From the holdings of the Department of Special Collections , Princeton University Library, Princeton, NJ

These documents are either in the public domain, or can only be used for educational and research purposes (Fair use) as per U.S. Copyright law (text below). By accessing this file, all users agree that their use falls in the public domain or within fair use as defined by the copyrightlaw. We do not charge any permission or usage fees for the publication of images of material inour collections, including those provided by Princeton University Library, via our website, catalog, or directly from staff.For more information regarding copyright, credit, and citation please review the information onthe Copyright, Credit and Citation Guidelines page of our website.
https://library.princeton.edu/special-collections/policies/copyright-credit-and-citation-guidelines. If you have any questions, including how to order higher-quality images from the collection, contact Special Collections Public Services via our Ask Us! Form. https://library.princeton.edu/special-collections/ask-us

---

Doctoral Dissertations, 2011-2026 Religion

2013

Law and Society in the Dead Sea Scrolls

Amihay, Aryeh

Princeton, NJ : Princeton University

---

http://arks.princeton.edu/ark:/88435/dsp017w62f835t

U.S. Copyright law: The copyright law of the United States (Title 17, §108, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be used for any purpose other than private study, scholarship, or research. If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of fair use that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve a violation of copyright law. https://www.copyright.gov/title17/title17.pdf

LAW AND SOCIETY IN THE DEAD SEA SCROLLS

Aryeh Amihay

A DISSERTATION PRESENTED TO THE FACULTY
OF PRINCETON UNIVERSITY
IN CANDIDACY FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

RECOMMENDED FOR ACCEPTANCE
BY THE DEPARTMENT OF RELIGION

ADVISOR: MARTHA HIMMELFARB

November 2013

© Copyright by Aryeh Amihay, 2013. All rights reserved.

ABSTRACT

The study of the legal texts found among the Dead Sea Scrolls benefits from a theoretical framework that is informed by contemporary legal scholarship. This dissertation undertakes a shift from the comparative approach, which focuses on parallels from either early Christian or early rabbinic sources, through exploration of four theoretical concepts: legal essentialism, intentionality, exclusion, and obligation. Legal essentialism is a new term proposed in chapter 1 as a substitute for previous terminology of "realism" (in contrast to "nominalism," called "legal formalism" in this study). This essentialism is then demonstrated in four aspects: time, space, hierarchy, and knowledge.

Chapter 2 examines the role of intention in the law as an important prism to understand the tensions created by and solutions found for the sectarians' legal essentialism. Using the work of Anscombe and Audi, the dissertation defines the concept of intention and separates it from desire and action. A special section examines the idiom "high hand" and distinguishes its biblical usage (primarily in Num 15), and its usage in the sectarian writings, primarily in 1QS.

The concept of exclusion is the focus of chapter 3, primarily through 4QMMT, and with many comparisons to 1QS. Through the work of legal scholars Dan-Cohen and Minow the role of exclusion in constituting the community and reflecting their legal essentialist stance is clarified. The role of emotions and rhetoric of emotions in exclusion is also explored in relation to contemporary theories of law and emotion. Finally, the dissertation distinguishes between permanent-static exclusions based on deformities and temporary-dynamic exclusions based on moral conduct. This distinction demonstrates the previously discussed roles of legal essentialism and intention in the law.

Chapter 4 examines obligation and commitment, borrowing the terms "transcendence" and "renunciation" from Rosabeth Moss Kanter. The tension between obligation to God and obligation to community is described using Kierkegaard, suggesting that this tension is mediated through interpretative authority in the sect.

The final chapter examines the laws of premarital sex in the Pentateuch and in 4Q159, 4QD and 11Q19 to examine the previous issues in a specific case study of legal interpretation and innovation, highlighting

different motivations between a sectarian text (4QD) and a non-sectarian text (the Temple Scroll).

The conclusion highlights the benefits of applying contemporary theory in general and legal theory in particular to the study of ancient texts, and especially to the study of the Dead Sea Scrolls.

Law, say the gardeners, is the sun,
Law is the one
All gardeners obey
To-morrow, yesterday, to-day.

Law is the wisdom of the old,
The impotent grandfathers feebly scold;
The grandchildren put out a treble tongue,
Law is the senses of the young.

Law, says the priest with a priestly look,
Expounding to an unpriestly people,
Law is the words in my priestly book,
Law is my pulpit and my steeple.

Law, says the judge as he looks down his nose,
Speaking clearly and most severely,
Law is as I've told you before,
Law is as you know I suppose,
Law is but let me explain it to you once more,
Law is The Law.

Yet law-abiding scholars write:
Law is neither wrong nor right,
Law is only crimes
Punished by places and by times,
Law is the clothes men wear
Anytime, anywhere,
Law is Good-morning and Good-night.

- W. H. Auden

TABLE OF CONTENTS

Introduction

A. *The Corpus* 1
B. *The Comparative Approach in Qumran Studies* 7
C. *Theories of Law and Society* 11
D. *Legal Theory vs. a Legal System* 14
E. *Conclusion* 16

1. Legal Essentialism in Essene Law

1.1. *Introduction* 17
1.2. *Nominalism and Realism* 18
1.2.1. *A New Proposal: Legal Essentialism and Legal Formalism* 20
1.3. *Time as a Force in Nature and in Law* 29
1.4. *The Constructions and Restrictions of Space* 40
1.5. *Hierarchy and Genealogy: Essentialism and Descent* 49
1.6. *Revealed and Hidden Knowledge* 52
1.7. *Conclusion* 59

2. Intention: Between Unchangeable Laws and Human Error

2.1. *Introduction* 61
2.2. *Intention between a Civil and a Religious Law System* 62
2.3. *The High Hand* 69
2.4. *Levels of Intent and Determining Intent* 82
2.5. *Intent and Knowledge* 90
2.6. *Conclusion* 91

3. Exclusion and Inclusion: A Community between Boundaries and Extensions

3.1. *Introduction* 96
3.2. *Inclusion and Exclusion as Role Distance* 98
3.3. *Inclusion and Exclusion in 4QMMT and Related Texts*
3.3.1. *The Historicity and Significance of 4QMMT* 107
3.3.2. *Role Distance in 4QMMT: Steering away from Peers* 113

3.3.3. *Hierarchy as Exclusion: Priesthood and Laity in 4QMMT* 117
3.3.3.1. *The Hierarchy of Priesthood and Laity in Other Essene Texts* 120
3.3.3.1.1. *Emotions and Election in 1QS* 123
3.3.3.2. *Further Duties of Priestly Sectarians* 128
3.3.4. *Inclusion as a Blessing: Curses and Blessings in 4QMMT* 130
3.3.4.1. *Blessings and Curses as Inclusion and Exclusion in 1QS* 136
3.4. *Initiation as Inclusion and Exclusion* 140
3.5. *Regulating Exclusion through Law* 145
3.6. *Conclusion* 150

4. Legal and Social Commitment: Between Obligation, Community and Authority

4.1. *Introduction* 151
4.1.1. *Religious Obligation in Conflict: Obedience and Morality* 151
4.1.2 *Legal Obligation: The Duty of Obedience* 156
4.2. *Communal Obligation and Voluntary Actions* 160
4.3. *Obligation as Renunciation and Transcendence* 166
4.4. *Commitment to Communal Structures and Institutions* 170
4.5. *Voice and Obligation: Regulating Relations within a Community* 175
4.6. *Conclusion: Obligation and Authority between Interpretation and Communication* 179

5. A Case Study: Biblical Laws of Premarital Sex in the Dead Sea Scrolls

5.1. *Introduction* 181
5.2. *The Biblical Laws of Premarital and Extramarital Sex* 182
5.2.1. *The Slandered Bride* 185
5.2.2. *Laws of Premarital Sex: The Betrothed and Unbetrothed Maidens* 189
5.3. *Premarital Sex in the Damascus Document* 192
5.3.1. *The Damascus Document and 4Q159* 204
5.4. *Premarital Sex in the Temple Scroll (11Q19)* 206
5.4.1. *Fit according to the Law: A Parallel between 11Q19 and 4QD* 212
5.4.2. *Illicit Relationships in the Temple Scroll* 215
5.5. *Conclusion* 218

Conclusion 224

Bibliography 230

Acknowledgments 302

INTRODUCTION

The purpose of this study is to offer a theoretical framework for analysis of the legal texts among the Dead Sea Scrolls. The presupposition of the analysis offered here is that importing advances from the field of legal theory into the study of ancient Jewish texts can unravel underlying assumptions or implicit mechanisms that contributed to the production and shaping of the law of an ancient sect, as preserved in the Dead Sea Scrolls. To do so, a clarification of methodology is required. The following will outline my approach towards the study of the Dead Sea Scrolls and to the study of law.

A. *The Corpus*

Any examination of the legal material in the Dead Sea Scrolls inevitably necessitates conjectures on two methodological concerns of contextualization. The first is whether an archeological discovery of texts, overburdened by fortuitous circumstances of various sorts,[1] is sufficient to constitute a corpus. The second concern is the relationship between the legal material of the scrolls and other postbiblical material, either Jewish or Christian, and the proper approach towards the task of comparing these separate corpora.

Regarding the first concern, I deem the archaeological circumstances insufficient and thus try to avoid declinations of "Qumran" as adjectives or adverbs. Inasmuch as the site where the scrolls were found

---

[1] For the circumstances, myths and adventures involved in the discovery of the Dead Sea Scrolls, see Weston W. Fields, "Discovery and Purchase," in *The Encyclopedia of the Dead Sea Scrolls*, ed. Lawrence H. Schiffman and James C. Vanderkam (Oxford: Oxford University Press, 2000), 208-12; Millar Burrows, *The Dead Sea Scrolls* (New York: Viking, 1955), 3-69; John C. Trever, *The Untold Story of Qumran* (Westwood: Fleming H. Revell, 1965); Yigael Yadin, *The Dead Sea Scrolls from the Judean Desert* (Tel Aviv: Schocken, 1958; in Hebrew), 13-89; J. M. Allegro, *The Dead Sea Scrolls* (London: Penguin, 1956), 15-93.

was designated with the Arabic name "Qumran" centuries after any Jewish sect lived there,[2] the cache of texts is indeed "Qumranic." But the sect reflected in it, its views and practices were certainly never Qumranic, and the name was unknown to them. Furthermore, a toponymy-based terminology erroneously emphasizes the site as a singular location for the development of the sect. This is not to detach the sect from the site, as some have proposed.[3] Jodi Magness has persuasively and accessibly made the argument that such a detachment is not only wrong when reading the textual and material evidence, but methodologically unsound, since the scrolls are, first and foremost, an archeological discovery and artifact.[4] In order to demonstrate the problems associated with assuming a corpus based on the find, we may consider the various expansions, retellings of Genesis, or allusions to it found in Qumran. 4Q201 and 4Q226 are considered fragments of the original Aramaic and Hebrew versions of pseudepigraphic works (*1 Enoch* and *Jubilees* respectively) that were preserved in the Ethiopic canon. The *Genesis Apocryphon* of cave 1 or the commentary on Genesis found in scroll 4Q252 were not preserved in churches (and no evidence of their translation has been found), and thus are not categorized as "Pseudepigrapha," but as material peculiar to the Scrolls. If, by sheer historical chance, the *Genesis Apocryphon*, rather than *Jubilees*, would have been translated into Greek and then into Ge'ez, these

---

[2] Jodi Magness sums it best: "Khirbet Qumran (or Kumran or Gumran) is the modern Arabic name of a site located on the northwest shore of the Dead Sea. It is first reported in de Saulcy's accounts. The site takes its name from the nearby riverbed (Wadi Qumran), although the name Qumran is of unknown origin. Perhaps it derives from the Arabic word *qmr*, which means 'being white, moonlit.' Similarly, Jericho's name comes from a Semitic word for the moon." See Magness, *The Archaeology of Qumran and the Dead Sea Scrolls* (Grand Rapids: Eerdmans, 2002), 24. De Saulcy was a Flemish explorer who led an expedition to the Dead Sea in the winter of 1850-51. Thus the earliest attestation of the name is mid-19th century.

[3] Most notably Norman Golb, *Who Wrote the Dead Sea Scrolls? The Search for the Secret of Qumran* (New York: Scribner, 1995); and Yizhar Hirschfeld, *Qumran in Context: Reassessing the Archaeological Evidence* (Peabody: Hendrickson, 2004).

[4] Jodi Magness, *Archaeology of Qumran*, 1-16. For further arguments in favor of the identification of the site with the Essenes, see Magen Broshi, "The Archeology of Qumran: A Reconsideration," in *The Dead Sea Scrolls: Forty Years of Research*, ed. Devorah Dimant and Uriel Rappaport (Leiden: Brill, 1992), 103-15; idem, "Qumran and Its Scrolls: Stocktaking," *Cathedra* 100 (2001): 165-82 (in Hebrew).

labels would have been reversed.[5] In sum, there is nothing inherent in any of those texts to define them as particularly "Qumranic" or "Pseudepigraphic."[6] In the same vein, the mere discovery of legal material in the same place is insufficient to define these texts as one corpus.

Notwithstanding, the legal material itself, in the content of the laws, their presuppositions, and the rhetoric employed to justify and constitute the law as well as admonish its subjects, does allow us to treat most of the legal texts found at Qumran as belonging to the same milieu. The *Community Rule*,[7] *Damascus Document*,[8] *4QMMT*,[9] *War Scroll*[10], as well as the

---

[5] See also Vanderkam's astute observation on the use of "Pseudo" for some texts similar to Jubilees: James C. Vanderkam, "The *Aqedah*, *Jubilees*, and Pseudojubilees," in *The Quest for Context and Meaning. Studies in Biblical Intertextuality in Honor of James A. Sanders*, ed. Craig A. Evans and Shemaryahu Talmon (Leiden: Brill, 1997), 241-61.

[6] Cf. Michael E. Stone, "Some Considerations on the Categories 'Bible' and 'Apocrypha'," in *New Approaches to the Study of Biblical Interpretation in Judaism of the Second Temple and in Early Christianity*, ed. Gary A. Anderson, Ruth A. Clements and David Satran (Leiden: Brill, 2013), 1-18.

[7] For the Hebrew text I use Elisha Qimron, *The Dead Sea Scrolls. The Hebrew Writings; volume 1* (Jerusalem: Yad Ben Zvi, 2010; in Hebrew); Jacob Licht, *The Rule Scroll. A Scroll from the Wilderness of Judaea.* (Jerusalem: Bialik Institute, 1965; in Hebrew). For listings of other editions and further general introduction, see Sarianna Metso, *The Serekh Texts* (London: T & T Clark, 2007). See also Philip S. Alexander and Geza Vermes, *Qumran Cave 4, xix: 4QSerekh Ha-Yaḥad and Two Related Texts* (DJD 26; Oxford: Clarendon, 1998).

[8] While I prefer to rely primarily on the extant fragments from cave 4, I will also consult the manuscripts from the Cairo Genizah (hitherto CD), based on Solomon Schechter, *Documents of Jewish Sectaries,* (New York: Ktav, 1970). Cf. Magen Broshi, ed. *The Damascus Document Reconsidered* (Jerusalem: Israel Exploration Society, 1992); Qimron, *Dead Sea Scrolls*, 1-58. On the history of the text see Louis Ginzberg, *An Unknown Jewish Sect* (New York: Jewish Theological Seminary, 1976); Stefan C. Reif, "The Damascus Document from the Cairo Genizah: Its Discovery, Early Study and Historical Significance," in *The Damascus Document: A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick (Leiden: Brill, 2000), 109-31; Sidnie White Crawford, "A Comparison of the *A* and *B* Manuscripts of the Damascus Document," *RevQ* 12.4 (1987): 537-53. For the Hebrew text and the English translation of the cave 4 fragments (hitherto 4QD), I use Joseph M. Baumgarten, et al., *Qumran Cave 4, xiii. The Damascus Document (4Q266-273)* (DJD 18; Oxford: Clarendon, 1996); Qimron, *Dead Sea Scrolls*, 1-58. For the problematic relationship between CD and 4QD see Maxine L. Grossman, *Reading for History in the Damascus Document. A Methodological Study* (Leiden: Brill, 2002), 1-12; Charlotte Hempel, *The Damascus Texts* (Sheffield: Sheffield Academic Press, 2000), 10-43; Lawrence H. Schiffman, "From the Cairo Genizah to Qumran: The Influence of the Zadokite Fragments on the Study of the Qumran Scrolls," in *The Dead Sea Scrolls. Texts and Context*, ed. Charlotte Hempel (Leiden: Brill, 2010), 451-66. For the tradition history among the Qumran fragments see

sect described by Josephus, reflect a shared tradition. As many have noticed, the *Temple Scroll*[11] is a marked exception.[12] This is not to ignore or undermine the significance of studies that emphasize the differences and even contradictions between these texts and traditions, most notably in the works of Baumgarten, Himmelfarb, and Regev.[13] These differences,

---

Charlotte Hempel, *The Laws of the Damascus Document. Sources, Tradition and Redaction* (Leiden: Brill, 1998).

[9] For text and translation, see Elisha Qimron and John Strugnell, *Qumran Cave 4, v. Miqṣat Maʿaśe Ha-Torah* (DJD 10; Oxford: Clarendon, 1994). See John I. Kampen and Moshe J. Bernstein, eds., *Reading 4QMMT: New Perspectives on Qumran Law and History* (Atlanta: Scholars, 1996); Steven D. Fraade, "To Whom It May Concern: *4QMMT* and Its Addressee(s)," *RevQ* 19.4 (2000): 507-26; Menahem Kister, "Studies in 4QMMT and its World – Halakhah, Theology, Language and Calendar," *Tarbiẓ* 68.3 (1999): 317-71 (in Hebrew); Hanne von Weissenberg, *4QMMT: Reevaluating the Text, the Function and the Meaning of the Epilogue* (Leiden: Brill, 2009).

[10] For the text see Yigael Yadin, *The Scroll of the War of the Sons of Light against the Sons of Darkness* (Jerusalem: Bialik Institute, 1955; in Hebrew) [published in English as *The Scroll of the War of the Sons of Light against the Sons of Darkness*, Oxford, 1962]. For other fragments see Maurice Baillet, *Qumrân Grotte 4,iii (4Q482-520)* (DJD 7; Oxford: Clarendon, 1982), 12-72. For an introduction see Jean Duhaime, *The War Texts. 1QM and Related Manuscripts* (London: T&T Clark, 2004). For further studies see J. P. M. van der Ploeg, *Le Rouleau de la Guerre* (Leiden: Brill, 1959) and more recently Brian Schultz, *Conquering the World. The War Scroll (1QM) Reconsidered* (Leiden: Brill, 2009). Schultz also has an excellent introduction on the War Scroll in his volume, pages 10-85.

[11] For the text see Yigael Yadin, *The Temple Scroll* (Jerusalem: Israel Exploration Society, 1983; in Hebrew). See there for an introduction, and cf. Johann Maier, *The Temple Scroll. An Introduction, Translation & Commentary* (Sheffield: JSOT Press, 1985). See also George J. Brooke, ed, *Temple Scroll Studies* (Sheffield: JSOT Press, 1989); Lawrence H. Schiffman, *The Courtyards of the House of the Lord. Studies on the Temple Scroll.* (Leiden: Brill, 2008).

[12] On the relation of the Temple Scroll to sectarian writings, see Schiffman, *Courtyards of the House of the Lord*, 3-65, 123-62; Martha Himmelfarb, *A Kingdom of Priests: Ancestry and Merit in Ancient Judaism* (Philadelphia: University of Pennsylvania Press, 2006), 85-114. On the identification of Qumran texts as sectarian or non-sectarian, see Devorah Dimant, "Qumran Sectarian Literature," in *Jewish Writings of the Second Temple Period*, ed. Michael E. Stone (Assen: Van Gorcum, 1984), 483-550; Carol A. Newsom, "'Sectually Explicit' Literature from Qumran," in *The Hebrew Bible and Its Interpreters*, ed. William Henry Propp, Baruch Halpern and David Noel Freedman (Winona Lake: Eisenbrauns, 1990), 167-87.

[13] Albert I. Baumgarten, *The Flourishing of Jewish Sects in the Maccabean Era* (Leiden: Brill, 1997); idem, "He Knew That He Knew That He Knew That He Was an Essene," *JJS* 48.1 (1997): 53-61; idem, "Who Cares and Why Does It Matter? Qumran and the Essenes, Once Again!" *DSD* 11.2 (2004): 174-90; Martha Himmelfarb, "Impurity and Sin in 4QD, 1QS, and 4Q512," *DSD* 8.1 (2001): 9-37; eadem, *Kingdom of Priests*, 115-42; Eyal Regev, *Sectarianism in Qumran: A Cross-Cultural Perspective* (Berlin: de Gruyter, 2007); idem,

however, could and did exist within a society that upheld some shared tenets.[14] This community, group, or ideological milieu is probably still best described as "Essene."[15] *Yahad* is clearly too specific, since it refers to the ostensibly celibate group living in Qumran.[16] "The Community of the Renewed Covenant" as Talmon insisted on calling the sectarians[17] is somewhat too long for scholarly purposes, and is slightly problematic in light of the fact that it is not preserved in the Community Rule.[18]

I choose to re-employ the label "Essenes" as a broad term for all the factions and stages of the sect, including the shared legal traditions as reflected in the aforementioned texts. By doing so, I recognize the significance of two parallel scholarly endeavors: emphasizing the idiosyncrasies of each of the factions of the sect, but also recognizing its contemporaneous perception as one group. This label also serves to denote the strand of analysis that embraces Josephus and Philo alongside the texts

---

"Between Two Sects: Differentiating the Yahad and the Damascus Covenant," in *The Dead Sea Scrolls: Texts and Context*, ed. Charlotte Hempel (Leiden: Brill, 2010), 431-49.

[14] Indeed, Daniel Schwartz considers this a result of the Freudian "Narcissism of Small Differences." See Daniel R. Schwartz, "The Dead Sea Sect and the Essenes," in *Qumran Scrolls and Their World*, ed. Menahem Kister (Jerusalem: Yad Ben Zvi, 2009), 2:601-12 (in Hebrew).

[15] John J. Collins has beautifully summarized the scholarly debates concerning the identification of the Essenes described in Josephus with the sect reflected in the scrolls. See his recent, *Beyond the Qumran Community: The Sectarian Movement of the Dead Sea Scrolls* (Grand Rapids: Eerdmans, 2010), 122-165.

[16] On *Yahad*, see J. J. Collins, *Beyond the Qumran Community*, 52-87; Sarianna Metso, "Whom Does the Term Yahad Identify?" in *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb,* ed. Charlotte Hempel and Judith M. Lieu (Leiden: Brill, 2006), 213-35; Alison Schofield, *From Qumran to the Yahad: A New Paradigm of Textual Development for the Community Rule* (Leiden: Brill, 2009).

[17] Shemaryahu Talmon, "The Essential 'Community of the Renewed Covenant': How Should Qumran Studies Proceed?" in *Geschichte – Tradition – Reflexion. Festschrift für Martin Hengel zum 70. Geburtstag*, ed. Hubert Cancik, Hermann Lichtenberger and Peter Schäfer (Tübingen: J. C. B. Mohr-Paul Siebeck, 1996), 323-52; idem, "The 'Dead Sea Scrolls' or 'the Community of the Renewed Covenant'?" in *The Echoes of Many Texts: Reflections on Jewish and Christian Traditions; Essays in Honor of Lou H. Silberman*, ed. William G. Dever and J. Edward Wright (Atlanta: Scholars, 1997), 115-45.

[18] This can be counter-argued by reading באי הברית (1QS 2.18) as an abbreviated reference to the Damascus Document epithet באי הברית החדשה, with the implication that the author of 1QS was familiar with the Damascus Document and perhaps even assumed this familiarity for his audience.

found in Qumran as relevant and reliable sources of information on the sect.

In particular, this label recalls that Josephus testifies to the diversity of Essene communities by reporting, first, that they are not concentrated in one town, but rather are numerous in every town (Μία δ᾽ οὐκ ἔστιν αὐτῶν πόλις ἀλλ᾽ ἐν ἑκάστη μετοικοῦσιν πολλοί – *Jewish Wars* 2.8.4);[19] and second, that "there is yet another order of Essenes" (Ἔστιν δὲ καὶ ἕτερον Ἐσσηνῶν τάγμα – *Jewish Wars* 2.8.13) that do not practice celibacy. Regardless of the partially lost self-designations employed by the sectarians to refer to specific groups, to the sect as a whole, and perhaps to a distinction between those who marry and those who do not, it is telling that Josephus sees no problem in labeling them all, despite the diversity, "Essenes". Admittedly, the etymology of the word is obscure,[20] and it is not documented in the scrolls. Furthermore, it is clear that Josephus is an outsider in relation to the Essenes, and that he is presenting this information to an audience that is presumably more remote from the Essenes than he is. These are quite sufficient circumstances to plausibly account for any misrepresentations.[21] Nevertheless, the fact remains that it

---

[19] Cf. Loeb edition: H. St. J. Thackeray, *Josephus, The Jewish War. Books I-II* (Cambridge: Harvard University Press, 1997), 370.

[20] For an overview of proposed etymologies, see J. J. Collins, *Beyond the Qumran Community*, 166-70. See also Geza Vermes, "The Etymology of 'Essenes'," *RevQ* 2.3 (1960): 427-43; Stephen Goranson, "'Essenes': Etymology from עשה," *RevQ* 11.4 (1984): 483-98.

[21] Steve Mason has strongly argued the opposite: "It is hard to imagine a less likely group for Essene identification, even if its members too have long initiations, eat meals together and share things, bathe daily, require that one does not spit at the group, and that sort of thing" [p. 450 from Mason's "What Josephus says about the Essenes in his 'Judean War,'" in *Text and Artifact in the Religions of Mediterranean Antiquity: Essays in Honour of Peter Richardson*, ed. Stephen G. Wilson and Michel Desjardins (Waterloo, Ont.: Wilfrid Laurier University Press, 2000), 423-55]. While initiation and communal life are admittedly not peculiar to a single group, the shared emphases in Josephus's account and the Community Rule (precisely on the list Mason outlines) are far from obvious. The practices have a strong theological foundation that is evident in the Rule, whereas it is clear why Josephus would not explicate those foundations, if they were even known to him. Furthermore, the growing body of evidence suggesting that the scrolls document an evolution of a sect, or more precisely several branches of a sect, further substantiate Josephus' report, and thus render Mason's suggestion that Josephus "invented the marrying kind of Essenes out of whole cloth" (448) rather dubious. See also his "Essenes and Lurking Spartans in Josephus' *Judean War*: From Story to History," in *Making History: Josephus and Historical Method*, ed. Zuleika Rodgers (Leiden: Brill, 2007), 219-61. Specific responses to Mason's arguments

seemed reasonable to Josephus to group these factions under one label, one which can be reemployed to indicate a discussion which draws together the archaeological findings, the texts from Qumran, the Genizah document of CD, and the information reported by ancient authors, specifically Josephus. This is what I seek to call to mind when reverting to the somewhat outdated, considerably contested, but hopefully renewed label of "the Essenes."[22]

B. *The Comparative Approach in Qumran Studies*

The second concern of contextualization bears on the relation of the Essene legal material to other postbiblical sources, namely early Christian and rabbinic sources. It is commonly agreed that some caution is required when proceeding with a comparison to either corpus. The preliminary excitement over the discovery of the scrolls and their implication for the study of Christian origins has become subdued in recent years, with the quest for historical figures[23] replaced by explorations of shared traditions of exegesis[24] and comparable communal practices.[25] At the

---

were offered by Kenneth Atkinson and Jodi Magness, "Josephus's Essenes and the Qumran Community," *JBL* 129.2 (2010): 317-42.

[22] For a further example of this usage, see James C. VanderKam, "The Oath and the Community," *DSD* 16.3 (2009): 416-32; Joan E. Taylor, "Women, Children, and Celibate Men in the *Serekh* Texts," *HTR* 104.2 (2011): 171-90.

[23] Most of these explorations concentrate on John the Baptist, as in the studies of Hartmut Stegemann, *The Library of Qumran: On the Essenes, Qumran, John the Baptist and Jesus* (Leiden: Brill, 1998), 211-27 and Joan E. Taylor, *The Immerser: John the Baptist within Second Temple Judaism* (Grand Rapids: Eerdmans, 1997), 15-48. More fanciful hypotheses attempted to locate Jesus of Nazareth at Qumran. See Barbara Thiering, *Jesus and the Riddle of the Dead Sea Scrolls: Unlocking the Secrets of His Life Story* (San Francisco: HarperCollins, 1992).

[24] E.g. George J. Brooke, "Biblical Interpretation in the Qumran Scrolls and the New Testament," in *The Dead Sea Scrolls: Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 60-73; Jean Carmignac, "Le genre littéraire du 'péshèr' dans la *Pistis-Sophia*," *RevQ* 4.4 (1964): 497-522; Lutz Doering, "Marriage and Creation in Mark 10 and CD 4-5," in *Echoes from the Caves: Qumran and the New Testament*, ed. Florentino García Martínez (Leiden: Brill, 2009), 133-63; Eric F. Mason, "Interpretation of Psalm 2 in 4QFlorilegium and in the New Testament," in *Echoes from the Caves*, 67-82.

[25] An early example for this kind of comparison is by Hans-Josef Klauck, "Gütergemeinschaft in der klassischen Antike, in Qumran und im Neuen Testament," *RevQ* 11.1 (1982): 47-79. See also George J. Brooke, "From Jesus to the Early Christian

same time, the interest in comparisons between Essene legal texts and the earliest sources of rabbinic Halakhah is flourishing.[26] Several reviews have commented that this increase in interest might be coming at the expense of necessary caution.[27] The similarities and relationships between the texts affirm what scholars knew long before the scrolls were discovered: that tannaitic material preserves debates and concerns that were part of the intellectual and theological discourse during the times of the Second Temple,[28] and not merely debates from after the rise of rabbinic Judaism

---

Communities. Modes of Sectarianism in the Light of the Dead Sea Scrolls," in *The Dead Sea Scrolls and Contemporary Culture*, ed. Adolfo D. Roitman, Lawrence H. Schiffman and Shani Tzoref (Leiden: Brill, 2011), 413-434; Ellen Juhl Christiansen, *The Covenant in Judaism & Paul: A Study of Ritual Boundaries as Identity Markers* (Leiden: Brill, 1995); Huub van de Sandt, "Two Windows on a Developing Jewish-Christian Reproof Practice: Matt. 18:15-17 and *Did.* 15:3," in *Matthew and the Didache: Two Documents from the Same Jewish-Christian Milieu?*, ed. Huub van de Sandt (Assen: Royal Van Gorcum; Minneapolis: Fortress Press, 2005), 173-92; Eyal Regev, "Temple and Righteousness in Qumran and Early Christianity: Tracing the Social Difference between the Two Movements," in *Text, Thought, and Practice in Qumran and Early Christianity*, ed. Ruth A. Clements and Daniel R. Schwartz (Leiden: Brill, 2009), 63-87; Adele Reinhartz, "We, You, They: Boundary Language in 4QMMT and the New Testament Epistles," in *Text, Thought, and Practice in Qumran and Early Christianity*, 89-105.

[26] In addition to the early studies on the topic, such as Joseph M. Baumgarten, *Studies in Qumran Law* (Leiden: Brill, 1977); Lawrence H. Schiffman, *The Halakhah at Qumran* (Leiden: Brilll, 1975), and idem, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code* (Chico: Scholars, 1983), I will only mention the most notable books on the topic, as articles on individual topics are indeed abundant in the past decade: Steven D. Fraade, Aharon Shemesh and Ruth A. Clements, eds. *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls* (Leiden: Brill, 2006); Aharon Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California Press, 2009); Vered Noam, *From Qumran to the Rabbinic Revolution: Conceptions of Impurity* (Jerusalem: Yad Ben Zvi, 2010; in Hebrew); Steven D. Fraade, *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages* (Leiden: Brill, 2011); Cana Werman and Aharon Shemesh, *Revealing the Hidden: Exegesis and Halakha in the Qumran Scrolls* (Jerusalem: Bialik Institute, 2011; in Hebrew). For a survey of issues, see Cana Werman and Aharon Shemesh, "The Halakhah in the Dead Sea Scrolls," in *Qumran Scrolls and Their World*, ed. Menahem Kister (Jerusalem: Yad Ben Zvi, 2009), 409-33.

[27] See for example Günter Stemberger, "Review: *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls*," *DSD* 17.2 (2010): 227-30; Steven D. Fraade, "Review: *Halakhah in the Making*," *JSJ* 43.1 (2012): 131-135.

[28] Naturally, the discovery rekindled the debate, providing further cases and considerations, but the historical kernel was not changed by the discovery of the scrolls. On Second Temple history from within rabbinic sources, see Lee I. Levine, "The Political Struggle between Pharisees and Sadducees in the Hasmonean Period," in *Jerusalem in the Second Temple Period*, ed. Aharon Oppenheimer, Uriel Rappaport and Menahem Stern (Jerusalem:

following the destruction of the Temple. Yet the discovery of the scrolls allowed a peephole, however narrow, to the other side of the debate, one that was not preserved with adequate representation in the rabbinic sources.

This endeavor has overburdened the study of Essene law with terminology that is either anachronistic or irrelevant to the corpus. The term "Halakhah" is the primary example of this methodological flaw. As noted, it is not mentioned even once in the Scrolls, conspicuously absent in the legal texts.[29] The suggestion that the derogatory epithet דורשי חלקות is a play on דורשי הלכות might even indicate that the term had a negative connotation in Essene circles.[30] But even more troubling than the mere use of a term that would not necessarily be used by the sect itself, is the application of this term in the creation of categories that are irrelevant for the study of Essene law. In studying law from the scrolls, a tendency to distinguish halakhic from non-halakhic law entails an imposition of rabbinic categories that are indistinguishable through the language of the surviving texts. It is quite probable that the Essenes were aware that their law could be divided into various categories, including laws that were under debate

---

Yad Ben Zvi, 1980), 61-83; Albert I. Baumgarten, "Rabbinic Literature as a Source for the History of Jewish Sectarianism in the Second Temple Period," *DSD* 2.1 (1995): 14-57; Shaye J. D. Cohen, *The Significance of Yavneh and Other Essays in Jewish Hellenism* (Tübingen: Mohr Siebeck, 2010), esp. 22-70, 262-96; Martin Goodman, *Judaism in the Roman World: Collected Essays* (Leiden: Brill, 2007), esp. 69-135.

[29] Steven D. Fraade, "Shifting from Priestly to Non-Priestly Legal Authority: A Comparison of the Damascus Document and the Midrash Sifra," *DSD* 6.2 (1999): 109-25; John P. Meier, "Is There *Halaka* (the Noun) at Qumran?" *JBL* 122.1 (2003): 150-155.

[30] The phrase appears in 1QH[a] 10.32; 4Q169 frg. 3-4 col. i, 2, 7, col. ii, 3-4, 2, 4, col. iii, 6-7 and reconstructed in 1QH[a] 10.15; 4Q163 23, ii 10; 4Q177 9.4. See also 4QD[a] 2, i, 4: [לדור]שי מצוותו ולה'לכים בתמים דרך (reconstruction based on 4QD[c]), pointing to another possible link between דרש and הלך. See Shani Tzoref (Berrin), *The Pesher Nahum Scroll from Qumran: An Exegetical Study of 4Q169* (Leiden: Brill, 2004), 91-99; James C. Vanderkam, "Those Who Look for Smooth Things, Pharisees and Oral Law," in *Emanuel: Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, ed. Shalom M. Paul et al. (Leiden: Brill, 2003), 465-77; Matthew A. Collins, *The Use of Sobriquets in the Qumran Dead Sea Scrolls* (London: T & T Clark, 2009), 186-90. If the term is deriding הלכה, one might ask if מדרש is also derided here. It is interesting to note that if דורשי חלקות is a corruption of דורשי הלכות it is not corrupting the word דורשי, and that unlike הלכה, the term מדרש appears in positive contexts of study and interpretation: 1QS 6.24, 8.15, 26; 4Q258 i, 1, 4Q270 7, ii, 15. Meier however insists that there is no documentation for a regular use of the plural form in the times of the Second Temple, proscribing the rise of such a pun (op. cit. 155).

with other contemporaneous factions and laws that were relevant only to the members of the sect. But one cannot deduce that these laws had different significances for the Essenes, no more than the fact that tannaitic law includes both laws that are exegesis and direct references to laws of the Pentateuch, and other laws that are undocumented in Jewish texts prior to the Mishnah. The only reason that they are all considered "Halakhah" is that rather than using the Pentateuch as the measure of delineation of rabbinic law, rabbinic law is defined on its own terms, acknowledging its own canonization.[31] Similarly, I argue, any law found within the corpus of Essene law is law, regardless of the existence of rabbinic parallels or lack thereof.

As a final example of the lack of necessary caution when examining Essene law in light of rabbinic law, I will mention the application of the categories קולא and חומרא (leniency and stringency) to Essene law.[32] Once more, these terms reflect a rabbinic concept, which is unattested in any of the legal texts of Qumran, nor provided as a consideration in lawmaking in any text. There is no evidence that these were relevant categories for the Essenes. While Regev and Noam allude to a clearly sectarian text (4Q171) that uses the cognate word קלות, it is significant that it is not a legal text per se, and that the context prohibits us from translating קלות as directly corresponding to the rabbinic notion of leniency.[33] The sect may well have viewed its adversaries as too lenient, but that in itself is insufficient as proof that they viewed themselves as stringent, or that they viewed stringency as an ideal. The fundamental approach reflected in Essene law would actually

---

[31] For more on the concept of Jewish law in the Dead Sea Scrolls, see Lutz Doering, "Jewish Law in the Dead Sea Scrolls: Some Issues for Consideration," in *The Hebrew Bible in Light of the Dead Sea Scrolls*, ed. Nóra Dávid et al. (Göttingen: Vandenhoeck & Ruprecht, 2012), 449-62.

[32] Eyal Regev, "Reconstructing Qumranic and Rabbinic Worldviews: Dynamic Holiness vs. Static Holiness," in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls*, ed. Steven D. Fraade, Aharon Shemesh and Ruth A. Clements (Leiden: Brill, 2006), 99; Vered Noam, "Stringency in Qumran: A Reassessment," *JSJ* 40.3 (2009): 342-55 [cf. Hebrew version in *Meghillot* 8-9 (2010): 211-26, and response by Paul Heger, "Stringency in Qumran?" *JSJ* 42.2 (2011): 188-217].

[33] For my criticism in this study it is especially relevant that Regev concludes his survey of the various suggestions for translation with a declared preference for the "Mishnaic Hebrew connotation" (op. cit.). Thus the argument becomes tautological: the interpretation of an Essene text relies on rabbinic sources, and as a result further connections between "Qumranic law" and rabbinic law are "established."

point in the other direction: they did not consider themselves strict, but rather as the correct interpreters and practitioners of divine law and divine will. There is no reason to assume that the sectarians viewed themselves as adding extra safeguards of stringency not required by God. The entire debate concerning "stringency in Qumran" encapsulates the imposition of irrelevant categories, imported from a separate and later corpus, thus obfuscating our understanding of Essene law on its own terms.

As a response to these hindrances, I offer a counter approach that is based on contemporary legal theory in an attempt to treat Essene law as a corpus of its own. Since the laws of the Essenes are intended for a sect, a considerable portion of this study is informed by a strand in legal theory known as "Law and Society."

Unlike the comparative approach which seeks connections and direct influences of the Essenes on subsequent Jewish and Christian strands, the import of legal theory provides a methodological framework and terminology which allow for a discussion of the texts without burdening them with language and tenets from proximate societies and ideologies. This is not to claim that the modern legal framework is neutral or objective, but its firm tradition in scholarly inquiry, alongside its distinct remoteness from Essene society, guarantee that it will not bear the same risks the comparative approach has demonstrated so far. As with any established discipline, it also raises a new set of problems that must be noted.

C. *Theories of Law and Society*

In his seminal work *The Authority of Law*, Joseph Raz asserts quite plainly that law is a social system in two significant meanings. In "one obvious sense," every law is in force in a certain community; and, in another sense, any law is inherently related to the origin of the Law, i.e. certain social institutions that legislate and enforce it:

> The view of law as a social fact, as a method of organization and regulation of social life, stands or falls with the two theses mentioned. At its core lie the theses that (1) the existence of a legal system is a function of its social

> efficacy, and that (2) every law has a source. The obvious importance of the first should not obscure the equal importance of the second.[34]

Yet while law is a product of a social system that shapes it as much as it is shaped by it, it has nevertheless been treated as an entity of its own, both in scholarship and in the popular conceptualization of law. Roger Cotterrell explains this "apparent isolation" as a result of the intimidating nature of the Law and its encounters with individuals, as well as a product of the professional autonomy sought by lawyers (understood in the broadest sense of all those who make the law, including legislators and judges).[35]

Various trends of "Law and…" scholarship testify to sincere attempts to contest this isolation, and likely also point to another cause for it, at least in scholarship: the tendency towards categorization and firm disciplinary boundaries characteristic of early modern scholarship. "Law and…" scholarship can be viewed, then, as a scholarly byproduct of postmodern currents of interdisciplinarity.

While the import of Law and Society methodology into the study of the scrolls is a novelty, this subdiscipline in legal studies has an established tradition,[36] which yields a new, inevitable turn. Indeed, the pendulum has begun its swing back in the other direction, as demonstrated in a recent criticism against the various "Law and…" movements.[37] My own project presented here, as its title betrays, is admittedly part of the interdisciplinary trend, and even calls for more of it, as I advocate a stronger reliance on legal theory for the study of the legal texts of the Dead Sea Scrolls.

There is, however, one further important sense in which I seek to study "Law and Society" in the Dead Sea Scrolls, which is distinct from the "Law and Society" movement in the general realm of the study of law: while promoting an interdisciplinary approach in the study of law, Cotterrell

---

[34] Joseph Raz, *The Authority of Law*: *Essays on Law and Morality* (Oxford: Clarendon and Oxford University Press, 1979), 151-152.

[35] Roger Cotterrell, *The Sociology of Law: An Introduction* (London: Butterworths, 1992), 16-18. On the popular conception of law, see Lawrence M. Friedman, "Law, Lawyers, and Popular Culture," *Yale Law Journal* 98.8 (1989): 1579-1606.

[36] Perhaps best demonstrated in the following collections of essays: Richard L. Abel, ed. *The Law & Society Reader* (New York: New York University Press, 1995) and Carroll Seron, ed. *The Law and Society Canon* (Aldershot: Ashgate, 2006).

[37] Shai Lavi, "Turning the Tables on 'Law and…': A Jurisprudential Inquiry into Contemporary Legal Theory," *Cornell Law Review* 96.4 (2011): 811-38 and many helpful references there.

did not define his interest as "Law and Society," but rather as the "Sociology of Law." In doing so, he insisted that the discipline requires empirical research and data that will inform the study of the "Living Law."[38] As empirical research is impossible with regards to Essene law, my title "Law and Society" seeks to nevertheless underscore my interest in the "Living Law" of the Essenes, inasmuch as it is possible to unravel the living law and extract it from the extant documents, despite the impossibility of empirical research necessary for a sociological-legal approach. This title also reaffirms the evident political aspect of Essene law, since, contrary to the claims made in these texts, the law is neither divine nor a straightforward interpretation of the pentateuchal laws. It is, ultimately, a social product. In order to do so, this study relies not only on legal theorists interested in social aspects of the law, but also on sociologists. This will be especially apparent in the chapters on exclusion and obligation, where in order to reconstruct the living law as it may have been implemented within the sect, I turn to sociologists such as Erving Goffman and Rosabeth Moss Kanter, and apply to the sect sociological concepts and terms they developed, before proceeding to the socio-legal analysis of the texts. This is a common practice in the "Law and Society" movement within legal studies, and one of the common criticisms against it. The difference between "Sociology of Law" and the "Law and Society" movement is a question of focus and limits of the field.[39] In an interdisciplinary context this is somewhat a question of nuance, but it is nevertheless notable that while socio-legal scholars introduce sociological terms and advances into their studies for sake of clarification, their interest remains the Law. Similarly, the engagement with sociological theory in the present study is for the purpose of better understanding the law itself as a social product, but the focus remains the law of the society in question rather than the society itself, Essene law rather than the Essene community.

---

[38] Cotterrell, *Sociology of Law*, 28-43. See also his *Living Law* (Aldershot: Ashgate, 2008), 29-44, 57-72.

[39] See Richard L. Abel, "Redirecting Social Studies of Law," *Law & Society Review* 14.3 (1980): 805-29; Lawrence M. Friedman, "The Law and Society Movement," *StanfLR* 38.3 (1986): 763-780; Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings Law Journal* 38.5 (1987): 814-53; David Nelken, "Changing Paradigms in the Sociology of Law," in *Autopoietic Law. A New Approach to Law and Society*, ed. Gunther Tuebner (Berlin: de Gruyter, 1987), 191-216; Austin Sarat, "Vitality Amidst Fragmentation: On the Emergence of Postrealist Law and Society Scholarship," in *The Blackwell Companion to Law and Society*, ed. Austin Sarat (Oxford: Blakwell, 2004), 1-11.

