Hebrew, Rewritten Bible continued only in the Targums.” Whether or not this is true for the Targums, the presumption here is that the shift from rewritten Bible to more explicit forms of exegesis is the product of the fixing and closing of the biblical canon.

⁵⁵ See S. D. Fraade, “Interpretive Authority in the Studying Community at Qumran,” *JJS* 44 (1993): 46–69. Cf. A. Shemesh and C. Werman, “Hidden Things and Their Revelation,” *RevQ* 18 (1998): 409–27.

the related differentiation between written and oral modes of revelatory transmission, nowhere evidenced at Qumran.⁵⁶ The following, from the preface to a recent comparative effort to get at the *differentia specifica* of commentaries cross-culturally, would apply well to the formal differences between scriptural interpretation within the Dead Sea Scrolls and early rabbinic midrash:

For commentary is not a natural type but is always constructed variously in various social formations, and may therefore be expected to respond differently to different kinds of identifiable exigencies. This constructedness of the form of commentary may well be disguised to a certain extent from its producers and consumers by its very ubiquity, both within their own work and across the spectrum of cultures available for historical and geographical comparison; . . . But there is nothing natural about the general form of commentary itself, and no matter how natural a particular form of commentary may seem to its own practitioners in any one place and time, it need not seem at all natural to other practitioners.⁵⁷

4. Finally, as we have done with respect to the above examples, we might ask to what extent do differences between Qumran and early rabbinic narrative interpretation reflect different attitudes not just to the biblical *text*, but also to the biblical *past*, in relation both to the present lives of the respective textual communities and to their anticipation of the future (imminent or deferred) fulfillment of biblically generated eschatological expectations? The rabbis employed *midrash aggadah*, in part at least, as a means of shuttling back and forth between biblical, present, and eschatological times so as to defer while still foretasting the last, and to enter while refashioning the first; whereas Qumran narrative and prophetic interpretation was more intent on defining and justifying the present conduct of the elect in urgent preparation for an imminently anticipated consummation of history. How do these very different *temporal* perspectives of the two corpora shape their very different manners of reworking biblical narrative?

⁵⁶ On the relation of rabbinic orality to discipleship, see M. S. Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE–400 CE* (Oxford: Oxford University Press, 2001), 126–52; S. D. Fraade, “Literary Composition and Oral Performance in Early Midrashim,” *Oral Tradition* 14 (1999): 33–51. On the role of the master-disciple relationship in determining the forms of rabbinic discourse, see A. D. Tropper, *Wisdom, Politics, and Historiography: Tractate Avot in the Context of the Graeco-Roman Near East* (Oxford: Oxford University Press, 2004). On the commentary form in relation to pedagogy more broadly, see G. W. Most, “Preface,” *Commentaries—Kommentare* (ed. G. W. Most; Göttingen: Vandenhoeck & Ruprecht, 1999), vii–xv.

⁵⁷ Most, “Preface,” vii–viii.

There are, no doubt, other aspects of this set of comparative questions that would need to be considered in any attempt at a fuller explanatory program, and many more specific comparative case-studies to be conducted along the way. But there can be no doubt that the Qumranic and rabbinic corpora, in their respective recastings of shared biblical narratives, have much more light to shed on one another and their respective textual, studying communities.⁵⁸

⁵⁸ I wish to thank two friends, Chaim Milikowsky and Hindy Najman, for their critical responses to an earlier draft of this paper.

TRACES OF SECTARIAN HALAKHAH IN THE RABBINIC WORLD

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A comparison of rabbinic and Qumranic law reveals contradictory approaches and sharp divergences between the two. At the same time, this comparison serves as a tool for reconstructing a common ancient halakhic foundation and common halakhic terms. This article deals with a third phenomenon, which seems, as yet, not to have been adequately explored. I am referring to the existence of intersectarian polemics *within* the scholarly world of the sages themselves. The halakhic views of certain Tannaim often bear a surprising resemblance to sectarian or semi-sectarian halakhah, whether in the details or in general aspects of halakhic thinking. Elsewhere I have suggested that a certain similarity existed between the approach of Beit Shammai and that of sectarian halakhah.¹ Both appear to share an early, stringent halakhic outlook, based more on tradition and authority, and less on contemporary human exegetical creativity; both seem to adhere to the more literal meaning of Scripture, tending towards stringency and uniformity, in abstract principles as well as in everyday life. I have suggested that this resemblance may have been the factor that decided the fate of Beit Shammai's views, relegating them to the sidelines of Pharisaic discourse. Once the sectarian approach had been defeated and discarded, it was inevitable that its distant echo within the rabbinic world—namely, the opinions of Tannaim who embraced somewhat similar halakhic principles—would also be rejected.

Sectarian halakhic tendencies seem to have established a greater foothold in the Pharisaic world than is apparent, and part of the battle that the early sages waged against them some decades later took place “within the family,” against rabbinic fringe groups and esoteric sages. Mainstream rabbis continuously rejected these marginal views.

¹ V. Noam, “Beit Shammai and the Sectarian Halakhah,” *Jewish Studies (World Union of Jewish Studies)* 41 (2002): 45–67 (Hebrew).

Nineteenth century scholars were vaguely aware of this phenomenon,² and several writers in the second half of the twentieth century hinted at examples of it,³ but a systematic study of the phenomenon has never been undertaken, and the little that has been written preceded the publication of most of the sectarian halakhic literature. It is only since Qumranic halakhah has come into the spotlight that we are afforded new insight into the anti-sectarian nature of some intra-rabbinic disputes, and can comprehend their particularly bitter nature.

I shall now present several examples to illustrate the affinity between Qumranic views and certain halakhic positions which probably prevailed in Pharisaic circles and still survive in early rabbinic discourse. These examples are taken from the teachings of R. Eliezer b. Hyrcanus, a

² Abraham Geiger had long ago proposed that “Shammai and his disciples tended more to follow ancient halakhah...and this ancient halakhah was also the approach of the Sadducees...and thus Shammai, even though he was regarded as a leading Pharisaic sage and far from the Sadducees..., nevertheless had a certain affinity with their approach” (A. Geiger, *Ke'vutzat Ma'amarim* (ed. S. A. Posnansky; Warsaw: Tushiyah, 1910–1912; limited facsimile edition: Haifa: La-Student, The Publishing House of the Students' Union, The University of Haifa, 1967), 346. In his book and in various papers, Geiger points out certain Samaritan and Karaite halakhot which, in his words, preserve “ancient halakhah that was rejected repeatedly over the ages” and which were adopted by the Sadducees. Sometimes he finds a similarity between these halakhot and the halakhah of Beit Shammai. See his discussions on the laws concerning a fetus (A. Geiger, *Hamikra vetargumav bezikatan lehitpathutah hapenimit shel hayahadut* [Jerusalem: Bialik Institute, 1949], 345–46 [this discussion was added at the end of the Hebrew translation of the book by the translator Y. L. Baruch and is not in the German original]; = idem, “Igrot el hamol,” *Otzar Nehmad* 3 [1860]: 126–27); on the prohibitions against using fire and against cooking on the festivals (*Ke'vutzat Ma'amarim*, 64–65); on the laws pertaining to *eruv* on the Sabbath (ibid., 64–70). In Sonne's opinion, the resemblance between Beit Shammai and Sadducean halakhah had been noticed originally in the Middle Ages, by the early Karaites. They attributed their halakhah to the Sadducees, and also felt a certain affinity between their own approach and that of Beit Shammai. See I. Sonne, “The Schools of Shammai and Hillel Seen from Within,” in *Louis Ginzberg: Jubilee Volume on the Occasion of his Seventieth Birthday. English Section* (New York: American Academy for Jewish Research, 1945), 275–91, and the bibliography presented there, 275 n. 1.

³ See J. N. Epstein, *Mevo'ot Lesifrut Ha-Tannaim* (Jerusalem: The Hebrew University Magnes Press; Tel-Aviv: Dvir, 1957), 278–79, 331 (Hebrew); Y. D. Gilat, *R. Eliezer Ben Hyrcanus: A Scholar Outcast* (Ramat-Gan: Bar-Ilan University Press, 1984), 26 n. 11; see also pp. 147, 425; Y. Sussmann, “The History of Halakha and the Dead Sea Scrolls: Preliminary Observations on *Miqsat Ma'ase Ha-Torah* (4QMMT),” *Tarbiz* 59 (1989–1990): 11–76, pp. 72–73 n. 237 (Hebrew; a shorter English version of this article appears in E. Qimron and J. Strugnell, *Qumran Cave 4.V: Miqsat Ma'ase ha-Torah* [DJD 10; Oxford: Clarendon, 1994], 179–200. It does not include the above-mentioned note in full, but cf. p. 190 n. 44 in the English version).

disciple of Beit Shammai.⁴ This exceptional scholar was an adherent of ancient traditions⁵ and a proponent of the plain meaning of biblical passages.⁶ His entire life was spent in a drawn-out conflict with the establishment,⁷ ending with his excommunication⁸ and the total rejection of his teachings. According to Talmudic legend, he complained on his deathbed: "...Much Torah have I taught, yet my disciples have only drawn from me as much as a painting stick from its tube. Moreover, I have studied three hundred laws on the subject of a deep bright spot [i.e., laws concerning leprosy], yet no man has ever asked me about them...."⁹ The similarity between some of Eliezer b. Hyrcanus' halakhot and parallel sectarian passages may explain the hostility that he aroused and his problematic status in the tannaitic world. The halakhot we will discuss are taken from different halakhic fields—the festivals, matrimonial law, judicial law, sacrifices, and ritual purity. After studying these examples against the background of sectarian halakhah, we will explore the affinities between some of the underlying ideologies of R. Eliezer and those of the sect. These resemblances, in halakhic details and principles alike, would indicate that the boundary separating the Pharisees from their opponents was sometimes fainter than assumed. Further delving in this direction may furnish us with a somewhat more complex portrait of Jewish society during Second Temple times and shortly thereafter.

⁴ See *t. Arak.* 4:5 and parallel passages. On identifying R. Eliezer as a follower of Beit Shammai, see Gilat, *R. Eliezer*, 462–73. See also Sussmann, "History of Halakha," 34 and n. 102 (p. 190 in the English version). On the similarity between R. Eliezer's approach and that of Beit Shammai with regard to susceptibility to impurity, see *t. Makhshirin* 1:4, and see below. In Jacob Neusner's opinion, the connection between R. Eliezer and Beit Shammai was an invention of later generations; see J. Neusner, *Eliezer Ben Hyrcanus: The Tradition and the Man* (2 vols.; SJLA 3–4; Leiden: Brill, 1973), esp. 2:351–52.

⁵ Gilat, *R. Eliezer*, 23–67. See Neusner's different evaluation; Neusner, *Eliezer Ben Hyrcanus*, 2:352–56. Nevertheless, Neusner also defines him as "an important representative of the old Pharisaism"; *ibid.*, 302.

⁶ Gilat, *R. Eliezer*, 68–82. See Neusner's more hesitant view, *Eliezer Ben Hyrcanus*, 2:387–94.

⁷ Gilat, *R. Eliezer*, 479–91. See also Epstein, *Mevo'ot Lesifrut Ha-Tannaim*, 65–70.

⁸ *B. Baba Metzia* 59b; *y. Mo'ed Qat.* 3:1, 81d.

⁹ *B. Sanh.* 68a, and compare with *Abot R. Nat.* 25. See also *m. 'Ed.* 1:6; *t. 'Ed.* 1:4; *t. Hal.* 1:10; and see Gilat, *R. Eliezer*, 486 n. 66.

A

Both sectarian and tannaitic law exhibit a stringent approach to the ritual impurity of liquids.¹⁰ 4Q284a 1 1–4¹¹ prohibits the harvesting of תאנים (figs), רמנאים (pomegranates), and possibly also olives,¹² by [one] who has not been brought into the covenant, who is not considered ritually clean and איננו נוגע במשקי הרבים (“[who] may not touch the communal liquids,”) as these fruits will become defiled if their juice comes out when he presses them: ימעכו ויצא משקיהם.¹³

Joseph Baumgarten has already noted the connection between these fragments and the bitter and dramatic dispute attributed by the Babylonian Talmud to Hillel and Shammai with regard to the laws concerning “harvesting grapes for the winepress.”¹⁴ Baumgarten states that, in contrast to tannaitic halakhah, the halakhah appearing in the Qumran fragments does not make the fruits’ susceptibility to impurity conditional on the desire of the owner. However, there is a further interesting parallel between this fragment and an internal Pharisaic dispute that has not as yet been explored. According to sectarian law, even fig and pomegranate juices make the fruits susceptible to uncleanness. Tannaitic law, however, stresses that fruit juices are not included in those liquids that cause susceptibility.

Scripture states: מכל האכל אשר יאכל אשר יבוא עליו מים יטמא וכל משקה אשר ישתה בכל כלי יטמא (“All food therein which may be eaten, upon which water comes, shall be unclean; and all drink in every such vessel that may be drunk shall be unclean”; Lev 11:34). The tannaitic midrash elaborates:

¹⁰ See for example *m. Parah* 8:5–7; *m. Kelim* 8:4; *t. Ṭ. Yom* 1:6; *Rule of the Community* 6:20–21 (text as in E. Qimron and J. H. Charlesworth, “Rule of the Community,” in: *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 1: Rule of the Community and Related Documents* [ed. J. H. Charlesworth; Tübingen: Mohr Siebeck; Louisville: Westminster John Knox, 1994], 28–29). See also Gilat, *R. Eliezer*, 397; Sussmann, “History of Halakha,” 29 nn. 76–77; 66 n. 216; J. M. Baumgarten, “Liquids and Susceptibility to Defilement in New 4Q Texts,” *JQR* 85 (1994–1995): 91.

¹¹ J. M. Baumgarten, “284a. 4QHarvesting,” in *Qumran Cave 4.XXV: Halakhic Texts* (ed. J. M. Baumgarten et al.; DJD 35; Oxford: Clarendon, 1999), 131–33.

¹² Completion of the editor based on the following verbs: ילאצו (press), לגלעם (open them), and on the reconstruction of ד[בב] ([in the olive pr]ess).

¹³ The last quote is from the semi-parallel 4Q274 3 i–ii (Baumgarten et al., DJD 35.106–7), which deals with an herb that is susceptible to impurity because of dew or rain. Similar wording is found in 4Q284a 1 5.

¹⁴ Baumgarten, “Liquids,” 91–100. See Sussmann, “History of Halakha,” 22 n. 53. For the halakhic dispute see *b. Shabbat* 15a, 17a and parallel versions.

אי 'כל משקה', יכול מי תותים או מי פירות או מי רימונים ושאר כל מיני פירות? תלמוד לומר: מים, מה מים מיוחדים שאין להם שם לווי אף אני מרבה הטל והיין והשמץ והדם והדבש והחלב שאין להם שם לווי ומוציא מי תותים ומי רימונים ושאר כל מיני פירות שיש להם שם לווי.

If [Scripture speaks of] “all drink,” might one think [that susceptibility to uncleanness is imparted also by] mulberry juice or fruit juice or juice of a pomegranate and all other sorts of fruit? Scripture says, “Water” [mentioned previously in the same verse]. Just as water is distinctive in that it has no additional name [i.e., it is defined by the term “water” alone, with no accompanying adjective, and is thus considered a liquid with an independent status], so I include dew, wine, oil, blood, honey and milk, which have no additional names, and I exclude *mulberry juice and juice of pomegranates* and of all other sorts of fruit, which do have additional names [i.e., liquids that are named after the fruits they were squeezed from, thus deemed as *not* having an independent status]. (*Sifra, Shemini* 8:1)¹⁵

This is an almost outright polemic against sectarian halakhah, which understands *the very same words* of Scripture, וכל משקה אשר ישתה (“and all drink that may be drunk”) to *include* any kind of liquid. Thus, the *Temple Scroll* states:

וכול אוכל אשר יוצק עליו מ[י]ם יטמא כול המושקה יטמא וכלי חרש יטמאו... והפתוחים יטמאו... כול המושקה אשר בהמה

And any foodstuffs, upon which wa[t]er is poured, shall be unclean; any liquid shall be unclean. And earthen vessels shall be unclean... and the open (vessels) shall be unclean... all the liquid which is in them.¹⁶

Fragment 4Q274 3 ii 11–12, as reconstructed by the editor, also appears to state: [כול המשקה] יטמא... (“[... any] liquid be[comes unclean]”).

¹⁵ Translation according to J. Neusner, *Sifra: An Analytical Translation* (3 vols.; BJS 138–140; Atlanta: Scholars Press, 1988), 2:203, with alterations. See also the reasoning in *t. Shabbat* 8:23–28.

¹⁶ *Temple Scroll* 49:7–10, E. Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* (Beer Sheva: Ben Gurion University of the Negev Press; Jerusalem: Israel Exploration Society, 1996), 71; translation cited from Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: Israel Exploration Society, 1977–1983), 2:213–14, with a slight revision: In his translation, Yadin incorrectly made a connection between the impure liquids in this chapter and the passage regarding מוצקות (poured liquids), in *Miqsat Ma'aseh Ha-Torah*, which at that time had not yet been published. See Yadin, *ibid.*, 213, commentary to lines 7–8. See also Sussmann, “History of Halakha,” 29 n. 77. Yadin also explained that *mushkeh* should be understood in the passive form, referring to a food that is susceptible to defilement by coming into contact with a liquid. But see Ben Hayyim (Z. Ben Hayyim, “Old but New from the Secrets of the Judean Desert,” *Leshonenu* 42 [1978]: 279–80 [Hebrew]), followed by Baumgarten (“Liquids,” 92 n. 5), who believes that this term refers to the noun משקה (a liquid), but that it was pronounced as the word מושקה.

As we have seen, in contrast to this sectarian approach, the Pharisaic halakhah stresses that only water and six other liquids that have an “independent” status (“no additional names,” as the *Sifra* puts it), such as oil, wine, honey and so on, make food susceptible to uncleanness. Indeed, in the previously-mentioned dispute described in the Babylonian Talmud,¹⁷ Hillel and Shammai differed only with regard to the liquids exuded by olives and grapes, namely oil and wine, but not with regard to liquids from other fruits, in accordance with the Pharisaic halakhic principle:

Said Hillel to Shammai: Why must one harvest grapes in purity, yet not gather [olives] in purity? If you provoke me, he replied, I will decree uncleanness in the case of olive gathering, too. (*b. Shabbat* 17b)¹⁸

Nevertheless, in relation to this question, there still remains an echo of the sectarian approach *within* the tannaitic world. It is no coincidence that the divergent view is that of none other than R. Eliezer, who disagrees with the halakhah that limits susceptibility to defilement to seven liquids,¹⁹ explaining the verse “and all drink that may be drunk” according to its literal meaning:²⁰

דבש תמרים ויין תפוחים וחומץ סיתווניות ושאר כל מי פירות . . . ר' אליעזר מטמא משם משקה. אמ' ר' יהושע: לא מנו חכמ' שבעה משקים כמוני²¹ פטמים! אלא אמרו: שבעה משקין טמאין ושאר כל המשקין טהורין.

Date honey, cider, winter-grape vinegar and all other fruit juices... R. Eliezer²² declares them subject to uncleanness *under the law regarding liquids*. R. Yehoshua stated: The sages did not take count of seven liquids

¹⁷ See above, p. 70.

¹⁸ Translation according to I. Epstein, ed., *The Babylonian Talmud: Shabbat* (London: Soncino Press, 1961), *ad loc.*, with alterations.

¹⁹ In Gilat's opinion, *R. Eliezer*, 396–98, 438–39, the halakhah of R. Eliezer is the earlier halakhah, and the use of fruit juices, which became prevalent “with the development of society to a higher level of luxury” (p. 397), is what led to limiting the number of liquids to seven.

²⁰ Regarding R. Eliezer's way of explaining the word *kol* ‘all’, see *b. Pesahim* 43b; and see Gilat, *R. Eliezer*, 86. R. Eliezer's opinion was not taken literally in *t. Terumot* 9:8, but this seems to be an apologetic for this sage's extreme, simplistic approach, particularly because of the sensitivity surrounding this halakhah. Cf. n. 50 below, on the Babylonian Talmud's reaction to R. Eliezer's literal interpretation of the verse, “an eye for an eye.”

²¹ This is the way the text should read. In Ms. Kaufmann, the *vav* became a *yod* and the *mem* has the vowel *hirik*, and the first letter may have been corrected to a *bet*—במיני.

²² In Ms. Kaufmann the name appears as “R. Elazar,” but the vocalization is that of “Eliezer.” However, in the beginning of this same mishnah (דבש תמרים ויין תפוחים) וחומץ סיתווניות ושאר כל מי פירות של תרומה רבי אליעזר מחייב קרן וחומש ורבי יהושע (פוטור) the reading is “Eliezer,” and based on the dispute with R. Yehoshua and *t. Terumot* 8:9, there is no doubt that this is the correct reading.

like those that count up spices! But they said: Seven liquids are capable of acquiring uncleanness; *all other liquids* are clean. (*m. Terumot* 11:2)

This mishnah indicates some degree of resentment that R. Eliezer aroused in his opponent, R. Yehoshua, an eminent representative of the Beit Hillel mainstream (“The sages did not take count of seven liquids like those that count up spices!”). Both R. Eliezer and R. Yehoshua allude to the biblical phrase **כל משקה** (“all drink”). R. Eliezer adheres to the plain meaning of the words (**משם משקה**, “under the law regarding liquids”), just as the sect did, ruling that anything that can be called a liquid can cause susceptibility. In response, R. Yehoshua also uses the scriptural words “all drink/liquid” saying: “**ושאר כל המשקין טהורים**”—“all other liquids are clean,” to reject that very same interpretation.

B

Fragment 4Q270 4,²³ which deals with the *sotah*, the woman suspected of infidelity (Num 5:11–31), begins with the following lines:

יבא איש אשה להאלוה []
הרואה אם יראה אשת []
...רעהו.]

[] a man brings a woman to have her tried by the curse
[] who sees, if he sees [his neighbor's] wife

The case of the *sotah* in the Bible presents a supernatural, extra-judicial procedure motivated by a husband's “spirit of jealousy” (Num 5:14). The woman's guilt is determined in the Tabernacle and not in the courts, by magical rather than judicial means. However, tannaitic law imposed judicial elements upon the procedure, and made mandatory the presentation of objective proof and the involvement of a court, judges and witnesses. The procedure was restricted, *inter alia*, to cases in which, although the husband had warned his wife in front of two witnesses that she should not be alone with a certain man, she was subsequently seen going into a place of seclusion with him by two witnesses.

In spite of its fragmentation, the Qumranic text appears to be referring to the **סתירה**—the case of the *sotah* being alone with a strange man. The Qumranic approach requires that the woman be seen going

²³ “4QDamascus Document,” in *Qumran Cave 4.XIII: The Damascus Document* (ed. J. M. Baumgarten; DJD 18; Oxford: Clarendon, 1996), 152.

into seclusion with the strange man prior to the initiation of the biblical ritual of inquiry; the biblical “spirit of jealousy” that overpowered the husband was not deemed sufficient. Thus, as in other cases, some halakhic development of scriptural law did take place in sectarian law. On the other hand, there is not a full judicial development in the extant text, as compared with tannaitic halakhah. The customary requirement of two witnesses is lacking. All that was necessary was that someone “see” the woman going off alone with another man. This is exactly the opinion of R. Eliezer,²⁴ as brought in the mishnah:²⁵

המקנא לאשתו רבי אליעזר אומר מקנא לה על פי שנים ומשקה על פי עד אחד או על פי עצמו רבי יהושע אומר מקנא לה על פי שנים ומשקה על פי שנים:

When a husband gives expression to his jealousy or suspicion of his wife’s fidelity by warning her of unbecoming conduct, R. Eliezer says: He must so warn her before two witnesses, and he must cause her to drink *even on the evidence of one witness* [as to the secret liaison] or on his own evidence. R. Yehoshua says: he must so warn her before two witnesses and make her drink on the testimony of two witnesses [as to the secret liaison]. (*m. Sotah* 1:1)

Like CD, R. Eliezer does not require two witnesses who saw the woman going into seclusion with a strange man. One witness suffices for him, even if this witness is the husband himself.²⁶ This approach is closer to the plain meaning of the biblical text, which mentions the “spirit of jealousy” that overtakes the husband without calling for objective proof, such as that furnished by other witnesses. This opinion of R. Eliezer’s is an individual opinion that was rejected outright. The passage from *m. Sotah* 6:3 below presents the opinion of R. Yehoshua as an anonymous, self-evident halakhah:²⁷

²⁴ As alluded to by Baumgarten, DJD 18.153.

²⁵ There is also a different version of R. Eliezer’s view. R. Yose son of R. Yehudah transmits a tradition, attributed to R. Eliezer, which reverses the terms of *m. Sotah*: The husband may warn her before one witness, but must cause her to drink on the evidence of two witnesses. See *t. Sotah* 1:1, which is cited in both Talmuds as well. Disputes among later sages as to the true opinion of R. Eliezer and deliberate changes to his sayings are widespread. This phenomenon is another outcome of the reservations with which this outcast scholar was regarded. See J. N. Epstein, *Mevo’ot Lesifrut Ha-Tannaim*, 66.

²⁶ See *t. Sotah* 1:1, and the commentary of R. Ovadia of Bartenura on this mishnah.

²⁷ See the Jerusalem Talmud ad loc.: מתניתא דרבי יהושע—“the mishnah is according to R. Yehoshua’s opinion” (*y. Sotah* 6:3, 21a). Evidently, this statement is not acceptable according to the other version of R. Eliezer’s opinion (see n. 25 above), as noted in *y. Sotah*, *ibid.*

שהיה בדין ומה אם עדות ראשונה שאין אוסרתה איסור עולם אינה מתקיימת בפחות משנים, עדות אחרונה שאוסרתה איסור עולם אינו דין שלא תתקיים בפחות משנים? תלמוד לומר (במדבר ה') ועד אין בה, כל עדות שיש בה. קל וחומר לעדות הראשונה מעתה: ומה אם עדות אחרונה שאוסרתה איסור עולם הרי היא מתקיימת בעד אחד, עדות הראשונה שאין אוסרתה איסור עולם אינו דין שתתקיים בעד אחד? תלמוד לומר (דברים כ"ד) כי מצא בה עדות דבר. ולהלן הוא אומר (שם י"ט) על פי שנים עדים יקום דבר. מה להלן על פי שנים עדים אף כאן על פי שנים עדים.

Surely, the deduction should have been thus! Seeing that the first evidence [that she had a secret liaison] which does not prohibit her for all time *can not be upheld by less than two witnesses*, should not the inference therefore be that the latter testimony [i.e. that she had actually committed adultery] which renders her forbidden forever can not be sustained by fewer than two witnesses! Scripture teaches (in Numbers 5), “And there be not witness against her”—whatever testimony there be against her. From this to the preceding evidence is a deduction from minor to major: Now, if the latter evidence which makes her forbidden for all time can be sustained by one witness, should not the inference be that the former testimony which does not render her forbidden for ever can also be upheld by one witness? But Scripture teaches (Deut 24:1) “Because he hath found some unseemly *thing* in her,” and in another verse (Deut 19:15) it says, “At the mouth of two witnesses... shall a matter [literally: *thing*] be established”; just as there it must be at the mouth of two witnesses, so here too, it must be at the mouth of two witnesses.

The mishnah begins with the obvious assumption that the “first evidence,” namely, pertaining to the secret liaison, cannot be upheld with less than two witnesses, as stated by R. Yehoshua. Further on, the mishnah brings the opinion of R. Eliezer, without mentioning his name, as an incorrect argument, (“should not the inference be that the former testimony... can also be upheld by one witness?”) and immediately rejects this opinion. Might there be a connection between the rejection of this ruling and the resemblance it bears to sectarian halakhah?

C

The *Temple Scroll* 63:10–15 paraphrases the laws of Deut 21:10–14 regarding the beautiful captive woman.²⁸ Scripture instructs the captive: ... וגלחה את ראשה ועשתה את צפרניה והסירה את שמלת שביה מעליה. (“and she shall shave her head and pare her nails; and she shall put the

²⁸ Qimron, *Temple Scroll*, 88; Yadin, *Temple Scroll*, 2:286.

raiment of her captivity from off her...”; Deut 21:12–13). Yigael Yadin notes, however, that in the *Temple Scroll*, (as well as in the Septuagint) it is the *husband-to-be* who must perform all of these tasks:

... וגלחתה את ראושה ועשיתה את צפורני{י}ה והסירותה
את שלמות שביה מעליה... .

... and *you* shall shave her head and pare h{e}r nails and you shall put off her captive’s garb... (63:12–13)

Yadin comments that this difference also proves that, according to the author of the scroll, *ועשיתה את צפרניה* meant cutting her nails and not growing them.²⁹ In this context, Yadin cites the dispute between R. Eliezer and R. Akiva:

רבי אליעזר אומר: תקוץ, רבי עקיבא אומר: תגדל. אמר רבי אליעזר: נאמרה עשיה בראש ונאמרה עשיה בצפרנים, מה עשיה האמורה בראש העברה, אף עשיה האמורה בצפרנים העברה. רבי עקיבא אומר: נאמרה עשיה בראש ונאמרה עשיה בצפרנים, מה עשיה האמורה בראש ניוול, אף עשיה האמורה בצפרנים ניוול

R. Eliezer said: “She shall cut them.” R. Akiva said: “She shall let them grow.” R. Eliezer said: “An act was mentioned in respect of the head, and an act was mentioned in respect of the nails; as the former signifies removal, so does the latter also signify removal. R Akiva said: “An act was mentioned in respect of the head, and an act was mentioned in respect of the nails; just as the act mentioned in respect of the head is for unsightliness, so the act mentioned in respect of the nails is for unsightliness. (*Sifre Deut.* 212; *b. Yevamot* 48a)³⁰

Lawrence Schiffman states that this dispute is only one of several controversies over the issue of the captive woman, each representing two different tannaitic approaches to the matter. R. Akiva’s approach, which is clearly a sharp departure from the *plain* meaning of the verses, lends an element of censure to the neutral biblical description of marriage to the captive. It regards the ritual procedure described in Scripture “as an attempt to make the captive woman repugnant to the husband-to-be.”

²⁹ Y. Yadin, *Temple Scroll*, 1:364.

³⁰ *Sifre on Deuteronomy* (ed. L. Finkelstein; New York: The Jewish Theological Seminary of America, 1969, 245–46. Translation by Yadin, *Temple Scroll*, 1:364, with additions. For the different interpretations reflected in the translation of the biblical words “ועשיתה את צפרניה” in Philo and Josephus, see L. H. Schiffman, “Laws Pertaining to Women in the *Temple Scroll*,” in *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant and U. Rappaport; STDJ 10; Leiden: Brill; Jerusalem: The Hebrew University Magnes Press and Yad Izhak Ben-Zvi, 1992), 219 n. 45.

The other approach, that of R. Eliezer, views the very same procedure as “designed to cleanse and purify.”³¹ Here, too, R. Eliezer and sectarian halakhah share the same attitude, both adhering to the more literal sense of Scripture.³² And here again, R. Eliezer’s interpretation was eventually rejected by rabbinic halakhah.

D

Fragment 4Q271 3 prohibits marriage to a maiden or a widow who is suspected of improper sexual behavior:³³

אל יבא איש ...
 [אשה בבֵּרית (?) תְּקוּ] דש אשר ידעה לעשות מעשה בדבר אשר ידעה
 [מעשה בבית] אביה או אלמנה אשר נשכבה מאשר התארמלה וכול
 [אשר עליה ש]ם רע בבתוליה בבית אביה אל יקחה איש כי אם
 [בראות נשים] נאמנות וידעות ברורות ממאמר המבקר אשר על
 [הרבים ואת] ר יקחנה ...

Let no man bring

[a woman into the ho]ly [covenant?] who has had sexual experience,
 whether she had such

[experience in the home] of her father or as a widow who had intercourse
 after she was widowed. And any

[woman upon whom there is a] bad [na]me in her maidenhood in her
 father’s home, let no man take her, except

[upon examination] by trustworthy [women] of repute, selected by
 command of the Supervisor over

[the Many. After]ward he may take her . . .

Aharon Shemesh interprets this fragment as constituting a prohibition, which derives from the laws of marital relationships addressed to the priests in Lev 21:7: “They shall not take a woman that is a harlot.”³⁴ The sect broadened the scope of this prohibition, as they did in other cases, to include all of Israel. They apparently included in the definition

³¹ Schiffman, *Laws Pertaining to Women*, 218–20. See also: D. Stern, “The Captive Woman: Hellenization, Greco-Roman Erotic Narrative, and Rabbinic Literature,” *Poetics Today* 19 (1998): 91–127.

³² See Gilat, *R. Eliezer*, 69–70, 75.

³³ Text and translation according to Baumgarten, DJD 18.175–76.

³⁴ A. Shemesh, “4Q271.3: A Key to Sectarian Matrimonial Law,” *JJS* 49 (1998): 244–63, pp. 246–47. The translation of the *Sifra* passage which follows is taken from this article, p. 247.

of a “harlot,” i.e., one who was prohibited from marriage, any woman who had performed **מעשה בדבר** (“an act of that matter”)—in other words, who had engaged in sexual relations outside the matrimonial context. Shemesh suggests that this definition is common to both the sect and to R. Eliezer, as can be learned from the *Sifra* (*Emor* 1:7):

אשה זונה רבי יהודה אומר זונה זו איילונית וחכמים אומרים אין זונה אלא גיורת ומשוחררת ושנבעלה בעילת זנות. רבי אליעזר אומר אף הפנוי הבא על הפנויה שלא לשם אישות.

They shall not take a woman that is a harlot. R. Yehudah says: This refers to a barren woman. The sages say: “Harlot” refers to a woman who has converted, or a freed bondwoman, or a woman who has had sexual relations licentiously. R. Eliezer says: Even a case in which an unencumbered man has had sexual relations with an unencumbered woman not for the sake of bringing about a marital relationship, [the upshot is that the woman falls into the category of harlot].

If Shemesh’s analysis is correct, this is a further example of an ancient, stringent approach to matrimonial law that was shared by both sectarian halakhah and R. Eliezer.

E

After having dealt with examples taken from the laws of ritual purity and matrimony, we will now turn to rulings concerning the festivals. In the Sabbath code of the *Damascus Document* we read:

**אל יילד איש בהמה ביום השבת ואם תפיל אל בור
ואל פחת אל יקימה בשבת³⁵**

Let no man deliver (the young of) an animal on the Sabbath day. And if it falls into a pit or a ditch, let him not raise it on the Sabbath.³⁶

Although these prohibitions receive no explicit mention in Scripture, the same rulings appear in rabbinic literature.³⁷ R. Eliezer and R. Yehoshua

³⁵ CD 11:13–14.

³⁶ Translation from J. M. Baumgarten and D. R. Schwartz, “Damascus Document,” in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations. Vol. 2: Damascus Document, War Scroll, and Related Documents* (ed. J. H. Charlesworth; The Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: Mohr Siebeck; Louisville: Westminster John Knox Press, 1995), 49.

³⁷ *T. Shabbat* 14:3 and parallels; *m. Betzah* 3:4. For discussion and bibliography see L. H. Schiffman, *The Halakhah at Qumran* (SJLA 16; Leiden: Brill, 1975), 122.

debated a related matter, namely the lifting of an animal from a pit on a festival:

אותו ואת בנו שנפלו לבור, ר' ליעזר או': מעלה את הראשון על מנת לשוחטו ושחטו, והשיני עושה לו פרנסה במקומו בשביל שלא ימות. ר' יהושע או': מעלה את הראשון על מנת לשוחטו, ואינו שוחטו, ומערים, ומעלה את השני. רצה שלא לשחוט אחד מהן—הרשות בידו.

If an animal and its young (which may not both be slaughtered in one day [see Lev 22:28]) have fallen into a pit (on a festival), R. Eliezer says: One lifts out the first on condition of slaughtering it, and one must actually slaughter it. The second he feeds where it is, in order that it may not die. R. Yehoshua says: One lifts out the first in order to slaughter it, but does not slaughter it, and uses legal evasion [in not slaughtering the first] and raises the second [ostensibly in order] to slaughter it; if he does not want to slaughter one of them—he is not bound to. (*t. Betzah* 3:2)³⁸

Although lifting an animal from a pit on the Sabbath or on a festival is forbidden, one may in fact lift an animal from a pit on a festival if it is fit for slaughter, on the condition that one intends to eat it on the same day, since preparing food on a festival is permitted. In the case described above, two animals fell into a pit, only one of which may be slaughtered on that day. R. Yehoshua employs legal evasion in order to save both animals. He permits each animal to be lifted out, pretending that only the one currently being lifted is intended for slaughter, and eventually leaving one of them alive.³⁹ However, R. Eliezer adheres to the straightforward, plain halakhah and permits only one animal to be lifted from the pit, to be slaughtered and eaten afterwards. There is no exact parallel to this halakhah in sectarian writings. Nevertheless, we see that the sect placed particular emphasis on this marginal, extrascriptural prohibition against lifting an animal from a pit on the Sabbath and on festivals. R. Eliezer as well was inclined to be stringent with regard to the details of this prohibition, which was of interest primarily to the sect, as noted already by Gilat.⁴⁰ Thus in this case as well, the general characteristics of R. Eliezer's rulings, such as simplicity, non-elaboration of Scripture and stringency, are reminiscent of sectarian halakhah.

³⁸ Translation according to Gilat, *R. Eliezer*, 323, with alterations.

³⁹ According to some commentators, R. Yehoshua even permits leaving both animals alive! See S. Lieberman, *Tosefta Ki-fshutah* (Jerusalem: The Jewish Theological Seminary of America, 1992), 5:965–66; Gilat, *R. Eliezer*, 323 n. 125.

⁴⁰ Gilat, *R. Eliezer*, 322–24. Another interesting reference to this halakhic issue appears in Matt 12:11–12 / Luke 14:5. I thank Dr. Ruth Clements for this reference.

F

A famous halakhah found in MMT⁴¹ would appear, according to the editors' interpretation, to prohibit the acceptance of offerings from Gentiles.⁴² Long before this scroll came to light, Israel Knohl postulated, on the basis of later aggadic midrashim and Karaite literature, the existence of a halakhic tradition from the Second Temple era that prohibited the receiving of sacrifices from Gentiles.⁴³ This tradition is contrary to accepted tannaitic halakhah. In commenting on Knohl's hypothesis, Gilat demonstrates that this exceptional opinion had already surfaced in tannaitic literature.⁴⁴ In *m. Parah* 2:1 we read: "R. Eliezer says: [The red heifer] may not be purchased from Gentiles; and the sages declare it permissible." Concerning this mishnah, a *baraita* brought in the Babylonian Talmud adds: "Thus R. Eliezer applied this disqualification to all other kinds of sacrifices."⁴⁵ According to R. Eliezer, even sacrifices brought by Jews may not be purchased from Gentiles. Here too, we find the stringent, dissenting, individual opinion of R. Eliezer. Later sages of the Talmud tried to guess, "What would his [i.e., R. Eliezer's] colleagues answer him in refutation of his opinion?"⁴⁶ The question indicates that all of R. Eliezer's "colleagues" disagreed with him. The common opinion of the "colleagues" is also represented in an anonymous halakhah that indeed permitted the acceptance of sacrifices from Gentiles: "All individual and communal sacrifices may come from the Land of Israel and from outside the Land of Israel, even from Gentiles."⁴⁷ In this case as well, R. Eliezer's opinion was relegated to the sidelines of tannaitic literature until it all but disappeared. If the interpretation of the above MMT passage is correct, then this ruling demonstrates yet another similarity between R. Eliezer and sectarian halakhah. This politically-charged conception may have been the view of broader priestly circles,

⁴¹ Qimron and Strugnell, DJD 10.46.

⁴² Qimron and Strugnell, DJD 10.47, 149–50. For a different suggestion for the meaning of the text, see J. M. Baumgarten, "The 'Halakha' in *Miqsat Ma'ase Ha-Torah* (MMT)," *JAOs* 116 (1996): 513.

⁴³ I. Knohl, "The Acceptance of Sacrifices from Gentiles," *Tarbiz* 48 (1979): 341–45 (Hebrew).

⁴⁴ Y. D. Gilat, "A Comment to 'The Acceptance of Sacrifices from Gentiles,'" *Tarbiz* 49 (1980): 422–23 (Hebrew). See also Gilat, *R. Eliezer*, 450–51.

⁴⁵ *B. Avodah Zarah* 23a. See also *y. Avodah Zarah* 2:1, 40c.

⁴⁶ *B. Avodah Zarah* 24a.

⁴⁷ See *t. Menahot* 9:1, and see Gilat, *R. Eliezer*, 450–51.

since those who abolished the offering of sacrifices on behalf of Rome on the eve of the great revolt were priests.⁴⁸

G

We will conclude with an example taken from judicial law. According to a *baraita* in the Babylonian Talmud,⁴⁹ R. Eliezer interpreted the words “an eye for an eye” (Exod 21:24; Lev 24:20) “literally” (ממש).⁵⁰ There are no vestiges of any rulings concerning this pentateuchal verse in Qumranic writings. However, it should be noted that *Scholium O* of *Megillat Ta’anit* attributes the literal interpretation of “an eye for an eye” to a dissenting sect:⁵¹

בארבעה בתמוז עדא ספר גזרתא: [...] ספר גזרתא—שהיו בייתוסין או: עין תחת עין, שן תחת שן. הפיל שן חבירו, יפיל שינו. סימא עין חבירו, יסמא את עינו ושניהן שוין... אמרו להן חכמים: והלא כבר נאמר: והתורה והמצוה אשר כתבתי להורותם, וכת': ועתה כתבו לכם את השירה הזאת ולמדה את בני ישראל שימה בפייהם. ולמדה—זו מקרא. שימה בפייהם—אלו הלכות.

On the fourth of Tamuz was the Book of Decrees removed: [...] The Book of Decrees—The Boethusians would say: An eye for an eye, a tooth for a tooth. If one had knocked his fellow’s tooth, his own tooth should be knocked. If one had blinded his fellow’s eye, his own eye should be blinded, and they [i.e. the aggressor and the victim] will be equal... The Rabbis said to them: Has it not been said already [in Scripture]: “and the Law and the commandment, which I have written down, that thou mayest teach them” (Exod 24:12); and it is further written: “Therefore write ye this song for you, and teach thou it the children of Israel; put it in their mouths” (Deut 31:19)? [That is to say]: “teach it”—that is the Written Law. “Put it in their mouths”—these are the halakhot [the Oral Law].

Scholarship on this issue offers contradictory hypotheses regarding the time and credibility of the *Scholium* in general and the reliability of this

⁴⁸ *Bḥ* 2.408. I thank Prof. D. R. Schwartz for this observation.

⁴⁹ *B. Baba Qamma* 84a. See also *Mekhilta d’Rabbi Ishmael, Nezikin, Mishpatim* 8 (ed. S. Horowitz and I. A. Rabin; Jerusalem: Shalem, 1997; repr. of 1931 ed.), 277. Note the different versions and the editors’ notes in the *Mekhilta*.

⁵⁰ The anonymous “*stan*” in *b. Baba Qamma* 84a avoids the plain meaning of R. Eliezer’s exegesis of Scripture: “Literally, you say? Could R. Eliezer be against all those Tannaim [enumerated above]?” and suggests several somewhat forced interpretations of his opinion. Cf. Geiger, *Kevutzat Ma’amarim*, 88–89.

⁵¹ See V. Noam, *Megillat Ta’anit: Versions, Interpretation, History, with a critical edition* (Jerusalem: Yad Izhak Ben-Zvi, 2003), 77–79, 209–13 (Hebrew). For bibliography concerning the “*Lex Talionis*,” see p. 211 n. 43.

comment in particular.⁵² However, my research indicates that authentic ancient traditions were indeed preserved in both versions of the *Scholium to Megillat Ta'anit*, and there is evidence as to the reliability of this individual tradition as well.⁵³ This source may thus serve as a further indication of the similarities between R. Eliezer's halakhic approach and that of the sect.

R. Eliezer and the Qumranites: General Characteristics

Following this study of specific halakhic examples, we will now broaden the scope of our perspective to include more general characteristics of R. Eliezer's halakhic approach. Can we find any traceable resemblance between the underlying *Weltanschauung* of R. Eliezer and that of the Qumranites? In addition to the common characteristics noted in the above comparisons, such as stringency, simplicity and adherence to the plain meaning of Scripture, other interesting similarities may be observed as well.

Daniel Schwartz, in an attempt to define the general nature of sectarian (and Sadducean) law, argues that the sect and the Sadducees "seem to have been mainly realists, while rabbis were mainly nominalists."⁵⁴ Schwartz defines the "realism" with which he characterizes sectarian law to mean that "law must conform to nature."⁵⁵ In other words, halakhah is meant to reflect objective, absolute, a priori truths about reality, rather than human consensus. It would appear that such a description might fit R. Eliezer's approach as well. Gilat maintains, based on R. Eliezer's position on measurements, that in R. Eliezer's opinion, "one becomes liable to penalty on the Sabbath for the most minute quantity, the only condition being that this must be a *natural* and independent unit (e.g. one stitch, but not half stitch). The sages,

⁵² See also V. Noam, "The Scholium to *Megillat Ta'anit*: Towards an Understanding of its Stemma," *Tarbiz* 62 (1993): 55–99, esp. 56–58, 71–74 (Hebrew).

⁵³ For a detailed discussion of the authenticity of this commentary, see V. Noam, "From Philology to History, the Case of *Megillat Ta'anit*," in *Recent Developments in Midrash Research: Proceedings of the 2002 and 2003 SBL Consultation on Midrash* (ed. L. Teugels and R. Kern-Ulmer; Judaism in Context 2; Piscataway, N.J.: Gorgias, 2005), 53–95.

⁵⁴ D. R. Schwartz, "Law and Truth: on Qumran-Sadducean and Rabbinic Views of Law," in Dimant and Rappaport, *The Dead Sea Scrolls, Forty Years of Research*, 229–40. The citation is from p. 230.

⁵⁵ *Ibid.*

however, insist on a *definitely fixed norm*, i.e. two units: one who removes two hairs, weaves two threads, writes two characters and so on....” (my emphasis, V.N.). According to Gilat, R. Eliezer is concerned with “defining measurements in accordance with the specific characteristics of the act or object, rather than by applying a single inflexible standard to numerous cases.”⁵⁶ The difference between these two attitudes, that of R. Eliezer and that of mainstream sages, is an impressive example of the realism vs. nominalism parameter described by Schwartz above.

One of the most famous stories that reflect the crisis in the relationship between R. Eliezer and the rabbinic establishment is the story of his excommunication.⁵⁷ The Jerusalem and Babylonian Talmuds present two different accounts of this event.⁵⁸ The origin and development of this magnificent story, as well as its possible Babylonian reworking, are not within the scope of the present discussion. However, a dominant motif in both versions is R. Eliezer’s attempt to obtain divine confirmation of his halakhic view, by inducing supernatural events. The carob tree was uprooted, the water in the aqueduct flowed backwards, the walls of the schoolhouse tilted; a voice from heaven even declared explicitly: הלכה כאליעזר בני—“The law follows Eliezer, my son.” Nevertheless, the sages insisted: לא בשמים היא—“It is not in heaven” (Deut 30:12). What is the fundamental difference in worldview that the narrator is trying to convey here, cloaked in legend? It seems that two major issues are the subjects of debate. One is quite obvious, the other frequently neglected in scholarly discourse. The first, clear issue of dispute is the source of authority. According to the majority of the sages, in contrast to R. Eliezer’s opinion, halakhah is a product of human activity, and it is determined by a human process, not by divine, supernatural events. However, another distinction is encapsulated in this story. It is an outstanding illustration of the same difference in approach described above, i.e. nominalism vs. realism. The mass of the sages viewed halakhah as the *innovative product of a legal process*, dependent on a coincidental majority of human opinions. This legal process does not *reveal* any preexistent halakhic truth, but rather *creates* it! For this reason, the sages disregarded even truth revealed by miracles. In contrast, R. Eliezer ignored the legal

⁵⁶ Gilat, *R. Eliezer*, 40.

⁵⁷ See n. 8 above.

⁵⁸ In the Jerusalem Talmud it is not completely clear that the reason for the excommunication is the dispute over “Akhnai’s oven,” as in the Babylonian parallel. See the discussion of J. Neusner in *Eliezer Ben Hyrcanus*, 1:422–27; 2:410–11.

procedure and searched for clues to *absolute, pre-existent truth* in nature itself.⁵⁹ The carob tree and the stream of water, despite the fact that they operate here *contrary* to natural law, are nevertheless clear symbols of this total, unconditional, truth, based on the observable operations of nature.

Let us return now to the first motif: the source of authority. Our story implies that R. Eliezer's perception of the sources of the authority of oral Torah differed from that of the mainstream. In R. Eliezer's opinion, oral Torah derived continuously directly from a divine source, and may be discerned through revelation. This very issue appears to be one of the most significant differences between the sect and the Pharisees. The Pharisaic world makes a very clear distinction between the *written* Torah, given by heaven, and the oral Torah, which is subordinate to human discourse. Whereas the tannaitic literature clearly differentiates between the written Torah and the oral Torah, forbidding the writing of the latter and the reciting of the former,⁶⁰ sectarian halakhah does not refrain from weaving its own exegeses and additions into the scriptures, as in the case of the *Temple Scroll*, or at the very least, from presenting its exegeses as the creations of divinely inspired persons. "The Covenanters perceived themselves as standing within the framework of the biblical period... the Qumran Covenanters did not subscribe to the idea that the biblical era had been terminated. . . ."⁶¹ I am not suggesting that R. Eliezer's views were identical to the extreme ideas of the sect in this respect. However, his attitude to the origins and authority of the oral Torah appears not to be any closer to the mainstream Pharisaic concept than to the sectarian approach. This may explain the harshness with which R. Eliezer was treated, and the fact that, according to both Talmuds, all his "purities," i.e., all the foods and dishes he had ever defined as pure, were burnt(!) in front of him. Even if the sages considered R. Eliezer wrong in the

⁵⁹ For a similar example, see Schwartz, "Law and Truth," 234–35.

⁶⁰ *B. Gitin* 60b. See Y. Sussmann, "כוחו של קוצו—כח פשוטה כמשמעה—תורה שבעל פה" in *Talmudic Studies 3: Dedicated to the Memory of Professor Ephraim E. Urbach* (ed. Y. Sussmann and D. Rosenthal; 2 vols.; Jerusalem: The Hebrew University Magnes Press, 2005), 1:209–384 (Hebrew).

⁶¹ See S. Talmon, "The Textual Study of the Bible—A New Outlook," in *Qumran and the History of the Biblical Text* (ed. F. M. Cross and S. Talmon; Cambridge, Mass.: Harvard University Press, 1975), (321–400), pp. 378–79. A. Shemesh and C. Werman, "Halakha at Qumran: Genre and Authority," *DSD* 10/1 (2003):104–29, have recently grouped the Qumran halakhic writings into two different categories, one in which halakhah is presented as divine revelation, the other in which halakhah is attributed to inspired human activity.

single halakhic case described in the above story, why should his other purities have been disqualified?⁶² This episode is reminiscent of a very similar reaction of the sages, this time in a sectarian context: the Tosefta reports that on one occasion the ashes of the rare and expensive red heifer, which were prepared in perfect purity, were thrown away only because they were prepared in accordance with the stringent demands of sectarian halakhah.⁶³ The total disqualification of R. Eliezer may have been a similar form of countermeasure against a semi-sectarian worldview, which, this time, threatened from within.

Conclusion

Scholars have tended to emphasize the differences that exist between Qumranic sectarian law and dissenting, seemingly monolithic Pharisaic approaches preserved in rabbinic literature. However, these approaches, as reflected in tannaitic literature, for the most part, echo majority opinions that crystallized and were formulated in the later tannaitic period. I have argued that a search for fringe opinions and polemical disputes among the early Tannaim, prior to the crystallization of accepted halakhic axioms, may reveal the existence of semi-sectarian ideas within rabbinic circles. Furthermore, disputes that took place within the rabbinic world often run parallel to those that took place earlier between the Pharisees and adversaries from without. Thus, sectarian halakhah can shed new light on later internal rabbinic conflicts and their unexpected bitterness.

⁶² Rashi's commentary on s.v. "כל טהרות שטיהר ר"א" ("all the purities that R. Eliezer defined," *b. Baba Metzia* 59b), does not seem to conform to the plain, original meaning of the story.

⁶³ *T. Parah* 3.6.

RECONSTRUCTING QUMRANIC AND RABBINIC WORLDVIEWS: DYNAMIC HOLINESS VS. STATIC HOLINESS

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Introduction

Since the publication of the *Temple Scroll* and MMT it has been clear that the Qumran sectarians followed a stricter halakhic approach than the Pharisees and rabbis.¹ But in what ways were the Qumranites stricter and why? During the last decade several attempts have been made to define the differences between these two types of “halakhic mind.” Knohl argued that the Pharisees encouraged the participation of the laity in the Temple cult whereas the Qumranites kept them away from the sacred realm; D. R. Schwartz pointed out certain cases in which the Qumranites followed a “realistic” approach to halakhah, as opposed to the rabbinic “nominalistic” approach.² Henshke has shown that the

¹ Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: Israel Exploration Society and the Shrine of the Book, 1977 [Hebrew]; 1983 [English]; the citations in this paper refer to the Hebrew edition); J. M. Baumgarten, “The Pharisaic-Sadducean Controversies about Purity and the Qumran Texts,” *JJS* 31 (1980): 157–70; L. H. Schiffman, “The *Temple Scroll* and the System of Jewish Law of the Second Temple Period,” in *Temple Scroll Studies: Papers Presented at the International Symposium on the Temple Scroll, Manchester, 1987* (ed. G. J. Brooke; JSPSup 7; Sheffield: JSOT Press, 1989), 239–55; E. Qimron and J. Strugnell, eds., *Qumran Cave 4.V: Miqsat Ma’ase Ha-Torah* (DJD 10; Oxford: Clarendon, 1994), 10; Y. Sussmann, “The History of the Halakha and the Dead Sea Scrolls: Preliminary Talmudic Observations on *Miqsat Ma’ase Ha-Torah* (4QMMT),” *Tarbiz* 59 (1989–1990): 11–76 (Hebrew; a briefer English version appears under the same title in Qimron and Strugnell, DJD 10.179–200). These studies are of the opinion that the rabbis continued to develop Pharisaic halakhah. For rabbinic evidence that supports this view see E. Rivkin, “Defining the Pharisees: The Tannaitic Sources,” *HUCA* 40–41 (1969–1970): 205–49.

² I. Knohl, “Post-Biblical Sectarianism and the Priestly Schools of the Pentateuch: The Issue of Popular Participation in the Temple Cult on Festivals,” in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March, 1991* (ed. J. Trebelle Barrera and L. Vegas Montaner; 2 vols.; STDJ 11; Leiden: Brill, 1992), 2:601–9; D. R. Schwartz, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law,” in *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant and U. Rappaport; STDJ 10; Leiden: Brill, 1992), 229–40. By “realistic,” Schwartz means that halakhah must “conform to nature” (p. 230); nominalistic indicates the use of halakhic categories based on human reasoning.

Qumranites rigorously emphasized the sanctity of the Temple, whereas the rabbis expanded the application of the concept of sanctity to the whole city of Jerusalem; and Harrington suggested that the Qumranites were stricter in their categories of holiness.³

Although I tend to agree with these theories, I believe that the first three are applicable to only certain halakhic controversies, and thus cannot define the more general point of departure between the two halakhic schools. Harrington's suggestion has indeed broader implications, but it is still too abstract: in what manner are the categories of holiness different, and why? In the present article I propose a new model, which defines Qumranic and rabbinic (or pharisaic) concepts of holiness in relation to the Temple, sacrifices and purity. This model may not be the first attempt to reconstruct the rabbinic *halakhic* worldview,⁴ but it is probably the first attempt to formulate the opposing Qumranic worldview. I will examine the halakhic controversies between the Qumranites and the Pharisees or rabbis in an attempt to define a comprehensive distinction between their general halakhic approaches. Their disparate worldviews are rooted in a religious concept that many scholars of religion and anthropology have tried to elucidate: holiness.

Before turning to the halakhic material, I will make a methodological clarification. Halakhah, law, and regulation are all means of directing human behavior. A halakhic decision derives from a certain value or idea employed in applying the rules of Scripture to the exigencies of everyday life.⁵ Thus, a halakhic controversy may be the product of conflicting values, ideas or theoretical conceptions. In our case, as I shall show, there is an extensive set of laws that bears a certain tendency or characteristic—the strict Qumranic halakhah—which

³ D. Henshke, "The Sanctity of Jerusalem: The Sages and the Sectarian *Halakhah*," *Tarbiz* 67 (1997): 5–28 (Hebrew); H. K. Harrington, "Holiness in the Laws of 4QMMT," in *Legal Texts and Legal Issues: Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge, 1995. Published in Honour of Joseph M. Baumgarten* (ed. M. J. Bernstein, F. García Martínez, and J. Kampen; STDJ 23; Leiden: Brill, 1997), 109–28; cf. idem, "Biblical Law in Qumran," in *The Dead Sea Scrolls after Fifty Years: A Comprehensive Assessment* (ed. P. W. Flint and J. C. Vanderkam; 2 vols.; Leiden: Brill, 1998–1999), 1:182.

⁴ Perhaps the most influential studies that have dealt with this question, although only partly and with no reference at all to the Qumranic halakhah, are: E. E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. I. Abrahams; 2 vols., Jerusalem: The Hebrew University Magnes Press, 1975); and, using a totally different methodology, J. Neusner, *Judaism: The Evidence of the Mishnah* (Chicago: The University of Chicago Press, 1981).

⁵ See, e.g., M. Halbertal, *Interpretive Revolutions in the Making: Values as Interpretative Considerations in Midrashei Halakhah* (Jerusalem: The Hebrew University Magnes Press, 1999 [Hebrew]).

is opposed to another vast set of laws of a conflicting tendency—the lenient rabbinic halakhah. All these controversies regarding cultic laws pertain to halakhic details that are not explicitly discussed in Scripture; in certain cases, such as the calendar, the subject as a whole is not even mentioned. The controversies thus introduce conflicting interpretations and supplements to the laws of the Pentateuch. The internal consistency of these bodies of conflicting halakhah cannot be coincidental, and therefore may attest to a certain worldview that lies in the base of each set of rules. The question is whether it is possible to reveal (as well as to formulate adequately) these competing halakhic presuppositions, which may be very abstract and philosophical, and yet explain the systematic halakhic trends.

Since the halakhic material has been fully discussed in prior publications, I will not examine it thoroughly, but will focus on several examples. The halakhic cases will be classified into four categories: 1) purity/impurity; 2) sacred food vs. sacred people; 3) sacred space in the Temple vs. in Jerusalem; and 4) sacred time (i.e., the calendar). In each of these categories the same opposing tendencies will be traced. Hence, it will be possible to point to the systematic but nevertheless rather specific character of a large set of Qumranic or rabbinic laws. I will suggest that these tendencies derive from different conceptions of what holiness really is. Finally, in order to clarify the meaning of these new designations I shall also discuss several theories taken from cultural anthropology and the study of religion.

The Sensitivity of the Sacred and the Fear of Transgression

The thesis proposed in the present article is that the *Temple Scroll* and MMT view holiness as dynamic, sensitive and dangerous, and therefore maintain that access to the sacred should be restricted. By contrast, in Pharisaic and rabbinic halakhah, holiness is static, and the access to the sacred is far less limited, since it is neither dangerous nor threatening. By this I mean that for the rabbis, holiness is not an active entity or quality, but a status. In order to explain why I regard a strict approach to the laws of the sacred as related to the view of dynamic holiness and the more lenient halakhic approach as coming from a view of the holy as static, I would like to use the model of the so-called Priestly Code as an illustration of the concepts of desecration of the sacred, and sins against God.

According to the Priestly Code, the Tabernacle, the altar, and Aaron the high priest and his sons were sanctified by God (Exod 29:44), and God or his glory dwelled in the sanctuary (Exod 29:43; 40:34–35). There is a gradation of holiness that ranks the sacred and most sacred objects in the Tabernacle and in the sacrifices, as well as the hierarchies of cultic positions and ritual ceremonies.⁶ The sacredness of the Tabernacle, its objects, and its sacrifices is coercive and contagious (Lev 6:11, 20). When this holiness is exposed to inappropriate contact or even to sight, it may become lethal, as God's divine force or glory "reacts" to such circumstances (Exod 28:35, 43; Lev 10:1–3; Num 4:15, 19–20).

The sacred character of the Tabernacle vessels and offerings requires that they be handled with extreme caution and with numerous orders and warnings. Any failure to observe these restrictions leads to the grave sin of trespass, i.e., violation of the boundaries between holy and profane, against sacred ritual or sacred space, and ends in punishment. The danger lies not only in ritual or bodily defilement, or the sacrilege of mixing sanctity and impurity; violation of a prohibitive commandment in itself generates impurity and blemishes the altar from afar. Since misdemeanors are inevitable, several means of atonement and redemption are detailed in the Priestly Code.⁷

The main feature of the levitical cultic system is therefore the continual need to repent and atone for trespass against the sacred. The demand for rigorous adherence to taboos and ritual restrictions as well as to the rituals of expiation that aim to eliminate pollution and desecration is undoubtedly derived from the concept of holiness that lies at the basis of the Priestly Code. "Holy" is what God has distinctively chosen as his own. This concept of holiness is particularly sensitive to sacrilege and the transgression of God's domain and may be termed *dynamic*.⁸

⁶ J. Milgrom, *Cult and Conscience: The Asham and the Priestly Doctrine of Repentance* (SJLA 18; Leiden: Brill, 1976), 35–37; M. Haran, "The Complex of Ritual Acts Performed Inside the Tabernacle," in *Studies in the Bible* (ed. C. Rabin; ScrHier 8; Jerusalem: The Hebrew University Magnes Press, 1961), 272–302; P. P. Jenson, *Graded Holiness: A Key to the Priestly Conception of the World* (JSOTSup 106; Sheffield: JSOT Press, 1992).

⁷ J. Milgrom, *Leviticus 1–16* (AB 3; New York: Doubleday, 1991), 42–51, 253–92, 339–78, 443–56.

⁸ E. Regev, "Priestly Dynamic Holiness and Deuteronomistic Static Holiness," *VT* 51 (2001): 243–61; idem, "Moshe Weinfeld Reconsidered: Towards the Typology of Holiness in the Priestly Schools and Deuteronomy," *Shnaton: An Annual for Biblical and Ancient Near Eastern Studies* 14 (2004): 51–74 (Hebrew). Note that Milgrom (*Leviticus 1–16*, 48) states, "P's doctrine of holiness is static; H's is dynamic," without elaborating the exact meaning of these terms. At any rate, one should bear in mind that these are only

Consequently, a relatively strict approach to the sacred that limits access to the holy or emphasizes the need to expiate sins against God through ritual acts should be associated with a worldview more or less similar to that of the Priestly Code.⁹ A relatively lenient attitude towards the sacred realm may thus be defined as aberrant from this worldview and apparently related to a different concept of holiness.

Purity and Impurity

Impurity is a virtual entity that threatens to desecrate the sacred or holy and cause the departure of the Divine Presence from the Temple.¹⁰ Thus the laws of the Priestly Code (P) or the Priestly Legislation (P and H) contain a number of rules to restrict and remove impurity from the cultic realm.¹¹ In at least five areas the Qumranites declare impure what the rabbis view as pure:

- 1) Bones and skin of unclean (“non-kosher”) animals. According to *Temple Scroll* 51:1–4 and MMT B 21–23 (building on the regulations in Leviticus 11), these are impure, while the rabbis declare them pure (*m. Hul.* 9:1).
- 2) Poured liquids. According to MMT B 55–58, liquids (*nitsok*) that are poured (*mutsakot*) from a pure vessel into an impure vessel beneath it contaminate the contents of the pure vessel; that is, impurity “climbs” up the stream of liquid to the upper vessel. The rabbis, however, held that the *nitsok* is pure, except for cases in which thick liquids are involved, e.g. honey (*m. Makh.* 5:9; *m. Yad.* 4:7).
- 3) Red heifer. MMT B 13–17 orders that the red heifer be burnt by a priest who becomes completely pure only at *Me’orav Shemesh* (that is, sundown). A priest who has the status of a *Ṭevul Yom*, that is, who has immersed himself but must wait for sundown to be completely

relative characterizations. P’s concept of holiness may seem static in comparison to H’s, but still dynamic in comparison to D’s.

⁹ Such a deduction is based on the presupposition that the exact character of holiness should be determined according to the manner in which people behave towards it, that is acting meticulously and following certain restrictions. Compare W. R. Comstock, “A Behavioral Approach to the Sacred: Category Formation in Religious Studies,” *JAAAR* 49 (1981): 625–43.

¹⁰ Milgrom, *Leviticus 1–16*, 615–17.

¹¹ F. H. Gorman, *The Ideology of Ritual: Space, Time and Status in the Priestly Theology* (JSOTSup 91; Sheffield: JSOT Press, 1990); Jenson, *Graded Holiness*.

ritually pure, may not perform this task. The rabbis, on the other hand, (*m. Par.* 3:7; *t. Par.* 3:9) insisted that the priest who burns the heifer *may* have the status of a *Ṭevul Yôm*.

- 4) Corpse impurity. In rabbinic halakhah corpse contamination is cleansed by sprinkling the ashes of the red heifer on the seventh day of impurity, and immersing on that day. However, the *Temple Scroll* and other Qumran writings mandate immersion on the first day of impurity, and sprinkling the ashes on the third day, in addition to the sprinkling and final immersion on the seventh day. The Qumranic ritual, sometimes termed “gradual purification,” is aimed at reducing impurity by stages. The rabbis did not utilize such a concept.¹²
- 5) Exclusion from the Temple. MMT B 39–49 prohibits the entrance of Ammonites, Moabites, *mamzerim*, and sexually disabled men into the Temple, whereas rabbinic halakhah does not mention such taboos at all. The explicit motivation for this Qumranic rigorousness is the suspicion that the sanctity of the cult will be desecrated by the force of impurity (MMT B 48–49). MMT B 49–54 goes on to prohibit the entrance of blind and deaf persons into the Temple (for the blind see also *Temple Scroll* 45:12–14), since they cannot restrict themselves from accidental defilement. Again, the Pharisees probably did not impose similar restrictions.

The intriguing question in all of these cases is why, on the one hand, the *Temple Scroll* and MMT *intensified* scriptural taboos pertaining to holiness, and why, on the other hand, the rabbis seemed committed to *mitigating* the intensity of these same taboos even when such an easing of restrictions would appear to go against the stringency of Scripture. This question will be addressed further on.

Sacred Food

The category of sacred food concerns priestly dues and other food that must be eaten under sacred circumstances—either by sacred people or in a sacred space, and also at a sacred time. The grounds of these limitations are ordered in Scripture (Lev 7:18; 10:17; 19:6–8; Num 18:11–13), but certain details were not specified.

¹² See *Temple Scroll* 49:17–20; 50:14–15; and the bibliography cited in E. Regev, “Pure Individualism: The Idea of Non-Priestly Purity in Ancient Judaism,” *JSS* 31 (2000): 176–202, pp. 178–80.

In the cases of the animal tithe, the fruits of the fourth year, and the arm, cheek and stomach of the *shelamim* sacrifice, the *Temple Scroll* and MMT maintain that the holy food should be given to the priests and eaten by them. However, the rabbis insist that these portions should be eaten by the lay persons who offered the sacrifices.¹³ Quite surprisingly, the *Temple Scroll* 35:10–15, 37:8–12 mandates a separation between the sacrifices offered by the priests (especially the *hattat* and *'asham*) and those offered by the laity. Clearly, the authors of the *Temple Scroll* view the priests as more sacred than the laity, in a way that requires separation. The *Temple Scroll* also holds that the eating of the fruits of the fourth year and of the paschal lamb should be restricted to the Temple's courts, whereas the rabbis permit eating them outside, throughout the entire city of Jerusalem.¹⁴ As for sacred time, both the *Temple Scroll* and MMT limit the time spent eating the breads of the thanksgiving *shelamim* to sunset, while the rabbis permit them to be eaten until midnight.¹⁵

Clearly, underlying the Qumran restrictions are, on the one hand, a concept of the priests as a uniquely holy group, whose sacred status is tied exclusively to consuming the sacrifices; and on the other hand, a concept of the Temple precincts as uniquely holy space. The Qumranic concept of sacred time is similarly restricted. The rabbis, by contrast, hold a more “expansive” view of the locus of holiness, in all three realms: people, space and time.

¹³ Animal tithe: MMT B 63–64; *m. Zeb.* 5:8. Fruits of the fourth year: MMT B 62–63; *Temple Scroll* 60:3–4; 4Q266 2 ii 6 (in J. M. Baumgarten, *Qumran Cave 4.XIII: The Damascus Document [4Q266–273]* [DJD 18; Oxford: Clarendon, 1996], 144–45); *m. Ma'aser Shen* 5:1–5; *Sifre Num.* 6 (*Siphre ad Numeros adjecto Siphre zutta* [ed. H. S. Horovitz; Leipzig: Gustav Frock, 1917; repr. Jerusalem: Wahrman, 1966], 6); *y. Peah* 7:6 (20b–20c). Arm, cheek and stomach of the *shelamim* sacrifice: *Temple Scroll* 20:14–16, 22:8–11; 11QT^b 8 i (in E. Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* [Beer-Sheva: Ben Gurion University of the Negev Press; Jerusalem: Israel Exploration Society, 1996], 32); *m. Hul.* 10:11; *Sifre Deut., Shoftim* 165 (*Siphre ad Deuteronomium* [ed. L. Finkelstein; Berlin: Gesellschaft zur Förderung der Wissenschaft des Judentums, 1939; repr. New York: Jewish Theological Seminary, 1969], 214); see Yadin, *Temple Scroll*, 1:120–21.

¹⁴ Fruits of the fourth year: *Temple Scroll* 60:3–4; *m. Ma'aser Shen* 5:2–4; *t. Ma'aser Shen* 5:14–15 (*Tosefta According to Codex Vienna* [ed. S. Lieberman; New York: The Jewish Theological Seminary of America, 1955], 271). Paschal lamb: *Temple Scroll* 17:8–9; *m. Zeb.* 5:8. See Yadin, *Temple Scroll*, 1:80–81; Qimron, *Temple Scroll*, 27; Henshke, “The Sanctity of Jerusalem,” 21. For views similar to those of the *Temple Scroll*, cf. *Jub.* 7:36 (fruits of the fourth year); and 49:16–20 (paschal lamb).

¹⁵ MMT B 9–13; *Temple Scroll* 20:12–13; *m. Zeb.* 5:6, 6:1. See E. Regev, “The Sectarial Controversies about the Cereal Offerings,” *DSD* 5 (1998): 33–56; H. Birenboim, “The Law of the Well-Being Sacrifice in the *Miqsat Ma'ase Ha-Torah* Scroll,” *Tarbiz* 67 (1998): 241–44 (Hebrew).

Sacred Space: The Temple and Jerusalem

The category of sacred space concerns the spatial distribution of holiness in the Temple, the boundaries of the holy, and the restrictions that should be applied to that space concerning both priestly and lay activities. The rabbis restricted the application of most of the impurity taboos to the Temple courts. In certain cases they applied these taboos to the entire Temple Mount, but not to the entire city of Jerusalem. Menstruating women, women after childbirth, and women with a discharge were not allowed to enter the Temple Mount, and men having a seminal discharge were restricted from the Temple courts.¹⁶ MMT, however, declares: **ירושלים היא מחנה הקודש . . . ירושלים היא ראש מחנות ישראל** (“For Jerusalem is the camp of holiness . . . For Jerusalem is capital of the camps of Israel”).¹⁷

Thus, MMT applies to all of Jerusalem the greatest degree of holiness, the degree of **מחנה שכינה** which the rabbis applied only to the Temple courts.¹⁸ This idea was implemented by the authors in MMT’s prohibition against non-sacral slaughter in Jerusalem (which includes use of the hides and bones of animals *not* slaughtered in Jerusalem), as well as the prohibition against raising dogs in the city (since they might eat the remains of the sacrifices).¹⁹

The same perception of Jerusalem’s holiness was introduced in a different manner and with many additional restrictions and prohibitions in the *Temple Scroll*. The *Temple Scroll* describes a very detailed plan of the Temple courts, a plan influenced by the division of the camps during

¹⁶ *M. Kel.* 1:8. Similar practices are described by Josephus, *Against Apion* 2.103–104, and seem to reflect general practice in the late Second Temple period. The rabbis discerned three theoretical spheres of holiness: the Temple courts (parallel to the biblical camp of the divine presence in the desert), the rest of the Temple Mount (parallel to the Levites’ camp), and the whole city of Jerusalem (parallel to the camp of Israel). See *t. Kel.* 1:12 (*Tosephta, Based on the Erfurt and Vienna Codices* [ed. M. S. Zuckerman; 2d ed.; Jerusalem: Bamberger and Wahrman, 1937], 570); *Sifre Naso* 1 (Horowitz, *Siphre*, 4); *b. Zeb.* 116b; *Numbers Rabbah* 7:9 (Jerusalem: Ortzel, 1961), 20d.

¹⁷ MMT B 59–61. Cf. B 29–31. Throughout the article translations of MMT follow Qimron and Strugnell, DJD 10.

¹⁸ See n. 15 above.

¹⁹ Prohibitions against non-sacral slaughtering: MMT B 17–20, 27–35. See L. H. Schiffman, “The Prohibition of the Skins of Animals in the *Temple Scroll* and *Miqsat Ma’ase Ha-Torah*,” *Proceedings of the Tenth World Congress of Jewish Studies. Division A: The Bible and its World* (Jerusalem: World Union of Jewish Studies, 1990), 191–98 (see also n. 46 below). Prohibition against raising dogs: MMT B 58–59. In the *Temple Scroll* there are many similar laws concerning the **עיר המקדש** (see below).

Israel's wandering in the desert as well as by Ezekiel's vision of the Temple.²⁰ The ideal Temple was divided into three concentric courts. The inner court included the Temple building (parallel to the Greek *naos*) and the altar on which the animal sacrifices were offered. It may be paralleled to the "priestly court" in rabbinic terminology or the "fourth court" in Josephus' writings.²¹ Certain holy utensils were restricted to use in this court; this implies a contrast to the pharisaic/rabbinic view that required the purification of the menorah after certain festivals, due to the suspicion that it had been defiled by lay people who had touched it.²² In the inner court, the sacrificial rites and priestly meals of sacrifices and cereal-offerings were to take place. The priests were not to eat these portions outside of the inner court, since the priestly share of the sacrifices and offerings had to be spatially separated from those of the laity, which were to be eaten in the middle court (*Temple Scroll* 37:4–12).

The middle court, whose measurements may be equated with the entire area of the Temple Mount in Josephus and tractate *Middot*, was designated for the eating of sacrificial food by lay males (its function parallels that of the court of Israel in *Middot*). Women, children and proselytes (until the fourth generation) were not to be allowed to enter this court (39:4–9). The wearing of priestly garments was forbidden in the middle court (40:1–4), since it was not as holy as the inner court.

The outer court's size was 1600 square cubits, much larger than the whole city of Jerusalem in the Hasmonean period (when the scroll was written). This was the court of the laity (quite like the court of women in *Middot*), but proselytes until the third generation were nevertheless forbidden to enter it (40:6–7). The outer court was designated for the religious activities of the laity, such as building booths (42:7–17) and eating *shelamim* sacrifices during the festival of Sukkot (21:2–4; 22:11–13). This area contained dozens of chambers for the chiefs of the

²⁰ Yadin, *Temple Scroll*, 1:146–48. The fact that the authors also looked forward to a different eschatological Temple that God would bring down from the heavens (*ibid.*, 141–44) indicates that the detailed plan of the Temple in the *Temple Scroll* was considered realistic and binding. The following description of the courts and their function as well as that of the "the city of the Temple" (עיר המקדש) is based on: Yadin, *Temple Scroll*, 1:154–247; and L. H. Schiffman, "Exclusion from the Sanctuary and the City of the Sanctuary in the *Temple Scroll*," *HAR* 9 (1985): 301–20.

²¹ For the arrangement of the Temple courts see in general: *m. Mid.* 2:1–6, 5:1; Josephus, *Against Apion* 2.103–104. Cf. *J.W.* 5.190–206; *Ant.* 15.416–419.

²² *Temple Scroll* 3:10–12; *m. Hag.* 3:8. The Pharisees and the Sadducees were debating this issue according to *t. Hag.* 3:35 (ed. Lieberman, *Tosefta*, 394). See also Knohl, "Post-Biblical Sectarianism," 143–44.

tribes, priests and Levites, and many porticos (*parvarim*). The booths of the lay people were supposed to be built on the roofs of the chambers. The collaboration of all the people of Israel in the Temple ritual was symbolized by the twelve gates to and from the outer courts, each of which was named after one of Jacob's twelve sons.

This spatial organization should be characterized as "graded holiness." Its main aim is to create a separation between the priestly and lay realms. Nevertheless, the lay people have a significant place on the Temple Mount, although this place is located at a distance from the altar, the holy vessels, and the atoning rituals.²³

Another spatial sphere discussed in the *Temple Scroll* is the "City of the Temple" (*ir ha-miqdash*), which seems to overlap with the total area of all three courts, and roughly covers the whole city of Jerusalem (termed in MMT the "camp of holiness").²⁴ Entrance to this area is forbidden to people with skin diseases or a seminal discharge, even in consequence of intercourse with a woman; in this latter case the purification process lasts three days (45:7–15). All these defiled persons may stay in three special areas located three thousand cubits from the "City of the Temple" (45:15–46:2). Yadin believes that the reason there are no interdictions pertaining to women in the City is that women are not allowed to enter it at all.²⁵ There are also strict restrictions regarding human excretions; these are restricted to a special place three thousand cubits outside the City (46:13–16). Impure food and drink must not be brought in (47:3–7). Non-sacral slaughter is forbidden, as well as bringing into the City the hides and bones of which have been slaughtered outside of the Temple precincts (47:7–18; 52:14–53:4, see also above on MMT).

Needless to say, rabbinic literature does not recognize such a rigorous division of the Temple sphere between priests and non-priests. For

²³ See also L. H. Schiffman, "Architecture and Law: The Temple and Its Courtyards in the *Temple Scroll*," in *From Ancient Israel to Modern Judaism: Essays in Honor of Marvin Fox* (ed. J. Neusner et al.; 4 vols.; BJS 159; Atlanta: Scholars Press, 1989), 1:280–84. Knohl, "Post-Biblical Sectarianism," 140–41, argued that the building of the tabernacles in the outer court actually indicates the separation of the laity from the cult.

²⁴ I follow Schiffman's view that *ir ha-miqdash* refers to the whole sacred *temenos*; see L. H. Schiffman, "Ir Ha-Miqdash and its Meaning in the *Temple Scroll* and Other Qumran Texts," in *Sanctity of Time and Space in Tradition and Modernity* (ed. A. Houtman et al.; Jewish and Christian Perspectives 1; Leiden: Brill, 1998), 95–109. Yadin, on the contrary, understood *ir ha-miqdash* to indicate the city *around* the outer court (*Temple Scroll*, 1.222–23). Although the conceptual frameworks of MMT's camps system and the *Temple Scroll*'s court system have much in common, there are probably some differences in regard to particular details. See, e.g., Henshke, "The Sanctity of Jerusalem," 17–27.

²⁵ Yadin, *Temple Scroll*, 1:224, 237.

example, the Pharisees did not legislate to prevent situations in which lay people might approach the altar and the holy vessels; neither did they implement purity restrictions or rigorous separation between the priests and the laity (see also below). Thus, I believe that the core of all these disagreements is to what extent access to the holy space should be limited, or to what extent the holiest space, artifacts and activities should be protected from possible profanation by the lay people.

Sacred Time: Calendar and Festivals

The so-called solar calendar of 364 days introduces one of the copies of MMT and is implied in the *Temple Scroll's* festival laws. One of the characteristics of this calendar is the fact that festivals never occur on the Sabbath. Thus, the *musaf* sacrifices of the festivals would never be offered on the Sabbath, and therefore, in the view of the Qumranites, it would not be necessary to violate the Sabbath rest in the Temple (apart from the *tamid* sacrifices).²⁶ The rabbis, of course, used a lunar-solar calendar of 354 days, in which there was no control over the relationship between Sabbaths and festivals, and viewed such offerings on the Sabbath as totally legitimate. Thus, the calendar controversy actually reflects, among other things, different approaches to Sabbath labor interdictions.

The Qumranic calendar also consists of several festivals that were not mentioned by the rabbis: the annual days of *milluim* (inauguration) in which the priests were sanctified, and the feasts of the first fruits of

²⁶ See Yadin, *Temple Scroll*, 1:78, 105 who also infers that in seven-day festivals the *Scroll* does not count the Sabbath among the days of the festival; see also Qimron and Strugnell, DJD 10.44–45, and note Strugnell's suspicion that the calendar was added to the original text of MMT (*ibid.*, 203). M. Kister, "Studies in 4QMiqsat Ma'ase Ha-Torah and Related Texts: Law, Theology, Language and Calendar," *Tarbiz* 68 (1999): 360 (Hebrew), assumes that the calendar is original. On the Qumranic calendar, see S. Talmon, "The Calendar Reckoning of the Sect from the Judean Desert," in *Aspects of the Dead Sea Scrolls* (ed. C. Rabin and Y. Yadin; ScrHier 4; Jerusalem: The Hebrew University Magnes Press, 1958), 162–99; U. Glessmer, "Calendars in the Qumran Scrolls," in Flint and Vanderkam, *The Dead Sea Scrolls after Fifty Years*, 2:213–78. The separation between Sabbaths and festivals also explains the *Temple Scroll's* reason for placing the harvesting of the *omer* (biblically designated from "the morrow of the Sabbath") on the *Sunday* which follows the conclusion of the entire seven-day festival of unleavened bread; in this way, the *omer* would never be reaped on the Sabbath. See Yadin, *Temple Scroll*, 1:95–96. Strict regulation of work on the Sabbath characterizes the Qumranic halakhah elsewhere, especially in CD 10:14–11:18.

wine and oil. The annual days of *milluim* were supposed to be celebrated during the seven or eight first days of Nisan (*Temple Scroll* 15:3–17:5). Quite similar to the original *milluim* in Exodus 29 and Leviticus 8–9, this was a long and complex ritual in which the priests were reconsecrated and reappointed, a rite of passage which transferred them from a profane state to a sacred one. Among other things, two bulls were sacrificed as *hattat* offerings, one to atone for the priests, and the other (“the bull of the public”) for the rest of the people of Israel.²⁷ The rabbis, however, held that this ritual should not be practiced at all, since its only purpose had been to establish the Tabernacle in the wilderness.²⁸

The festivals of the first fruits of wine and oil were sacrificial rituals, the purpose of which was to redeem the sanctity of the new crop of grapes and olives (apparently the usual biblically mandated once-a-year offering of first fruits, *bikkurim*, in the Temple did not satisfy the authors). The taboo of sanctity on the new crops was thus released and eating them, as God’s own crop, was no longer considered sinful.²⁹ The *Temple Scroll* uses the root *kpr* in connection with these festivals (21:8; 22:14–16); thus, they had an additional atoning function. Obviously, the rabbis did not find a need for such additional atoning rituals. Since atonement is aimed at eliminating pollution or guilt and reconstituting sanctity, it follows that in comparison to the Qumranic tendency, the rabbis saw less of a need for such a reestablishment of holiness.