D. *Legal Theory vs. a Legal System*

The nature of law, its presuppositions, its aim, its source of power, and so forth, have troubled many scholars and philosophers.[40] One of the major problems of this debate is the apparent incongruity between the models offered by legal philosophers and the legal systems in action. Unlike the coherent structures delineated by philosophers, a legal system is always the product of its time, and as such – the result of societal actions, political struggles, contesting powers with opposing stances, and even the frivolity of chance, which might place a rule or a verdict that is apparently or arguably inconsistent with the system as a whole.[41]

While this problem will inevitably arise in any attempt to match a complex, living legal system with a single theory, it is even more persistent, and curiously so, when addressing the theoretical presuppositions of law in ancient Judaism. This is curious since law is a major component of Judaism: by regulating practices and rituals of festive or commemorative significance as well as of everyday minutiae, law constitutes Judaism, defines it, and demarcates its boundaries. The significance of the centrality of law in

---

[40] To name only a select number of works that have helped and informed my understanding of the debate: H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon, 1961); Lon L. Fuller, *The Morality of Law* (revised edition; New Haven: Yale University Press, 1969); Raz, *Authority of Law*; John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 2011); Ronald Dworkin, *Law's Empire* (Cambridge: Belknap, 1986); Kent Greenawalt, *Conflicts of Law and Morality* (Oxford: Clarendon and Oxford University Press, 1987); Robert P. George, ed. *Natural Law Theory. Contemporary Essays* (Oxford: Oxford University Press, 1992); idem, ed. *The Autonomy of Law. Essays on Legal Positivism* (Oxford: Clarendon, 1996); idem, *In Defense of Natural Law* (Oxford: Clarendon and Oxford University Press, 1999); Meir Dan-Cohen, *Harmful Thoughts. Essays on Law, Self, and Morality* (Princeton: Princeton University Press, 2002); Owen Fiss, *The Law as It Could Be* (New York: New York University Press, 2003); Leora Batnitzky, "A Seamless Web? John Finnis and Joseph Raz on Practical Reason and the Obligation to Obey the Law," *OJLS* 15.2 (1995): 153-75; Raymond Wacks, *Understanding Jurisprudence. An Introduction to Legal Theory* (Oxford: Oxford University Press, 2009), 12-140.

[41] Batnitzky, "A Seamless Web," 173; George Fletcher, *Basic Concepts of Legal Thought* (Oxford: Oxford University Press, 1996), 188-95; Sean Coyle, "Hart, Raz and the Concept of a Legal System," *Law and Philosophy* 21.3 (2002): 275-304; Jane S. Schacter, "The Pursuit of 'Popular Intent': Interpretive Dilemmas in Direct Democracy," *Yale Law Journal* 105.1 (1995): 107-76; Imer B. Flores, "The Quest for Legisprudence, Constitutionalism *v.* Legalism," in *The Theory and Practice of Legislation. Essays in Legisprudence* (Aldershot: Ashgate, 2005), 26-52; Douglas E. Edlin, *Judges and Unjust Laws. Common Law Constitutionalism and the Foundations of Judicial Review* (Ann Arbor: University of Michigan Press, 2008).

Judaism is understood against the backgrounds of other religions which either do not display elaborate legal systems, or do not consider the law to be more important than the theology, the creed, the canon, and so forth. For example, a reader unaware of the common origin of Maimonides' *A Guide to the Perplexed* and the teachings of Lurianic Kabbalah, might conclude that such disparate conceptualizations of God and of the world cannot possibly stem from the same religion. Indeed, what unites these streams – and many other contradictory trends in Jewish thought for that matter – is not their theology, but their adherence to Jewish Law.[42] This is only by way of an example for the supremacy of law in Judaism, a contention which is true regardless of disparaging views of Judaism as fossilized legalism.[43] Despite this centrality of law, however, ancient Jewish writings rarely discuss the philosophy of law, in keeping with a general avoidance of a systematic theory of Judaism.[44] The law is provided and later

---

[42] Note, for example, Alexander's argument against "a highly dubious essentialising of a fundamental opposition between 'Law' and 'Mysticism.'" The opposition between the two above mentioned approaches is self-evident, but inserting "Law" into the equation overlooks what they share in common. See Philip S. Alexander, "Qumran and the Genealogy of Western Mysticism," in *New Perspectives on Old Texts*, ed. Esther G. Chazon, Betsy Halpern-Amaru and Ruth A. Clements (Leiden: Brill, 2010), 228. Similarly, Michael Satlow writes, "The understanding, however, that law and spirit are antithetical has a specific genealogy that goes back to the apostle Paul's attempt to contrast the Law (that is, the Torah) with the Spirit of God as revealed through Jesus Christ. There is nothing natural or obvious to the dichotomy; it is a culturally constructed one." See Michael L. Satlow, *Creating Judaism. History, Tradition, Practice* (New York: Columbia University Press, 2006), 231.

[43] This apologetic note is added as a safeguard, lest my emphasis is understood to be influenced in any way by such views. Quite the contrary: the affirmation of the role of law in Judaism can be phrased with the most positive undertones. See Menahem Elon, *Jewish Law. Its Origins, Sources and Principles*. Jerusalem: Hebrew University of Jerusalem, 1973 (in Hebrew); Yeshayahu Leibowitz, *Five Books of Faith* (Jerusalem: Keter, 1995; in Hebrew); David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998), 92-125; Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* (Philadelphia: Jewish Publication Society, 2007), 87-117, 248-252. See also Jonathan Jacobs's recent article, "Judaism and Natural Law," *Heythrop Journal* 50.6 (2009): 930-47. On the idiosyncrasies of Jewish Law see Bernard S. Jackson, "Secular Jurisprudence and the Philosophy of Jewish Law. A Commentary on Some Recent Literature," *JLA* 6 (1987): 3-44; Leora Batnitzky, "From Politics to Law: Modern Jewish Thought and the Invention of Jewish Law," *Diné Israel* 26-27 (2009-2010): 7-44.

[44] This is a "deeply rooted tendency in Jewish thought," as Gershom Scholem defined it, and not peculiar to the philosophy of Jewish law. Scholem defines this tendency as follows: "The more genuinely and characteristically Jewish an idea or doctrine is, the more

interpreted, elaborated, rectified, and reconstituted, but it is hardly questioned or theorized. As such, attempts to extract the assumptions and fundamentals of ancient Jewish law are focused on the laws themselves, trying to follow their rationale, their consistency, and their language. As stated above, however, a legal system is unlikely to exhibit the consistency of a legal theory.

E. *Conclusion*

Based on the methodology described above, the present study will explore legal concepts that shaped Essene law, in the following order. First, I offer a general description of the legal essentialism that characterizes all Essene law. In the next chapter I explore the significance of intention, as a way of highlighting and clarifying the influence of legal essentialism on Essene law, but also calling to question the difference between a legal system and a legal theory. Then I proceed to two chapters focused on socio-legal concepts and practices, exclusion and obligation. Finally, I offer an analysis of the reworking of the biblical[45] premarital sex laws in 4QD and the Temple Scroll as a case study for the arguments in all previous chapters.

---

deliberately unsystematic it is." See his *Major Trends in Jewish Mysticism* (London: Thames and Hudson, 1955), 158.

[45] Joseph Angel notes that "biblical" carries its own anachronism, as the Hebrew Bible has not taken a final, canonized form at the time these texts were being composed. It is used throughout for lack of a better word, to describe texts that were indubitably authoritative for the sectarians, and that would later evolve into what was known as the Hebrew Bible. In addition to the problem noted by Angel, it also suffers the ambiguity of an adjective that refers to several different canons, dependeing on context. See Joseph Angel, "The Use of the Hebrew Bible in Early Jewish Magic," *Religion Compass* 3.5 (2009): 787-8.

CHAPTER ONE

LEGAL ESSENTIALISM IN ESSENE LAW

1.1. *Introduction*

As explained in the introduction, the methodology of this study is based on two assumptions. First, that a consistent legal theory is separate from a practical legal system. Hence, apparent inconsistencies in a legal system do not necessarily denote the lack of a shared legal theory. Second, that the sectarian legal texts of the Dead Sea Scrolls reflect an ideological movement with a shared theology, and the advances in research concerning this movement's various branches do not contradict a legitimate treatment of this movement's shared texts and beliefs. A close examination of the trees, so to speak, does not prohibit or deny the existence of a forest.

Based on these two assumptions the following discussion of the legal premises of Essene law is offered. Admittedly, these premises are never made explicit. They are ontological and theological beliefs that inform the entire approach to the law, and are embedded in the actual laws, as well as in the rhetoric surrounding them. To explicate this implicit worldview, one must extract concepts from various excerpts of rhetoric, admonition, and justification, as well as closely examine the laws themselves. Indeed, the worldview of the Essenes on many of the points that will be addressed here has been described previously. This discussion, however, suggests a formulation of this worldview in legal terms.

I begin with a summary of the debate on nominalism and realism in Essene and rabbinic sources, favoring a new terminology of legal essentialism and formalism. I then proceed to examine the manifestation of legal essentialism in the following elements: time, space, hierarchy, and knowledge.

1.2. *Nominalism and Realism*

The study of the premises of Essene law begins with a significant contribution found in a series of articles by Daniel R. Schwartz.[1] Schwartz characterized Sadducean law (which is also reflected in the scrolls, according to his argument) as "realist" and rabbinic law as "nominalist," borrowing the terms from a study by Yohanan Silman.[2]

Schwartz argues that the priestly law as preserved in reported polemics in rabbinic literature, as well as its related counterpart in the scrolls, reflects a "realist" view of the world. By this he means that the laws reveal something inherent in nature. This division parallels the dilemma Socrates poses to Euthyphro, whether the pious (ὅσιον) is loved by the gods because it is pious, or vice versa.[3] However, the distinction between realism and nominalism does not address the problem of law and morality, but

---

[1] Daniel R. Schwartz, "Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law," in *The Dead Sea Scrolls: Forty Years of Research*, ed. Devorah Dimant and Uriel Rappaport (Leiden: Brill, 1992), 229-40; idem, "Between Sages and Priests in the Times of the Second Temple," *Migvan de'ot ve-hashkafot be-tarbut Yisrael* 2 (1992): 63-79 (in Hebrew); idem, "From Priests at Their Right to Christians at Their Left? On the Interpretation and Development of a Mishnaic Story (m. Rosh Hashanah 2:8-9)," *Tarbiẓ* 74.1 (2004): 21-41 (in Hebrew); idem, "Arguments of *Qal va-ḥomer* as Sadducean Realism," *Masekhet* 5 (2006): 145-56 (in Hebrew); idem, "Yannai and Pella, Josephus and Circumcision," *DSD* 18.3 (2011): 339-59.

[2] D. R. Schwartz, "Law and Truth," 229-40. Cf. Yohanan Silman, "Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations," *Diné Israel* 12 (1984-1985): 249-66 (in Hebrew). For an English version see idem, "Introduction to the Philosophical Analysis of the Normative-Ontological Tension in the Halakha," *Daat* 31 (1993): v-xx.

[3] Euthyphro 10a. For text see Harold North Fowler, *Plato, volume I: Euthyphro, Apology, Crito, Phaedo, Phaedrus* (Cambridge: Harvard University Press, 1914), 34 (although I reject the English translation in this edition as "holy" instead of "pious"). The dilemma raises a question as to whether God has choice in command at all, and as such contradicts the possibility of a "nominalist" divine law. See Richard Joyce, "Theistic Ethics and the Euthyphro Dilemma," *JRE* 30.1 (2002): 49-75; Michael Levin, "Understanding the Euthyphro Problem," *International Journal for Philosophy of Religion* 25.2 (1989): 83-97. For its implications in Jewish thought, see Avi Sagi and Daniel Statman, "Divine Command Morality and Jewish Tradition," *JRE* 23.1 (1995): 39-67. In relation to the above discussion and the contrast suggested between *Euthyphro*'s ethical concerns and Schwartz's material discussion, it is also interesting to note the seeming opposition in the platonic dialogue between morality and "pollution," which might imply a substance. See Mark L. McPherran, "Justice and Pollution in the *Euthyphro*," *Apeiron* 35.2 (2002): 105-29.

rather that of actual substances. Schwartz offers a helpful example:[4] if a person drinks poison without knowing it is poison, the effects of the substance will be no less hazardous due to his ignorance. The parallel one may draw from this example to Jewish dietary laws is quite telling: is consumption of the meat of an unclean animal forbidden because there is something inherently wrong, dubious, or unclean in that animal, or is it wrong solely because a law decreed it so? According to the dichotomy advocated by Schwartz, a realist would believe the former and the nominalist would favor the latter. The realist would believe the meat is unclean, and would be unclean whether or not God gave a law that revealed this fact to humankind, and a nominalist would believe that the law could have arbitrarily banned beef and allowed pork and it would equally require obedience.[5]

Various components of Schwartz's paradigm have been criticized by some and upheld by others, and the debate it has stirred continues to be a sign of its significance.[6] The criticism pointed out an implied conflation in Schwartz's work between Sadducees and priests and between the Pharisees and the early rabbis, as well as the weaknesses of the dichotomy, by examining cases of nominalism in the scrolls and realism among the rabbis.[7]

---

[4] D. R. Schwartz, "Between Sages and Priests," 65-66 (405-406 in reprint version).

[5] For a rabbinic understanding of this formulation and its material as well as societal implications, see Jordan D. Rosenblum, "'Why Do You Refuse to Eat Pork:' Jews, Food, and Identity in Roman Palestine," *JQ*R 100.1 (2010): 95-110; idem, *Food and Identity in Early Rabbinic Judaism* (Cambridge: Cambridge University Press, 2010), 35-102.

[6] Yaakov Elman, "Some Remarks on 4QMMT and the Rabbinic Tradition, or, When Is a Parallel Not a Parallel?" in *Reading 4QMMT: New Perspectives on Qumran Law and History*, ed. John I. Kampen and Moshe J. Bernstein (Atlanta: Scholars, 1996), 99-128; Jeffrey L. Rubenstein, "Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment," *DSD* 6.2 (1999): 157-83; Shemesh, *Halakhah in the Making*, 107-28; Noam, *From Qumran to the Rabbinic Revolution*, 220-55, 344-6; Martha Himmelfarb, "'Found Written in the Book of Moses': Priests in the Era of Torah," in *Was 70 CE a Watershed in Jewish History? On Jews and Judaism before and after the Destruction of the Second Temple*, ed. Daniel R. Schwartz and Zeev Weiss (Leiden: Brill, 2012), 23-41.

[7] Indeed, even Silman's article that inspired Schwartz's argument did not claim that the rabbis were entirely nominalist, but rather pointed to a tension within Halakhah. In the English version, Silman states that both are "inherent in halakhik thinking," "contradictory" and yet "comprise one of the fundamental tnesions in Halakha which constitute" its dialectic unity (Silman "Introduction to the Philosophical Analysis," vii). Schwartz adopted Silman's terminology, but apparently did not accept his analysis. Conversely, in the following pages I accept Schwartz's analysis (inasmuch as the Essenes are concerned), but reject his terminology.

In response to the latter concern, Schwartz has modified his argument, stating that only cases of an explicit polemic yield a consistency in principle, and therefore those are the only cases relevant for an examination of his hypothesis.[8] The acknowledgment of the inherent inconsistency of a legal system supports my opening claim regarding the possible, or even inevitable, incongruities between consistent legal theories and practical legal systems.

Schwartz's elucidation of the two concepts and how they shape Jewish law are very helpful, but his choice of terminology remains a concern that requires revision.

1.2.1. *A New Proposal: Legal Essentialism and Legal Formalism*

The confusion of terminology is almost inevitable in discussions of philosophy of law, since philosophers and lawyers use the same terms in different meanings, the standard example being the use of "positivism" in philosophy and law. Silman is interested in the philosophy of Halakhah and thus borrows terms from the realm of philosophy.[9] I continue to argue that

---

[8] D. R. Schwartz, "Arguments of *Qal va-ḥomer* as Sadducean Realism," 147. Note that Silman, in the study that instigated Schwartz's claim, also argued that "the tension between the two tendencies is not necessarily conscious, at least not in its ful generality" (Silman, "Introduction to the Philosophical Analysis," vii.

[9] Silman chooses to restrict his discussion to rabbinic sources (250), and thus exempts himself from any citations for the terms he uses (he actually says he will restrict himself to halakhic sources, but proceeds on the next page to provide an aggadic source, and so it is clear that he is conflating "rabbinic" and "halakhic"). His meaning of "Nominalism" and "Realism" is clear from the article, but his sources remain obscure. It is clear, however, that these terms are borrowed from philosophers, not lawyers. In a later study, *The Voice Heard at Sinai* (Jerusalem: Magnes, 1999; in Hebrew), Silman mentions the tension of nominalism and realism only in passing, and discusses ontological and epistemological conceptualizations of the Torah according to three approaches: "Perfection"; "Discovery" and "Being-Ever-Perfected." He acknowledges that the ontological linkage between God and the Torah overlaps his use of realism (ibid, 19), but the book regrettably includes rare references to philosophical texts which are unquestionably informing him, and even then only to Jewish philosophers, except for three passing references to Plato. Evidently, he was more successful than R. Elisha in concealing the books in his lap (*b.* Hag 15b).

for the study of law in the scrolls it is more appropriate to borrow terms from the realm of legal theory.[10]

The shortcomings of Silman's terms were first noticed by Rubenstein, who disputed the suitability of the terms for the debate because they relate to ontology rather than the nature of law.[11] As Rubenstein indicated, realism as an ontological stance is irrelevant to the discussion of law, while "legal realism" is inapplicable to the issues concerning Schwartz (or Silman, for that matter). Legal realism is a skeptical strand in (primarily) American scholarship and jurisprudence that argued against the aforementioned "isolation of the law," and sought to study and define the law not based on idealistic perceptions of what the law should be and do, but by admitting its socio-historical and political context.[12] The ontological stance of

---

[10] This might also be the case for the study of Halakhah, but besides the fact that it is not the focus of this study, there is a stable tradition of scholarly study of Jewish law drawing on general legal theory.

[11] J. L. Rubenstein, "Nominalism and Realism," 158-159. See also Leib Moscovitz's caution against any application of these terms to ancient Jewish law, in his *Talmudic Reasoning* (Tübingen: Mohr Siebeck, 2002), 170.

[12] Justice Oliver Wendell Holmes, Jr. is considered a founding figure of realism in American jurisprudence. His assertion in *Schenk v. United States* (249 U.S. 47) that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic" is a hallmark of the pragmatic foundations of his realist jurisprudence, widely considered as influenced by philosopher Charles Peirce. See Catharine Wells Hantzis, "Legal Innovation within the Wider Intellectual Tradition: The Pragmatism of Oliver Wendell Holmes, Jr.," *Northwestern University Law Review* 82.3 (1988): 541-95. In scholarship, legal realism was championed and formulated by Karl Llewellyn. The following quotes are characteristic of his methodological approach and purpose:
"'What can be done,' and by whom? I have spoken of law as a means: *whose* means, to *whose* ends? Discussion of law, like discussions of 'social control,' tend a little lightly to assume '*a* society' and to assume the antecedent discovery of 'social' objectives… Into another aspect of ideals as to what law ought to be this present paper does not attempt to go. I make no effort *here* to indicate either the proper rule or the proper action of any legal subject. I do, however, argue, and with some vigor, that as soon as one turns from the *formulation* of ideals to their *realization*, the approach here indicated is vital to his making headway. It is only in terms of a sound descriptive science of law… that ideals move beyond the stage of dreams… I have been concerned not at all with marking a periphery of law, with defining 'it,' with *excluding* anything at all from its field. I have argued that the trend of the most fruitful thinking about law has run steadily toward regarding law as an engine… having purposes, not values in itself; and that the clearer visualization of the problems involved moves toward ever-decreasing emphasis on words, and ever-increasing emphasis on observable behavior…". See Karl N. Llewellyn, *Jurisprudence. Realism in Theory and Practice*

Nominalism, as advocated by John Stuart Mill for example,[13] derives from the Latin *Nomen*, but the legal sense in which Silman and Schwartz uses it confuses it with the Greek νόμος. Indeed, Rubenstein argues that at one point Schwartz even characterizes the (allegedly nominalist) approach of the rabbis as "legalist."[14] Rubenstein concludes with a suggestion that the opposition of Natural Law and Legal Positivism are closer to the tension Schwartz is describing, but favors to use the terminology introduced by Schwartz, despite its "unconventional use."[15]

In response to Rubenstein's critique, Christine Hayes has defended the use of Schwartz's terms, suggesting that those "are philosophical terms that relate primarily to ontology – to the question of whether or not material objects exist independent of our perceptions – and not to law."[16] According

(New Brunswick: Transaction, 2008), 36-40. See further on legal realism in Mathieu Deflem, *Sociology of Law* (Cambridge: Cambridge University Press, 2008), 97-116.

[13] John Stuart Mill, *A System of Logic* (London: Longmans, 1875), 2:195-216. See further on nominalism in Paul Forster's *Peirce and the Threat of Nominalism* (Cambridge: Cambridge University Press, 2011), 1-175.

[14] J. L. Rubenstein, "Nominalism and Realism," 159, quoting Schwartz, "Law and Truth," 231. Schwartz, however, is not conflating the terms "nominalism" and "legalism," but referring to a narrow interpretation of the law as it is written. His rhetorical question ("why does the [Qumran legislator] not take a legalist approach?") leaves Rubenstein's reading possible, and points to another problem of the mistaken semantic proximity of nominalism and legalism. For the burdens of "legalism" in the context of Jewish studies, see n. 43 in the introduction.

[15] J. L. Rubenstein, "Nominalism and Realism," 158-159. A full account of the vaccilating history of proposed terminologies should also include Silberg's description of it as "Naturalism." Silman disapproves of Silberg's terminology, including "law of nature," but does not exaplin why, possibly for both theological and philosophical reasons, i.e. wishing to avoid a conflation of nature with either God or ontology. See Moshe Silberg, "The Order of Holy Things as a Legal Entity," *Sinai* 52 (1962): 10-13 (in Hebrew); Silman, "Halakhic Determinations," 251-2; Rubenstein, "Nominalism and Realism," 159-61. I initially favored Rubenstein's suggestion (in my article "Law and Society in the Dead Sea Scrolls: Preliminary Remarks"), but changed my opinion for the reasons described in this chapter.

[16] Christine E. Hayes, "Legal Realism and the Fashioning of Sectarians in Jewish Antiquity," in *Sects and Sectarianism in Jewish History*, ed. Sacha Stern (Leiden: Brill, 2011), 120-121. Hayes may very well be right in identifying Schwartz's (or more accurately, Silman's) terms as borrowed from 12th century scholastic jurists, but that should only serve as a further deterrent from borrowing that terminology. Scholarship of the ancient world should either analyze the text on its own terms, or on contemporary terms of the scholar. Medieval philosophers neither illuminate the worldview of the Essenes, nor do they speak in a language common to legal theorists today.

to Hayes, if the terms relate merely to ontological and epistemological questions of reality and perception, the terminology offered by Schwartz should be upheld.

However, the legal framework is precisely the proper prism for understanding legal texts from the scrolls, and it therefore seems that Rubenstein did not stress enough the significance of shifting terminologies from the ontological to the legal sphere. The texts in question do not philosophize in the abstract on the nature of the world and the attainable knowledge regarding reality. They rather address very concrete issues of everyday conduct, purity rituals, and societal matters. These issues are indeed founded on certain assumptions regarding the world, but that is no different from any other legal system, including contemporary law.

Hayes is correct in shifting the focus of the debate from the nature of law (that is stressed in Rubenstein's parallelization of the debate to the contrast of Natural Law and Legal Positivism) to the ontological presuppositions embedded in the law. She rejects Rubenstein's suggestion because those theories "differ on the source of law's authority… This is not the issue that concerned various Jewish sects in antiquity." Finally, Hayes offers an extremely helpful summation of the issue at hand: "*the role of epistemological certainty in determining the content of the law*."[17] Yet despite these strengths of her argument, Hayes added to the terminological confusion by supplementing her embrace of Schwartz's terminology with the adjective "legal." She does not acknowledge Rubenstein's valid point that "legal realism" denotes a specific strand in contemporary legal theory that does not apply to the tension described by Schwartz,[18] just as the opposition between legal positivism and natural law did not apply to it.

The terms "Natural Law" and "Legal Positivism" are wrong in this case not only because they address the source of authority, as Hayes noted. This issue of authority has other implications concerning the law, following its source. It is tempting to conflate the idea of Natural Law with divine law, although Natural Law does not necessitate a deity who creates it.[19] Legal

---

[17] Both quotations from Hayes, "Legal Realism," 121.

[18] Indeed, the pragmatic aspect of legal realist jurisprudence requires creativity and flexibility in the interpretation of the law in order to adapt it to changing circumstances. A blatant admission of such an approach to the interpretation of the law would certainly be unsettling to Sadducean or Essene "realists," to say the least.

[19] Jeffrey Stout, "Truth, Natural Law, and Ethical Theory," in *Natural Law Theory. Contemporary Essays*, ed. Robert P. George (Oxford: Oxford University Press, 1992), 72-73.

Positivism always requires human agents, and thus is inapplicable to the self-understanding of religious law. Scholars may analyze the project of rabbinic Halakhah as legal positivism, but the rabbis would never fashion their own view as such. Natural Law is likened to divine law in the claim that it preexists to and independent of any human awareness of it, and that it is truthful and unchanging regardless of humans' imperfect attempts to reveal and understand it. Unlike divine law, however, the concept of Natural Law has a strong affinity to the deistic Enlightenment, so that "human beings can discover [these laws] through rational enquiry unaided by revelation or theological assumptions."[20] In relation to Hayes' claim, it should be noted that even through these brief comments on the concept of Natural Law, its claims cover both ontological and ethical issues, and are still never extracted from the realm of law.

Neither the Essenes nor the rabbis viewed the law as a metaphysical fact available to any person through enquiry. The Essenes, as will be discussed below, view law as available only through a two-tier revelation of נגלות (revealed) and נסתרות (hidden). Rabbinic literature includes a belief in a preexisting Torah,[21] but does not claim that it is available to everyone. Medieval Jewish philosophers as Saadya Gaon will further divide the commandments into laws of reason and revelation, the former being deducible by any inquisitive human, the latter demonstrating nothing but the will of God and unavailable to humans through reason.[22] Jewish law,

---

Cf. David Novak, *Natural Law in Judaism*, 1-26; idem, *Covenantal Rights. A Study in Jewish Political Theory* (Princeton: Princeton University Press, 2000), 3-35, 99-116; idem, "Is Natural Law a Border Concept between Judaism and Christianity?" *JRE* 32.2 (2004): 237-54; Julius Stone, "Leeways of Choice, Natural Law and Justice in Jewish Legal Ordering," *Jewish Law Annual* 7 (1988): 210-51; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 120-64.

[20] Stout, "Truth, Natural Law, and Ethical Theory," 74.

[21] Gen Rab 1.1, 1.4; Lev Rab 19.1; *b.* Shab 88b; Pirqe R. El. 3. This view is also found in Second Temple writings as the Book of Jubilees, and quite plausibly shared by the Essenes in general. See Gary A. Anderson, "The Status of the Torah before Sinai. The Retelling of the Bible in the Damascus Covenant and the Book of Jubilees," *DSD* 1.1 (1994): 1-29; idem, "The Status of the Torah in the Pre-Sinaitic Period: St. Paul's Epistle to the Romans," in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls*, ed. Michael E. Stone and Esther G. Chazon (Leiden: Brill, 1998), 1-23.

[22] Saadya Gaon, *Book of Beliefs and Doctrines* 3.2. See English version in Hans Lewy, Alexander Altmann and Isaak Heinemann, eds. *Three Jewish Philosophers* (New York: Atheneum, 1974), 93-105. See Alexander Altmann, "Saadya's Conception of the Law," *Bulletin of the John Rylands Library* 28.2 (1944): 3-24; Norbert M. Samuelson, "Possible and

despite some lingering affinities, is therefore distinct from Natural Law through its claims for revelation and its converse – esotericism.

Thus, neither Schwartz's terminology nor Rubenstein's suggestion (which did not gain a following in scholarly debate) aptly describe the problem at hand. It seems to me that the position Silman, Schwartz and Hayes designated as realism is best defined as "Legal Essentialism." This term is used primarily in debates concerning social and political issues of cultural identities and various minorities, but in its most basic form it denotes an attribution of various capabilities (commonly intellectual and emotional capabilities) and/or ethical traits based on matter, usually in the sense of biological facts, but that is only because essentialism is usually debated in regards to human beings.[23] However, while legal essentialism is mostly debated nowadays in contexts of inclusion and avoiding various instances of bias or discrimination resulting from sexism, racism, homophobia and so forth, contemporary law is also affected by human conceptualization of essence and substance, and attaching other qualities to them.[24]

Similarly, the Essenes attribute certain traits to various biological, physical, and astronomical phenomena. These were not considered happenstance occurrences which can be treated as one way or another, but facts that constitute a reality. As Wong notes, the core concept of essentialism is "that the characteristics used to define a thing are thought to

---

Preferred Relations between Reason and Revelation as Authority in Judaism," in *Studies in Jewish Philosophy* (Lanham, Md.: University Press of America, 1987), 127-42. As Altmann notes, Saadya Gaon "distinguishes between those parts of the Bible which reflect the Law of nature and those which, though they are never at variance with the true Law of nature, nevertheless, are no proof of it" (Altmann, "Saadya's Conception," 19).

[23] See Jane Wong, "The Anti-Essentialism v. Essentialism Debate in Feminist Legal Theory: The Debate and Beyond," *William and Mary Journal of Women and the Law* 5 (1998-1999): 274-5. See also Elizabeth Grosz, "Conclusion: A Note on Essentialism and Difference," in *Feminist Knowledge*, ed. Sneja Gunew (Abingdon: Routledge, 1990), 332-44; Nick Haslam, Louis Rothschild, and Donald Ernst, "Essentialist Beliefs about Social Categories," *British Journal of Social Psychology* 39.1 (2000): 113-27; Anthony Good, "Cultural Evidence in Courts of Law," *Journal of the Royal Anthropological Institute* 14 (2008): s47-s60.

[24] The obvious example is legal issues concerning psychoactive drugs which are sometimes even referred to as "substance," and laws that steadily change reflecting certain essential attitudes towards them. A peculiar and entertaining case, although not characteristic at all, was the case of *Maurice v. Judd*, described in Graham Burnett's *Trying Leviathan* (Princeton: Princeton University Press, 2007). Samuel Judd, an oilmaker claimed that whales were not fish, and as such he should be exempt from New York State fish inspection.

inhere in its very essence and, thus, to be unchangeable."[25] The pork carries with it impurity, and the pentateuchal dietary laws thus only reveal a fact that is true regardless of whether the law was written. The holidays occur according to a celestial calendar that no human error can change, and if a certain holiday is not celebrated on the correct date, it does not change the fact that it was indeed the date of the holiday, since this is an essence of time that is instilled in nature, just as the sun rises and the moon sets.[26] These unchangeable facts of nature, therefore, bear implications on the law, which is why I label this stance as "legal essentialism," rather than simply "essentialism." It is an ontological premise that informs the attitude towards the law, its practice and interpretation. It bears consequences for the question of intention, since intent does not change reality, as seen with Schwartz's helpful example of the poison. Further consequences will be discussed throughout this study.

If Schwartz's designation of "realism" is to be substituted with "legal essentialism," the problem of the designation for the converse stance remains. It is not a major concern of this study, since the stance that Schwartz attributed to the Pharisees and the rabbis as "nominalism," is less of an issue in Essene law. However, since I entered the terminological debate, I will conclude it by briefly arguing that I think a better term for this stance is "legal formalism." Often contrasted with legal realism,[27] legal formalism stems from the school of thought of legal positivism, but rather than address the ontology of the law, its origins and source of authority, legal formalism offers a plan for action of jurisprudence. The emphasis is on the form of the law, that so long it is maintained, should also be adhered. Questions regarding the legislator's intent or the spirit of the law can lead to a shaky ground of interpretation, and thus undermine the rule of law. In face of this instability supposedly caused by realists, legal formalists propose to conform to the letter of the law. Their detractors consider this a reduction of jurisprudence to a mechanical process.[28]

---

[25] Wong, "The Anti-Essentialism v. Essentialism Debate," 275.

[26] I purposefully avoided describing this in terms of planetary movements, so as not to speak in terms that would contradict the worldview of the sect.

[27] Although initially Hart contrast "formalism" with "skepticism" (Hart, *Concept of Law*, 136-41; cf. Fletcher, *Basic Concepts of Legal Thought*, 47-48).

[28] On legal formalism, see Hart, *Concept of Law*, 124-54; Ernest J. Weinrib, "Legal Formalism: On the Immanent Rationality of Law," *Yale Law Journal* 97.6 (1988): 949-1016; idem, "The Jurisprudence of Legal Formalism," *Harvard Journal of Law and Public Policy* 16.3

The emphasis on the process of law and the obligation to the letter of the law once it is set is evidently a greater concern than that of the ontological reality the law is supposedly reflecting. This concern leads to the perception of the rabbis as "nominalists," as Schwartz labeled them, but this label, in addition to its other problems mentioned above, also yields a misconception as if the rabbis believe the ontology is dictated by the law. However, it is not the case that the rabbis believe that since they rendered something pure than it is pure in essence; rather, that if something is rendered as pure, it should be treated as pure for all intents and purposes.

Thus, the Mishnah states that if one immerses so that he may eat profane (or: unconsecrated) foods and is held (at the time of immersion) for the unconsecrated food, he is prohibited to eat from the tithe.[29] As Yair Furstenberg noted in a recent lecture, the conclusion of this passage is the most instructive: "if he immersed but was not considered [for a certain purpose], it is as if he did not immerse [at all]."[30] The contrast between the beginning of the passage and its conclusion underlines the formalist nature

---

(1993): 583-96; Morton J. Horwitz, "The Rise of Legal Formalism," *American Journal of Legal History* 19.4 (1975): 251-64; Adrian Vermeule, "Interpretation, Empiricism, and the Closure Problem," *UChicLRev* 66.3 (1999): 698-709. For more on the debate between legal realism and legal formalism, see Richard Posner's excellent summary, despite his disparaging view of their usefulness in jurisprudence: "Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution," *Case Western Reserve Law Review* 37.2 (1986-1987): 179-217. Cf. Daniel A. Farber, "The Inevitability of Practical Reason: Statutes, Formalism, and the Rule of Law," *Vanderbilt Law Review* 45.3 (1992): 533-60, and more recently Brian Z. Tamanaha, *Beyond the Formalist-Realist Divide* (Princeton: Princeton University Press, 2010), esp. 13-108.

[29] **הטובל לחולין והוחזק לחולין אסור למעשר** (*m.* Hag 2.6). The Mishnah continues with several proclamations in the same vein. **הוחזק** is commonly translated as "intended," "with the intention," etc., but in addition to being an extrapolation that is not made explicit in the text, it is also confusing in regards to my later discussion of intention to introduce it here. The question of intention is pertinent to the text, but for the literal translation I side with Jastrow, "considered" or even the literal "held" in an idiomatic sense. See Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi* (London: Luzac, 1903), 445.

[30] **טבל ולא הוחזק כאילו לא טבל** (*m.* Hag 2.6). For the lecture, see Yair Furstenberg, "Impurity and Social Demarcation: Resetting Second Temple Halakhic Traditions in New Contexts," *The Thirteenth International Orion Symposium*, 22-24 February 2011. The lecture is available online at http://orion.mscc.huji.ac.il/symposiums/13th/papers/Furstenberg.pdf (recent retrieval: August 13, 2013). For further connections between the Mishnah and the scrolls, see Magness, *Archaeology of Qumran*, 140-2; Eyal Regev, "The Ritual Baths near the Temple Mount and Extra-Purification Before Entering the Temple Courts," *IEJ* 55.2 (2005): 200.

of the text: neither the water nor the proclamation render an immerser pure, but only the performance of the ritual exactly as prescribed yields the legal status of purity for a certain purpose. Another example that demonstrates the rabbinic tendency towards legal formalism are laws concerning thievery which repeatedly seek to secure damages for the rightful owner, but also to render transactions conducted by the thief as valid.[31] In this case, too, the rabbis do not consider themselves able to undo a robbery or to change ownership through their proclamation, but regardless of ontology they reinforce the validity of performed actions according to the law. As a final example for rabbinic formalism I will cite the quotation from Sifrei Deuteronomy 154, "you shall not stray from the law (Torah) they tell you, even if before your very eyes they show you that right is left and left is right."[32] It is not that the rabbis can render left to be right, but that once the decision is reached in an accepted manner, the rule should be followed as valid.

In conclusion of my terminological discussion, I reiterate the significance of the debate stirred by Schwartz for the understanding of Essene law. I suggest to replace his proposed terminology of Nominalism and Realism with "legal formalism" and "legal essentialism," and accept that the latter plays an important role in Essene law. While the scope of rabbinic law, which extends many volumes more than the corpus of Essene law, ensures further contradictions and puzzling examples, a tendency towards legal formalism cannot be denied, regardless of whether it can be traced to reported debates between Sadducees and Pharisees.

Furthermore, in both Essene and rabbinic law, scholars are extracting the theory from the legal system, but the theory was never composed as such. As I stated earlier, a legal system is more than likely to have laws and cases that fail to coincide with one another, or that even seem to undermine some widely-accepted premise of the law. This is to say that a certain degree of disparity between the legislators and the jurisprudents is an anticipated result of a living legal system, and it reflects the political struggles that are also embedded in the work of the legislators themselves. In order to focus on Essene law, I am setting aside the debate regarding the

---

[31] Thus, for example, one who slaughters a stolen lamb does not pay the penalty of a thief, and only compensates the rightful owner for his loss (*m.* Bava Qama 7.1-5; *b.* Bava Qama 62b-67b, with many further scenarios and examples there).

[32] לא תסור מן התורה אשר יגידו לך אפילו מראים בעיניך על ימין שהוא שמאל ועל שמאל שהוא ימין שמע להם. See chapter 4, n. 2.

premises of rabbinic law, and reiterating that despite some examples to the contrary (important in and of themselves), I contend that Essene law does reflect a clear tendency towards legal essentialism. This can be best demonstrated through the rhetoric of law on four points: time, space, hierarchy, and knowledge.

1.3. *Time as a Force in Nature and in Law*

In his book *A Time for Every Purpose: Law and the Balance of Life*,[33] Todd Rakoff shows how time, originally a human construction and conceptualization, can be said to be shaped by human society, through the technology humanity generates on the one hand and the laws it constitutes on the other. This is not to deny the natural phenomena embedded in time: the cycles of day and night, and the seasons – both of which are determined by the rotation and revolution of the earth. These cycles which are predictable and calculable, are an undeniable force of nature. Nevertheless, humanity constitutes its attitude towards these phenomena based on technological advances and societal needs (such as industry, economy, military, and so forth), and regulates its perception of time through law. Thus the widely accepted notion that ideally people should be awake, active, and productive during daytime and at rest or asleep during nighttime originates in ancient times, when human activity was, to a great extent, depended upon and determined by natural light.[34] Yet technological advances have changed this. Electrical lighting has allowed people to work independently of sunrise and moonshine, whereas satellites, telephones, and

---

[33] Todd D. Rakoff, *A Time for Every Purpose. Law and the Balance of Life* (Cambridge: Harvard University Press, 2002). For further relationships between time, work, and leisure, see Mark Elchardus and Wendy Smits, "The Persistence of the Standardized Life Cycle," *Time & Society* 15.2-3 (2006): 303-26; Lonnie Golden, "A Brief History of Long Work Time and the Contemporary Sources of Overwork," *Journal of Business Ethics* 84.2 (2009): 217-27; Jerry A. Jacobs and Kathleen Gerson, *The Time Divide. Work, Family, and Gender Inequality*, The Family and Public Policy 3 (Cambridge: Harvard University Press, 2004), 169-202; Jérôme Pélisse, "From Negotiation to Implementation. A Study of the Reduction of Working Time in France (1998–2000)," *Time & Society* 13.2-3 (2004): 221-44.

[34] On pre-modern nightlife activities, see A. Roger Ekirch, *At Day's Close: Night in Times Past* (New York: Norton, 2005); for discussion in context of the Dead Sea Scrolls, see Jeremy Penner, *Patterns of Daily Prayer in Second Temple Period Judaism* (Leiden: Brill, 2012): 165-208.

the internet have made it possible for people to interact, trade, or report events at any time of day. Faithful to Marshall McLuhan's famous dictum,[35] modern media of communication have thus weakened the firm distinctions of night and day, since it is always daytime somewhere in the world. These technological advances have been addressed and regulated by law, with laws such as overtime pay regulations embracing technology and allowing for the changes it caused.

Such legislations should not be considered obvious; a legal and constitutional debate over the idea of nocturnal labor could have been an equally plausible response to these technological advances. The law constitutes new realities and new conceptions of time based on the capabilities, necessities, and wishes of humanity.[36]

At the opening of his aforementioned book Rakoff describes the shifting perception of time in American society as follows:

> Sunday is more like Monday than it used to be. The Fourth of July is more like the third. Places of business that used to keep daytime "business hours" are now open late into the night. Schools in some communities are open throughout the year. And on the Internet, the hour of the day and the day of the week have become nearly as irrelevant as they are in the casinos of Las Vegas.
>
> It is also true that most Americans still work less on the weekends than during the week. Trips and family gatherings are still scheduled around holidays… The structure of our time is changing and not changing, too.[37]

Put more generally, the 24-hour model that adheres to the rotation of the Earth is still relevant in modernity, but the essence it carries is evolving, if not already changed, for many people in the world. Such a fluid notion of

---

[35] "The Medium is the message," as explained in Marshall McLuhan, *Understanding Media. The Extensions of Man* (New York: Signet, 1964), 23-35.

[36] This aspect of law stands true whether one considers it as a human construct, as legal positivists claim, or not. While the principles of the law are unchangeable, according to proponents of natural law, statutes can be changed to adapt to changing circumstances, and to ensure those principles in face of new realities. See David F. Forte, ed. *Natural Law and Contemporary Public Policy* (Washington, D.C.: Georgetown University Press, 1998), esp. R. George Wright's essay, "Welfare," 280-97.

[37] Rakoff, *A Time for Every Purpose*, 1.

time would be strikingly foreign to a Second Temple Judean.[38] In the ancient world, time was an indisputable given. In a wider context than the Qumran legal texts, time in Second Temple Literature bears theological meanings. It has a beginning and an end, and it is part of a grand plan that God has for the world and that introduces order and sense to the world. This notion accompanies the notion of time in the legal texts, and I now turn to look at specific passages on time in legal texts to address the relation between time and law.

In the first page of the Community Rule (1QS), we find the preamble of the law which describes the purpose of joining the sect as follows:[39]

7b	ולהבי את כול הנדבים לעשות חוקי אל
8	בברית חסד להיחד בעצת אל ולהתהלכ לפניו תמים כול
9	הנגלות למועדי תעודותם ולאהוב כול בני אור איש
10	כגורלו בעצת אל ולשנוא כול בני חושכ איש כאשמתו
11	בנקמת אל וכול הנדבים לאמתו יביאו כול דעתם וכוחם
12	והונם ביחד אל לברר דעתם באמת חוקי אל וכוחם לתכן
13	כתם דרכיו וכול הונם כעצת צדקו ולוא לצעוד בכול אחד
14	מכול דברי אל בקציהם ולוא לקדם עתיהם ולוא להתאחר
15	מכול מועדיהם ולוא לסור מחוקי אמתו ללכת ימין ושמאול

7b and to induct all who volunteer to perform the laws of God
8 into the Covenant of Grace to yahadize[40] in the counsel of God[41], and to walk perfectly before him (according to) all

[38] For a comprehensive view of conceptualizations of time in ancient Judaism, see Sacha Stern, *Time and Process in Ancient Judaism* (Oxford: Littman Library of Jewish Civilization, 2003). See also his "Fictitious Calendars: Early Rabbinic Notions of Time, Astronomy, and Reality," *JQR* 87.1-2 (1996): 103-29 and Marius Nel, "View of Time in Ancient Cultures and the Origin of Apocalypticism in Jewish Thought in the Centuries before Christ," in *Stimulation from Leiden*, ed. Hermann Michael Niemann and Matthias Augustin (Frankfurt am Main: Peter Lang, 2006), 207-17.

[39] 1QS, 1.7b-15. My translation is based on consultation with the translations of *DSSSE* 1:71; Geza Vermes, *The Complete Dead Sea Scrolls in English* (New York: Allen Lane, 1997), 98-99; Michael Wise, Martin Abegg, Jr. and Edward Cook, *The Dead Sea Scrolls. A New Translation* (revised edition; San Francisco: HarperSanFrancisco, 2005), 117; Elisha Qimron and James Charlesworth, "Rule of the Community," in *Rule of the Community and Related Documents*, ed. James H. Charlesworth (Tübingen: Mohr Siebeck, 1994), 6; P. Wernberg-Møller, *The Manual of Discipline* (Leiden: Brill, 1957), 22-23.