²⁷ For the biblical ritual and its anthropological aspects see Jenson, *Graded Holiness*, 55–65, 119–21; Gorman, *The Ideology of Ritual*, 103–39. Such a ritual may protect the holiness of the sanctuary and constitute the Divine indwelling there (Gorman, *The Ideology of Ritual*, 26, 39–60). Yadin, *Temple Scroll*, 1:77, 2:54, reconstructed an eighth day of *milluim* (cf. Leviticus 9). More recently, Chaim Milikowsky disputed this reconstruction and concluded that there were only seven days of *milluim*, and that the Qumranic ritual differed from the biblical one since the former consecrated only the priests, not the Temple. See C. Milikowsky, “עיונים בפרשנות פרשת המילואים: קרבנות המילואים: במגילת המקדש, הימים 'די לא למספד' בריש מגילת תענית, והמחלוקת על תאריך ימי המילואים בספרות חז"ל” in *Talmudic Studies 3: Dedicated to the Memory of Professor Ephraim E. Urbach* (ed. Y. Sussmann and D. Rosenthal; 2 vols.; Jerusalem: The Hebrew University Magnes Press, 2005), 2:519–42.

²⁸ *B. Sukkah* 43a. Cf. *y. Yoma* 1:5 (38a); *Sifra, Milluim* 1:37 (I. H. Weiss, *Sifra* [Vienna: J. Schlossberg, 1861–1862; repr. New York: Olm, 1946], 43a–b); *b. Yoma* 2a.

²⁹ Cf. *Jub.* 7:36. On these festivals in the *Temple Scroll* as well as in other texts, see Yadin, *Temple Scroll*, 1:92–96; J. M. Baumgarten, “4QHalakah^a 5, the Law of Hadash, and the ‘Pentecontad Calendar,’” *JJS* 27 (1976): 36–46; idem, “The Laws of ‘Orlah’ and First Fruits in the Light of *Jubilees*, the Qumran Writings, and *Targum Ps.-Jonathan*,” *JJS* 39 (1987): 195–202. For the sacredness of first fruits and similar offerings, and the ritual of deconsecration, see H. Hubert and M. Mauss, *Sacrifice: Its Nature and Function* (trans. W. D. Halls; [Chicago and London]: University of Chicago Press, 1964), 57–58.

Defining Dynamic and Static Holiness: Cultic Ideology and Textual Evidence

Clearly, all the laws discussed above concern the concept of holiness. The strictness of the Qumranites and the leniency of the Pharisees or rabbis is very consistent, and probably also self-conscious.³⁰ One may assume that the rationale of the Qumranic views follows the general trend toward strictness in the Priestly Code. But how can the divergence of the rabbis from the Priestly ideology be explained? Were they indifferent to the dangers of pollution and desecration? Obviously, the rabbis did hold that the Temple and the sacrifices were subject to defilement and desecration. They were certainly not indifferent to the desecration of the holy since they discussed at length its legal aspects (*viz.* in tractates *Ṣebahim*, *Hulin*, and *Me'ilah*). The relative lack of attention to the danger of desecration of the holy in rabbinic halakhah should be explained as stemming from their view of the very nature of holiness.³¹ It is apparent, then, that the rabbis had in mind a concept of holiness different from that of the Qumranites. In order to understand the two conflicting approaches to cult and holiness, a new set of terminologies is needed. I would like to suggest a theoretical definition for each of these two concepts of holiness by proposing a new typology—dynamic versus static holiness.

³⁰ In the *pesher* on Psalm 37, the Man of Lies, whom most scholars identify as the leader of the Pharisees, along with his people, is accused of choosing the easy way: "Its [interpretation] concerns the Man of Lies who misdirected many with deceptive words, for they have chosen worthless things (כִּי בַחֲרוּ בַקְלוֹת) and did not lis[ten] to the Interpreter of Knowledge." See 4Q171 1–10 i 26–27; in J. M. Allegro, *Qumran Cave 4.I (4Q158–4Q186)* (DJD 5; Oxford: Clarendon, 1968), 43. Translation follows *The Dead Sea Scrolls Study Edition* (ed. F. García Martínez and E. J. C. Tigchelaar; Leiden: Brill, 1997–1998). G. Vermes, *The Dead Sea Scrolls in English* (4th ed., rev. and extended; London: Penguin, 1995), 348 translates קְלוֹת as 'frivolous' (perhaps drawing upon the biblical Hebrew sense of קָל, 'fast', hence 'vanished'); and M. P. Horgan *Pesharim: Qumran Interpretations of Biblical Books* (CBQMS 8; Washington, D.C.: Catholic Biblical Association of America, 1979), 195 translates 'deceitful words'; but I prefer the mishnaic Hebrew connotation of 'lenient' or 'slight'. For the Man of Lies as a Pharisaic leader see E. Regev, "Yosef ben Yoezer and the Qumran Sectarians on Purity Laws: Agreement and Controversy," in *The Damascus Document: A Centennial of Discovery. Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 4–8 February, 1998* (ed. J. M. Baumgarten, E. G. Chazon, and A. Pinnick; STDJ 34; Leiden: Brill, 2000), 104–5.

³¹ This assertion should be qualified as: a) relative, namely, made in light of the Qumranic views; and b) mainly based on rabbinic halakhah. Here and there one finds "dynamic" theological statements concerning, e.g., sins or bloodshed that pollute the land, desecrate God's name or banish God's presence. See for example, *Sifra Qodashim* 4:1 (Weiss, *Sifra*, 89a); *Sifre Masei* 160 (Horowitz, *Siphre*, 220); *Sifre Shoftim* 148 (Finkelstein, *Siphre*, 203). Thanks are due to Prof. A. Shemesh for these references.

I suggest that since Qumranic halakhah shares the Priestly Code's rigorousness in approaching the sacred, it also shares the Code's more general conception of holiness. I therefore conclude that the intensive pursuit of purity, sanctity and atonement in Qumran derives from the idea that sacred rituals and sacred space are extremely sensitive to the threat of pollution and desecration, and that any violation of cultic holiness brings guilt upon Israel and thus causes divine wrath and punishment.

This idea is implicit in the rhetoric of MMT and the *Temple Scroll*. For instance, according to MMT one should keep oneself from impurity (*ta'arovet*, literally 'mixing') since one must "be full of reverence (יראים) for the sanctuary" (MMT B 48–49). In the Hebrew bible א.י.ר. is applied to God (e.g., Gen 42:18), as well as to certain authoritative individuals (e.g., 1 Sam 18:29), but never to the sanctuary. The emphasis on such reverence in a halakhic context of purity interdictions attests to the motive for the halakhic strictness. Furthermore, in two cases, those of eating *shelamim* sacrifices and thanksgiving cakes after sundown, and of bringing in bones and hides of animals which were not slaughtered in Jerusalem, MMT orders that "the priests shall not cause the people to bear sin" (שלא יהיו משיאים את העם עון; MMT B 12–13, 26–27). This warning stems from the biblical prohibitions against desecrating the *shelamim* offerings by eating them after the permitted time span (Lev 7:18), and against a non-priest eating holy food (Lev 22:16). The fact that MMT uses the rhetoric of the Priestly School indicates that the authors embraced the cultic *worldview* of the Priestly School (note that in the case of non-sacral animals this phrasing is applied to a context *not* found in Scripture). Perhaps the authors' implicit claim that failure to observe the laws of MMT will result in misfortunes and curses (C 12–26) is related to the Priestly perception that neglecting scrupulous observance of the cultic taboos will lead to grave punishment.

Quite like the Priestly Code, in the *Temple Scroll* the interdictions and warnings concerning desecration and impurity are prevalent,³² as well as the aspiration to atone for guilt.³³ The fear of pollution and sin

³² On desecration, see *Temple Scroll* 35:7–8; 35:14–15; 46:11–12. On impurity, see *Temple Scroll* 7:7; 16:4–5; 45:13–14; 47:3–6, 10–11, 17–18.

³³ Atonement for "all their guilt" (pertaining to the people of Israel) is mentioned in connection with the he-goat of the *hattat* on the seventh day of the Festival of Unleavened Bread (18:3–4), though Scripture does not mention atonement in this connection. Similar cases are found in connection with the Festivals of the First Fruits

and the aspiration for repentance and atonement are characteristic of the Qumran sectarian general worldview. They are dominant in non-halakhic passages in the admonition of the *Damascus Covenant*, in the *Hodayot*, and in the ceremony of entry into the covenant.³⁴

In light of the Qumranic laws as well as the non-legal treatments of desecration, impurity and sin, it seems to me that the basic presupposition of the Qumranic halakhah is that holiness is very vulnerable. Any violation may transform it or cause its desecration, and the additional taboos and rituals were designated to prevent such a situation or restore sanctity as necessary. This perception of holiness may be termed dynamic. If one does not do his best to protect it, holiness (the Divine Presence, that is, the earthly aspect of God's holiness) will vanish or at least be reduced, and human action will be divinely viewed as sinful and punishable.

In contrast, the Pharisees and rabbis minimized cultic taboos and atoning rituals. They lessened the causes of impurity (e.g., bones and hides of unclean, "non-kosher," animals were considered pure), permitted certain labors in the Temple on the Sabbath and festivals, and did not consider the defilement of the menorah by the laity to be an offence, since this could be purified by immersion. Moreover, in many cases the rabbis eliminated the social and theological hierarchy between the priesthood and laity (see above concerning eating the animal tithe and the fruits of the fourth year). The rabbis gave the sages authority that Scripture (and consequently also the Qumranites) relegated solely to the priest, such as the right to slaughter sacrificial animals and the halakhic determinations concerning skin disease.³⁵

of wine and oil: 21:8; 22:14–16; 11QT^b 6:8 (Qimron, *Temple Scroll*, 30). One may also infer that God's promise, stated at the conclusion of the laws of festivals (29:2–9)—“and I shall dwell with them for ever and always; I shall sanctify my [Te]mple with my glory, for I shall make my glory reside over it” (29:7–9)—will be fulfilled only if these rituals are practiced meticulously (translation follows García Martínez and Tigchelaar, *Study Edition*, 2:1251). See L. H. Schiffman, “The Theology of the *Temple Scroll*,” *JQR* 85 (1995): 116–17.

³⁴ See E. Regev, “Atonement and Sectarianism in Qumran: Defining a Sectarian Worldview in Moral and Halakhic Systems,” in *Sectarianism in Early Judaism* (ed. D. Chalcraff; London, forthcoming).

³⁵ On slaughtering, see the ensuing discussion of *m. Zeb.* 3:1. In the case of skin disease, the Qumranites reserve the position of halakhic authority for the priest, even if he is not learned (in such a case the overseer would teach him). See S. D. Fraade, “Shifting from Priestly to non-Priestly Legal Authority: A Comparison of the *Damascus Document* and the Midrash *Sifra*,” *DSD* 6 (1999): 109–25. For additional examples, see M. Bar-Ilan, “The Confrontation between Sages and Priests in the Late Second Temple

An illuminating example of the uniqueness of rabbinic cultic presuppositions is to be found in *m. Zeb.* 3:1:

All unfit people who slaughtered—their act of slaughter is valid. For an act of slaughter is valid when done by non-priests, women, slaves, and unclean men, even in the case of slaughtering Most Holy Things, on the condition that the unclean people do not touch the flesh. Therefore they also invalidate by improper intention (במחשבה) in the act of slaughtering.³⁶

Here the rabbis are permitting non-priests and even defiled persons to slaughter sacrifices as long as they do not physically defile the animals. The rabbis are disregarding the apprehensiveness about cultic hierarchy and ritual impurity within the sacred realm which is typical of the Priestly School, yet this halakhah does not contradict any explicit scriptural command. This is quite remarkable in light of the *Temple Scroll's* insistence on separation and differentiation between the degrees of holiness within the Temple. According to the *Temple Scroll*, the persons permitted by the rabbis to slaughter were not even allowed to enter the inner court or the middle court. The rabbis, however, are more concerned with a cognitive category of intention that is not specified in the Pentateuch nor in the Qumran documents.³⁷

The rabbinic halakhic positions seem to have derived from a conception of holiness distinctively different from those of the Priestly Code and the Qumranites. I conclude that according to rabbinic thinking, the sacred rituals, sacred domain and holy food are not as sensitive to pollution and desecration as they are in the Priestly Code. Holiness is not as vulnerable as the Qumranites tend to think. I suggest that for the rabbis, holiness is only a status, not an entity. It is only a convention or label that the Torah uses to describe certain cultic objects or activities that relate to the worship of God. Holiness is thus static and may be approached more overtly, even by non-priests. Desecration

Period" (Ph.D. diss., Bar-Ilan University, 1982 [Hebrew]). Note that the rabbis did not abide by many of the distinctions in grading and separation which were observed in the priestly schools and which influenced MMT and especially the *Temple Scroll*. For these interdictions, see J. Milgrom, *Studies in Levitical Terminology* (University of California Publications, Near Eastern Studies 14; Berkeley: University of California Press, 1970), 5–59; Jensen, *Graded Holiness*.

³⁶ Translation follows J. Neusner, *The Mishnah: A New Translation* (New Haven and London: Yale University Press, 1988), 703, with slight changes.

³⁷ For a list of people unfit to offer sacrifices, see *m. Zeb.* 2:1. For a general discussion of the emphasis on intention in rabbinic halakhah, see Neusner, *Judaism: The Evidence of the Mishnah*, 270–83; H. Eilberg-Schwartz, *The Human Will in Judaism: The Mishnah's Philosophy of Intention* (BJS 103; Atlanta: Scholars Press, 1986).

is only an unwelcome change in this status and not a cosmic or natural event. Its implications are limited to at worst, impiety or undisciplined behavior.

In the rabbis' view, the whole cultic system of priests-Temple-sacrifices is a construction that follows God's orders, but lacks an *inner meaning*. It is not a symbolic system, in the manner of the theology of sacrifices and purity of the Priestly school. It is a system of *mitzvoth*. Its aim is to fulfill God's commands and attain reward. The rabbis indeed believed that certain sacrifices atoned for certain sins but viewed them as technical procedures, and not as sublime activities that demand endless taboos or ritual measures, as the Qumranites thought.³⁸

In order to illustrate this argument, I would like to point to two famous amoraic sayings. Rabbinic midrash attributes to R. Yoḥanan ben Zakkai the following teaching concerning the rationale for the red heifer ritual:

By your lives, I swear: The corpse does not have the power by itself, nor does the mixture of ash and water have the power by itself to cleanse. The Truth is that the purifying power of the Red Heifer is a decree of the Holy One. The Holy One said: "I have set it down as a statute, I have issued it as a decree. You are not permitted to transgress My decree." As it is written: *This is the statute of the Torah.* (Num 19:1)³⁹

R. Yoḥanan ben Zakkai does not even try to find an explanation for the so-called paradox of the red heifer, namely, the fact that the ashes which purify the corpse-contaminated person also defile the one who sprinkles them. R. Yoḥanan ben Zakkai, who discussed the red heifer

³⁸ See, e.g., *m. Ker.* 1:3–7. Note that rabbis saw the atonement rituals of the days of *milluim* and the Day of Atonement as an elimination of the guilt of the people, ignoring the aspect (emphasized in Scripture and in the *Temple Scroll*) of the ritual cleansing or consecration of the sanctuary. Cf. I. Knohl and S. Naeh, "Milluim ve-Kippurim," *Tarbiz* 62 (1993): 17–44 (Hebrew). The idea of intensive atonement rituals stemming from the fear of guilt is described in *m. Ker.* 6:3 as non-rational compulsion, and is also implied in *Rom* 7:7–25.

³⁹ "לא המת מטמא ולא המים מטהרין אלא אמר הקב"ה חוקה חקקתי גזירה גזרתי" "אי אתה רשאי לעבור על גזרתי דכתיב זאת חקת התורה" *Pesikta de-Rab Kahana* (trans. W. G. Braude and I. J. Kapstein; Philadelphia: Jewish Publication Society, 1975), *Piska* 4 (*Parah*), 82–83. See also the parallels in *Tanḥuma*, *Hukkat* 26; *Pesiqta Rabbati* 14 (*Midrash Pesiqta Rabbati* [ed. M. Ish Shalom; Tel Aviv: Esther Press, 1963], 65a). Compare *b. Yoma* 67b. Interestingly, the core of R. Yoḥanan ben Zakkai's saying is already embedded in *Sifra 'Aḥarei Mot* 13:10 (Weiss, *Sifra*, 86a). Urbach, *The Sages*, 98–100, sees in this saying "complete sublimation and demythologization of the heifer ritual," but also explains it in light of the rabbinic tendency not to search for inner logic and allegoric interpretations (cf. the parallels cited at *ibid.*, 377–82).

ritual perhaps more than any other rabbi, the sage who was believed to have confronted (and defeated) the Sadducees and their priestly views, and who may also have confronted rabbinic priests at Yavneh, thought that there was nothing to understand here, and that there was no explanation for this paradox.⁴⁰ The import of this provocative saying is that the greatest biblical cleansing ritual has no inner logic at all. One may presume that other rabbis followed a similar approach in relation to other cultic practices.

A saying of R. Levi (third century CE) is even *anti*-sacrificial:

Because Israel were passionate followers after idolatry in Egypt and used to bring their sacrifices to the satyrs . . . and they used to offer their sacrifices in the forbidden high places, on account of which punishments used to come upon them, the Holy One, blessed be He, said: "Let them offer their sacrifices to me at all times in the Tent of Meeting, and thus they will be separated from idolatry and be saved from punishment."⁴¹

Here R. Levi views the Temple cult as merely circumstantial and believes that an ideal Judaism would have existed without any sacrifices.⁴² Although this saying is documented in the relatively late *Leviticus Rabbah*, it is significant that the same argument appears in the writings of Justin Martyr and the Pseudo-Clementines (ca 150–200 CE).⁴³ Christian circles probably used a traditional Jewish or rabbinic idea in order to refute the Jewish belief in the rebuilding of the Temple.⁴⁴ Thus, it should be concluded that the core of the saying attributed to R. Levi is an early tradition that circulated among Jews, probably in rabbinic circles, well before the days of R. Levi.

⁴⁰ For other traditions in which R. Yoḥanan discusses the red heifer ritual, see *t. 'Ohalot* 16:8 (Zuckerman, *Tosephta*, 614); *t. Parah* 4:7 (ibid., 633); *Sifre Hukkat* 123 (Horowitz, *Sifre*, 151). On R. Yoḥanan and the Sadducees, see *t. Parah* 3:8 (Zuckerman, *Tosephta*, 632); E. Regev, *The Sadducees and Their Halakhah: Religion and Society in the Second Temple Period* (Jerusalem: Yad Izhak Ben-Zvi, 2005), 348–77 (Hebrew); idem, "The Traditions about the Pharisees' and Sadducees' Authority in the Temple During the Early Roman Period," in *Jerusalem and the Land of Israel* 1 (2003): 5–46 (Hebrew). For his tense relationship with priestly rabbis in Yavneh, see A. Büchler, *Die Priester und der Cultus im letzten Jahrzehnt des jerusalemischen Tempels* (Vienna: Alfred Hölder, 1895), 16–25.

⁴¹ *Leviticus Rabbah* 22:8, in *Midrash Rabbah, Leviticus* (trans. J. J. Slotki; London: Soncino, 1939), 286–87. "לפי שהיו ישראל להוטים אחר עבודה זרה במצרים והיו מביאין . . . אמר הקב"ה: קורבנותיהם לשעירים . . . והיו ישראל מקריבים קרבנותיהן באיסור במה . . . יהיו מקריבין לפני בכל עת את קרבנותיהן באהל מועד והן נפרשים מעבודה זרה"

⁴² This idea was later developed by Maimonides, *Guide of the Perplexed* 3:32 (see also 3:46). Cf. W. Z. Harvey, "Les sacrifices, la prière, et l'étude chez Maimonide," *REJ* 154 (1995): 97–103.

⁴³ *Recognitions* 1.35:1–36:1; Justin Martyr, *Dialogue with Trypho* 29:6.

⁴⁴ D. Rokéah, *Justin Martyr and the Jews* (Leiden: Brill, 2002), 52–55 and references.

On the basis of these sayings and other attestations, Urbach has asserted that “. . . when the Sages interpreted . . . Scripture with respect to ‘the sanctity of all precepts,’ these expositions have no mystical-magical connotation, as in the Cabbala, nor do they allude to holiness emanating from the substance of the ritual observance that is linked to the object of the precept.” Urbach also thought that the rabbis transferred sanctity to the realm of individual religious experience, i.e., to an individual’s personal commitment to observe the commandments. At first sight, it would seem that the individual’s access to holiness was now more direct. However, “The commandment is thus voided not only of any magical-mystical quality, but also of its very ritual-cultic basis.”⁴⁵ Urbach’s characterization of the later rabbinic view of holiness illustrates what I mean by a static view of holiness, a concept of sanctity that is only a status, not a tangible entity.

The sayings attributed to R. Yohanan ben Zakkai and R. Levi reflect a perception of the Temple cult as following from a set of heavenly commands without earthly rationale or inner meaning,⁴⁶ a view that (according to Urbach) may have been common among the rabbis. Since this perception can definitely explain the lenient halakhic positions of Pharisees and rabbis concerning the danger of desecration and pollution, I conclude that it was already implied in their lenient approaches to ritual practices and the priestly cult. Indeed, earlier rabbinic sources do not explicitly mention this particular rabbinic cultic theology only because tannaitic sources do not tend to treat such meta-halakhic issues in a direct way. Therefore, the theological ideas that Urbach ascribed to the later rabbis can be traced back to the Pharisees in the Hasmonean period as well as to the earliest layers of the Mishnah.

I believe that conceptions of holiness as dynamic or static not only characterize the two halakhic systems, but may also explain why the Qumranites and the rabbis differed concerning all these cultic issues in the first place. Each school shaped and developed its interpretation

⁴⁵ Urbach, *The Sages*, 368–69. The rabbinic tendency is extremely exceptional if one follows Geertz’s definition of religion as “a system of symbols which acts to establish powerful, pervasive, and long-lasting moods . . . by formulating conceptions of a general order of existence and clothing these conceptions with . . . an aura of factuality . . .” See C. Geertz, “Religion as a Cultural System,” in his *The Interpretation of Cultures* (New York: Basic Books, 1973), 87–125.

⁴⁶ For an illustration of this tendency in Hinduism, see F. Staal, “The Meaninglessness of Ritual,” *Numen* (1979): 2–22. Staal thinks that in some cultures rituals prevail only due to the power of the consistency of tradition.

of Scripture according to different theological, philosophical, and anthropological presuppositions. I am fully aware of the fact that both schools supported their laws with halakhic exegesis.⁴⁷ But I maintain that most of these exegetical moves were motivated and directed by an overarching concept of holiness. Otherwise, how should we explain the internal consistency of these conflicting halakhic tendencies in relation to holiness?

Neither of these concepts of holiness was by any means an innovation of either the Qumran sectarians or the Pharisees. In earlier articles, I have described the dynamic concept of holiness represented by the laws of the so-called Priestly School of the Pentateuch and the static concept of holiness found in Deuteronomy.⁴⁸ However, I am not implying that there is a direct connection between the biblical and the post-biblical perceptions, since these trends may have been unconscious. Notwithstanding this, it is interesting to note that in certain cases, apparently conflicting scriptural commands led the Qumranites and *Jubilees* to follow the Priestly School, whereas the rabbis followed Deuteronomy.⁴⁹ Here both groups had to adjudicate between two halakhic possibilities; they naturally chose the option that suited their general perceptions concerning the necessity of protecting holiness. In many cases the interpretive framework in which they operated was not objective intellectual reasoning, but the textual justification of a fundamental ideological preconception: the conception of what holiness, or attaining holiness, actually means, and what kind of culture the Torah aims to create.

To this point, I have not addressed the issue of the Sadducees and their halakhic worldview. In a previous study I have characterized the Sadducean concept of holiness as dynamic.⁵⁰ However, it is important to

⁴⁷ For Qumranic scriptural exegesis relating to the cultic laws, see J. Milgrom, "The Scriptural Foundations and Deviations in the Laws of Purity of the *Temple Scroll*," in *Archaeology and History in the Dead Sea Scrolls* (ed. L. H. Schiffman; JSPSup 8; JSOT/ASOR Monograph Series 2; Sheffield: JSOT Press, 1990), 83–99; idem, "The Qumran Cult: Its Exegetical Principles," in *Temple Scroll Studies: Papers Presented at the International Symposium on the Temple Scroll, Manchester, December 1987* (ed. G. J. Brooke; JSPSup 7; Sheffield: JSOT Press, 1989), 165–80. For rabbinic exegesis see, e.g., Halbertal, *Interpretive Revolutions*.

⁴⁸ See the articles cited in n. 8 above.

⁴⁹ Cf. C. Werman, "Consumption of the Blood and its Covering in the Priestly and Rabbinic Traditions," *Tarbiz* 63 (1994): 173–84 (Hebrew); L. H. Schiffman, "Sacral and Non-Sacral Slaughter According to the *Temple Scroll*," in *Time to Prepare the Way in the Wilderness: Papers on the Qumran Scrolls by Fellows of the Institute for Advanced Studies of the Hebrew University, Jerusalem, 1989–90* (ed. D. Dimant and L. H. Schiffman; STDJ 16; Leiden: Brill, 1995), 69–84.

⁵⁰ See Reggev, *The Sadducees and their Halakhah*, esp. 226–246.

draw attention to the differences between the Sadducean and Qumranic worldviews. The Qumranites held much more extreme views in two major categories: the calendar, and the distribution and function of the Temple courts. I argue that the Sadducees, quite like the Pharisees, used a lunar calendar.⁵¹ Furthermore, the fact that Sadducean high priests headed the functioning, non-utopian Temple suggests that in contrast to the writers of the *Temple Scroll*, they did not insist that the Temple's spatial organization should be changed and did not wish to radically enhance the separation of the priests from the laity, as did the *Temple Scroll*. However, in contrast to the Sadducees, the Qumranites (and particularly the *Temple Scroll*) designated several ritual activities to the laity, such as their constant presence in the outer court, and the role of the leaders of the tribes in the sacrificial cult (according to the *War Scroll*, column 2).⁵² The *Temple Scroll* also applied special purity regulations to the laity outside Jerusalem, which do not appear to have been a concern for the Sadducees.⁵³

I therefore suggest that there were two major conceptual differences between the Sadducees and Qumranites. First, the Qumranites utilized a solar calendar, so as to prevent the desecration of the Sabbath by the festival rituals. Second, they insisted on a stricter spatial separation between the priests and the laity within the Temple precincts. In contrast to the Qumranites, the Sadducees were not concerned with the manner by which the laity would restrict itself from defilement outside of priestly territory. In short, if the Sadducees' concept of holiness was dynamic, then the Qumranites concept of holiness was ultra-dynamic.

⁵¹ For the Sadducean calendar (there is no clue indicating that they practiced the festivals of the new fruits of wine and oil), see Regev, *The Sadducees and their Halakhah*, 90–97. Also note A. I. Baumgarten, "Who Were the Sadducees? The Sadducees of Jerusalem and Qumran," in *The Jews in the Hellenistic-Roman World: Studies in Memory of Menahem Stern* (ed. A. Oppenheimer, I. Gafni, and D. R. Schwartz; Jerusalem: Zalman Shazar Center, 1996), 396–405 (Hebrew).

⁵² On the Sadducean intention to restrict the laity from taking part in the Temple cult, see Regev, *The Sadducees and their Halakhah*, 132–47, 152–60, 230–31. On the presence of the leaders of the laity in the Temple cult see the *War Scroll*, 2:3–6; Y. Yadin, *The Scroll of the War of the Sons of Light against the Sons of Darkness* (trans. B. and C. Rabin; Oxford: Oxford University Press, 1962), 202–8, 263–65.

⁵³ According to the *Temple Scroll* (48:14–17), menstruating women, women after childbirth, persons with a skin disease, and men with seminal discharge must not enter *any* city. By contrast, rabbinic prohibitions were more limited in scope: people with skin-diseases were barred only from the so-called "fortified cities"; menstruating women and people with seminal or other discharge only from the Temple Mount (*m. Kel.* 1:7–8). For the comprehensive holiness restrictions in the *Temple Scroll*, see also A. Shemesh, "The Holiness according to the *Temple Scroll*," *RevQ* 19 (2000): 369–82.

The Typology of Holiness in Light of Religious and Anthropological Research

I have characterized the distinction between dynamic and static holiness in a general fashion and avoided a more exact definition since I could not find better terms in other fields of research. Nevertheless, since the conceptualization of holiness is at the core of almost every culture, it is possible to point to somewhat parallel distinctions in the fields of philosophy of religion, the study of religion, and anthropology. Drawing analogies to these parallels may illustrate the differences between dynamic and static holiness and consequently may clarify the differences between the Qumranites and the rabbis.

The typology of dynamic and static holiness parallels Y. Silman's double philosophical categorization of the relationship between God and human beings as ontological and deontological.⁵⁴ According to the ontological pattern, the divine/human relationship is closely related to nature. Human behavior affects the environment, and consequently also holiness. This model is dynamic and hence can be related to the concept of dynamic holiness, since reality changes on the basis of human actions. According to the deontological pattern, the divine/human relationship is established only through human discipline and obedience to heavenly commands, regardless of any effect on nature and environment. This relationship consists solely of obedience and reward. Humans cannot affect the holy, nor God's presence in the world, but only their own destinies before God; thus, holiness in this model may be characterized as static.

Owing to the lack of a similar categorization of holiness in the study of religion in general, I would like to illustrate my typology of dynamic/static holiness by using an analogy from the concepts of purity and impurity in a variety of cultures. For this purpose, I will introduce a typology of dynamic and static concepts of purity/impurity in ancient Judaism and other cultures. This typology of purity conceptions is relevant since the notion of purity is one of the markers of the behavioral or practical approach to the holy. Dynamic impurity is a substantive entity. It is dangerous and violates the holy. Therefore, complicated rites by which to eliminate impurity are essential in order to protect the sacred. Dynamic conceptions of impurity are common in African and

⁵⁴ Y. Silman, "The Significance of the Relation between Intention and Behavior in the Halakhah," in *Studies in Jewish Law* (ed. A. Anker and S. Deutsch; Ramat Gan: Bar-Ilan University Press, 1998), 263–77 (Hebrew).

Polynesian cultures, and in the concept of moral impurity at Qumran.⁵⁵ Impurity is dynamic also in the laws of ritual impurity in the *Temple Scroll* and MMT. In all these cases impurity is taboo; it is associated with anxiety and leads to exclusion.

Static impurity, in contrast, signifies that which is prohibited or improper, but does not really endanger the holy. The disposal of static impurity may be necessary before a certain religious activity or experience commences, e.g., a rite of passage from a profane status to a sacred one. This conception of impurity can be recognized in ancient Greek rituals to be completed before entering a temple; in rites of passage to adulthood for girls among the caste system of Sri-Lanka, and in the practice of washing or bathing before prayer in Second Temple Judaism or in Islamic rite.⁵⁶ In addition, neglecting to guard against the sources of static impurity may violate the social order, as occurs in conjunction with the Indian caste system.⁵⁷ In all these cases, the boundaries between the state of impurity and the state of purity mark social or religious distinctions that are not concerned with sacrilege.

I suggest that the rabbis held a somewhat similar static concept of impurity, i.e., that it cannot damage holiness, but is improper and even repulsive or disgraceful when brought into relation to the holy. Although

⁵⁵ V. Turner, *The Forest of Symbols: Aspects of Ndembu Ritual* (Ithaca: Cornell University Press, 1967), 74–81; A. S. Meigs, “A Papuan Perspective on Pollution,” *Man* n.s. 13 (1978): 304–18; J. Klawans, “Idolatry, Incest, and Impurity: Moral Defilement in Ancient Judaism,” *JSTJ* 29 (1998): 391–415; E. Regev, “Abominated Temple and A Holy Community: The Formation of the Notions of Purity and Impurity in Qumran,” *DSD* 10 (2003): 243–78. Cf. also M. Douglas, *Purity and Danger* (London; Penguin, 1966); Gorman, *Ideology of Ritual*, 78 n. 2.

⁵⁶ R. Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford: Clarendon, 1983), 19–21. Greek religion also contains patterns of dynamic impurity, viz. the exclusion from temples of women in the first months of pregnancy, as well as corpse-defiled persons. See *ibid.*, 48–50, 60–61. Interestingly, Parker (113–15) finds it hard to decide whether impurity is a powerful determinant of action, or only a religious idea which lacks coercive force. On Sri Lanka, see N. Yalman, “On the Purity of Women in the Castes of Ceylon and Malabar,” *Journal of the Royal Anthropological Institute* 93 (1963): 25–58. For Second Temple Judaism, see Regev, “Pure Individualism.” For Islamic ritual, see A. K. Reinhart, “Impurity/No Danger,” *History of Religions* 30 (1990): 1–24. For another example from the *Hekhalot* literature and the *Sar-Torah* texts, see M. D. Swartz, “‘Like Ministering Angels’: Ritual Purity in Early Jewish Mysticism and Magic,” *AJSR* 19 (1994): 135–67.

⁵⁷ See L. Dumont, *Homo Hierarchicus: The Caste System and Its Implications* (trans. M. Sainsbury, L. Dumont, B. Gulati; rev. English ed.; Chicago: University of Chicago Press, 1980), 48: “among the Hindus the notion of impurity is distinct, different from the notion of danger which corresponds elsewhere to the sacred in general and not only to the impure.” According to Dumont (p. 49), in this case defilement is a matter of social status.

the rabbis held that the defilement of the sacred is a transgression of the heavenly commands, they did not believe that pollution bears a tangible danger for the holy. Impurity is only something that Scripture orders should be avoided. In fact, the comparison of rabbinic purity laws with the impurity regulations of the priestly schools would indicate that the rabbis diminished the theoretical power of pollution. They ignored the prohibition against remaining in a state of impurity,⁵⁸ as well as the notion of “*sancta contagion*” (i.e., when the contact of profane people with sacred objects affect the former, sometimes even lethally).⁵⁹ Furthermore, whereas the Qumranites and *Jubilees* viewed Gentiles as morally and repulsively defiled, the rabbis decreed that Gentiles were merely *considered as* defiled in order to prevent intermarriage; they did not emphasize the manner in which contact with them desecrates the holiness of the people of Israel.⁶⁰

Perhaps the most interesting and illuminating analogy to the typology suggested in the present article is a cultural theory that is based on the work of anthropologists and ecologists. Thompson, Ellis and Wildavsky introduced a classification system for a social construction of nature that is based on the cultural model of Mary Douglas’ grid-and-group theory, published in her book *Natural Symbols*.⁶¹ I think that three out of their

⁵⁸ See Lev 5:2–3, with Milgrom, *Leviticus 1–16*, 298–99, 308–18 (he also discusses the rabbinic interpretation); Num 19:13, 20, with B. Levine, *Numbers 1–20* (AB 4A; New York: Doubleday, 1993), 457–58. For the rabbinic and medieval interpretation, see Y. Broyer “איסור טומאה בתורה,” *Megadim* 2 (1987): 45–53.

⁵⁹ J. Milgrom, “Sancta Contagion and Altar/City Asylum,” in *Congress Volume: Tenth Congress of the International Organization for the Study of the Old Testament, Vienna, 1980* (VTSup 32; Leiden: Brill, 1981), 278–310; S. Friedman, “The Holy Scriptures Defile the Hands: The Transformation of a Biblical Concept in Rabbinic Theology,” in *Minhah le-Nahum: Biblical and Other Studies Presented to Nahum M. Sarna in Honour of his 70th Birthday* (ed. M. Brettler and M. Fishbane; JSOTSup 154; Sheffield: JSOT Press, 1993), 117–32.

⁶⁰ J. Klawans, “Notions of Gentile Impurity in Ancient Judaism,” *AJSR* 20 (1995): 285–312; C. Hayes, “Intermarriage and Impurity in Ancient Jewish Sources,” *HTR* 92 (1999): 3–36; idem, “The Impurity of Gentiles in Biblical Law and Late Antique Judaism,” unpublished Seminar Paper for the Biblical Law Group, SBL Annual Meeting, Philadelphia, 1995.

⁶¹ M. Thompson, R. Ellis and A. Wildavsky, *Cultural Theory* (Boulder, Colo.: Westview, 1990), esp. 25–29. For Douglas’ grid-and-group theory, see M. Douglas, *Natural Symbols: Explorations in Cosmology* (2d ed. with new introduction; London and New York: Routledge, 1996).

A model which slightly resembles mine was introduced by H. Bergson, *The Two Sources of Morality and Religion* (trans. R. A. Audran and C. Brereton; London: Macmillan, 1935). Bergson distinguished between static (closed, which parallels my notion of dynamic holiness) and dynamic (open, which parallels my static holiness) religion and favored the latter. However, Bergson aimed to broadly define the place of the *human* in the

five general ideological and sociological worldviews—“nature benign,” “nature tolerant,” and “nature ephemeral”—may be compared with my categories of static, dynamic, and ultra-dynamic holiness.

According to Thompson, Ellis and Wildavsky, the “nature benign” worldview sees nature (or God) as forgiving, which gives a free hand to human activity. Nature, it seems, is static and does not directly respond to human deeds and behavior. Hence, this perception supposes that nature is passive and does not radically change in reaction to human behavior, and hence is not threatening and dangerous. Thompson, Ellis and Wildavsky illustrate this schema by a U-shaped basin with a ball rolling inside. No matter how the ball moves, it will always remain on course and return to the bottom of the basin.

The “nature tolerant,” view, however, understands that nature can tolerate certain acts, but is vulnerable to other, more radical, acts, which lead to destructive effects. Nature’s forgiveness and endurance are limited, and crossing the boundary of tolerance leads to awful consequences. The relation between human behavior and nature is thus dynamic, and humans are obligated to behave in a certain way lest their actions cause harm. The authors illustrate this perception by an M-shape with a ball rolling on its top. The ball’s course should be more limited than that of the U pattern, since the ball must not fall out of the M’s borders.

The “nature ephemeral” stance views the world as terrifying or fragile and God as unforgiving. The least jolt may trigger a complete collapse. Therefore, effective sanctions are required to prevent such a collapse from occurring; institutions (or rituals) must be established to care for and maintain the ecosystem (or cultic system). This perception may be illustrated by an Omega in which the ball must stay in its top.

In terms of their social characteristics, the “nature benign” model encourages individualistic social patterns; “nature tolerant” promotes hierarchic patterns, and “nature ephemeral” gives rise to sectarian patterns. These patterns correspond respectively to the social tendencies of the Pharisees, Sadducees and Qumran sectarians. Thus, in religious movements there is a connection between the ideologies of the sacred and social typologies. Perhaps, then, the social characteristics of the so-called Jewish sects actually derived from their religious ideas.⁶²

religious system and was not focused on the character of *holiness* per se. Compare also J. Z. Smith’s locative/utopian model in his *Map is Not Territory: Studies in the History of Religion* (SJLA 23; Leiden: Brill, 1978), 67–206 and especially xi–xv, 101.

⁶² For the Pharisees (and rabbis) as individualistic, see E. Regev, “The Individualistic

Conclusion

The controversies between the *Temple Scroll*/MMT and rabbinic halakhah regarding cultic laws may be explained in light of conflicting perceptions of the character of holiness. The Qumranic strictness in avoiding or eliminating pollution and desecration arises from the perception that holiness is dynamic (or, by comparison with the Sadducees, ultra-dynamic); that is, holiness is sensitive to desecration, vulnerable, and in some manner changeable. The Pharisees, and later the rabbis, held much more lenient views regarding the laws of purity and sacrificial rites, were less worried by the danger of defilement and desecration, and did not require such extensive efforts to protect the holy, because they perceived holiness to be static. That is, holiness is not sensitive to human activity and thus “desecration” does not really change it. “Holy” is not an entity but simply a halakhic status. Thus, the Pharisees/rabbis saw the cultic laws as divine orders similar to other heavenly commands, with no exceptional consequences.

These worldviews were inferred from the character and reasoning of the laws of the Qumranites and rabbis in a somewhat hypothetical manner, with certain more explicit literary support and demonstration from expressions in MMT and the *Temple Scroll*, as well as later rabbinic sayings. More than anything, I think that the present reconstruction explains the reasoning behind the lenient rabbinic approach to the priestly system. The illustrations I have used from anthropology and the study of religion indicate that such worldviews exist in many other cultures and may explain the ideological origins of conflicting modes of behavior.

I have introduced here a new typology of holiness, in order to enable us to compare Qumran and the rabbis. The use of this typology helps to clarify the fundamental differences between these two halakhic or socio-religious worldviews and has explained, at least partly, why this ideological divergence occurred.

Meaning of Jewish Ossuaries: A Socio-Anthropological Perspective on Burial Practice,” *PEQ* 133 (2001): 45, and bibliography there. For the Sadducees’ tendencies toward hierarchical thinking see idem, *The Sadducees and their Halakhah*, 385–403.

PROHIBITED MARRIAGES IN THE DEAD SEA SCROLLS AND RABBINIC LITERATURE

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The various laws of prohibited marriages which are presented in this paper are, of course, based on the biblical tradition as found primarily in Leviticus 18 and 20 and Deuteronomy 23, interpreted in the Qumran scrolls and in the rabbinic corpus, primarily in tannaitic texts. The Qumran corpus is represented by three manuscripts. The first is the well-known, virtually complete manuscript of the *Temple Scroll* (11QT^a).¹ The second is a fragmentary Cave 4 version of the *Temple Scroll* (4Q524),² and the third is a poorly preserved text entitled *4QHalakhah A* (4Q251) (fig. 17).³ The relevant section of the last document is actually entitled **על העריות**, “Concerning Forbidden Marriages.” In addition, there is also a passage in the *Zadokite Fragments (Damascus Document)* that refers to the prohibition of marriage of a man with his niece.⁴ This law has been subjected to extensive discussion since the discovery of this text in the Cairo Genizah in the late nineteenth century.⁵

In the rabbinic corpus, I shall concentrate to a great extent on the **מכילתא דעריות**, currently preserved in the *Sifra*,⁶ interpreting the sections that deal with prohibited marriages in Leviticus 18 and 20. The *Mekhilta de-Arayot* consists of what is printed as *Sifra 'Ahare Mot* 13:3–15;⁷ and *Qedoshim* 9:1–7 and 9:11–11:14.⁸ However, scholars have determined

¹ Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: The Israel Exploration Society and the Shrine of the Book, 1983).

² É. Puech, *Qumrân Grotte 4.XVIII: Textes Hébreux (4Q521–4Q528, 4Q576–4Q579)* (DJD 25; Oxford: Clarendon, 1998), 85–114.

³ E. Larson, M. R. Lehmann, and L. Schiffman, in *Qumran Cave 4.XXV: Halakhic Texts* (ed. J. M. Baumgarten et al.; DJD 35; Oxford: Clarendon, 1999), 25–51.

⁴ CD 5:7–11 (this passage is not preserved in the Qumran manuscripts).

⁵ Cf. L. Ginzberg, *An Unknown Jewish Sect* (New York: Jewish Theological Seminary, 1976), 23–24, 134–35.

⁶ Ed. I. H. Weiss, *Sifra* (Vienna: J. Schlossberg, 1861–1862). See Weiss’s note explaining that this is not part of the *Sifra* on 86b; see also his note on 91c. These passages are not included in the first printed edition.

⁷ Weiss, *Sifra*, 85d–86b.

⁸ Weiss, *Sifra*, 91c–93b.

that this section, introduced into the printed editions and not found in most of the manuscripts upon which they are based, is in fact of a very different character from the *Sifra* in which it now appears.⁹ Despite the fact that the passage is preserved in the excellent Vatican manuscript Assemani 66 of the *Sifra*,¹⁰ this text actually belongs not to the midrashic type attributed to the school of R. Akiva, as does the rest of the *Sifra*, but rather to that associated with the school of R. Ishmael, and hence it is termed a “*Mekhillta*.”¹¹ While I recognize that there is room to debate the classification of midrashim into these two basic families, and even more room to debate the specific attributions of these families to these particular teachers, I must assert that the basic scheme of a twofold division in midrashic methodology and language is certainly correct. In any case, this is virtually the only material from the tannaitic midrashim available to us for this study since the *Sifre* to Deuteronomy does not deal with the relevant passages apart from Deut 23:1.¹² Additional material is found in the Mishnah. *M. Keritot* 1:1 contains a list of most of those with whom marriage incurs the penalty of *karet* (lit. ‘excision’),¹³ and *m. Yevamot* 1 lists relatives with whom marriage is prohibited as well.

The end of col. 66 of 11QT^a, the last column of the *Temple Scroll* with preserved writing, contains a list of forbidden marriages. The *Temple Scroll* comes to a close with a variety of laws pertaining to prohibited, and, for the most part, consanguineous marriages (11QT^a 66:11–17). The list continues for at the most 5 or 6 lines onto col. 67, the final column of the scroll.¹⁴ The placement of these laws in the scroll is clearly a result of the prohibition against marriage to “the wife of one’s father” in Deut 23:1. The author had included most of the legal material from

⁹ M. D. Herr, “*Sifra*,” *Ej* 14:1517–19; H. L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash* (trans. M. Bockmuehl; Edinburgh: T & T Clark, 1991), 285–86, where the correct parameters of the *Mekhillta de-Arayot* are provided.

¹⁰ L. Finkelstein, *Sifra or Torat Kohanim According to Codex Assemani LXVI* (New York: Jewish Theological Seminary of America, 1956), 370–87.

¹¹ On these schools see M. D. Herr, “Midreshei Halakhah,” *Ej* 11:1521–23; M. Kahana, *Ha-Mekhillot le-Parashat Amalek* (Jerusalem: The Hebrew University Magnes Press, 1999), 15–19; idem, “The Tannaitic Midrashim,” in *The Cambridge Geniza Collections: Their Contents and Significance* (ed. S. C. Reif with the assistance of S. Reif; Cambridge: Cambridge University Press, 2002), 59–63.

¹² Ed. L. Finkelstein, *Sifre on Deuteronomy* (New York: Jewish Theological Seminary 1969), 275.

¹³ *Karet*, in the rabbinic view, is a form of death at the hands of heaven. See Rashi to *b. Keritot* 2a and I. Ta-Shma, “*Karet*,” *Ej* 10:788–89; C. Albeck, *Shishah Sidre Mishnah: Qodashim* (Jerusalem: Bialik Institute; Tel Aviv: Dvir, 1958), 243–44.

¹⁴ Yadin, *Temple Scroll*, 2:298–300; cf. 1:371–72.

Deuteronomy and arrived at Deuteronomy 23. This led the author of the section to expand upon the incest laws, drawing on material from Leviticus. While this technique of weaving together diverse biblical materials on a single topic is typical of the *Temple Scroll* as a whole, it is not usual in the Deuteronomic Paraphrase, of which this passage constitutes the conclusion.¹⁵

I will examine the various unions forbidden in these texts and compare the parallels from tannaitic literature.

1. *Father's Wife*

Deuteronomy 23:1, prohibiting relations with one's father's wife, is quoted in 11QT^a 66:11–12 with only orthographic changes. The verbatim quotation in the scroll of this verse, which in itself raises various exegetical questions, raises the very same questions in the new context. The major problem is that the content of this verse seems to duplicate Lev 18:8. The author of the *Temple Scroll* indeed saw our verse as synonymous with Lev 18:8. He therefore proceeded to list other marriage prohibitions found in Leviticus immediately after his quotation of Deut 23:1. Tannaitic tradition interpreted the first half of Deut 23:1 as simply restating the prohibition against marrying a woman who had been married to one's father (Lev 18:8).

The prohibition against marrying one's father's wife in 4Q*Halakhah A* 17 2 (as restored) also follows the form of Deut 23:1, rather than that of Lev 18:8. The hem or skirt (כנף) refers in 4Q*Halakhah A* to the garment of a man, meaning "that which belongs to him," which in this case denotes his former wife.¹⁶

M. Keritot 1:1 lists as prohibited one's own mother, as well as the wife of one's father. *Mekhilta de-'Arayot* (*Qedoshim*) Pereq 9:12 further defines this prohibition, based on Lev 20:11.¹⁷ From the words *'erwat 'aviv gillah*, "he uncovered his father's nakedness," it is learned that Lev 20:11 refers to one's father's wife, whether or not she is one's mother. But rabbinic law requires both a prohibition (*'azharah*) and punishment (*'onesh*): Lev 18:8 is taken as instituting the prohibition, and Lev 20:11 is taken as

¹⁵ L. H. Schiffman, "The Deuteronomic Paraphrase of the *Temple Scroll*," *RevQ* 15 (1992): 543–68.

¹⁶ Cf. Larson, Lehmann and Schiffman, *DJD* 35.46.

¹⁷ Weiss, *Sifra*, 92a.

prescribing the punishment, since it goes on to require the death penalty. Note that this exegesis totally ignores Deut 23:1; Deut 27:20, which curses one who violates this prohibition, is also ignored.

Yet a conflict existed regarding the significance of the second half of Deut 23:1. In *m. Yevamot* 11:1, Rabbi Judah argued that this verse prohibited a person from marrying a woman who had been raped or seduced by his father. The anonymous view allowed such marriages. The view of Rabbi Judah was occasioned by the repetitive style of the verse. Further, *Targum Pseudo-Jonathan* and *Neofiti* to Deut 23:1 understand the verse as does Rabbi Judah, although they apparently reverse the significance of the first and last halves of the verse. In view of the general stringency of our scroll in such matters, it is most likely that the *Temple Scroll* and *4QHalakhah A* prohibited such unions, as did Rabbi Judah later on.¹⁸

We should also compare this prohibition to the parallel in *Jubilees* 33. Here the law appears in the context of the narrative of Reuben, who, according to *Jubilees*, actually had relations with Bilhah, his father's concubine (*Jub.* 33:1–7). *Jubilees* commands that both the male and the female offender “die together,” despite the fact that Bilhah was asleep (*Jub.* 33:3–4), in accord with the penalty clause of Lev 20:11 (*Jub.* 33:10). *Jubilees* 33:12 describes this prohibition as having been written “again,” and explicitly refers to the second version in Leviticus, which it quotes. This would mean that the author either understood Deut 23:1 to refer to other prohibitions or just ignored it. Furthermore, in 33:13 *Jubilees* specifically commands the penalty of stoning, and adds that the perpetrator is to be “rooted out from the people.” To say the least, the language of this text is condemnatory in the strongest terms of those who violate this command. From verse 13 it appears that the text may have understood the penalty of *karet* to have applied along with execution, an understanding in marked contrast with later Talmudic views. The text goes on to excuse the fact that Reuben was not executed by saying that “the statute, the punishment and the law” had not yet been completely revealed (33:16).¹⁹

¹⁸ Cf. *t. Yevamot* 12:1 and S. Lieberman, *Tosefta Ki-fshutah* (10 vols.; New York: Jewish Theological Seminary of America, 1955–1988), 6:122 for the amoraic discussion.

¹⁹ See M. Segal, “The Relationship between the Narrative and Legal Passages in *Jubilees*,” in *Reworking the Bible: Apocryphal and Related Texts at Qumran. Proceedings of a Joint Symposium by the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature and the Hebrew University Institute for Advanced Studies Research Group on Qumran, 15–17 January, 2002* (ed. E. G. Chazon, D. Dimant and R. A. Clements; STDJ 58. Leiden: Brill, 2005),

2. *Brother's Wife*

In 11QT^a 66:12–13, the *Temple Scroll* discusses the prohibition against relations with one's brother's wife, detailed in Lev 20:21. The scroll phrases this prohibition in a form similar to that of Deut 23:1 (*lo' yiqqah*), which the author had quoted verbatim immediately before (ll. 11–12).²⁰ In discussing Lev 20:21, which provides that it is forbidden to marry a woman who was married to one's brother (most probably levirate marriage is understood as an exception), the author has adapted the phraseology *lo' yitgaleh kenaf* . . ., based on *tegalleh* in Lev 18:16 and *'erwat 'ahiw gillah* in Lev 20:21. It is again difficult to tell if the author regards this clause in Lev 20:21 simply as a repetition of the first part of the verse, and not as indicating a specific prohibition; or if, like the Tanna Rabbi Judah, he understood this phrase to refer to women with whom a person's brother may have had sexual relations outside of the sphere of marriage.

The addition of *ben 'avih[u] 'o ven 'immo* (cf. Lev 20:17) in the *Temple Scroll* is designed to emphasize that for the purpose of this law it does not matter if the brothers share a common father or a common mother. Even if he is only a half-brother, it is forbidden to marry a woman to whom one's brother was married. Rabbinic halakhah reached the same conclusion.

Mekhilta de-'Araiyot (Qedoshim) Pereq 11:8²¹ takes up this law as based on Lev 20:21. The text immediately indicates that the law applies to the wife even of a half-brother, regardless of whether the brothers share a common father or mother. Lev 20:21 is understood as the penalty clause, and the prohibition is traced to Lev 18:16. This prohibition is also listed in *m. Keritot* 1:1.

3. *Sister*

Marriage to one's sister is prohibited in 11QT^a 66:14. This prohibition is based on Lev 20:17 and is also referred to in Deut 27:22. The *Temple*

203–28, pp. 206–14, who frames the contrasts between the retold narrative and the legislation in source-critical terms.

²⁰ The list in Leviticus 18 is not the literary basis of the scroll text, as the form of the prohibitions in Leviticus 18 is *'erwat X lo' tegalleh*. Close to Deut 23:1 is Lev 20:21, *ve-'ish 'asher yiqqah*.

²¹ Weiss, *Sifra*, 93b.

Scroll has replaced the difficult *hesed hu'* of Lev 20:17 with *to'evah hi'* used in Lev 20:13 to describe homosexuality.

Mekhilta de-Arayot (Qedoshim) Pereq 10:10 refers to the prohibition against marriage to one's sister in Lev 20:17, indicating that it refers even to a half-sister from either parent.²² Since the verse describes the penalty of *karet*, it is concluded by the Tannaim that this passage refers to the penalty, and Lev 18:9 is taken as providing the basic prohibition. This penalty is also listed in *m. Keritot* 1:1.

4. Aunt

11QT^a 66:14–15 and 4QHalakhah A 17 3–4 prohibit marrying the sister of one's parent. This command is based on Lev 18:12–13 and 20:19. Yet the concluding words in the *Temple Scroll*, *zimmah hi'*, "it is immorality," are taken from other cases in the Bible. Lev 18:17 and 20:14 use this clause in reference to marrying a woman and her daughter (and even granddaughter in Lev 18:17). CD 8:6–7 uses *zimmah* also in connection with incestuous relationships. 4QHalakhah A, in mentioning the mother's sister first (I restore the father's sister in the continuation), follows MT to Lev 20:19, but contrast LXX and Sam., which mention the father's sister first in this verse as well.

Mekhilta de-Arayot (Qedoshim) Pereq 11:4–5²³ likewise deals with this prohibition. It immediately clarifies that the ruling includes even a half-sister of either parent. Lev 20:19 is understood as the penalty clause, since the verse mentions that the offenders must bear their transgression. The text identifies Lev 18:12–13 as the source of the prohibition. *M. Keritot* 1:1 also prohibits the sister of one's father or mother.

Another type of aunt, termed *dodah* in the Torah, is the wife of the father's brother, i.e. an aunt by marriage, not by birth. This prohibition is given in the Torah in Lev 18:14 and 20:20.

This restriction is taken up in (*Qedoshim*) Pereq 11:6 of *Mekhilta de-Arayot*.²⁴ The text specifically limits the definition of *dodah* to the wife of the father's brother and explicitly excludes the mother's brother's wife from this prohibition. Because the text of Lev 20:20 goes on to discuss

²² Weiss, *Sifra*, 92d.

²³ Weiss, *Sifra*, 92a.

²⁴ *Ibid.*

the punishment for violation of this commandment, this is taken as the penalty verse and Lev 18:14 is taken as the source of the prohibition.

5. *Niece*

The last prohibition which is preserved in the *Temple Scroll* is 11QT^a 66:15–17. This passage prohibits marriage of a man to his niece. The marriage of nieces was permitted and even encouraged in tannaitic teaching.²⁵ Yet the sectarians from Qumran,²⁶ the *Temple Scroll*, the Samaritans, the early Christians, the Falashas, and the Karaites forbade it.²⁷ CD 5:7–11 gives an explanation of the derivation of this prohibition in the context of a description of the sins of the Pharisees:

And they marry each his brother's daughter and his sister's daughter. But Moses said, "Do not have sexual relations (*tigrav*) with your mother's sister, for she is your mother's flesh" (Lev 18:13). And the rules of incest are written with reference to males, and apply equally to women. So how (*we-'im*) can the brother's daughter engage in sexual relations with her father's brother, is she not (also) flesh (a close relative)?

The logic of this passage is that if a man cannot marry his aunt, i.e. his mother's sister or his father's sister (prohibited in Lev 18:12), then a woman may not marry her uncle, either her father's or mother's brother. Put from the point of view of a male, a man may not marry his niece, whether his brother's or sister's daughter.

This logic must have been the basis for the view of the *Temple Scroll* on this matter. Since this same ruling was presumably adopted by virtually all Jewish sects except the Pharisees, it is unjustified to use this parallel as a basis for assuming an identical provenance for the *Temple Scroll* and the *Zadokite Fragments*. This passage is not preserved in any of the Qumran copies of the *Zadokite Fragments*.

4QH^a 174–5 forbids marriage to one's niece. Yadin's comment, that the wording of this law in CD must be taken from 11QT^a or some other work with the same text,²⁸ is significant in light of the presence

²⁵ *B. Yevamot* 62b; *b. Gittin* 83a; *b. Sanhedrin* 76b.

²⁶ CD 5:7–11.

²⁷ C. Rabin, *The Zadokite Documents* (Oxford: Clarendon Press, 1954), 19, who also notes that it was forbidden by the 12th century *Sefer Hasidim*, 282, and that a case of such a marriage is recorded by Josephus, *Ant.* 12.4.6 (186–195). Cf. also C. Rabin, *Qumran Studies* (Oxford: Oxford University Press, 1957), 91–92.

²⁸ *Temple Scroll* 2:300.

of the nearly identical formulation here in frag. 17 of *4QHalakhah A*, *4QHalakhah A* and the *Temple Scroll* must have originally contained even more complete (and virtually parallel) listings of forbidden sexual unions, such as exist in the 4Q524 version of the *Temple Scroll*.²⁹

6. *Uncle*

4QHalakhah A 17 4–5 explicitly prohibits a *woman* from marrying the brother of her father or mother; this is actually the same as the prohibition against a man's marrying his niece, which we saw above. Accordingly, there is no scriptural parallel to this law, since it is a restatement of a law that was itself derived by logical deduction. By contrast with this passage, the formulation of this same law in CD 5:7–11 (esp. ll. 10–11, pertaining specifically to the woman) mentions only the brother of the woman's father and *not* the brother of her mother. However, both cases are referred to explicitly in 11QI^a 66:16–17, which seems to agree in its entirety with frg. 17 of *4QHalakhah A*.³⁰

7. *Mother?*

Line 6 in *4QHalakhah A* 17 specifies a prohibition against sexual relations with someone, but it is not certain with whom. Despite the fragmentary nature of this text, as well as of its parallel in the *Temple Scroll*, we can assume that both texts prohibited all unions prohibited in the biblical codes. Milik³¹ took this fragmentary line as prohibiting relations with one's mother and restored **אמו [ערות]**; however, we would have expected mention of the prohibition of relations with one's mother to precede the prohibition regarding one's aunt.

We have already seen that rabbinic sources, in dealing with the interpretation of Lev 18:8 and 20:11, have deduced that relations are prohibited with a woman who was one's father's wife, even if she was not one's mother. But what of the case of one's mother when *no longer*

²⁹ See Yadin's full discussion of this prohibition in *Temple Scroll*, 1:371–72.

³⁰ Perhaps our restoration should include the words **כי תועבה היא** in line 5 in accordance with 11QI^a 66:17, but we cannot be certain.

³¹ Cf. Larson, Lehmann and Schiffman, DJD 35.46.

married to one's father? This passage, if Milik is correct, would serve to emphasize that even in such a case, relations with one's mother would still be prohibited. The problem here is that this is so self-evident and would already seem to be the literal meaning of Lev 18:7, which prohibits exposing the nakedness of one's mother or father. However, *b. Sanhedrin* 54a, in a tannaitic context, does agree that the second clause of Lev 18:7 comes to prohibit relations with one's mother, even when not married to one's father. This same prohibition is listed in *m. Keritot* 1:1.

8. *Intermarriage: Between Priests and Laity or Jews and Non-Jews?*

4QMMT B 75–82 has been taken by Qimron and Strugnell to refer to a ban on marriage between priests and Israelites, the violation of which is tantamount to fornication (זנות) and which is compared with the mixing of diverse species.³² J. M. Baumgarten,³³ however, takes this law in MMT as referring to intermarriage with non-Jews.

The *Damascus Document* does preserve, in the Qumran fragments, a passage about marrying off a daughter (4Q270 5 14–17 = 4Q269 9 1–3 = 4Q271 3 7–10), which also compares an improper marriage to violation of the law of diverse species. That passage, however, appears to be discussing an inappropriate match.³⁴

If Qimron and Strugnell are correct, then one would have to assume that priests were expected to limit themselves to marrying virgin daughters of priests (following the requirements for the high priest set down in Lev 21:13–14 and interpreting מעמיו to mean “from his tribe”); thus, non-virgin daughters of priests were permitted to marry non-priests. In fact, Ezek 44:22, providing a code of priestly conduct for a reformed Temple practice, does require all Zadokite priests³⁵—the only ones who would minister in Ezekiel's restored Temple—to marry only virgins descended from the house of Israel (*mi-zera' bet Yisra'el*). This

³² Cf. E. Qimron and J. Strugnell, *Qumran Cave 4.V: Miqsat Ma'ase ha-Torah* (DJD 10; Oxford: Clarendon, 1994), 171–74.

³³ Qimron and Strugnell, DJD 10.171 n. 178a.

³⁴ Cf. Qimron and Strugnell, DJD 10.174–75 for evidence of such a ruling in Second Temple sources following priestly traditions.

³⁵ Cf. L. H. Schiffman, *The Halakhah at Qumran* (SJLA 16; Leiden: Brill, 1975), 70–75.

ruling was part of a tendency to priestly stringency expected by the author of the priestly section at the end of Ezekiel.

Yet this parallel would in no way explain the limitation of the marriage of a priest to the daughter of a *priest*. Certainly, no rabbinic parallel can be found for such a restriction. If, however, we follow the assumption that the passage in MMT intends to prohibit a person from marrying his daughter to a non-Jew, as suggested by Baumgarten, then our text would essentially retroject back into the Torah a law not stated explicitly. Rabbinic tradition had to derive this prohibition from a complex exegesis of Deut 7:3–4 that in reality refers to the Canaanite nations only. Nonetheless, by Second Temple times, as is clear from a variety of texts, the blanket prohibition of intermarriage was in full force, and it became the norm, of course, in tannaitic halakhah.³⁶ But if it is indeed prohibited by MMT, the author thus anticipates the views of Maimonides, *H. Issure Bi'ah* 12:1, to the effect that the Torah prohibits sexual relations between Israelites and all non-Jews.

9. *Marriage to Two Women*

4QHalakhah A 17 7, like the passage from 4QMMT just discussed, has been taken to include a law against marrying off one's daughter to a non-Jew or against a priest's marrying off his daughter to a non-priest (depending on the restoration). But in such cases, the use of יקה, a *gal* form (אל יקה איש את בתו), would be difficult, and no *hif'il* is attested for the root לקח. The possible parallel in 4Q270 5 14–17, noted in the preceding section, uses the verb נתן in the *gal*; but this passage deals with the avoidance of fraud in making a match, not with forbidden unions. Furthermore, there is no parallel to such a law preserved in either manuscript of the *Temple Scroll*. Recently, Qimron has proposed the new reading: אל יקה איש [ש]תי נ[שים], a reading that solves these problems, as it renders the law a prohibition against polygamy for all Israelites.³⁷ Leviticus 18:18 has also been read as prohibiting polygamy, in CD 4:20–21. Polygamy is prohibited for the king in the Law of the King of the *Temple Scroll*, 11QT^a 56:18–19.

³⁶ Cf. *Tg. Ps.-Jon.* Deut 7:3; *b. Yevamot* 76a; *Sefer ha-Hinukh* 427, where all nations are included; and *b. Qiddushin* 68b. For the early history of this prohibition, see L. H. Schiffman, *Who was a Jew? Rabbinic and Halakhic Perspectives on the Jewish-Christian Schism* (Hoboken, N.J.: Ktav, 1985), 9–17.

³⁷ Cf. A. Shemesh, "4Q251: Midrash Mishpatim," *DSD* 12 (2005): 296, 299.

Needless to say, no rabbinic parallel can be cited for such a law. Indeed, the rabbinic sages considered polygamy permissible for ordinary Israelites.

10. *Granddaughter*

A prohibition which cannot be identified appears in the last line of col. 66 of 11QT^a. The parallel text from 4Q524 15–22 4–5, however, indicates that this passage concerned marriage with one's granddaughter. This law as stated in 4Q524 is based on Lev 18:10, except that the reference to 'nakedness' (*erwah*) has been removed in order to approximate more the language of Deuteronomy. Lev 18:22 is the source of *to'evah hi'*. *Ki* is based on Deut 24:4.

According to 4Q524, the *Temple Scroll* clearly understands Lev 18:10 as a direct, explicit prohibition of relations between a man and his granddaughter. Nevertheless, this passage is not understood in this way by the rabbis.³⁸ Instead, rabbinic interpretation takes this verse as unnecessary, and understands grandchildren as included in the prohibition of relations with one's children.³⁹ The otherwise unnecessary Lev 18:22 is then taken to prohibit a man from having relations with a daughter born to him from a woman he had raped (*b. Yevamot* 97a).⁴⁰ No such issues are discussed at all in the Qumran material as preserved.

11. *Daughter-in-Law*

Based on Lev 18:15, the text of 4Q524 15–22 4–5 also prohibits the marriage of a man to a woman who had been his daughter-in-law. Lev 20:12 had stated about such a case, *tevel hu'*, another expression for abomination, but our author preferred to stay with his usual formula, "it is an abomination" (*to'evah hi'*). *Mekhilta de-'Arayot (Qedoshim)* Perek 9:13 derives the requirement of punishment for this offense from Lev 20:12, since that passage explicitly refers to the death penalty.⁴¹ The actual

³⁸ It is not interpreted in *Mekhilta de-'Arayot*.

³⁹ This prohibition also includes the children and grandchildren of one's wife, according to the Mishnah.

⁴⁰ See *b. Yevamot* 22b; *b. Sanhedrin* 76a; *y. Sanhedrin* 9:1 (26c).

⁴¹ Weiss, *Sifra*, 92b.

prohibition is derived from Lev 18:15. This prohibition is also listed in *m. Keritot* 1:1.

12. *Woman and Her Daughter or Granddaughter*

The prohibition against marrying both a woman and her daughter or granddaughter appears in the *Temple Scroll*, according to 4Q524 15–22 5–6. Lev 20:14 prohibits marrying a mother and daughter, and 18:17 prohibits a woman and her daughter or granddaughter, and says about it, *zimmah hi*², but our author prefers to use the familiar *ki to'evah hi*². In reformulating this prohibition, *Mekhilta de-Arayot (Qedoshim)* Perek 9:16–17⁴² refers explicitly to Lev 20:14 and widens the ruling to prohibit not only a woman and her daughter, but also her granddaughter, as in Lev 18:17.⁴³ Again, Lev 20:14 is taken as providing the punishment clause since it refers explicitly to the penalty of burning (*serefah*), and 18:17 provides the prohibition itself.

The prohibition against marrying both a woman and her daughter also appears in *m. Keritot* 1:1 among the list of those who incur the penalty of *karet*, despite the fact that the punishment specified in the Torah for this offense is burning (cf. *m. Sanhedrin* 9:1). This punishment is to be applied when the transgression is intentional and follows upon a warning (התראה); however, when this offense is committed without a prior warning, the violator incurs the penalty of *karet*.⁴⁴

13. *Woman and Her Sister*

The final law to be discussed is the prohibition against marrying two sisters, found in the *Temple Scroll* (4Q524 15–22 6). Lev 18:18 prohibits such marriages as long as both women are alive, but permits marriage to one after the other has passed away. This appears to be the view of the *Temple Scroll* as well.

The same prohibition is found in *m. Keritot* 1:1, where the penalty is listed as *karet*.⁴⁵ Although no parallel for this prohibition exists in

⁴² Weiss, *Sifra*, 92c.

⁴³ Cf. *m. Sanhedrin* 9:1 and *b. Sanhedrin* 75a.

⁴⁴ P. Kehati, *Mishnayot Mevo'arot* (15 vols.; Jerusalem: Heikhal Shelomoh, 1996–1997), 10:129, to *m. Keritot* 1:1.

⁴⁵ Cf. *m. Qiddushin* 2:7; baraita in *b. Qiddushin* 50b and parallels.

Leviticus 20, from which to derive the penalty clause, it was derived from the catchall prescription of *karet* in Lev 18:29.⁴⁶ Apparently, this catchall penalty was understood to refer only to those offenses listed in Leviticus 18 for which there was no doublet in Leviticus 20, and hence no specific penalty. This offense is not mentioned in *Mekhilta de-Arayot*.

Conclusions

The fundamental problem facing Late Antique exegetes of the biblical marriage prohibitions is their duplication, primarily in Leviticus 18 and 20, but also in Deuteronomy 23 and 27. The exegetical technique represented here by three Qumran manuscripts, but only two compositions, is to harmonize or homogenize the various biblical passages, creating a sort of redacted version of the biblical rulings. The Tannaim followed a markedly different approach, preferring to give a distinct halakhic significance to each of the biblical passages. This is accomplished by way of an overall theory about the exegesis of biblical commands. The Tannaim hold that negative commandments must be represented twice in the Torah, once to establish the prohibition, and once to render the offender subject to punishment. Thus, in one fell swoop of hermeneutical theory, the Tannaim dispose of the duplication of commandments in Leviticus 18 and 20.

In essence, despite differences in specific prohibitions, both corpora have effectively done the same thing by different techniques. Both have eliminated the duplication of commands in the Torah, primarily in Leviticus 18 and 20, creating one set of uniform prohibitions. For the Qumran sectarians and related Zadokite/Sadducean groups, this is accomplished by harmonization, which then results in rewritten Torah legislation. For the Tannaim and the later rabbinic tradition, the biblical text cannot be invaded or even rewritten. Instead, the rabbis invoked the hermeneutical principle of the oral law that all prohibitions must be stated twice. But for both groups, their respective techniques of exegesis were employed to create a final list of prohibited marriages—of which, so it seems, only part is preserved in our texts from Qumran.

⁴⁶ Rashi to *b. Keritot* 2b; cf. Ibn Ezra to Lev 18:18.

SECLUSION AND EXCLUSION: THE RHETORIC OF SEPARATION IN QUMRAN AND TANNAITIC LITERATURE

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David Goodblatt opened his lecture at the Fourth International Symposium of the Orion Center, held in Jerusalem in 1999, by noting the rarity of “dialogue between Qumran studies and the study of the history of Judea during late Second Temple times.”¹ To be sure, interest in the history of Second Temple Judaism is not absent from scholarly literature devoted to the Dead Sea Scrolls; however, as Goodblatt puts it, this interest is not for its own sake, but is rather aimed primarily at establishing a background for understanding the scrolls and the community which is presumed to have produced them. “What [i]s relatively lacking,” Goodblatt complains, is “the reverse: using the Dead Sea Scrolls to illuminate the history of the Jews.”²

Behind this critical observation stands the notion that from a historical perspective the significance of the Qumran sect, as such, is limited. One may even dare to speculate that had the Qumran sectarians not left behind them their library, containing such a large amount of documents, the historical interest in the group would have been much smaller. It is therefore the historian’s obligation to ask how these sources can illuminate broader questions relating to the history of the Jewish people in the Second Temple era, and not only to that of the sect itself. Such an attitude was the guiding principle underlying my previous contributions to the Orion Center symposia. I was not interested in Dead Sea texts for their own sake; rather, I have tried to use them as a source that might

* I would like to express my gratitude to Ruth Clements for her editorial advice. All translations of biblical and other texts are my own, unless otherwise noted.

¹ D. Goodblatt, “Judean Nationalism in the Light of the Dead Sea Scrolls,” in *Historical Perspectives: From the Hasmoneans to Bar Kokhba in Light of the Dead Sea Scrolls. Proceedings of the Fourth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 27–31 January 1999* (ed. D. Goodblatt, A. Pinnick, and D. R. Schwartz; STDJ 37; Leiden: Brill, 2001), 3.

² *Ibid.*

potentially illuminate issues relating to the rest of Jewish society of the time.³

In the present paper I shall continue walking in the same path. I am not so much interested in Qumran, as I wish to use certain Dead Sea texts to illuminate a broader historical question. I would like to suggest that investigating a phenomenon which is common both to the Qumran sectarians and to the rabbis may contribute to our understanding not only of the Qumran material, but more importantly to our understanding of an important socio-historical aspect of Jewish society in the post-destruction period: the place of the rabbis in the Jewish society of their time.

I

In a famous phrase, the author of 4QMMT prides himself and his group on having “separated from the multitude of the people” (פרשנו) (מרוב העם),⁴ thereby expressing the sect’s own self-perception as a group of people who have withdrawn from the rest of Jewish society.⁵ As was noted long ago by David Flusser, this perception is echoed in many other

³ Thus, in my “Qumran Polemic on Marital Law: CD 4:20–5:11 and Its Social Background,” in *The Damascus Document: A Centennial of Discovery. Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 4–8 February, 1998* (ed. J. M. Baumgarten, E. G. Chazon, and A. Pinnick; STDJ 34; Leiden: Brill, 2000), 147–60, I was not so much interested in Qumran’s attitude to marriage as in the norms prevalent in the rest of Jewish society, against which the author of CD was arguing, and which are echoed in his polemic against these norms. Similarly, in “[T]he[y] Did Not Read in the Sealed Book”: Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism,” in Goodblatt, Pinnick, and Schwartz, *Historical Perspectives*, 105–26, I was less interested in describing what I termed the “Qumranic revolution” as such, than in using it as a “reflector,” so to speak, of a broader historical process that Jewish society and religion of the Second Temple era had undergone.

⁴ See E. Qimron and J. Strugnell, *Qumran Cave 4.V: Miqsat Ma’ase Ha-Torah* (DJD 10; Oxford: Clarendon, 1994), 58. I shall not enter here into the much-debated issue of precisely how to translate the Hebrew רוב העם in this phrase. On this matter see D. R. Schwartz, “MMT, Josephus and the Pharisees,” in *Reading 4QMMT: New Perspectives on Qumran Law and History* (ed. J. Kampen and M. J. Bernstein; SBLSymS 2; Atlanta: Scholars Press, 1996), 67–80; but compare M. Kister, “Studies in 4QMiqsat Ma’ase Ha-Torah and Related Texts: Law, Theology, Language and Calendar,” *Tarbiz* 68 (1999): 320 n. 9 (Hebrew).

⁵ See Y. Sussman, “The History of *Halakha* and the Dead Sea Scrolls—Preliminary Observations on *Miqsat Ma’ase Ha-Torah* (4QMMT),” *Tarbiz* 59 (1990): 38–39 (Hebrew); Kister, “Studies,” 320 n. 9; Qimron and Strugnell, DJD 10.58, 111.

places in the writings of the Qumran sect.⁶ Thus, twice in the *Damascus Document* the sect is described as “the penitent of Israel, who departed from the way of the people” (שבי ישראל סרו מדרך העם).⁷ Similarly, the author of the *Rule of the Congregation* speaks of the members of the sect as those of Israel who gather “to walk continuously according to the judgment of the Sons of Zadok, the priests, and the men of their covenant who have turned away from walking in the way of the people” (להתהלך על פי משפט בני צדוק הכוהנים ואנושי בריתם אשר סרו מלכת) (בדרך העם).⁸ So, too, the author of *11QMelchizedek* describes the sect: they are “the establishers of the covenant, who avoid walking in the way of the people” (מקימי הברית הסרים מלכת בדרך העם).⁹ And the same phrase is used by the author of *4QFlorilegium* when he interprets the phrase “the man who did not walk in the council of wicked” of Psalms 1:1 as referring to the sect itself: “This refers to those who departed from the way of the people” (פשר הדב[ר] המ[ה] סרו מדרך [העם]).¹⁰ As the

⁶ See D. Flusser, “Pharisees, Sadducees and Essenes in Peshet Nahum,” in *Essays in Jewish History and Philology in Memory of Gedaliahu Alon* (ed. M. Dorman, S. Safrai and M. Stern; Tel Aviv: Ha-Kibbutz Ha-Meuḥad, 1970), 151 (Hebrew); idem, “Some of the Precepts of the Torah from Qumran: *4QMMT* and the Benediction Against the Heretics,” *Tarbiz* 61 (1992): 363–66 (Hebrew).

⁷ CD 8:16 and 19:29. See E. Qimron, “The Text of CDC,” in *The Damascus Document Reconsidered* (ed. M. Broshi; Jerusalem: The Israel Exploration Society and The Shrine of the Book, Israel Museum, 1992), 25, 45. In both places the reading of the Genizah fragment is סרו, which is in the past tense. For that reason I think an emendation of the text to סרי (that is, the present tense) is unwarranted. Further, סרו, with a final *vav*, appears in yet another place where this phrase occurs, that is *4QFlorilegium* 2 14. See below, n. 10. Compare Kister, “Studies,” *ibid.*; Qimron and Strugnell, DJD 10.111; and many others. Consequently, I follow here the translation of J. M. Baumgarten and D. R. Schwartz, “Damascus Document,” in *Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 2: Damascus Document, War Scroll, and Related Documents* (ed. J. H. Charlesworth; Tübingen: Mohr [Siebeck]; Louisville: Westminster John Knox, 1996), 28, 32.

⁸ 1QSa 1:1–3. Text and translation: L. T. Stuckenbruck and J. H. Charlesworth, “Rule of the Congregation (1QSa),” in *Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 1: The Rule of the Community and Related Documents* (ed. J. H. Charlesworth; Tübingen: Mohr [Siebeck]; Louisville: Westminster John Knox, 1994), 110.

⁹ *11QMelchizedek* 2:24. See *Qumran Cave 11.II: 11Q2–18, 11Q20–31* (ed. F. García Martínez, E. J. C. Tigchelaar, and A. S. van der Woude; DJD 23; Oxford: Clarendon, 1998), 226.

¹⁰ *4Q174 (Florilegium)* 2 14. See *Qumran Cave 4.I (4Q158–4Q186)* (ed. J. M. Allegro; DJD 5; Oxford: Clarendon, 1968), 53. G. J. Brooke, *Exegesis at Qumran: 4QFlorilegium in its Jewish Context* (JSOTSup 29; Sheffield: Sheffield University Press, 1985), 87, 115, suggested restoring חטאים / דרך הרשעים. This restoration was followed by F. García Martínez and E. J. C. Tigchelaar, *The Dead Sea Scrolls: Study Edition* (2 vols.; Leiden: Brill, 1997–1998), 1:352. A. Steudel, *Der Midrasch zur Eschatologie aus der Qumrangemeinde (4Q MidrEschat^{a,b}): materielle Rekonstruktion, Textbestand, Gattung und traditions-geschichtliche*

author himself indicates, his interpretation was based on the words of Isaiah 8:11, which he read in accordance with the reading of the *Isaiah Scroll* and other ancient witnesses, as saying: “With a strong hand He averted me (וּיְסִירֵנִי) from walking in the way of the people.”¹¹

This self-perception furnished the conceptual basis for the sect’s rulings that strove to set boundaries between its members and outsiders. As is well known, in several places in the writings of the Qumran sect we find rulings prohibiting social and economic relations between members of the sect and others. Thus, according to the “Instructions of the *Maskil* concerning those who freely volunteer to revert from all evil and to keep themselves steadfast in all he commanded” (עַל אַנְשֵׁי הַתּוֹרָה הַמֵּתְנַדְּבִים לְהַשִּׁיב מִכָּל רַע וּלְהַחְזִיק בְּכָל אֲשֶׁר צִוָּה),¹² the newcomer is taught that as a rule, a member of the sect “must not be united with” an outsider “lest he burden him (with) guilty iniquity” (וְאֲשֶׁר לֹא יִיחַד עִמּוֹ בְּעִבּוּדָתוֹ וּבְהוֹנֵנוּ פֶּן יִשְׂאִינּוּ עִוּוֹן) (1QS 5:14–15; אֲשַׁמָּה).¹³ Therefore, not only is it prohibited for the member of the sect to engage with outsiders “with respect to any law or judgment” (1QS 5:15–16: וְאֲשֶׁר לֹא יֵשׁוּב אִישׁ מֵאֲנָשֵׁי הַיַּחַד עַל פִּיהֶם לְכוֹל תּוֹרָה וּמִשְׁפָּט), but it is also prohibited “either to eat or drink anything of their property, or accept anything whatever from their hand without payment” (1QS 5:16–17: וְאֲשֶׁר לֹא יֹכֵל מֵהוֹנֵם כּוֹל וְלֹא יִשְׁתֶּה וְלֹא יִקַּח מִיָּדָם כּוֹל מֵאוֹמָה). According to these instructions, “The man of holiness must not lean on any worthless works, for worthless are all who do not know his covenant” (1QS 5:18–19: וְלֹא יִשְׁעַן אִישׁ הַקּוֹדֵשׁ עַל כּוֹל מַעֲשֵׂי) (הַבֵּל כִּי אֵל הַבֵּל כּוֹל אֲשֶׁר לֹא יִדְעוּ אֶת בְּרִיתוֹ).¹⁴

Einordnung des durch 4QJ74 (“Florilegium”) und 4QJ77 (“Catena A”) repräsentierten Werkes aus den Qumranfunden (STDJ 13; Leiden: Brill, 1994), 25, restored [חֲטָאִים] מִדְּרַךְ, the reason being that Ps 1:2 uses the phrase דֶּרֶךְ חֲטָאִים (ibid., 46 n. 7). However, in light of other occurrences of this phrase, and in light of the verse from Isaiah, to which the author of the *Florilegium* alludes, the phrase דֶּרֶךְ הַעֵם should be preferred. As Steudel notes (ibid.), this had indeed been suggested by many scholars. As סָרוּ (which in all probability is the correct reading), see Steudel, ibid., 46 n. 4.

¹¹ See D. Flusser, “Pharisees, Sadducees, and Essenes,” 140; idem, “Jerusalem in the Literature of the Second Temple,” in *Vē'im Biguroth—Fourscore Years: A Tribute to Rubin and Hannah Mass on their Eightieth Birthdays* (ed. A. Even-Shushan et al.; Jerusalem: Yehidim, 1974), 271; idem, “Some of the Precepts of the Torah,” 364–65. See also: J. Licht, *The Rule Scroll* (Jerusalem: Bialik Institute, 1965), 252.

¹² 4QS^d 1 i 1. For text and translation, see E. Qimron and J. H. Charlesworth, “Cave IV Fragments (4Q255–264 = 4QS MSS A–J),” in Charlesworth, *Hebrew, Aramaic, and Greek Texts, Vol. 1*, 72.

¹³ For text and translation of 1QS 5:14–19, see E. Qimron and J. H. Charlesworth, “Rule of the Community (1QS),” 22.

¹⁴ Cf. A. I. Baumgarten, *The Flourishing of Jewish Sects in the Maccabean Era: An Interpretation* (JSJSup 55; Leiden: Brill, 1997), 106–7.