9 revealed laws at their appointed times, and to love all the Sons of Light—each
10 according to his lot in the counsel of God, and to hate all the Sons of Darkness each according to his guilt
11 in the vengeance of God. And all those who volunteer to His truth, shall bring all their knowledge, and their strength,
12 and their property into the Community (Yahad) of God in order to refine[42] their knowledge in the truth of the laws of God and to regulate[43] their strength

---

[40] This awkward translation I offer here is intended to stress that the authors who decided to use יחד as a verb in the Niphal were themselves playing on the name of the community, and it should therefore not be translated as merely "uniting" (Wise, Abegg and Cook, *Dead Sea Scrolls*, 130; cf. *DSSSE* 1:71, J. J. Collins, *Beyond the Qumran Community*, 71), "enrolling" (*DSSSE* 1:83), "joined" (Wise, Abegg and Cook, *Dead Sea Scrolls*, 117), "to make common cause" (Wise, Abegg and Cook, *Dead Sea Scrolls*, 124); or coming together. In all three occurrences of this infinitive (1QS 1.8; 5.20; 9.6) it denotes the formation of the community. Thus, García Martínez and Tigchelaar aptly render it in 1QS 9.6 "form a community" (*DSSSE* 1:91). I accept this translation but want to add to it the sense of a verbization of a proper noun, which was surely the way it sounded when read by a member of the Yahad. As Naphtali Meshel noted (personal communication, August 27, 2013), since the shift *w* → *y* does not normally apply in these cases, the form should have been להוחד (see, however, Gn 49.6 and KBL 2:405). The irregular formulation strengthens the suggestion that it is purposeful. Despite some interchanges between *waw* and *yod* in the scrolls, Qimron notes that the word appears with a clear *yod*: see Elisha Qimron, "The Distinction between *waw* and *yod* in Documents from the Judaean Desert," *Beit Mikra* 18 (1973), 108 (in Hebrew). This is true also in the Hodayot (1QH[a] 19.14) where the word was read להוחד, but Qimron has recently reaffirmed its reading with a *yod*. See use Hartmut Stegemann with Eileen Schuller, et al., *1QHodayot[a] with Incorporation of 1QHodayot[b] and 4QHodayot[a-f]* (DJD 40; Oxford: Clarendon, 2009), 245; Qimron, *Dead Sea Scrolls*, 88-89.

[41] Since עצה is used in 1QS both as "counsel," and "Council," it is possible to read it in lines 8 and 10 as the Council of God, i.e. a reference to the community.

[42] The interpretation of לברר is based on its appearance in a similar context of eschatological knowledge in Dan 11:35. See Louis F. Hartman and Alexander A. Di Lella, *The Book of Daniel* (Garden City: Doubleday, 1978), 66, 313; John J. Collins, *Daniel* (Minneapolis: Fortress, 1993), 386; Cf. *DSSSE* 1:71.

[43] The root תכן is quite prevalent in sectarian rhetoric and has been translated in various ways, including "order," "discipline," "plan," "examine," and so forth. I chose "regulate" for all its occurrences in the texts I provide, since it seems to be closest in meaning. Although the English phrase might seem awkward on occasion, I prefer to preserve a single equivalent for the word so that the English reader may recognize its recurring appearance in various contexts and usages. Its semantic field is perhaps best demonstrated in its appearance in Isa 40:13, a verse that also includes the words עצה (Counsel, also used for Council in Qumran, see n. 41 above) and the root ידע (knowledge). On the importance

13 according to the perfection of His ways, and all their property according to his righteous counsel, and in order not to stray from any single one
14 of all the commands of God in their ordained times, neither to advance their scheduled time, nor to delay
15 and of their appointed times,[44] and in order not to turn aside from His true laws (by) walking either (to) the right or (to) the left

The significance of time is emphasized in this text in several ways. First, the mention of time (in lines 9 and 14-15) is enveloped in a segment that begins and ends by demanding the adherence to the laws (lines 7b and 15). The reference to the appointed times in lines 14-15 reflects the apocalyptic views of the sect. However, the admonition to neither advance nor delay these appointed times echoes the calendric polemic of the sect with other sects in Judaism, including the priesthood of the Jerusalem temple.[45]

These two aspects of time illustrate separate fashions for the interrelation of time and law in Essene codes. On the wide-scope level of an eschatological order, time is not to be advanced. The divine plan needs

---

of Isaiah in Qumran, see James C. Vanderkam, *The Dead Sea Scrolls Today* (Grand Rapids: Eerdmans, 2010), 49-50; Lawrence H. Schiffman, *Reclaiming the Dead Sea Scrolls. Their True Meaning for Judaism and Christianity* (New York: Doubleday, 1994), 229; J. J. M. Roberts, "The Importance of Isaiah at Qumran," in *The Bible and the Dead Sea Scrolls*, ed. James H. Charlesworth (N. Richland Hills: BIBAL, 1997), 273-86; K.B. Starkova, "The Ideas of Second and Third Isaiah as Reflected in the Qumran Literature," *Qumran Chronicle* 2.1 (1992): 51-62; Michael A. Knibb, "Isaianic Traditions in the Apocrypha and Pseudepigrapha," in *Writing and Reading the Scroll of Isaiah. Studies of an Interpretive Tradition*, ed. Craig C. Broyles and Craig A. Evans (Leiden: Brill, 1997) 633-50; John J. Collins, "A Herald of Good Tidings: Isaiah 61:1-3 and Its Actualization in the Dead Sea Scrolls," in *The Quest for Context and Meaning. Studies in Biblical Intertextuality in Honor of James A. Sanders*, ed. Craig A. Evans and Shemaryahu Talmon (Leiden: Brill, 1997), 225-40.

[44] The words קץ, עת, and מועד are all nouns denoting appointed times. The translation offered here reflects the synonymous use through the modifying adjectives. See Jacob Licht, "Time and Eschatology in Apocalyptic Literature and in Qumran," *JJS*16.3-4 (1965): 177-82.

[45] On the calendar of Qumran and the polemic surrounding it, see Shemaryahu 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*, ed. Donald W. Parry and Eugene Ulrich (Leiden: Brill, 1999), 379-95; James C. VanderKam, *Calendars in the Dead Sea Scrolls: Measuring Time* (London: Routledge, 1998); Roger T. Beckwith, "The Modern Attempt to Reconcile the Qumran Calendar with the True Solar Year," *RevQ* 7.3 (1970): 379-96; Jonathan Ben-Dov and Stéphane Saulnier, "Qumran Calendars: A Survey of Scholarship 1980—2007," *Currents in Biblical Research* 7.1 (2008): 124-68.

to take its course, and one must not attempt to hasten it. In regards to the annual cycle of the year, there are festivals one must celebrate in their accurate time, and take caution so as not to celebrate them on an erroneous date.[46] These are two different examples in which Essene law dictates time-pertaining regulations. However, unlike contemporary legal systems that conceive time as a human construct, the aforementioned passage reflects a perception of time as an immutable force of nature. The instruction in 1QS to walk in the laws of God according to the times pre-ordained by God parallels the insistence to celebrate festivals based on an astronomic calculation. Both reflect an essentialist view: if the calendar was miscalculated, it is not sufficient to celebrate the festival in good faith, following the decrees of a religious leader. In fact, it is the exact opposite – despite the fact that the mistake might have been made out of good faith and with the full intention of observing the law it is considered a transgression, as the festival was not celebrated on the correct day. Both the dates of the festivals and the course of history are regarded as fixed truths, not human constructions.

These views are shared by the Community Rule and the Damascus Document. The following is stated in the first copy of the Damascus Document from cave 4:[47]

2 [יבוא בם]כי אין [להת]ק[ד]ם ולהתאחר ממועדיהם

3] והו] א חקוק קצ חרון לעם לא ידעהו

4 [והוא הכין מועדי רצון לדור]שי מצוותו ולהלכים בתמים דרך

5 [ויגל עיניהמה בנסתרות וא]זנם פתחו וישמעו עמוקות ויבינו

2 [befalls them]for they can neither [come b]efo[r]e or after their appointed times.

3 [and h]e ordained[48] a period[49] of wrath for a people that knows him not,

---

[46] The polemic concerning the calendar and erroneous calculation of festivals is reported in 1QpHab 11.4-8 and Jub 6:20-38. On the relations between Jubilees and the Essenes see Menahem Kister, "Concerning the History of the Essenes. A Study of the *Animal Apocalypse*, the *Book of Jubilees* and the *Damascus Covenant*," *Tarbiz* 56.1 (1986): 1-18 (in Hebrew); Liora Ravid, "The Book of Jubilees and Its Calendar. A Reexamination," *DSD* 10.3 (2003): 371-94.

[47] 4QD[a] (4Q266) 2, i, 2-5. Translation by Joseph M. Baumgarten

[48] Reading חקק for חקוק, based on 4QD[c] (4Q268), 1.5. See Qimron, *Dead Sea Scrolls*, 6).

4 [and he established times of favor for those that see]k his commandments and for those that walk on the path of integrity
5 [And he uncovered their eyes to hidden things and] they opened their[e]ars and heard profundities, and they understood

As in the Community Rule, here too a warning against changing the appointed times appears. It is considerably more fragmentary, but the surviving words allow us to construe the meaning. Fortunately, another copy of 4QD, although witnessing a slightly different version of the document, has preserved the word **לקדם** (followed by a corrupted **לאחר**).[50] Combined with the inverse survival of these two words in 4QD[a], the similarity of this line to 1QS 1.14-15 is indubitably ascertained.

Regarding the calendar polemic, 4QD relates that a person who profanes the Sabbath unknowingly will not be subject to death (the apodosis is not preserved, and reconstructed based on CD).[51] This statute is pertinent to the issue of knowledge discuss below as well as to the problem of intent addressed in the next chapter, but I mention it here to demonstrate the Essene conceptualization of time as a natural phenomenon. Again, while modern views do not deny the natural phenomena embedded in time and its generation, they also acknowledge the profound element of choice that composes human response to time. For instance, some have suggested that the State of Israel should adopt a five-day work week that will comply with world markets by way of adapting to global trade. Such a suggestion reflects a flexible perception of the designated rest day as a human construct,[52] rather than a divine

---

[49] Qimron reads **קצי**, "periods" (Qimron, *Dead Sea Scrolls*, 6).

[50] 4QD[c] (4Q268), 1.4:]וא֯י֯[לקדם]ו[ל[א]חר ממועדיה֯.

[51] 4QD[f] (4Q271) 5, 1, 19-20.

[52] On the construction of the weekend in modern society, see Rakoff, *A Time for Every Purpose*, 34-55; Michel de Certeau, *The Practice of Everyday Life. Volume 2: Living & Cooking* (trans. Timothy J. Tomasik; Minneapolis: University of Minnesota Press, 1998), 101-114; J. David Lewis and Andrew J. Weigert, "The Structures and Meanings of Social Time," *Social Forces* 60.2 (1981): 432-62; Ann Westenholz, "Identity, Times and Work," *Time & Society* 15.1 (2006): 33-55; Marilyn L. Cantwell and Margaret Meitus Sanik, "Leisure before and after Parenthood," *Social Indicators Research* 30.2-3 (1993): 139-47; Cristina Carrasco and Maribel Mayordomo, "Beyond Employment: Working Time, Living Time," *Time & Society* 14.2-3 (2005): 231-59.

commandment that imbues certain characters into the time-period itself.[53] The view expressed in 4QD^{f} 5, i, 19-20 is quite the opposite: there is only one rest day, ordained by God, and that is the Sabbath. According to this view, it is not sufficient to observe the Sabbath on a day one believes is the Sabbath. If an error was made in calculation, the observance is considered false. Despite some leniency towards the transgressors in this case, who in good faith wanted to observe the Sabbath, the fact remains that the Sabbath, as a cosmic reality, was profaned.

The relation of this warning to an eschatological mindset can be seen more clearly in 4QD, as the "appointed times" are followed by the mention of קץ חרון ("the period of wrath"). The appearance of an eschatological expectation in a primarily legal document is yet another manifestation of the relation between time and law in Essene theology. This eschatological theology enfolds in it the impetus for law-abidance, by simultaneously instilling fear of the fate of the wicked, and offering rewards stored for those who seek God's commandments (דורשי מצוותיו). As in the Community Rule, the proper attitude towards time is decreed by legislation, and the overall legislative document serves the purpose of specific times, both eschatological and cyclical-annual, ordained by God.

I now return to the first passage from the Community Rule quoted above (1QS 1.9-10) in order to address the mention of the Children of Light and Children of Darkness in it. Indeed, this idiom is not peculiar to this passage in the Community Rule and its symbolism carries more than a

[53] This is not the only possible conclusion of the biblical Sabbath laws. For other possible constructions of the meaning of the Sabbath in the Hebrew Bible and ancient Judaism, see Matitiahu Tsevat, "The Basic Meaning of Biblical Sabbath," in his *The Meaning of the Book of Job and Other Biblical Studies. Essays on the Literature and Religion of the Hebrew Bible* (New York: Ktav, 1980), 39-52; Moshe Weinfeld, *The Place of the Law in the Religion of Ancient Israel* (Leiden: Brill, 2004), 119-23; Saul M. Olyan, "Exodus 31:12-17 - the Sabbath According to H, or the Sabbath According to P and H ?" *JBL* 124.2 (2005): 201-209; Alexandra Grund, *Die Entstehung des Sabbats. Seine Bedeutung für Israels Zeitkonzept und Erinnerungskultur* (Tübingen: Mohr Siebeck, 2010); Jeffrey L. Rubenstein, *Talmudic Stories. Narrative Art, Composition and Culture* (Baltimore: Johns Hopkins University Press, 1999), 72-83; Shaye J. D. Cohen, "Sabbath Law and Mishnah Shabbat in Origen *De Principiis*," *JSQ* 17.2 (2010): 160-89. As noted previously, the Book of Jubilees shares the Essene worldview, and thus its approach should be traced to the same origins. Doering considers this option ("That Sabbath is anchored in creation," – p. 200), but suggests further explanations for Jubilees' attitude to the Sabbath. See Lutz Doering, "The Concept of the Sabbath in the Book of Jubilees," in *Studies in the Book of Jubilees*, ed. Matthias Albani, Jörg Frey and Armin Lange (Tübingen: Mohr Siebeck, 1997), 179-205.

relation to time. Yet I wish to argue that this sectarian idiom also reflects a notion of time as a natural phenomenon, and therefore inherently loaded with meaning. The contrast of light and darkness as parallel to the contrast of good and bad immediately evokes two biblical passages. The first is Genesis 1:4 in which God sees that light is good, and separates it from darkness. The following verse reports that God named the light "Day" and the darkness "Night." These two verses, then, link the juxtaposition of light and darkness to two other pairs of juxtapositions: one that is related to time (night and day), and the other that is qualitative by nature (good and bad, whether as an aesthetic or ethic quality). A similar linkage is evident in the proclamation in Isaiah 45:7, where the juxtaposition of light and darkness is paralleled with that of peace and evil.[54] The juxtaposition of light and darkness is a pertinent idiom in the Hebrew Bible,[55] commonly paralleling or symbolizing the juxtaposition of good and bad.[56] For the Essenes this was also an essentialist juxtaposition which linked natural phenomena with knowledge and morality, as reflected in their self-designation as Children of Light.[57] However, these two prominent examples frame these pairs within a concept of time, both in the cosmic sense (linking the inherent good and

---

[54] This parallel is rejected in the New Testament, which stresses the affinity of God to light alone, cf. John 1:1-9, 8:12; Acts 26:18-23; 2 Cor 4:4-6; Eph 5:8-14, 1 John 1:5-7, 2:8-10. Moreover, since in Genesis God allegedly only creates the light and separates it from darkness, Isa 45:7 can be interpreted to contradict Gn 1:4. See Edward Noort, "The Creation of Light in Genesis 1:1-5: Remarks on the Function of Light and Darkness in the Opening Verses of the Hebrew Bible," in *The Creation of Heaven and Earth. Re-Interpretations of* Genesis *I in the Context of Judaism, Ancient Philosophy, Christianity, and Modern Physics*, ed. George H. van Kooten (Leiden: Brill, 2005), 3-20; Mark S. Smith, "Light in Genesis 1:3—Created or Uncreated: A Question of Priestly Mysticism?" in *Birkat Shalom. Studies in the Bible, Ancient near Eastern Literature, and Postbiblical Judaism Presented to Shalom M. Paul on the Occasion of His Seventieth Birthday*, ed. Chaim Cohen et al. (Winona Lake: Eisenbrauns, 2008), 125-34; S. D. Giere, *A New Glimpse of Day One. Intertextuality, History of Interpretation, and Genesis 1.1-5* (Berlin: de Gruyter, 2009), 16-27.

[55] Isa 5:30, 13:10; Ezek 32:8; Am 8:9; Ps 139:11-12; Job 12:25, 17:12, 18:18, 24:16, 29:3, 38:19; Lam 3:2. See Giere, *A New Glimpse of Day One* on all these verses and more. A similar juxtaposition is found in Ecc 11:7, but the goodness of light is immedeatly followed by its transience. See Norbert Lohfink, *Qoheleth* (trans. Sean McEvenue; Minneapolis: Fortress Press, 2003), 134-5; Jennie Barbour, *The Story of Israel in the Book of Qohelet* (Oxford: Oxford University Press, 2012), 44-46.

[56] Isa 5:20, 9:1, 42:16, 59:9; Am 5:18-20; Mi 7:8; Ps 112:4; Ecc 2:13.

[57] See Menahem Kister, "4Q392 1 and the Conception of Light in Qumran 'Dualism'," *Meghillot* 3 (2005): 125-42 (in Hebrew).

bad of light and darkness, respectively, to the time of creation), and in the diurnal sense as reflected in night and day.[58]

The latter juxtaposition is made explicit in column 10 of the Community Rule:[59]

9 {○○} אזמרה בדעת וכול נגינתי לכבוד אל וכנור נבלי לתכון קודשו וחליל שפתי אשא בקו משפטו

10 עם מבוא יום ולילה אבואה בברית אל ועם מוצא ערב ובוקר אמר חוקיו ובהיותם אשים

11a גבולי לבלתי שוב ומשפטו אוכיח כנעוותי ופשעי לנגד עיני כחוק חרות

9 {○○}[60] I shall sing with knowledge, and all my music is for the glory of God. The lyre of my harp[61] for the regulation of His holiness, and the flute of my lips I shall play in tune with His judgment.

10 As the day and night enter, I shall enter into the covenant of God, and as evening and morning depart, I shall recite His laws. And by their existence I will set

11a my boundary without backsliding. (By) His judgment I will reprove according to my iniquities, and my transgressions are before my eyes as an engraved law.

Day and night are employed here as a merismus conveying that the speaker is constantly addressing God and cherishing him in his thoughts.

---

[58] The juxtaposition of light and darkness as symbols of good and evil are repeated in several places in the Community Rule, as well as other Qumran texts. Here I wanted to argue that this common juxtaposition also bears with it a sense of time, symbolizing night and day and hearkening to the moment of creation.

[59] 1QS 10.9-11.

[60] Unidentified characters are scraped for erasure, measuring approximately the space of two characters.

[61] The obscure phrase is apparently due to some corruption. Vermes (*Complete Dead Sea Scrolls*, 112) supplies a possessive pronoun for both instruments, i.e. "(My) lyre (and) my harp," while García Martínez and Tigchelaar translate "the playing of my harp," thus rendering **כנור** as an unattested gerund (*DSSSE* 1:95). 4QS^{f} 3.1 preserves remnants of letters which have been reconstructed as **אכה נבלי** ("I will strike my lyre"), but the evidence is insufficient to call for a definite emendation. The following phrase **וחליל שפתי** ("the flute of my lips") may suggest another organ was mentioned allegorically, such as **לבי** instead of **נבלי**, which would then read as "the harp of my heart." If this is correct, a copyist mistake would occur because of the similarity of the letters and the common pairing of **כנור** and **נבל** (cf. 1 Sam 6:5; 1 Ki 10:12; Isa 5:12; Ps 33:2, 57:9, 71:22, 81:3, 92:4, 108:3, 150:3; Neh 12:27; 1 Chr 15:16).

Interestingly, despite the musical terms that precede this usage, the terminology associated with "day" and "night" is not liturgical (addressing, praise, glory, supplication, etc.), but rather legal, viz. covenant (**ברית**), judgment (**משפט**) and law (**חוק**).

The juxtaposition of day and night as presented here does not reflect, therefore, the extremities of good and evil, but the encompassing coordinates of the day, as a way to describe constant devotion. In the context in which they appear, these terms depart from another point made previously in the text. In the preceding lines of the same column (1QS 10.1-8) God is described as governing time and ordaining specific cycles as the months, the agricultural seasons, and the Jubilees. In contrast to these specific times ordained by God, in 1QS 10.9-11 day and night are employed to describe continuity, rather than the specificity of their occurrence. This can be seen by contrasting their mention in these lines with the opening lines of the column:[62]

1	עם קצים אשר חקקא ברשית ממשלת אור עם תקופתו ובהאספו על מעון חוקו ברשית
2	אשמורי חושכ כיא יפתח אוצרו וישתהו עלת ובתקופתו עם האספו מפני אור באופיע
3	מאורות מזבול קודש עם האספם למעון כבוד במבוא מועדים לימי חודש יחד תקופתם עם
4a	מסרותם זה לזה בהתחדשם יום גדול לקודש קודשים

1 (In accord) with the times which He has decreed: at the beginning of the dominion of light, during its circuit, and when it withdraws itself to its assigned dwelling at the beginning of
2 the watches of darkness, when He unlocks His storehouse and places it above, and with its circuit, when it withdraws before the light,
3 when luminaries shine forth from the realm of holiness, when they withdraw themselves to the dwelling of glory, at the entrance of the appointed times, on the days of the new moon, together with their circuit,
4a and their transmitting one to the other – when they are renewed (it is) a great day for the holy of holies

The text then proceeds to describe that just as God has ordained the days, the cycle continues and expands to months, seasons, years and Jubilees. When contrasting lines 1-4 of column 10 with lines 9-11, the difference between the employment of night and day as specific times

[62] 1QS 10.1-4.

ordained by God (10.1-4) or as two ends which together include not only the entirety but also the continuity of this entirety (10.9-11) is quite discernible. Lines 1-4, however, do not mention "day" and "night" but their idiomatic counterparts "light" and "darkness" (clearly, with reference to Gn 1:4),[63] strengthening the argument that the epithets "Children of Light" and "Children of Darkness" (1QS 1.9-10 and elsewhere) bear also a temporal sense of day and night, although this is not the sole, or even primary, meaning of these terms.

Whether "day" and "night" stand as a merismus or as specific points of time, these terms are understood in Essene texts as ordained and governed by God, and as such are not merely a natural phenomenon but one that is willfully regulated. Furthermore, once regulated, this phenomenon constitutes and requires certain human responses, rituals, and behaviors. Nowhere in these texts is it suggested that time can be dominated by humans or structured as a human construct. This view of nature and its relation to law dominates every aspect of Essene law.

1.4. *The Constructions and Restrictions of Space*

The factor of space is not as prominent as the factor of time in the theology and legal philosophy reflected in Essene law. In addition to its diminished prevalence compared to time, space is often conceived as a human construct. This does not mean that the Essenes view time and space as complete opposites. However, unlike the Essene concept of time, space

---

[63] As before, the reference to Gn 1:4 also evokes Isa 45, especially with the use of אוצר in line 2, translated here as storehouse, and appearing also in Isa 45:3 (cf. Deut 28:12; Jer 10:13=51:16; Ps 135:7). Jonathan Ben-Dov traces a Second Temple notion of a heavenly storehouse for light, that was also the original text and meaning of Jer 10:13, and is reflected in 4 Ezra 6:40; 1QPs^{a} 26:14-16 ("Hymn to the Creator"). He agrees with Stone that other natural phenomena were imagined as maintained in storehouses, as can be seen here with "darkness." See Jonathan Ben-Dov, "Treasures of Light," in *On the Border Line. Textual Meets Literary Criticism. Proceedings of a Conference in Honor of Alexander Rofé on the Occasion of His Seventieth Birthday*, ed. Zipora Talshir and Dalia Amara (Beer-Sheva: Ben-Gurion University of the Negev Press, 2005), 155-62 (in Hebrew); idem, "Exegetical Notes on Cosmology in the Parables of Enoch," in *Enoch and the Messiah Son of Man. Revisiting the Book of Parables*, ed. Gabriele Boccaccini (Grand Rapids: Eerdmans, 2007), 143-50; Michael E. Stone, *Fourth Ezra* (Minneapolis: Fortress Press, 1990), 139.

is not regarded as an entirely unchangeable natural phenomenon with a specific essence attached to it.

Indeed, in some cases it is still possible to trace a conceptualization of space that parallels the essentialist view of time of the Essenes. In other words, a rhetoric referring to space in order to convey a sense of essentialist ethical traits, in the way that the "appointed times" have been ordained for the wicked and the righteous. The following example is taken from the Damascus Document:[64]

3 [ביום ההוא יפק]וֹד אל את כול מעשיה להבי כל[מה]
4 בת[ועי רוח ולהשיב גמול]למסיגי גבול וכלה יעשה [בעדת]
5a רשעה

3 [On that day] God [will vis]it[65] all her works, to bring sha[me]
4 upon [the errant in spirit and to requite recompense] to those who move boundaries, and he will wreak ruin [in the community of]
5a wickedness.

Even through the corrupted text there is a parallelism that seems to stand out between **מסיגי גבול** ("those who move boundaries") and the X-**רשעה** (something of wickedness, perhaps "community"). Baumgarten explains his reconstruction of **פועלי רשעה** ("those who work wickedness") based on the parallel with **מסיגי גבול** (those who move boundaries),[66] but Qimron rejects this, presumably based on the remaining space for characters.[67] The Hodayot include both the phrases **פועלי רשע** ("those who work wickedness") and **גבול רשעה** ("boundary of wickedness"), reflecting a shared Essene rhetoric between these two documents.[68]

---

[64] 4QD[a] (4Q266) 1a-b, 3-5.

[65] **יפקוד.** The root **פקד** is difficult to translate, but is best rendered as "visit" in the biblical sense of examining and rewarding a person or group for their deeds.

[66] J. M. Baumgarten, *DJD 18*, 32.

[67] Qimron, *Dead Sea Scrolls*, 5.

[68] For **פועלי רשע** ("workers of wickedness), see 1QH[a] 6.14. For **גבול רשעה** ("boundary of wickedness") see 1QH[a] 10.8, 11.24 (contrast with "boundary of [right]eous" in 1QH[a] 15.14). See Jonas C. Greenfield, "The Root *GBL* in Mishnaic Hebrew and in the Hymnic Literature from Qumran," *RevQ* 2.2 (1960): 155-62. The phrase "boundary of wickedness" in the Hodayot seems to be borrowed from Mal 1:4. See Jacob Licht, *The Thanksgiving*

The connection between righteousness and space, presented in the phrase in 4QD[a] through a parallel between moving boundaries and wickedness, seems to have been taken one step further in the Hodayot, where the community is morally arranged according to physical/spatial boundaries, with a distinction between **גבול רשעה** (boundary of wickedness) and **גבול צדיקים** (boundary of the righteous), although the latter phrase itself is only reconstructed. Such a division of humans to their allotted boundaries of Good and Evil is essentially analogous to their division into categories of Light and Darkness. The idiosyncrasy of this Hodayot phrase is that it frames this dichotomy using idioms of space. This might suggest that an essentialist conceptualization of space as imbued with inherent meaning and ethical values was part of the sectarian worldview. Yet as stated in the beginning this is not the case in the majority of the sectarian texts. Even when such an understanding is presented, its clearest manifestation is in the poetic work of the Hodayot. While the Hodayot seem to draw here on a concept that is paralleled in the Damascus Document (and the relations between the Hodayot and the legal texts of 1QS and 4QD are manifold)[69], this does not seem to be a concept that was actually embedded in any of the remaining legal texts of Qumran.

When terminology of space or place is used in the legal texts of Qumran, it tends to reflect a space that is constituted by human actions. Consider, for example, the following passage from the Community Rule:[70]

3b **ובכול מקום אשר יהיה שם עשרה אנשים מעצת החיד אל ימש מאתם איש**
4a **כוהן ואיש כתכונו ישבו לפניו וכן ישאלו לעצתם לכול דבר**

Scroll. A Scroll from the Wilderness of Judaea (Jerusalem: Bialik Institute, 1957; in Hebrew), 66, 85; Svend Holm-Nielsen, *Hodayot. Psalms from Qumran* (Aarhus: Universitetsforlaget, 1960), 310-315. Note that Mal 3:15 also includes the phrase **עשי רשעה** ("doers of wickedness").

[69] For conceptual relations between the Hodayot poetry and the Community Rule see Carol A. Newsom, *The Self as Symbolic Space. Constructing Identity and Community at Qumran* (Leiden: Brill, 2004). See also A. I. Baumgarten, *Flourishing of Jewish Sects*, 60-62; George W. E. Nickelsburg, "Polarized Self-Identification in the Qumran Texts," in *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, ed. Florentino García Martínez and Mladen Popović (Leiden: Brill, 2007), 23-31; Denise Dombrowski Hopkins, "The Qumran Community and 1QHodayot: A Reassessment," *RevQ* 10.3 (1981): 323-64.

[70] 1QS 6.3-4. Compare the similar requirement for someone to engage in the study of Torah, 1QS 6.6-7.

3b And in every place where there are ten men of the Council of the Yahad, there must not be lacking among them a man (who is)
4a a priest. And each member according to his regulation shall sit before him, and thus they shall ask[71] for their counsel concerning every matter.

Two notions of space are interacting with each other in this brief passage. The first is the actual physical space of gathering. This space is unspecified and, as far as the text is concerned, unlimited and undefined. In other words, any happenstance space in which a gathering of ten people of the Yahad will take place is subject to this statute (as understood from the opening words **ובכול מקום** – "wherever"). The second notion of space explicit in this text is constituted by the actual gathering of ten members. By the mere act of assembling, a new space is constituted, one that is constrained and limited by requirements and defined in boundaries that are neither geographical nor physical. This distinction between two types of spaces – and especially their reciprocal interaction – correlates to the distinction proposed by Henri Lefebvre in his work *La production de l'espace*.[72]

---

[71] Common translations (Wise, Abegg and Cook, *Dead Sea Scrolls*, 124; *DSSSE* 1:83; Vermes, *Complete Dead Sea Scrolls*, 105; Wernberg-Møller, *Manual of Discipline*, 30), translate here in the passive ("they shall be asked;" or "their opinions will be sought"). It is unclear whether the translators are rendering the Hebrew verb in the passive, but the subject is understood to be the happenstance gathering of ten. Thus, the order of seating is understood to regulate also the order of questioning. However, since the section concerns the superiority of priests in the sect, the verb should be read in the active, referring to the happenstance gathering of the ten, and anticipating the priest as the direct object. The law would then be mandating that priests are not intended to be merely present, but also to be consulted on every matter. This reading assumes some confusion in number, as the following word, **לעצתם** ("their counsel"), should have been rendered in the singular. Possible solutions are to read the plural as referring to all the priests to whom this applies, or that the plural subject are asking for the benefit of their Council (and therefore in the plural), rather than for his/their counsel.

[72] Henri Lefebvre, *La production de l'espace* (Paris: Anthropos, 1974; 3ème ed., 1986). See English translation: idem, *The Production of Space* (trans. Donald Nicholson-Smith; Oxford: Blackwell, 1991). For this reference and its relevance to Qumran studies I am indebted to Liv Ingeborg Lied, "Approaching Heavenly Promised Lands. Jewish, Eschatological Geography from Edward W. Soja's Thirdspace Perspective." This paper was originally stored online on www.hf.uib.no/i/ikrr/proak/Lied%20Approaching.pdf (retrieved on July 20, 2006) but is no longer available. A revised version (but with less emphasis on Lefebvre) appears in Lied's book, *The Other Lands of Israel. Imaginations of the Land in 2 Baruch* (JSJS 129; Leiden: Brill, 2008), 13-20. On implications of spatial theory for Qumran research, see also

Lefebvre delineates a triad (*triplicitê*) of perceived space (*espace perçu*), conceived space (*espace conçu*), and lived space (*espace vécu*).[73] The difference between perceived and conceived space is that perceived space is the space that is actually experienced by the senses, or, as Lefebvre denotes it, "spatial practice." Conceived space, on the other hand, is the imagined space, the one represented by art and envisaged by architects. Finally, the lived space, also named the "Spaces of Representation" (*espaces de la representation*),[74] is the result of the unavoidable conjuncture of the two former categories.[75]

The significance of Lefebvre's theory to the present discussion lies in the path it opens to name and nuance the medial attitude to space in Essene law that is neither a strict essentialist, nor a formalist one. This third alternative responds to the problems involved in the attempt to extract views on space from the legal texts of the Scrolls in a way that did not arise in regard to the conceptualization of time, since time was construed in a single essentialist fashion, as discussed above.

One of the widespread terms denoting place in Essene legal texts is **גבול** (boundary), mentioned already in the first example from 4QD[a]. It indeed appears mainly in 4QD fragments, and usually with the root **נסג** (translated commonly as "moving boundaries"). It is also used to describe setting a

---

Liv Ingeborg Lied, "Another Look at the Land of Damascus: The Spaces of the *Damascus Document* in the Light of Edward W. Soja's Thirdspace Approach," in *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, ed. John G. Campbell, William John Lyons and Lloyd K. Pietersen (London: T & T Clark, 2005), 101-25.

[73] Lefebvre, *Production of Space*, 38-41 (cf. Lefebvre, *La production de l'espace*, 48-51).

[74] Following the format of the previous titles, Nicholson-Smith translated this term as "represented space," but see criticism by Rob Shields, *Lefebvre, Love & Struggle. Spatial Dialectics* (London: Routledge, 1999), 162-66.

[75] Although this may raise some confusion as to the differences between the first category (*espace perçu*) and the last one (*espace vécu*), such ambiguity was significant for Lefebvre, who emphasizes, not entirely free of neither theological nor Hegelian undertones: "A triad: that is, three elements and not two. Relations with two elements boil down to oppositions, contrasts or antagonisms. They are defined by significant effects: echoes, repercussions, mirror effects. Philosophy has found it very difficult to get beyond such dualisms…" (39, cf. p. 49 in original French edition). For critique of Lefebvre and his followers see Tim Unwin, "A Waste of Space? Towards a Critique of the Social Production of Space," *Transactions of the Institute of British Geographers* 25.1 (2000): 11-29. See also the following anthology of space theory: Jörg Dünne und Stephan Günzel, eds. *Raumtheorie. Grundlagentexte aus Philosophie und Kulturwissenschaften* (Frankfurt am Main: Suhrkamp, 2006).

boundary of conduct, as in the following two examples from 1QS, column 10:

10 עם מבוא יום ולילה אבואה בברית אל ועם מוצא ערב ובוקר אמר חוקיו ובהיותם אשים
11a גבולי לבלתי שוב ומשפטו אוכיח כנעוותי ופשעי לנגד עיני כחוק חרות

10 As the day and night enter, I shall enter into the covenant of God, and as evening and morning depart, I shall recite His laws. And by their existence I will set
11a my boundary without backsliding. (By) His judgment I will reprove according to my iniquities, and my transgressions are before my eyes as an engraved law.

24b בעצת תושיה אס{תְ}ר דעת
25a ובערמת דעת אשוכ בְּעִוְּתָה גבול סמוכ לשמור אמנים ומשפט עוז לצדקת אל

24b with the counsel of salvation, I will conceal knowledge,
25a and with prudent knowledge I will hedge it[76] with a firm boundary, keeping faithfulness and strong judgment of God's righteousness.

In both of these stanzas the boundary is set by the speaker as a means to follow the laws of God. That is to say, space is construed here idiomatically as a suitable description of the law that imposes limits on human conduct. Again, unlike time, these limits are not construed as inherent in nature, but could be equally understood by formalists to be human constructions, that should nevertheless be maintained, not because of their essence, but for the preservation of the order they constitute. To be precise, there is no evidence that these limits are construed in a legal essentialist framework.

This language is the mirror of the phrase **נסג + גבול**. The phrase appears twice in Deuteronomy as a law against changing the original

[76] The verb **שך** is not common in biblical Hebrew. Its appearance in the context of knowledge concealment evokes its use in Ex 33:22, while its use together with the preposition **בעד** is reminiscent of Job 1:10. Both uses reaffirm the benevolence of God embedded in the establishment of boundaries (cf. also Isa 5:5 and Ho 2:8).

divisions of the land,[77] once as an allegory in Hosea[78], and twice more in Proverbs where it most probably should be understood as practical advice, characteristic of wisdom literature.[79] The reliance on the Deuteronomic prohibition for the phrase is clearly seen in 4QD[a] 2, i, 19-20:[80]

19b	ו]להסיע גבול
20a	אשר גבלו רישו]נים בנחלתם

19b and] moving the border
20a marked out by the first on[es in their inheritance

The allegorical sense that has been added to this phrase, however, is most apparent in the following stanza from 4QD[b] 2.4-7:[81]

4	[ובקץ חרבן]ה֯א[רץ עמדו] מסיגי [ג]בול ויתעו את ישׂ[ראל]
5	[ותישם ה]א֯[ר]צ כי דברו עצה סרה על מצוות אל בו[י]ד
6	[משׁ]ה *vacat* וגם במשיחי הקודש ונ֯נבאו שקר לה[ש]יב את
7a	[ישר]אל מאחרי אל

[77] Deut 19:14, 27:17. See Jeffrey H. Tigay, *Deuteronomy* (Philadelphia: Jewish Publication Society, 1996), 183, 454; Elizabeth Bellefontaine, "The Curses of Deuteronomy 27: Their Relationships to the Prohibitives," in *A Song of Power and the Power of Song. Essays on the Book of Deuteronomy*, ed. Duane L .Christensen (Winona Lake: Eisenbrauns, 1993), 256-68.

[78] Hosea 5:10. See Hans Walter Wolff, *Hosea* (trans. Gary Stansell; Philadelphia: Fortress Press, 1974), 104-114. Andersen and Freedman, however, do not construe it as a simile, and together with Gordis consider the כ to be assertive. See Francis I. Andersen and David Noel Freedman. *Hosea* (Garden City: Doubleday, 1980), 399-408; Robert Gordis, "The Assertive *Kaph* in Ugaritic and Hebrew," *JAOS* 63.2 (1943): 176-178. For a more recent discussion see Ehud Ben-Zvi, *Hosea* (Grand Rapids: Eerdmans, 2005), 140-141. A CD manuscript preserves a quote of this verse in the Document itself. See Qimron, *Dead Sea Scrolls*, 16-17; Hempel, *Laws of the Damascus Document*, 182.

[79] Pr 22:28, 23:10. On the relation of these verses to the equivalent phraseology in Deuteronomy, see Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Oxford University Press, 1972), 260-74. For a rabbinic interpretation of Pr 22:28 see Naomi G. Cohen, "'Al Taseg Gevul Olim' (Peah 5:6, 7:3)," *HUCA* 56 (1985): 145-66.

[80] 4QD[a] (4Q266) 2, I, 19-20. Reconstructing רישונים בנחלתם (first ones in their inheritance) based on CD I, 16, creates a sequence of six words that is parallel to Deut 19:14 (allowing for the substitution of נסג with נסע). See also Hempel, *Laws of the Damascus Document*, 182.

[81] 4QD[b] (4Q267) 2.4-7. The passage is also preserved in 4QD[a] (4Q266) 3, ii, 7-9, but is less fragmentary in the version provided above.

4 [And at the time of the destruction]of the l[and], trespassers [arose] and led Is[rael] astray
5 [and the l]and [became desolate,] for they spoke defiantly against the commandments of God (given) thro[ug]h
6 [Mose]s, *vacat* and also against the anointed holy ones. And they prophesied falsely so as to cause [Isra]el to turn
7a away from God.

Those who push back the boundaries (here translated simply as "trespassers"), are equated in this passage with those who spoke against the commandments and against the holy anointed ones, and prophesied falsely. The boundary, then, that is being pushed back is very similar to, if not one and the same as, the boundary which the speaker prescribed for himself in 1QS 10.10-11.

The final aspect of space as it refers to law is the sanctification of space. As in the statute from 1QS 6.3-4 (and 6.6-7), discussed above in light of Lefebvre, the spaces that are allotted to be sanctified do not seem to be specified, but can be arbitrary (prior to their sanctification)[82]. This is the opposite of the argument made for the Essene perception of time. To be sure, there is the special case of Jerusalem and the Holy of Holies, which have been chosen, or ordained by God (just as the times of the year have been ordained by Him). This is a theme mentioned several times in the Hebrew Bible, most notably in Deuteronomy,[83] which has influenced some

[82] The arbitrariness of the sacred is, of course, a common idea in analyses of sacredness. See, for example, Émile Durkheim, *The Elementary Forms of Religious Life* (trans. Karen E. Fields; New York: Free Press, 1995), 33-39, 412-417; Rudolf Otto, *The Idea of the Holy. An Inquiry into the Non-Rational Factor in the Idea of the Divine and Its Relation to the Rational* (translated by John W. Harvey; London: Milford, 1923), 12-68; Mircea Eliade, *The Sacred and the Profane. The Nature of Religion* (translated by Willard R. Trask; New York: Harcourt, 1959), 8-65. For a contemporary analysis of sanctification of space with special consideration of cultural elements, see Martyn Smith, *Religion, Culture, and Sacred Space* (New York: Palgrave Macmillan, 2008), 1-37.

[83] Most notably chapters 12 and 14 in Deuteronomy. For a discussion of these sources and more widely the name theology, see Tryggve N. D. Mettinger, *The Dethronement of Sabaoth. Studies in the Shem and Kabod Theologies* (Trans. Fredrick H. Cryer; Coniectanea Biblica. Old Testament Series 18; Lund, Sweden: CWK Gleerup, 1982); Sandra L. Richter, "The Place of the Name in Deuteronomy," *VT* 57.3 (2007): 342-66; William M. Schniedewind, "The Evolution of Name Theology," in *The Chronicler as Theologian. Essays in Honor of Ralph W. Klein*, ed. M. Patrick Graham, Steven L. McKenzie and Gary N. Knoppers (London: T&T Clark, 2003), 228-39; John van Seters, "The Formula *haššakken šəmô šam* and the

writings found in Qumran.[84] However, the theology of the place in Essene texts is not as strong as one might expect. One possible explanation to this is the sect's withdrawal from the Temple in Jerusalem that may have contributed to a shift in conceptualization of space as holy. Once the space chosen by God is no longer the center of religious activity, other places need to be sanctified or rendered impure to receive sanctity arbitrarily, or based on the people present in them. Consider for example the law of avoiding gentile dwellings on the Sabbath:[85]

9b אל ישבות איש במקום קרוב לגוים בשבת

9b Let no man rest in a place near to gentiles on the Sabbath.

As with the quorum of ten which requires a priest and one studying the Torah on duty, so here the place where the gentiles might be present can be anywhere. In itself, there is nothing prohibited within the specific place, or at least there is no indication of such a view.

Conversely, the Temple Scroll[86] decrees several places that need to be set apart, such as a separate place for the sin offerings and guilt offerings, (11QT[a] 16.12, 35.10) and a separate place for the stoves to boil the sacrifices (37.13-14). In addition, separate places for impurities must be established outside the holy city: for feces (46.13-16), for lepers and other impure persons (46.16-18, 48.14-17), for menstruating women (48.16-17), and for the burial of the dead (48.11-14). In none of these examples is there any indication that the allotted place (whether for the impurities or for the sacrifices) must be a place that is inherently impure or holy. The only

---

Centralization of Worship in Deuteronomy and DH," *Journal of Northwest Semitic Languages* 30.2 (2004): 1-18; Weinfeld, *Deuteronomy and the Deuteronomic School*, 191-209.

[84] For the election of place in the Scrolls, see 4QapocrMoses[a] (4Q375) 1, I, 8; 4QMMT[a] (4Q394) 8, iv, 10-11; 11QT[a] (11Q19) 53.9, 56.5, 60.13. For discussion see Reinhard Gregor Kratz, "'The Place Which He Has Chosen'. The Identification of the Cult Place of Deut. 12 and Lev. 17 in 4QMMT," *Meghillot* 5-6 (2007): *57-*80; Hannan Birenboim, "'The Place Which the Lord Shall Choose,' the 'Temple City,' and the 'Camp' in 11QT[a]," *RevQ* 23.3 (2008): 357-69.

[85] 4QD[f] (4Q271), 5, i, 9.

[86] As noted in the introduction, the Temple Scroll is not sectarian and not analyzed as Essene for the purpose of this study. It shares some of the Essene worldviews based on its priestly provenance. I will discuss this some more in chapter 5, when I compare the laws of premarital sex in the Damascus Document and the Temple Scroll.

requirement regarding the places allotted for impurities is their distance from holiness.

The joint analysis of all these references to space through the prism of legal theory leads to a few significant interim conclusions. While the essentialist view of the Essenes perceives the law as closely tied to natural phenomena, and nature as interacting with the law (since the creator of nature is also the source of law), it does not imply a dogmatic rejection of any legal formalism.[87] Moreover, if the element is the in two separate cases (such as two different places), the arbitrariness of the decision to render one pure and the other impure is recognized, enacting a legal formalist mode of operation which then becomes decisive. This relates precisely to the difference between a legal theory and a legal system emphasized earlier: despite the distinct views, as formulated in this debate, the legal system manifests a coexistence of the two, based on circumstances and needs.

Finally, the considerably smaller degree of space rhetoric (such as the **גבול**, "boundary," cases) in proportion to time rhetoric corresponds well to the suggestion that unlike time, space was not viewed in Essene law as an essentialist phenomenon.

1.5. *Hierarchy and Genealogy: Essentialism and Descent*

As a segue from the discussion of space to that of hierarchy, I turn to a mention of space that regulates the order of the Yahad in the annual ritual, thus touching on both place and social order:[88]

19 ככה יעשו שנה בשנה כול יומי ממשלת בליעל הכוהנים יעבורו *vacat*
20 ברשונה בסרכ לפי רוחותם זה אחר זה והלויים יעבורו אחריהם

[87] When discussing the views of Natural Law and Legal Positivism, Kelsen speaks of a "fundamental dualism." However, following the argument that a legal system is not as pure as the legal theory informing it, such instances of a basically essentialist legal system (that on less crucial matters applies what might be viewed as legal formalism) do not weaken the fundamental essentialist stance of the system. On the contrary, they are necessary accommodation for the system to continue functioning. On this dualism of legal systems, see Hans Kelsen, *General Theory of Law and State* (trans. Anders Wedberg; Clark: Lawbook Exchange, 2007), 3-14, and also Raz's discussion of Kelsen's critique: Raz, *Authority of Law*, 122-45.