Similarly, in 1QS 9:8–9 we read that “the property of the men of holiness who walk perfectly—it must not be merged with the property of the men of deceit” (והון אנשי הקודש ההולכים בתמים אל יתערב הונם) (עם הון אנשי הרמיה).¹⁵ A few lines later the author rules that no member of the sect should “reproach anyone, or argue with the men of [the pit], but instead hide his counsel in the midst of the men of injustice” (ואשר לוא להוכיח ולהתרובב עם אנשי השחת ולסתר את עצת התורה בתוך אנשי העול).¹⁶ Furthermore, according to this text, the member of the sect must “leave to [the men of the pit] property and labor of hands as a slave does to the one who rules over him, and one oppressed before the one who dominates over him” (לעזוב למו הון ועמל כפים כעבד למושל).¹⁷ These are (1QS 5:1): “The rules for the men of the Community who devote themselves to turn away from all evil” (הסרכב [!] לאנשי היחד המתנדבים לשוב מכול רע).¹⁸

The guiding principal of these rules, as stated by the text itself, is that “they shall *separate* themselves from the congregation of the men of deceit” (1QS 5:1–2: להבדל מעדת אנשי העול).¹⁹ Indeed, the member of the sect is called to *withdraw* from the rest of the people, and to “take upon his soul by covenant to separate themselves *from* all the men of deceit who walk in the way of wickedness” (ואשר יקים בברית על נפשו) (להבדל מכול אנשי העול ההולכים בדרכב [!] הרשעה).²⁰ The obligation to “separate from each man who has not turned his way from all deceit” (והבדל מכול איש ולוא הסר דרכו מכול עול),²¹ is repeated in the *Rule of the Community* again and again, and is even presented as a founding principal of the sect as a distinct community:

ובהיות אלה <ליחד> בישראל יבדלו <בתכונים האלה> מתוך מושב הנשי [!] העול ללכת למדבר לפנות שם את דרכ הואהא, כאשר כתוב במדבר פנו דרך יי ישרו בערבה מסלה לאלוהינו'

When these become the Community in Israel, they shall separate themselves from the session of the men of deceit in order to depart into

¹⁵ 1QS 9:8 (Qimron and Charlesworth, “Rule of the Community,” 38). Cf. Baumgarten, *Jewish Sects*, 107.

¹⁶ 1QS 9:16–17 (Qimron and Charlesworth, “Rule of the Community,” 40). Cf. 4QS^d 3 ii 1 (Qimron and Charlesworth, “Cave IV Fragments,” 78).

¹⁷ 1QS 9:22–23 (Qimron and Charlesworth, “Rule of the Community,” 40–42). Cf. 4QS^d 3 ii 6–7 (Qimron and Charlesworth, “Cave IV Fragments,” 80).

¹⁸ For 1QS 5:1–2, see Qimron and Charlesworth, “Rule of the Community,” 18.

¹⁹ Cf. 4QS^d 1 i 2 (Qimron and Charlesworth, “Cave IV Fragments,” 72).

²⁰ 1QS 5:10–11 (Qimron and Charlesworth, “Rule of the Community,” 22).

²¹ 1QS 9:20–21 (Qimron and Charlesworth, “Rule of the Community,” 40).

the wilderness to prepare there the Way of the Lord, as it is written: “In the wilderness prepare the way of the Lord, make level in the desert a highway for our God” (Isa 40:3).²²

Despite the declarative character of these lines, the tone of the practical rules quoted above is evidently a defensive one. It is clear, therefore, that these rules function as “laws of *seclusion*.” That is, they are rules of self-isolation that function as a means to create boundaries between the sect and its members, on the one hand, and the rest of Jewish society, on the other hand.

II

It has been suggested that Qumran’s “laws of seclusion,” are in fact a reflection of ancient “Laws of Separation” of Jews from Gentiles, which were applied by the Qumran sect to other *Jews*.²³ The existence of such “laws” and tendencies towards separation from Gentiles, among Palestinian Jews of the Second Temple period, was suggested most emphatically by Gedaliah Alon, in his now classic paper on “Gentile impurity.”²⁴ In that paper, Alon argued that “laws of separation” from Gentiles, found in various forms in rabbinic literature, were not a rabbinic innovation. Rather, they reflect ancient notions and views, widely held by Jews of the land of Israel throughout the Second Temple period, that Gentiles were ritually impure.²⁵ Alon’s view of the *conceptual foundation* of these “laws” (that is, the notion that Gentiles were ritually impure) was recently refuted,²⁶ but his claim with regard to their antiquity is generally

²² 1QS 8:12–14 (Qimron and Charlesworth, “Rule of the Community,” 34–36).

²³ See A. Shemesh, “The Origins of the Laws of Separatism: Qumran Literature and Rabbinic Halacha,” *RevQ* 18 (1997): 223–41. Cf. L. H. Schiffman, “Legislation Concerning Relations with non-Jews in the Zadokite Fragments and in Tannaitic Literature,” *RevQ* 11 (1983): 379–89.

²⁴ See G. Alon, “The Levitical Uncleaness of Gentiles,” in his *Jews, Judaism and the Classical World* (trans. I. Abrahams; Jerusalem: The Hebrew University Magnes Press, 1977), 146–89.

²⁵ In this, Alon rejected Adolf Büchler’s view that these rabbinic *halakhot* were first introduced by the Sages in the eve of the First Revolt. See A. Büchler, “The Levitical Impurity of the Gentile in Palestine Before the Year 70,” *JQR* 17 (1926): 1–81.

²⁶ See C. E. Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (Oxford: Oxford University Press, 2002), 205–14; idem, “Do Converts to Judaism Require Purification? *M. Pes.* 8:8—An Interpretative Crux Solved,” *JSQ* 9 (2002): 325–27. According to Hayes, “Although it is true that much of the Jewish literature of the Second Temple period promotes a policy of *social amixia* (to

accepted in scholarly literature. One important and often cited text, in which such a tradition is preserved and which demonstrates these “laws of separation,” is *Jub.* 22:16–22:

[16] And you also, my son Jacob, remember my words, and keep the commandments of Abraham, your father. Separate yourself from the gentiles, and do not eat with them, and do not perform deeds like theirs. And do not become associates of theirs. Because their deeds are defiled, and their ways are contaminated, and despicable, and abominable. [17] They slaughter their sacrifices to the dead, and to the demons they bow down. And they eat in tombs. And all their deeds are worthless and vain... [19] But (as for) you, my son, Jacob, may God Most High help you, and the God of heaven bless you. And may he turn you away from their defilement, and from their errors. [20] Be careful, my son, Jacob, that you not take a wife from the seed of the daughters of Canaan, because all of his seed is (destined) for uprooting from the earth. [21]... and all of his seed will be blotted out from the earth, and all his remnant, and there is none of his who will be saved... [22] And for all of those who worship idols and for the hated ones, there is no hope in the land of the living; because they will go down in Sheol. And in the place of judgment they will walk, and they will have no memory upon the earth. Just as the sons of Sodom were taken from the earth, so (too) all of those who worship idols shall be taken away.²⁷

After a general directive to “separate from the Gentiles,” the text lists the following “prohibitions”: (1) a prohibition against eating together; (2) a prohibition against “performing deeds like theirs”; (3) a prohibition

widely varying degrees), this policy is never predicated on the fear of ritual defilement by ritually impure Gentiles... The separation from Gentiles is based on the desire to prevent imitation of their ‘works’ and ‘ways’ and ‘worship,’ which are *morally* impure abominations, and to bolster adherence to the laws and worship of the God of Israel” (*Gentile Impurities*, 47). The sources certainly support Hayes’ argument, but for the purposes of the present discussion the distinction between *ritual* impurity and *moral* impurity is immaterial. In a world in which people pay much attention to all kinds of “purity” and “holiness,” the distance between the idea that the Gentile is “ritually impure” and the idea that he or she is “morally impure,” is very small. From that perspective, just as one must keep oneself from anything which is *ritually* impure, one also must keep oneself from anything which is *morally* impure. The question in the present discussion, therefore, is not whether rules of separation from Gentiles were rooted in this or that concept of purity or holiness, but rather whether such rules governed actual social relations between Jews and Gentiles during the Second Temple period. Consequently, one does not need to assume, with Alon, that “Laws of Separation” from Gentiles derive from a concept of “Gentile ritual impurity.” It is sufficient to accept the claim that such “Laws” actually existed. Indeed, the existence of such tendencies is proven by many sources, and with *this* Hayes apparently agrees, as she herself writes: “The purpose of these traditions and laws is to limit extensive social interaction [between Jews and Gentiles]” (*ibid.*, 48).

²⁷ See J. C. VanderKam, *The Book of Jubilees: A Critical Text (CSCO Scriptorum Aethiopicum 88; Louvain: Peeters, 1989)*, 131–32. Here I followed the more literal translation (as it is clear from VanderKam’s own notes *ad. loc.*) of O. S. Wintermute, in *OTP* 2:98–99. On this passage, see Baumgarten, *Flourishing of Jewish Sects*, 84; Shemesh, “Laws of Separatism,” 234–35.

against becoming “associates of theirs”; and (4) a prohibition against intermarriage between Jews and non-Jews. A. Shemesh has already noted the affinities between this passage in *Jubilees* and the Qumran material.²⁸ The difference between the two lies in the fact that while *Jubilees* speaks of separation from *Gentiles*, the Qumran sect applied the basic concept of separation, as indicated above, to other *Jews*.²⁹

III

A similar application of “Laws of Separation” to *other Jews* can be seen in the tannaitic halakhah concerning *minim*, as we find it in the Tosefta:

[20] בשר שנמצא ביד גוי מותר בהנאה; ביד המין אסור בהנאה. היוצא מבית ע"ז הרי זה בשר זבחי מתים. מפני שאמרו שחיתת המין ע"ז ופיתם פת כותי וינם יין נסך ופירותיהם טבלים וספריהם ספרי קוסמין ובניהם ממזרין.

[21] אין מוכרין להם ואין לוקחין מהן ואין נושאים מהן ואין נותנים להן ואין מלמדין את בניהן אומנות ואין מתרפאים מהן לא רפוי ממון ולא רפוי נפשות.

[20] Meat which is found in the possession of a gentile is permitted for gain; in the possession of a *min* it is prohibited for gain. That which goes forth from a pagan temple, lo, it is deemed to be meat from the sacrifices of corpses. For they have stated: “The act of slaughter of a *min* [is deemed to be for the purposes of] idolatry. Their bread [is deemed] the bread of a Samaritan, and their wine is deemed wine used for idolatrous purposes. And their produce is deemed wholly untithed, and their books are deemed magical books, and their children are *mamzerim*.”

[21] People are not to sell anything to them, or buy anything from them. And they do not take wives from them or give children in marriage to them. And they do not teach their sons a craft. And they do not seek medical assistance from them, either healing for property or healing for a person.³⁰

²⁸ Shemesh, “Laws of Separatism,” *ibid*.

²⁹ Albert Baumgarten, following Mary Douglas, has drawn attention to the social implication of such a move, namely the creation of a sense of a “new other” *within* Jewish society, rather than the Gentile. See Baumgarten, *Flourishing of Jewish Sects*, 6–8; *idem*, *Second Temple Sectarianism: A Social and Religious Historical Essay* (Jerusalem: Ministry of Defense, 2001), 40–56 (Hebrew). This obviously does not imply that we should always view an act of creating boundaries in such a way; sometimes boundaries are created as means of exclusion. This, I submit, is what we see in the rabbinic material, as I shall argue below. For Qumranic laws of *exclusion*, see A. Shemesh, “Expulsion and Exclusion in the Community Rule and the Damascus Document,” *DSD* 9 (2002): 44–74.

³⁰ *T. Hull.* 2:20–21 (ed. M. S. Zuckerman; 2d ed.; Jerusalem: Wahrman, 1970), 502, according to MS Vienna (translation mine). I found no relevant variant readings

The similarities between these rulings and those found in *Jubilees* are obvious. First, the Tosefta, like *Jubilees*, prohibits in a very general manner any economic connections with the “others” about which it speaks: “One does not sell to them and does not buy from them” (אין מוכרין להם ואין לוקחין מהן). It then deems their wine, bread and fruit, as halakhically prohibited for use: “their bread [is deemed] the bread of a Samaritan, and their wine is deemed wine used for idolatrous purposes. And their produce is deemed wholly untithed” (פתן פת כותי)—the (unstated) consequence of which is a prohibition on common eating, exactly as in *Jubilees*. The Tosefta also prohibits intermarriage with the *minim*: “And they do not take wives from them or give children in marriage to them” (אין נושאין מהן ואין נותנין להן), another prohibition which is stated very clearly in *Jubilees*. And finally, the Tosefta rules that one may not accept from the *minim* any assistance—even for medical purposes: “And they do not seek medical assistance from them, either healing for property or healing for a person” (אין מתרפאין מהן, לא ריפוי ממון ולא ריפוי נפשות).

These similarities to *Jubilees* suggest that the tannaitic “Laws of *Minim*” are rooted in the ancient “Laws of Separation,” as we know them from ancient sources of the Second Temple era.³¹ But while these ancient “Laws of Separation” were aimed at creating boundaries between Jews and their non-Jewish environment, the rabbis employed them with regard to other *Jews*—a move similar to that which we have seen at Qumran.

either in the *editio princeps*, or in MS London (The British Museum, Add. Fol. 27.296). Cf. *b. Hull.* 13a–b.

³¹ In addition to the above mentioned points, note the correspondences between the rhetoric of rabbinic sources and *Jubilees*’ assertion that “All of those who worship idols,” “have no *hope* in the *land of the living*.” The *Birkat ha-Minim* echoes: “let there be no hope” (אל תהי תקוה); *t. Sanh.* 13:5 (ed. Zuckerman, 434), *Seder Olam*, chap. 3, and *b. RoHash.* 17a, associate the *minim* with those who “struck terror in the land of living” (נתנו חיתתם בארץ החיים). The meaning of the latter phrase and its precise reference are far from clear; its origins are biblical (Ezek 32:23), but in its biblical context it is applied to various nations. One may also note the mention of *Sheol* in this context (“Because they will go down in Sheol”), which is common to *Jubilees* and the tannaitic sources mentioning *minim* (*t. Sanh.*, *ibid.*).

IV

A comparison between the Qumranic move and the rabbinic one, however, reveals an important difference. As noted above, the employment of “laws of separation” by the Qumran sect is a movement of withdrawal, and therefore “defensive” in character, so that we may view these laws in their Qumranic setting as “laws of *seclusion*.” The situation in the tannaitic source is entirely different.³² First, the Tosefta creates a comparison between the status of the *minim* and that of Gentiles, and treats the former much more severely. It alludes to an earlier ruling—“as they have ruled” (מפני שאמרו)—which states explicitly that, “All are permitted to perform an act of slaughtering [of an animal], even a Samaritan, even an uncircumcised person, and even an Israelite apostate, but the slaughter of a *min* is deemed as idolatry, and that of a Gentile is invalid.”³³ Thus, not only is the *min* worse than a Samaritan, worse than the one who is not circumcised and worse even than an apostate, but beyond this, he is treated more severely than even a non-Jew.

Moreover, the Tosefta does not simply tell us how to *deal* with *minim*; it first *categorizes* them and applies to them halakhic categories that already exist: “Their bread [is deemed] the bread of a Samaritan, and their wine is deemed wine used for idolatrous purposes. And their produce is deemed wholly untithed, and their books are deemed magical books, and their children are *mamzerim*.” In a sense, the text *labels* the *minim* through the labeling of their property. Only after this labeling, and as its logical outcome, does the Tosefta proceed to specific instructions as how to engage with—or, better, disengage from—these *minim*. Thus,

³² Admittedly, similar notions can be found in rabbinic sources as well. Thus, for example, according to Rabbi Nathan, the words of Exod 23:7, “keep yourself far from a false matter” (מדבר שקר תרחק) imply “a warning to *keep away* (לפרוש) from *minut*” (*Mekhilta de-Rabbi Ishmael, Kaspa*, 20 [ed. H. S. Horovitz and I. A. Rabin; Jerusalem: Wahrman, 1970], 327; [ed. and trans. J. Z. Lauterbach; 3d ed.; Philadelphia: The Jewish Publication Society of America, 1976], 3:168–69). Similarly, Rabbi Joshua ben Korḥa applies the words “Keep your way far from her” (הרחק מעליה דרכיך) of Prov 5:8 to *minut*. See *The Fathers According to Rabbi Nathan* (ed. S. Schechter [Vienna: n.p., 1887], Version B, 3 [7a]). It might well be the case, however, that the language of the biblical prooftexts was the major cause for this formulation of these rabbinic sayings.

³³ *T. Hull.* 1:1 (Zuckerman, *Tosefta*, 500). In the parallel baraita at *b. Hull.* 4b (and 5a) the *min* is not mentioned, but this may be explained by the fact that according to the Babylonian Talmud itself *minim* were almost unknown in Babylonia. See *b. Pesah* 56a; *b. Avod. Zar.* 4a; *b. Hull.* 13b.

the “laws of separation” are used here by the rabbis as means towards actively *excluding* the *minim*.

What is the significance of this difference? In both cases a boundary within society is created. However, the social process of creating boundaries may take different forms and reflect different socio-historical situations. In some cases a “border within” is created by means of self-withdrawal and seclusion of a group from the rest of society. Such is the case, as we have seen, with the Qumran sect. In many other cases, however, “a border [is] imposed by strong people on weaker people.”³⁴ In these cases the imposition of a boundary is a political act of exercising power, which presupposes the social and political centrality of the “strong” and the relative marginality of the “weak.”

Where do the rabbinic “Laws of *Minim*” belong? Recent discussions of the discourse of “orthodoxy and heresy” in early patristic literature have raised the possibility that the use of such discourse by the heresiologists among the Church Fathers does not reflect a position of concrete social power of the “Catholic Church” over against those whom it fought and excluded by labeling them “heretics.” Rather, it is claimed, such a discourse serves a means for *constructing* a status of social dominance. That is, the very employment of a discourse of “heresy” may be seen as a weapon used by certain groups in the struggle to *establish* themselves as “the center,” not necessarily as a reflection of a position of social dominance already obtained.³⁵

³⁴ D. Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), 1. Boyarin’s recognition of the socio-political nature of the discursive act of “creating boundaries” necessitates a view of those who “inscribe” such boundaries (as he puts it) as socially powerful. Yet he refuses to acknowledge the consequences of his view for the question of the place of the rabbis in Jewish society of their times, and instead speaks of the “decision of the ‘legislative’ bodies, the metaphorical parliaments of religious power” (ibid., 21). The identity of those who belong to the “metaphorical parliaments of religious power” is not explicitly stated, but since the materials discussed throughout his book to support this view are rabbinic, it is clear that the rabbis are those who stand behind the vague sobriquets. Similarly, A. J. Saldarini, “The Gospel of Matthew and Jewish-Christian Conflict in the Galilee,” in *The Galilee in Late Antiquity* (ed. L. I. Levine; New York and Jerusalem: The Jewish Theological Seminary of America, 1992), 23–38, speaks of “Matthew’s disagreements with the *dominant forces* in the Jewish community” (33; emphasis added), yet still claims that, “after the destruction of the Temple, there was no ‘normative’ Jewish teaching, practice or authority” (30 n. 22). As it is well known, these “dominant forces” are designated by Matthew as “Pharisees” and “Scribes.” One wonders who these could have been in the late 80s or early 90s of the first century CE in Palestine, where, according to Saldarini, that Gospel was composed.

³⁵ See, for example: K. King, *What is Gnosticism* (Cambridge, Mass. and London:

Were we to follow such a line of thought, it would obviously have been difficult to deduce anything from the rhetoric operating in the rabbinic “Laws of *Minim*” as to the actual position of the rabbis in the Jewish society of their time. But, is this line of thought really as convincing as it appears? First, it must be borne in mind that in contrast to the patristic discourse of “orthodoxy and heresy” no direct claim as to the social centrality of the rabbis is made by the text of the Tosefta; such a social position is *presupposed* and *taken for granted*. It is less persuasive, therefore, to maintain in this case that the rabbinic discourse is aimed at *constructing* rabbinic hegemony.

Second, and even more important: sociological discussions of deviance teach us, time and again, that only a group which knows that it actually has the ability to exercise social power, and is known by others to be such, uses a rhetoric of power to formulate the group’s “laws of separation” as “laws of *segregation*.”³⁶ A group that lacks social power does not normally do this (as the comparison to the Qumran material indeed demonstrates). Such a group may claim that those whom it condemns have gone astray; it may assert that they have ceased to follow the correct path. But it never employs a discourse of separatism (in a derogatory sense) in relation to the main body of society, and it never accuses the rest of society of having separated from the community. Such a group never uses a rhetoric of exercising power, or of excommunicating those with whom it disagrees, for the simple reason that it does not have the power to do so. For that reason, the very treatment of some members

Belknap and Harvard University Press, 2003), 33; Boyarin, *Border Lines*, 50–51. The roots of this approach go back to W. Bauer, *Orthodoxy and Heresy in Earliest Christianity* (ed. R. A. Kraft and G. Krodel; Philadelphia: Fortress, 1971). In spite of the great influence of Bauer’s fundamental assertion, it is important to bear in mind that his thesis was severely attacked during the last generation, both on empirical as well as on *theoretical* grounds. See G. Strecker’s Appendix 2 to the English edition of Bauer’s book (“The Reception of the Book,” 286–316); D. Harrington, “The Reception of W. Bauer’s Orthodoxy and Heresy in Earliest Christianity during the Last Decade,” *HTR* 73 (1980): 289–98; J. McCue, “Bauer’s *Rechtgläubigkeit und Ketzere*,” in *Orthodoxy and Heterodoxy* (ed. J.-B. Metz and E. Schillebeeckx; Edinburgh: T & T Clark, 1987), 28–35; T. A. Robinson, *The Bauer Thesis Examined: The Geography of Heresy in the Early Christian Church* (Lewiston: Edwin Mellen, 1988); M. Desjardins, “Bauer and Beyond: On Recent Scholarly Discussions of Ἀιρεσις in the Early Christian Era,” *The Second Century: A Journal of Early Christian Studies* 8 (1991): 65–82; R. Williams, “Does it Make Sense to Speak of Pre-Nicene Orthodoxy?” in *The Making of Orthodoxy: Essays in Honour of Henry Chadwick* (Cambridge: Cambridge University Press, 1989), 1–23; J. Berlinerblau, “Toward a Sociology of Heresy, Orthodoxy, and *Doxa*,” *History of Religions* 40 (2000–2001): 327–51.

³⁶ Cf. E. M. Schur, *Labeling Deviant Behavior: Its Sociological Implications* (New York: Harper and Row, 1971), 109.

of a society as deviants is usually seen as an act taken by the dominant establishment towards dissenting individuals and groups.³⁷

It is in light of this sociological insight that I suggest we approach the rabbinic “Laws of *Minim*.” Consequently, our comparison of the rhetoric of the tannaitic “Laws of *Minim*,” as found in *t. Hull.* 2: 20–21, to that of the “laws of separation” at Qumran, may illuminate one of the fundamental questions with which students of Palestinian Jewish society during the first few centuries of our era are faced; that is, the question of the place of the rabbis in the Jewish society of their time. While traditional views grant the rabbis a central socio-political position within Palestinian Jewish society in antiquity, various scholars in the last generation have argued that the rabbis were in fact only a marginal elite.³⁸ Seth Schwartz is representative of this scholarly view, vigorously claiming that, “the rabbis did not *control* anything in rural Palestine—not synagogues, not charity collection or distribution, nor anything else.”³⁹ Although he allows for the possibility that “patriarchal and rabbinic authority may have increased between 150 and 350,”⁴⁰ he still argues that “patriarchs and rabbis always remained in important ways marginal.”⁴¹

³⁷ This assumption is implicit in virtually all sociological discussions of deviance. See, for example: Schur, *ibid.*; J. Kitsuse, “Societal Reaction to Deviant Behavior,” *Social Problems* 9 (1962): 247–56; K. T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: John Wiley & Sons, 1966); E. M. Lemert, *Human Deviance, Social Problems, and Social Control* (Englewood Cliffs: Prentice-Hall, 1967); H. Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1973); E. Sagarin, *Deviants and Deviance: An Introduction to the Study of Devalued People and Behavior* (New York: Praeger, 1975); S. J. Pfohl, *Images of Deviance and Social Control: A Sociological History* (New York: McGraw-Hill, 1985); E. H. Pfohl, *The Deviance Process* (Belmont: Wadsworth, 1986). A similar approach is evident in many of the discussions of “orthodoxy and heresy” as well. See J. B. Henderson, *The Construction of Orthodoxy and Heresy: Neo-Confucian, Islamic, Jewish, and Early Christian Patterns* (Albany: SUNY, 1998); Berlinerblau, “Toward a Sociology of Heresy.”

³⁸ See S. J. D. Cohen, “The Place of the Rabbi in Jewish Society of the Second Century,” in *The Galilee in Late Antiquity* (ed. L. I. Levine; New York and Jerusalem: The Jewish Theological Seminary of America, 1992), 157–73; *idem*, “The Rabbi in Second-Century Jewish Society,” in *The Cambridge History of Judaism, III: The Early Roman Period* (ed. W. Horbury, W. D. Davies, and J. Sturdy; Cambridge: Cambridge University Press, 1998), 922–90. Compare: L. I. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity* (Jerusalem: Yad Izhak Ben-Zvi; New York: The Jewish Theological Seminary of America, 1989).

³⁹ S. Schwartz, *Imperialism and Jewish Society 200 BCE to 640 CE* (Princeton: Princeton University Press, 2001), 124.

⁴⁰ Schwartz, *Imperialism*, 120.

⁴¹ Schwartz, *Imperialism*, 120. Reading through many of the writings of this school easily reveals that the prime concepts with which they approach the question are

Without entering into a detailed examination and unpacking of the assumptions that govern this view,⁴² I wish to suggest that the rhetorical analysis of the rabbinic “Laws of *Minim*” and their comparison with the Qumran “rules of separation” can shed some light on this subject. For, as we have seen, the stance from which the rabbinic “Laws of *Minim*” were formulated reflects the authors’ self-image as a group that has social power and the ability to control the status of those with whom they disagree. This self-image, I suggest, may be valuable evidence for the place of the rabbis in the Jewish society of their time. For, if the rabbis use a rhetoric of exclusion, this may imply not only that they *thought* of themselves as capable of excluding others, but that they were actually in a position to do so. That is, that they had considerable social power within the Jewish society of their time.

concepts of “power” and “authority.” The argument is that since the rabbis lacked power and authority over the masses, their influence must have been limited and marginal. As Schwartz puts it: “The Palestinian Talmud itself, interested though it is in playing up rabbinic authority, never describes the rabbis as possessing jurisdiction in the technical sense. No one was compelled to accept rabbinic judgment. The rabbis could threaten, plead, and cajole, but could not subpoena or impose a sentence” (120). See also *ibid.*, 6 (“the *authority* of the rabbi... was neither absolute nor unchallenged”); 7 (“the rabbis did not *control* Jewish life”); 8 (“they... aspired but never in antiquity attained widespread authority over the Jews”); and see Cohen, “The Rabbi in Second-Century Jewish Society,” 922. This is not the place to enter into a detailed discussion of Schwartz’s reading of the only two stories from the Palestinian Talmud that he brings as examples of the inadequacy of common scholarly reliance on these materials as a proof for the relatively authoritative status of Rabbi Judah the Prince. Neither is it the place to address many other sources testifying to rabbinic authority among the masses, which Schwartz does not even mention. I plan to devote a separate study to this historiographical subject in the future.

⁴² This would require going back to Morton Smith’s famous and influential paper, “Palestinian Judaism in the First Century,” in *Israel: Its Role in Civilization* (ed. M. Davis; New York: Jewish Theological Seminary of America, dist. by Harper, 1956), 67–81, which, as has been noted by Baumgarten, needs to be revisited. See A. I. Baumgarten, “Rivkin and Neusner on the Pharisees,” in *Law in Religious Communities in the Roman Period: The Debate Over Torah and Nomos in Post-Biblical Judaism and Early Christianity* (ed. P. Richardson and S. Westerholm; Studies in Christianity and Judaism 4; Waterloo: Wilfrid Laurier University Press, 1991), 109–26, pp. 114–18. See also: G. Stemberger, “Was There a ‘Mainstream Judaism’ in the Late Second Temple Period?” *Review of Rabbinic Judaism* 4 (2001): 189–208. In spite of recent rejections of Smith’s major claims in the above-mentioned paper, the impact of his thesis has not diminished, as it created the framework for an entire non-orthodox approach to the question of the place of the rabbis in Jewish society in general. Should I be blessed with old age by Divine grace I hope to devote a detailed discussion to this issue in the future.

Appendix: On Dating the Rabbinic “Laws of Minim”

When were the rabbinic “Laws of *Minim*” formulated? To what period do they testify? The anonymity of the text is an obvious obstacle to any attempt to date these “Laws of *Minim*.” If one were to decide the matter only according to the date of the document in which they are presently found—the *Tosefta*—one might tend to assign them to the second half of the third century CE.⁴³ Yet, a story that immediately follows the presentation of these laws may suggest that they are much earlier, and may be dated to the first third of the second century CE. For thus we read:

מעשה בר' לעזר בן דמה שנשכו נחש ובא יעקב איש כפר סמא לרפאתו משום ישוע בן פניטרא [!] ולא הניחו ר' ישמעאל. אמרו [!] לו: אי אתה רשאי בן דמה. אמ' לו: אני אביא לך ראייה שירפאני, ולא הספיק להביא ראייה עד שמת. אמ' ר' ישמעאל: אשריך בן דמה שיצאת בשלום ולא פרצת גדירן של חכמים. שכל הפורץ גדירן של חכמים לסוף פורענות באה עליו, שנ' "ופורץ גדר ישכנו נחש." (קהלת י, ח)

It once happened that Rabbi Elazar ben Dama was bitten by a snake, and Jacob of Kefar Sama came to heal him in the name of Jesus son of Pantera, but Rabbi Ishmael did not allow him. He said to him: “You are not permitted, Ben Dama!” He said to him: “I shall bring you proof that he may heal me,” but he did not have time to bring the proof before he dropped dead. Said Rabbi Ishmael: “Happy are you, Ben Dama, for you have expired in peace, and you did not break down the hedge erected by sages. For whoever breaks down the hedge erected by sages eventually suffers punishment, as it is said: ‘He who breaks down a hedge is bitten by a snake.’” (Eccl 10:8)⁴⁴

This story has repeatedly attracted the attention of scholars interested in rabbinic reactions to Christians and Christianity during the late first and early second centuries. The reason for this is self-evident: it

⁴³ See H. L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash* (ed. and trans. M. Bockmuehl; 2d ed.; Edinburgh: T & T Clark; Minneapolis: Fortress Press, 1996), 156–57.

⁴⁴ *T. Hull.* 2:22–23 (ed. Zuckerman, *Tosefta*, 503), according to MS Vienna. For a detailed discussion of this story and its talmudic parallels see D. R. Schwartz, *Leben durch Jesus versus Leben durch die Torah: Zur Religionspolemik der ersten Jahrhunderte* (Franz-Delitzch-Vorlesung 2; Münster: Franz Delitzch Gesellschaft, 1993), 13–23. For an earlier version see D. R. Schwartz, “מה הוה ליה מימר? 'וחי בהם',” in *Sanctity of Life and Martyrdom: Studies in Memory of Amir Yékutiél* (ed. I. M. Gafni and A. Ravitzky; Jerusalem: The Zalman Shazar Center for Jewish History, 1992), 69–83 (Hebrew). For a possibly related Christian story of Paul bitten by a snake, see Acts 28:1–6. See also Luke 10:19 and Mark 16:18 (I thank Ruth Clements for these two references).

mentions Jesus and one of his followers. It raises several interpretive questions and difficulties, however, most of which have been noted by scholars quite long ago. Thus, for example, readers of the story have been interested in the question of what proof Rabbi Eleazar ben Dama wanted but was ultimately unable to bring, in support of the legitimacy of his desire to be healed by Jacob, the follower of Jesus. In fact, this question was raised by the Babylonian Talmud, which asks: **ומה הוה ליה למימר**?—that is, “what could have he said?” The Talmud answers that Ben Dama’s supposed proof was from the words of Lev 18:5, **וחי בהם**, (literally, “he shall live by them”). According to the rabbinic tradition itself, these words were taken by the Sages to indicate that saving one’s life is even more important than the keeping of the commandments.⁴⁵

⁴⁵ In *b. Sanh.* 74a this stance is attributed to Rabbi Joḥanan, who cites it in the name of Rabbi Simeon ben Jehozadak: “Rabbi Joḥanan said in the name of Rabbi Simeon ben Jehozadak: By a majority vote it was resolved . . . that in every law of the Torah, if one is commanded, ‘Transgress and suffer not death,’ one should transgress and not suffer death, excepting idolatry, incest and murder.” A slightly corrupt version of this tradition, which nevertheless is attributed to the same Rabbi Joḥanan in the name of the same Rabbi Simeon ben Jehozadak, appears in *ḡ. Shevi.* 4:2, 35a (= *ḡ. Sanh.* 3:6, 21b). These sources record the halakhic stand without its scriptural basis, but a subsequent tannaitic source cited in the same Babylonian *sugya* attributes to Rabbi Ishmael the opinion that one should even worship idols rather than risking one’s life, and this is presented as being rooted in a reading of Lev 18:5. The tannaitic origin of this baraita is beyond doubt, since it appears in *Sifra, ‘Aḥare Mot, Mekhilta de-Arayot*, 14 (in *Sifra or Torat Kohanim according to Codex Assemani LXVI* [ed. L. Finkelstein; New York: The Jewish Theological Seminary of America, 1956], 374); on which see below, n. 46. Moreover, the use of Lev 18:5 for a similar purpose is found in *t. Shab.* 15:17 (*Tosefta According to Codex Vienna* [ed. S. Lieberman; New York: The Jewish Theological Seminary of America, 1962], 2:75): “Hence the commandments were not given to Israel but to live by them, as it is said: ‘If a man does them he shall live in them’ (Lev 18:5)—live in them; not that he shall die in them. There is nothing that stands against a danger to life except for idolatry, sexual immorality, and murder.”

D. Schwartz (*Leben durch Jesus*, 20 n. 24 [= Hebrew p. 78 n. 15]), wishes to cast doubt on the tannaitic origin of these sources. He ascribes the passage in *t. Shab.* 15:17 to Rabbi Aḥa, who is mentioned a few lines earlier in the Tosefta, and whom he views as a fourth-century Palestinian sage. He goes even a step further to suggest that the entire passage is a late addition to the text, basing himself on Urbach, who hypothesized that, “possibly the whole passage is only an amoraic addition to the Tosefta.” See E. E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. I. Abrahams; Cambridge, Mass.: Harvard University Press, 1987), 839 n. 28. A close reading reveals, however, that Urbach’s contention does not refer to the *entire* passage, but only to its concluding sentence. Moreover, there is no reason to identify Rabbi Aḥa as the fourth-century sage carrying that name, as there was also a Tanna of that name, who is mentioned in other sources as well. See A. Hyman, *Toldoth Tannaim Ve’amoraim* (London: n. p., 1910), 119. In fact, the quoted tradition is *not* attributed to Rabbi Aḥa, but only the preceding one, and there is no reason to read the two traditions on a continuum. This is proven by the fact that Rabbi Aḥa’s tradition appears alone, *without our tradition*, in various other

A second question with which readers of the story are faced is: since Rabbi Ishmael admits that Rabbi Eleazar ben Dama did *not*, after all, break down the hedge set up by the Sages, why then was he bitten by a snake?⁴⁶ Daniel Boyarin, who ponders this question, concludes that “the story is indicating that this Ben Dama, otherwise a kosher rabbinical Jew . . . had been an intimate of the Christians.”⁴⁷

There is yet a third question, which, to the best of my knowledge, is usually not addressed, at least not explicitly, by readers of this story. That is, what exactly was “the hedge erected by the Sages,” which Rabbi Eleazar ben Dama was about to break down, and to which Rabbi Ishmael was referring? The answer to this question has to do with the very reason for the editorial placement of this story, here in tractate *Hullin*. For, after all, one should ask: How is this story related to the subjects dealt with in this tractate, which is devoted to the laws of preparation of non-sacral meat for eating?

places in rabbinic literature (all listed by S. Lieberman, *Tosefta Kī-Fshutah* [New York: The Jewish Theological Seminary of America, 1962], 3:262). Even had one wished to read the two traditions on a continuum, and consequently to attribute both to Rabbi Aḥa, it would not be possible to ignore the fact that he himself cites the tradition in the name of Rabbi Akiba. As noted by Lieberman, the parallel in the *Mekhilta de-Rabbi Ishmael* attributes this teaching to Rabbi Ishmael, who was a contemporary of Rabbi Akiba—thus the parallel also supports the earlier dating. It is always possible to view this anonymous baraita in the Tosefta as stemming from the time of its editor, but this would not remove the baraita from its Palestinian provenance and early dating, prior to the Babylonian Talmud.

⁴⁶ This question was raised by the Talmudic tradition itself. See *b. 'Avod. Zar.* 27b: “But he too was bitten by a snake!” (אִיֵּהוּ נָמִי חוּיָא טַרְקִיָּה). The formulation of the question as it appears in *y. Shab.* 14:4, 14d (= *y. 'Avod. Zar.* 2:2, 41a) is slightly different: “But isn’t he bitten by a snake?!” (וְלֹא נֶחַשׁ נִשְׁכָּו?) Despite the similarity, the meaning is not the same; in the Bavli’s version the question refers to Ben Dama, while in the Yerushalmi it refers to the *quoted verse*, Eccl 10:8! In fact, it should not be taken as a “question” at all, but as an explanatory remark. That is, since we know that snakes actually do bite (as in the case of Ben Dama), it is impossible to understand the verse as saying that whoever breaks a hedge will ultimately be bitten by a snake, or, conversely, that whoever does not break a hedge is protected from snake bites. Therefore, it must be understood as speaking of a “Divine” snake. This interpretation is proven by a similar rhetorical move in *y. Pe'ah* 1:1, 15a: “As Scripture says ‘But righteousness delivers from death’ (Prov 10:2)—but doesn’t he [eventually] die?! Rather [it means] that he shall not die in the world to come” (וְצַדִּיקָא תְּצִיל מִמוּת—וְלֹא מִיָּת? אֲלֵא שְׂלָא יָמוּת מִיָּתָּה לְעֵתִיד לְבוֹא). See also: *Sifra, 'Aḥare Mot*, 9:9 (Finkelstein, *Sifra*, 370): “‘He shall live in them’ (Lev. 18:5)—in the world to come. If you say in the present world, but he is destined to die! How, therefore, do I read ‘He shall live in them’? In the world to come” (אִם תֹּאמַר בְּעוֹלָם וְחַי בְּהֵם—לְעוֹלָם הַבָּא הַזֶּה, וְהָלוּא סוּפוּ מֵת הוּא! הֲאֵי מָה אֲנִי מַקְיִים “וְחַי בְּהֵם”? לְעוֹלָם הַבָּא). These parallels indicate that the question וְלֹא נֶחַשׁ נִשְׁכָּו in the Yerushalmi is an explanatory remark which refers to the biblical verse, not to Ben Dama.

⁴⁷ See D. Boyarin, *Dying For God: Martyrdom and the Making of Christianity and Judaism* (Stanford: Stanford University Press, 1999), 35.

The answer to this question is that our story was placed here because it tallies with the end of the preceding passage, in which we find the prohibition against seeking medical assistance from the *minim*.⁴⁸ Accordingly, we have to assume that Rabbi Ishmael was familiar with this or a similar ruling, and that the phrase, “the hedge erected by the sages,” refers to such a ruling.

This assumption is corroborated by another consideration, of which the Babylonian Talmud was already aware. That is, the rabbinic stand that permits one to violate the law for the sake of saving one’s life was restricted by the majority of the rabbis, by the exclusion of three major religious issues: idolatry, sexual immorality, and bloodshed. However, according to Rabbi Ishmael himself, this restriction does *not* apply. According to *his* view, one should do everything to save one’s life, even worship idols if ordered by others to do so, lest he, or she, will be killed:

”וחי בהם” —לא שימות בהן. היה ר' ישמעאל או: מנ' אתה או' שאם אמרו לו לאדם בינו לבין עצמו עבוד עבודה זרה ואל תהרג יעבוד ואל יהרג? תל' לו' ”וחי בהם”, לא שימות בהן.

“He shall live by them” (Lev. 18:5)—Rabbi Ishmael said: Whence do you say, that if one is told, in private, “worship idols so that you will not be killed,” that one should worship and not be killed? Scripture says: “He shall live by them,” not that he will die because of them.⁴⁹

⁴⁸ It is usually assumed that the story is brought up *as an example* for the prohibition. This assumption rest upon another assumption, namely that the term *minim* was commonly used to designate the followers of Jesus. A thorough examination of all occurrences of this term in tannaitic literature, however, reveals that this is not the case; not even in a single source are we forced to understand the term *minim* as referring to Christians. I therefore suggest that our story functions precisely to introduce followers of Jesus into the [already existent] category of *minim*. I discuss this issue at some length in my forthcoming book, *Rabbinic Judaism and Early Christianity*.

⁴⁹ *Sifra*, *Ahare Mot*, *Mekhilta de-Arayot*, 14 (ed. Finkelstein, *Sifra*, 374). This baraita appears also at *b. Sanh.* 74a, and *b. Avod. Zar.* 27b, and in both places it is attributed to Rabbi Ishmael, as in the *Sifra*. The words “in private” (בינו לבין עצמו), however, do not appear in these parallels; instead, Rabbi Ishmael’s statement is augmented by the following deterrent note: “Is it so even in public? Scripture says, ‘Neither shall you profane my holy name’ (Lev 22:32).” The existence of two different versions limiting Rabbi Ishmael’s stance indicates, to my mind, that these notes were not originally part of his dictum, but a later addition, the purpose of which was to soften his extreme stand.