[88] 1QS 2.19-25.

21 וכול העם יעבורו בשלישית בסרכ זה אחר זה לאלפים ומאות
22 וחמשים ועשרות לדעת כול איש ישראל איש בית מעמדו ביחד אל
23 לעצת עולמים ולוא ישפל איש מבית מעמדו ולוא ירום ממקום גורלו
24 כיא הכול יהיו ביחד אמת וענות טוב ואהבת חסד ומחשבת צדק
25a איש לרעהו בעצת קודש ובני סוד עולמים

19 *vacat* Thus they shall do year after year, all the days of the reign of Belial. The priests shall cross over
20 first into the order, according to their spirits, one after the other. Then the Levites shall cross over after them,
21 then all the people shall cross over thirdly into the order, one after the other, by thousands, hundreds,
22 fifties, and tens, so that every single Israelite may know his standing place in the Yahad of God
23 for an eternal council. And no one shall either be lower from his standing place, or rise higher than the place of his lot.
24 For they shall all be in the Yahad of Truth, with virtuous humility, and with love of piety, and righteous intention.
25a [towa]rds one another in holy council, and members of an eternal assembly.

Carol Newsom has stressed the performative role space plays in underscoring hierarchy in the sect as well as its organizational power. Following Christiansen, she notes that the ritual described includes "metaphorical terms that employ the imagery of spatial movement across a marked boundary or threshold to describe a change in status."[89] In her discussion of the phrase **מקום גורלו** ("foreordained rank"),[90] Newsom offers a Foucauldian reading that understands these arrangements as instruments of discipline, though not in a limited sense of rewards and punishments: "[o]ne sees simply by looking, what is better, what is worse."[91] Nevertheless, even in its widest sense, a phrase such as "instruments of discipline" still sustains the notion that these Essene practices of hierarchy are pre-meditated purposeful rituals introduced for the sake of maintaining power. With no inclination to deny the existence of power politics in any

[89] Newsom, *Self as Symbolic Space*, 118. Cf. Christiansen, *Covenant in Judaism & Paul*, 104-144.
[90] 1QS 2.23, as well as related passages, such as 1QS 5.23-24, 6.8-13.
[91] Newsom, *Self as Symbolic Space*, 140. Cf. Michel Foucault, *Discipline and Punish. The Birth of the Prison* (trans. Alan Sheridan; New York: Vintage Books, 1995), 141-94.

hierarchical system, nor the likelihood that such elements were at play in the formation of Essene legal and disciplinary systems, I would nevertheless argue that such analysis (a worthwhile effort of itself) is a step further than the one I am venturing to make towards a study of Essene law through legal theory. In other words, an analysis of the means by which power is constituted and preserved through law, which is common in Foucauldian and Marxist political scrutiny, seeks to unveil the hidden interests that mold the law in a given society. As such, these readings tend to dismiss the legal theory that establishes the system, the one that people believe and follow in good faith. The two modes of interpretation, power-politics and legal theory, need not be irreconcilable. In fact, they are distinct components joined together in the same productive process. For this reason, while I fully embrace Newsom's analysis, I wish to hold back from it at this point, as I think the pre-meditated direction and power-politics focus it points to, might prove less useful for the extraction of legal theory from these texts.

The phrase מקום גורלו ("foreordained rank") in 1QS 2.23 primarily reflects the notion that these hierarchies are foreordained.[92] Just as the appointed times, all natural phenomena, as well as the laws, are elements that have essentialist characteristics which God instilled in them. That is to say, the hierarchical division into Priests, Levites, and Laity[93] is one that is grounded in scripture but more importantly is seen as the true reflection of nature. Just as God has allotted humans to be Children of Light and Children of Darkness, He has ordained some to be Priests, and others to be

---

[92] For the relevance of hierarchy in everyday life of the Yahad, see also Himmelfarb, *Kingdom of Priests*, 124-8; Nathan Jastram, "Hierarchy at Qumran," in *Legal Texts and Legal Issues. Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, ed. Moshe J. Bernstein, Florentino García Martínez and John Kampen (Leiden: Brill, 1997), 349-76; Sarianna Metso, "Problems in Reconstructing the Organizational Chart of the Essenes," *DSD* 16.3 (2009): 388-415.

[93] This division appears several times in the text. See 1QS 1.16-24, 2.1-10, 2.11-18. A more elaborate version appears in the Damascus Document, 4QD^{b} (4Q267) 9, v, 6-14 (=4Q268 2). For other divisions, see 1QS 5.2, 5.9-10, 6.8-9; 1QM (1Q33) 2.1-5, 13.1; 4QM^{a} (4Q491) 1-3, 7. For further analysis see Himmelfarb, *Kingdom of Priests*, 85-142; George J. Brooke, "Levi and the Levites in the Dead Sea Scrolls and the New Testament," in *Mogilany 1989 - Papers on the Dead Sea Scrolls*, ed. Zdzislaw J. Kapera (Kraków: Enigma Press, 1993), 105-29; Robert A. Kugler, "The Priesthood at Qumran: The Evidence of References to Levi and the Levites," in *The Provo International Conference on the Dead Sea Scrolls*, ed. Donald W. Parry and Eugene Ulrich (Leiden: Brill, 1999), 465-79; Robert C. Stallman, "Levi and the Levites in the Dead Sea Scrolls," *JSP* 10 (1992): 163-89.

Laity. The fact that even among the Priests a specific dynasty of priests is specified (the Zadokites), further attests to the strong essentialist relation between genealogy and the law.

That the Community Rule prescribes a process of admission, as well as a penal code that banishes members, should not be misconstrued to reflect an element of choice or voluntarism.[94] Neither the individual requesting to join nor the sect approving his admission consider themselves to have a free-will choice on the matter. This is clear from the repeated rhetoric of ordination and fate. The rules for admission, rather, are the process by which the sect facilitates what has already been ordained by God.[95] There is no documentation of cases reflecting acknowledgment of mistaken decisions – e.g., an admission of a Child of Darkness who tries to join the sect (either by malicious intent or erroneously) or a banishment of a member not according to his destiny. The warning against novices entering the covenant insincerely,[96] or cases of expulsions reversed, reported by Josephus,[97] indicate the Essenes were aware of such possibilities. We can only speculate that any attempt to justify such errors would strive to reconcile the unchanging dichotomy with the changing realities of members joining and leaving the group, while not challenging the determinist worldview as a whole. A further discussion of social hierarchy will follow in the chapter on notions of exclusion in Essene law. But now I turn to discuss a salient trait of natural law which could be defined as yet another kind of hierarchy: the distinction between eternal truths and human knowledge.

1.6. *Revealed and Hidden Knowledge*

If there is one element that would strengthen Rubenstein's suggestion of terminology to view Essene law in terms of Natural Law, it is their concept of knowledge of the law. As discussed above, there is some

---

[94] See further in chapter 4 on the problem of voluntarism in a determinist context.

[95] Markus Bockmuehl, "1QS and Salvation at Qumran," in *Justification and Variegated Nomism*. Vol. 1, *The Complexities of Second Temple Judaism*, ed. D.A. Carson, Peter T. O'Brien, and Mark A. Seifrid (Tübingen: Mohr Siebeck, 2001), 381-414.

[96] 1QS 2.11-18.

[97] Josephus, *Jewish War* 2.143-144. For text and translation see Thackeray, *Josephus. The Jewish War, Books I-II*, 376-9.

correspondence between elements of divine law and Natural Law. One of the fundamental ideas that substantiates Natural Law is the notion of a "higher law," i.e. an autonomous law that exists above the specific laws legislated and enforced by humans. This notion implies that concrete legal practices differ and change over time, responding to new cases and problems that were not foreseen or addressed by previous legislation. Furthermore, this notion of a "higher law" is a way to reconcile the constant change of law throughout history, with the idea that the law is equated with truth and thus eternal.[98] In other words, while law, as a natural phenomenon, is always true and unchangeable, humans, due to their limited capacities, have made laws that were either inapplicable under changing circumstances, or that were always wrong, even to the extent of dismissing an entire legal system as a "bad system of laws."[99]

Postbiblical Judaism struggled with this issue, and various solutions were formulated in response, most notably the rabbinic tradition of an oral law that was given in Sinai alongside the written law.[100] The Essenes also

---

[98] This point is crucial for natural lawyers, among other reasons, as a way to substantiate the authority and validity of law. See Greenawalt, *Conflicts of Law and Morality*, 159-201; Alf Ross, "Validity and the Conflict between Legal Positivism and Natural Law," in *Normativity and Norms. Critical Perspectives on Kelsenian Themes*, ed. Stanley L. Paulson and Bonnie Litschewski Paulson (Oxford: Clarendon, 1998), 147-63.

[99] For an articulation of this argument, see Fuller, *Morality of Law*, 33-94. See also discussions of this point by Colleen Murphy, "Lon Fuller and the Moral Value of the Rule of Law," *Law and Philosophy* 24.3 (2005): 239-62; Stanley L. Paulson, "Lon L. Fuller, Gustav Radbruch, and the 'Positivist' Theses," *Law and Philosophy* 13.3 (1994): 313-59. The concern of "bad laws" and the substantiation of law's validity in light of their plausible existence is raised frequently in relation to the Holocaust and the Nazi regime as an extreme example. The abundance of literature on this subject prevents me from addressing this more comprehensively, but see David Fraser, *Law after Auschwitz: Towards a Jurisprudence of the* Holocaust (Durham: Carolina Academic Press, 2005). For this reference I am indebted to Kristen Rundle, "The Impossibility of an Exterminatory Legality: Law and the Holocaust," *University of Toronto Law Journal* 59.1 (2009): 65-125.

[100] See Martin S. Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE* (Oxford: Oxford University Press, 2001); Joseph M. Baumgarten, "The Unwritten Law in the Pre-Rabbinic Period," *JSJ* 3.1 (1972), 7-29; Steven D. Fraade "Literary Composition and Oral Perfomance in Early Midrashim," *Oral Tradition* 14.1 (1999): 33-51; David W. Nelson, "Oral Orthography: Early Rabbinic Oral and Written Transmission of Parallel Midrashic Tradition: In the Mekhilta of Rabbi Shimon B. Yohai and the Mekhilta of Rabbi Ishmael," *AJS Review* 29.1 (2005): 1-32; Richard S. Sarason, "The Petihtot in Leviticus Rabba: 'Oral Homilies' or Redactional Constructions?" *JJS* 33.1-2 (1982): 557-67. In relation to Qumran texts, Hanan Eshel proposed that the Pesharim

grappled with the changing nature of the law in light of its claims for eternity. One solution was found in the claims to prophetic knowledge invested in the Teacher of Righteousness. Another is the division of the laws into categories of revealed and concealed laws. But whether the argument is advanced through claims of prophetic knowledge or through new categories of law, the project remains the same, namely, the contention that the law is eternal and applicable under any circumstance. Legal theorist John Finnis presents this perception through Thomas Aquinas:

> [Thomas Aquinas] emphasized that moral principles such as those in the Ten Commandments are *conclusions from* the primary self-evident principles, that reasoning to such conclusions requires good judgment, and that there are many other more complex and particular moral norms to be followed and moral judgments and decisions to be made, all requiring a degree of practical wisdom which (he says) few men in fact possess. [101]

Law is here conceived as universal, following a reasoning that can be uncovered by especially talented human minds. Human legislation, then, is a continuous endeavor to conform its own legal systems to this universal law.[102]

---

were transmitted at some point orally, to allow for changes in light of circumstances: Hanan Eshel, *The Dead Sea Scrolls and the Hasmonean State* (trans. David Louvish and Aryeh Amihay; Grand Rapids: Eerdmans, 2008), 163-79. Cf. Albert I. Baumgarten, *Second Temple Sectarianism. A Social and Religious Historical Essay* (Tel Aviv: Ministry of Defence, 2001), 72-79 (in Hebrew); idem, "Literacy and the Polemics surrounding Biblical Interpretation in the Second Temple Period," in *Studies in Ancient Midrash*, ed. James L. Kugel (Cambridge: Harvard University Center for Jewish Studies, 2001), 27-41; James C. VanderKam, "Those Who Look for Smooth Things"; Cana Werman, "Oral Torah vs. Written Torah(s): Competing Claims to Authority," in *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, ed. Steven D. Fraade, Aharon Shemesh and Ruth A. Clements (Leiden: Brill, 2006), 175-97. For the biblical period itself see recently Joachim Schaper, "Exilic and Post-Exilic Prophecy and the Orality/Literacy Problem," *VT* 55.3 (2005): 324-42.

[101] Finnis, *Natural Law and Natural Rights*, 101 (see also 29, n.17 for sources in Aquinas's *Summa Theologiae* I-II).

[102] This view has raised manifold debates regarding the act of legislation as one of discovery (or rediscovery) versus the view that purports it to be an act of creation. See, for example, Bruce Ackerman, *We the People: Transformations* (Cambridge: Belknap, 1998), 345-82; Michael S. Moore, "Good without God," in *Natural Law, Liberalism and Morality*, ed. Robert P. George (Oxford: Oxford University Press, 1996), 221-70; Strauss, *Natural Right and History*, 202-29.

The distinctions between this view and the one found in Essene texts are clear. Above all, Essene laws are not considered universal in the sense that all humanity should strive to adhere to them. Indeed, they bear implications on all humanity, but for people outside the sect (categorized as the Children of Darkness) these laws are considered innately unattainable. Furthermore, unlike the Aquinean view cited by Finnis, many of these laws – if not all – would not be construed as laws that can be deduced merely through good judgment, but rather as laws that are solely fathomable by revelation. This is the dividing line between divine law and natural law.

For the Essenes, however, knowledge is an ontological fact independent of epistemology. It exists regardless of its availability to humans. Certain truths pertaining to the nature of this world form the substance of this knowledge, which is then distributed through the concealed and revealed laws.

A case in point is the explanation the Damascus Document offers for Abraham's belated circumcision:[103]

6 *vacat* וביום אשר יקים [האיש ע]ל נפשו לשׁ[וב אל תור]ת מושׁה[יסור מלא]ך המשטמה

7a מאחריו אם יקים את ד[בריו ע]ל כן נמול [אברהם בי]ום דע[תו

6 *vacat* And on the day when [a man] takes upon himself to re[turn to the La]w of Moses, [the ang]el Mastema [will turn aside]

7a from after him, if he fulfills [his] w[ords. Th]erefore [Abraham] was circumcised [on the d]ay of [his] know[ing.

Several elements in this terse, and somewhat cryptic, reference to Abraham's circumcision (Gn 17)[104] are pertinent to the discussion, especially the emphasis that Abraham was circumcised on the same day of his "knowing." This emphasis is significant for the author within the

---

[103] 4QD[f] (4Q271) 4, ii, 6-7. A more fragmentary version is preserved in 4QD[c] (4Q270) 6, ii, 17-19. Reconstruction is based on CD. See Qimron, *Dead Sea Scrolls*, 39.

[104] For other post-biblical traditions of Abraham's circumcision, see Daniel Boyarin, "'This We Know to Be the Carnal Israel': Circumcision and the Erotic Life of God and Israel," *Critical Inquiry* 18.3 (1992): 474-505; Martha Himmelfarb, "The Ordeals of Abraham: Circumcision and the *Aqedah* in Origen, the *Mekhilta*, and *Genesis Rabbah*," *Henoch* 30.2 (2008): 289-310; Maren R. Niehoff, "Circumcision as a Marker of Identity: Philo, Origen and the Rabbis on Gen 17:1-14," *JSQ* 10.2 (2003): 89-123.

context of penitence and the Essene belief that on the day a person resolves to return to the way of the Torah, the angel Mastema moves away from him.[105] This context, however, may also disclose an understanding of the innate powers of circumcision. The language of reasoning draws a connection between the immediate removal of the angel Mastema upon the day of return to righteousness and Abraham's circumcision on the same day.[106] Indeed, the biblical text does not imply that Abraham was in a sinful state prior to his circumcision. The author of the Damascus Document, however, takes as granted that such a state was essentially sinful, and that Abraham had to rectify it immediately.[107]

---

[105] Angel Mastema, or elsewhere Prince Mastema, represents evil and darkness. For etymology, angelology and appearances see Devora Dimant, "Between Qumran Sectarian and Non-Sectarian Texts: The Case of Belial and Mastema," in *The Dead Sea Scrolls and Contemporary Culture*, ed. Adolfo D. Roitman, Lawrence H. Schiffman, and Shani Tzoref (Leiden: Brill, 2011), 235-56. Cf. Esther Eshel, "Mastema's Attempt on Moses' Life in the 'Pseudo-Jubilees' Text from Masada," *DSD* 10.3 (2003): 359-64; Michael Segal, *The Book of Jubilees. Rewritten Bible, Redaction, Ideology and Theology* (Leiden: Brill, 2007), 174-227; Cana Werman, "Narrative in the Service of Halakha: Abraham, Prince Mastema, and the Paschal Offering in *Jubilees*," in *Law and Narrative in the Bible and in Neighbouring Ancient Cultures*, ed. Klaus-Peter Adam, Friedrich Avemarie, and Nili Wazana (Tübingen: Mohr Siebeck, 2012), 225-42.

[106] Contra Kister, who considers Abraham's mention here solely as an exemplar for immediate action and strict adherence to the law: Menahem Kister, "Demons, Theology and Abraham's Covenant (CD 16:4-6 and Related Texts)," in *The Dead Sea Scrolls at Fifty. Proceedings of the 1997 Society of Biblical Literature Qumran Section Meetings*, ed. Robert A. Kugler and Eileen M. Schuller (Atlanta: Scholars, 1999), 167-84. The discussion of whether symbolic meanings of the circumcision bear doubt on the actual performance of the ritual (J. M. Baumgarten, *DJD 18*, 179; Kister, ibid., 180; the strongest – and strangest – formulation of this argument is by Christiansen, *Covenant in Judaism & Paul*, 138-139, 179) seem to me a late projection that is irrelevant to the discussion of this text. Clearly a ritual can have symbolic meanings and still be performed. Only if the symbolism is explicitly said to suffice to replace the ritual, should we assume such a tendency (precisely as is the case with Paul, to whom Baumgarten, Kister and Christiansen allude).

[107] This also touches on my observation elsewhere that circumcision is considered to be the perfected state. See Aryeh Amihay, "Noah in Rabbinic Literature," in *Noah and His Book(s)*, ed. Michael E. Stone, Aryeh Amihay and Vered Hillel (Atlanta: SBL, 2010), 195-7. Further on Qumran views of circumcision, see Roger Le Déaut, "Le thème de la circoncision du coeur (Dt. 30:6, Jer 4:4) dans les versions anciennes (LXX et Targum) et à Qumran," in *Congress Volume. Vienna 1980*, ed. John A. Emerton (Leiden: Brill, 1981), 178-205; Robert Eisenman, "'Sicarii Essenes,' 'the Party of the Circumcision,' and Qumran," in *Defining Identities: We, You, and the Other in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, ed. Florentino García Martínez and Mladen Popović (Leiden: Brill,

Together, these elements reiterate the prevalence of an essentialist view in Essene writings. First of all, that being uncircumcised is rendered sinful even prior to the knowledge of the law, reflects the essentialist notion that ignorance of the law does not affect its validity. On some level, this is supposedly true of legal formalism, as well, but that is only in a case where the law has been legislated, and the ignorance of an individual is at question. In such cases, the law is still considered known in a general, and therefore enforced regardless of the personal knowledge of an individual. An essentialist will view this quite differently: the law is valid whether or not it is known to humans (either by way of discovery or revelation).

The usage of the term "Law of Moses" is also illustrative of this view. Although the Code is named after the one who delivered it to the Israelites, the author does not seem to think that earlier Israelites as Abraham were not bound by it. In other words, the Law is the "Law of Moses" only by name, where in fact it is considered to be existent, true, and valid long before Moses. In this view, the question of enforcement is a separate one from the issue of legality or validity. While Abraham is not punished for his unintentional sinful state, he is commended for rectifying it directly upon his knowledge.

In addition to the issue of knowledge, another essentialist view raised here regarding the circumcision is the effect of law-abidance on external reality. If being uncircumcised is likely to bring Mastema into one's presence or vicinity, it follows that adherence to the law has a concrete effect on cosmic reality.

This leads to the greater issue of the Essene perception of the law as divided into two categories of "revealed" and "hidden" laws. These terms of distinction originate from Deuteronomy 29:28, although the usage of them in Essene rhetoric is quite different. This issue has been studied by several scholars,[108] and is also pertinent to the question of intentional sin, to

---

2007), 247-60; David R. Seely, "The 'Circumcised Heart' in 4Q434 'Barki Nafshi'," *RevQ* 17.1-4 (1996): 527-35.

[108] Licht, *Rule Scroll*, 60-61, 132; J. M. Baumgarten, *Studies in Qumran Law*, 29-35; Philip R. Davies, *The Damascus Covenant. An Interpretation of the "Damascus Document"* (Sheffield: JSOT Press, 1982), 109; Elisha Qimron, "On Unintentional and Intentional Sins in the Dead Sea Scrolls. A Study in the Terms Used for their Designation," *WCJS* 10a (1990): 103-110 (in Hebrew); Schiffman, *Reclaiming the Dead Sea Scrolls*, 247-9; Gershon Brin, *Studies in Biblical Law. From the Hebrew Bible to the Dead Sea Scrolls* (Sheffield: JSOT Press, 1994), 151-4; Gary A. Anderson, "Intentional and Unintentional Sin in the Dead Sea Scrolls," in *Pomegranates and Golden Bells. Studies in Biblical, Jewish, and near Eastern Ritual, Law and Literature in Honor of*

be addressed in the following chapter. At this point I will dedicate my discussion of this distinction to its influence on how knowledge is conceptualized in relation to law. The clearest manifestation of such influence is in the Community Rule:[109]

10	המתנדבים יחד לאמתו ולהתלכ ברצונו ואשר יקים בברית על נפשו להבדל מכול אנשי העול ההולכים
11	בדרכ הרשעה כיא לוא החשבו בבריתו כיא לוא בקשו ולוא דרשהו בחוקוהי לדעת הנסתרות אשר תעו
12a	בם לאששמה והנגלות עשו ביד רמה

10 who devote themselves together to his truth and to walking in his will. And whosoever shall take upon himself by covenant to separate from all the men of deceit who walk

11 in the wicked way, for such are not reckoned a part of His covenant. They have not sought Him nor inquired of His statutes[110] so as to discover the hidden laws in which they err

12a to bear guilt. Even the revealed laws they knowingly transgressed

As can be seen, despite the division of law into hidden and revealed laws, the hidden laws are only are applicable to humans, but it is their responsibility to strive and uncover them. There can be no clearer

Jacob Milgrom, ed. David Pearson Wright, David Noel Freedman and Avi Hurvitz (Winona Lake: Eisenbrauns, 1995), 49-64; Aharon Shemesh and Cana Werman, "Hidden Things and their Revelation," *Tarbiẓ* 66.4 (1997): 471-82 (in Hebrew), idem, "Hidden Things and Their Revelation," *RevQ* 18.3 (1998): 409-27; David Flusser, "'The Secret Things Belong unto the Lord Our God': Ecclesiasticus and the Essenes," *Tarbiẓ* 67.3 (1998): 407-410 (in Hebrew); for an English version see his *Judaism of the Second Temple Period. Volume 1: Qumran and Apocalypticism* (trans. Azzan Yadin; Jerusalem: Magnes, 2007), 293-8; Newsom, *Self as Symbolic Space*, 68-75; Paul Heger, "The Development of Qumran Law: *Nistarot*, *Niglot* and the Issue of 'Contemporization'," *RevQ* 23.2 (2007): 167-206; Shani Tzoref, "The 'Hidden' and the 'Revealed': Progressive Revelation of Law and Esoterica," *Meghillot* 7 (2009): 157-90 (in Hebrew), cf. eadem, "The 'Hidden' and the 'Revealed': Esotericism, Election, and Culpability in Qumran and Related Literature," in *The Dead Sea Scrolls at 60. Scholarly Contributions of New York University Faculty and Alumni*, ed. Lawrence H. Schiffman and Shani Tzoref (Leiden: Brill, 2010), 299-324. On esoteric literature in the scrolls see further in Samuel I. Thomas, *The 'Mysteries' of Qumran. Mystery, Secrecy, and Esotericism in the Dead Sea Scrolls* (Atlanta: SBL, 2009).

[109] 1QS 5.10-12a.

[110] Alluding to Zeph 1:6.

manifestation to the argument that according to Essene perception, the law is true regardless of whether it has been made public. The transgression of the hidden law is held against the sinners ("to their guilt"),[111] indeed to a lesser degree than that of the revealed law, whose transgression by definition is more severe, but it nevertheless carries its implications. These implications, I argue, are not absurd or Kafkaesque as they may seem at first. God is not assumed to maliciously hide laws from humans and then hold them accountable for their transgressions. Rather, the division of laws into hidden and revealed laws can be historically explained as stemming from a need to reconcile the emergence of new laws with the claim for the authority of the written Law, the Pentateuch. Understandably, this motivation is never made explicit. Instead, a rhetoric for the need to hide the laws (e.g., from the Sons of Darkness) is established. Despite such an explanation, the fact that these laws are still considered binding, reflects the essentialist perception of law as embedded in nature and therefore unchangeable. This distinction between the historical-critical observation of the law that as indeed changing and between the sectarian self-perceptions and claims regarding the law as the exact opposite is necessary for an historical-legal analysis of the legal essentialist perception at the heart of Essene Law.

1.7. *Conclusion*

The reconstruction of the ideological premises of the legal texts found in Qumran focused on the rhetoric and justifications of the laws in these texts themselves, but without analyzing individual statutes per se. The analysis shows that the Essenes held an essentialist view of the law. In this I agree with the claim set forth by Daniel Schwartz, yet I shift away from the terms he employs, favoring legal essentialism instead. I also suggested that rather than juxtaposing this position with rabbinic law, Schwartz's claims concerning the rabbis can be described as "legal formalism," that switching their emphasis and purpose, not only their stance, from ontology to legislation and jurisprudence. The significance I see is not only in stating

[111] The Hebrew לאששמה is probably a mistake, and should be reconstructed לאשמה. See Licht, *Rule Scroll*, 132; Qimron, *Dead Sea Scrolls*, 218. More than a sense of individual or societal denouncement, it is a status before God, which demands penitence or atonement. See Gary A. Anderson, *Sin. A History* (New Haven: Yale University Press, 2009), 15-39.

that Essene law subscribes to a legal essentialist view. Both in the context of a religious system, as well as against the backdrop of the ancient world in general, this comes as little surprise. More important, therefore, was to demonstrate the ways that legal essentialist views inform the law, and the specific formulation of the relationship between law and nature , as it is manifested in the rhetoric employed to reaffirm the law.

CHAPTER TWO

INTENTION: BETWEEN UNCHANGEABLE LAWS AND HUMAN ERROR

2.1. *Introduction*

Speaking in Cleveland, Ohio on the morrow of Martin Luther King's assassination, Robert F. Kennedy asserted the following:

> Whenever any American's life is taken by another American unnecessarily - whether it is done in the name of the law or in defiance of the law, by one man or by a gang, in cold blood or in passion, in an attack of violence or in response to violence - whenever we tear at the fabric of our lives which another man has painfully and clumsily woven for himself and his children, whenever we do this then the whole nation is degraded.[1]

The idea that any killing is abominable, regardless of its circumstances, is at once admirable and puzzling. On the one hand, it affirms a deep notion of the sanctity of life. Yet at the same time it contradicts a widespread notion regarding the significance of intent and a time-honored distinction between premeditated crimes on the one hand and crimes resulting by accident, negligence, or insanity on the other.[2]

---

[1] Robert F. Kennedy, "On the Mindless Menace of Violence," Cleveland, Ohio, April 5, 1968. Quoted in Jack Newfield, *RFK: A Memoir* (New York: Thunder's Mouth Press and Nation Books, 2003), 248-249. For further analysis of this speech, see Goldzwig and Sullivan, "Robert Francis Kennedy (1925-1968)," in *American Voices. An Encyclopedia of Contemporary Orators*, ed. Bernard K. Duffy & Richard W. Leeman (Westport: Greenwood, 2005), 238-247; Michael W. Flamm, *Law and Order. Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005), 142-5.

[2] See, for example, Ex 21:12-14; *b.* Ḥag 5a; Plato, *The Apology of Socrates* 26a (text in Fowler, *Plato, I*, 96]; David Daube, *The Deed and the Doer in the Bible*, ed. Calum Carmichael (West Conshohocken: Templeton Foundation Press, 2008), 32; Stephen P. Garvey, "What's Wrong with Involuntary Manslaughter?" *TexLR* 85.2 (2006): 336.

Thus the indiscriminate abhorrence of homicide as morally affecting the entire nation is somewhat surprising when asserted by a liberal Democratic US senator and presidential candidate in 1968. It would hardly come as a surprise, however, to find a similar worldview in Essene law, where transgressions of single individuals are considered offensive to God and to the natural order He ordained. Hence, it could be expected that as in Kennedy's assertion, the Essenes would hold that actions bear consequences on the cosmic order regardless of the intention behind them. To return to Schwartz's helpful example of the poison mentioned in the previous chapter,[3] one who drinks poison will suffer its consequences regardless of whether the poison was mistaken to be wine, forced down the throat against one's will, or swallowed as a suicidal act.

At the same time, however, it might have also been surprising if the self-evident moral difference between an intentional and unintentional crime would have been overlooked by the Essenes. The tension, therefore, between these two expectations suggests that a closer examination of the role of intent in Essene law will illuminate the intricacies of some legal assumptions in these texts. In this chapter, I will study the significance of intent in Essene law, through the following discussions: terminology of intent, the levels of intent, and the relation between intent and knowledge. Upon conclusion, I will argue that the connection between intent and sin in Essene law is linked to their approach of legal essentialism, as demonstrated in the previous chapter. But at the outset of this discussion, some general comments regarding criminal intent in legal systems are in place.

2.2. *Intention between a Civil and a Religious Law System*

When discussing the issue of intention, it is important to distinguish between the philosophical debate over the meaning of intent and the legal concept of criminal intent. Philosophical investigation of intent ranges from debates on free will and determinism to the most abstract meaning of the word. In its most abstract denotation, intention marks the opposite of mindlessness. As such, it can be divorced from planning[4] or even

[3] D. R. Schwartz, "Between Sages and Priests," 65-66 (reprint 405-406).
[4] Michael Bratman, *Faces of Intention. Selected Essays on Intention and Agency* (Cambridge: Cambridge University Press, 1999), 58-60.

contrasted with wants and desires.[5] For the sake of example, let us consider a hold-up scene, where one is intimidated to relinquish money or other valuable belongings (a purse, jewelry, etc.) under the threat of death.[6] The handing over of money or other personal possessions under such circumstances is obviously against the victim's will, demonstrating how a person might act intentionally but unwillingly. Yet it cannot be likened to the inadvertent slip of a wallet, or to an erroneous transfer of a wallet (e.g., in the dark, mistaking it for a different object). The latter two cases are distinct examples of lack of intention: if the wallet falls, the action is completely unintended, whereas the mistaken release of a wallet demonstrates an intentional act with an unintended outcome replacing the original intention which is not carried out.

However, these philosophical nuances are almost irrelevant for the legal definition of intent. This can be demonstrated through a comparison between a hold-up victim and a person who bribes a government official. While both cases involve people intentionally transferring money to another party in a criminal context, only one of them – the briber – can be charged and tried. Thus, criminal intent is not only dependent upon the fulfillment of the philosophical criteria for intention; it is closely tied to a cognizant, premeditated violation of the law.

Practically any system of law, whether religious or civil, presents a very revealing distinction regarding intent. Primarily, intent is never sanctioned in and of itself. That is to say, if an intent is not carried out, it is not deemed punishable, and when it is carried out, it is the action itself that is punished,

---

[5] G. E. M. Anscombe, *Intention* (Ithaca: Cornell University Press, 1957), 76-78; Robert Audi, *Action, Intention, and Reason* (Ithaca: Cornell University Press, 1993), 35-55; Bratman, *Faces of Intention*, 225-49; Donald Davidson, "Intending," in his *Essays on Actions and Events* (Oxford: Oxford University Press, 2001), 83-102; Duff, *Intention, Agency and Criminal Liability. Philosophy of Action and the Criminal Law* (Oxford: Basil Blackwell, 1990), 52-63. See also R.M. Hare, *Practical Inferences* (Berkeley: University of California Press, 1971), 44-58 and more recently Richard Holton, *Willing, Wanting, Waiting* (Oxford: Clarendon and Oxford University Press, 2009), 1-19.

[6] Admittedly, this example raises questions not only regarding the victim's intent to hand over the money, but also regarding the robber's intent and whether or not the proclaimed threat to kill constitutes an intention to kill. Presuming the threat is only presented as motivation for the robbery, it might be argued that the robber has no intention of murder. This, again, demonstrates the discrepancy between the philosophical sense of intent, and the legal sense of the term. On the interpretations of threats as intentions in criminal law, see Paul T. Crane, ""True Threats' and the Issue of Intent," *Virginia Law Review* 92.6 (2006): 1225-77.

not the intent.[7] At the same time, however, intent does play a significant role in determining the nature and degree of a crime its punishment.[8] In fact, there exists usually a correlation between the severity of the crime and the crucial role of intent in the judicial process.

Notwithstanding the importance of these statements, they do call for some qualifications. The first is regarding the lack of liability for mere intent. This may be viewed as a very pragmatic aspect of the law: since the law has no means of mind-reading, it does not seek to punish a mental process.[9] On the other hand, it can also be said that lack of action signifies lack of intent.[10] Let us consider, for example, the difference between the following two cases: (a) in a moment of anger, Brutus exclaims: "Julius makes me so mad, I could kill him!" and (b) following a bitter dispute, Brutus plans to kill Julius, acquires a weapon, follows him to know his whereabouts, etc. The first case merely includes an idiom expressing anger, albeit a very harsh one, that at most could express a momentarily desire to kill, but not an intention to actually do so. The second case, conversely, is a reflection of an unquestionable intention to kill, and it is marked as such by concrete actions.[11] As such, it is indeed punishable under several legal systems.

---

[7] See Gideon Yaffe, *Attempts: in the Philosophy of Action and the Criminal Law* (Oxford: Oxford University Press, 2010). This distinction, too, is tenable in a legal sphere, but much more problematic in a philosophical discourse.

[8] Adam J. Kolber, "Unintentional Punishment," *Legal Theory* 18.1 (2012): 1-29; Arye Edrei, "'Should a Person Offend Errantly': Responsibility without Guilt? On the Responsibility of the Inadvertent Sinner in the Hebrew Bible and Rabbinic Literature," *Shnaton ha-Mishpat ha-'ivri* 24 (2007): 1-9 (in Hebrew).

[9] See, for example, Clayton P. Gillette, "Limitations on the Obligation of Good Faith," *Duke Law Journal* 1981.4 (1981): 619-65.

[10] In philosophical terms, if no action was taken to implement or execute an intent, the very existence of intent becomes questionable and can be replaced by other, more lenient definitions (wish, desire, and so forth). See Douglas Husak, "Why Punish Attempts at All? Yaffe on 'the Transfer Principle'," *Criminal Law and Philosophy* 6.3 (2012): 399-410.

[11] The notion that intent is manifest in actions is almost as old as history. We find it in the Hebrew Bible (e.g. Ex 22:1; Num 35:15-23) as well as in Roman Law, e.g. Digest 48.6.1-11; quoted in S. P. Scott, *The Civil Law including the Twelve tables, the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo* (Cincinnati: Central Trust Company, 1932), 51-57. Cf. J. A. Crook, *Law and Life of Rome, 90 B.C. –A.D. 212* (Ithaca: Cornell University Press, 1967), 268-9; Albrecht Dihle, *The Theory of Will in Classical Antiquity* (Berkeley: University of California Press, 1982), 136-7. I am grateful to Alex Kocar for informing me of Dihle's fine study. The comparison of these two systems' views on this point is also famous for being drawn in the opening of the 8th century *Legum*

By claiming to have access to the mind and soul of the individual, a religious system such as the laws of the Pentateuch can and does make demands regarding desires and thoughts. Such is the command to love God in one's heart (Lev 19:18) or the prohibition against coveting (Ex 20:17; Deut 5:21).[12] This is a point in which religious law is incompatible with civil law. But interestingly enough, both systems accept the distinction between intentional and unintentional sin. This is somewhat surprising in light of the stark differences between these legal systems in the conceptualization of law, its source, its purpose, and its function in society. These differences inevitably lead to separate attitudes towards the question of intent, despite the shared recognition of its significance.

For a civil system, the question of intention sheds light on the entangled relation of law and morals. This relation is less complicated in a religious system, in which God represents both law and morality.[13] The significance of intention, therefore, reflects the relation of law and morals by confirming their unity. However, the recognition of intention does problematize a separate notion that is unique to religious law. This is the natural imbalance caused by sin which is not believed to disappear due to lack of intention.

Here too an example is in place: Gn 9:6 clearly states that "he who sheds human blood, by humans his blood shall be shed, for in the image of

---

Collatio, a somewhat understudied text comparing Mosaic and Roman law. See Moses Hyamson, *Mosaicarum et Romanarum Legum Collatio* (London: Oxford University Press, 1913). I am indebted to Brent Shaw for calling my attention to this text. See also his own study (Shaw, "Raising and Killing Children," 31-77) in regard to Roman Law of killing, and cf. Rüpke, "You Shall Not Kill," 58-79. For the benefits of Comparative Law in the study of the Ancient World, see Alan Watson, *Roman Law and Comparative Law* (Athens: University of Georgia Press, 1991). See also David Daube, "The Civil Law of the Mishnah: The Arrangement of the Three Gates," *Tulane Law Review* 18.3 (1944): 351-407; idem, "Jewish Law in the Hellenistic World," in *Jewish Law in Legal History and the Modern World*, ed. Bernard S. Jackson (Leiden: Brill, 1980), 45-60. For a more general note of comparative methodology, see an excellent analysis by Nils Jansen, "Comparative Law and Comparative Knowledge," in *The Oxford Handbook of Comparative Law*, ed. Mathias Reimann and Reinhard Zimmerman (Oxford: Oxford University Press, 2006), 305-38.

[12] On the former, see Baruch J. Schwartz, *The Holiness Legislation. Studies in the Priestly Code* (Jerusalem: Magnes, 1999), 317-318. On the latter, see Bernard S. Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 202-34. On the differentiation of wanting from intending, see n. 5.

[13] This claim is not without its problems, as discussed in chapter 4.

God He made humankind."[14] In other words, the killing of a person by a fellow human being is presented here as sinful because it blemishes the divine, the image of God. If this is the case, then the fact that someone did not intend to shed blood is irrelevant to the transgression against the divine. Within such an epistemology, where God is construed as a force not to be attacked since any such attack destabilizes the order in the world, intention is an obscure notion. Introducing intent into such a system is tantamount to arguing that an ecological imbalance or pollution is not harmful to the environment if committed without malice.[15] In short, the seeming contradiction between the biblical demand for retribution by shedding blood and its provision of protection for those who shed blood,[16] reveals an entangled relationship by which the transgression against the Lord is at times understood almost in the terms of an ecological pollution, but at the same time is also affected by intention, that is to say, by ethics.

Intent can play a role in legal theory in several ways. The immediate aspect that comes to mind is the malicious intent when a sin, transgression, crime, or felony is performed. A sub-category of the criminal intent is the fraudulent intent or misrepresented intent in contract laws. There is a substantial difference between intending to perform an act that is against the law, and the lack of intent to keep a contract. However, since insincerity at the time of creating a contractual relationship is illegal in some systems, and causes problems in all systems of law, the initial misrepresented intent at the time of agreeing on the contract can be discussed under criminal

---

[14] Translation quoted from Robert Alter, *The Five Books of Moses. A Translation with Commentary* (New York and London: Norton, 2004), 50.

[15] For a psychological study of perceptions of intent in relation to environmental issues, see Joshua Knobe, "Intentional Action in Folk Psychology: An Experimental Investigation," *Philosophical Psychology* 16 (2003): 309-324; idem, "The Concept of Intentional Action. A Case Study in the Uses of Folk Psychology," in *Experimental Philosophy*, ed. Joshua Knobe and Shaun Nichols (Oxford: Oxford University Press, 2008), 129-47.

[16] Examples of protection for those who shed blood in the Hebrew Bible are present in narrative as well as in law: see the protection of Cain after killing Abel (Gn 4:15) and the towns of asylum (Ex 21:13; Num 35; Deut 19). Admittedly, this is a problematic rhetorical argument in the context of Pentateuch scholarship itself (assuming that the story of Cain and Abel is not by the same author who formulated the gravity of murder in Gn 9:6). For the purposes of the argument, however, suffice it to note that the constitutive text of Jewish law contains such contradictions, regardless of the process by which they transpired.

law.[17] Other issues that fall under the concern of criminal law that are related to intent are those of lack of intent in situations that call for intention and foresight, most notably, cases of negligence, accidents, and so forth.[18] Another type of intent is the good will with which one obeys the law or performs a gracious act that is not required by the law. This is more of interest in religious legal systems, and definitely in ancient Jewish law,[19] since civil law systems are less concerned with the reasons behind the adherence to their laws.[20] Finally, a very different kind of intent is the intent

---

[17] See Ian Ayres and Gregory Klass, *Insincere Promises. The Law of Misrepresented Intent* (New Haven: Yale University Press, 2005); Stephen L. Carter, *Integrity* (New York: Basic Books, 1996); George P. Fletcher, *Loyalty. An Essay on the Morality of Relationships* (Oxford: Oxford University Press, 1993), 1-68; Andrew Borkowski, *Textbook on Roman Law* (London: Blackstone, 1997), 255-324.

[18] See Dworkin, *Law's Empire*, 276-309; Gregroy C. Keating, "Reasonableness and Rationality in Negligence Theory," *StanfLR* 48.2 (1996): 311-84, and recently Joseph Raz, "Responsibility and the Negligence Standard," *OJLS* 30.1 (2010): 1-18. For negligence in Jewish Law, see David Pearson Wright, "The Compositional Logic of the Goring Ox and Negligence Laws in the Covenant Collection (Ex 21:28-36)," *ZABR* 10 (2004): 93-142; Jackson, *Essays in Jewish and Comparative Legal History*, 108-52, 250-67; Noam, "'The Later Rabbis Add and Innovate': On the Development of a Talmudic *Sugya*," *Tarbiz* 72.1-2 (2003): 151-75 (in Hebrew). Eran Belinsky called my attention to the "Good Samaritan" laws, which may also be seen as laws prescribing intentional action in cases where bystanders with lack of any malicious intent are deemed to be immoral and hence unlawful. See F. J. M. Feldbrugge, "Good and Bad Samaritans: A Comparative Survey of Criminal Law Provisions concerning Failure to Rescue," *American Journal of Comparative Law* 14.4 (1965): 630-57; Anne Cucchiara Besser and Kalman J. Kaplan, "The Good Samaritan: Jewish and American Legal Perspectives," *Journal of Law and Religion* 10.1 (1993-1994): 193-219; H. M. Malm, "Bad Samaritan Laws: Harm, Help, or Hype," *Law and Philosophy* 19.6 (2000): 707-50; Mark Osiel, "The Banality of Good: Aligning Incentives against Mass Atrocity," *Columbia Law Review* 105.6 (2005): 1751-1862.

[19] See Jacob Bazak, "The Element of Intention in the Performance of *Mitsvot* Compared to the Element of Intention in Current Criminal Law," *JLAS* 14 (2004): 9-15; idem, "Is a Consequence Considered 'Intended', When It Is Forseen as Highly Probable? A Comparative Study in *Halakha* and in Modern Criminal Law," *JLAS* 10 (2000): 1-9.

[20] The question of reasons for adherence to the law, relate either to the issue of obligation, discussed in chapter 4, or to the purpose and justification of punishment. See Michael S. Moore, "A Taxonomy of Purposes of Punishment," in *Foundations of Criminal Law*, ed. Leo Katz, Michael S. Moore and Stephen J. Morse (Oxford: Oxford University Press, 1999), 60-78; idem, *Placing Blame. A General Theory of the Criminal Law* (Oxford: Clarendon, 1997), 83-188. For differentiation between the notions of desert and retribution, see John Rawls, "Two Concepts of Rules," *Philosophical Review* 64.1 (1955): 3-32; George Sher, *Desert. Studies in Moral, Political, and Legal Philosophy* (Princeton: Princeton University Press, 1987), 69-90; Richard G. Singer, *Just Deserts. Sentencing Based on Equality & Desert* (Cambridge.: Ballinger,

of the legislator, and the significance it has for the judicial process.[21] Thus, the role of intent encompasses very different aspects of law, not merely the criminal private law. These aspects can be roughly divided into three groups: the malicious intent, the benevolent intent, and the legislative intent.[22] The discussion below will focus on the aspect of malicious intent

---

1979); Stephen P. Garvey, "Restorative Justice, Punishment and Atonement," *Utah Law Review* 2003.1 (2003): 303-17; Douglas Husak, "Why Punish the Deserving," *Noûs* 26.4 (1992): 447-64. For various views on the obligation to the law, see Fuller, *Morality of Law*, 19-41; Greenawalt, *Conflicts of Law and Morality*, 47-203; H. L. A. Hart, "Positivism and the Separation of Law and Morals," in his *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon, 1983), 49-87; Raz, *Authority of Law*, 3-27, 233-249.