A note concerning the date of this source is in order here. Epstein noted that this portion of the *Sifra*, the *Mekhilta de-Arayot*, does not appear in the *editio princeps*, and was added to later editions by early modern commentators on the *Sifra*. See J. N. Epstein, *Prolegomena ad littera tannaiticas* (Jerusalem: The Hebrew University Magnes Press; Tel Aviv: Dvir, 1957), 640–41 (Hebrew). This should not mislead us into thinking that

How, then, are we to reconcile Rabbi Ishmael's stand with his position in our story? The most logical solution is to assume that Rabbi Ishmael considered the healing of Rabbi Elazar ben Dama by the name of Jesus as more severe than idolatry. Such an opinion had to be rooted in a ruling that explicitly treats heretics in a harsher manner than it treats idol-worshippers. This is precisely the nature of the ruling preceding our story.⁵⁰

It follows from this analysis that the block of legal rulings that govern social relations with *minim*, as it appears in *t. Hull.* 2:20–21, predates Rabbi Ishmael; that is, these laws should be seen as earlier than the early second century CE.⁵¹

Epstein was passing judgment on the tannaitic origin and character of the material. In fact, this text appears in various ancient manuscripts of the *Sifra* (including Codex Assemani 66, which is presumably of the tenth, or perhaps even the ninth, century CE). Epstein claims that the *Mekhilta de-Arayot* is a tannaitic text emanating from a lost midrash on Leviticus, which was composed by the school of Rabbi Ishmael. This remnant was incorporated into manuscripts of the *Sifra* in ancient times. A similar view had earlier been expressed by D. Z. Hoffman, "Zur Einleitung in den halachischen Midraschim," *Jahresbericht des Rabbiner-Seminars zu Berlin* (Berlin: Driesner, 1888), 29–30. For other tannaitic passages which presumably emanate from a lost midrash of the school of Rabbi Ishmael on Leviticus, see J. N. Epstein, *Studies in Talmudic Literature and Semitic Languages* (3 vols. in 4; Jerusalem: The Hebrew University Magnes Press, 1988), 2.1:108–24 (Hebrew). The material, therefore, is certainly tannaitic; only its insertion into the *Sifra* is late.

⁵⁰ Cf. also *t. Shab.* 13:5 (Lieberman, *Tosefta*, 58).

⁵¹ D. Flusser has suggested that the *Birkat Ha-Minim* was originally aimed against the Qumran sectarians. See Flusser, "Jerusalem," 270–71; idem, "Some Precepts of the Torah," 353–68. See also D. Instone-Brewer, "The Eighteen Benedictions and the *Minim* before 70 CE," *JTS* 54 (2003): 25–44. Should we assume that the "Laws of *Minim*," too, were originally directed against the Qumranites, it would be possible to suggest that in an early stage these "laws" functioned in a reactionary manner (against those who separated themselves from the rest of the community), while at a later stage they were used *actively* to exclude dissident groups. That is, to use Baumgarten's words, "the transfer of [these laws] to heretics marks their exclusion from the community." See Baumgarten, *Flourishing of Jewish Sects*, 10.

THE HISTORY OF THE CREATION OF MEASUREMENTS: BETWEEN QUMRAN AND THE MISHNAH

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Introduction

Mishnah Pe'ah 1:1 reads:

אלו דברים שאין להם שיעור: הפיאה, והביכורים, והריאיון, וגמילות חסדים,
ותלמוד תורה. אלו דברים שאדם אוכל פירותיהן בעולם הזה, והקרן קיימת לו
לעולם הבא: כיבוד אב ואם, וגמילות חסדים, והבאת שלום בין אדם לחברו;
ותלמוד תורה כנגד כולם.

These are things which have no [specified] measure: *pe'ah*, first-fruits, *re'ayon*, righteous deeds, and study of Torah. These are things the benefit of which a person enjoys in this world, while the principal remains for him in the world to come: honoring of one's father and mother, righteous deeds, making peace between a man and his fellow; and study of Torah is equal to them all.¹

* It is my pleasant duty to thank Professor Elisha Qimron for sharing his new readings for several of the Qumran texts treated here and for his generosity in allowing me to cite them. I also wish to thank Professor Hanan Eshel for enlightening me on the topics of ancient agriculture and wine and oil production. Dena Ordan prepared the translation and I thank her very much. This article is part of a comprehensive project in progress treating the history of early halakhah and the Dead Sea Scrolls supported by the Israel Science Foundation (Grant no. 888/00).

Translator's note: The following English translations have been used for biblical and rabbinic citations. The translations for the Qumran literature are cited in the text. Biblical citations: *JPS Hebrew-English Tanakh* (2d ed.; Philadelphia: Jewish Publication Society, 1999); Mishnah: J. Neusner, *The Mishnah: A New Translation* (New Haven: Yale University Press, 1988); Tosefta: J. Neusner, ed., *The Tosefta: Translated from the Hebrew* (Hoboken, N.J.: Ktav, 1971–86); Palestinian Talmud: J. Neusner, trans., *The Talmud of the Land of Israel* (Chicago: University of Chicago Press, 1982–); Babylonian Talmud: I. Epstein, ed., *The Babylonian Talmud* (London: Soncino, 1948); *Mekilta*: J. Z. Lauterbach, *Mekilta de-Rabbi Ishmael* (3 vols.; Philadelphia: Jewish Publication Society, 1933–35); *Sifre on Deuteronomy*: R. Hammer, trans., *Sifre: A Tannaitic Commentary on the Book of Deuteronomy* (New Haven: Yale University Press, 1986); Philo: *Philo* (trans. F. H. Colson, G. H. Whittaker, and R. Marcus; 12 vols.; LCL; Cambridge, Mass.: Harvard University Press, 1929–1962); Josephus: *Josephus* (trans. H. St. J. Thackeray et al.; 10 vols.; LCL; Cambridge, Mass.: Harvard University Press, 1926–1981).

¹ Translation slightly revised.

The plain meaning of the text is that these commandments have neither a set nor a minimum measure.

Yet the statement that *pe'ah* has no measure stands in apparent contradiction to the mishnah that follows:

אין פוחתין לפאה מששים. ואע"פ שאמרו אין לפאה שיעור הכל לפי גודל השדה ולפי רוב העניים ולפי רוב הענוה.

One should designate as *pe'ah* no less than one-sixtieth [of a field's produce]. And even though they said, "*Pe'ah* has no [specified] measure," [the quantity designated] should always accord with the size of the field, the number of poor people, and the extent of the yield. (*m. Pe'ah* 1:2)

The opening of this mishnah clearly states that *pe'ah* has a measure, i.e., one-sixtieth. The first baraita in *Tosefta Pe'ah* reflects a tannaitic debate regarding this ostensible contradiction, solved via the suggestion that *pe'ah* has a specified lower limit but no defined upper one:

דברים שאין להן שיעור הפיאה והבכורים והראיון וגמילות חסדים ותלמוד תורה. הפיאה יש לה שיעור מלמטה ואין לה שיעור מלמעלה.

[These are] things that have no [specified] measure: *Pe'ah*, first fruits, *re'ayon*, righteous deeds, and study of Torah. *Pe'ah* has a minimum measure [specified], but it has no maximum measure specified. (*t. Pe'ah* 1:1)²

The weakness of the baraita's proposal is readily apparent. By establishing a lower limit for *pe'ah* alone, it differentiates *pe'ah* from the remaining items mentioned in the mishnah, which have neither lower nor upper limits. Apparently, this explanation did not win acceptance. PT juxtaposes two opposing baraitot on this same issue:

הפיאה יש לה שיעור מלמטן ואין לה שיעור מלמעלן, הביכורים וראיון אין להם שיעור לא מלמעלן ולא מלמטן. אית תני תנא: הפיאה והביכורים וראיון אין להם שיעור לא למעלן ולא למטן.

Pe'ah is subject to a specific minimum measure, but no maximum measure, while first fruits and *re'ayon* are subject to neither an upper nor a lower limit. [In contrast] there is a Tanna who teaches, "*Pe'ah*, first fruits, and *re'ayon* have neither an upper nor a lower limit." (*y. Pe'ah* 1:1, 15a)³

It is noteworthy that there is no reason to adduce the second baraita (which emphasizes that these commandments have *no* measure, minimum

² Text in S. Lieberman, *Tosefta: Z'era'im* (4 vols.; 2d ed.; Jerusalem: The Jewish Theological Seminary of America, 1992), 1:41. Translation slightly revised.

³ Translation slightly revised.

or maximum) except as an *objection* to the stance taken by the first baraita, which parallels the Tosefta.

I therefore find preferable the explanation for the contradiction between *m. Pe'ah* 1:1 and 1:2 proposed by my colleague Shlomo Naeh. He suggests that the words **אין פוחתין לפאה מששים** are a later addition, and that mishnah 1:2 originally opened with, "And even though they said, 'Pe'ah has no [specified] measure,' [the quantity designated] should always accord with the size of the field. . . ." ⁴ Hence, there is no binding measure for the amount of *pe'ah* left in the field. Nonetheless, the mishnah urges field owners to act generously, recommending that the amount be consistent with the needs of the poor, on the one hand, and with the nature of the crop and its yield, on the other. According to this scheme, as with many other laws, we see development over time: initially the halakhah was that *pe'ah* had no measure; later halakhah set a minimum of no less than one-sixtieth. ⁵ Indeed, the setting of uniform measures is a characteristic feature of the development of tannaitic halakhah. ⁶

This article examines the relevant halakhic sources from the Dead Sea Scrolls, along with some rabbinic parallels, and establishes the existence of obligatory measures in Qumran halakhah for four of the five items mentioned in the mishnah. ⁷ Moreover, it demonstrates that just as *pe'ah* did in actual fact have a measure, so too did the other four items mentioned there; several tannaitic sources (some of which testify to the early Second Temple period) indicate the existence of operative measures for these items as well. Thus, even Naeh's solution is not entirely satisfactory, and the explanation that the first two mishnayot in *Pe'ah* reflect early and late halakhah remains problematic.

Pe'ah

Pe'ah is but one of four gifts designated for the poor in tannaitic doctrine (*t. Pe'ah* 2:13):

⁴ Oral communication.

⁵ For a different analysis of the development of the mishnaic text, see M. Weiss, "The Arrangement of the Mishnah in Tractate *Pe'ah* and Its Relationship to the Tosefta" (Ph.D. diss., Bar-Ilan University, 1978), 58 n. 18 (Hebrew).

⁶ See Y. D. Gilat, *Studies in the Development of the Halakhah* (Ramat Gan: Bar-Ilan University Press, 1992), 28–29 (Hebrew).

⁷ **ראיין** is not mentioned in the Dead Sea Scrolls for the simple reason that the sectarians refrained from pilgrimage because they viewed the Temple as impure. See J. M. Baumgarten, *Studies in Qumran Law* (SJLA 24; Leiden: Brill, 1977), 57–74.

[ארבע] מתנות בכרם: פרט שכחה ופאה ועוללות. שלש בתבואה: לקט שכחה ופאה. שתיים באילן: שכחה ופאה.

[There are four] gifts [that must be designated for the poor] from [the produce] of a vineyard: separated grapes, forgotten produce, *pe'ah*, and defective clusters. [There are] three [gifts that must be designated for the poor] from a field of grain: gleanings, forgotten sheaves, and *pe'ah*. [There are] two [gifts that must be designated for the poor] from [the fruit] of a tree: forgotten sheaves and *pe'ah*.⁸

Although the baraita names five gifts, as we shall see below, “separated grapes” is the vineyard equivalent to “gleanings” from a field; consequently, there is a difference in name only, and hence only four gifts.

How did the rabbis arrive at this halakhic structure? The obligation to leave some produce from the harvest first appears in Lev 19:9–10:

ובקצרכם את קציר ארצכם
לא תכלה פאת שדך לקצר / ולקט קצירך לא תלקט.
וכרמך לא תעולל / ופרט כרמך לא תלקט
לעני ולגר תעזב אתם אני ה' אלהיכם.

When you reap the harvest of your land,
you shall not reap all the way to the edges of your field, or gather the gleanings of your harvest.
You shall not pick your vineyard bare, or gather the fallen fruit of your vineyard;
you shall leave them for the poor and the stranger: I the Lord am your God.

Each of these two verses contains two injunctions; the first verse relates to produce from the field and the second to produce from the vineyard.

The commandment to give gifts to the poor found in Deut 24:19–22 differs somewhat:

כי תקצר קצירך בשדך ושכחת עמר בשדה לא תשוב לקחתו לגר ליתום ולא למנה יהיה, למען יברכך ה' אלהיך בכל מעשה ידך.
כי תחבט זיתך לא תפאר אחריו לגר ליתום ולא למנה יהיה.
כי תבצר כרמך לא תעולל אחריו לגר ליתום ולא למנה יהיה.
וזכרת כי עבד היית בארץ מצרים, על כן אנכי מצוה לעשות את הדבר הזה.

When you reap the harvest in your field and overlook a sheaf in the field, do not turn back to get it; it shall go to the stranger, the fatherless, and the widow—in order that the Lord your God may bless you in all your undertakings.

⁸ Text: Lieberman, *Tosefta*, 1:47–48. Translation slightly revised.

When you beat down the fruit of your olive trees, do not go over them again; that shall go to the stranger, the fatherless, and the widow.
 When you gather the grapes of your vineyard, do not pick it over again; that shall go to the stranger, the fatherless, and the widow.
 Always remember that you were a slave in the land of Egypt; therefore do I enjoin you to observe this commandment.

Only one injunction is mandated for each type of produce in these verses. However, as distinct from Leviticus, in Deuteronomy we find mention not only of the field and the vineyard but also of olive trees.

Summation of the two pericopes elicits three requirements that apply to produce in the field: an obligation to leave the edges uncut (*pe'ah*); a prohibition against picking up gleanings (*leqet*); and a prohibition against coming back for a forgotten sheaf (*shikheha*). These are the same three elements mentioned in *t. Pe'ah* 2:13, though rabbinic halakhah applied them to other types of produce as well. The Tosefta mandates that one must leave *pe'ah* in a vineyard and an orchard as one does in a field, and cites *leqet* as obligatory also in a vineyard. Another innovation emerges from the above-cited tosefta: the baraita speaks of trees in general and not of olive trees alone, to indicate that the biblical obligation is not *restricted* to “grain, wine, and oil.” Rather, scripture specifies field, vineyard, and olive trees as the primary examples of a more general obligation. The law, then, applies as well to other agricultural species.

The surprising feature in the rabbinic system is the fourth gift from the vineyard, defective clusters (עוללות). As structured, the verses in Leviticus clearly show that לא תעולל כרמך לא תעולל parallels לא תכלה פאת שדך, just as לקט קצירך לא לקט כרמך לא תלקט is the vineyard parallel to לקט תלקט in the field. Interpreted thusly, לא תעולל derives from על"ל in the meaning of ‘to act strictly’, i.e., to harvest the grapes completely. The rabbis, however, interpreted this word differently, as meaning ‘small’, ‘nursling’; they explicitly concluded on this basis that the term refers to any cluster which is not fully formed: “What [produce is subject to the law of the] defective cluster? Any [cluster] which has neither a shoulder [a wide upper part] nor a pendant [a cone-shaped lower part]” (*m. Pe'ah* 7:4). Consequently, in the rabbinic schema, the poor enjoy four gifts from the vineyard: שכחה, פאה, פרט, and עוללות.

This maximalist reading of the pentateuchal pericopes on gifts to the poor is not the only possible one. I cite Philo and Josephus by way of illustration:

Again who could fail to admire the ordinance about reapers or grape-pickers? He bids them at harvest time not take up what drops from the

sheaves, nor put in the sickle to the whole crop, but leave part of the field uncut. . . . Again in the autumn when the owners have the fruit picked he forbids them to collect the grapes that fall or to glean the vineyards. He gives the same order to the olive pickers. (Philo, *On the Virtues*, 90–94)

When reaping and gathering in the crops ye shall not glean, but shall even leave some of the sheaves for the destitute, to come as a godsend for their sustenance; likewise at the vintage leave the little bunches for the poor, and pass over somewhat of the fruit of olive-yards to be gathered by those who have none of their own whereof to partake. (Josephus, *Ant.* 4.230–232)

Philo, interpreting Leviticus, mentions two separate commandments: to leave behind produce that falls in the course of harvesting grain/grapes, and to leave some produce uncut for the poor. Furthermore, Philo extends these obligations to the olive harvest mentioned in Deuteronomy alone. Josephus, on the other hand, is satisfied with a more general description: Scripture commands leaving some produce from the field, vineyard, and olive harvest for the poor. Should we regard Josephus' description as superficial and deficient, or does it perhaps reflect a tradition which did not distinguish between the different types of "gifts" for the poor, understanding the biblical pericopes as a single obligation to leave produce for the poor from every harvest in a manner consistent with crop type?

Analysis of the following Cave 4 passage from the *Damascus Document* (4Q270 3 ii 12–19), supports, in my opinion, this second possibility:

[על הלקט ועללות הכרם עד עשרה גרגרים
 העוללת וכל הלקט עד סאה לבית הסאה. והיא אשר זרעה
 אין בה תרומה ופרט אין בה ובעוללה עד עשרה ג[רגרים]
 ובנקוף הזית ופרי תבואתו אם שלמה היא נקפה אחד
 משלושים וכול [מעשר] בו ואם רפוס השדה או קדה
 בשרפ ונפרט [יותר] מסאה לבית סאה מעשרה בה ואם תלקוט
 נפש אחת [סאה] אחת ממנו ביום אחד תרומה בה עשרון
 .[אחד].

[Concerning gleanings (of grain) and the single grapes of the vineyard, the single grapes may be up to ten berries and all the gleanings up to a *se'ah* per *bet se'ah*; (however), a (field) which does not yield its seed is not subject to *terumah* and fallen berries, nor its single grapes up to ten b[erries].]

As to the remnants of the olive harvest and the fruit of its produce, if it (the harvest) is intact, its *noqef* is one out of thirty [and it is subject to tithes] but if the field was muddied or scorched by fire, [if more than] one *se'ah* per *bet se'ah* was left, it is subject to the tithes. If

one person gleanes one [se'ah] from it in one day the *terumah* from it shall be [one] *'isaron*.⁹

Although its details are not entirely clear, the subject of the passage is definitely gifts granted to the poor from harvest produce. Without entering into uncertain hypotheses with respect to the precise content of these problematic instructions, several important conclusions can nevertheless be elicited with respect to the central issue.

The passage explicitly mentions three gifts and their measures: (1) “[the single] grapes may be up to te[n berries]”; (2) “[and all the gleanings] up to a *se'ah* per *bet se'ah*”; and (3) “the remnant of the olive harvest . . . is one out of thirty.” These three gifts encompass the three main pentateuchal crop types. The fact that we find only one halakhah for each type of crop makes the Qumranic halakhic tradition closer to Josephus than to the rabbinic traditions. Qumranic halakhah does not distinguish between the terminology of the different pentateuchal commands, but interprets all the verbs in the pericopes of both Leviticus and Deuteronomy as having a single connotation; namely, that it is forbidden to collect the harvest completely. The changing feature is the manner in which the gift is given, in accordance with the nature of the crop in question. The contribution from the vineyard takes the form of עוללות; from the olive produce one-thirtieth should be left for the poor. As for the gift from the field, the passage states וכל הלקט עד סאה לבית סאה. This is, in my opinion, the general halakhic ruling derived from the scriptural commandment לא תכלה פאת שדך ולקט קצירך לא תלקט, translated in Qumranic halakhah as the obligation to leave the poor one *se'ah* of produce per *bet se'ah*. Interpreted thusly, *leqet* here resembles *pe'ah* in rabbinic halakhah and had a fixed measure. In what follows, each of these halakhot is treated in greater detail.

עוללות

The expression לא תעולל appears in both Leviticus and Deuteronomy. From the context in both passages, the meaning of the phrase emerges as not to pick the vineyard bare, deriving from the connotation, ‘to act

⁹ J. M. Baumgarten, *Qumran Cave 4.XIII: The Damascus Document (4Q266–273)* (DJD 18; Oxford: Clarendon, 1996), 147. The text presented here is a composite of the various fragments, and it reflects suggestions for new readings and reconstructions by Professor Elisha Qimron. The translation is based on Baumgarten's edition, slightly adjusted in accordance with the new readings.

violently or strictly'—להתעלל. As mentioned earlier, this explanation finds support in the parallel commandment regarding field crops: “you shall not reap all the way to the edges of your field.” In the Deuteronomic passage the emphasis on אחרִיךְ in the phrase לא תעולל אחרִיךְ points to a similar interpretation. Yet, we find both tannaitic and Qumranic halakhah diverging from the plain meaning of the text and interpreting עולל according to its connotation of ‘small’. Although the practical definition differs in each case—in the mishnah the term is construed as any cluster without a shoulder or a pendant, whereas at Qumran the definition is up to ten berries—nevertheless, linguistically they bear the same meaning, that is they both designate a fixed small quantity of grapes to be deliberately left behind. This, then, is an example of an early exegetical tradition shared by sectarian and rabbinic halakhah. They differ in that for Qumran halakhah עוללות are the sole gift to the poor from the vineyard produce, whereas in rabbinic halakhah עוללות are required in addition to the other categories of gifts: לקט, פאה, and שכחה.

וכל הלקט עד סאה לבית הסאה

The reading suggested above for this text differs from that of Baumgarten. On the basis of the use of the word לקט and the phrase עד סאה לבית סאה, Baumgarten reads this injunction as a maximum measure for gleanings. Accordingly, the poor can follow the harvesters and collect what falls up to a *se'ah* per *bet se'ah*. Beyond this amount, the owner of the field may prevent the poor from gleaning. In the following I wish to defend my reading.

Whereas it is correct that in rabbinic language *leqet* usually refers to the fallen sheaves to be left for the poor, and that such was the nature of this gift in ancient times (as conveyed by the biblical story of Ruth following the harvesters [ch. 2]), it is not inevitable that the term should carry this meaning in CD. Even rabbinic literature contains instances in which the verb לק"ט is used to describe the gathering of other gifts for the poor and is not restricted to *leqet* per se. The outstanding example comes from *m. Pe'ah* 4:9, which speaks of מי שלקט את הפאה.¹⁰ Similarly, in rabbinic

¹⁰ Cf. the following two examples: (1) שלבית נמר היו מלקיטין על החבל ונותנים פאה (“the inhabitants of Beit Namer [permitted the poor] to collect gleanings from each row [of the fields as they were harvested], and designated *pe'ah* from each and every furrow” [*m. Pe'ah* 4:5]). The gift under discussion here is *pe'ah*, yet in describing

literature the expression **עד היכן** can refer to the minimum required measure, rather than the upper limit. A sugya in the PT¹¹ establishes a maximum limit for charitable donations, then uses the words **עד היכן** to set the minimum requirement.¹² It may then be that **וכול הלקט** in this Qumran halakhah relates to gifts left for the poor in advance and not what is left after the fact; i.e., this halakhah treats the Qumranic parallel to rabbinic *pe'ah* and establishes the required quantity as “one *se'ah* per *bet se'ah*.” The advantage of this interpretation is that the halakhah in question, which pertains to the field, then parallels the first halakhah, which treats the vineyard, and the third halakhah, which deals with the olive crop.

It is noteworthy in this context that, in his studies of agriculture in rabbinic Palestine, Yehuda Feliks established the actual ratio between the amount of seed sown and the crop harvested as 1:22.5 in bad years and 1:45 in good years.¹³ Thus the measure *se'ah* per *bet se'ah* averages 1:30, which is exactly the amount mandated for gifts to the poor from the olive harvest in the next halakhah.

ובנקוף הזית... אחד משלושים

This halakhah opens with the words **ובנקוף הזית ופרי תבואתו**. The referent of the last two words is uncertain: is it the olive produce specifically or is it a general reference to any produce harvested by the owner? I find the second possibility more likely, meaning that the halakhah treats the harvest of olives or other fruits. If so, the Qumranic tradition, like rabbinic halakhah, also assigns the obligation to give gifts to the poor in relation to other crops.

its donation by the House of Namer the mishnah uses the verb **מלקיטין**. (2) The *Sifre*'s homily on Deut 24:20 states: “*Thou shalt not go over the boughs (again): Do not lord it over the poor. Hence the Sages have said: He who does not permit the poor to gather [ללקט] (their share), or permits it to one but not to another, or helps one of them, is robbing the poor*” (*Piska* 284). The mishnah cited by the midrash, “he who does not permit, etc.” (*m. Pe'ah* 5:6), does treat *leqet*; nonetheless, no *leqet* pertains to the olive harvest. The homily's use of *leqet* in connection with the olive harvest shows that this term may refer to all the types of gifts granted to the poor.

¹¹ *Y. Pe'ah* 1:1, 15b; see discussion below, pp. 164–66.

¹² One should also consider the possibility that the phrase “*up to a se'ah per bet se'ah*” was influenced by the phrasing of the preceding halakhah: “*up to ten berries*.”

¹³ J. Feliks, *Agriculture in Palestine in the Period of the Mishnah and Talmud* (Jerusalem: The Hebrew University Magnes Press, 1963), 158–59, 163 (Hebrew).

The size of the gift required here is one-thirtieth, or double the one-sixtieth mandated by the Mishnah as the minimum measure for *pe'ah*. Nevertheless, this measure is familiar from another tannaitic source:

שעור תרומה, בית שמיי אומרים עין יפה—אחד משלשים, והבינונית מארבעים, והרעה מחמישים. בית הלל אומרים עין יפה מארבעים, בינונית מחמישים והרעה מששים.

[This is] the [required] measure of heave-offering. The House of Shammai say, “[If a man is] generous [he separates] one-thirtieth [of his produce], and [if he is] average [he separates] one-fortieth [of his produce], and [if he is] miserly [he separates] one-fiftieth [of his produce].” The house of Hillel say, “[If a man is] generous, [he separates] one fortieth of his produce], and [if he is] average [he separates] one-fiftieth [of his produce], and [if he is] miserly [he separates] one-sixtieth [of his produce].” (*t. Ter.* 5:3)¹⁴

Thus, according to Beit Shammai the measure of one-thirtieth comprises a generous gift. We find in *Sifre Deut.*, *Piska* 284, a description of the olive harvest: “*When you beat your olive tree* (24:20): In earlier times people, while beating their olive trees, would do it (i.e. leave the remains for the poor) in a generous manner.”¹⁵ Perhaps the “generous manner” cited here can be understood as referring to the generous measure of one-thirtieth? If that is the case, the *Sifre* echoes the Qumranic tradition which grants this measure to the poor from the olive harvest.

In summary: Qumranic tradition sets measures for the gifts donated to the poor from harvest produce. The main distinction between this practice and rabbinic halakhah is that Qumran halakhah designates one gift, whereas rabbinic halakhah distinguishes between various categories: שכחה, לקט, and פאה.¹⁶

¹⁴ See Lieberman, *Tosefta*, 1:129.

¹⁵ Text: L. Finkelstein, *Sifre on Deuteronomy* (New York: Jewish Theological Seminary of America, 1969), 301.

¹⁶ It is tempting to attribute the distinction between the different gifts as a late development in rabbinic halakhah, grounded in intellectual-hermeneutical consideration of Scripture. Although Philo also distinguishes between two gifts, *leqet* and *pe'ah*, it can be argued that his description is based not on actual practice, but on scriptural interpretation. Accordingly, in describing a single gift to the poor it is Josephus who reflects actual practice, similar to sectarian tradition. With regard to *shikheḥa*, there is, however, evidence that this was practiced in the predestruction era. *T. Pe'ah* 3:8 (Lieberman, *Tosefta*, 1:53) relates: “A certain righteous man forgot a sheaf in the middle of his field. He said to his son, “Go and offer in my behalf [the following offering of thanks:] a bullock as a burnt-offering and a bullock and a whole-offering.”

Bikkurim

I have elsewhere treated in depth Qumran halakhah on the laws of the first-fruits.¹⁷ I argued that, in contrast to the distinction in rabbinic halakhah between *terumah* and *bikkurim*, and the requirement that two separate gifts be given to the priests from the crops, Qumran halakhah did not distinguish between biblical ראשית and תרומה,¹⁸ but understood them collectively as a single gift, first-fruits. Here I shall focus only on the question of the “measure,” namely the required size of the gift of first-fruits. That first-fruits had an exact measure in Qumran halakhah emerges from the following Cave 4 fragment of CD (4Q270 2 ii):¹⁹

[או אשר לוא] ימחא להרים [את כל הקודשים]
 [אשר נתנם אל] לבני אהרון המטעת הר[ביעית לכל פרי עצי
 המאכל וראש]ית כל אשר להם ומעשר *20* [הבקר]
 והצון ופדוי[י הבה]מה הטמאה ופדוי בכ[ור האדם וראשית גז]
 הצון וכסף הערכים לפדוי נפשם

[Whoever shall not] adequately set aside the holy things
 which God gave to the sons of Aaron, the fourth-year produce of all fruit-bearing trees
 food and the first fruits of everything they possess and tithe of ** [the cattle]
 and the sheep and the redempti[on of the firstlings of] unclean animals
 and the redemption of the first-[born of man and the first shearings of
 the sheep,] and the assessment money for the redemption of their
 person.²¹

¹⁷ A. Shemesh, “The Laws of First Fruits in the Dead Sea Scrolls,” in *Meghillot: Studies in the Dead Sea Scrolls I* (ed. M. Bar-Asher and D. Dimant; Haifa: Haifa University Press; Jerusalem: Bialik Institute, 2003), 149.

¹⁸ See Num 18:12–13; Deut 18:4.

¹⁹ The reconstruction is based on Baumgarten, DJD 18.144, with additional suggested readings by E. Qimron.

²⁰ The reading of the letters marked by asterisks is problematic. Baumgarten, DJD 18.144, reconstructed the text as follows: והצון [ומעשר בה]מתם מן הבקר [והצון]. In Qimron’s opinion this reflects unnecessary duplication (בהמה/בקר וצאן); he therefore suggests an alternative reading: והצון [ומעשר פרי] העץ ומעשר הבקר [והצון]. This order is consistent with that found in Leviticus 27: “All tithes from the land, whether seed from the ground or fruit from the tree, are the Lord’s; they are holy” (v. 30); “All tithes of the herd or flock—of all that passes under the shepherd’s staff, every tenth one—shall be holy to the Lord” (v. 32). This matter requires further investigation, as according to the *Temple Scroll* (60:6) tithes are given to Levites, and here we find priests.

²¹ Translation is my own.

This passage belongs to what Baumgarten terms “the catalogue of transgressors.”²² From the context, it appears that these transgressors are unworthy of joining the sect. One of their transgressions, as set forth in the above-cited passage, consists of the failure to fulfill the commandments related to donating the proper portions of gifts to the priests, including first-fruits (ראשית). For our purposes, the fragment’s opening line [או אשר לוא] ימחא להרים [את כל הקודשים] is of especial importance. The meaning of the verb למחות is ‘to be exact’; as Shlomo Naeh has shown, it usually denotes the precise measurement of volume or weight using a measuring utensil.²³ Given this phrasing, then, it seems likely that first-fruits have a specified measure. Indeed, I understand another passage in CD, 4Q271 2, as specifying the amount of first-fruits that must be donated from each species.²⁴ In his new edition of CD (in preparation) Elisha Qimron suggests corrected readings and reconstructions of the passage based on his examination of the manuscripts. Qimron’s reconstruction follows, along with several suggestions of my own marked by underlining:

מגורן ימוד את העשרון מן הג[ת את ההין ששית הא]יפה
 [והבת כא]שר ה[קים אל] האיפה והבת תכון אחד שניהם. [והרים ממנו
 שלי]שית
 [ההין ליין ומחצית ההין לשמן ולפ]רי העץ. אל יבדל איש להרים לשה [אח]ד
 מן המאה²⁵
 [אל י]ואכל איש [מן השד]ה ומן [הכרם ו]מן הגנה טרם ישלחו [הכזה]נים
 את ידם
 [לבר]ד לריאשונה

From the threshing floor he shall measure an *‘saron*, from the wi[nepress
a hin, one-sixth of an *‘ephah*
 [and *bat* a]s [God established], the *‘ephah* and the *bat* shall both be of one
 measure: [and he shall offer from it one-] third
 [of a hin for wine and half a hin for oil] and for the fr[uit of the tree: Let no
 one deviate by offering from the lambs [on]e out of a hundred

²² Baumgarten, DJD 18.12–13.

²³ S. Naeh, “Polishing Measures and Cleaning Scales”—A Chapter from the Tractate of Weights and Measures,” *Tarbiz* 59 (1990): 379–95 (Hebrew).

²⁴ First published in Baumgarten, DJD 18.173.

²⁵ The meaning of this halakhah is obscure. The readings of the final three words and the *heh* of לשה are doubtful; the restoration is based on an associative link with Ezek 45:15: “And [the due] from the flock shall be one animal from every 200.” Accordingly, Baumgarten suggests that the halakhah warns against giving more than one two-hundredth, to ensure that the owner will not diverge from the accepted practice and give one hundredth. This interpretation is difficult in and of itself, and especially in light of the suggested reading provided here, which divorces the contents of the passage from Ezekiel.

Let[no] man eat [from the fie]ld and from [the vineyard and] from the garden before [the prie]sts stretch forth their hand [to ble]ss first . . .²⁶

Three textual facts form the basis for the reconstructions suggested here and for my interpretation of this passage: (1) three types of produce are mentioned in these lines: גורן, ג[ת], ו[פ]רי העץ; (2) the passage deals with some sort of present to the priests as shown by the reference: טרם ישלחו [הכוה]נים; and (3) the measure for the gift from the threshing floor is an *‘isaron*. Mentioned scores of times in Qumran literature, without exception *‘isaron* refers to a measurement equivalent to one-tenth of an *‘ephah* and not to 10 percent of the produce. On this basis I conclude that the size of the gift discussed in this passage was predetermined and was not proportional to the yield of the crop.

What, then, is the gift from the threshing floor whose measure equals an *‘isaron*? In my opinion, this gift is the first-fruits of the grain, and its quantity is based upon the biblical paradigm of the *‘omer*. Concerning the *‘omer* Scripture states: “When you enter the land . . . and you reap its harvest, you shall bring the first sheaf of your harvest [עמר ראשית קצירך] to the priest” (Lev 23:10). As defined in Exod 16:36, the *‘omer* is equivalent to an *‘isaron*: “The *‘omer* is a tenth of an *‘ephah*.” At Qumran, the measure for private offerings of first-fruits thus equals that of the public offering.

If this construction be accepted, the continuation of the halakhah also treats first-fruits: the first-fruits of wine and oil. It is well known that three first-fruits festivals were celebrated in the Qumran calendar, for grain, wine, and oil. The *Temple Scroll* mandates that on the Festival of the First Fruits of Wine, four *hins* shall be brought from all the tribes of Israel, a third of a *hin* for each tribe (19:14–15); on the Festival of the First Fruits of Oil, each tribe shall bring half a *hin* of oil (21:15–16). My suggested reconstruction for the remainder of the text is based on the assumption that for each of these types of *bikkurim* the private offering is equivalent to the public one. Consequently, for the first-fruits of oil or wine one must first measure a *hin* (one-sixth of an *‘ephah* or *bat*) from the press,²⁷ and then offer as *bikkurim* a third of this (i.e., the *hin*) in the case

²⁶ The translation is based on Baumgarten’s edition.

²⁷ The ancient methods of oil and wine production were very similar, with both employing vats. See, for example, Joel 2:24: “And vats shall overflow with new wine and oil” (see also Mic 6:15). In later, more advanced methods the two processes became differentiated. In Mishnaic Hebrew **גת** is usually the place where wine is produced and

of wine or a half of it in the case of oil. According to the reconstruction proposed here, the treatment of fruit-bearing trees is brought under the rubric of the halakhah for giving first fruits from the oil. “Fruit-bearing trees” apparently denote trees whose fruits yield juices (pomegranates, dates); thus this law establishes the amount of *bikkurim* for such trees as half a *hin* (of juice), like that for oil, rather than one-third of a *hin*, like that for wine.²⁸

This reading harmonizes with the halakhah of new produce found in line 4: “Let[no] man eat [from the fie]ld and from [the vineyard and] from the garden before [the prie]sts stretch forth their hand [to ble]ss first.”²⁹ Three types of settings appear here: field (שדה), vineyard (כרם), and vegetable garden (גנה). A field per se is not irrigated and is generally used to grow grains. כרם is the home of the grape and the olive and like the field is not irrigated. The garden, on the other hand, receives irrigation on a regular basis. Although גנה as such usually refers to a vegetable garden, several types of trees, such as pomegranates, nuts, and dates, were grown in gardens.³⁰ Indeed, juices can be extracted from these crops as well: pomegranate nectar, nut oil, and date liquor.

בית הבד refers to the olive press (see R. Frankel, *Wine and Oil Production in Antiquity in Israel and Other Mediterranean Countries* [JSOT/ASOR Monograph Series 10; Sheffield: Sheffield Academic Press, 1999], 185–86). Indeed, tannaitic sources also refer to גתות for oil. See *t. Ter.* 3:6 (Lieberman, *Tosefta*, 1:117): “One who separates the heave-offering [required] of the [oil in the] vat must direct his intention toward that which is in the peels”; *m. Pe'ah* 7:1; and the baraita in *b. Pesah.* 20b: “If a cask of [wine of clean] *terumah* is broken in the upper vat, while [in] the lower there is unclean *hullin* . . .” (cf. S. Lieberman, *Tosefta Kī-fshutah: Zeraim* [Jerusalem: The Jewish Theological Seminary of America, 1992–], 1:324 and nn. 16–17. Regarding Lieberman’s comments, see D. Rosenthal, “Gat Shemanim, Gad Shemanim, Gad Yavan,” *Cathedra* 67 [1993]: 4 and n. 9 there).

²⁸ Evidently the amount of *bikkurim* taken from fresh fruit was an *‘isaron*, similar to first-fruits from the threshing floor. This is apparently the reason why the author pays no special attention to this matter; only with regard to *bikkurim* from fruit juices, and because of the differences between the laws concerning wine and oil, is it necessary to establish that the law of other liquids is like oil and not like wine.

²⁹ Note that, according to the wording of this law, the consumption of new produce depends not only upon its being *given* to the priests but also on their *consuming* it first. This resembles the *Temple Scroll*’s description of the public *bikkurim* ceremonies. On each of the festivals of first-fruits, for grain, wine, and oil we find stress upon the fact that the priests ate first, followed by the people. See *Temple Scroll*, 19:5–6, 21:7–9, 22:14–15.

³⁰ See Feliks, *Agriculture in Palestine*, 311–14. In the collection of documents from the Judean Desert published by Ada Yardeni (*Textbook of Aramaic, Hebrew and Nabataean Texts from the Judaean Desert and Related Material* [2 vols.; Jerusalem: The Dinur Center, Hebrew University, 2000]), גינות תמרים are mentioned several times: once in an Aramaic deed of gift (P. Yadin 7), and three times in documents written in Nabataean hands (see the concordance there, 2:29). Irrigated orchards of fruit and incense trees were especially

Thus, in contrast to *m. Pe'ah's* statement that *bikkurim* “have no [specified] measure,” Qumran halakhah sets an exact measure for this offering. Nonetheless, the tannaitic traditions do not provide an entirely unequivocal picture. The tradition that *bikkurim* have no set measure appears in yet another mishnah: יש בתרומה ובמעשר מה שאין כן בבכורים: שהתרומה והמעשר [...] ויש להם שעור, [...] מה שאין כן בבכורים (“There are [restrictions which apply] to heave-offering and to tithe which [do] not [apply] to first-fruits. For heave-offering and tithe... have a [prescribed] quantity... which [does] not [apply] to first-fruits” [*m. Bik.* 2:3]).

The precise definition of the required measure for *terumah* mentioned in this mishnah was disputed by Beit Shammai and Beit Hillel;³¹ thus it must be dated relatively early. Nonetheless, this fixed measure was considered a rabbinic decree (*de-rabbanan*), as according to the Bible (*de-oraita*) “one grain of wheat frees the whole stack” (*b. Qidd.* 58b). Accordingly, the juxtaposition of *bikkurim* with *terumah* indicates that *bikkurim* have no specified measure even *de-rabbanan*. This tradition is in harmony with the description of how *bikkurim* were separated in the continuation of the tractate (*m. Bik.* 3:1): כיצד מפרישין את הבכורים? יורד אדם לתוך שדהו ורואה תאנה שבכרה, אשכול שבכר, רמון שבכר — קושרו בגמי ואומר: “הרי אלו בכורים” (“How do [landowners] separate first-fruits [from the rest of their produce?] [When] a man goes down to his field and sees a fig that has begun to ripen, a grape cluster that has begun to ripen, or a pomegranate that has begun to ripen, he binds it with a reed and says, ‘Lo, these are first-fruits’”). According to this mishnah, the *bikkurim* are only the first fruits to ripen on the tree, and therefore if the owner wishes to increase the amount he must designate a “supplement of first-fruits” and “the decorations [that bedeck] the first-fruits” (*m. Bik.* 3:10).

However, another tradition appears in two baraitot:

תני הביכורים אחד מששים ראשית הגז אחד מששים תרומה טמאה אחד מששי'. תני ר' ישמעאל הביכורים אחד מששים פיאה אחד מששים ראשית הגז אחד מששים תרומה טמאה אחד מששים שאין הכהנים מקפידין עליה אחד מששים.

well developed in the Dead Sea area during the Hasmonean period. See J. Porat, “Aspects of the Development of Ancient Irrigation: Agriculture in Jericho and Ein-Gedi,” in *Man and Land in Eretz-Israel in Antiquity* (ed. A. Kasher, A. Oppenheimer, and U. Rappaport; Jerusalem: Yad Izhak Ben-Zvi, 1986), 127–41.

³¹ *T. Ter.* 5:3 (Lieberman, *Tosefta*, 1:129) and more briefly in *m. Ter.* 4:3.

It has been taught: “The proper proportion of first fruits is one out of sixty; first fleece, one out of sixty; unclean heave-offering, one out of sixty.” R. Ishmael taught: “As to first fruits, [the proper proportion is] one out of sixty, for the corner of the field, one out of sixty; for the first fleece, one out of sixty; for unclean heave-offering, one out of sixty; for heave-offering [from sorts of fruits] to which priests pay little attention [because they are generally worthless], one out of sixty.” (γ. *Bik.* 3:1, 65c)

According to this tradition, the rabbis equalized the amounts for *bikkurim*, *Pe'ah*, and *terumah*, standardizing the measure for all of them as one-sixtieth, even though Scripture mandated no specified amount.