[21] The significance of the original intent of the legislator in jurisprudence or in innovative legislation is dealt both in relation to Jewish Law and its exegesis and contemporary law. As a matter of comparison it holds opportunities which are yet to be explored. On Jewish law see Moshe J. Bernstein and Shlomo A. Koyfman, "The Interpretation of Biblical Law in the Dead Sea Scrolls: Forms and Methods," in *Biblical Interpretation at Qumran*, ed. Matthias Henze (Grand Rapids: Eerdmans, 2005), 61-87; Sidnie White Crawford, *Rewriting Scripture in Second Temple Times* (Grand Rapids: Eerdmans, 2008); Michael A. Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985); Steven D. Fraade, "Interpretive Authority in the Studying Community at Qumran," *JJS* 44.1 (1993): 46-69; Moshe Halbertal, *Interpretative Revolutions in the Making. Values as Interpretative Considerations in Midreshei Halakhah* (Jerusalem: Magnes, 1997; in Hebrew); Geoffrey H. Hartman, "Midrash as Law and Literature," *Journal of Religion* 74.3 (1995): 338-55; Christine E. Hayes, "Authority and Anxiety in the Talmuds: From Legal Fiction to Legal Fact," in *Jewish Religious Leadership. Image and Reality*, ed. Jack Wertheimer (New York: Jewish Theological Seminary, 2004), 1:127-54; James L. Kugel, *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era* (Cambridge: Harvard University Press, 1998), 1-40; Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1997); idem, "You Must Not Add Anything to What I Command You: Paradoxes of Canon and Authorship in Ancient Israel," *Numen* 50.1 (2003): 1-51; Hindy Najman, *Seconding Sinai. The Development of Mosaic Discourse in Second Temple Judaism* (Leiden and Boston: Brill, 2003); Shemesh, *Halakhah in the Making*. On contemporary law see Aharon Barak, *Purposive Interpretation in Law* (translated by Sari Bashi; Princeton: Princeton University Press, 2005); Marianne Constable, *The Law of the Other* (Chicago: University of Chicago Press, 1994), 96-111; Ronald Dworkin, "Law as Interpretation," *TexLR* 60 (1982): 527-50; idem, *Law's Empire*, 313-99; Kent Greenawalt, *Legal Interpretation* (Oxford: Oxford University Press, 2010), 1-58; Antonin Scalia, *A Matter of Interpretation. Federal Courts and the Law* (Princeton: Princeton University Press, 1998); Harry H. Wellington, *Interpreting the Constitution. The Supreme Court and the Process of Adjudication* (New Haven: Yale University Press, 1990).

[22] Interestingly, the legislative intent may be compared with a concept from a very different field, the significance of intentionalism in criticism of aesthetics. See W. K. Wimsatt and M. C. Beardsley, "The Intentional Fallacy," *Sewanee Review* 54.3 (1946): 468-88; Dennis

in Essene law, while the legislator's intent will relate to questions of interpretative authority in chapter 4. The three types of legal intent should be considered as interrelated and thus the arguments regarding malicious intent will be consequential for the other two categories.[23]

2.3. *The High Hand*

One of the outstanding cases of distinction between intentional and unintentional transgressions in Essene law is found in the Community Rule, where intent is designated by the idiom "high hand":[24]

16b	וכול איש מאנשי היחד ברית
17	היחד אשר יסור מכול המצוה דבר ביד רמה אל יגע בטהרת אנשי הקודש
18	ואל ידע בכול עצתם עד אשר יזכו מעשיו מכול עול להלכ בתמים דרכ וקרבהו
19	בעצה על פי הרבים ואחר יכת{ו}[3] בתכונו וכמשפט הזה לכול הנוסף ליחד
20	*vacat* ואלה המשפטים אשר ילכו בם אנשי התמים קודש איש את רעהו
21	כול הבא בעצת הקודש ההולכים בתמים דרכ כאשר צוה כול איש מהמה
22	אשר יעבר דבר מתורת מושה ביד רמה או ברמיה ישלחהו מעצת היחד
23	ולוא ישוב עוד ולוא יתערב איש מאנשי הקודש בה'נו ועם עצתו לכול
24	ואם בשגגה יעשה והובדל מן הטהרה ומן העצה ודרשו המשפט
25	אשר לוא ישפוט איש ולוא ישאל על כול עצה שנתים ימים אם תתם דרכו
26	במושב במדרש ובעצה [ע]ל [פ]י [ה]רבים אם לוא שגג עוד עד מולאת לו שנתים
27	ימים *vacat*

Dutton, "Why Intentionalism Won't Go Away," in *Literature and the Question of Philosophy*, ed. Anthony J. Cascardi (Baltimore: Johns Hopkins University Press, 1987), 192-210; Shoshana Felman, "The Literary Speech Act," in *The Claims of Literature. A Shoshana Felman Reader*, ed. Emily Sun, Eyal Peretz and Ulrich Baer (New York: Fordham University Press, 2007), 111-51 (with responses by Cavell and Butler); Peter Brooks, *Reading for the Plot: Design and Intention in Narrative* (Cambridge: Harvard University Press, 1992), 3-36.

[23] A fine example for this interrelation is demonstrated in a recent study on the redaction of a tanaaitic passage regarding the unintentional killer. While the major focus of the study remains the actions of the legislator, these are uncovered through the subject matter, which is the law of the unintentional killer. See Michal Bar-Asher Siegal, "The Unintentional Killer. Midrashic Layers in the Second Chapter of Mishnah Makkot," *JJS* 61.1 (2010): 30-47.

[24] 1QS 8.16-27. For Hebrew text, see Licht, *Rule Scroll*, 185-6; Qimron, *Dead Sea Scrolls*, 224. For my English rendition I consulted *DSSSE* 1:91; Vermes, *Complete Dead Sea Scrolls*, 109-10; Wernberg-Møller, *Manual of Discipline*, 34.

16b And anyone of the men of the Yahad, the covenant
17 of the Yahad, who turns away from all that is commanded – even from a single word – with a high hand, will not touch the purity of the men of holiness,
18 and will not know anything of their counsel until his deeds have been cleansed from all injustice, to walk in a perfect way. And they shall include him
19 in the council according to the Many, and afterwards he shall be written by his rank. And such is the rule for each one who joins the Yahad.
20 *vacat* And these are the rules in which will walk the men of perfect holiness, one with another.
21 Anyone who enters the council of holiness– they who walk in a perfect way as He commanded– anyone of them
22 who transgresses a word of the Law of Moses with a high hand or in deceit, they shall send him away from the council of the Yahad,
23 and he shall not return again. And none of the men of holiness is to associate with his property or with his counsel for any
24 matter. But if he does so unintentionally, he will be separated from the purity and from the council, and they shall study the judgment
25 that he will not judge anyone, and not be asked for any counsel, for two years. If his way becomes perfect,
26 [it will be discussed] in the session, in the study and in the council according to the Many, if he has not erred again within the fullness of two
27 years. *vacat*

Apparently, since the Hebrew language at this stage has a word for "error" but not for "intentional," the authors of this text are compelled to rely on a biblical idiom to express the opposite of error. In the Hebrew Bible, the phrase "high hand" refers twice to the public manner of the exodus from Egypt, stressing that the Israelites did not leave in hiding (Ex 14:8; Num 33:3), but with pride and the full knowledge of their Egyptian enslavers. This sense of the phrase may have contributed to the mention of deceit in line 22, expressing that a "high hand" transgression need not be necessarily public. Yet the more pertinent biblical usage of the phrase for our discussion is found in Num 15, where it is clearly contrasted with error. This direct allusion requires beginning the discussion of the usage of "High Hand" in the Community Rule with an analysis of the meaning of the phrase in its biblical context.

The passage in Num 15:22-31 and the case of the wood-gatherer immediately following in verses 32-36[25] demonstrate two points of interest in the law of the inadvertent transgressor which correlate with the two aspects of intention mentioned above in relation to contemporary legal theory. The first is error as grounds for acquittal as expressed by the usage of the causal conjunction כי in v. 25: "And the priest shall atone for all the community of the Israelites and it will be forgiven to them, *for* it is an errancy" and again in v. 26: "And it will be forgiven to all the community of Israelites and to the sojourner who resides in their midst, *for* the whole people is errant."[26] The error is brought as a sufficient reason to forgive the people, without further explanation. This demonstrates the aforementioned notion that the lack of culpability for an error is widely accepted as self-evident. Even more telling is the contrast between the case of erroneous act and an act carried out with a "high hand" (v. 30) where the blame is not only for the act itself, but for the intention behind it. A malicious intent amplifies the severity of the crime because in addition to the specific transgression the culprit also "reviles the Lord" (v. 30). The lack of culpability cannot and does not erase the immediate consequences of the sin. In biblical terms, this is formulated with the understanding that while an inadvertent transgression will be forgiven, precisely because it was an honest mistake, it will nevertheless require atonement by sacrifice. Hence, while inadvertent sin is forgivable, it nevertheless requires penitence.

The law in Num 15 also distinguishes between an inadvertent sin transgressed by the whole community (vv. 24-26) and an inadvertent sin of an individual (vv. 27-29).[27] The causal conjunction mentioned above is

---

[25] For the connection between the wood-gatherer narrative and the preceding laws, see Simeon Chavel, *Oracular Law and Narrative History* (forthcoming); Jacob Milgrom, *Numbers* (Philadelphia: Jewish Publication Society, 1990), 96. On the relations of law and narrative in the Bible in general, see Robert Cover's classic essay "Nomos and Narrative," in *Narrative, Violence, and the Law. The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan and Austin Sarat (Ann Arbor: University of Michigan Press, 1993), 95-172; Steven D. Fraade, "Nomos and Narrative before *Nomos and Narrative*," *Yale Journal of Law and the Humanities* 17.1 (2005): 81-96; Pamela Barmash, "The Narrative Quandry: Cases of Law in Literature," *VT* 54.1 (2004): 1-16; Chaya Halberstam, "The Art of Biblical Law," *Prooftexts* 27.2 (2007): 345-64.

[26] Translation quoted from Alter, *Five Books of Moses*, 758.

[27] For a brilliant structural analysis of the relation between the unintentional communal sin and unintentional individual sin – as well as the structure of the whole passage and the

provided only for a communal sin. While the individual inadvertent sinner is forgiven just the same, it is not emphasized that the reason is the self-evident innocence of error. Indeed, this could be explained as a mere stylistic preference to avoid repetition of the already stated self-evident explanation of error (in vv. 25-26). However, the previous repetition weakens this possibility, giving rise to an alternative proposal. While the individual inadvertent sinner is forgiven, it is still considered a somewhat different case from a sin of a whole community. When a whole community makes a mistake, the wholeness itself testifies to the honesty of the mistake. When an individual errs in a similar way independently, on the other hand, his failure to follow common practice casts a shadow of doubt regarding the sincerity of the mistake.[28]

Num 15 also raises a question concerning the juxtaposition of "inadvertently" with "high hand." Such a juxtaposition immediately suggests "high hand" to mean the opposite of "inadvertent," i.e., "intentionally" or "deliberately."[29] This interpretation poses two problems:

---

narratives in which it is enveloped – see Tzvi Novick, "Law and Loss: Response to Catastrophe in Numbers 15," *HTR* 101.1 (2008): 1-14.

[28] Admittedly, this is somewhat speculative, as the text does not express this difference, and if there were real suspicion regarding the sincerity of the mistake, the transgressor might not have been forgiven in actual practice. Furthermore, it is uncertain that a transgression of a whole community would indeed be seen as honest and inadvertent. Surely, there are several cases in the wilderness narratives themselves to contend otherwise (such as the Golden Calf episode in Ex 32, to mention one). This is not the concern of the text in Num 15, which does not even explain how an entire community could be wrong about something. Lev 4 elaborates slightly more on this point, raising the possibility that somehow the law was "hidden from the eyes of the assembly" (v. 13). Such qualifications notwithstanding, the author's choice to specify the case of the inadvertent community and the inadvertent individual as separate merits further consideration.

[29] This is the common understanding of "high hand" in Num 15:30. See Alter, *Five Books of Moses*, 758; George Buchanan Gray, *A Critical and Exegetical Commentary on Numbers* (Edinburgh: T & T Clark, 1903), 178-81; Israel Knohl, "The Law of Sin-Offering of the 'Holiness School'," *Tarbiz* 59.1-2 (1990): 8-9 (in Hebrew); Adriane Leveen, *Memory and Tradition in the Book of Numbers* (Cambridge: Cambridge University Press, 2008), 106; Baruch A. Levine, *Numbers 1-20* (New York: Doubleday, 1993), 398; Jacob Licht, *A Commentary on the Book of Numbers [XI-XXI]* (Jerusalem: Magnes, 1991; in Hebrew); Martin Noth, *Numbers. A Commentary* (trans. James D. Martin; London: SCM Press, 1968), 116; Novick, "Law and Loss," 6-7; Aharon Shemesh, "Traces of Sectarian Halakhah in Tannaitic Literature," *Meghillot* 2 (2004): 98 (in Hebrew); Aryeh Toeg, "A Halakhic Midrash in Num. XV:22-31," *Tarbiz* 43.1-4 (1974): 1-20 (in Hebrew). Milgrom stresses the significance of defiance and that the act was done flauntingly, but proceeds to argue that

first, the idiom "high hand" seems too strong to reflect merely deliberateness.[30] A more substantial problem is the explanation provided for the severity of a "high hand" act: "he reviles the Lord, and that person shall be cut off from the midst of his people. For he has spurned the word of the Lord and his commandment he has violated" (Num 15:31). On the one hand, every transgression deviating from the commandment of God is an offence to God. Yet the relatively small number of appearances of this statement in the Hebrew Bible does not justify such a view.[31] There are many reasons given for laws in the Pentateuch, including the memory of the slavery in Egypt, social reasons, or the creation of humans in God's

---

any act that was done in secret can be "commuted to the status of inadvertencies by means of repentance" (Milgrom, *Numbers*, 96). In doing so, he sustains the dichotomy between intentional and unintentional sin that most people see in this passage. Newsom defines the "high hand" transgression to be "presumptuous," rather than merely deliberate: Newsom, *Self as Symbolic Space*, 161. For other views, see Timothy R. Ashley, *The Book of Numbers* (Grand Rapids: Eerdmans, 1993), 288; Horst Seebass, *Numeri* (Neukirchen-Vluyn: Neukirchener Verlag, 1995), 146-7.

[30] I thank David Jorgensen for drawing my attention to the use of this idiom in modern English, probably deriving from biblical origins. Oxford English Dictionary defines it as "acting or done with a high hand, or in an overbearing or arbitrary manner," while Merriam-Webster describes it as "having or showing no regard for the rights, concerns, or feelings of others." Both dictionaries were accessed electronically on September 30, 2010 (http://oed.com/ and http://www.merriam-webster.com respectively).

[31] Conversely, it can be said that precisely because every transgression is an offence to God it is implausible that the law would demand *karet* (excision) punishment for every transgression. Knohl claims that this view is compatible with the Holiness School: Israel Knohl, "The Sin Offering Law in the 'Holiness School' (Numbers 15.22-31)," in *Priesthood and Cult in Ancient Israel*, ed. Gary A. Anderson and Saul M. Olyan (Sheffield: JSOT Press, 1991), 192-203. On the identification of Num 15 as belonging to H, see also Jacob Milgrom, "H_R in Leviticus and Elsewhere," in *The Book of Leviticus. Composition and Reception*, ed. Rold Rendtorff, Robert A. Kugler and Sarah Smith Bartel (Leiden: Brill, 2003), 24-40. Knohl's argument, however, renders the specification in the Holiness Code of certain sins that are punished by *karet* redundant (cf. Lev 17:4, 9-10; 18:29; 19:8; 20:3-5; 22:3; 23:29-30). The meaning of *karet* and whether its original meaning can be equated with capital punishment, has been a source of great debate. See Aharon Shemsh, *Punishments and Sins: From Scripture to the Rabbis* (Jerusalem: Magnes, 2003); Beth A. Berkowitz, *Execution and Invention. Death Penalty Discourse in Early Rabbinic and Christian Cultures* (Oxford: Oxford University Press, 2006), 58-59; Devora Steinmetz, *Punishment and Freedom. The Rabbinic Construction of Criminal Law* (Philadelphia: University of Pennsylvania Press, 2008), 40-45, 69-83.

image.[32] It is rarely stated that transgression is by definition a deviation from the word of God and hence an offence to Him.

Let us consider three different kinds of transgressions of pentateuchal law: idolatry (Ex 20:3-5), adultery (Ex 20:14), and blasphemy (Lev 24:15-16). Following the understanding of "high hand" in Num 15:31 as a term for deliberateness, all three cases should be deemed instances of "reviling the Lord."[33] However, notwithstanding this common aspect, these are three very different cases in nature. Unlike adultery, idolatry and blasphemy are offenses to God by their content, not only because they are explicitly prohibited in the divine law. Idolatry is the pursuit of an alternative cultic activity that competes with the cult of the Lord and thus denies His uniqueness. Blasphemy does not involve a cultic worship abhorrent to the Lord, but sets out to deliberately revolt against Him.[34] Adultery, on the other hand, may be a mere submission to sexual urges, not in spite of the God's law, but regardless of them and without any explicit consideration of Him.

Yet under certain circumstances adultery could be enacted as a deliberate revolt against God, regardless of the pleasures one might gain from the act itself. For example, let us imagine a man who comes to the

---

[32] See, for example, Gn 9:6; Ex 22:20-26; Deut 5:12-15, 24:14-15.

[33] Assuming all were deliberate (the idolater was not under the impression he was praying to God; the adulterer knew he was married, or that the other woman was not his wife; and the blasphemer knew the epithet he used would be offensive to God, and did not mean to say something else which came out blasphemous by mistake. For the criteria that constitute intent, see Anscombe, *Intention*; Audi, *Action, Intention, and Reason*, 56-73 (esp. 64-65); Bratman, *Intention, Plans, and Practical Reason* (Cambridge: Harvard University Press, 1987), 111-23; idem, "What is Intention?" in *Intentions in Communication*, ed. Philp R. Cohen, Jerry Morgan and Martha E. Pollack (Cambridge: Bradford, 1990), 15-31; Donald Davidson, "Actions, Reasons and Causes," in his *Essays on Actions and Events* (Oxford: Oxford University Press, 2001), 3-19; Duff, *Intention, Agency and Criminal Liability*, 15-73; Kathleen Lennon, *Explaining Human Action* (La Salle: Open Court, 1990), 60-67; Moore, *Placing Blame*, 449-77; A. P. Simester, "Moral Certainty and the Boundaries of Intention," *OJLS* 16.3 (1996): 445-69; Leo Zaibert, *Five Ways Patricia Can Kill Her Husband. A Theory of Intentionality and Blame* (Chicago: Open Court, 2005), 12-17, 179-200.

[34] Shlomi Sasson suggested to me that a comparison to modern law may be drawn from laws in which the offense is against the state, e.g. a distinction between murder and a political assassination. The widely-debated *Texas vs. Johnson* was a case in point: if burning the flag was intended to degrade it, it would be deemed illegal. But if it was done intentionally as protest, it was argued, it should be defended under Freedom of Speech. See Marianne Constable, *Just Silences. The Limits and Possibilities of Modern Law* (Princeton: Princeton University Press, 2005), 93-110.

temple, proclaims that he does not care for the laws of God, and to prove it, tells of his acts of adultery which he has committed in broad daylight, only to defy God.[35]

According to biblical law, the common adulterer has violated the law of the adulterer (Ex 20:12; Lev 18:20, 20:10; Deut 5:16, 22:22), while the latter is primarily guilty of reviling the Lord. Both have purposefully transgressed and deserve punishment accordingly, but only one fits the description of Num 15:31.[36]

This differentiation is hardly new. Maimonides has already delineated four levels of transgression: the one who is compelled, the one who is erroneous, the deliberator, and the one who acts with a high hand.[37] However, Maimonides had before him a much richer legal tradition than the one provided in Num 15. The Hebrew Bible does not discuss these four levels as such, and the distinction between the deliberator and the "high hand" is not one made explicit in the Pentateuch. Nevertheless, by inferring from the two hypothetical adulterers on the special meaning of Num 15, it is quite possible that this notion does exist in the Hebrew Bible. Thus, the juxtaposition between the erroneous transgressor and the transgressor with a high hand is somewhat misleading. It is not precisely a matter of presenting intentional and unintentional acts as opposites but rather, presenting them as two opposing cases of exceptions to the regular condition of sin. Sin, by its nature, is deliberate. As such, it entails a whole system of rules concerning the severity of the crime (murder, damages to people or to property, sexual crimes, etc.). When it is not deliberate, Num 15 tells us, it is either inadvertent or spiteful. This nuance of intent is one that complicates the message of Num 15 and is more appropriate to its language than the common understanding of the dichotomy between intentional and unintentional. Underlying the explicit laws of the

---

[35] See 2 Sam 16:21-22 for adultery that is perpetrated not for its own sake.

[36] This hypothetical case demonstrates Audi's distinction between simple intentions and complex ones. The common adulterer intends to commit adultery, and executes his intent while the second intends to defy God, and commits adultery in order to bring about this intention. However, although his major intention is defiance, it should be emphasized that the second adulterer cannot claim to have committed adultery unintentionally on the grounds that adultery was not his primary intention. This claim would involve separating one action from another and describing the case as a series of actions resulting of a series of intentions. See Audi, *Action, Intention, and Reason*, 70-73, 109-119; Anscombe, *Intention*, 30-36; Bratman, *Intention, Plans, and Practical Reason*, 139-67.

[37] Guide for the Perplexed, 3.41.

unintentional sin and the high hand are three, not two, possible modes of action. The one that goes unmentioned is the one that much of the criminal law in the Pentateuch describes: the standard deliberate sinner. In short, the significance of Num 15 is not in explaining the distinction between intentional and unintentional sin, but in appending to the standard sinner two categories of exceptions.

Naturally, such a reading of Num 15 also bears consequences for extra-biblical sources that use similar language. In the Dead Sea Scrolls, where the earliest extra-biblical Jewish laws are preserved, we find several uses of the term "high hand," most importantly, as mentioned above, in the Community Rule.[38] Scholars agree that the term "high hand" itself is derived from the biblical sources[39] and have tended to view the use of it in the Community Rule as a technical legal term that marks deliberateness, as opposed to the term for "error," שגגה.[40] As in the biblical discussion, this "technical" view overlooks the essence that is carried by the idiom "high hand." Even if it is used merely as a distinction between a deliberate act and a mistake, the term would still reflect a significant notion. Namely, that anything which is not a mistake is accompanied by arrogance, insolence, or a whole array of terms associated with the imagery of a high hand (especially in light of the aforementioned connotations of the term in the

---

[38] All instances occur only in the relatively complete copy of cave 1, 1QS and none have been preserved in the fragments from other caves. For an excellent summary of the problem, see Alison Schofield, "Rereading S: A New Model of Textual Development in Light of the Cave 4 Serekh Copies," *DSD* 15.1 (2008): 96-120. For further reading, see primarily the work of Sarianna Metso, especially *The Textual Development of the Qumran Community Rule* (Leiden: Brill, 1997), but also "The Textual Traditions of the Qumran Community Rule," in *Legal Texts and Legal Issues. Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, ed. Moshe J. Bernstein, Florentino García Martínez and John Kampen (Leiden: Brill, 1997), 141-7; eadem, "The Redaction of the Community Rule," in *The Dead Sea Scrolls: Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 377-84; eadem, *Serekh Texts*, 15-20. See also Philip S. Alexander, "The Redaction History of Serek Ha-Yahad: A Proposal," *RevQ* 17.1-4 (1996): 437-56; Hempel, "Interpretative Authority in the Community Rule Tradition," *DSD* 10.1 (2003): 59-80.

[39] Anderson, "Intentional and Unintentional Sin," 52; Tzoref, "Hidden and Revealed," 172; Qimron, "On Unintentional and Intentional Sins," 106-107; Licht, *Rule Scroll*, 185.

[40] Qimron, "On Unintentional and Intentional Sins," 103-110; Anderson, "Intentional and Unintentional Sin," 49-64; Tzoref, "The 'Hidden' and the 'Revealed'," 157-90. See also Licht, *Rule Scroll*, 185.

Exodus narrative). As such, it cannot be construed as merely a technical term, but rather as one that is also loaded with ideology.

That said, it remains to be decided whether the use of this term in the Scrolls is similar to Num 15, i.e., whether it denotes an exception to the ordinary intentional sin rather than an opposite term of שגגה. The passage from the Community Rule quoted above (1QS 8.16-27) mentions two cases in which the "high hand" aspect is significant in determining the punishment, one regarding a member of the Yahad community, the other regarding a member of the Council of Holiness.[41] The former is forbidden to touch the purity of the men of holiness,[42] nor know of the counsel, until his deeds have purified (1QS 8.17-18). The latter is banished from the Council of Holiness as a result of his high-hand actions. It is understandable why the punishment of a member of a higher inner-circle

[41] The division of inner circles within the sect is yet another difficult question which will not be developed here. See discussions by John J. Collins, "Forms of Community in the Dead Sea Scrolls," in *Emanuel. Studies in the Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, ed. Shalom M. Paul et al. (Leiden: Brill, 2003), 97-111; idem, "The Yahad and the Qumran Community," in *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb*, ed. Charlotte Hempel and Judith M. Lieu (Leiden: Brill, 2006), 81-96; idem, "Beyond the Qumran Community: Social Organization in the Dead Sea Scrolls," *DSD* 16.3 (2009): 351-69; Charlotte Hempel, "Community Structures in the Dead Sea Scrolls: Admission, Organization, Disciplinary Procedures," in *The Dead Sea Scrolls after Fifty Years. A Comprehensive Assessment*, ed. Peter W. Flint and James C. VanderKam (Leiden: Brill, 1999), 2: 67-92; Jastram, "Hierarchy at Qumran," 349-76; Michael A. Knibb, *The Qumran Community* (Cambridge: Cambridge University Press, 1987), 77-144; Louise J. Lawrence, "'Men of Perfect Holiness' (1QS 7.20): Social-Scientific Thoughts on Group Identity, Asceticism and Ethical Development in the Rule of the Community," in *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, ed. Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen (London: T & T Clark, 2005), 83-100; Metso, "Problems in Reconstructing the Organizational Chart of the Essenes"; eadem, "Whom Does the Term Yahad Identify?" in *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb*, ed. Charlotte Hempel and Judith M. Lieu (Leiden: Brill, 2006), 213-35; Regev, *Sectarianism in Qumran*, 163-96; Schiffman, "Utopia and Reality: Political Leadership and Organization in the Dead Sea Scrolls Community," *Emanuel. Studies in the Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, ed. Shalom M. Paul et al. (Leiden: Brill, 2003), 413-27; Aharon Shemesh, "Expulsion and Exclusion in the Community Rule and the Damascus Document," *DSD* 9.1 (2002): 44-74; Moshe Weinfeld, *The Organizational Pattern and the Penal Code of the Qumran Sect* (Fribourg: Editions Universitaires, 1986), 10-16.

[42] Most likely referring to food, so as not to render it impure, see Qimron and Charlesworth, "Rule of the Community," 37.

(with hierarchical authority and responsibility) is banished forever, whereas the ordinary member is suspended and has an opportunity to repent and atone for his transgressions. At the same time, however, the relative leniency of the punishment is quite striking, especially considering that the phrase "high hand" is borrowed from the Pentateuch which specifies that "high hand" actions will result in כרת (*karet*). It seems somewhat unlikely for the Community Rule to appropriate this phrase without linking it to the same punishment prescribed in the Pentateuch.

This discrepancy generates the possibility that unlike the biblical text of Num 15, in these texts the term "high hand" indeed denotes any form of deliberateness. This would therefore mean that the texts of the Dead Sea Scrolls do not subscribe to the distinctions of error, deliberateness, and spite, but consider any transgression of an explicit law to be a spiteful act. Thus, I am reaffirming earlier views of the term "high hand" in Qumran texts as reflecting a distinction between intentional and unintentional sins. However, at the same time I also stress that this is a deviation from the biblical conceptualization of the term "high hand."

This conception can be seen in another passage of the Community Rule (5.10-13, provided in the previous chapter), in which it is made explicit that those who transgress the "hidden" laws (נסתרות) are culpable for not seeking and acquiring knowledge of those hidden laws, but they are all the more so culpable for transgressing the "revealed" laws (נגלות) which they are assumed to know.[43] Again, the transgressions of high hand are punished more severely, but not to the extent required by Num 15. It does become

[43] The partial correlation between the hidden and revealed laws and the intentional and unintentional sin has been source for debate in the studies dedicated to this issue. See especially the discussion by Tzoref, "The 'Hidden' and the 'Revealed'," 169-174. See the entire study (pp. 157-190) on the concept of the hidden and revealed law, and also those by Schiffman, *Halakhah at Qumran*, 22-32; idem, *Reclaiming the Dead Sea Scrolls*, 247-9; Heger, "Development of Qumran Law," 167-206; Shemesh and Werman, "Hidden Things and Their Revelation," 409-27; Ben Zion Wacholder, "The 'Sealed' Torah versus the 'Revealed' Torah: An Exegesis of Damascus Covenant V, 1-6 and Jeremiah 32, 10-14," *RevQ* 12.3 (1986): 351-68; Philip R. Davies, "The Judaism(s) of the Damascus Document," in *The Damascus Document. A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon, and Avital Pinnick (Leiden: Brill, 2000), 33; Michael E. Stone, "Lists of Revealed Things in the Apocalyptic Literature," in *Magnalia Dei: The Mighty Acts of God. Essays on the Bible and Archaeology in Memory of G. Ernest Wright*, ed. Frank Moore Cross, Werner E. Lemke and Patrick D. Miller, Jr. (Garden City: Doubleday, 1976), 414-52.

clear, however, that the criterion for high hand here is the fact that the law was known, unlike the hidden laws.

Furthermore, when considered in the context of the avoidance of death penalty in Essene law,[44] the significance of the departure from the original meaning of Num 15 is clarified. Interestingly, the one instance in which the term "high hand" appears in Qumran texts with a capital punishment attached to it (4Q159 2-4:6) appears in the same scroll that Joseph Baumgarten notes in reference to a different case of capital punishment, unlike the tendency of Essene laws.[45] Therefore, we could say that the Community Rule either misinterpreted Num 15 to relate to any intentional sin (as did many subsequent commentators), or that it purposely diverged from the original intention of Num 15, and chose to view any intentional sin (or at least any intentional sin of an explicit transgression listed in the Pentateuch) to be a sin of "high hand." In addition, it also decreed that death would not be the penalty in contrast to Num 15.[46] This is also the case in the Damascus Document.[47] The other instances of "high hand" in Qumran are too fragmentary to allow us to say anything regarding the penalty.[48]

In rabbinic literature the common term for deliberate transgression is זדון,[49] not "high hand." However, a few rabbinic sources which do relate to

---

[44] Joseph M. Baumgarten, "The Avoidance of Death Penalty in Qumran Law," in *Reworking the Bible: Apocryphal and Related Texts at Qumran*, ed. Esther G. Chazon, Devorah Dimant and Ruth A. Clements (Leiden: Brill, 2005), 31-38. Compare also the status of death penalty in rabbinic literature. For a survey of scholarship on the matter, see Berkowitz, *Execution and Invention*, 25-64.

[45] This is not without implications on the place of 4Q159 in the legal corpus of the Essenes. See chapter 5, and Bernstein, "4Q159 Fragment 5 and The 'Desert Theology' of the Qumran Sect," in *Emanuel. Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, ed. Shalom M. Paul et al. (Leiden: Brill, 2003), 43-56; Charlotte Hempel, "4QOrd^{a} (4Q159) and the Laws of the Damascus Document," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 372-6.

[46] In addition to the instances mentioned above (1QS 5.10-13 and 8.16-27), there is one more occurrence (9.1-2) that substantiates this argument.

[47] 4Q266 8, iii:3. The parallel in 4Q270 6 iv:5 lacks any remnants of the phrase "high hand" which is extremely fragmentary in 4Q266 itself.

[48] For sake of comprehensiveness I list the other occurrences I am referring to here, without discussing them: 4Q171 3-19, iv:15; 4Q182 1:3; 4Q387 1:5; 4Q388a 3:7.

[49] On זדון see Ya'acov Habba, "Tools for Determining the Culpability Degree of Murder Crimes in Jewish Law," *Qiryat ha-Mishpat* 2 (2002): 265-93 (in Hebrew).

"high hand" are noteworthy. Aharon Shemesh has studied the use of the phrase in *Sifre*,[50] where Num 15:30 is said to be about Manasseh, for "revealing sides in the Torah."[51] The meaning of this obscure idiom, it appears, refers to someone who purposefully interprets scripture wrongfully, in order to abuse it, or even allow what the Torah forbids.[52] The relation of such misinterpretation of "high hand" would then be the understanding of the term as an indication of arrogance or shamelessness that is required in order to treat scripture in such a manner rather than approaching it humbly to reveal its true meaning.[53] As mentioned earlier, the association of arrogance or shamelessness to the term "high hand" derives from the biblical verses describing the Exodus from Egypt, and several midrashim elaborate on that point, too.[54]

The rabbinic sources, therefore, do not conceive "high hand" to denote mere malicious intent that precedes a transgression, but they do not explicitly discuss the difference and importance of malicious intent, and the "high hand" in the way offered by Maimonides, as mentioned above. Some difficulty with the Num 15:30 and its implications can be detected in several passages of the Babylonian Talmud that explain Num 15 as an equation of the any transgression from the Torah with idolatry, since idolatry would actually require *karet*, and the transgression of the Torah is in a way a denunciation of God, and therefore idolatry.[55] Nonetheless, the Babylonian

---

[50] Also reproduced in *b.* San 99b.

[51] Shemesh, "Traces of Sectarian Halakhah," 91-103.

[52] While the accusation against the Sadducees (or the Essenes) addressed by Shemesh is very different, it seems worthwhile to note an interesting parallel in modern law. Brian Rubens discusses the case of drug manufacturers who intentionally alter the chemical structure of certain substances so they do not fall under the Food, Drug, and Cosmetic Act. The intent behind such act is hard to define. While the manufacturers are doing everything they can in order to keep the law (producing a substance that will not be illegal), they are not adhering to the spirit of the law (as they know very well the new substance will eventually be prohibited). See Brian Rubens, "Common Law versus Regulatory Fraud Common Law versus Regulatory Fraud: Parsing the Intent Requirement of the Felony Penalty Provision of the Food, Drug, and Cosmetic Act," *UChicLRev* 72.4 (2005): 1501-32.

[53] This point nicely ties together the issue of malicious intent with the importance of the legislator's intent, mentioned in the introduction to this chapter.

[54] See Mekhilta de-Rabbi Ishmael on Ex 14; Mekhilta de-Rabbi Shimon bar Yoḥay 14; Avot de-Rabbi Nathan (version A) 29; *y.* Ḥallah 2, 58, 2; *b.* Ber 9a. See also Ashley, *Book of Numbers*, 288.

[55] *b.* Shab 69a, 153b; *b.* Yeb 9a; *b.* Hor 8a; *b.* Ker 3a. For further discussion on the significance of intention for transgressions of idolatry, see Ya'acov Habba, "Intention as

Talmud, as well as earlier rabbinic sources, did not deem all transgressions to require *karet*, and do not explicitly state that transgression done defiantly (with a "high hand") leads to such punishment.

Before concluding the discussion of the term "high hand" it is important to state that it could denote intent only in the criminal context and not in any positive way ("willfulness," "devotion," etc.). Biblical law hardly refers to positive intent and the approximate term for such positive willfulness would be נדבה. Although it is often used with "heart" and "spirit", it is almost exclusively used in reference to contributions to the temple (e.g. Ex 35:5, 21-22; Deut 16:10) or wealth (1 Sam 2:8, Ps 113:8). A more general meaning cannot be asserted. This, too, will become a source of interest in later rabbinic tradition, which elaborates on one's intent in time of prayer and charity.[56]

The same root – נדב – is used in the Community Rule in reference to those who voluntarily join the sect (1QS 1.7 and 11).[57] Again, this single use does not provide much insight concerning the relation of this term to positive intent or even to its biblical origins. In light of the deterministic view that is widespread in the scrolls, perhaps this should come as no surprise: free will and hence intentional actions are not a major consideration.[58] This issue becomes problematic when dealing with

---

Part of the Actus Reus in Jewish Law and Israeli Law," *Bar Ilan Law Studies* 20.1 (2003): 184-8 (in Hebrew).

[56] See, for example, *t.* Ber 3.4; *b.* Sukk 49b; Howard Eilberg-Schwartz, *Human Will in Judaism* (Atlanta: Scholars, 1986); Edrei, "'Should a Person Offend Errantly'," 20-62; Martin S. Jaffee, "Mishnaic Literary History and the History of a Mishnaic Idea. On the Formation of the Mishnah's Theory of Intention, with Special Reference to Tractate Ma'aserot," *AJS Review* 11.2 (1986): 135-55; Gilla Ratzersdorfer Rosen, "Between Thought and Action. The Role of Intent in the Performance of *Mitzvot*," in *Jewish Legal Writings by Women*, ed. Micah D. Halpern and Chana Safrai (Jerusalem: Urim, 1998), 202-30; Solomon Zeitlin, "A Note on the Principle of Intention in Tannaitic Literature," in *Alexander Marx Jubilee Volume* (New York: Jewish Theological Seminary, 1950), 631-6.

[57] See Devorah Dimant, "The Volunteers in the *Rule of the Community*: A Biblical Notion in Sectarian Garb," *RevQ* 23.2 (2007): 233-45.

[58] For determinism in Qumran, see Jacob Licht, "An Analysis of the Treatise on the Two Spirits in DSD," in *Aspects of the Dead Sea Scrolls*, ed. Chaim Rabin and Yigael Yadin (Jerusalem: Magnes, 1958), 88-100; Alfred Marx, "Y a-t-il une prédestination à Qumran?" *RevQ* 6.2 (1967): 163-81; Philip S. Alexander, "Predestination and Free Will in the Theology of the Dead Sea Scrolls," in *Divine and Human Agency in Paul and His Cultural Environment*, ed. John M. G. Barclay and Simon Gathercole (London: T&T Clark, 2006), 27-49; Klawans, "The Dead Sea Scrolls, the Essenes, and the Study of Religious Belief:

transgressions of explicit laws, which cannot be defended as errors. Other than those cases, there is no notion comparable with the Greek τόλμα.[59]

2.4. *Levels of Intent and Determining Intent*

I mentioned previously the four levels of transgression delineated by Maimonides (the compelled, the erroneous, the deliberator, and the high handed). It is important to see that while they are all related to the question of intent, Maimonides is not offering a scale of intent where the lowest in this scale of culpability is the coerced, followed by the inadvertent transgressor, etc. As far as a philosophical definition of intent is concerned, the coerced transgressor, unlike his inadvertent counterpart, is performing his deed intentionally. He may not be legally liable as is one who intended to commit a crime, but nevertheless the action itself was intentional: he knew what he was doing, and he was in full command of his faculties while performing the deed.

There are several possibilities for inadvertence which will become pertinent in the following section on intention and knowledge. In order to sketch them briefly, we may consider the modern prohibition of turning on a light on the Sabbath (a derivative of the biblical prohibition on fire-lighting). One may inadvertently turn on the light, for example, by accidentally turning it on while tripping and grabbing the wall to prevent

---

Determinism and Freedom of Choice," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, ed. Maxine L. Grossman (Grand Rapids: Eerdmans, 2010), 264-83; Armin Lange, *Weisheit und Prädestination* (Leiden: Brill, 1995), 121-70, 233-70; Vanderkam, *The Dead Sea Scrolls Today*, 108-11.

[59] See Dihle, *The Theory of Will*, 20-47. For the stark contrast of Qumran theology and Hellenism, see Hengel, *Judentum und Hellenismus* (Tübingen: Mohr Siebeck, 1973), 319-69, and cf. his "Qumran und der Hellenismus," in *Qumrân: Sa piété, sa théologie et son milieu*, ed. Mathias Delcor (Paris: Ducolt, 1978), 333-72. However, for further nuances see VanderKam, "Greek at Qumran," in *Hellenism in the Land of Israel*, ed. John J. Collins and Gregory E. Sterling (Notre Dame: University of Notre Dame, 2001), 175-81; Corrado Martone, "Qumran and Stoicism: An Analysis of Some Common Traits," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 617-22. In his discussion of 4Q339 and 4Q340, Shaye Cohen asserts that "the creation of thematic lists… is an expression of Hellenistic textual scholarship…. The Qumran list of false prophets and perhaps also the list of *netinim* provide our earliest evidence for the penetration of this type of scholarship into Jewish circles…" See S. J. D. Cohen, *Significance of Yavneh*, 102.

the fall, or by moving a hand across a wall, without realizing a switch is there. Alternatively, one may not be aware it is Sabbath (e.g. due to jet-lag) or of the law (for instance, a new convert trying to practice Judaism). In the first two cases, the action itself is unintentional. In all the other examples, the act itself was intentional (i.e., setting out to turn on the light and succeeding in doing so), but the transgression was unintentional, whether due to ignorance of the law itself or of circumstances that provide the conditions for the law.[60]

Such differences also exist in the category of an intentional transgression and can be demonstrated using the same example. One may turn on the light on the Sabbath in order to investigate the source for worrying noises in the night. Alternatively, one may turn on the light following a decision not to be an observant Jew or in order to make a point (e.g., to prove lack of observance[61] or that there is no immediate consequence to sin). The first instance is a case known in Jewish Law as **פקוח נפש** ("peril to life"), and is allowed: the profanation of the Sabbath is upheld for matters of life and death.[62] Nevertheless, as far as the definition of intent is concerned, this case is still considered as a deliberate

---

[60] This notion is not unique in the Essene texts, but prevalent in the ancient world, where crime is often viewed as resulting of lack of understanding. This view echoes Socrates, arguing against Euthyphro that no person can act against what is dear to the Gods (Plato, *Euthyphro* 8a-9b. See Fowler, *Plato, I*, 28-32. See also Dihle, *Theory of Will*, 1-19, 31-36. This notion is still prevalent in modern times, especially among those who seek rational causes for actions, when explaining intent. See Davidson, "Actions, Reasons and Causes," 3-19.

[61] As in the story of Aher and R. Meir, *b.* Ḥag. 15a. On this narrative see Jeffrey L. Rubenstein, "Elisha Ben Abuya: Torah and the Sinful Sage," *Journal of Jewish Thought and Philosophy* 7.2 (1997): 139-225; idem, *Talmudic Stories*, 72-83.

[62] *b.* Shab 132a-b. See also *m.* Shab 2.5, on the specific context of extinguishing a candle on the Sabbath. For **פקוח נפש** in relation to Qumran, see Joseph M. Baumgarten, "Laws of the Damascus Document - between Bible and Mishnah," in *The Damascus Document. A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon, and Avital Pinnick (Leiden: Brill, 2000), 23, and more generally on the laws of the Sabbath, Ginzberg, *Unknown Jewish Sect*, 107-15; Schiffman, *Halakhah at Qumran*, 77-133; Shemesh, *Halakhah in the Making*, 96-97; Lutz Doering, "New Aspects of Qumran Sabbath Law from Cave 4 Fragments," in *Legal Texts and Legal Issues. Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, ed. Moshe J. Bernstein, Florentino García Martínez and John Kampen (Leiden: Brill, 1997), 251-74; idem, "Purity Regulations Concerning the Sabbath in the Dead Sea Scrolls and Related Literature," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 600-609.

profanation of the Sabbath. The second example is of a standard transgression of law, and the final one is of a transgression done out of spite, merely for the sake of the violation. The last example demonstrates the category defined by Maimonides – and also by Num 15 as I have argued – as "high hand," whereas in Essene rhetoric there is no apparent distinction between the transgressor out of spite and the standard transgressor.

These levels are relevant when considering the role of intent in Essene thought although not all are manifest in the Scrolls. Their significance lies in concretizing questions of intent and specifically in differentiating intent from outcome. The main element in such differentiation is the statement of a suspect or a defendant, coupled with the evidence or lack thereof to prove or refute it.

A significant component in regulating the actions of the sect was its organizational and hierarchical structure. Josephus stresses the lack of discretion of individual members of the sect twice:

> Τῶν μὲν οὖν ἄλλων οὐκ ἔστιν ὅ τι μὴ τῶν ἐπιμελητῶν προσταξάντων ἐνεργοῦσι, δύο δὲ ταῦτα παρ' αὐτοῖς αὐτεξούσια, ἐπικουρία καὶ ἔλεος.
>
> In all other matters they do nothing without orders from their superiors; two things only are left to individual discretion, the rendering of assistance and compassion.[63]
>
> Τοῖς δὲ πρεσβυτέροις ὑπακούειν καὶ τοῖς πλείσιν ἐν καλῷ τίθενται· δέκα γοῦν συγκαθεζομένων οὐκ ἂν λαλήσειέν τις ἀκόντων τῶν ἐννέα.
>
> It is a point of honor with them to obey their elders, and a majority; for instance, if ten sit together, one will not speak if the nine desire silence.[64]

---

[63] Josephus, *Jewish War* 2.134. Text and translation based on Thackeray, *Josephus. The Jewish War, Books I-II*, 374-5.
[64] *Jewish War* 2.146. Ibid., 378-9.

The strict inspection and adherence to seniors in age or rank is confirmed in several ways by the writings found in Qumran. The significance of hierarchy in Qumran law was discussed in the previous chapter from a different angle, but here it is raised again as a form of reinforcement of surveillance, one that provides little opportunity to sin. Both the Community Rule and the Damascus Document refer to a **מבקר**, an overseer, who is an officer of the sect.[65]

One of the legal roles of the overseer reveals a decisive component of determining intent, namely repetition:

כל דבר אשר ימעל	16b
איש בתורה וראה רעיהו והוא אחד אם דבר מות הוא וידיעהו	17
לעיניו *vacat* בהוכיח למבקר והמבקר יכתבהו בידו עד עשותו	18
עוד לפני אחד ושב והודיע למבקר אם ישוב ונתפש לפני	19
אחד שלם משפטו	20

16b Any matter in which a man betrays
17 the Law, and which his fellow saw, he being alone, if it is a matter of death [i.e., of capital punishment] he shall report it

---

[65] 1QS 6.12, 20; 4QD[a] 5 i, 14; 8 i, 2, 5; 11, 16 and elsewhere. On the term *mbqr* see Richard C. Steiner, "The *mbqr* at Qumran, the *Episkopos* in the Athenian Empire, and the Meaning of *lbqr'* in Ezra 7:14: On the Relation of Ezra's Mission to the Persian Legal Project," *JBL* 120.4 (2001): 623-46 and a review of previous literature there. I share Steiner's skepticism of Thiering's hypothesis that "the earliest Christian church adopted the office of bishop from the Essene lay communities" –Barbara Thiering, "*Mebaqqer* and *Episkopos* in the Light of the Temple Scroll," *JBL* 100.1 (1981): 74. However, I think that his etymological discussion need not dissociate the usage of the term in the Scrolls from the allusion to Ezek 34:12 (Steiner, "The *mbqr*," 644-5). His argument against such a link based on the omission of the crucial word **בקרת** ignores the art of allusion, which many times gains its power from a partial quote, which the reader is expected to recognize and complete on his own. I demonstrated this in my yet unpublished paper, "Interlacement of Biblical Quotations as a Stylistic Feature of the Hodayot Scroll," presented at the Orion Center for the Study of the Dead Sea Scrolls, Hebrew University, November 15, 2005. For the social significance of the overseer, see A. I. Baumgarten, *Flourishing of Jewish Sects*, 110-2; Grossman, *Reading for History*, 167-95; Colin G. Kruse, "Community Functionaries in the Rule of the Community and the Damascus Document: A Test of Chronological Relationships," *RevQ* 10.4 (1981): 543-51; Metso, *Serekh Texts*, 30-37; Newsom, *Self as Symbolic Space*, 138-48; Weinfeld, *Organizational Pattern*, 19-21.

18 before his eyes *vacat* reproaching [him] to the Overseer. And the Overseer shall write it in his hand[66] until he commits it
19 again before one, who will again report to the Overseer. If he repeats it and is caught in the presence
20 of one,[67] his judgment is complete.[68]

As several scholars have noted, the main problem tackled by the law above is the requirement of two witnesses for indictment mandated by Deut 17:6, 19:15.[69] This requirement is in conflict with the desire to prosecute transgressors and protect the purity of the sect even in cases where only one has witnessed the transgression.[70] However, at the base of

---

[66] The phrase "to write in hand" is obscure. García Martínez and Tigchelaar (*DSSSE* 1:567) suggest "personally record it." The context also allows to interpret it as a tentative recording, i.e., something that remains in the Overseer's hand, rather than the permanent records.

[67] Qimron reads אחר ("of another"), but concedes that אחד is possible (Qimron, *Dead Sea Scrolls*, 43). אחד (one) does not denote "the same one," and thus the two possible readings do not affect the meaning.

[68] CD 9.16-20. The text and translation are based on Joseph M. Baumgarten and Daniel R. Schwartz, "Damascus Document (CD)," in *Damascus Document, War Scroll, and Related Documents*, ed. James H. Charlesworth (Tübingen: Mohr Siebeck, 1995), 42-45; cf. Qimron, *Dead Sea Scrolls*, 43. See also Esther Eshel, "4Q477: The Rebukes by the Overseer," *JJS* 45.1 (1994): 119. The above quoted text is not preserved in the Qumran fragments of the Damascus Document. However, 4QD[e] 6 iii-iv preserves other lines of CD 9, concerning the overseer, witnesses, and rebuke, and the extant text follows quite closely the text of CD. It is therefore plausible that the above quoted passage also existed in the Qumran version of the Damascus Document. On the bearings of the medieval manuscript and its relation to the Qumran document, see Grossman, *Reading for History*, 212-20.

[69] Schiffman, *Sectarian Law in the Dead Sea Scrolls*, 73-81; Hempel, *Laws of the Damascus Document*, 93-100 and further bibliography there. In accepting two single witnesses for two separate instances of the same transgression CD seems to be departing from the original meaning of the deuteronomic command. See Bernard S. Jackson, "Damascus Document IX,16-23 and Parallels," *RevQ* 9.3 (1978): 445-50; idem, *Essays in Jewish and Comparative Legal History*, 172-201; Shemesh, *Punishments and Sins*, 85-86; Chaim Rabin, *Qumran Studies* (Oxford: Oxford University Press, 1957), 32 and Wassen, *Women in the Damascus Document*, (Leiden: Brill, 2005), 65.

[70] On the use of the Hebrew Bible in the Damascus Document see Sidnie White Crawford, "The Use of the Pentateuch in the Temple Scroll and the Damascus Document in the Second Century B.C.E," in *The Pentateuch as Torah. New Models for Understanding Its Promulgation and Acceptance*, ed. Gary N. Knoppers and Bernard M. Levinson (Winona Lake: Eisenbrauns, 2007), 301-17; Devorah Dimant, "The Hebrew Bible in the Dead Sea Scrolls: Torah Quotations in the Damascus Covenant," in *Sha'arei Talmon. Studies in the Bible,*

the law lies also the obligation to rebuke one's fellow man for sins, as commanded in Lev 19:17-18.[71] In the Damascus Document this obligation is coupled with the obligation of firm evidence in the form of two witnesses.[72] The demand to rebuke a fellow man is revealed here also as a preventive measure against the denial of committing a sin altogether, or a denial of the intention behind it.[73]

Both the Damascus Document (4QD) and the Community Rule (1QS) state that a member who has sinned "in the stubbornness of his heart" and then repents, will be separated (i.e., expelled) for two years.[74] The Community Rule proceeds to assert that any member who has been in the Council of the Community (עצת היחד) for ten years, and then his spirit has "backslidden" (simply שבה, "return" in the Hebrew), will not be allowed

---

Qumran, and the Ancient Near East presented to Shemaryahu Talmon, ed. Emanuel Tov and Michael Fishbane (Winona Lake: Eisenbrauns, 1992), *113-*122 (in Hebrew); Hannah K. Harrington, "Biblical Law at Qumran"; in *The Dead Sea Scrolls after Fifty Years: A Comprehensive Assessment*, ed. Peter W. Flint and James C. VanderKam (Leiden: Brill, 1998), 1: 160-85; Himmelfarb, *Kingdom of Priests*, 98-114, 128-31; Shemesh, "The Scriptural Background of the Penal Code in the Rule of the Community and Damascus Document," *DSD* 15.2 (2008): 191-224; idem, "Scriptural Interpretations in the Damascus Document and Their Parallels in Rabbinic Midrash," in *The Damascus Document. A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon, and Avital Pinnick (Leiden: Brill, 2000), 161-75. See also specifically on the significance of Deuteronomy, Maxine L. Grossman, "Reading for Gender in the Damascus Document," *DSD* 11.2 (2004): 222-6.

[71] On the laws of rebuke in Qumran, see Kister, "Divorce, Reproof and Other Sayings in the Synoptic Gospels: Jesus Traditions in the Context of 'Qumranic' and Other Texts," in *Text, Thought, and Practice in Qumran and Early Christianity*, ed. Ruth A. Clements and Daniel R. Schwartz (Leiden: Brill, 2009), 212-29; Qimron, "The Law of the Avenger and the Grudge-Bearer in the Dead Sea Scrolls," in *The Path of Peace. Studies in Honor of Israel Friedman Ben-Shalom*, ed. Dov Gera and Miriam Ben-Zeev (Beer Sheva: Ben Gurion University, 2005), 499-505 (in Hebrew); Schiffman, *Sectarian Law in the Dead Sea Scrolls*, 89-109; Aharon Shemesh, "Rebuke, Warning and the Obligation to Testify – in Judean Desert Writings and Rabbinic Halakha," *Tarbiz* 66.2 (1997): 149-68 (in Hebrew).

[72] CD 9.2-8. Cf. 4QD^{e} 6 iii, 17- iv, 1.

[73] 4Q477, a text labeled as "Rebukes Reported by the Overseer" provides a glimpse into this process in action. Unfortunately, its fragmentary nature prevents an in-depth discussion, but the statement preserved in Frg. 1, "to make their offences remembered" (להזכיר את נעויתם) testifies that this is a rare document in which the general laws from the Damascus Document and the Community Rule were being put into practice. See E. Eshel, "4Q477: The Rebukes by the Overseer"; Hempel, "Who Rebukes in 4Q477?" *RevQ* 16.4 (1995) 655-56; Metso, *Serekh Texts*, 58-59.

[74] 4QD^{e} 7 i, 8- 9; 1QS 7.18-20

to repent or to return to the community again.[75] The differences between the Damascus Document and the Community Rule on this point call for an explanation. Shemesh has argued that the addition of the ten-year period is intended to verify that a transgressor is no longer under the dominion of Belial,[76] and is therefore fully responsible for his actions.[77] However, the differences do not end in the mention of the ten-year period in 1QS and its omission in 4QD. While 1QS describes this transgressor as someone who has "backslidden," 4QD describes him as one who "despises the law of the many" (**אשר ימאס את משפט הרבים**).[78] Shemesh claims that the ten-year stipulation is a later addition intended to distinguish between the former transgressor (who may repent and be separated for two years) and the latter.[79] But the latter transgressor is said to repeat his transgressions thus preventing us from reading this as a first-time incident of a ten-year member. In other words, rather than distinguishing the two laws, the wording compels a joint reading of them as one law. The Community Rule, therefore, provides its members with a ten-year grace period, instead of stipulating a permanent expulsion for any repeated transgression.

To the aforementioned texts describing the role of the overseer in preventing unintentional sin, we may add the following passage from the Damascus Document:

1 [ואל י]עש [איש למקח ולממכר]
2 רב]ד[כי אם[הודיע למבקר]

[75] 1QS 7.22-24.

[76] The spirit or angel dominating the realm of darkness. See Annette Steudel, "God and Belial," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Socieety, 2000), 332-40; Dimant, "Between Qumran Sectarian and Non-Sectarian Texts: The Case of Belial and Mastema," 237-46; Ishay Rosen-Zvi, *Demonic Desires. 'Yetzer Hara' and the Problem of Evil in Late Antiquity* (Philadelphia: University of Pennsylvania Press, 2011), 46-64.

[77] Shemesh, *Punishments and Sins*, 77. This reading can be further supported by the fact that someone who repeats a transgression within the two years of his separation is considered to have "erred again" (**שגג עוד**), see 1QS 8.26.

[78] 4QD[e] 7 i, 11. The phrase appears in the Hebrew Bible in the context of despising God's law (Lev 26:43; Ezek 5:6, 20:13, 16), and therefore also serves as a bold statement regarding the status of the law of the many.

[79] Shemesh, *Punishments and Sins*, 77.

3 [א]שר במחנ[ה ועשה בעצה]
4 וְלוֹ ישוגו וכן לכול לוֹק[ח אשה]
5 וְהוֹאה בעצה וְכֵן וכן לֵ[מגרש]

1 [Let no man] do any[thing involving buying or selling]
2 unless [he informs the Overseer]
3 who is in the cam[p; he shall do it with counsel]
4 so that they do not err. Likewise for anyone who tak[es a wife,]
5 let it be with counsel, and so[80] for [one who divorces.][81]

In a similar manner to the one described in the previous passages, this passage orders for matters of trade and personal life to be handed over to the Overseer as a preemptive measure against the possibility of an inadvertent sin. This demonstrates once again that inadvertent sin is not taken lightly.[82] Whenever the sin can be avoided, the proper measures should be taken for that purpose. Inadvertence is an argument for leniency but not for amnesty. Thus, although the above passage is not directed at overt sins, but rather with ordinary dealings of every society, the possibility of mishandling these dealings is grave enough to submit them to the discretion of the Overseer.[83]

The discussion of levels of intent and the ways intent is determined reveals an important link between intent and knowledge in Essene law. Both the Damascus Document and the Community Rule reflect a grave concern that lack of knowledge may yield unintentional sins. One of the ways to avoid this danger according to both texts is a close supervision of all members by the officers of the sect. As shown, this method is also mentioned in two passages from Josephus, testifying that it was not only

---

[80] The word וכן is mistakenly repeated in the Hebrew. See Qimron, *Dead Sea Scrolls*, 49.

[81] 4QD[a] 9 iii, 1-5. The crucial reconstructions (such as "buying and selling" on l. 1, "overseer" on l. 2) are all based on extant text in CD 13.15-17. The phrase ולו ישוגו ("so that they do not err") does not appear in the CD version, but has been preserved in the cave 4 copy.

[82] Another example will be seen in the Damascus Document's treatment of the laws of premarital sexual relations, to be discussed in Chapter 5.

[83] Possession was closely linked to the intent of the parties in Roman Law as well. See Digest 47.2.1-6; cf. Borkowski, *Textbook on Roman Law*, 184-200; Crook, *Law and Life of Rome*, 168-70; A. Watson, *The Spirit of Roman Law* (Athens: University of Georgia Press, 1995), 98-110.

mandated in Essene legal documents, but was practiced as part of the Essene legal system. In light of the centrality of this practice, the discussion will conclude with a final example concerning intent and knowledge.

2.5. *Intent and Knowledge*

As mentioned in the previous section, Shemesh has argued that the ten-year stipulation in 1QS prior to a permanent expulsion is related to Belial's measure of influence, and is intended to rule out the possibility that the transgressor was acting without full command of will or consciousness. The notion that the lack of proper consciousness can lead to sin is another major link between intent and knowledge and it is made explicit in the following segment of the Damascus Document:

4b וכול אשר נגלה מן התורה לרוב המחנה
5 והו[א שג]ה בה יודיעהו המבקר אותו ויצוהו עלו וילמד
6 עד שנה תמימה ולפי דעתה יקרב וכול היותו אויל
7 [ומ]שוגע אל יבו וכול פתי ושוגה וכה עינים לבלתי ראות
8 [ו]חגר או פסח או חרש או נער זעטוט א[ל יבוא] איש
9 [מ]אלה אל תוך העדה כי מלאכ[י] הקוד[ש ב]

4b Any matter of the Law revealed to the multitude of the camp
5 in which [he might e]rr, let the Overseer make it known to him and enjoin it upon him and teach
6 him for up to one complete year; according to his knowledge let him be brought near and no light-minded
7 [or f]ool shall come (into the congregation). Neither shall any simple minded or errant man, nor one with dimmed eyes who cannot see,
8 [nor] a limping or lame or deaf person, nor a young boy, none
9 [of] these shall [come] into the congregation, for the hol[y] angel[s][84]

[84] 4QD[a] 8 i, 4-9. On the restrictions of disabled persons to join the congregation, see Johanna Dorman, *The Blemished Body. Deformity and Disability in the Qumran Scrolls* (Groningen: Rijksuniversiteit, 2007), 49-136. For distinctions and shared features of physically impure and the spiritually impure in connection to separation from the congregation, see also Mila Ginsburskaya, "The Right of Counsel and the Idea of Purity in

The law states explicitly the possibility that the transgression is a result of ignorance. Consequentially, the transgressor is entrusted in the hands of the Overseer, who is then responsible for tutoring him during a full year, to ensure that the transgressor is familiar with the law. For this reason, various mentally and physically challenged individuals (including a young boy) are excluded from joining the congregation.[85] Apparently it is assumed that unlike ignorant transgressors, the mentally and physically challenged cannot reach the required familiarity with the law. This stipulation is supplemented with an explanation concerning holiness and purity, which must be protected from any form of transgression, even that of ignorant erring, by those whose access to knowledge is inherently limited or interrupted.[86]

The "law revealed to the multitude of the camp" mentioned in l. 4, is most probably related to the distinction between נגלות and נסתרות discussed above. It should be stressed again that this is a form of reconciling certain demands of the sect from all adherents to the Torah, with a lack of access to certain demands, for those were "revealed" solely to the members of the sect. In addition, this is also a way to accommodate changing interpretations and new concepts introduced to the sect.

2.6. *Conclusion*

In his *Philosophical Investigations*, Wittgenstein asks:

> *Aber vergessen wir eines nicht: wenn 'ich meinen Arm hebe', hebt sich mein Arm. Und das Problem entsteht: was ist das, was übrigbleibt, wenn ich von der Tatsache, daß ich meinen Arm hebe, die abziehe, daß mein Arm sich hebt?*

---

the Rule of the Community (1QS) and the Rule of the Congregation (1QSa)," in *Qumran Cave 1 Revisited. Texts from Cave 1 Sixty Years after Their Discovery*, ed. Daniel K. Falk et al. (Leiden: Brill, 2010), 77-90.

[85] This issue is expanded in chapter 3.

[86] Hempel stresses the difference between the camp (l. 4, מחנה) and the congregation (l. 9, עדה) in this respect: "I am inclined to think that access to the congregation was more limited than access to the camp"(Hempel, *Laws of the Damscus Document*, 104).

> Let us not forget this: When 'I raise my arm', my arm goes up. And the problem arises: what is left over if I subtract the fact that my arm goes up from the fact that I raise my arm?[87]

There is a play with language here which relevant to the discussion of intent and is somewhat lost in the English. The German for "my arm goes up" here is "hebt sich mein Arm" - i.e., the same verb describes the movement of the arm and the action of the doer. Hence, if the arm is literally (and mathematically) doing the raising on itself, the doer is seemingly erased from the equation. But that leaves the question of intention which is where the doer is crucial after all. Wittgenstein's rhetorical question expresses the notion that the doer is "raising his arm," not "saying that he intends to raise his arm" in complete separation from the act itself. Intention, if we will, is the engine within the act of the hand. Several paragraphs later Wittgenstein even goes further into describing intention as more memorable, and thus more significant, than action (in this case, a speech-act):

> *"Ich erinnere mich nicht mehr an meine Worte, aber ich erinnere mich genau an meine Absicht: ich wollte ihn mit meinen Worten beruhigen." Was zeigt mir meine Erinnerung; was führt sie mir vor die Seele? Nun, wenn sie nichts täte, als mir diese Worte einzugeben! und vielleicht noch andere, die die Situation noch genauer ausmalen. – ("Ich erinnere mich nicht mehr meiner Worte, aber wohl an den Geist meiner Worte.")*
>
> 'I no longer remember the words I used, but I remember my intention precisely; I meant my words to quiet him. What does my memory *shew* me; what does it bring before my mind? Suppose it did nothing but suggest those words to me! –and perhaps others which fill out the picture still more exactly. –('I don't remember my words any more, but I certainly remember their spirit.')[88]

Interestingly, G. E. M. Anscombe, a student of Wittgenstein, tackles this very same issue – of the innate intention within an act – through a description of a man pulling his arm up and down. Yet unlike

---

[87] Wittgenstein, *Philosophical Investigations* (trans. G. E. M. Anscombe; Malden: Wiley-Blackwell, 2009), 136-136e, §621. The segment concludes with the provocative question: "((are the kinaesthetic sensations my willing?))."
[88] Wittgenstein, *Philosophical Investigations*, 140-140e, §648.

Wittgenstein's independent arm raising this man is raising his arm in order to pump water and consequently poison people.[89] Anscombe then suggests a few turns to the hypothetical story, such as that person claiming he has no intention of poisoning the people, although they were being poisoned as a result of his arm raising. For this to be the case, Anscombe contends, he should prove that his actions are routine and have not changed at all in a way that could affect the poisoning.

What Anscombe suggests here is the distinction between a simple intention and a complex intention.[90] There is no doubt that the man is pumping the water intentionally. The only question is regarding his intention to poison people. There are two questions here: the first is of knowledge, the second of action. If the man knows the consequences of his actions he is clearly at fault. Yet assuming he does not, the question of whether such knowledge would change the course of his actions will be crucial in deciding his degree of culpability. We find a similar approach in the Damascus Document concerning those who do not observe the Sabbath and the festivals on the correct dates:

19 וכול אשר יתעה לחלל את השבת ואת המו[עדות]
20 [לוא יומת כי על בני] האדם משמרו ואם ירפא ממנה ושמרוהו עד [שבע]
21 [שנים ואחר יב]וא לקהל

19 Anyone who errs and profanes the Sabbath or the fe[stivals]
20 [shall not be put to death; rather] he is to be guarded by [m]en, and if he heals from it, he shall be guarded for [seven]
21 [years and then he may ent]er the assembly.[91]

This brief passage presents the assumption that those who do not observe the Sabbath on the correct dates[92] do so out of ignorance rather than out of

[89] Anscombe, *Intention*, 40-44. It is no coincidence that Anscombe's example begins with a simple movement of the arm up and down, which develops into a much more complex action. Anscombe is using as her point of departure Wittgenstein's simple example for action and intention of moving the arm, and then elaborates upon the example as a way to advance the philosophical investigation, while pointing to its origin through the example.
[90] See n. 36.

[91] 4QD^{f} 5 i, 19-21. Cf. Qimron, *Dead Sea Scrolls*, 46.
[92] In all likelihood the Essenes are more concerned about the calculation of the dates of festivals rather than the Sabbath, where there was more likely to be consensus. The

evil inclinations. In doing so, it encapsulates the essence of intention in Essene law, and the problem it poses for understanding the legal assumptions found in the Scrolls. On the one hand, one cannot be held culpable for inadvertent sin as clarified by several passages. At the same time, however, an intention to follow the law, and even a firm conviction that one is indeed observing it, is not sufficient if the law is not obeyed precisely as it should. If one intends to observe the Sabbath, and succeeds in observing it fully, but has failed to calculate the calendar properly, then despite his efforts, he is acting against a natural order, and hence against God. The only mentioned qualification is that if this is a result of an honest mistake there is room for penitence. The idea that someone who observed the Sabbath in good faith still needs to pay a price for being ignorant or misled by others shows the idiosyncratic nature of sin in Essene perception as an act that violates the essence of time, and is thus beyond humans to forgive. However, if the view was indeed so absolute in rendering an essentialist violation and a sin against God as one that cannot be undone, the person observing the Sabbath on the wrong date would have had to be put to death, based on biblical law. And yet, if the reconstruction is correct, the Damascus Document notes that this person should not be put to death and thus offers a glimpse to the complex view of intention in Essene perception and to the assumptions regarding the nature of the law embedded in these texts. The medical metaphor ("if he heals from it") in reference to the polemic over the calendar is also quite telling since it dismisses the opponents of the sect as sick and weak in mind and body.[93] As such, they deserve pity, and their transgressions are viewed as a weakness rather than malice. This is a lenient approach, quite different from the scorching rhetoric reserved for opponents. Yet its use in this passage is quite appropriate and significant as it provides an opportunity to "heal" for those who are able to leave the erring ways of the opponents and join the sect.

---

theoretical discussion of the Sabbath that follows is elaborated for the sake of convenience.

[93] For an excellent investigation of the view of others in the Scrolls, see Florentino García Martinéz and Mladen Popović, eds., *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls* (Leiden: Brill, 2007). See also Devorah Dimant, "Men as Angels: The Self-Image of the Qumran Community," in *Religion and Politics in the Ancient near East*, ed. Adele Berlin (Bethesda: University Press of Maryland, 1996), 93-103 on the self-perception of the sect.

Thus we see that the notion of intention in the Essene worldview is introduced into the law in an attempt to achieve the impossible, i.e. to bridge the gap between two contradicting legal views. On the one hand, these texts present a strict view of law as eternal and physical, including a system where transgressions bear immediate repercussions on the divine, and furthermore, reflective of a determinist lot, which the individual cannot control. On the other hand, a more lenient legal approach seeks to offer some hope of repentance for those who erroneously failed to follow the law in the past.[94] This is the main impetus for the broad definition of intention in Essene law.[95] Intention was quite certainly a reflection of reality, a result of an indisputable fact that people make mistakes. More importantly, however, it was a theological concept that allowed the recruiting or acceptance of newcomers, while continuing to damn those outside the sect to the dominion of Belial.[96]

---

[94] This was employed in various ways in later Christian and Jewish traditions. See aforementioned studies on rabbinic intent, as well as Katz, "Man, Sin, and Redemption in Rabbinic Judaism," in *The Cambridge History of Judaism. Vol. IV: The Late Roman-Rabbinic Period*, ed. Steven T. Katz (Cambridge: Cambridge University Press, 2006), 925-45. On this view in Christianity, see for example the text concerning confessors in the Apostolic tradition: Paul F. Bradshaw, Maxwell E. Johnson, and L. Edward Phillips, *The Apostolic Tradition* (Minneapolis: Fortress Press, 2002), 67-70; cf. Anderson, *Sin: A History*, 111-32, 152-63.

[95] Edrei, "'Should a Person Offend Errantly'," 14-20. See also Qimron, "On Unintentional and Intentional Sins," 103-10.

[96] An earlier and shorter version of this chapter appeared as "Intentionality and the 'High Hand' in the Pentateuch and the Dead Sea Scrolls," *Jewish Law Association Studies* 23 (2012): 1-12.

CHAPTER THREE

EXCLUSION AND INCLUSION: A COMMUNITY BETWEEN BOUNDARIES AND EXTENSIONS

3.1. *Introduction*

The forms, significance, and appropriate interpretation of exclusionary rhetoric in the legal texts of the Essenes have been at the heart of considerable debate among scholars.[1] This topic is of great pertinence to

[1] Joseph M. Baumgarten, "The Exclusion of *Netinim* and Proselytes in 4QFlorilegium," *RevQ* 8.1 (1972): 87-96; Shane Berg, "An Elite Group within the *Yaḥad*: Revisiting 1QS 8-9," in *Qumran Studies: New Approaches, New Questions*, ed. Michael T. Davis and Brent A. Strawn (Grand Rapids: Eerdmans, 2007), 161-77; idem, "Religious Epistemology and the History of the Dead Sea Scrolls Community," in *The 'Other' in Second Temple Judaism. Essays in Honor of John J. Collins*, ed. Daniel C. Harlow et al. (Grand Rapids: Eerdmans, 2011), 333-49; J. J. Collins, *Beyond the Qumran Community* 69-79; Dorman, *The Blemished Body*; Kåre Sigvald Fuglseth, *Johannine Sectarianism in Perspective: A Sociological, Historical, and Comparative Analysis of the Temple and Social Relationships in the Gospel of John, Philo, and Qumran* (Leiden: Brill, 2005); García Martínez and Popović, *Defining Identities*; Stephen Goranson, "The Exclusion of Ephraim in Rev. 7:4-8 and Essene Polemic against Pharisees," *DSD* 2.1 (1995): 80-85; Maxine L. Grossman, "Women and Men in the Rule of the Congregation: A Feminist Critical Assessment," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods* ed. Maxine L. Grossman (Grand Rapids: Eerdmans, 2010), 229-45; Gudrun Holtz, "Inclusivism at Qumran," *DSD* 16.1 (2009): 22-54; Jutta Jokiranta, "Social-Scientific Approaches to the Dead Sea Scrolls," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, ed. Maxine L. Grossman (Grand Rapids: Eerdmans, 2010), 246-63; George W. E. Nickelsburg, "Revealed Wisdom as a Criterion for Inclusion and Exclusion: From Jewish Sectarianism to Early Christianity," in *"To See Ourselves as Others See Us". Christians, Jews, "Others" In Late Antiquity*, ed. Jacob Neusner, Ernest S. Frerichs and Caroline McCracken-Flesher (Chico: Scholars, 1985), 73-92; Lawrence H. Schiffman, "Exclusion from the Sanctuary and the City of the Sanctuary in the Temple Scroll," *HAR* 9 (1985): 301-20; Adiel Schremer, "Seclusion and Exclusion: The Rhetoric of Separation in Qumran and Tannaitic Literature," in *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, ed. Steven D. Fraade, Aharon Shemesh and Ruth A. Clements, (Leiden: Brill, 2006), 127-45; Shemesh, "Expulsion and Exclusion"; idem, "The Holy Angels Are in Their Council: The Exclusion of Deformed Persons from Holy Places in Qumranic and Rabbinic Literature," *DSD* 4.2 (1997): 179-206; Cecilia Wassen, "What Do Angels Have against the Blind and the Deaf? Rules of Exclusion in the Dead

the discussion of law and society in the Dead Sea Scrolls and thus should also be addressed in the context of this study. Nevertheless, a word of methodological caution is in place concerning my use of legal theory in this chapter. In the previous two chapters I was able to employ legal theory in relation to the Essenes in a parallel manner. That is, my aim was to show that modern notions of legal essentialism can be applied when analyzing the legal material in the Scrolls, *mutatis mutandis*, considering the religious views reflected in them and their historical context. Similarly, the problems raised by the issue of intent – specifically the identification of intent, the relation between intention and action, and the fact that a lack of intent cannot annul the crime completely – are relevant to Essene law as well as to contemporary legal theory, albeit in very different ways. When addressing the subject of exclusion, on the other hand, an inherent difference exists between ancient and modern law. The presupposition of modern lawyers is that exclusion is primarily negative, as it is indicative of, or an instrument to promote, inequality. For the Essenes, on the other hand, equality was not a cherished value. Their essentialist view upheld that people were intrinsically unequal and therefore social norms and practices should reflect this natural order. Contemporary laws, of course, do recognize differences between people. As Martha Minow aptly notes in what she defines as the "Dilemma of Difference," separation, segregation, and special treatment can all be used for the promotion of equality and the advancement of human rights.[2]

Sea Scrolls," in *Common Judaism. Explorations in Second-Temple Judaism*, ed. Wayne O. McCready and Adele Reinhartz (Minneapolis: Fortress Press, 2008), 115-29.

[2] Martha Minow, *Making All the Difference. Inclusion, Exclusion, and American Law* (Ithaca: Cornell University Press, 1990), 1-97. See also eadem, *Not Only for Myself. Identity, Politics, and the Law* (New York: New Press, 1997), 59-105; Jacqueline Bhabha, "'Get Back to Where You Once Belonged': Identity, Citizenship, and Exclusion in Europe," *Human Rights Quarterly* 20.3 (1998): 592-627; Susan D. Clayton and Faye J. Crosby, *Justice, Gender and Affirmative Action* (Ann Arbor: University of Michigan Press, 1992); William E. Connolly, *Identity/Difference. Democratic Negotiations of Political Paradox* (Ithaca: Cornell University Press, 1991); Constable, *The Law of the Other*, 28-47; David M. Engel and Frank W. Munger, *Rights of Inclusion. Law and Identity in the Life Stories of Americans with Disabilities* (Chicago: University of Chicago Press, 1993); Phil Fennell, "Convention Compliance, Public Safety, and the Social Inclusion of Mentally Disordered People," *Journal of Law and Society* 32.1 (2005): 90-110; Martha C. Nussbaum, *Frontiers of Justice. Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006), 96-324; Michael Omi and Howard Winant, *Racial Formation in the United States. From the 1960s to the 1990s* (New York: Routledge, 1994); Richard A. Posner, *The Problematics of Moral and Legal Theory* (Cambridge: Belknap, 1999), 136-58.

Yet an attempt to understand exclusionary rhetoric in the Dead Sea Scrolls through a contemporary legal prism faces a stark contrast rising from opposing values that constitute even greater opposing practices. Nevertheless, contemporary legal theory is capable of enhancing the interpretation of exclusionary practices described in Essene law. While the presuppositions and purposes of exclusion differ considerably, modern laws of exclusion do exist, and the recognition that a society is molded based on its choices of exclusion (who, how and why) is as pertinent to understanding of contemporary laws as it is to ancient laws.

To explore the problems of inclusion and exclusion both within the sect and in the way the sect identifies itself in relation to its surroundings and societal context, I will turn primarily to 4QMMT and 1QS. Indeed, with the former being an externally-addressed document used for internal purposes and the latter an internal code, the two documents differ from each other both in language and content. Yet notwithstanding the differences between 4QMMT and 1QS, through a joint discussion of the texts in the following two sections I hope to establish and reaffirm their shared background and approach to matters of exclusion and inclusion. In the fourth section I will examine the role of the initiation rite described in 1QS as an exclusionary practice, and conclude with an analysis of the role of exclusion as punishment in 1QS and 4QD in the final section.

3.2. *Inclusion and Exclusion as Role Distance*

By its nature, a sect is an ambivalent entity that offers its members the twofold experience of uniqueness and membership. In other words, a sectarian enjoys the sense of a stern indignation towards the world without paying the heavy price of isolation, since this indignation is supported by a group of individuals who subscribe to it. This duality is astutely captured in a scene from Monty Python's Second Temple satire film *Life of Brian,* where a crowd outside the window of Brian, the Jesus-like character, cries out simultaneously: "yes, we are all individuals!"[3] Beyond the ridiculing aspect

[3] Terry Jones, Director. *Monty Python's Life of Brian*. Handmade Films (distributed by Orion Pictures through Warner Bros. Entertainment), 1979. See also book version, Graham Chapman et al., *Monty Python's The Life of Brian (of Nazareth)* (New York: F. Jordan Books, 1979), and an account of the making of the film by Kim Howard Johnson, *Monty Python's Tunisian Holiday: My Life with Brian* (New York: St. Martin's Press, 2008). For an assessment

of this scene, it effectively illustrates the dual existential experience of a sectarian: the sense of a unique marginal view of the world accompanied by the assurance of a group of fellows who share this idiosyncratic view.[4]

With regards to the Essenes, the initial task is to determine whether they were indeed a sect, or whether this is a term imposed on them, as many other presuppositions that have been made regarding this group.[5] I

---

of the film's depiction of Second Temple times, see Philip R. Davies, "Life of Brian Research," in *Biblical Studies / Cultural Studies*, ed. J. Cheryl Exum and Stephen D. Moore (Sheffield: Sheffield Academic Press, 1998), 400-14. On the specific scene, see Luther H. Martin, "The Anti-Individualistic Ideology of Hellenistic Culture," *Numen* 41.2 (1994): 117-40; Kevin Schilbrack, "Heresy, Humanism and Heroism in *Monty Python's Life of Brian*," in *Monty Python and Philosophy: Nudge Nudge, Think Think!* Ed. Gary L. Hardcastle and George A. Reisch (Chicago: Open Court, 2006), 17-19.

[4] See Giorgio Agamben, *The Coming Community* (trans. Michael Hardt; Minneapolis: University of Minnesota Press, 1993), 1-3; 14-15; 63-5. For some introductory remarks on the anthropology of religious sects, see Bryan S. Turner, ed., *New Blackwell Companion to the Sociology of Religion* (Oxford: Wiley-Blackwell, 2010), 247-85, 475-543; Ralph W. Hood, Jr., Peter C. Hill, and Bernard Spilka, *The Psychology of Religion. An Empirical Approach* (fourth ed.; New York: Guilford, 2009), 244-87.

[5] Perhaps the best example is the use of Christian monastic terms to describe the sect for example by referring to the 1QS as the Manual of Discipline (see Wernberg-Møller, *Manual of Discipline*, 1-21; Schiffman, *Reclaiming the Dead Sea Scrolls*, 16-19. This is not to deny the significant relations between Early Christian texts and 1QS, especially in the Treatise on the Two Spirits, as well as other texts from Qumran. The difficult task is to note similarities without imposing terminology borrowed from a different context. The following list is far from comprehensive, but reflects the debate this relationship has stirred: David E. Aune, "Dualism in the Fourth Gospel and the Dead Sea Scrolls: A Reassessment of the Problem," in *Neotestamentica et Philonica: Studies in Honor of Peder Borgen*, ed. David E. Aune, Torrey Seland and Jarl Henning Ulrichsen (Leiden: Brill, 2003), 281-303; Brooke, *The Dead Sea Scrolls and the New Testament* (London: Society for Promoting Christian Knowledge, 2005); James H. Charlesworth, "Have the Dead Sea Scrolls Revolutionized Our Understanding of the New Testament?" in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 116-32; idem, "John the Baptizer and Qumran Barriers in Light of the Rule of the Community," in *The Provo International Conference on the Dead Sea Scrolls*, ed. Donald W. Parry and Eugene Ulrich (Leiden: Brill, 1999), 353-75; Ruth A. Clements and Daniel R. Schwartz, eds., *Text, Thought and Practice in Qumran and Early Christianity* (Leiden: Brill, 2009; see esp. contributions by Attridge, Kister, Regev, Reinhartz, and Ruzer); John J. Collins, "Qumran, Apocalypticism, and the New Testament," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, 133-38; John J. Collins and Craig A. Evans, eds., *Christian Beginnings and the Dead Sea Scrolls* (Grand Rapids: Baker, 2006); Karl Paul Donfried, "Paul and Qumran: The Possible Influence of סרך on 1 Thessalonians," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, 148-56;

Joseph A. Fitzmyer, *The Dead Sea Scrolls and Christian Origins* (Grand Rapids: Eerdmans, 2000); Florentino García Martínez, "Divine Sonship at Qumran: Between the Old and the New Testament," in *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb*, ed. Charlotte Hempel and Judith M. Lieu (Leiden: Brill, 2006), 109-32; Himmelfarb, *Kingdom of Priests*, 160-85; Albert L. A. Hogeterp, *Expectations of the End. A Comparative Traditio-Historical Study of Eschatological, Apocalyptic and Messianic Ideas in the Dead Sea Scrolls and the New Testament* (Leiden: Brill, 2009); John I. Kampen, "A Reexamination of the Relationship between Matthew 5:21-48 and the Dead Sea Scrolls," *SBLSP* 29 (1990): 34-59; idem, "'Righteousness' in Matthew and the Legal Texts from Qumran," in *Legal Texts and Legal Issues. Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, ed. Moshe J. Bernstein, Florentino García Martínez and John Kampen (Leiden: Brill, 1997), 461-87; idem, "The Significance of the Scrolls for the Study of the Book of Matthew," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, 157-69; Kister, "A Qumranic Parallel to 1Thess 4:4? Reading and Interpretation of 4Q416 2 ii 21," *DSD* 10.3 (2003): 365-70; Heinz Wolfgang Kuhn, "The Impact of the Qumran Scrolls on the Understanding of Paul," in *The Dead Sea Scrolls. Forty Years of Research*, ed. Devorah Dimant and Uriel Rappaport (Leiden: Brill, 1992), 327-39; Eric F. Mason, *'You Are a Priest Forever': Second Temple Jewish Messianism and the Priestly Christology of the Epistle to the Hebrews* (Leiden: Brill, 2008); John Pryke, "John the Baptist and the Qumran Community," *RevQ* 4.4 (1964): 483-96; idem, "'Spirit' and 'Flesh' in the Qumran Documents and Some New Testament Texts," *RevQ* 5.3 (1965): 345-60; Lawrence H. Schiffman, "Biblical Exegesis in the Passion Narratives and the Dead Sea Scrolls," in *Biblical Interpretation in Judaism and Christianity*, ed. Isaac Kalimi and Peter J. Haas (London: T & T Clark, 2006), 117-30; Hartmut Stegemann, "The 'Teacher of Righteousness' and Jesus: Two Types of Religious Leadership in Judaism at the Turn of the Era" in *Jewish Civilization in the Hellenistic-Roman Period*, ed. Shemaryahu Talmon (Sheffield: JSOT Press, 1991), 196-213; Krister Stendahl, ed. *The Scrolls and the New Testament* (New York: Harper, 1957); Stuckenbruck, "An Approach to the New Testament through Aramaic Sources: The Recent Methodological Debate," *JSP* 8 (1991): 3-29; Geza Vermes, *Scrolls, Scriptures and Early Christianity* (London: T & T Clark, 2005); Moshe Weinfeld, "God versus Moses in the Temple Scroll: 'I Do Not Speak on My Own but on God's Authority' (Sifrei Deut. Sec. 5; John 12,48)," *RevQ* 15.1-2 (1991): 175-80. Another salient example of a misappropriation of terminology is the use of rabbinic language in the analysis of Qumran texts. See, for example, Brownlee's usage of "midrash" for 1QpHab: William H. Brownlee, "Biblical Interpretation among the Sectaries of the Dead Sea Scrolls," *Biblical Archaeologist* 14 (1951): 54-76; idem, "The Habakkuk Midrash and the Targum of Jonathan," *JJS* 7.3-4 (1956): 169-86; idem, *The Midrash Pesher of Habakkuk* (Missoula: Scholars, 1979) and Alexander Rofé, "4QMidrash Samuel? Observations Concerning the Character of 4QSam^{a}," *Textus* 19 (1998): 63-74. See Schremer's apprehension of the term in his "'[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*, ed. David Goodblatt, Avital Pinnick and Daniel R. Schwartz (Leiden: Brill, 2001), 105-26 as well as my own critique of the employment of the term "Halakhah" in relation to Qumran law, in the introduction. Similarly, the strange labeling of 4Q225, as "Pseudo-

consider the argument in favor of viewing these groups as sectarian according to established sociological definitions as more than compelling.[6]

Jubilees" or of 1Q20 as an "Apocryphon" reflects the imposition of previous terminology on newly found texts that do not comply with their denominations. See VanderKam, "The 'Aqedah', 'Jubilees', and Pseudojubilees"; Daniel A. Machiela, *The Dead Sea Genesis Apocryphon* (Leiden: Brill, 2009), 2-6. A final example to be mentioned here is the description of the communal treasury and organization as a predecessor of the kibbutz movement, reflecting the Zionist enthusiasm over the discovery of the Scrolls as yet another connection between the Zionist enterprise and ancient Israel. See David Flusser, *The Spiritual History of the Dead Sea Scrolls* (Tel Aviv: Ministry of Defence, 1985), 11 (in Hebrew); Y. Yadin, *The Dead Sea Scrolls*, 136, 205-19. The story of Sukenik examining the scrolls for the first time on the day the UN voted on the partition resolution has been recounted in several places. See Y. Yadin, *Dead Sea Scrolls*, 9-21; VanderKam, *Dead Sea Scrolls Today*, 6-7. This, of course, is part of a wider impact of Zionism on research and archaeology of the Hebrew Bible and ancient Judaism. See Allan Arkush, "Biblical Criticism and Cultural Zionism prior to the First World War," *Jewish History* 21.2 (2007): 121-58; Lea Mazor, "On Bible and Zionism: The Tribal Conception of Territory as Reflected in Israeli Place Names during the First Years of Statehood," *Cathedra* 110 (2003): 101-22 (in Hebrew); Yaacov Shavit and Mordechai Eran, *The Hebrew Bible Reborn: From Holy Scripture to the Book of Books* (Berlin: de Gruyter, 2007), 371-519; Isaiah Gafni, "Studies on Antiquity in *Zion*: The First Seventy-Five Years," *Zion* 75.4 (2010): 465-71 (in Hebrew).

[6] A. I. Baumgarten, *Flourishing of Jewish Sects*, 1-80; Jutta Jokiranta, "An Experiment on *Idem* Identity in the Qumran Movement," *DSD* 16.3 (2009): 309-29; eadem, "Sectarianism," in *The Eerdmans Dictionary of Early Judaism*, ed. John J. Collins and Daniel C. Harlow (Grand Rapids: Eerdmans, 2010), 1209-11; eadem, *Social Identity and Sectarianism in the Qumran Movement* (Leiden: Brill, 2012), 17-76; Eyal Regev, "Comparing Sectarian Practice and Organization: The Qumran Sects in Light of the Regulations of the Shakers, Hutterites, Mennonites and Amish," *Numen* 51.2 (2003): 146-81; idem, *Sectarianism in Qumran*. Application of sociological and anthropological studies to the Qumran texts has been flourishing in the past decade. In addition to the above, see also Russell C. D. Arnold, *The Social Role of Liturgy in the Religion of the Qumran Community* (Leiden: Brill, 2006); Philip R. Davies, "Sects from Texts: On the Problems of Doing a Sociology of the Qumran Literature," in *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, ed. Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen (London: T & T Clark, 2005), 69-82; Steve Delamarter, "Sociological Models for Understanding the Scribal Practices in the Biblical Dead Sea Scrolls," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, ed. Maxine L. Grossman (Grand Rapids: Eerdmans, 2010), 182-97; Beate Ego and Helmut Merkel, eds., *Religiöses Lernen in der biblischen, frühjüdischen und frühchristlichen Überlieferung* (Tübingen: Mohr Siebeck, 2005); Fuglseth, *Johannine Sectarianism in Perspective*, 336-51; García Martínez and Popović, *Defining Identities*; Jokiranta, "Social-Scientific Approaches to the Dead Sea Scrolls"; Eyal Regev, "Access Analysis of Khirbet Qumran: Reading Spatial Organization and Social Boundaries," *BASOR* 355 (2009): 85-99; Cecilia Wassen and Jutta Jokiranta, "Groups in Tension: Sectarianism in the Damascus Document and the Community Rule,"

Furthermore, the ambivalence outlined above is evident in the writings under discussion. The authors consider themselves to be a select minority of this world, and the language and rhetoric throughout the Community Rule and related texts reveal a disdain and dismissal of anyone outside this group. Derogatory terms for outsiders, including Children of Darkness,[7] People of the Pit,[8] People of Injustice,[9] and People of the Lot of Belial,[10] reflect a highly exclusionary perception which enhances the worthiness of the members of the sect.