Re'ayon

What exactly is ראיִון, which the mishnah also says has no specified measure? Part of the thrice-yearly pilgrimage obligation, repeated in the Pentateuch on several occasions, is “not [to] appear before the Lord empty-handed” (Exod 23:15; 34:20; Deut 16:16). From their presentation in the opening mishnayot of tractate *Hagigah* we learn that these two commandments—the obligations to appear in the Temple and to bring an offering³²—are called ראיִה (‘appearance’). *Mishnah Hag.* 1:1 establishes: הכל חיבין בראיה חוץ מחרש . . . ומי שאינו יכול לעלות ברגליו (“All are liable for *appearance* [before the Lord] except for a deaf-mute . . . and one who cannot go up on foot”). From the context in general and primarily from the exemption granted to someone who cannot walk, it is apparent that ראיִה here refers to the obligation to appear in the

³² According to the principal tradition in tannaitic literature, this gift is a sacrifice, as was taught in *t. Hag.* 1:4 (Lieberman, *Tosefta*, 2:377): “What is the definition of an appearance-offering? These are the burnt-offerings which are brought for [designated as] the appearance-offering. What is the definition of a festal-offering? These are the peace-offerings which are brought for [designated as] the festal-offering.” However, there is another tradition in tannaitic sources according to which the offering mandated by Scripture is charity. See *Sifre Deut.* 143 (Finkelstein, *Sifre*, 196): “*And they shall not appear before the Lord empty* (16:16)—of charity. The Sages have set a fixed amount (for the offering). The School of Shammai says: The pilgrimage offering is two silver *ma'ah*, the offering of rejoicing one silver *ma'ah*. The School of Hillel says: The pilgrimage offering is one silver *ma'ah* and the offering of rejoicing two silver *ma'ah*.” This doctrine survived in *Mekilta* as a premise: “*And None Shall Appear before Me Empty*. That is, without sacrifices. You interpret it to mean without sacrifices. Perhaps this is not so, but it means without money? Behold you must reason thus . . .” (*Neziqin, Parasha* 20; *Mekhilta* [ed. S. Horowitz and I. A. Rabin; Frankfurt am Main: Kauffmann, 1928–31], 333; Lauterbach, *Mekilta*, 183). See also S. Lieberman, *Tosefta Ki-fshutah: Hagigah*, 5:1278–79.

Temple. Mishnah 2 reads: **בית שמאי אומרים: הראיה שתי כסף והחגיגה כסף** (“The House of Shammai say, ‘The appearance-offering must be worth at least two pieces of silver, and the festal-offering at least one *ma’ah* of silver.’ And the House of Hillel say, ‘The appearance-offering must be at least one *ma’ah* of silver, and the festal-offering must be worth at least two pieces of silver.’”) In this mishnah **ראיה** refers to the obligatory pilgrim offering, whose value is a matter of dispute between Beit Shammai and Beit Hillel.

To which of these two “appearances” does *m. Pe’ah* 1:1 refer? The fact that each of these aspects has a specified measure—three appearances per year, an offering valued explicitly at either two pieces of silver (Beit Shammai) or one *ma’ah* of silver (Beit Hillel)—poses a difficulty. Indeed, in the talmudic discussion of this issue the early amoraim deliberate on this question:

אמר רבי יוחנן: כסבורין אנו לומר הראיון אין לו שיעור למעלה, אבל יש לו שיעור למטה. עד שבא רבי אושעיא ברבי ולימד: הראיון אין לו שיעור לא למעלה ולא למטה. אבל חכמים אומרים: הראייה מעה כסף, והחגיגה שתי כסף.

R. Johanan said, “We were of the opinion that the visiting of the Temple [with an offering] had no maximum limit, but that it had a minimum limit, till R. Oshaya the Great came and taught that the visiting of the Temple [with an offering] has no maximum nor minimum limit.” But the Sages said, “The pilgrimage-offering must be worth [at least] one *ma’ah* of silver and the festal-offering two pieces of silver.” (*b. Hag. 7a*)

Thus, R. Johanan in his first proposal and R. Oshaya understand the **ראיון** discussed here as the pilgrimage-offering itself, evidently because the number of times one is required to appear before God, three, receives explicit mention in the Pentateuch. Moreover, with regard to the offering, Scripture explicitly states: “each with his own gift, according to the blessing that the Lord your God has bestowed upon you” (Deut 16:17).³³ More pertinent to the discussion is the attribution of the dispute over

³³ The parallel in PT also states: **אבל בראיית פנים יש לה** (“Our mishnah refers to the appearance-offering; but appearance before the Lord has a specified measure” [MS Leiden]). However, the majority of the commentators reverse the order, reading **שיעור ראיון יש לה** (“Our mishnah refers to appearance before the Lord but the appearance-offering has a specified measure”) based upon the continuation of the passage: “Said R. Johanan, ‘The specification of a *ma’ah* of silver or two pieces of silver derives from the laws of the Torah” (*y. Hag. 76b*). Shmuel Safrai (*In Times of Temple and Mishnah: Studies in Jewish*

the size of the festal offering to Beit Hillel and Beit Shammai, making the setting of a minimum for the appearance-offering relatively early.

The term **ראיון** does not occur in the halakhic literature at Qumran, either as the obligation to appear before the Lord in the Temple or as the required offering. This overlooking of an explicit pentateuchal commandment provides further testimony to the degree to which the sectarians had distanced themselves from the Temple and its priests; their view of the Temple as currently impure prevented them from fulfilling this commandment.³⁴

Acts of Loving-Kindness

The following passage in PT deals with “righteous deeds”:

וגמילות חסדים הדא דתימר בגופו אבל בממונו יש לו שיעור ואתייא כיי דמר רבי שמעון בן לקיש בשם רבי יהודה בן חנינא נמנו באושא שיהא אדם מפריש חומש מנכסיו למצות עד היכן רבן גמליאל בן איניאי ורבי אבא בר כהנא חד אמר עד כדי תרומה ותרומת מעשר וחרנה אמר כבד את ה' מהונך ומראשית כל תבואתך כמראשית כל תבואתך.

History [Jerusalem: The Hebrew University Magnes Press, 1994], 1:51–53 (Hebrew); Safrai, idem, “The Temple,” in *The Jewish People in the First Century* [ed. S. Safrai and M. Stern; 2 vols.; CRINT 1.1; Assen: Van Gorcum; Philadelphia: Fortress, 1974–1976], 2:899–900), deals with the passage in PT at length. In his opinion, PT’s stance was indeed that **ראיית פנים** had no measure; that is, the Palestinian tradition did not view the scriptural injunction mandating three pilgrimages a year as binding. Underlying Safrai’s position is a compilation of witnesses from historical sources demonstrating that in practice the thrice-yearly pilgrimage obligation was not strictly observed during the late Second Temple period. A detailed discussion of Safrai’s textual analysis is beyond the scope of this article. In any event, it is difficult to accept his thesis that **ראיון** had no measure because this is in direct contradiction to a scriptural injunction. Rashi’s explanation that **ראיון** in the passage refers to pilgrimage, which has no measure, seems preferable: “כמה פעמים שהוא חפץ בא ומראה עצמו (“He comes and shows himself as many times as he wishes”); Rashi, *b. Hag* 7a, lemma **רבי יוחנן**.”

³⁴ On this matter, see J. M. Baumgarten, *Studies in Qumran Law*, 39–74; L. H. Schiffman, *Reclaiming the Dead Sea Scrolls* (Philadelphia and Jerusalem: Jewish Publication Society, 1994), 282. S. Safrai (*In Times of Temple and Mishnah*) also treated Essenes and sectarian avoidance of making pilgrimages to the Temple, including this among his proofs that pilgrimage was not seen as obligatory during that era. I do not view this conclusion as inevitable; the avoidance of observing this obligation does not indicate that it was not seen as binding but rather that these groups saw themselves as prevented from its fulfillment (somewhat on the lines of **אונס רחמנא פטריה** [the Merciful One exempted one under duress from obligations] in talmudic literature).

Acts of loving-kindness—This refers to physical deeds [such as visiting the sick or burying the dead]. But as regards [acts of loving-kindness of a] monetary [nature, such as charity]—these [acts *are* subject to] a limit. And [this statement] accords with that which R. Simeon b. Laqish said in the name of R. Judah b. Ḥanina, “At Usha they voted that a person may separate [up to] one-fifth of his possessions for charity.” To what point [that is, what is the lower limit]? R. Gamliel b. Ininya and R. Abba bar Kahana [had the following dispute]: One said, “the proper amount [to be given] is as little as that of heave-offering or heave-offering of the tithe.” The other said: “We may derive the minimum amount to set aside for charity [from exegesis of the following verse:] ‘Honor the Lord with your wealth, and with the first fruits of all your grain’ (Prov 3:9)—as first fruits of your grain.” (γ. *Pe’ah* 1:1, 15b)³⁵

Underlying this discussion is the Tosefta’s statement that *gemilut hasadim* is performed via either financial (charitable) or physical deeds (*t. Pe’ah* 4:19).³⁶ Awareness of the existence of set rates for charity leads the passage to open by establishing that when the Mishnah assigns loving-kindness to the category of things without specified measure it means physical deeds and not money. My interest, however, lies in the tradition that charity (loving-kindness via money) *does* have a specified measure: “It was ordained at Usha that if a man wishes to spend liberally he should not spend more than a fifth.” This *takkanah*, which dates to the latter half of the second century, evidently fixed the upper limit for charity.³⁷

³⁵ Translation revised by author.

³⁶ Lieberman, *Tosefta*, 1:61. The use of the term צדקה in the connotation of giving money to the needy is characteristic of rabbinic Hebrew. On the biblical roots of this usage, see A. Hurvitz, “The Biblical Roots of a Talmudic Term: The Early History of the Concept of צדקה [= charity, alms],” in *Language Studies* (ed. M. Bar-Asher; Jerusalem: Academon, 1987), 155–60 (Hebrew). From the talmudic passage it is clear that acts of loving-kindness using money are equivalent to charity. Seen thus, in the conceptual pair “charity and loving-kindness,” charity is included in the category of loving-kindness, and no distinction is to be made between charity and acts of loving-kindness with money. So, too, is the language of the Tosefta (*Pe’ah* 4:19 [p. 61]) to be understood: “Charity and righteous deeds outweigh all other commandments in the Torah. Nevertheless, charity [can only be given to the] living, but righteous deeds [can be performed for the] living and dead. Charity [is given only] to the poor people, but righteous deeds [are done for both] poor and rich people. Charity [is given as an aid for a poor person’s] finances, but righteous deeds [aid both a poor person’s] finances and his physical needs.” On the origins and content of humanistic ideals encompassed by charitable acts, see M. Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: The Hebrew University Magnes Press, 1995), 222–30.

³⁷ For the rationale and historical background of this *takkanah*, see E. E. Urbach, “Socioreligious Trends in the Rabbinic Doctrine of Charity,” in *The World of the Sages: Collected Studies* (Jerusalem: The Hebrew University Magnes Press, 1988), 111 (Hebrew).

From the continuation of the passage we also learn of a binding norm governing the lower limit for this charity: the measure for *terumat ma'aser* (1/100) or for *terumah* (in accord with the above-mentioned dispute between Beit Hillel and Beit Shammai either one-fortieth, one-fiftieth, or one-sixtieth). Another tradition fixes the amount of charity at one-tenth. In a homily cited by medieval commentators in the name of the *Sifre* we find: “*You shall set aside every year a tenth part of all the yield of your sowing that is brought from the field* (Deut 14:22). This states specifically that the yield of what is sown must be tithed, how do we derive [the rule] with regard to profits from interest and business dealings? It states ‘of all’ (since it could have said only *your sowing*, not *all*) to include interest and business and other profitable activities.”³⁸ Finkelstein maintained that this was a medieval homily;³⁹ for their parts, Gedaliah Alon and Efraim Urbach viewed it as authentic. Urbach suggested that “it is likely that the laws of the soup kitchen and the charity box were reworked after the destruction. Perhaps the obligation to tithe was extended and applied to commercial revenues at the same time.”⁴⁰ Alon, on the other hand, relying on *Jubilees’* account of Jacob giving Levi a tithe “from people to animals, from money to all utensils and clothing” (*Jub.* 32:2), submits that this tradition predates the destruction of the Temple.⁴¹

Institutionalized obligatory charity appears explicitly in the following passage from CD (CD 14:12–17):

וזה סרך הרבים להכין כל חפציהם. שכר שני ימים לכל חדש לממעט ונתנו על יד המבקר והשופטים ממנו יתנו בעד פצעם וממנו יחזיקו ביד עני ואביון ולזקן אשר יכרע ולאיש אשר ינוגע ולאשר ישבה לגוי נכר ולבתולה אשר אין לה גואל ולנער אשר אין לו דורש [ול]כול עבודת החבר ולא יכרת בית החבר מידם.⁴²

And this is the rule for the Many to prepare for all their needs: a wage of at least two days every month shall be given to the Examiner and the judges. From it they shall give for their wounded, and from it they shall support the poor and the destitute, the old man who is [bowe]d down, the man who is affli[ct]ed, the one captured by a foreign people, the virgin who has no redeemer, the boy who has no one to look after him, and all

³⁸ Tosafot to *b. Ta'an.* 9a, lemma עשר תעשר.

³⁹ *Sifre Deut.*, 166–67.

⁴⁰ Urbach, “Socioreligious Trends,” 108 and n. 77.

⁴¹ G. Alon, “The Halacha in the Teaching of the Twelve Apostles (*Didache*),” in *The Didache in Modern Research* (ed. J. A. Draper; AGJU 37; Leiden: Brill, 1996), 191–94.

⁴² Cited from the Qimron edition: *The Damascus Document Reconsidered* (ed. M. Broshi; Jerusalem: Israel Exploration Society, 1992), 37.

the work of the communal body, so that the communal house will not be cut off from among them.⁴³

This brief passage describes a multipartite communal social services network, in which the set amount of tax is **שכר שני ימים לכל חדש לממעית**. Thus, charity has a minimum, but no maximum amount. Whether these two days of wages represent a fixed rate or were relative to the personal revenues of each member of the community is unclear. Charlotte Hempel notes that, in the version of the passage found in 4Q266, the words **לכל חודש** are missing. She suggests that the law in question underwent development: originally a yearly tax collected during the meeting of all the camps, at a later stage it became a monthly tax.⁴⁴ The charitable donations in question are not given directly to the beneficiaries but rather are distributed by the overseer and the judges, who here play the same role as the charity collectors and officials familiar from rabbinic literature.⁴⁵

The list of beneficiaries is of special interest. In essence, there are two lists here: the first contains only one item—**ממנו יתנו בעד פצעם**; the second begins with **וממנו יחזיקו ביד**.⁴⁶ This division, and the shift from ‘give’ in the first to ‘support’ in the second, indicates that **בעד פצעם** refers to payment for medical needs and not to financial support for someone unable to work due to illness (which is the case for the needy in the second list). In the second list we find the poor and the needy followed by **ולזקן אשר יכרע ולאיש אשר ינוגע**. A similar combination appears in 1QSa (*Rule of the Congregation*) 2:4–7: **וכול מנוגע בבשרו נכאה רגלים או ידים פסח או עור או חרש או אלם או מום מנוגע בבשרו לראות עינים, או איש זקן כושל לבלתי התחזק בתוך העדה** (“And anyone who is afflicted in his flesh, crippled in the legs or the hands, lame or blind or deaf or dumb, or if he is stricken with a blemish in his flesh visible to the eyes; or a [tottering] old man who cannot maintain himself with the Congregation”).⁴⁷ Elsewhere I have shown that the phrase **מנוגע בבשרו**

⁴³ Translation according to Baumgarten, DJD 18.73, slightly adjusted.

⁴⁴ C. Hempel, *The Laws of the Damascus Document: Sources, Tradition and Redaction* (STDJ 29; Leiden: Brill, 1998), 138–40.

⁴⁵ See Z. Safrai, *The Jewish Community in the Talmudic Period* (Jerusalem: Zalman Shazar Center for Jewish History, 1995), 251–55 (Hebrew).

⁴⁶ 4Q266—**בעד**.

⁴⁷ Text from Licht, *The Rule Scroll* (Jerusalem: Bialik Insitute, 1965), 264; translation by L. T. Stuckenbruck and J. H. Charlesworth, “Rule of the Congregation (1QSa),” in *Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 1: The Rule of the Community and Related Documents* (ed. J. H. Charlesworth; Tübingen: Mohr [Siebeck]; Louisville: Westminster John Knox, 1994), 117.

in IQSa serves as a heading for the list of impediments that follows, among which the tottering old man appears.⁴⁸ Accordingly, I maintain that similarly in CD's halakhah **אֲשֶׁר יִנּוּגַע** refers not to a ritually impure person but to someone with a handicap, who, like the tottering old man, is in need of charity because he cannot work to support himself.

In CD's continuation of the list, a captive is mentioned. It is pertinent to note that ransom of captives was one of the purposes towards which charity funds were directed in the mishnaic period.⁴⁹ The final two items on the list—the girl without a near kinsman and the boy without an advocate—are perhaps poetic forms for orphans. Although such an interpretation is possible, the absence of “the widow” who normally accompanies mention of orphans is surprising. Perhaps the girl and boy mentioned here are to be understood as youngsters who have left their families, cutting their former ties to join the sectarian community. Although not technically orphans, such youths have neither redeemer nor advocate. Another possibility is that the needs in question are not daily ones but rather provision for marriage. If the latter surmise is correct, then the list in CD contains the classic elements of acts of loving-kindness: charity, visiting the sick, and dowering brides.⁵⁰

To sum up: the existence of known traditions setting minimum and maximum amounts for monetary charity underlies PT's interpretation that the mishnah in *Pe'ah* refers to physical deeds. The amounts specified for charity are consistent with our knowledge of the structure of social services in mishnaic Palestine: the poor box, the soup kitchen, dowering brides, and so on. In order to maintain these institutions funds were collected (sometimes forcibly) on a regular basis; both contributors to, and beneficiaries of, specific charities were precisely predetermined.⁵¹ Although these tannaitic traditions are relatively late, CD testifies to collection of obligatory payments by the sect for similar charitable purposes during the Second Temple period.

⁴⁸ A. Shemesh, “The Holy Angels Are in Their Council: The Exclusion of Deformed Persons from Holy Places in Qumranic and Rabbinic Literature,” *DSD* 4 (1997): 196.

⁴⁹ See Z. Safrai, *Jewish Community*, 70.

⁵⁰ A similar suggestion was put forth by Moshe Weinfeld in the wake of Ginzberg's reading of the passage in question from CD. Although this reading does not stand up in light of known parallels from Cave 4 documents; nonetheless, the general conception is feasible. See Weinfeld, *Social Justice*, 222–30; L. Ginzberg, *An Unknown Jewish Sect* (New York: Jewish Theological Seminary, 1928), 90.

⁵¹ For a summation, see Safrai, *Jewish Community* (n. 45 above).

Study of Torah

Is there really no set measure for the study of Torah? The following two talmudic dicta seem to indicate otherwise:

א"ר אמר: מדבריו של ר' יוסי גלמוד, אפילו לא שנה אדם אלא פרק אחד שחרית ופרק אחד ערבית, קיים מצות לא ימוש ספר התורה הזה מפיך. אמר רבי יוחנן משום ר"ש בן יוחי: אפי' לא קרא אדם אלא קרית שמע שחרית וערבית—קיים לא ימוש.

R. Ammi said, "From the words of R. Jose we learn that even though a man learns but one chapter in the morning and one chapter in the evening he has thereby fulfilled the precept of *This book of the law shall not depart out of thy mouth* [Josh 1:8]." R. Johanan said in the name of R. Simeon bar Yoḥai, "Even though a man but reads the Shema morning and evening he has thereby fulfilled the precept of [*This book of the law*] *shall not depart*. (b. *Menah.* 99b)

According to both R. Ammi and R. Yoḥanan in the name of Simeon bar Yoḥai, there is a minimum binding measure for the study of Torah in order to fulfill the scriptural injunction, "This book of the law shall not depart out of thy mouth."⁵² That Simeon bar Yoḥai viewed recitation of the Shema as Torah study is evident from the following statement cited in his name in PT: כגון אנו שעוסיקים בתלמוד תורה אפילו לק"ש אין אנו מפסיקים ("Those like us who are engaged [constantly] in the study of Torah, do not interrupt it even for the recitation of the Shema"), there grounded in the rationale, "Both are acts of study" (y. *Ber.* 1:2, 3b). From these and other sources, Y. D. Gilat concluded that the obligation to recite the Shema originated as part of a *takkanah* establishing the minimum requirement for daily Torah study.⁵³

In Qumran, as well, we find quantitative instructions defining the obligation to study Torah (1QS 6:6–8):

ואל ימש במקום אשר יהיו שם העשרה איש דורש בתורה יומם ולילה תמיד עלִיפות איש לרעהו והרבים ישקודו ביחד את שלישיית כול לילות השנה לקרוא בספר ולדרוש משפט ולברך ביחד.

⁵² Note that a dissenting viewpoint appears in the same passage: "For R. Samuel b. Nahmani said in the name of R. Jonathan, This verse is neither duty nor command but a blessing. For when the Holy One, blessed be He, saw that the words of the Torah were most precious to Joshua, as it is written, *His minister Joshua, the son of Nun, a young man, departed not out of the tent* [Exod. 33:11], He said to him, 'Joshua, since the words of the Torah are so precious to thee, [I assure thee.] *this book of the law shall not depart out of thy mouth!*'"

⁵³ Gilat, *Development of the Halakhah*, 284–85.

In any place where is gathered the ten-man quorum, someone must always be engaged in study of the Law, day and night, continually, each one taking his turn. The general membership will be diligent together for the third of every night of the year, reading aloud from the Book, interpreting Scripture, and praying together.⁵⁴

This passage contains two injunctions concerning Torah study. The first enjoins that Torah be studied continuously, “day and night,” in every community of ten or more men. Because of the inherent difficulty of fulfilling the scriptural verse, the author of 1QS bolstered this injunction with a framework for public implementation, establishing shifts for Torah study.⁵⁵ My interest lies in the second prescription: **והרבים ישקודו וביחד את שלישיית כול לילות השנה**, which apparently refers to one-third of each night—the first third—and not to a total of one-third of all the nights of a year. That this is R. Eliezer’s defining criterion for the time until which the Shema can be recited: “until the end of the first watch” (*m. Ber.* 1:1) is not coincidental.⁵⁶

The History of the Creation of Measurements: Between Qumran and the Mishnah

We have seen that Qumran halakhah had fixed and binding measurements for the obligations which *Mishnah Pe'ah* specifies as without measure or limit. These Qumran measures sometimes represent the lower limit, as in CD’s requirement for charity (“a wage of at least two days every month”); in other cases the measurement seems to reflect the accepted norm (as seen with regard to the gifts to the poor from agricultural produce). Within the accepted approach to the study of the history of halakhah, which usually portrays early halakhah as less formed than rabbinic halakhah, this seems exceptional.⁵⁷ A characteristic feature

⁵⁴ Translation in M. Wise, M. Abegg, and E. Cook, *The Dead Sea Scrolls: A New Translation* (San Francisco: Harper San Francisco, 1996), 134.

⁵⁵ The explanation for the word **עליפות** must be **חליפות**, as H. Yalon (*Studies in the Dead Sea Scrolls: Philological Essays [1949–52]* [Jerusalem: Shrine of the Book Fund, 1967], 71–87 [Hebrew]) and J. Licht (*The Rule Scroll*, 140) suggest.

⁵⁶ For a survey of this topic and the various opinions regarding what was studied during this nighttime activity, see H. Shapira, “Beit ha-Midrash (the House of Study) during the Late Second Temple Period and the Age of the Mishnah: Institutional and Ideological Aspects” (Ph.D. diss., The Hebrew University of Jerusalem, 2001), 73–74 (Hebrew).

⁵⁷ See C. Werman and A. Shemesh, “Halakhah in the Dead Sea Scrolls,” in *The Dead Sea Scrolls* (Jerusalem: Yad Izhak Ben-Zvi, forthcoming [Hebrew]).

of much Qumran halakhah is the *absence* of individual specifications and halakhic distinctions, which evidently developed at a later period within the broader context of Torah study and exegesis. This feature distinguishes other types of measurements treated in different contexts in rabbinic literature. Thus, for example, Qumran halakhah contains no discussion of issues such as, “How much food which had not been tithed . . . does one eat so as to be liable?” (*m. Mak.* 3:2) or the minimal size for a garment to be classified as liable to impurity.⁵⁸ What then fostered the early development of exact measurements for the obligations in question?

From various places in Qumran literature a picture emerges of members and candidates assailed by constant anxiety to fulfill scrupulously their religious obligations and to avoid forbidden acts:

ובמענה לשון להתנפל ול[התחנן על מע]ל פשעו, ולבקש רוח [...] ולהתחזק ברוח ק[ודשך] ולדבוק באמת בריתך ולע[בדך] באמת ולב שלם ולאהוב את [שמך]

I will find the proper reply, prostrating myself and [entreating f] or my rebellion, seeking a spirit of [...] encouraging myself by [Your] h[oly] spirit, clinging to the truth of Your covenant, [serv]ing You in truth and a perfect heart and loving [Your holy name]. (*Hodayot* 8:15–16)⁵⁹

Fear of transgression stimulates the creation of strict norms, such that one avoids acts permissible in and of themselves for fear that they will *lead* to sin. However, in the case of positive commandments, this tactic is ineffectual. The devout believer experiences difficulty determining whether he has properly fulfilled the generally worded scriptural commandment. In my opinion this quandary constitutes the background for the setting of the measures discussed earlier. The fixing of defined minimum measures for specific obligations frees the sect member from constant worry: by setting aside the correct amount of *pe'ah* and first-fruits, or by donating the equivalent of two days' monthly wages, he has fulfilled his obligation.

⁵⁸ See *Torat Kohanim, Tazri'a* 13:2 (Weiss ed., 68a). For a general treatment of measurements in rabbinic literature, see Gilat, *Development of the Halakhah*, 63–71; M. Silberg, *Principia Talmudica* (Legal Studies 8; Jerusalem: Hebrew University Students' Press, 1961), 45–59 (Hebrew).

⁵⁹ 16:6–7 in the edition of J. Licht, *Thanksgiving Psalms* (Jerusalem: Bialik Institute, 1957), 202–3 (Hebrew). The translation is from Wise, Abegg, and Cook, *New Translation*, 90, slightly altered.

This analysis accords with the description of sectarian religiosity set forth by Adiel Schremer in his article “[T]he[y] Did Not Read in the Sealed Book.”⁶⁰ Schremer, who relied on Haym Soloveitchik’s analysis of present day ultra-Orthodox circles,⁶¹ noted the process of ever-increasing halakhic stringency among the Qumran sectarians. Schremer labels this phenomenon as text-based religiosity. The desire **לשוב אל תורת משה ככול אשר צוה, ככול לב ובכול נפש**, “to return to the Law of Moses (according to all he commanded) with all his heart and with all his mind” (*Rule of the Community* 5:8–9),⁶² necessarily leads to enhanced halakhic stringency; in every case where there is a seeming gap between the demands of the text and actual practice, the text triumphs and overtakes accepted convention. Moreover, wherever the text is open to various explanations, the most exacting interpretation prevails.⁶³ Against this religiosity we find the Pharisaic mode, based, as Josephus testifies, on ancestral tradition. In the context of Pharisaic society, observance of the commandments flows more naturally because its members feel relatively greater confidence in their actions, performed in the accustomed manner. A member of the Pharisaic community did not ask himself if the commandment he fulfilled met the requirements of written scriptural injunction; his confidence in the correct performance was grounded in the time-honored convention enacted by his parents and teachers, and by previous generations. The innovative aspect of Schremer’s argument inheres in his suggestion that tannaitic midrash and the increased emphasis on Torah study among the sages developed in reaction to Sadducean/sectarian text-based religiosity, which challenged the Pharisees and their heirs to attempt to anchor their traditions in the text via homiletical treatment.

It seems to me that a similar process can be traced with reference to the measurements discussed here. But we first must draw attention to a hitherto unmentioned point, which is that, in stating “these are things that have no specified measure,” the mishnah reflects a reality in which measurements *are* in effect. Perhaps its intent was to contrast that

⁶⁰ In *Historical Perspectives: From the Hasmoneans to Bar Kokhba in Light of the Dead Sea Scrolls. Proceedings of the Fourth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 27–31 January 1999* (ed. D. Goodblatt, A. Pinnick, and D. R. Schwartz; STDJ 37; Leiden: Brill, 2001), 105–26.

⁶¹ H. Soloveitchik, “Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy,” *Tradition* 28 (1994): 64–130.

⁶² Wise, Abegg, and Cook, *New Translation*, 132.

⁶³ Soloveitchik, “Rupture and Reconstruction,” 67–68.

these commandments in particular with others that do have specified measures. It is also possible that the mishnah is taking a stand against the notion that these *specific* commandments have measures. In light of the above discussion it is certainly feasible that the mishnah reflects Pharisaic/rabbinic opposition to Sadducean/sectarian religiosity, which assigned designated measurements for the fulfillment of these *mitzvot*. As opposed to the text-based religiosity of the Sadducees, the mishnah represents the Pharisaic tradition of religiosity grounded in ancestral tradition, which, as noted, does not require binding normative determinations but educates the public to fulfill its obligations naturally, following the example of previous generations. Moreover, by establishing that these things have no specified measure, the mishnah thereby expresses its opposition to the over-legalization of sectarian halakhah. If this description of the chronology of the texts is correct, then we find that in this matter, as in the question of the authority of the text, the Sadducean/Qumranic notion ultimately prevailed. We have seen in the course of this discussion how a rabbinic system of obligatory measurements quickly developed for these items.

Another, similar, explanation may be suggested for the relationship between the sources. The development of measurements in rabbinic thought may be viewed as a direct continuation of the process that had its inception in sectarian halakhah. As suggested above, such a trend could emerge from pressure by believers seeking to rid themselves of anxiety as to whether or not they had fulfilled the commandments correctly. Nonetheless, the designation of minimum measures and the obligation to fulfill scriptural injunctions could have negative results. The rabbis were certainly concerned that these minimum measures might become (or had already become) the accepted norm. The declaration “these are things that have no specified measure” may have been aimed at addressing this concern. The rabbis encourage the public not to be satisfied with fulfilling the requirement of Torah study by twice-daily recitation of the Shema, nor with fulfilling the obligation of *pe’ah* by leaving only one-sixtieth of the crop. If this proposed explanation is correct, then the first mishnah of *Pe’ah* is of a later date than the one that follows—“They may designate as *pe’ah* no less than one-sixtieth”—and was a reaction to this statement.

ORAL TORAH VS. WRITTEN TORAH(S): COMPETING CLAIMS TO AUTHORITY*

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The Claim to Authority and the Qumran Community

The halakhic writings originating in the Qumran community show the early fusion of many commandments of the Torah into a consolidated legal system¹ that in turn is indicative of attention and fidelity to the Torah and its worldview.² Once we penetrate the sectarian outer garb of these writings, we uncover details and general principles that are not characteristic of a dissident community. Consequently, these

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¹ A. Schremer (“‘[T]he[y] Did Not Read in the Sealed Book’: Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism,” in *Historical Perspectives: From the Hasmoneans to Bar-Kokhba in Light of the Dead Sea Scrolls. Proceedings of the Fourth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 27–31 January 1999* [ed. D. Goodblatt et al.; STDJ 37; Leiden: Brill, 2001], 105–26), argues that the members of the Qumran community were the first to engage in the exegetical study of the Torah, because of a halakhic controversy that arose in their time. Schremer thus implies that Torah study began in 150 BCE. The very existence of a halakhic disagreement, however, speaks of the prior development of the halakhah, leading us to assume an established practice of Torah study before the withdrawal of the Qumran community. Prolonged Torah study among the elite and at the center of the nation’s religious life may explain the existence of interpretive traditions that were common to different groups and that appear in various writings over the course of centuries. For descriptions of these shared traditions, see: J. L. Kugel, *Traditions of the Bible* (Cambridge, Mass.: Harvard University Press, 1998); M. Kister, “A Common Heritage: Biblical Interpretation at Qumran and Its Implications,” in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls. Proceedings of the First International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 May 1996* (ed. M. E. Stone and E. G. Chazon; STDJ 28; Leiden: Brill, 1998), 101–11.

² This appears to characterize the concept of “priestly halakhah” which is frequently invoked when discussing halakhah at Qumran; that is, a halakhah whose fundamental constitution is the Pentateuch, and whose laws are fashioned in accordance with this constitution in a way that attempts to resolve contradictions and to rule between inconsistent sources. This halakhah acquired distinctive features when adapted by the Qumran community, a sect with an apocalyptic worldview.

halakhot may have been, not the fruits of study by the members of the Qumran congregation in isolation, but rather rulings formulated prior to the secession of the community. These halakhot probably evolved in Jerusalem, among the Temple priests who engaged in the study of the Torah (are those the *soferim* [scribes] mentioned in later sources?)³ during the Second Temple period, before the sect came into existence. Priestly authority in halakhic matters derived from the standing of the Temple as a religious and political center.⁴ Furthermore, the very Torah that the priests developed gave them the central role in its dissemination: “They [Levi’s offspring, the priests] shall teach Your statutes to Jacob, Your Torah to Israel” (Deut 33:10). At Qumran, these laws were committed to writing in a variety of literary genres.⁵ It has not been determined, however, whether the fruits of priestly study and teaching were written down before Qumran,⁶ and if so, in what literary forms these principles and halakhot were conveyed, whether as collections of midrashim, or as collections of laws.⁷

³ E. E. Urbach (“The Derasha as a Basis of the Halakha and the Problem of the Soferim,” *Tarbiz* 27 [1958]: 173 [Hebrew]) describes the activity of the *soferim* (the comparison of parallels, the application of something explicit in another place, the resolution of conflicting texts, and more). Unlike Urbach, I do not believe that such activity should be called “*derashah*.” I take issue with Urbach’s picture of a group of authoritative sages (i.e., predecessors of the rabbis) functioning during the period of the *soferim*, since I find no evidence for the existence of such a group. See also below.

⁴ See a survey of the ruling classes during the Second Temple period in D. Goodblatt, *The Monarchic Principle* (Tübingen: Mohr [Siebeck], 1994). As was shown by Goodblatt, there are no echoes in Second Temple literature of any representation of the common people in any form of government.

⁵ A. Shemesh and C. Werman, “Halakhah at Qumran, Genre and Authority,” *DSD* 10 (2002): 104–29.

⁶ The “Book of Decrees” mentioned in *Megillat Ta’anit* is discussed below.

⁷ The halakhic part of *Aramaic Levi Document*, a pre-Qumranic priestly writing formed as a collection of laws, might give us a clue. However, the solar calendar of 364 days, hinted at in *Aramaic Levi*, points to an origin in a (pre-Qumranic) oppositional group. Thus, we cannot deduce from *Aramaic Levi Document* clear conclusions regarding the genre that was used by the Temple priestly circles. On the halakhah in *Aramaic Levi* see: C. Werman, “The Flood Story in the Book of Jubilees,” *Tarbiz* 64 (1995): 183–202 (Hebrew); C. Werman, “Qumran and the Book of Noah,” in *Pseudepigraphic Perspectives: The Apocrypha and Pseudepigrapha in the Light of the Dead Sea Scrolls: Proceedings of the Second International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 January, 1997*. (ed. E. G. Chazon and M. E. Stone; STDJ 31; Leiden: Brill, 1998), 171–81.

In the middle of the second century BCE, upon the appointment of Hasmonean High Priests, their allies the Pharisees gained more influence in Jerusalem. The Pharisees sought to impose their own halakhic system, which included some ancient traditions that contradicted Scripture.⁸ The established Jerusalem priests had to decide whether to accept the halakhah promoted by the Pharisees, or to withdraw to a place where they could maintain the halakhah to which they owed allegiance. The priesthood split: one group, which from this time on would be known as the “Sadducees”⁹ (בית אבשלום?),¹⁰ chose to remain and cope with the new reality. Their decision proved wise, since a generation later, during the time of John Hyrcanus, the reins of power once again passed to the priests (Josephus, *Ant.* 13.196). Another group, known to us as the “Qumran community,” elected to leave.¹¹

The departure of the latter from Jerusalem was also a withdrawal from the locus of halakhic power. From this juncture forward, the dissenters could not exercise general authority to explain, interpret, and expand Scripture, for their connections with the Temple had been severed. In other words, the members of the new community could no longer claim the authority rooted in the Temple and in the civil authority that the priests had enjoyed until the decrees promulgated by Antiochus. The Qumran community had to develop a different basis for their authority; and indeed, we find two different claims advanced by the members

⁸ On an ancient tradition preserved by the Pharisees see: M. Kister, “Some Aspects of Qumranic Halakhah,” in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March 1991* (ed. J. Trebolle Barrera and L. Vegas Montaner; STDJ 11; Leiden: Brill 1992), 2:571–88.

⁹ As was shown by D. Schwartz (“On Two Aspects of Priestly View of Descent at Qumran,” in *Archaeology and History in the Dead Sea Scrolls: The New York University Conference in Memory of Yigael Yadin* [ed. L. H. Schiffman; JSPS 8; JSOT/ASOR Monographs 2; Sheffield: JSOT Press, 1999], 159), the name ‘Sadducees’ itself is a sign of opposition to the Hasmonean family.

¹⁰ *Habakkuk Peshet* 5:9; M. Stern, *Hasmonaean Judaea in the Hellenistic World: Chapters in Political History* (ed. D. R. Schwartz; Jerusalem: The Zalman Shazar Center for Jewish History, 1995), 57–58 and n. 26 (Hebrew).

¹¹ To intensify the rift with the rest of the nation, the Community embraced a 364-day calendar. Of Babylonian origin (W. Horowitz, “The 360- and 364-Day Year in Ancient Mesopotamia,” *JANES* 24 [1996]: 35–44), this calendar is presented to Enoch by the angel Uriel in *1 Enoch*. The author(s) of *1 Enoch* also put a statement in Uriel’s mouth, declaring that in the future, because of the people’s sins, the celestial bodies will change their route. This angelic claim is a hidden confession that 364-day calendar could not be and was not in use in the author’s day. The use of the 364-day calendar by the Community members was a revolutionary act.

of the community in justification of their halakhic approach. One, alluding to the traditional priestly perspective, looked to Mount Sinai, to argue that the interpretation of the Torah in accordance with priestly halakhah had already been given to Moses. The other, deriving directly from the circumstances of dislocation from the Temple, identified the source of authority with the leader of the community, the agent of God, who provided the community's members with the hermeneutical tools necessary for the study of the written Torah.

The argument that the explanation and further development of the Torah had already been given over to Moses at Sinai, along with the Torah itself, appears in *Jubilees* and in the *Temple Scroll*.¹² According to *Jubilees*,¹³ Moses received, along with the Torah engraved on stone tablets,¹⁴ another written Torah; this second Torah, however, Moses himself copied.¹⁵ The purpose of the second Torah, the Torah and the *te'udah* (predestined history), which contains the expansion and interpretation of the first Torah, is to stand before the people as a witness when the correct interpretation is forgotten in the future: "[...] this Torah and *te'udah* will confront (them), fo[r they will forget all of my commandments, everything which I will co]mmand you" (*Jub.* 1:9; exegetically following Deut 31:19–21: "Therefore, write down this poem and teach it to the people of Israel; put it in their mouths, in order that this poem may be My witness against the people of Israel [...] then this poem shall confront them as a witness").¹⁶

¹² The prevailing scholarly inclination is not to ascribe sectarian authorship to these two compositions, since they seemingly contain no hint of the rift within the Jewish people or of a sectarian worldview that distinguishes between the elect group and the sinning multitudes. However, as I demonstrated in my essay, "The *Book of Jubilees* and the Qumran Community," in *Meghillot: Studies in the Dead Sea Scrolls 2* (ed. M. Bar-Asher and D. Dimant; Haifa: Haifa University Press; Jerusalem: Bialik Institute, 2004), 37–55 (Hebrew), *Jubilees* does presume the existence of a separatist and elect community.

¹³ The first column of the *Temple Scroll* is not preserved, and therefore we cannot know just how the claim to authority was presented. The second column of the scroll contains a rewriting of Exodus 34, describing the Revelation at Sinai. We may conclude that the Revelation served as background for the presentation of the *Scroll*.

¹⁴ In the words of *Jubilees* [1:1]: "Come up to me to] the mountain, [that I may give you] the [two] stone [tablets]—the Tor[ah and the commandment which I have written down to in]stru[ct them"; contrast Exod 24:12: "The Lord said to Moses: Come up to Me on the mountain and wait there, and I will give you the stone tablets with the Torah and commandments which I have written down to instruct them."

¹⁵ Exegetically based on Exod 34:27: "Write down these words, for in accordance with these words I make with you a covenant and with Israel."

¹⁶ C. Werman, "The תורה and the תעודה Engraved on the Tablets," *DSD* 9 (2002): 75–103.