At the same time, the language employed to describe the group testifies to a strong bond within the community. The name of the branch of Essenes living in Qumran, the Yahad, or unity, is perhaps the best example of this strong bond, but it is reflected in other features as well, such as the reference to the community as **טהרת הרבים**, "the purity of the many," in contrast to the external impurity surrounding it; the notion of a covenant; and the recurring imagery of family in the Rule.[11]

This twofold notion of rejection and belonging is also pertinent for the assessment of the common shift from first-person singular to the plural (and, at times, to the third-person plural) in various sectarian writings. This phenomenon has drawn attention particularly in the Hodayot,[12] but it is also

---

in *Sectarianism in Early Judaism: Sociological Advances*, ed. David J. Chalcraft (London: Equinox, 2007), 205-45.

[7] 1QS 1.10. Cf. 1QM 1.1, 7-16, 3.6-9, 13.16,14.17, 16.11. As Himmelfarb notes, this is never used in 4QD (Himmelfarb, *Kingdom of Priests*, 118-119).

[8] 1QS 9.16. Cf. 4QS^{d} viii, 6; 4QS^{e} iii, 14.

[9] 1QS 5.2, 10, 8.13, 9.17; 4QS^{b} ix, 8; 4QS^{d} i, 2, viii, 2; 4QS^{e} iii, 4. Cf. 4QInstruction^{c} 2, i, 7. Also Children of Injustice, 1QS 3.21, perhaps also in 4QD^{a} 3, ii, 21.

[10] 1QS 2.5. Cf. 1QM 1.5. Also the Army of Belial (e.g. 1QM 1.1) and the Dominion of Belial (e.g. 1QS 1.7).

[11] On the latter see Jutta Jokiranta and Cecilia Wassen, "A Brotherhood at Qumran? Metaphorical Familial Language in the Dead Sea Scrolls," in *Northern Lights on the Dead Sea Scrolls. Proceedings of the Nordic Qumran Network, 2003-2006*, ed. Anders Klostergaard Petersen et al. (Leiden: Brill, 2009), 173-203.

[12] See Carol A. Newsom, "Kenneth Burke Meets the Teacher of Righteousness: Rhetorical Strategies in the Hodayot and the Serek Ha-Yahad," in *Of Scribes and Scrolls. Studies on the Hebrew Bible, Intertestamental Judaism, and Christian Origins Presented to John Strugnell*, ed. Harold W. Attridge, John J. Collins, and Thomas H. Tobin (Lanham: University Press of America, 1990), 121-31; eadem, "Apocalyptic and the Discourse of the Qumran Community," *JNES* 49.2 (1990): 135-44; eadem, *Self as Symbolic Space*, 191-346 (cf. also discussion of 1QS on pp. 91-190); eadem, "Constructing 'We, You and the Others' through Non-Polemical Discourse," in *Defining Identities: We, You, and the Other in the Dead Sea Scrolls. Proceedings of the*

manifested in 1QS.[13] These distinctions are important for understanding the text and can serve as clues of redactions, interpolations, and so forth, especially when they seem to be muddled. At the same time, there are two other possible explanations for the singular and plural voices overlap. First, in a liturgical setting, a singular voice does not preclude the possibility of a communal recitation. On the contrary, an entire congregation uttering the same words simultaneously in the first-person singular can produce a powerful communal experience. Second, and more important to the purposes of this discussion, the confusion of a singular and plural voice can bear a legal significance, as a reflection and affirmation of the cohesion of the community.

In a socio-legal framework, Meir Dan-Cohen has defined this degree of identification between the self and the community as "role distance":

> …the self consists, at least in part, of the social roles that it enacts. The special insight that the concept of role distance imports into this picture relates to the self's capacity to locate itself, metaphorically speaking, at variable distances from the different roles that it occupies. Identification with a role is a matter of degree, and depending on the degree of identification, a given role may be more or less integrated with and constitutive of a particular self.[14]

Fifth Meeting of the IOQS in Groningen, ed. Florentino García Martínez and Mladen Popović (Leiden: Brill, 2007), 13-21; Angela Kim Harkins, "Observations on the Editorial Shaping of the So-Called Community Hymns from 1QH^a and 4QH^a (4Q427)," *DSD* 12.3 (2005): 233-56; eadem, "The Community Hymns Classification: A Proposal for Further Differentiation," *DSD* 15.1 (2008): 121-54; eadem, "A New Proposal for Thinking about 1QH^a Sixty Years after Its Discovery," in *Qumran Cave 1 Revisited. Texts from Cave 1 Sixty Years after Their Discovery*, ed. Daniel K. Falk et al. (Leiden: Brill, 2010), 101-34; Jokiranta, "An Experiment on *Idem* Identity."

[13] See for example the third person plural as referring to the entire sect (1QS 2.2; 5.1-4), which then shifts to the singular, as if referring to the individual member (1QS 2.2-4; 5.4-5).

[14] Dan-Cohen, *Harmful Thoughts*, 13-14. Dan-Cohen borrows the term from Erving Goffman's work, citing his *Encounters: Two Studies in the Sociology of Interaction* (Indianapolis: Bobbs-Merrill, 1961), 85-152. See also Goffman's earlier *The Presentation of the Self in Everyday Life* (Garden City: Doubleday, 1959). For critical appraisals of Goffman's Role Distance theory, see Ann Branaman, "Interaction and Hierarchy in Everyday Life: Goffman and Beyond," in *Goffman's Legacy*, ed. A. Javier Treviño (Lanham: Rowman and Littlefield, 2003), 86-126; James J. Chriss, "Role Distance and the Negational Self," in *Goffman and Social Organization*, ed. Greg Smith (London: Routledge, 1999), 64-80; Rod

Dan-Cohen proceeds to make several observations that will be pertinent to the larger scope of this study. Primarily, he focuses on the role of interpretation in a legal community, following the work of Dworkin[15] and Habermas,[16] and proposes to juxtapose interpretation with communication. The metaphorical polarity between interpretation and communication is based on the contrast between striving for agreement (on values, meaning, etc.) and striving for a shared practice (which can be achieved despite disagreement, for example by coercion of a leader).[17]

Watson, "Reading Goffman on Interaction," in *Goffman and Social Organization*, 138-55; also Michael Hviid Jacobsen, *The Contemporary Goffman* (New York: Routledge), 1-47, 64-97.

[15] Dworkin, "Law as Interpretation." Since Dan-Cohen cites the reprint edition, it is interesting to compare the changing context of this seminal essay by Dworkin. The legal context of the original publication in a 1982 issue of the *Texas Law Review* had as its discussants Sanford V. Levinson ("Law as Literature," 373-403); James Boyd White ("Law as Language", 415-45) and Stanley Fish ("Interpretation and the Pluralist Vision," 495-505 as well as a harsh criticism of Dworkin, "Working on the Chain Gang," 551-67). Subsequently, Dworkin developed this as part of his overall conceptualization of law in works such as *Matter of Principle* (Oxford: Oxford University Press, 1985), 119-77; idem, L*aw's Empire*, 45-86. Cf. Barak, *Purposive Interpretation in Law*, 126-9, 228-9. For the impact of Dworkin's interpretative turn, see responses by James Donato, "Dworkin and Subjectivity in Legal Interpretation," *StanfLR* 40.6 (1988): 1517-41; Ken Kress, "The Interpretive Turn," *Ethics* 97.4 (1987): 834-60; Jon Mahoney, "Objectivity, Interpretation, and Rights: A Critique of Dworkin," *Law and Philosophy* 23.2 (2004): 187-222; Michel Rosenfeld, "Dworkin and the One Law Principle: A Pluralist Critique," *Revue Internationale de Philosophie* 233 (2005): 363-92. For more on the debate between Dworkin and Fish see references in Dworkin, *Law's Empire*, 424-5.

[16] Jürgen Habermas, *Communication and the Evolution of Society* (trans. Thomas McCarthy; Cambridge: Polity, 1991), 1-68; idem, *The Theory of Communicative Action: Reason and the Rationalization of Society* (trans. Thomas McCarthy; Boston: Beacon, 1984), 273-337.

[17] Dan-Cohen, *Harmful Thoughts*, 18-23. This juxtaposition is especially relevant in the context of the rabbinic idea of מחלוקת, or legal dispute, and the toleration of separate practices. Baumgarten has discussed this in order to shed light on the growth of sectarianism in the Second Temple period, see Albert I. Baumgarten, "Legal Disputes as the Cause of Sectarian Schism," in *Fifty Years of Dead Sea Scrolls Research. Studies in Memory of Jacob Licht*, ed. Gershon Brin and Bilhah Nitzan (Jerusalem: Yad Ben Zvi, 2001), 155-65 (in Hebrew); idem, "'But Touch the Law and the Sect Will Split:' Legal Disputes as the Cause of Sectarian Schism," *RRJ* 5.3 (2002): 301-15. Cf. Shemesh, "Rebuke, Warning and the Obligation to Testify." In the context of rabbinic literature, see Ephraim E. Urbach, *The Sages. Their Concepts and Beliefs* (Jerusalem: Magnes, 1975), 526-57 (in Hebrew); Halbertal, *Interpretative Revolutions in the Making*, 197-203; Hanina Ben-Menahem, Neil S. Hecht and Shai Wosner, eds. *Controversy and Dialogue in the Jewish Tradition. A Reader* (Abingdon: Routledge, 2005); David Novak, "The Dialectic between Theory and Practice in Rabbinic

When coupled with this juxtaposition of interpretation and communication, the broad range of role distance that allows for varying degrees of identification with the community is a fair description of the two circles of communities reflected in the scrolls. The immediate community is the sect, with which the authors, and presumably all members, identify the most. A wider community is the whole of Israel, or Judea, to which the sect evidently feels responsible (otherwise it would not be concerned with their transgressions) but nevertheless involves a strong sense of separation and differentiation. Interestingly, the texts reflect an intense engagement with interpretation, through explicit interpretations of scripture or implicit allusions and expansions.[18] What is perhaps more surprising is that these

---

Thought," *Tradition in the Public Square*, ed. Randi Rashkover and Martin Kavka (Grand Rapids: Eerdmans, 2008), 21-33; Tzvi Novick, "Tradition and Truth: The Ethics of Lawmaking in Tannaitic Literature," *JQR* 100.2 (2010): 223-43; Moshe Simon-Shoshan, *Stories of the Law* (Oxford: Oxford University Press, 2012), 167-93.

[18] Scholarship on biblical interpretation in Qumran is vast. For introductory remarks, see Moshe J. Bernstein, "Interpretation of Scriptures," in *Encyclopedia of the Dead Sea Scrolls,* ed. Lawrence H. Schiffman and James C. VanderKam (Oxford: Oxford University Press, 2000), 1:376-83; Michael Fishbane, "Use, Authority and Interpretation of Mikra at Qumran," in *Mikra: Text, Translation, Reading and Interpretation of the Bible in Ancient Judaism and Early Christianity*, ed. Martin Jan Mulder (Assen: Van Gorcum, 1988), 339-77 and Schiffman, "Dead Sea Scrolls, Biblical Interpretation in," in *Encyclopaedia of Midrash. Biblical Interpretation in Formative Judaism*, ed. Jacob Neusner and Alan J. Avery-Peck (Leiden: Brill, 2005), 1:40-54. See more recently Tigchelaar, "The Dead Sea Scrolls," in *The Eerdmans Dictionary of Early Judaism*, ed. John J. Collins and Daniel C. Harlow (Grand Rapids: Eerdmans, 2010), 166-73 and Moshe J. Bernstein, "Biblical Interpretation in the Dead Sea Scrolls: Looking Back and Looking Ahead," in *The Dead Sea Scrolls and Contemporary Culture*, ed. Adolfo D. Roitman, Lawrence H. Schiffman and Shani Tzoref (Leiden: Brill, 2011), 141-59, who offers an overview of the history of research and raises important methodological questions. For further reading, see Moshe J. Bernstein, "Pentateuchal Interpretation at Qumran," in *The Dead Sea Scrolls after Fifty Years. A Comprehensive Assessment*, ed. Peter W. Flint and James C. VanderKam (Leiden: Brill, 1998), 128-59; George J. Brooke, "Biblical Interpretation at Qumran," in *The Bible and the Dead Sea Scrolls*, ed. James H. Charlesworth (N.Richland Hills: BIBAL, 1997), 287-319; idem, "Biblical Interpretation in the Qumran Scrolls and the New Testament"; idem, "From Bible to Midrash: Approaches to Biblical Interpretation in the Dead Sea Scrolls by Modern Interpreters," in *Northern Lights on the Dead Sea Scrolls. Proceedings of the Nordic Qumran Network, 2003-2006*, ed. Anders Klostergaard Petersen et al. (Leiden: Brill, 2009), 1-19; Jonathan G. Campbell, *The Exegetical Texts* (London: T & T Clark, 2004); Esther G. Chazon, Devorah Dimant and Ruth A. Clements, eds., *Reworking the Bible: Apocryphal and Related Texts at Qumran* (Leiden: Brill, 2005); Crawford, *Rewriting Scripture*; Philip R. Davies, "Biblical Interpretation in the Dead Sea Scrolls," in *A History of Biblical Interpretation*, ed.

acts of interpretation are never presented as such. Nowhere is there a trace of acknowledgment that these are *original* interpretations, and are therefore contestable. Instead, the text repeatedly affirms that these interpretations are the only possible ones, reflecting the true meaning of the biblical text. Thus, to go back to Dan-Cohen's juxtaposition of interpretation and communication, while inwardly this community engages in a project of interpretation that stems from and reflects a strong sense of identification, externally they present only a mode of communication. They communicate their disagreements without allowing discussion or questioning of their interpretation.

By applying Goffman's notion of role distance within the legal framework offered by Dan-Cohen to the Essenes, I wish to stress the multiplicity of identities enacted by sectarians.[19] The range of roles that are enfolded in each individual, as well as in organizations, allows for "flexibility and adaptability," according to Dan-Cohen.[20] These are not characteristics commonly associated with the strict worldview of the sect, but through the notion of role distance, we can better understand the inherent tensions or contradictions of their worldview. By rejecting dichotomies of exclusion and inclusion, we may reconcile their exclusion

---

Alan J. Hauser and Duane F. Watson (Grand Rapids: Eerdmans, 2003), 144-66; Esther Eshel, "Hermeneutical Approaches to Genesis in the Dead Sea Scrolls," in *The Book of Genesis in Jewish and Oriental Christian Interpretation*, ed. Judith Frishman and Lucas van Rompay (Leuven: Peeters, 1997), 1-12; Daniel K. Falk, *The Parabiblical Texts. Strategies for Extending the Scriptures among the Dead Sea Scrolls* (London: T & T Clark, 2007); Fraade, "Interpretive Authority"; Matthias Henze, ed., *Biblical Interpretation at Qumran* (Grand Rapids: Eerdmans, 2005); Menahem Kister, "A Common Heritage: Biblical Interpretation at Qumran and Its Implications," in *Biblical Perspectives: Early Use of and Interpretation of the Bible in Light of the Dead Sea Scrolls*, ed. Michael E. Stone and Esther G. Chazon (Leiden: Brill, 1998), 101-11; Shani Tzoref, "Qumran Pesharim and the Pentateuch: Explicit Citation, Overt Typologies, and Implicit Interpretive Traditions," *DSD* 16.2 (2009): 190-220; Vermes, "The Qumran Interpretation of Scripture in Its Historical Setting," *Annual of Leeds University Oriental Society* 6 (1969): 85-97; Molly M. Zahn, "New Voices, Ancient Words: The Temple Scroll's Reuse of the Bible," in *Temple and Worship in Biblical Israel*, ed. John Day (London: T & T Clark International, 2005), 435-68.

[19] The multiple identifications experienced by an individual does not deny, of course, the supremacy of the minority identity as a major component. Whether ideological or cultural, the minority to which a person belongs will become a defining element of one's identity. On social and ethical implications of such identities, see Kwame Anthony Appiah, *The Ethics of Identity* (Princeton: Princeton University Press, 2005), 65-113.

[20] Dan-Cohen, *Harmful Thoughts*, 18.

and separatist practices with their concern for the entire nation.[21] As Gudrun Holtz writes, "Rather than being a contradiction, exclusivism and inclusivism in Qumran literature are two sides of one and the same coin."[22] I suggest explaining this tension by understanding the multiple roles embodied by the sectarians, as will be described in the remainder of the chapter.

3.3. *Inclusion and Exclusion in 4QMMT and Related Texts*

3.3.1. *The Historicity and Significance of 4QMMT*

4QMMT has been the cause of much debate, beginning with a scandal over its unauthorized publication,[23] and following debates over its genre,[24]

---

[21] The understanding of Israel as a unified people should not be confused, of course, with the modern concept of nationalism. See David Goodblatt, *Elements of Ancient Jewish Nationalism* (Cambridge: Cambridge University Press, 2006); Doron Mendels, *The Rise and Fall of Jewish Nationalism* (Grand Rapids: Eerdmans, 1997). A membership in a nation engenders a host of contemporary ethical and legal issues, which cannot be applied to the essentialist view of group formation by the sect. See comments below on the view of gentiles. On contemporary issues, see Charles R. Beitz, "The Distribution of Membership," in *Boundaries. National Autonomy and Its Limits*, ed. Peter G. Brown and Henry Shue (Totowa: Rowman and Littlefield, 1981), 1-35; idem, "Cosmopolitan Ideals and National Sentiment," *Journal of Philosophy* 80.10 (1983): 591-600; Olle Frödin, "Political Order and the Challenge of Governance: Moving beyond the Nationalism-Cosmopolitanism Debate," *Distinktion* 14.1 (2013): 65-79.

[22] Holtz, "Inclusivism at Qumran," 54.

[23] Hershel Shanks published Qimron and Strugnell's transcription and restoration without permission, and was subsequently taken to court. The Israeli Supreme Court decided in favor of Qimron, see *Qimron v. Shanks et al* [Civil Case (Jer) 41/92 (March 30, 1993)] (in Hebrew)]. This decision was appealed and rejected [*Eisenman et al. v. Qimron* (CA 2709/93, 2811/93; August 30, 2000), (in Hebrew)]. The case has since become a major study case of intellectual property laws, and attracts the attention of lawyers and scholars alike. See Michael D. Birnhack, "Dead Sea Scrolls Case: Who is an Author?" *European Intellectual Property Review* 23.3 (2001): 128-42; Niva Elkin-Koren, "Of Scientific Claims and Proprietary Rights: Lessons from the Dead Sea Scrolls Case," *HousLRev* 38.2 (2001): 445-62; Roberta Rosenthal Kwall, "Inspiration and Innovation: The Intrinsic Dimension of the Artistic Soul," *Notre Dame Law Review* 81.5 (2006): 1945-2012; Timothy H. Lim, "Intellectual Property and the Dead Sea Scrolls," *DSD* 9.2 (2002): 187-98; Timothy H. Lim, Hector L. MacQueen, and Calum M. Carmichael, eds., *On Scrolls, Artefacts and Intellectual Property* (Sheffield: Sheffield Academic Press, 2001); Neil Weinstock Netanel, "From the Dead Sea Scrolls to the Digital Millennium. Recent Developments in Copyright

its author and addressee,[25] its unique language,[26] and whether or not it includes a reference to a tri-partite canon, resembling the Tanakh of

Law," *Texas Intellectual Property Law Journal* 9.1 (2000): 19-63; David Nimmer, "Authorship and Originality," *HousLRev* 38.1 (2001): 1-217; James L. Oakes, "The Dead Sea Scrolls: A Live Copyright Controversy," *HousLRev* 38.1 (2001): 219-97; Roger Syn, "© Copyright God: Enforcement of Copyright in the Bible and Religious Works," *Regent University Law Review* 14.1 (2001-2002): 1-34; Urszula Tempska, "Originality after the Dead Sea Scrolls Decision: Implications for the American Law of Copyright," *Marquette Intellectual Property Law Review* 6 (2002): 119-46; Neil Wilkof, "Copyright, Moral Rights and the Choice of Law: Where Did the Dead Sea Scrolls Court Go Wrong?" *HousLRev* 38.2 (2001): 463-97; Martha Woodmansee, "Response to David Nimmer," *HousLRev* 38.1 (2001): 231-7; and Richard A. Lanham's somewhat playful "Barbie and the Teacher of Righteousness: Two Lessons in the Economics of Attention," *HousLRev* 38.2 (2001): 499-540. For a succinct account of the affair, see James VanderKam and Peter Flint, *The Meaning of the Dead Sea Scrolls* (San Francisco: HarperSanFrancisco, 2002), 394-7.

[24] For a survey of the genre problems related to 4QMMT and suggested solutions, see Maxine L. Grossman, "Reading 4QMMT: Genre and History," *RevQ* 20.1 (2001): 3-21; Weissenberg, *4QMMT*, 144-67, 219-225. The significance of genre studies and genre theory has recently gained special interest, with a special session at the 2010 SBL annual meeting in Atlanta ("The Dead Sea Scrolls: Rethinking Our Categories of Analysis") and an issue of *DSD* dedicated to this topic, in honor of John J. Collins. See John J. Collins, "Epilogue: Genre Analysis and the Dead Sea Scrolls" and further essays in *DSD* 17.3 (2010), esp. Benjamin G. Wright, "Joining the Club: A Suggestion about Genre in Early Jewish Texts," 289-314 and Matthew Goff, "Qumran Wisdom Literature and the Problem of Genre," 315-35.

[25] Qimron and Strugnell, *DJD 10*, 114-21; Hanan Eshel, "4QMMT and the History of the Hasmonean Period," in *Reading 4QMMT. New Perspectives on Qumran Law and History*, ed. John I. Kampen and Moshe J. Bernstein (Atlanta: Scholars, 1996), 59-60 (cf. idem, *The Dead Sea Scrolls and the Hasmonean State*, 46-57); Fraade, "To Whom It May Concern"; Lester L. Grabbe, "4QMMT and Second Temple Jewish Society," in *Legal Texts and Legal Issues. Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, ed. Moshe J. Bernstein, Florentino García Martínez and John Kampen (Leiden: Brill, 1997), 92-3; Grossman, "Reading 4QMMT," 8-11; Jesper Høgenhaven, "Rhetorical Devices in 4QMMT," *DSD* 10.2 (2003): 201-3; Kister, "Studies in 4QMiqṣat Ma'aśe Ha-Torah," 323; Weissenberg, *4QMMT*, 224-32; Azzan Yadin, "4QMMT, Rabbi Ishmael, and the Origins of Legal Midrash," *DSD* 10.1 (2003): 148-9.

[26] 4QMMT showcases a unique mixture of a Hebrew heavily influenced by the Hebrew Bible (and apparently used for the sake of authority), with Aramaisms which endow its Hebrew with a proto-rabbinic flavor. See Qimron and Strugnell, *DJD 10*, 65-108; Kister, "Studies in 4QMiqṣat Ma'aśe Ha-Torah," 355-9; Shelomo Morag, "Language and Style in *Miqṣat Ma'aśe Ha-Torah* – Did *Moreh Ha-Ṣedeq* Write This Document?" *Tarbiẓ* 65.2 (1996): 209-23.

subsequent Jewish tradition.[27] The original editors of the text suggested that the author was the founder and first leader of the sect, known as the Teacher of Righteousness, and that his addressee was the High Priest in Jerusalem. However, over the years scholarly consensus shifted to view this suggestion as "sheer conjecture,"[28] and now generally accepts the intramural purposes of the text, attested by the multiplicity of copies found in Qumran,[29] a view first proposed by Steven Fraade.[30] Nevertheless, the claim that "the letter plainly explains its purpose"[31] has not been completely invalidated. Its conclusion (discussed more elaborately below) demonstrates

---

[27] Katell Berthelot, "4QMMT et la question du canon de la Hébraïque Bible," in *From 4QMMT to Resurrection. Mélanges Qumraniens en hommage à Émile Puech*, ed. Florentino García Martínez, Annette Steudel and Eibert J.C. Tigchelaar (Leiden: Brill, 2006), 1-14; George J. Brooke, "The Explicit Presentation of Scripture in 4QMMT," in *Legal Texts and Legal Issues. Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, ed. Moshe J. Bernstein, Florentino García Martínez and John Kampen (Leiden: Brill, 1997), 82-8; Jonathan G. Campbell, "4QMMT^{d} and the Tripartite Canon," *JJS* 51.2 (2000): 181-90; Eugene C. Ulrich, "The Non-Attestation of a Tripartite Canon in 4QMMT," *CBQ* 65.2 (2003): 202-14; idem, "Methodological Reflections on Determining Scriptural Status in First Century Judaism," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, ed. Maxine L. Grossman (Grand Rapids: Eerdmans, 2010), 148-50; Weissenberg, *4QMMT*, 59-60, 204-6. See also Roger T. Beckwith, "Formation of the Hebrew Bible," in *Mikra: Text, Translation, Reading and Interpretation of the Bible in Ancient Judaism and Early Christianity*, ed. Martin Jan Mulder (Assen: Van Gorcum, 1988), 39-86. Beckwith is apparently unaware of the 4QMMT evidence, but his essay is nevertheless pertinent for the debate. This question relates to a larger question of scriptural authority in 4QMMT, see Moshe J. Bernstein, "The Employment and Interpretation of Scripture in 4QMMT: Preliminary Observations," in *Reading 4QMMT. New Perspectives on Qumran Law and History*, ed. John I. Kampen and Moshe J. Bernstein (Atlanta: Scholars, 1996), 29-51; Brooke, "The Explicit Presentation of Scripture in 4QMMT," 68; Steven D. Fraade, "Rhetorics and Hermeneutics in Miqṣat Maʿaśe Ha-Torah (4QMMT): The Case of the Blessings and Curses," *DSD* 10.1 (2003): 155-9; Himmelfarb, "'Found Written in the Book of Moses'"; Høgenhaven, "Rhetorical Devices," 190-2, 199-200; Lawrence H. Schiffman, "The Place of 4QMMT in the Corpus of Qumran Manuscripts," in *Reading 4QMMT. New Perspectives on Qumran Law and History*, ed. John I. Kampen and Moshe J. Bernstein (Atlanta: Scholars, 1996), 94-7; Weissenberg, *4QMMT*, 120-9, 169-218; A. Yadin, "4QMMT, Rabbi Ishmael, and the Origins of Legal Midrash," 145-8.

[28] John I. Kampen, "4QMMT and New Testament Studies," in *Reading 4QMMT. New Perspectives on Qumran Law and History*, ed. John I. Kampen and Moshe J. Bernstein (Atlanta: Scholars, 1996), 132.

[29] Grossman, "Reading 4QMMT," 22.

[30] Fraade, "To Whom It May Concern," 507-26.

[31] Schiffman, *Reclaiming the Dead Sea Scrolls*, 84.

this effectively: the text may present a polemic against a "straw-man" or an absent adversary, employing the second-person as a rhetorical device intended to impress an audience. However, in addition to the usage of the second-person 4QMMT explicitly states "we have written to you," a factual statement which could hardly serve any rhetorical purpose if it were entirely fictional. This statement is distinct from other polemical phrases such as "it is said," "some say," or **אומרים צדוקים** ("Sadducees say"), known from elsewhere.[32] The similarities between such introductory polemic formulae and the language used in 4QMMT is compelling,[33] but an actualizing and historicizing phrase such as "we have written to you" remains a distinctive feature which should be addressed in order to fully and properly appreciate the text. Such a phrase would be less powerful assuming the text was originally written to a neophyte as the addressee. However, if the text was originally addressed to the High Priest in Jerusalem and later used internally as an introductory text for neophytes, such a phrase becomes significant. It would leave an even more powerful impression on a neophyte who, as a further stage of initiation, would be allowed to read a letter that was originally addressed to an esteemed leader.

In order to refute this historicizing interpretation altogether, Fraade has suggested, among other strong arguments, that the term **לעמך** ("to your people") in line 3 can refer to anyone who sees the people of Israel as his people, not necessarily a leader, and that this "would be consistent with other sectarian scrolls to presume that the welfare of the people Israel depends on the Qumran community's proper worship of God."[34] This is an important point that will be the subject of further discussion below, and ties in well with the opening comments on the dual position enveloped in the experience of sectarianism, one that is at once separate from society but

---

[32] See Matt 5:31, 33, 38, 43; *m.* Yad 4:6; *t.* Yad 2.20. Cf. Jer 31:28; Ezek 18:3; Am. 5:18. The phrase in the Sermon on the Mount should also be understood to be a formula introducing scripture, but the fact that the text is being argued against might lend a different reading, construing the phrase not as the introduction of authoritative scripture, but of common knowledge.

[33] Kampen, "4QMMT and New Testament Studies," 129-35; Fraade ("To Whom It May Concern," 511-13) rejects this argument. Høgenhaven is correct in stating, "that Fraade in denying altogether the epistolary character of the text has overstated his case" (Høgenhaven, "Rhetorical Devices," 189). Note, however, that in anticipation of such reception of his view, Fraade furnishes his projected audience with "weak, strong and intermediate versions" of his conclusions (Fraade, "To Whom It May Concern," 524).

[34] Fraade, "To Whom It May Concern," 520.

assumes responsibility for it as a whole. Nevertheless, I argue that this suggestion does not fit the recurring second-person singular language of 4QMMT. Immediately after the designation of "your people," the text continues to state that "we have seen that you have cunningness and knowledge of the Torah." This makes the term less likely to be a rhetorical device directed at a general reader. Although supposedly, the officer handing the text to the neophyte could state that this was written for anyone whom the sect has concluded to have these qualities, this would only intensify the neophyte's experience that this text was not addressed to him. If this were the purpose, the third-person would be more effective, describing more remotely anyone who wishes to join while refraining from addressing an individual. 1QS demonstrates this technique clearly, using the third-person plural[35] to describe the covenant and the ceremony of those joining the sect while switching to the singular specifically for those who enter the covenant hypocritically.[36] This instance is all the more striking since the text is ritually recited in the presence of those joining, and still does not turn to the second-person, while the second-person singular is used to bless all Children of Light and damn all Children of Darkness who presumably are not present.[37]

In short, the praises of the addressee's knowledge and prudence suggest a concrete original recipient,[38] and the specification of the act of writing

---

[35] 1QS 1-3, esp. 1.11-13, 16, 20, 24.

[36] 1QS 2.11-14. See Newsom, *Self as Symbolic Space*, 120-2.

[37] 1QS 2.2-9. Even if all the Children of Light are ideally expected to be present (Licht, *Rule Scroll*, 56), not only can we doubt whether this took place, but it is obvious that the second-person singular for the Children of Darkness is recited *in absentia* of the damned. In any case, the second-person is not reserved for the neophyte (since it includes also the renewal of the covenant for existing members, see for example Hempel, *Laws of the Damascus Document*, 87-8). Any language referring to the neophyte in 1QS is in the third-person, whether singular or plural. See also Fraade's own comments on this ceremony: "Rhetoric and Hermeneutics," 155-9.

[38] The apparent flattery is a further sign of address to a king or ruler. While this is true to this day, it bears special implications in the context of the ancient world. See Steven Weitzman's detailed treatment of flattery in Philo, in his *Surviving Sacrilege* (Cambridge: Harvard University Press, 2005), 57-75, and further on flattery in Jewish sources in Erwin R. Goodenough, "Kingship in Early Israel," *JBL* 48.3-4 (1929): 169-205 and Seth Schwartz, "The Composition and Publication of Josephus's *Bellum Iudaicum* Book 7," *HTR* 79.4 (1986): 380-5. See also on flattery in the Greco-Roman world, John T. Fitzgerald, *Friendship, Flattery, & Frankness in the New Testament World* (Leiden: Brill, 1996); Jerome Kemp, "Flattery and Frankness in Horace and Philodemus," *Greece and Rome* 57.1 (2010):

supplements this concretization with an actualization of the document as an epistle that was historically sent.[39] However, this applies only to the original document, and therefore this conclusion requires reckoning with the clear caution that rises from Fraade's stance, reminding us that the original document is in all probability not extant. Any version of the letter that was found in Qumran was obviously not the copy that was delivered to a leader in Jerusalem, and as such, should be viewed as serving an intramural purpose of study, possibly subject to redaction, change, or at least to scribal errors. The implications of the contrasting views on the authorship, addressee, and purpose of 4QMMT were summarized perceptively by Maxine Grossman:

> By reading *MMT* in terms of a series of possible interpretations, without selecting a unitary "correct" reading of the text, we can isolate the *range* of historical accounts that this text supports, while calling into question the historicity of some apparently convincing accounts. This approach also highlights the *dynamic* nature of textual development and use in the Qumran community… Our own historical readings of their texts must, consequently, take these dynamics and ideological developments into consideration.[40]

While my purpose here is not to study the historical background of 4QMMT, these remarks are essential before I proceed to offer my analysis of rhetorical usage of exclusive and inclusive language in the document.

65-76; and on flattery of the audience in ancient texts in Joanne McNamara, "The Frustration of Pentheus: Narrative Momentum in Ovid's *Metamorphoses,* 3.511–731," *Classical Quarterly* 60.1 (2010): 185-93.

[39] Thus I subscribe to Kister's firm assertion: **ממ"ת איגרת היא** ("MMT is a letter"), and see n. 6 of his study ("Studies in 4QMiqṣat Ma'aśe Ha-Torah," 319) in response to Strugnell's consideration of a treatise as opposed to an epistle. Kister's study precedes Fraade's observation, and therefore does not respond to it. As I stress in the concluding notes above, the historicity of the document does not exclude its subsequent internal usage.

[40] Grossman, "Reading 4QMMT," 22.

3.3.2. *Role Distance in 4QMMT: Steering away from Peers*

Having described my approach to 4QMMT as an historical resource, I now turn to the text itself. 4QMMT probably presents the most striking example of an external discourse among the texts from Qumran. In order to demonstrate its rhetorical power and its function both in terms of inclusion and exclusion, I will begin with an example from the end of the text. The concluding paragraph of the document, belonging to the "homiletical conclusion"[41] section and preserved primarily in the fifth copy, reads as follows:[42]

25b זכור [את]דוֹ֫ד שהיא איש חסדים אף
26 הוֹא [נ]צל מצרות רבות ונסלוח לוֹ ואף אנחנו כתבנו אליך
27 מקצת מעשי התורה שחשבנו לטוב לך ולעמך שר[א]ינו
28 עמך ערמה ומדע תורה הבן בכל אלה ובקש מלפנו שיתקן
29 את עצתך והרחיק ממך מחשבת רעה ועצת בליעל
30 בשל שתשמח באחרית העת במצאך מקצת דברינו כן
31 ונחשבה לך לצדקה בעשותך הישר והטוב לפנו לטוב לך
32 ולישראל *vacat*

25b [ ] (their) sins. Remember David, who was a man of righteous deeds and indeed
26 was delivered from many troubles and was forgiven. And indeed we have written to you
27 some of the deeds of the Torah which we intend for the benefit of you and your people, for we have seen
28 cunningness and knowledge of the Torah are with you. Reflect on all these matters and beseech him to straighten
29 your counsel and keep far from you the plans of evil and the counsel of Belial
30 so that you may rejoice at the end of time, when finding some of our words to be true.

---

41 4QMMT is composed of three sections: "(A) the calendar at the beginning, (B) the list of laws, and (C) the homiletical conclusion" - Schiffman, "The Place of 4QMMT," 81; see also idem, *Reclaiming the Dead Sea Scrolls*, 83-7; Qimron and Strugnell, *DJD 10*, 109-11.

42 Composite Text C 25-32, based on 4QMMT^{e} (4Q398) 14-17, ii. Cf. 4QMMT^{d} (4Q397) 23; 4QMMT^{f} (4Q399) ii. See Qimron and Strugnell, *DJD 10*, 62. For translation I consulted DSSSE 2:803, 805; Qimron and Strugnell, *DJD 10*, 63; Vermes, *Complete Dead Sea Scrolls*, 228; Weissenberg, *4QMMT*, 213.

31 And it shall be reckoned[43] to you as righteousness for doing what is upright and good before him, for your benefit
32 and that of Israel. *vacat*

The second-person singular in this text is a significant marker. I have firmly stated my own belief that this in itself is sufficient evidence of its historicity as an actual letter, but even the skeptical view should acknowledge the powerful rhetoric of this personal address. This personal appeal reveals several important assumptions of its author. First, it reveals that the authors consider the addressee to be in a position to alter some of the erroneous and sinful conducts mentioned previously in the document. Second, it reflects the authors' hope that the addressee might be interested to hear their grievances and concerns, and that some room for negotiation or change is possible. Furthermore, it reveals that although the authors consider themselves to be separate and distinct from the addressee and his party, they also consider both parties to be not entirely independent of one another. Through the personal address the authors convey a sense of responsibility for the addressee's community and their actions, and possibly also present themselves as affected by their misgivings and misdoings. As with the case of intent, here too an example of contemporary environmental and ecological concerns can be a helpful illustration. Swedish citizens, for example, may consider their country's welfare and taxation system to be just and reasonable and hold a critical view of the United States' welfare system.[44] Nevertheless, they would have no cause for grievance against the United States, since they enjoy the benefits of their own country and the citizens of the United States are free to choose their own preferred system. This is not the case with questions of pollution and global warming, where the United States has come under harsh criticism for not complying with the Kyoto treaty.[45] Swedish citizens may feel it is within

[43] Another possible reading is: "and we shall reckon it."
[44] As demonstrated, for example, by Catrin Lundström and France Winddance Twine, "White Migrations: Swedish Women, Gender Vulnerabilities and Racial Privileges," *European Journal of Women's Studies* 18.1 (2011): 67-86.
[45] The protocol can be accessed online: <http://unfccc.int/resource/docs/convkp/kpeng.html>. As an introduction to the Protocol, I consulted Michael Grubb et al., *The Kyoto Protocol. A Guide and Assessment* (London: Royal Institute of International Affairs, 1999). For general comments on the abstention of US government from joining as a signatory to the Kyoto Protocol, see Sebastian Oberthür and Hermann E. Ott, *The Kyoto Protocol* (New York: Springer, 1999), 68-70. The Kyoto example is appropriate here for two reasons: (a) it

their rights and even obligation to present demands to the United States on this matter if they firmly believe that this conduct will have severe repercussions on their own quality of life and security. In other words, although they belong to a separate community, Swedish citizens may still feel justified as well as obliged to address the American government if its conduct affects the common fate of a larger community to which they all belong – in this case, the citizens of planet earth.[46]

Likewise, the Essenes did not feel they could assure themselves that their departure from Jerusalem and their strict adherence to the law would save them. The continuous wrongdoings in the temple posed a direct threat not only to those responsible in Jerusalem, but also to the righteous who failed to change it.[47]

Following the terminology of Dan-Cohen mentioned above, this raises once again the "role distance" apparent here and in other sectarian texts.[48] One of the key phrases for this purpose is the much-debated phrase in 4QMMT C 7 **פרשנו מרוב העם** ("we separated from the multitude of the

---

echoes the parallels of air pollution with the pollution of the temple, discussed in the previous chapter; and (b) it has become a major example among theorists of International Law, regarding the degree of autonomy of states, human rights, and the balance between the two. See Oona A. Hathaway, "Between Power and Principle: An Integrated Theory of International Law," *UChicLRev* 72.2 (2005): 469-76; Peter H. Huang, "International Environmental Law and Emotional Rational Choice," *Journal of Legal Studies* 31.S1 (2002): S237-58; Judith Resnik, "Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry," *Yale Law Journal* 115.7 (2006): 1644-8; Shirley V. Scott, "Is There Room for International Law in Realpolitik? Accounting for the US 'Attitude' Towards International Law," *Review of International Studies* 30.1 (2004): 71-88; Victor W. Sidel, "The Right to a Just and Peaceful Social and International Order," *Health and Human Rights* 3.2 (1998): 110-25. For more general comments on the relationship of Law and environment, see John Copeland Nagle, *Law's Environment. How the Law Shapes the Places we Live* (New Haven: Yale University Press, 2010), 241-52.

[46] However, some argue they have a right or even a duty to interfere with internal policies if they concern humanist matters, regardless of whether citizens of another country are directed immediately and physically. See John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 11-128; Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 96-128, 161-212.

[47] The *Hodayot* provide a vivid glimpse to the fear of the sectarians that neither righteousness nor repentance will suffice to escape the tribulations of the End of Times. See $1QH^a$ 12.31-38.

[48] As noted previously, the terminology should be attributed to Goffman, but Dan-Cohen sets this term within a legal framework that is significant for the present discussion.

people").[49] One reason this terse statement has been celebrated is that it is the earliest evidence for the usage of the root **פרש** to denote a sectarian schism. It therefore bears implications for the history and origins of the Pharisees and as such interest scholars of rabbinic Judaism and New Testament alike. However the commotion over **פרשנו** obscured the great significance of the following words of the phrase, **רוב העם** ("the multitude of the people") that captures in a nutshell the aforementioned inherent duality of the sectarian experience. The speakers describe their withdrawal while at the same time acknowledging that they are part of this people.

This reading reveals an important nuance regarding the Essenes, one that the sectarian terminology used in the analysis of the Scrolls tends to obscure: the sectarians recognized their social role as a minority, but never sought to be one. Judging by their rhetoric and regulations, the sectarians would have preferred to have the multitude of their people follow them. There is no mention of a restriction on the number of people who can join the sect, nor any indication that the sect seeks to be a separate elite. This is a distinction of an utmost significance which further remarks on inclusionary and exclusionary rhetoric in Qumran texts must take into account. According to the sectarians' own perception, their community is not a separatist group that seeks to shun members of its own people. Rather, they consider their separation to be a deplorable outcome of the majority's sins. The authors of 4QMMT recognize the separation but simultaneously convey a strong sense of connection and concern regarding the sinful majority of the people, a concern based on the conviction that the sect knows what is best for the rest of the people. Viewed in this light, the separation is essentially partial and conditional.

As already mentioned briefly earlier, the issue of genre is also highly significant to the analysis of exclusion terminology in 4QMMT. The letter is addressed externally, and thus, while stressing that the sect willfully and unilaterally separated from the multitude of the people, it also reflects a concern for them. Moreover, the text expresses a certain degree of openness to reunite with the people, conditioned upon the choices and changes they and their leaders will be willing to make. Indeed, there are many examples of strict laws intended to intensify this separation and

[49] 4Q397, see Weissenberg's discussion, *4QMMT*, 201-20; cf. Charlotte Hempel, "The Context of 4QMMT and Comfortable Theories," in *The Dead Sea Scrolls. Texts and Context*, ed. Charlotte Hempel (Leiden: Brill, 2010), 275-92.

exclusion of others, especially in 1QS. On the one hand, it is significant that such laws are not mentioned in 4QMMT, as Hempel noted.[50] Conversely, it is equally important to note that a text intended solely for internal use, such as the Community Rule, does present such an inclination towards separation, distinction, and exclusion.

3.3.3. *Hierarchy as Exclusion: Priesthood and Laity in 4QMMT*

Inclusion and exclusion invariably involve selection and election. Although the sectarians' separation is neither a complete dissociation from their people, nor is it exclusionary by definition, there is one form of exclusion that is not left to their choice – namely, the priesthood/laity partition in Jewish society.

The division of the Jewish people into priesthood and laity is not constituted by choice of individuals, but is dependent upon genealogy. In the determinist worldview of the sect this division is viewed as a natural order of the world, ordained and regulated by God, who invests unique attributes in those born within the priestly family. As is often the case with the Scrolls, the most explicit version of this perception, in 4QMMT B 75-82, is fragmentary:[51]

75 ועל הזונות הנעסה בתוך העם והמה ב[ני זרע]
76 קדש משכתוב קודש ישראל ועל בה[מתו הטהור]ה
77 כתוב שלוא לרבעה כלאים ועל לבוש[ו כתוב שלוא]
78 יהיה שעטנז ושלוא לזרועֿ שדו וכֿ[רמו כלאים]
79 [בֿ]גלל שהמה קדושים ובני אהרון ק[דושי קדושים]

---

[50] Hempel, "The Context of 4QMMT and Comfortable Theories"; cf. eadem, "The Laws of the Damascus Document and 4QMMT," in *The Damascus Document. A Centennial of Discovery*, ed. ed. Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick (Leiden: Brill, 2000), 70; John Strugnell, "MMT: Second Thoughts on a Forthcoming Edition," in *The Community of the Renewed Covenant. The Notre Dame Symposium on the Dead Sea Scrolls*, ed. Eugene C. Ulrich and James C. VanderKam (Notre Dame: University of Notre Dame Press, 1994), 68; Yaakov Sussman, "The History of Halakha and the Dead Sea Scrolls: Preliminary Observations on MIQSAT MA'AŚE HA-TORAH [4QMMT]," in *DJD 10*, 186.

[51] Composite Text B 75-82, based on 4QMMT^{c} (4Q396) IV, 4-11; 4QMMT^{d} (4Q397) frgs. 6-13, 12-15. For translation I consulted *DSSSE*; Qimron and Strugnell, *DJD 10*; Vermes, *Complete Dead Sea Scrolls*; Weissenberg, *4QMMT*.