The second claim to authority, which locates the prerogative of interpretation in the special status of the community and its leader, is set forth in CD. The author of CD believes that the aggregate of the commandments comprises both the “revealed” commandments (i.e., those stated explicitly in the Torah) and the “hidden” ones, the interpretations and laws that have been disclosed only to the members of the community.¹⁷ The author describes the process by which the latter are revealed in an exposition of a verse from the Song of the Well:

“The well which the chieftains dug, which the nobles of the people excavated, with the ruler, with their own staffs” (Num 21:18)—the well is the Torah, and those who dig it are the penitents of Israel who depart from the land of Judah [...] and the ruler is the Interpreter of the Torah, of whom Isaiah said “and produce a tool for his work” (Isa 54:16). And the nobles of the people are those who came to excavate the well, with the statutes which were ordained by the ruler to walk in them in the entire time of evil. (CD 6:3–9)¹⁸

According to this metaphor, the “nobles of the people” are the members of the community, and the “ruler” is the Interpreter of the Torah. The author explains the role of this exegete by comparing him to a smith, aided by a verse from Isaiah (54:16): “It is I who created the smith to fan the charcoal fire and produce a tool for his work.” God created the smith, who in turn produces tools in order to continue to produce. The moral of this parable is that the Interpreter of the Torah was sent by God to produce the tools needed for the exposition of the Torah, i.e., the “statutes” thus promulgated. The Interpreter of the Torah transmits these statutes to the members of the community to enable the Qumranites to *continue* the interpretation of the Torah and the disclosure of the concealed commandments. The author of CD thereby presents the halakhic creative process as a combination of human intellectual activity and divine inspiration: it is the community’s wise men who expound the Torah and uncover the hidden commandments, but this exegetical activity is feasible only by means of the tools that they were given through their Teacher, who was sent to them by God.

¹⁷ A. Shemesh and C. Werman, “Hidden Things and their Revelation,” *RevQ* 18 (1998): 409–27.

¹⁸ Translation as in J. M. Baumgarten and D. R. Schwartz, “The Damascus Document,” in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 2: Damascus Document, War Scroll, and Related Documents* (ed. J. H. Charlesworth; The Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: Mohr [Siebeck]; Louisville: Westminster John Knox Press, 1995), 22.

The Sages' Claim to Authority

The necessity for two claims to authority in the Qumran community will be discussed below. In this section, I will attempt to show that these two claims to authority inherent in the Qumran writings will likely aid us in discerning the two claims to authority advanced by the Pharisees and the Tannaim, two groups that (contrary to the priests) considered themselves as abiding by traditions in addition to the Sinaitic revelation presented in the Pentateuch.

Josephus indicates that the Pharisees developed a ramified system of halakhot,¹⁹ and that they were interpreters of the laws (*J. W.* 1:110–111; *Ant.* 18:12; *J. W.* 2:162). He does not explicitly connect these laws with the Mosaic code, and it therefore cannot be claimed that the Pharisees were the interpreters of the written Torah.²⁰ Rather, Josephus's comments match the picture that emerges from the tannaitic depiction of the halakhic activity of the Sages. The Sages do not study Torah. They determine a halakhah; they discuss halakhic matters among themselves; they raise questions, which they decide by majority decision.²¹ Consequently, even though the Tannaim do not claim to be the disciples of the Pharisees,²² in their activity they are, in fact, the successors of the latter; both groups developed and formulated collections of laws stemming from traditions that existed independently of the Bible.

Like the Qumranites, the Sages were forced to rely upon a claim to authority unrelated to the Temple. I suggest that as the Sages sought

¹⁹ This enables us to understand the charge leveled in the NT (Matt 23:2) that the Pharisees see themselves as sitting on Moses's seat, that is, occupying the seat of the legislator.

²⁰ A fact overlooked by M. S. Jaffee, *Torah in the Mouth* (Oxford: Oxford University Press, 2001), 53, and many others. A survey of the disputes between Beit Hillel and Beit Shamai is included in: M. Fish and H. Shapira, "פולמוסי הבתים: המחלוקת המטא-הלכתית בין בית שמאי לבית הלל," *Iyunei Mishpat* 22 (1999): 461–97 (Hebrew). Most of the disputes are not the outcome of different reading of Scriptures and do not include *derashot*. A critical study of the figure of Hillel, with comments on the small number of midrashim attributed to him are found in: I. M. Gafni, *The Jews of Babylonia in the Talmudic Era: A Social And Cultural History* (Jerusalem: The Zalman Shazar Center for Jewish History, 1990), 68–76 (Hebrew); D. Henshke, "Studies in the Method of שני בתובים המכחישים זה את זה," *Proceedings of the Eleventh World Congress of Jewish Studies C.1* (Jerusalem: The World Union of Jewish Studies, 1994), 39–46 (Hebrew); D. R. Schwartz, "Hillel and Scripture: From Authority to Exegesis," *Hillel and Jesus* (ed. J. H. Charlesworth and L. L. Johns; Minneapolis: Fortress, 1997), 335–62.

²¹ Cf. Jaffee, *Torah*, 73–82.

²² Jaffee, *Torah*, 55–56.

to impart authoritativeness to their collection of laws they voiced two claims that resembled those of the Qumran community. Nonetheless, there are two significant differences between these sets of authoritative claims. The first is that one of the claims advanced by the Sages preceded the other: the claim that a second Torah was given at Sinai belongs to the Second Temple period, while the second claim to authority, that of divinely-inspired human elaboration of the law (parallel to the Qumran argument for both revealed and hidden laws), dates from a later generation, and might possibly be ascribed to R. Akiva. The second dissimilarity is that in the Sages' early claim to authority, the second Torah given at Sinai is oral, not written.

Admittedly, no Second Temple period source explicitly links the halakhic system developed by the Pharisees with the Revelation at Sinai. As Jaffee demonstrated, in the Christian tradition the Pharisees are characterized as preserving the traditions of the forefathers,²³ and Jesus charges them with preferring the tradition of the forefathers to the words of God Himself. Paul contrasts his way as a Pharisee, of fidelity to the tradition of the forefathers, to his way as a believer in Jesus, after having received a divine revelation (Gal 1:11–16). Consequently, divine revelation stands in opposition to tradition, a human creation. Josephus, as well, emphasizes Pharisee loyalty to the traditions of the forefathers, not written in the Torah of Moses (*Ant.* 13.297–298; 17.41). As Fraade observes,²⁴ these texts do not claim that the tradition of the forefathers is of Sinaitic origin (nor they do not assert that it is unwritten, only that it is not written in the Mosaic code; see below).

I nevertheless would contend that the Pharisees *did* set forth the argument of the two Torahs, as it was similarly stated by the Tannaim,²⁵ since the claim of two Torahs originating at Sinai, one in writing and the other oral, is embodied in the early stratum of tannaitic literature, as in this disagreement in *Sifra* between the *Tanna Qamma* and R. Akiva:

“These are the laws, the statutes, and the instructions [*torot*]” (Lev 26:46)—this teaches that two *Torot* were given to Israel, one in writing and the other oral. R. Akiva said: Did Israel have two *Torot*? Were not many *torot* given

²³ Jaffee, *Torah*, 45–50. I do not accept his assumption, however, that the tradition of the forefathers was derived from exegesis of Scriptures.

²⁴ S. Fraade, “Literary Composition and Oral Performance in Early Midrashim,” *Oral Tradition* 14 (1999): 41.

²⁵ A. Yadin’s statement that the phrase “תורה (שב) על פה” “does not occur in tannaitic sources” is surprising; see A. Yadin, “4QMMT, Rabbi Ishmael, and the Origin of Legal Midrash,” *DSD* 10 (2003): 130, n. 6.

to Israel: “This is the torah of the burnt offering” (Lev 6:2); “This is the torah of the meal offering” (Lev 6:7); “This is the torah of the guilt offering” [Lev 7:1]; “This is the torah of the peace offering” (Lev 7:11); “This is the torah when a person dies in a tent” (Num 19:14)? (*Sifra* 112c [following MS Vatican 31])²⁶

The view that two Torahs were given at Sinai is presented in this teaching as axiomatic. R. Akiva, who lived about half a generation after the Destruction, disputes this opinion, thereby going against the earlier established view. He maintains that this biblical text cannot teach us how many Torahs were given at Sinai, since the Bible states that Israel had been given many *torot*.

The assertion that the oral Torah had been given at Sinai appears in an additional tannaitic source, *Sifre Deut.* 351:²⁷

[1] “They shall teach Your statutes to Jacob” (Deut 33:10)—this teaches that all decisions [*horayot*] can issue only from their mouths, as it is said, “Every matter of dispute or assault is subject to their ruling” (Deut 21:5): “dispute” [*riv*] refers to disputes concerning the [red] heifer (Numbers 19), disputes concerning the heifer [whose neck is broken] (Deut 21:1–9), and disputes concerning the suspected adulteress (Num 5:11–31). “Assault” [*neg’a*] refers to an eruptive plague affecting a person, an eruptive plague affecting clothing, and an eruptive plague affecting houses.

[2] “And Your Torah [sing.] to Israel” (Deut 33:10)—this teaches that two *Torot* were given to Israel, one oral and the other written. Agnitus the General once asked Rabban Gamaliel to tell him how many *Torot* were given to Israel. He replied: Two, one written and the other oral.

The verse that is the subject of this exposition authorizes the priests: “They shall teach Your statutes to Jacob and Your Torah to Israel.” The exegete learns from “They shall teach Your statutes to Jacob” that the authority to instruct the people in the ways of proper conduct was indeed given to the priests. Support for this assertion is brought from Deut 21:5, which is understood to limit this authority to cases of *riv* and *neg’a*. A clarification of these two terms further restricts priestly authority. *Riv* is not an ordinary disagreement; the exegete specifies three situations, to delineate the limits of the term: the red heifer (the ashes of which remove corpse impurity); the heifer whose neck is broken (employed in the case of an unsolved murder); and the suspected adulteress (who is

²⁶ My translation.

²⁷ L. Finkelstein, *Sifre on Deuteronomy* (New York: Jewish Theological Seminary, 1993), 408 (Hebrew); my translation.

brought to the Temple in consequence of her husband's suspicions). In all three cases the priest functions primarily as conductor of a ritual. *Neg'ā* is narrowly defined as an eruptive affliction, the priestly role in relation to which is defined by the book of Leviticus: the identification of the affliction and the purification of the afflicted.

This limitation of priestly authority sheds light on the second part of the exposition. It seems likely that the exegete knew of the textual tradition that read *torotekha*, "Your *torot*" (plural instead of singular) in the second half of the verse.²⁸ By dividing this priestly-oriented verse, the exegete finds sanctions both for limiting priestly authority to specific contexts, and for granting overall interpretive authority more broadly. "Israel," who received both the written and the oral Torahs, holds the authority.

This exposition coheres well with the presumption of a contemporary clash between priests and sages over the basis for each group's interpretive authority. Such a clash likely had its roots in the Second Temple period. Perhaps, then, this midrash echoes disputes that existed even prior to the Destruction,²⁹ in which the Pharisees advanced their claim of two *Torot*.

The exegete, who finds biblical testimony for the authority of the Sages, seeks to entrench the standing of the halakhah of the latter in the political system of his time. He (or the redactor) accordingly appends to the exposition a dialogue between Agnitus the General and Rabban Gamaliel.³⁰ Agnitus poses a question to Rabban Gamaliel: How many *Torot* were given to Israel? The formulation of the question indicates that the non-Jew knew what the Torah was, and was aware that more than one had been given to Israel. Such thorough knowledge by an outsider is not plausible, and so the conversation was no more than a figment of the redactor's imagination. This narrative, in which the exegete has Rabban Gamliel speak of two *Torot* from Sinai, was intended to afford formal status to the halakhic approach of the Sages in post-Destruction Judea.

²⁸ As evidenced in LXX, Peshitta, and Targum Ps.-Jonathan; see Finkelstein, *Sifre*, 408.

²⁹ On the suppression of priests in another tannaitic source see: M. D. Herr, "Continuum in the Chain of Torah Transmission," *Zion* 44 (1979): 43–56 (Hebrew).

³⁰ In *Midrash Tannaim* on the same verse, the dialogue is between R. Yochanan ben Zakkai and Agrippa the General; see D. Z. Hoffmann, *Midrash Tannaim on Deuteronomy* (Jerusalem: Miphah Sepharim Le-yetznu, 1984), 215 (Hebrew).

These two midrashim, from the *Sifra* and from *Sifre on Deuteronomy*, indicate that the claim of two *Torot* was advanced in the generation of the Destruction and before. Additional support for the early origin of the argument of two *Torot* given at Sinai may be inferred from the existence of the two claims to authority in the Qumranic writings.

The need for the two different claims may be explained by the different audiences which the Qumran community addresses.³¹ The claim to reveal hidden teaching was suitable for the internal audience of the community itself, which believed that the Interpreter of the Torah was the agent of God. When addressing the broader audience beyond the community, a different claim was required, since this audience did not accept the Interpreter of the Torah and his status. The audience outside the community might have been receptive to the argument of two *Torot*, not only because this proposition was free of sectarian connotations, but also because it was an adaptation of another conception of two *Torot* with which “the simple ones” outside the community were familiar: the written Torah and the oral Torah. The claim to authority raised by *Jubilees*, that of a second written Torah given at Sinai, is comprehensible only in light of the opposing claim of an authoritative oral Torah, likewise given at the desert mount.

Intriguing testimony on this issue is to be found in the *Scholium on Megillat Ta’anit*, which sets up a dialogue between the opinion cited in *Jubilees* (the *Scholium* attributes it to the Boethusians) and the view professing the Sinaitic origin of the oral Torah.

On the Tenth of Tammuz ספר גזרתא was annulled and removed. For the Boethusians would write laws in a book, so that when a person should ask, they would show him [the answer] in the book. The Sages said to them: Has it not been said already [in Scripture]: “...for in accordance with these words I make with you a covenant and with Israel” (Exod 34:27); “in accordance with the Torah that they shall teach you, etc.” (Deut 17:11), implying that it is forbidden to write [these laws] in a book? Another interpretation (דבר אחר): [...] The Sages said to them: Has it not been said already [in Scripture]: “the Torah and the commandment which I have written down to instruct them” (Exod 24:12); and it is further written: “Therefore, write down this poem and teach it to the people of Israel; put it in their mouths” (Deut 31:19)? “And teach it”—that is the written Torah (מקרא); “put it in their mouths”—these are halakhot [i.e., the oral Torah].³²

³¹ Shemesh and Werman, “Halakhah at Qumran,” 123–29.

³² MS. Oxford, in V. Noam, *Megillat Ta’anit: Versions, Interpretation, History with a Critical Edition* (Jerusalem: Yad Izhak Ben Zvi, 2003), 77–78 (Hebrew).

In the first part of this passage, the Sages reject the Boethusian claim that, besides the Torah, other writings were given at Sinai. The Boethusians write halakhot in a book, a person asks, and they show him what is written in a book. In other words, even though it is they who have written this book, they point to this tome that they themselves wrote as possessing Sinaitic authority.³³ The Sages, in response, cite two verses, one from Exodus (taken from the command that Moses received before he ascended Mount Sinai), and a second from Deuteronomy. It is the former to which *Jubilees* refers: “And the Lord said to Moses: Write down these words, for in accordance with these words I make a covenant with you and with Israel” (34:27). This verse is compared with the verse from Deuteronomy that is the basis for the authority of the Sages: “You shall act in accordance with (על פי) the Torah that they shall teach you and the ruling handed down to you; you must not deviate from the verdict that they announce to you either to the right or to the left” (Deut 17:11). The underlying midrash, employing analogous reasoning, concludes that the covenant that was forged at Sinai and mentioned in the verse from Exodus (“for in accordance [על פי] with these words I make a covenant with you and with Israel”) is likewise *‘al pi*, that is, *‘al peh*—oral; thus, this midrash undermines the claim to interpretive authority of the Boethusians (and of *Jubilees*).

In the second part, the Sages justify their position that an oral tradition may deviate from what appears in the written Torah, and they cite the two verses to which *Jubilees* refers.³⁴ While *Jubilees* chose these verses because they mention writing (“which I have written down to instruct them” [Exod 24:12]; “Therefore, write down this poem” [Deut 31:19]), the Sages learn from a close reading of the verses that, along with the *written* Torah and the poem that was *written*, there was also an *oral* transmission: “which I have written down”/“to instruct them”; “write down”/“put it in their mouths.” The Sages maintain that alongside the written Torah, the Five Books of Moses, an oral tradition was also conveyed.

We therefore have two tannaitic sources to indicate that the concept of oral Torah constitutes an early claim to authority, along with a slightly

³³ The presumption that the Sages uttered the verse that describes the Sinaitic Revelation teaches that the controversy centered around the question of authority, and not that of the writing. Consequently, the conclusion that “it is forbidden to write [these laws] in a book” is not from the original stratum, but rather a later addition.

³⁴ Exod 24:12 and Deut 31:19; see the discussion at p. 178 and n. 14 above.

later composition that reconstructs a dialogue between Boethusians, who present an opinion resembling that in *Jubilees*, and the Sages, who present the concept of the oral Torah. The reconstruction assumes the contemporaneous existence of these two opinions even before the Destruction, in the time of the Pharisees. Although the dating of the *Scholium* is far from certain, its familiarity with the exegetical claim found in *Jubilees* implies that it preserved earlier material.

As was noted above, the Pharisees and the Tannaim were interpreters of laws, and they fashioned, expanded, and established halakhot as normative. An attempt to integrate the claim of the Sinaitic origin of the oral Torah with the awareness of the continual development of this Torah appears in a difficult passage in *t. Soṭah* 7:11–12:³⁵

He further expounded: “The sayings of the wise are like goads, and like nails firmly planted [are the masters of assemblies; they were given by one Shepherd]” (Qoh 12:11)—just as a goad leads the cow to bring life to the world, so, too, the words of Torah are life for the world, as it is said, “It is a tree of life” (Prov 3:18).

Or, [one might propose]—just as a goad is movable, so, also, are the words of Torah? Scripture teaches: “and like nails.”

“Firmly planted”—just as a plant flourishes and grows, so, too, the words of Torah flourish and multiply.

“Masters of assemblies”—those who convene and sit groups by groups, declaring the unclean “unclean,” and the clean, “clean,” for the unclean in its place, and the clean in its place. [. . .]

“They were given by one Shepherd”—one God created them, one Provider gave them, the Master of all things, blessed be He, spoke them.

Although the sayings of the wise, that is, the words of the oral Torah, live, flourish, and multiply, the *Tosefta* yet claims that “one God created them, one Provider gave them, the Master of all things, blessed be He, spoke them.”

A study of rabbinic expositions shows, however, that some exegeses present a single Torah, and not two. For example, note the following:³⁶

³⁵ S. Lieberman, *The Tosefta* (New York: The Jewish Theological Seminary of America 1996), 3–4:194–95. This citation follows MS. Vienna and the reconstruction by S. Naeh, “עשה לבך חדרי חדרים: עיון נוסף בדברי חז"ל על המחלוקת,” in *Renewing Jewish Commitment: The Work and Thought of David Hartman* (ed. A. Sagi and Z. Zohar; Tel-Aviv: Hakibbutz Hameuchad, 2001), 863 (Hebrew); translation my own.

³⁶ This citation and the next were translated by S. D. Fraade, See S. D. Fraade, *From Tradition to Commentary* (Albany: State University of New York, 1991), 96, 60–61.

Another interpretation of “May my discourse come down as rain” (Deut 32:2)—just as rain falls on trees and infuses each type with its distinctive flavor—the grapevine with its flavor, the olive tree with its flavor, the fig tree with its flavor—so, too, words of Torah are all one, but they comprise Mikra, Mishnah, Talmud, halakhot and *aggadot*. (*Sifre Deut.* 306)³⁷

The “discourse” that God gives Israel—the (written) Torah—is all one, embracing all the branches of rabbinic creativity. The midrash portrays a Torah which includes hidden things that the Sages, by the power of their intellect, draw forth from it.

The advocate of the oneness of the entire Torah does not accept the claim of two *Torot*, one in writing and the other oral, and he therefore must find another basis for the authority of the Mishnah and so on. The Sages do advance such a claim, which is similar to the Qumranic idea that God gave the members of the community tools with which to expound the Torah:

“He cared for him (= gave him understanding [*binah, yevonenehu*])” (Deut 32:10)—with the Ten Commandments. This teaches that when each Commandment went forth from the mouth of the Holy One, blessed be He, Israel would perceive it, and know how much *midrash* is in it, how much halakhah is in it, how many *a fortiori* arguments are in it, how many arguments by verbal analogy are in it. (*Sifre Deut.* 313)³⁸

In the Revelation at Sinai, the people of Israel received understanding (*binah*) from God, and could delve into the profundities that issued from the Lord’s mouth; that is, the people were given the ability to extract the world of rabbinic halakhah, in all its diversity. This claim to authority is close, albeit not identical, to that set forth in Qumran. The members of the Qumran community believed that the “Interpreter of the Torah” was sent to give them exegetical tools that would make possible the formulation of halakhot; in the above midrash, it is God Himself who gives, to the people as a whole, the sense of understanding that facilitates the creation of the world of halakhah.

These two exegetical passages from *Sifre on Deuteronomy* are anonymous, but it is evident that the Sage who voiced them also opposed the claim of two *Torot* given at Sinai. As we have seen, R. Akiva rejected the anonymous teaching that used the verse in Leviticus as a proof-text for the two *Torot* from Sinai argument, and these midrashim may reflect his view.

³⁷ Finkelstein, *Sifre*, 339.

³⁸ Finkelstein, *Sifre*, 355.

R. Ishmael and Claims to Authority

To this point, we have examined the early tannaitic claim to authority and the claim to authority that may reasonably be attributed to R. Akiva. We know, however, of the existence of a second school in the time of R. Akiva, that of R. Ishmael.³⁹ *Midrashei halakhah* were formulated in the latter school, but R. Ishmael voices no objection to the claim of two Sinaitic *Tōrot*. We shall now examine R. Ishmael's attitude to the biblical text and to the orally transmitted tradition, to try to discern which claim to authority he maintained. Our discussion will be based on an analysis of R. Ishmael's methodology in relation to two halakhic issues. We will compare R. Ishmael's approach with the halakhah of Qumran (which might also reflect the opinion of priests in Jerusalem) and with R. Akiva's approach.⁴⁰

The first topic is the law in Deut 21:10–14 concerning the beautiful female war captive. The book of Deuteronomy, like the other early biblical sources, permits marriage to a non-Israelite woman. The intention of the law in Deuteronomy is only to *restrict* the possession of non-Israelite women taken captive in war, as well as sexual relations with them. The law mandates the gradual integration of the captive in the house of her captor.

The *Temple Scroll* rewrites the biblical passage as follows (11QT 63:10–15):

When you go forth to war against your enemies, and I give them into your hands, and you take them captive, and you see among the captives a beautiful woman, and you have desire for her and would take her for yourself as wife, then you shall bring her to your house, and you shall shave her head and pare her nails. And you shall put off her captive's

³⁹ A. Yadin ("4QMMT, Rabbi Ishmael," 136–40 = idem, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* [Philadelphia: University of Pennsylvania Press 2004], 142–54), recently proposed that R. Ishmael represented the priestly orientation, and was not of the Pharisaic school. Yadin indicates that R. Ishmael did not transmit tradition; his teacher instructed him in exegetical methodology, and not in halakhah, and R. Ishmael used the terminology of oral transmission for the exposition of the Torah. I shall show (below) that the halakhah of R. Ishmael differs from the priestly halakhah known to us at Qumran. Furthermore, the fact that R. Ishmael was not a transmitter of tradition teaches us nothing, for R. Akiva similarly did not transmit tradition; like R. Ishmael, he, too, was a disciple of a teacher of exegetical methods.

⁴⁰ For the differences between the two schools in methodology and vocabulary see a survey by: M. Y. Kahana, *The Two Mekhilot on the Amalek Portion* (Jerusalem: The Hebrew University Magnes Press, 1999), 15–19 (Hebrew).

garb, and she shall remain in your house and bewail her father and her mother a full month; after that you may be intimate with her and possess her and she shall be you{r} wife. But she shall not touch your pure stuff for seven years, and she shall not eat a sacrifice of peace offering until seven years pass; only then she may eat.⁴¹

Several interpretive and polemical differences infuse the rewriting. The *Temple Scroll* interprets the command “to pare her nails” as a simple directive to the husband (in distinction from the woman herself). The writer also replaces the term *yerah* with the neutral *hodesh*.⁴² Most importantly, the Qumran scroll adds a sentence that establishes the impurity of the captive woman: “But she shall not touch your pure stuff for seven years, and she shall not eat a sacrifice of peace offering until seven years pass; only then she may eat.” This text thereby undermines any possible marriage, by asserting that the woman is impure. A wife who cannot bear her share of the household’s burden by preparing food will be a weight around her husband’s neck, and not even her beauty will compensate for her inability to function in the kitchen. The *Temple Scroll* therefore transforms permission to marry a non-Jewish woman into a prohibition.

The midrash from the school of R. Ishmael (*Midrash Tannaim*), unlike the *Temple Scroll*, accepts the biblical law [2], albeit after first expressing its negative opinion concerning the act [1]. Later, however, it adds something original, and notes the existence of the possibility of conversion [3]:⁴³

[1] “And you see among the captives a beautiful woman”—Scripture only speaks against the Evil Inclination. It is preferable for Israel to eat the flesh of dying animals that have been properly slaughtered rather than that of animals that have expired [without ritual slaughter]. To what is this comparable? To the son of a king who desired something that he cannot have. His father persuades him, and says to him, “My son, if you eat this, it will harm you.” When he [the father] saw that he [the son] did not take heed, he said to him “Do such-and-such, and you shall not come to harm.” This is the meaning of “and put off her captive’s garb.”

⁴¹ Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: The Israel Exploration Society, the Institute of Archaeology and the Shrine of the Book, 1983), 2:285–86.

⁴² *Yerah*, month, implies following the lunar cycle, and does not accord with the solar calendar of the Qumran community.

⁴³ For the transition from גרות = the state of being a stranger, to גיור = conversion see: C. Werman, “The Attitude toward Gentiles in the Book of Jubilees” (Ph.D. diss., The Hebrew University of Jerusalem, 1995), 258–78.

[2] “You shall bring her into your house”—so that he shall not press her [to yield to him] during the war.

“And she shall shave her hair”—for if he were to regard her hair as beautiful and pleasing, [to counter this] it therefore is said, “and she shall shave her hair.”

“And she shall put off her captive’s garb”—for if he were to regard her garb as beautiful and pleasing, [to counter this] it therefore is said, “and she shall put off her captive’s garb.”

[3] “She shall remain in your house lamenting her father and mother a full month; after that you may be intimate with her and possess her”—to what case does this apply? [The case in which] she did not accept upon herself to convert; but if she agreed to convert, he has her immerse, and she is permitted to him immediately.⁴⁴

The school of R. Ishmael therefore accepts the biblical law: the woman is permitted to him following a period of acclimatization that extends for a month, once it has been determined that the man does indeed desire her, even while she is stripped of her beauty, without her hair and without the garment that she wore when taken captive. But R. Ishmael also adds another option: “But if she agreed to convert, he has her immerse, and she is permitted to him immediately” [3]. Conversion, not in Scripture, is mentioned here as a possibility that the husband and the captive woman may choose. The captive becomes a Jew; the period of acclimatization is unnecessary, and she is immediately permitted to him.

Rabbi Akiva’s approach is recorded in *Sifre on Deuteronomy*:

“She shall lament her father and mother”—father and mother, literally; the opinion of R. Eliezer. R. Akiva says, Not her [actual] father and her mother; this rather [refers] to idolatry, as it is said, “They said to a tree, ‘You are my father’” (Jer 2:27). (*Sifre Deut.* 213)⁴⁵

R. Akiva interprets in allegorical fashion the biblical demand to allow the woman to mourn her father and mother. According to his exegesis, the woman is required to forgo idolatry. The demand made of a convert to renounce paganism guides R. Akiva to find in the biblical passage the obligation to convert the non-Jewess prior to marrying her, rather than permission to marry her while she is not a Jew. He does not accept conversion as an alternative to the biblical law, but as the sole option.

Accordingly, R. Ishmael and his school accept both the biblical law that permits marriage to a non-Jewess, and conversion, which was an

⁴⁴ Hoffmann, *Midrash Tannaim*, 127–28; my translation.

⁴⁵ Finkelstein, *Sifre*, 246; my translation.

innovation in his time; R. Akiva (or his school) does not accept the permission to marry in its simple sense, and authorizes marriage only after conversion, going so far as to find in the passage a proof-text for the necessity of conversion.

Another halakhic issue that is disputed by the schools of R. Akiva and R. Ishmael, and differs between these two schools and the Qumran halakhah, is that of the permissibility of slaughtering nonconsecrated animals. Chapter 17 of Leviticus is central to the prohibition of consuming blood. The Qumranites (and maybe other priests as well) regarded this chapter as cardinal, and claimed that it forbids the slaughtering of nonconsecrated animals. Every beast that one desires to slaughter must be brought to the altar and its blood put on the altar to atone for the slaughtering; the eating of blood is totally prohibited, since “the life of the flesh is in the blood” (v. 11). The Qumranic halakhah reads Deuteronomy 12 in the light of Leviticus 17, and restricts the broad permission granted in Deuteronomy to slaughter an animal anywhere and pour out its blood “like water.”⁴⁶

R. Ishmael’s understanding of Leviticus 17 is akin to the halakhah at Qumran. He maintains that Chapter 17 forbids the slaughtering of nonconsecrated animals, and commands that the slaughter of any animal be conducted only in the Sanctuary. R. Ishmael, however, in contrast with Qumran, does not impose Leviticus 17 on Deuteronomy 12. He accepts that when the Israelites entered the Land of Israel permission was granted to eat nonconsecrated meat:

“I shall eat some meat” (Deut 12:20)—R. Ishmael says, The sole purpose of this scriptural passage is to permit nonsacral meat. Initially, nonsacral meat was forbidden to them; when they entered the Land of Israel, nonsacral meat was permitted to them. (*Midrash Tannaim* on Deut 12:20)⁴⁷
 “And you say, ‘I shall eat some meat,’ for you have the urge to eat meat” [Deut loc. cit.]—R. Ishmael says, This testifies that nonsacral meat was forbidden to Israel in the wilderness, and when they entered the Land, Scripture [MS. Oxford: the Sages] granted permission to them. (*Sifre Deut. 75*)⁴⁸

⁴⁶ C. Werman, “The Rule of Consuming and Covering the Blood in Priestly and Rabbinic Law,” *RevQ* 16 (1995): 621–36.

⁴⁷ Hoffmann, *Midrash Tannaim*, 52; my translation.

⁴⁸ Finkelstein, *Sifre*, 139; my translation.

“Scripture [or the Sages] granted permission” to the Israelites to slaughter nonconsecrated animals. On the one hand, R. Ishmael acknowledges the simple meaning of the chapter in Leviticus, while on the other, he proclaims the revocation of its applicability upon entering the Land of Israel. Intriguingly, Ms. Oxford ascribes this permission to the Sages, and not Scripture. Was R. Ishmael aware of the possibility of a less than total lifting of the prohibition in Leviticus 17? Did he think that it was the Sages who granted full permission, in like fashion to the sanctioning of conversion?

R. Akiva, unlike R. Ishmael, does not subscribe to the view that Leviticus forbids the slaughtering of nonsacral animals. He finds no contradiction between Leviticus 17 and Deuteronomy 12: “The purpose of the verse is solely to teach you the commandments set forth in it” (*Sifre Deut.* 75), and the entry into the Land of Israel therefore changed nothing in this respect.⁴⁹

A comparison of the approaches taken by R. Akiva and R. Ishmael to the female captive and the slaughtering of animals reveals that the former assumed the unity of the Torah, i.e., that it is all-encompassing, with no internal contradictions. To achieve this unity, however, he detaches from the simple meaning of the text and might impose on the text external ideas (i.e., the idea of conversion). The claim to authority that he advances corresponds to this general view: a single Torah was given, with the tools necessary for its exposition and expansion.

R. Ishmael, in contrast, subjects Scripture to a careful reading, and presents what emerges from the simple meaning of the biblical text. His colleagues call him a “mountain palm” (*Sifra* 68b)—i.e., a palm that bears no fruit—because of his refusal to set forth daring exegeses and impose on Scripture what is not in it. On the other hand, R. Ishmael presumes the existence of halakhah that “circumvents” Scripture; that is, the halakhah accords with the details in the Bible, but expands it and permits additional details.⁵⁰ He accepts the interpretation of the

⁴⁹ Finkelstein, *Sifre*, 140; my translation.

⁵⁰ As D. Henshke (“Two Subjects Typifying the Tannaitic Halakhic Midrash,” *Tarbiz* 65 [1996]: 427–34 [Hebrew]) demonstrated, R. Ishmael’s teaching of the three instances (the covering of the blood with earth; the bill of divorce; and the awl used to pierce the slave’s ear) in which the halakhah circumvents Scripture is meant to reject midrashim that seek to limit, in accordance with the spirit of the Bible, the type and number of means to be used for covering, writing, and piercing. The halakhah, according to

Sages that raises a contradiction between the different books of the Torah (“Scripture/the Sages granted permission to them” to slaughter nonconsecrated animals when they entered the Land of Israel), and acknowledges the existence of a system of halakhot that is an alternative to the Bible (conversion). He cannot propose that “the Torah is all one,” and consequently cannot agree with R. Akiva’s claim to authority. The most suitable authoritative basis for R. Ishmael’s halakhic methodology is the claim, as adapted by the Tosefta, that a second Torah was given at Sinai; namely, that the oral Torah given by God contains also what was conceived by the Sages. R. Ishmael accepts that the additions, changes, and expansions are the words of God that are voiced by the Sages.

A Reexamination of Assumptions and Concepts

An analysis of the different conceptions regarding the essential nature of Torah and the interpretive authority asserted by the priests in Qumran, the Pharisees, and the Tannaim may shed fresh light on concepts that appear in the tannaitic literature, and aid in a reexamination of several scholarly assumptions regarding this literature. I present two such cases below.

(1) *Halakhot*

The first concept worthy of reexamination is that of “halakhot” itself. A comparison of the Mishnah and the Tosefta teaches that the term could be understood in two senses:

R. Ishmael, permits all: the slave’s ear may be pierced with any instrument; a writ of divorce may be written on anything; and the blood may be covered in any manner. R. Ishmael contends that the halakhah presumably is based on Scripture, but cunningly distances itself from the Bible. We should *not* conclude from R. Ishmael’s statement that he believes that, except for these three cases, the halakhah corresponds to Scripture; consequently, we cannot state, as A. Yadin did (“4QMMT, Rabbi Ishmael,” 135) that R. Ishmael contradicts the view of the Sages.

<i>Mishnah Hag 1:8</i>	<i>Tosefta Hag 1:9 (= t. Erwin 8:23–24)⁵¹</i>
[The rules governing] the release from vows hover in the air	[The rules governing] the release from vows hover in the air
and have no [scriptural text] to rely on.	And have no [scriptural text] to rely on, But a Sage may release in accordance with his wisdom.
The halakhot of Sabbath, Festival offerings, and sacrilege are as mountains hanging by a hair, for [the teaching of] Scripture thereon is scanty, and the halakhot many;	The halakhot of Sabbath, ⁵² Festival offerings, and sacrilege are as mountains hanging by a hair, for [the teaching of] Scripture thereon is scanty, and the halakhot many;
	They have no [scriptural text] to rely on. In this regard R. Joshua said, Tongs are made with tongs. [But] who made the first tongs? They were created.
The torts, the Temple service, the purity laws, and the forbidden sexual unions—	The torts, the Temple service, the purity laws, and the forbidden sexual unions, and added to them are [the halakhot of] valuations, things declared <i>herem</i> , and things declared sacred, have abundant Scripture, a lot of exegesis and halakhot;
They have that [in Scripture] to rely on.	They have that [in Scripture] to rely on.
These are the essentials of the Torah.	Abba Yose ben Hanan says, These eight bodies of the Torah are the essentials of halakhot

The Tosefta speaks of two types of halakhot, those which “have no [scriptural text] to rely on”; and those which “have that [in Scripture] to rely on.” Those of the first type (Sabbath, Festival offerings, and sacrilege) are based on scanty Scripture, and the numerous halakhot therefore have no textual support. Halakhot of the second type (torts,

⁵¹ Lieberman, *The Tosefta*, 2:379; 138–39.

⁵² S. Lieberman, *Tosefta Kī-fshutah: A Comprehensive Commentary on the Tosefta* (10 vols.; New York: The Jewish Theological Seminary of America, 1962), 3:468–69: *regalim* (festivals) instead of *Shabbat*.

the Temple service, the purity laws, forbidden sexual unions, valuations, declarations of *herem*, and sanctifications) are based on abundant Scripture; thus they are derived via exposition of texts (“a lot of exegesis and halakhot”).

I maintain that R. Joshua endeavors to impart authority to the first category of halakhot, as well. He asserts that even halakhot that are based on scanty Scripture and not derived from the Bible are nevertheless divine: “They were created.” R. Joshua compares the halakhot to tongs, which can be produced only by another pair of tongs; consequently, the first pair was a divine creation.⁵³ Accordingly, there are two categories of halakhot possessing sanctity: the first type originates in the word of God, and the second is derived from the words of the Torah. The Tosefta attests to the ambiguity of the term, applying it both to laws transmitted independently of the biblical text, and to those that are the result of an exegetical process. Its use of the term halakhot both in the case of independent transmission and in the case of an exegetical process fits the view of R. Ishmael.

The Mishnah (in which the term halakhot appears only 6 times, by contrast with the 36 instances in the Tosefta), takes care to use this word in only one context (“the halakhot of the Sabbath, Festival offerings, and sacrilege are as mountains hanging by a hair, for [the teaching of] Scripture thereon is scanty, and the halakhot many”); nor does this section contain the declaration present in the Tosefta: “They [these halakhot] have no [scriptural text] to rely on,” since they do have a scriptural basis, according to the Mishnah. It seems that the Mishnah’s version of the saying coheres with that of R. Akiva: all details derive from the biblical text. Consequently, the Mishnah has no need for the dictum of R. Joshua, who imparts divine authority to halakhot that do not enjoy scriptural support.

⁵³ The contrast between the writings of the Qumran community and the tannaitic position when using the same metaphor is noteworthy. In CD God creates the smith (the Interpreter of the Torah), who in turn produces the first instrument that is then used to produce additional instruments; in R. Joshua’s teaching, it is God who creates the first instrument from which the Sages develop additional tools. This difference clearly shows that the sect needed a leader, while for the Sages, the exposition of the Torah was not dependent upon a single leader or institution.

(2) *The Presumed Prohibition Against Writing in the Rabbinic Literature*

It is commonly accepted that the teachings of the Tannaim (and their Pharisaic predecessors) were not committed to writing, due to the prohibition against writing the oral Torah.⁵⁴ I wish to reexamine this assumption, based on the above discussion.

As I have shown, the concept of “oral [*al peh*] Torah” is a claim about authority present in the early tannaitic stratum, which attributes the traditions of the fathers (at least their beginnings) to teachings that were orally transmitted to Moses at Sinai, along with the written Torah. The term originates in a verse from Exodus (34:27): “For in accordance with [*al pi*] these words I make with you a covenant and with Israel”; its interpretation makes use of Deut 17:11: “In accordance with [*al pi*] the Torah that they shall teach you.”⁵⁵ The concept “oral Torah” does *not* include the argument that what was given orally at Sinai is to be transmitted in similar fashion, merely that these teachings were given orally at Sinai, and are not included in the written Torah.

Thus, we need not assume that whatever was given orally at Sinai was subsequently transmitted orally. As long as the one who commits these teachings to writing is cognizant of their original Sinaitic oral expression, no harm has been done to the source of their authority. Nonetheless, the advocate of the “oral Torah” claim might be cautious when writing, especially during the writing of nonmidrashic collections of laws, due to his quite likely fear that the transition to written form might blur the claim of oral conveyance at Sinai. In any event, the advocate of the claim to authority that we have ascribed to R. Akiva (who rejects the theory of two *Torot* from Sinai, and maintains that exegetical freedom was given to Israel), would not issue a blanket prohibition against writing.⁵⁶ R. Akiva’s stance assumes that whatever is not Scripture is a human creation (under divine inspiration): both the midrash, which clearly distinguishes between Scripture and what is inferred from it; *and* the halakhot, which are derived through the exegetical process and were not given directly at Sinai.

⁵⁴ For the different opinions on the subject see: S. Naeh, “The Structure and Division of *Torat Kohanim* (A): Scrolls,” *Tarbiz* 66 (1997): 505–12 (Hebrew).

⁵⁵ See above, p. 178 and n. 14.

⁵⁶ It is clear, then, why the prohibition against putting halakhot into writing is ascribed solely to the school of Rabbi Ishmael (and only in the Babylonian Talmud [*b. Gittin* 60b]).

Summary

We find two bodies of ancient Jewish tradition that show a belief in a single Torah: the priestly halakha from the Second Temple period and traditions ascribable to R. Akiva. The priests were loyal to the written Torah, its spirit, and the worldview inherent in it.⁵⁷ R. Akiva established a single Torah by subjoining human exegetical endeavors to the written Torah.

The Pharisees endorsed the existence of two *Torot*, but expressed their allegiance only to one, given orally at Sinai. R. Ishmael affirms the existence of two *Torot*, both of which he examines and interprets.⁵⁸ R. Ishmael's method of expounding the written Torah is similar to that of the priestly *halakhah*. However, when one must decide between the two *Torot*, he favors the oral Torah, the independent system of halakhot.

While those who held to the existence of oral Torah refrained from putting their learning into writing, both groups who believed in only one, written, Torah did not hesitate to write down the outcome of their exegetical activity, thus creating a second authorized written text. The priests of Qumran presented their written text to outsiders as part of the Sinaitic revelation. Among themselves, however, they understood that they possessed a different basis for authoritative teaching because of the divine exegetical tools they had received. Like R. Akiva, the Qumranite priests felt that God had bestowed upon human beings the ability to interpret and expand His written Words. Unlike R. Akiva, they restricted this ability to their chosen group alone.

⁵⁷ See n. 2.

⁵⁸ R. Ishmael, who restored the position of the written Torah in the two-*Torot* theory, would likely use the same terms to elucidate both oral traditions and written document. We need not accept the hypothesis by A. Yadin ("4QMMT, Rabbi Ishmael," 137–40) that the application to the written Torah of terms familiar to us from the transmission of oral traditions (such as *sham'anu*—'we heard'; *le-kayem*—'to affirm'; *diber ba-hoveh*—'[the Torah] spoke in contemporary terms') is indicative of disregard for the oral Torah.

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