80 [וא]תֶּם יודעים שמקצת הַכֹּהֲנים וְהָעם מתערבים[
81 [והם]מִתוככים ומטמאי[ם]את זרעֹ[הקודש ואף]
82 את [זרע]ם עִם הזונות כֹּ[י]

75 And concerning the fornications carried out in the midst of the people, even
though they are so[ns of a seed]
76 (of) holiness, as it is written: "Holy is Israel". And concerning [his pure] an[imal]
77 it is written not to breed it *kil'ayim*[52]; and concerning [his] clot[hing, it is written
that it should not be]
78 *sha'atnez*[53]; and not to sow his field or [his] vi[neyard *kil'ayim*][54]
79 [be]cause they are holy. And the sons of Aaron are the ho[liest of holy].
80 [But y]ou know that some of the priests and the peo[ple mingle]
81 [and they]unite with each other[55] and defile the seed [of holiness] [as well as]
82 their (own) [seed] with women who go astray,[56] be[cause]

---

[52] I.e. with another species. Cf. Lev 19:19. My choice here follows Milgrom's designation of *sha'atnez* to be "untranslatable" [Milgrom, *Leviticus 17-22* (New York: Doubleday, 2000), 1664] and expands it to *kil'ayim* as well.

[53] I.e., of mixed materials. Cf. Lev 19:19; Deut 22:11.

[54] As the previous two laws, the prohibition of sowing the field with mixed species is also found in the Hebrew Bible. The text conflates the prohibition of the field (Lev 19:19) and the vineyard (Deut 22:9) as one. Note that the LXX for Lev 19:19 substitutes "your vineyard", thereby "harmonizing with Deut 22:9 and implying that this prohibition is limited to the case of planting a vineyard with diverse seed" (Milgrom, *Leviticus 17-22*, 1662). 4QMMT, on the other hand, offers a harmonization which asserts the inclusion of all fields and vineyards. See Esther Eshel, "4QLev[d]: A Possible Source for the Temple Scroll and Miqṣat Ma'aśe Ha-Torah," *DSD* 2.1 (1995): 1-13 on the use of Leviticus in 4QMMT and Bernstein, "Employment and Interpretation of Scripture in 4QMMT," 36-46; Brooke, "Explicit Presentation of Scripture," 71-85; Robert A. Kugler, "Rethinking the Notion of 'Scripture' in the Dead Sea Scrolls: Leviticus as a Test Case," in *The Book of Leviticus. Composition and Reception*, ed. Rolf Rendtorff, Robert A. Kugler and Sarah Smith Bartel (Leiden: Brill, 2003): 342-57.

[55] In addition to the reference that Qimron and Strugnell provide – Ezra 9:2, *DJD* 10, 57 – it should be noted that the word **בתוככם**, "in your midst," appears several other times in the Hebrew Bible in contexts of mixing and fornication, e.g., Lev 18:26, 20:14. Especially notable is the recurring usage of the phrase in relation to the *gerim*: Ex 12:49; Lev 16:29, 17:12, 18:26; Num 15:14; Ezek 47:22 (cf. the appellation to Abraham after he self-designated himself as *ger*: Gn 23:5-6).

[56] **זונות** can be read literally as "whores," or perhaps as the abstract noun, "fornication," based on l. 75. I prefer the reading "women who go astray" which does not deem all laity to be whores, but stresses the real danger of marrying women whose misconduct is tolerated (see chapter five for this argument).

Although in this fragment, as Robert Duke points out, "the most important information… is not preserved,"[57] the context allows for a plausible reconstruction. When used within a discussion of the defilement of the priestly seed through marriage, the imagery of *kil'ayim* and *sha'atnez* poignantly reflects the Essene deterministic worldview regarding the essential(ist) difference between priesthood and laity. It reflects the perception that the binary between priests and laity goes beyond the question of social class – they are in fact two separate races that should not be mixed. The equation of the mixture of these two groups with examples of forbidden blends of fabric, livestock, and agriculture further stresses that the social order is considered a natural one. Moreover, this natural order of separate groups is also a structured hierarchy of holiness. As Martha Himmelfarb writes, "[t]hey seem to have come to the conclusion that, in the words of 4QMMT, while all Israel was holy, the priests were holy of holies."[58]

The essentialist hierarchical order stands in tension with the attempt for inclusion and unification expressed in the epistle explicitly and by the act of its communication. The openness reflected in the act of writing the letter, portrays its authors as non-elitist, who do not consider their views and conduct too stringent for the multitudes. Their expectation is idealistic, perhaps naïve. The simultaneous expectation of fortified hierarchical boundaries stands in contrast and thus serves as an important peephole to the nuanced notion of exclusion presented in the text. It is once again Minow's Dilemma of Difference:[59] differences in society are a given, and the Law is faced with the problem of addressing and regulating various contours that mark individuals and groups as separate within a society. For the Essenes, in order for the society to function properly, it needs to be organized according to preordained hierarchies, organized according to roles of worship.

---

[57] Robert R. Duke, *The Social Location of the* Visions of Amram *(4Q543-4Q547*) (Frankfurt am Main: Peter Lang, 2010), 56.

[58] Himmelfarb, "'Found Written in the Book of Moses': Priests in the Era of Torah," 38; cf. eadem, *Kingdom of Priests*, 27-28; J. J. Collins, *Beyond the Qumran Community*, 73. Kister and Hayes have both argued against the editors' suggestion that the above quoted paragraph refers to an objection to intermarriage between laity and priesthood, and have favored a reading that suggests an opposition to intermarriage between Jews and non-Jews. See Kister, "Studies in 4QMiqṣat Ma'aśe Ha-Torah," 344-7; Christine E. Hayes, *Gentile Impurities and Jewish Identities* (Oxford: Oxford University Press, 2002), 82-91.

[59] See n. 2 in this chapter.

3.3.3.1. *The Hierarchy of Priesthood and Laity in Other Essene Texts*

The extant text of 4QMMT does not include any explicit sectarian laws in the sense that it does not administer or prescribe conduct within the sect. This fact is compatible with an understanding of the text as a letter to an external figure and weakens Fraade's argument that it was initially written as a "pseudo-letter for neophytes."[60] On the other hand, the same feature has also raised the possibility that it is not a sectarian work at all. Regev, for example, has deemed it "pre-sectarian."[61] This assertion overlooks the crucial self-designation of the authors as a group who has separated itself. Furthermore, the concern over intermarriage of priesthood and laity is echoed in various Second Temple texts,[62] and may well have been a concern that occupied the sect but also extended beyond sectarian lines.

Therefore, special value should be given to the shared views expressed in 4QMMT and explicit sectarian writings,[63] as well as to the distinction between priesthood and laity in matters beyond the issue of marriage. Although concerns and issues raised before an outsider are expected to be different from those raised in internal writings, core values or basic

---

[60] Fraade, "To Whom It May Concern."

[61] Regev, *Sectarianism in Qumran*, 161.

[62] Jubilees 30; Vision of Amram (4Q543-549), ALD 6:3-5. See Martha Himmelfarb, "Levi, Phinehas, and the Problem of Intermarriage at the Time of the Maccabean Revolt," *JSQ* 6.1 (1999): 1-24; Duke, *Social Location of the* Visions of Amram, 49-69; Wassen, *Women in the Damascus Document*, 76-80. This issue relates of course to a larger preoccupation with intermarriage in Second Temple Period. See Shaye J. D. Cohen, "From the Bible to the Talmud: The Prohibition of Intermarriage," *HAR* 7 (1983): 23-9; idem, "Solomon and the Daughter of Pharaoh: Intermarriage, Conversion, and the Impurity of Women," *JANES* 16-17 (1987): 23-37; Louis H. Feldman, *Studies in Josephus' Rewritten Bible* (Leiden: Brill, 1998), 196-9, 483-99; Hayes, *Gentile Impurities and Jewish Identities*; Lawrence H. Schiffman, "Prohibited Marriages in the Dead Sea Scrolls and Rabbinic Literature,"in *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, ed. Steven D. Fraade, Aharon Shemesh and Ruth A. Clements (Leiden: Brill, 2006), 113-25; Cana Werman, "Jubilees 30: Building a Paradigm for the Ban on Intermarriage," *HTR* 90.1 (1997): 1-22.

[63] By now it is almost impossible to use terms as "explicit" and "sectarian" without calling to mind Carol Newsom's classic essay, "'Sectually Explicit' Literature from Qumran." For more on the identification of scrolls as sectarian or non-sectarian, see J. J. Collins, *Beyond the Qumran Community*; Dimant, "Qumran Sectarian Literature," eadem, "The Composite Character of the Qumran Sectarian Literature as an Indication of Its Date and Provenance," *RevQ* 22.4 (2006): 615-30 and recently "Criteria for the Identification of Qumran Sectarian Texts," in *Qumran Scrolls and Their World*, ed. Menahem Kister (Jerusalem: Yad Ben Zvi, 2009), 1:49-86 (in Hebrew).

worldviews should remain prevalent. Thus, it is significant that a hierarchical structure distinguishing priesthood and laity appears in an indisputable sectarian text as the Community Rule:[64]

5b בעת ההיאה יבדילו אנשי
6 היחד בית קודש לאהרון להיחד קודש קודשים ובית יחד לישראל ההולכים בתמים
7 רק בני אהרון ימשלו במשפט ובהון ועל פיהם יצא והגורל לכול תכון אנשי היחד

5b At that time the men
6 of the *Yahad* shall set apart a holy house for Aaron to yahadize[65] as a Holy of Holies, and a Yahad house for Israel, those who walk in perfection.
7 Only the sons of Aaron shall rule over judgment and goods. And according to them the lot will be settled for all regulations of the men of the Yahad.

Two important linguistic elements should be noted in this paragraph. First, the word "separated," of the root **בדל**, which is an operative word here. In addition, the use of the word "house" is particularly interesting. As noted by Licht, the language may well be inspired by 1 Chr 23:13 where both the root **בדל** ("separate") and the term **קדש קדשים** ("Holy of Holies") appear together.[66] The significance therefore is the emphasis on an exclusionary, or at least hierarchical, practice, which is based on scripture and reflects a tradition of genealogy and an established social order. While the sectarians hold that everyone should follow their interpretation of the law (as stated explicitly in the concluding paragraph of 4QMMT, discussed above), they also hold that not everyone can be part of a select elite group within the Yahad, which is based on dynastical lines. This interesting choice of language actually reflects the subtle tension between a class set by birth and a class constituted by the choice of individuals. On the one hand, the ruling group within the sect is the priesthood, "Sons of Aaron", the only ones who "shall rule over judgment and goods" and so forth. On the other hand, the rest of the *Yahad* can theoretically be all of Israel (the *Yahad* house, for

[64] 1QS 9.5-7. For my English translation I consulted *DSSSE*, 1:91; Metso, *Textual Development*, 88; Vermes, *Complete Dead Sea Scrolls*.
[65] This awkward translation I offer here is intended to stress that the authors who decided to use **יחד** as a verb in the Niphal were themselves playing on the name of the community. For a full explanation see n. 40 in chapter 1.
[66] Licht, *Rule Scroll*, 172.

example, is said in line 6 to be set for Israel), but in practice will be only for those of Israel who walk in perfection. In other words, two criteria of genealogy and deeds, or descent and conduct, interact in order to determine membership and composition in the sect. In Schwartz's words, these criteria preserve a tension "between institutions, traditions, and authorities based upon descent and a new outlook focusing upon the individual, and so upon mankind."[67]

The legislation of a hierarchy of authorities within 1QS complements the demand for an established hierarchy marked by matrimony in general Jewish society. Both employ the law to shape society according to its perceived purpose. By way of example, one may consider John Rawls' "Difference Principle," which claims the following:

> Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society.[68]

Rawls accepts the existence of a hierarchical society as a given,[69] but declares it just only when the elite is serving to improve the conditions of those below. Such a view stems, of course, from a stance of equality over entitlement. For the Essenes it is clear that the duties of the priestly elite are not towards the laity, but towards God. Hence, the laws of difference need not strive to correct the inequality or narrow the hierarchical gap, but the exact opposite: the law maintains the hierarchy, and all classes should strive

---

[67] Daniel R. Schwartz, "On Two Aspects of a Priestly View of Descent at Qumran," in *Archaeology and History in the Dead Sea Scrolls*, ed. Lawrence H. Schiffman (Sheffield: JSOT Press, 1990), 167. As I try to demonstrate throughout this study, this tension is the result of the confrontation of an essentialist worldview that holds a correlation between natural phenomena (such as descent) and moral conduct, and a reality in which these phenomena do not comply with the behavior of individuals. However, in addition to the legal perspective, this view also reflects a social and political hierarchy set in specific historical circumstances. See Peter Schäfer, "Rabbis and Priests, Or: How to Do Away with the Glorious Past of the Sons of Aaron," in *Antiquity in Antiquity*, ed. Gregg Gardner and Kevin Osterloh (Tübingen: Mohr Siebeck, 2008), 155-72 and further literature there.

[68] John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999), 65.

[69] See also Minow, *Making All the Difference*, 101-45.

toward a proper worship of God, mediated and governed by the priestly elite.

3.3.3.1.1. *Emotions and Election in 1QS*

Before I continue to examine further examples of distinctions between priesthood and laity in the sectarian texts, I would like to demonstrate the tension between the claim of descent and the claim of merit by examining another passage in 1QS. This passage follows the one quoted above, some ten lines below on the very same column, but reflects a strikingly contrasting view without any mention of genealogy:[70]

15b	ואיש כבור כפיו לקרבו ולפי שכלו
16	להגישו וכן אהבתו עם שנאתו *vacat* ואשר לוא להוכיח ולהתרובב עמ אנשי השחת
17	ולסתר את עצת התורה בתוכ אנשי העול ולהוכיח דעת אמת ומשפט צדק לביחרי
18a	דרכ איש כרוחו כתכון העת

15b and he shall bring near each one according to the cleanness of his palms, and according to his intellect

16 make him approach[71]; and thus with his love and with his hatred.[72] ***vacat*** He should not reprove or argue with the People of the Pit

17 but rather hide the counsel of the Torah (when) in the midst of the People of Injustice, and prove[73] truthful knowledge and righteous judgment to the elect[74]

---

[70] 1QS 9.15-18. For translations see *DSSSE* 1:93; Vermes, *Complete Dead Sea Scrolls*, 111.

[71] Both **קרב** and **נגש** are translated here more literally although I accept the common view that these are terms of admission to the sect. See Licht, *Thanksgiving Scroll*, 46, and the mentioned translations of this passage. The translation of **להגישו** as "make him approach" follows Alter's translation of this verb in Ex 21:6 (Alter, *Five Books of Moses*, 436). While the single verb is not sufficient to claim for a biblical allusion here, the imagery of slave-like submission is not foreign to the Rule, and even appears several lines below: 1QS 9.22-23. Cf. 1QS 11.16; 1QH^a 8.21. More on this motif see in Joseph Blenkinsopp, *Opening the Sealed Book* (Grand Rapids: Eerdmans, 2006) and Kristin Joachimsen, *Identities in Transition. The Pursuit of Isa. 52:13-53:12* (Leiden and Boston: Brill, 2011)

[72] In other words, his love and hatred will determine who comes near, see discussion below and Ari Mermelstein, "Love and Hate at Qumran: The Social Construction of Sectarian Emotion," *DSD* 20.2 (2013): 253-4. Mermel. While the juxtaposition of the two is self-explanatory and need not require a prooftext, it is possibly alluding to Ecc 9:6.

18a of the way, each according to his spirit and according to the regulation of the time

This passage is part of the "Rule of the *Maskil*," or the instructor. If we accept suggestions that the two roots used for "bringing near" (קרב and נגש) describe two separate actions, the instructor is invested here with the task of admitting and perhaps promoting or advancing members within the sect.[75] The evidence is inconclusive, but for the purpose of this discussion the crucial point is the role of the instructor as a filter between the members of the sect and the outside world. He is responsible for approving of new members, and he is responsible for hiding the counsel of the Torah in front of outsiders and revealing it in the proper context. Most curious in this context is the assertion that the approval of new members will also follow the love and hate of the instructor. However, this assertion should not be misconstrued to be a decision left to the subjective tastes of the instructor – it is taken for granted that the instructor will love the righteous and hate the wicked.[76] The use of emotional language in legal religious texts

---

[73] I.e., attest. Translation intended to emphasize the play on the meanings of להוכיח in the previous line (as "reprove") and the positive meaning here. García Martínez and Tigchelaar suggest "to reproach with." This is possible, but seems problematic because להוכיח ("reproach, reprove") appears in 1QS with an accusative as the object of reproof (e.g. 1QS 5.24, 26;), whereas here the direct object seems to be the truthful knowledge and righteous judgment. I therefore prefer to read the verb here as "attesting." In support of García Martínez and Tigchelaar's translation it should be noted that the Hodayot includes such forms in the sense of reproach (e.g. 1QH^a 17.23-24; 23.12).

[74] All translations read this in the active form ("those who choose the path" – *DSSSE* 1:93; "those who have chosen the way" – Vermes, *Complete Dead Sea Scrolls*, 111; cf. Wise, Abegg and Cook, 131). The passive form ("elect" – i.e., those who have been chosen) seems more compatible with the Hebrew form as well as with the determinist worldview of the sect.

[75] Alternatively, the usage of two synonyms could be read as mere interchangeable parallelisms according to the tradition of biblical poetry. Of course, as demonstrated in biblical poetry scholarship, the phenomenon of interchanging synonyms in the Hebrew Bible itself actually supplements and enhances the meaning of the text rather than merely reflecting it as a mirror. Hence, even in the context of this reading the question as to the meaning of the two verbs in discussion remains open. See Adele Berlin, *The Dynamics of Biblical Parallelism* (Grand Rapids: Eerdmans, 2007); Robert Alter, *The Art of Biblical Poetry* (New York: Basic Books, 1985), 3-26; James L. Kugel, *The Idea of Biblical Poetry* (New Haven: Yale University Press, 1981), 1-68; Stephen A. Geller, *Parallelism in Early Biblical Poetry* (Missoula: Scholars, 1979) and also Shemaryahu Talmon, "Synonymous Readings in the Textual Traditions of the Old Testament," *Scripta Hierosolymitana* 8 (1961): 335-83.

[76] Similarly Mermelstein concludes: "Although the group's construction of love and hate emphasized the degree to which they were passive recipients of divine grace, the emotions

with practical implications has been studied to some extent in relation to the Hebrew Bible,[77] and requires further consideration in relation to early Judaism in general and the Second Temple period in particular.[78]

The discussion of Law and Emotion, as these terms have emerged in the field of legal theory[79] and in relation to the Scrolls, will necessitate mediation between the starkly different, practically opposing conceptualization of emotion in these two separate settings. In legal theory emotions are understood as a psychological phenomenon and a given reality which interacts with the law in different ways, including the mental state of a defendant or plaintiff,[80] the strong feelings raised by injustice,[81] or the toll of guilt that accompanies wrongdoings or repulsion of them.[82] In addition to the primordial claim of associating law and emotion, scholars have further advanced investigations of ways by which law aims to regulate,

---

were also sources of sectarian power…" (in Mermelstein, "Love and Hate at Qumran," 263).

[77] See primarily Yochanan Muffs, *Love & Joy: Law, Language, and Religion in Ancient Israel* (New York: Jewish Theological Seminary, 1992) and more recently Andreas Wagner, *Emotionen, Gefühle und Sprache im Alten Testamen* (Waltrop: Spenner, 2006). Cf. Ellen van Wolde, "Sentiments as Culturally Constructed Emotions: Anger and Love in the Hebrew Bible," *BibInt* 16.1 (2008): 1-24.

[78] See Gary A. Anderson, *A Time to Mourn, A Time to Dance* (University Park: Pennsylvania State University Press, 1991); cf. idem, "The Expression of Joy as a Halakhic Problem in Rabbinic Sources," *JQR* 80.3-4 (1990): 221-52; Betsy Halpern-Amaru, "Joy as Piety in the *Book of Jubilees*," *JJS* 56.2 (2005): 185-205; Steven Weitzman, "Warring against Terror. The *War Scroll* and the Mobilization of Emotion," *JSJ* 40.2 (2009): 213-41; and most recently Mermelstein, "Love and Hate at Qumran."

[79] For an introduction to the debate see Terry A. Maroney, "Law and Emotion: A Proposed Taxonomy of an Emerging Field," *Law and Human Behavior* 30.2 (2006): 119-42 and also Susan A. Bandes, ed., *The Passions of Law* (New York: New York University Press, 1999).

[80] Eric A. Posner, "Law and the Emotions," *Georgetown Law Journal* 89 (2001): 1977-2012.

[81] Nancy L. Rosenblum, "Justice and the Experience of Injustice," in *Breaking the Cycles of Hatred. Memory, Law and Repair*, ed. Martha Minow and Nancy L. Rosenblum Princeton: Princeton University Press, 2002), 77-106.

[82] Leon R. Kass, "The Wisdom of Repugnance," in *The Ethics of Human Cloning*, ed. Leon R. Kass and James Q. Wilson (Washington: American Enterprise Institute for Public Policy Research, 1998), 3-59; Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton: Princeton University Press, 2004); Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993). See also Stephen P. Garvey, "The Moral Emotions of the Criminal Law," *Quinnipiac Law Review* 22 (2003): 89-108. For an opposing view see Raffaele Rodogno, "Guilt, Anger, and Retribution," *Legal Theory* 16.1 (2010): 59-76.

dominate, censure, and approve certain feelings.[83] Other studies have explored the role emotions assume in the judicial process itself.[84] While this latter angle of exploration is relevant to the analysis of the case of the Instructor, the role emotions may assume in modern judicial process would be entirely different from what we may imagine with the instructor of the Yahad community. Modern-day judges are assumed to have emotions which they should strive to suppress, in attempting to reach neutrality and fairness in the adjudication process. The emotions of the instructor, on the other hand, are assumed to correlate with the proper morals. In other words, emotions in 1QS are assumed to be part and parcel of value-based decisions rather than an alien component to the rational process of decision-making, and as such they are given a normative role.[85] This correlates with what scholars as Muffs and Anderson have claimed regarding the language of emotion in the Hebrew Bible: the seemingly familiar phraseology ("love," "hate," "joy"), especially in legal contexts, should not be confused with the modern view of emotions as spontaneous and incontrollable.[86]

---

[83] Carol Sanger, "The Role and Reality of Emotions in Law," *William and Mary Journal of Women and the Law* 8 (2001): 107-13; Meital Pinto, "What Are Offences to Feelings Really About? A New Regulative Principle for the Multicultural Era," *OJLS* 30.4 (2010): 695-723.

[84] Brian H. Bornstein and Richard L. Wiener, eds. *Special Issue: Emotion in Legal Judgment and Decision Making* (Law and Human Behavior 30.2; New York: Springer, 2006).

[85] It is perhaps not surprising that a similar view regarding the role of hate in modern law is found in Jeffrie G. Murphy and Jean Hampton's *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988), since this volume combines a legal and theological discussion. Hampton argues that hate is an emotion that reaffirms the law when reserved for criminals, and defines this as "moral hatred" (in Murphy and Hampton, *Forgiveness and Mercy*, 60-87). Note also Murphy's response on pages 88-110. Murphy also introduces Adam Smith's *Theory of Moral Sentiments*, where he writes: "When Resentment is guarded and qualified in this manner, it may be admitted to be even generous and noble" (quoted on p. 109). Obviously, Smith is uncommitted to Hampton's distinction between hatred and resentment, and his view of resentment seems akin to Hampton's definition of moral hatred. See also Nussbaum on disgust in *Hiding from Humanity*, 72-171.

[86] See for example Anderson's assertion (following his teacher Moran), that "(o)ne can only claim to be a lover of one's lord to the extent that one is loyal," and that conversely the term "to hate", in "certain semantic contexts, mainly juridicial ones," can "also possess a legal force" (Anderson, *A Time to Mourn*, 10-11). Cf. William L. Moran, "The Ancient Near Eastern Background of the Love of God in Deuteronomy," *CBQ* 25.1 (1963): 77-87. Similarly, Muffs writes, "(i)n this legal context, *besimhah* 'joyfully/gladly,' is used with the specific legal meaning of 'willingly.' (Muffs, *Love & Joy*, 127). Note that Muffs is referring to Rabbi Ishmael, whereas Anderson was reffering to Akkadian texts and their implication

As a final example of the contrast between the role of emotions in modern and ancient legal systems, I will mention Rachel Moran's study of love and hate crimes, addressing crimes of violence perpetrated in heat of passion or hatred.[87] This research further demonstrates the modern conceptualization of love and hate as emotions interfering with one's responsibility for decisions and deeds, rather than confirming them (as reflected in 1QS).

The stark differences in the conceptualization the role of emotions – specifically love and hate – in the modern and ancient legal process notwithstanding, this rhetoric in 1QS is far from incidental. As the Hebrew Bible attests, even in ancient texts terms related to love and hate were not used only as technical terms in the legal context but also to discuss the emotional range of romantic love,[88] preference,[89] discrimination,[90] finding favor,[91] falling out of favor,[92] or detestation.[93] The employment of this language in 1QS relating to those who may or may not join the sect testifies to the emotional aspect involved in this process, hence emphasizing the exclusionary nature of this text. Those deemed inappropriate to join the sect will not be merely rejected, but also hated. Thus, while the emotional language in 1QS does not refer to personal likings, it is far from neutral.

To conclude this section, the ninth column of 1QS includes two views which may seem opposing. Lines 5-7 administer the rule of the priests in all matters pertaining to the treasury and judgment, practically consolidating all the social power over the sect in their hands. Lines 15-18, on the other hand, assign the admission process of a member in the hands of the Instructor. It would be plausible that the Instructor be a priest himself, as his role and duties involve judgment (stated in line 17), yet the rhetoric does not emphasize genealogy but rather merit, using emotive language to emphasize the core values. Nevertheless, it should be assumed that in practice these two views did not annul one another but rather coexisted,

---

on Deuteronomy. The overarching presence of this phenomenon from the times of Babylon to rabbinic period is especially significant in the context of the present discussion.

[87] Rachel F. Moran, "Law and Emotion, Love and Hate," *Journal of Contemporary Legal Issues* 11 (2001): 747-84.

[88] Gn 29:18; 1 Sam 18:20, 28; Ecc 9:9.

[89] Gn 25:28, 37:3; Deut 21:15; 1 Sam 1:5; 2 Sam 19:7; Songs 1:7, 3:1-4.

[90] Gn. 29:31; Deut 21:15-17.

[91] 1 Sam 16:21, 18:22.

[92] Deut 22:13; Ju 14:16.

[93] Gn 37:4; Deut 12:31.

albeit in tension. The two passages do not present any legal conflict – there is no contradiction between the roles and duties of the priests and the discretion allotted to the Instructor – but they do reflect separate views regarding the source of the merit of the authoritative figure.

3.3.3.2. *Further Duties of Priestly Sectarians*

Two passages of sectarian texts decree a quorum requiring a priest. The Community Rule orders that any gathering of ten members of the Council of the Yahad include a priest.[94] The Damascus Document, on the other hand, requires that the judges of the congregation will include ten people,[95] four from the staff of Levi and Aaron and six of Israel, who are knowledgeable in the "Book of Hagi."[96]

Several issues rise from these brief laws. First, the juxtaposition of stipulations regarding the presence of priests among laity in 1QS and 4QD reflects different social realities. While the number of priests required to be present is significantly higher in 4QD, the context requiring it is not a quotidian one. In other words, the requirement for four priests in 4QD applies only to the gathering of the judges of the congregation, which is not necessarily a daily event.

1QS, on the other hand, requires the presence of only one priest but stipulates this requirement for any congregating of ten members of the council, which had to have been a daily event. This is further supported by the context of the stipulation which is mentioned alongside other orders

---

[94] 1QS 6.3-4.

[95] 4QD^{c} (4Q270) 6, iv, 15-19.

[96] Much speculation has surrounded the cryptic term. See J. J. Collins, *Beyond the Qumran Community*, 28; Steven D. Fraade, "Hagu, Book of," in *Encyclopedia of the Dead Sea Scrolls*, ed. Lawrence H. Schiffman and James C. VanderKam (Oxford: Oxford University Press, 2000), 1:327; Moshe Goshen-Gottstein, "'Sefer Hagu' – the End of a Puzzle," *VT* 8.3 (1958): 286-88; Hempel, *Laws of the Damascus Document*, 101-3, 150; eadem, *Damascus Texts*, 38; Kugler, "The Priesthood at Qumran," 476; F. Noetscher, "Himmlische Bücher und Schicksalsglaube in Qumran," *RevQ* 1.3 (1959): 405-11; Isaac Rabinowitz, "The Qumran Authors' *SPR HHGW/Y*," *JNES* 20.2 (1961): 109-14; Schiffman, *Reclaiming the Dead Sea Scrolls*, 123, 283; Devora Steinmetz, "Sefer Hehago: The Community and the Book," *JJS* 52.1 (2001): 40-58; Cana Werman, "What Is the Book of Hagu?" in *Sapiential Perspectives. Wisdom Literature in Light of the Dead Sea Scrolls*, ed. John J. Collins, Gregory E. Sterling and Ruth A. Clements (Leiden: Brill, 2004), 101-23.

regarding day-to-day activities, such as praying and eating. It is difficult to extract further information regarding the social reality within the sect from this stipulation. Since it is a minimum requirement, it cannot be taken as an indication for the actual percentage of priests within the sect. Admittedly, a ratio of ten percent priests would be significantly low considering the abundance of priestly concerns and rhetoric in sectarian texts, especially in matters of purity and ritual. Yet even if the ratio of priests within the sect in reality was higher than ten percent, 1QS could still reflect the authors' aspiration for a wider membership with a different proportion of priesthood and laity. On the other hand, such a stipulation guarantees not only the presence of at least one priest in any significant assembly but also that regardless of the growth of the sect, the priesthood would still maintain control of the sect.[97]

Thus, this stipulation might be construed to reflect two opposite notions. On the one hand, the relatively low priesthood/laity ratio reflected in it can denote an interest in making the sect more open and diminishing the proportion of priests in it. Conversely, the requirement for the presence of at least one priest in any significant sectarian assembly may indicate a concern lest the possible growth of the sect diminish not only the number of priests but also their power within the sect. This requirement for priestly presence might reflect a concern over the possibility of a gathering of laity without priestly supervision. There are numerous possible motivations behind such a concern among sectarian priests. For example, there could have been tensions between priesthood and laity within the sect that led the priests to prefer not to be discussed in large groups without their presence. Alternatively, the banter of laity could have been viewed as more susceptible to immorality and the presence of a priest was a safeguard intended to insure that a congregation of ten sectarians would not sit idle, but rather engage in holy activities as study or prayer. It is impossible to determine which of these hypotheses are more likely, yet each of them acknowledges how laws of a given social group shape it and at the same time are influenced by the dynamics within it.

---

[97] It is possible that the required presence of a priest can be an honorary custom without actual political power, but the combination of the structure of the legal institutions together with this stipulation implies constant regulation by people who are also in power. It assumes, however, that the priests will be in agreement on various matters concerning the sect and its leadership.

In conclusion of this this section I would like to return to the stipulation in 4QD that in a gathering of the judges of the congregation four of the judges should be of the staff of Levi and Aaron, and the remaining six – from Israel. As Hempel notes, while this is not made explicit, the wording bars proselytes from participating in the sect as judges.[98] This discrimination against proselytes raises once more the tension between merit and descent in determining an individual's ethical stance.[99]

3.3.4. *Inclusion as a Blessing: Curses and Blessings in 4QMMT*

So far the discussion has focused on the assumptions in the background of inclusionary and exclusionary practices reflected in the Essene texts. I specifically addressed issues as the target of regulations of exclusion, the reasons behind them, and the implications of the inclusion of such groups in the sectarian discourse. Having considered the foundations that substantiate the sectarian decrees of exclusion, I now proceed to discuss the practicalities of exclusion within the sect. Specifically, I will explore the measures used to exclude individuals from the sect, or to include them in it by law, and the ways in which the sectarian society fashions itself through its practices of exclusion and inclusion.

---

[98] Hempel, *Laws of the Damascus Document*, 101. Note however that Hempel does stress that the camp community as a whole included proselytes.

[99] As Hempel mentions, another excluding regulation regarding the judges in 4QD is the restriction on age (see Hempel's discussion, ibid, 102-4). Age plays a role in the order of seating in the Yahad (1QS 6.8) and the Therapeutae. For further discussion see J. J. Collins, *Beyond the Qumran Community*, 161; Newsom, *Self as Symbolic Space*, 145-6. Cf. Lawrence H. Schiffman, *The Eschatological Community of the Dead Sea Scrolls* (Atlanta, Scholars, 1989), 37-52. On the significance of age in political hierarchy in ancient Judaism, see also Maria Brutti, "The Council of Elders during the Pre-Hasmonean Period," *European Journal of Jewish Studies* 3.2 (2009): 171-8 on the council as a γερουσία; David Goodblatt, *The Monarchic Principle* (Tübingen: Mohr Siebeck, 1994), 80-99, idem, *Elements of Ancient Jewish Nationalism*, 76-95. For general discussions of old age in ancient Judaism, see Jonathan Wyn Schofer, *Confronting Vulnerability. The Body and the Divine in Rabbinic Ethics* (Chicago: University of Chicago Press, 2010), 21-51; Haim Tadmor, "'And if Given the Strength – Eighty Years': The Terms for Longevity in Akkadian, Biblical Hebrew, and Mishnaic Hebrew," in *Tehillah Le-Moshe. Biblical and Judaic Studies in Honor of Moshe Greenberg*, ed. Mordechai Cogan, Barry L. Eichler and Jeffrey H. Tigay (Winona Lake: Eisenbrauns, 1997), *93-*97 (in Hebrew).

I will begin this exploration with the analysis of the use of curses and blessings in 4QMMT to demarcate insiders and outsiders and to relate the appropriate attitude toward outsiders.

As Fraade has noted in his study of the curses in 4QMMT, these curses are intended to evoke the ceremony of blessings and curses described in Deut 27-28. Fraade astutely identifies the rhetorical benefit of such evocation as simultaneously delineating "three intersecting temporal domains: biblical past, sectarian present, and eschatological future."[100] Yet unlike Fraade, I do not think that this poetic device necessarily suggests that the addressee is a neophyte of the sect. Priests and kings in Jerusalem would have been just as familiar with Deuteronomy to be influenced – or at least to be expected to be influenced – by this rhetorical use of the biblical text.

The close connection between past and future is a pertinent theme of eschatological writing, reverting not only to biblical past as in this specific context but even further back to the beginning of time, alluding to a peculiar meeting-point between *Urzeit* and *Endzeit*.[101] In the following passage this is achieved by several biblical allusions:[102]

---

[100] Fraade, "Rhetorics and Hermeneutics," 160.

[101] On this notion of a link between the beginning of time and the end of time, see Gunkel's *Schöpfung und Chaos in Urzeit und Endzeit* (Göttingen: Vandenhoeck & Ruprecht, 1895), esp. 367-83. Gunkel's contribution is groundbreaking in the context of History of Ideas, even if his specific historical reconstruction of the New Testament Book of Revelation is outdated. On the *Urzeit/Endzeit* motif in the Dead Sea Scrolls, see John J. Collins, *Apocalypticism in the Dead Sea Scrolls* (London: Routledge, 1997), 30-70; Michael A. Daise, "Biblical Creation Motifs in the Qumran Hodayot," in *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society, 2000), 293-305; Florentino García Martínez, "Creation in the Dead Sea Scrolls," in *The Creation of Heaven and Earth. Re-Interpretations of Genesis I in the Context of Judaism, Ancient Philosophy, Christianity, and Modern Physics*, ed. George H. van Kooten (Leiden: Brill, 2005), 49-70; idem, "The End of the World or the Transformation of History? The End of the World or the Transformation of History? Intertestamental Apocalyptic," in his *Qumranica Minora I. Qumran Origins and Apocalypticism* , ed. Eibert J. C. Tigchelaar (Leiden: Brill, 2007), 169-93; Jacob Licht, "The Attitude to Past Events in the Bible and in Apocalyptic Literature," *Tarbiz* 60.1 (1991): 1-18 (in Hebrew); Grant Macaskill, "Creation, Eschatology and Ethics in 4QInstruction," in *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, ed. Florentino García Martínez and Mladen Popović (Leiden: Brill, 2007), 217-45.

[102] Composite Text C 10-24, based on 4QMMT^{d} (4Q397) 14-21; 4QMMT^{e} (4Q398) 11-13, 14-17 i. See Qimron and Strugnell, *DJD 10*, 58-60.

10 [כתב]נו אליכה שתבין בספר מושׁה [ו][בספר]י הנ[ביאים ובדוי]ד [ ]
11 [במעשי] דור ודור ובספר כתוב [ ]ל[ ]ים ל◦ לוא
12 [לך וקדמניות]◦ה ואף כתוב שתסור מהד[ר]ך וקרתך[ך] הרעה וכתו[ב]
13 והיא כי
14 [יבו]א עליך [כול הדברים] האלה באחרי[ת] הימים הברכה
15 [וה]קללא [והשיבות]ה אל ל[בב]ך ושבתה אלו בכל לבבך
16 [ובכו]ל נפשך באחרי[ת] [וח][ ] [ ]
17 [כתוב בספר מושה ובספרי הנביאים שיבוא של]
18 [הבר]כו[ת ש]בא[ו] ו ב◦ [ ] ◦[ ]בימי שלומוה בן דויד ואף הקללות
19 [ש]באו בי[מי יר]ובעם בן נבט ועד גל[ו]ת ירושלם וצדקיה מלך יהודה[ה]
20 [ש]יב[י]אם ב[ ]ואנחנו מכירים שבאוו מקצת הברכות והקללות
21 שכתוב בס[פר מו]שה וזה הוא אחרית הימים שישובו בישר[אל]
22 לת[ורה][103]]ולוא ישובו אחור]והרשעים ירשע[יע]ו ואמ[ ]
23 וה[ ]זכרו את מלכי ישרא[ל] והתבנן במעשיהמה שמי מהם
24 שהיא ירא[התו]רה היה מצול מצרות והם מב[ק]שי תורה

10 We have [written] to you that you may study the book of Moses [and the] book[s of the p]rophets and in Davi[d]
11 [the events of] each generation. And in the book it is written [ ] not
12 [and former times] and further it is written that [you will stray] from the p[at]h and that evil will encounter [you]. And it is wri[tten]
13 and should it
14 [come to pass, al]l [these] thing[s] [at the en]d of days, the blessing
15 and the curse, then you will take it to your h[ear]t and you will return unto Him with all your heart
16 and with all your sou[l] at the end [of time]
17 [It is written in the book] of Moses [and in the books of the Prophets that there will come
18 [the blessi]ngs that came[104] (already) in the days of Solomon the son of David. And the curses, too
19 [that] came in the days of Jeroboam son of Nebat until the ex[i]le of Jerusalem and of Zedekiah King of Judah
20 that He will bring them […] And we know that some of the blessings and curses came
21 as it is written in the B[ook of Mo]ses. And this is the end of days that the will return in Isr[ael]
22 for[ever] and not turn back, but the wicked will act wickedly and s[ay]
23 and […] remember the kings of Israel and reflect on their deeds, that whoever among them

[103] Qimron and Strugnell (*DJD 10*, 60) reconstruct לת[מיד] ("forever"). לת[ורה] ("to the law") is proposed by García Martínez and Tigchelaar. See Fraade, "Rhetorics and Hermeneutics," 151.
[104] I.e. fulfilled, befallen.

24 feared [the To]rah was delivered from troubles, and these are see[k]ers of the Torah

Fraade notices that the text alludes not only to the curses of Deut 27-28 through language borrowed from the conclusion of the curses in Deut 30:1-3, but also to the prologue of Deuteronomy, in Deut 4:30. To this I suggest to add the fact that Deut 4:32, which is not employed in the 4QMMT passage directly, alludes to the beginning of time, making this a sophisticated biblical allusion. Such biblical allusions often evoke not only the quoted phrases, but also their surrounding text.[105] Ironically, it is the unquoted phrase **אחרית הימים** ("End of Days") as it appears in Deuteronomy, which ties together the explicit *Endzeit* with the implicit *Urzeit*. Equally, the phrase **הרשעים ירשיעו** evokes Dan 12:10, forging another allusion to the end of times. The repetition of the heart idiom, drawing on Deut 30:1-3, alludes to the circumcision of the heart which is mentioned in the biblical text a few verses later (Deut 30:6). While it is not employed here explicitly, we know from other sectarian texts that it served as a significant idiom in sectarian language.[106] This is yet another subtle connection

[105] I demonstrated this in a paper delivered at the Orion Center in 2005 ("Interlacement of Biblical Quotations as a Stylistic Feature of the Hodayot Scroll"), and hope to return and expand this point in the near future. Cf. Shani Tzoref (Berrin), "The Use of Secondary Biblical Sources in Pesher Nahum," *DSD* 11.1 (2004): 1-11.

[106] 1QpHab 11.13; 1QS 5.26; 4Q434 1, i, 4. Cf. also 1QS 5.5; 1QH^a 21.5; 4Q184 2.5; 4Q504 5.11; 4Q509 287.1. George Brooke is skeptical as to whether this is sectarian language, pointing to the secondary appearance of the idiom in 1QS (in light of cave 4 fragments) and rejecting the identification of the *Barkhi Nafshi* poems as clearly sectarian (see Brooke, "Body Parts"). Of course, the idiom of a spiritual circumcision appears in the Hebrew Bible (in addition to Deut 30:6, it also appears in Jer 9:25) and has been used in the New Testament (Rom. 2:29, Col. 2:11) and other Early Christian texts (Gospel of Thomas 53; Epistle of Barnabas 9; Justin, *Trypho* 43, 113; Clement, *Stromata* 5.8; Origen, Commentary on John 1.1; Irenaeus, *Adv. Haer.*4.16.1; Acts of Pilate 12). For further discussion, see Werner E. Lemke, "Circumcision of the Heart: The Journey of a Biblical Metaphor," in *A God So Near. Essays in Old Testament Theology in Honor of Patrick D. Miller*, ed. Brent A. Strawn and Nancy R. Bowen (Winona Lake: Eisenbrauns, 2003), 299-319; David R. Seely, "The 'Circumcised Heart' in 4Q434 'Barkhi Nafshi'," *RevQ* 17.1-4 (1996): 527-35; Roger Le Déaut, "Le thème de la circoncision du coeur (Dt. xxx 6, Jér. iv 4) dans les versions anciennes (LXX et Targum) et à Qumrân," in *Congress Volume. Vienna 1980*, ed. John A. Emerton (Leiden, Brill: 1981), 178-205; Nina E. Livesey, "Theological Identity Making: Justin's Use of Circumcision to Create Jews and Christians," *JECS* 18.1 (2010): 51-79; eadem, *Circumcision as a Malleable Symbol* (Tübingen: Mohr Siebeck, 2010) and Christiansen, *Covenant in Judaism & Paul*, 96-100, 272-90.

between 4QMMT and sectarian literature, marking not only the similarities, but also the differences between an external and internal text.

The blessings and curses in Deuteronomy are phrased in the second person singular, adorning them with a sense of individual responsibility and reward despite the overall national nature of the blessings. This rhetoric is aptly reproduced in 4QMMT, through a similar usage of the second person singular concerning the fate of the entire people. However, the allusion to Deut 27-30 raises problems in view of the theology reflected in 4QMMT. Deuteronomy stresses a clear choice which remains in the hands of the volitional individual (and the people as a whole, comprised of volitional individuals), and presents the possible rewards or punishments as a direct result of that individual's doings. 4QMMT employs similar rhetoric, beseeching its addressee to change his ways so that he may rejoice at the end of time, but the sectarian essentialist perception of a natural order which ostensibly supposes allotment of character, actions, and fate remains incongruous with such a plea.

As Fraade notes, the rhetorical role reserved for curses and blessings in 4QMMT "resonates strongly" with their use in the Temple Scroll.[107] This aligns with the classification of both 4QMMT and the Temple Scroll, suggested by several scholars, as non-sectarian texts, preceding the development of the sects reflected in 1QS and 4QD. As presented earlier, I hold that 4QMMT actually presents strong connections to the worldview of 1QS, and believe its subtlety regarding explicit sectarian language should be ascribed to its original extramural purpose. Nevertheless, it is of prominent significance that this epistle would share language and rhetoric with a text as the Temple Scroll that was known to the sect but also appealed to a wider audience.[108] This renders the relation between 4QMMT and the Temple Scroll worthy of further exploration.

The connections between 4QMMT C 10-24 and 11Q19 59.2-21 operate on several levels. In addition to the comparable role of blessings and curses, the motif of kingship is found in both. The blessings and curses in 11Q19 are mentioned within the context of a reworking of the Law of the King from Deut 17:14-20.[109] As for 4QMMT, in addition to the fact that the

---

[107] Fraade, "Rhetorics and Hermeneutics," 154-5.

[108] Note also that according to Eshel, both authors had a similar copy of Leviticus, resembling 4QLev^{d}. See E. Eshel, "4QLev^{d}: A Possible Source."

[109] The allusion to Deut 27-30 within an interpretive expansion of Deut 17 highlights the general strong dependency of 11Q19 and Deuteronomy. On the use of Deuteronomy in

addressee of the letter has long been suggested to be a king, kingship is a recurring motif in the letter's epilogue. The passage relating the curses and blessings begins with a mention of Solomon son of David, and proceeds with Jeroboam, Zedekiah, and the Kings of Israel. The hortative "remember the Kings of Israel" particularly demonstrates the association the authors are drawing between the addressee and kingship. Finally, the concluding passage begins with a hortative to remember David. Indeed, the figures of the kings may be evoked merely as role models (positive and negative), underscoring the notion that not even a king is immune to the punishment of God, hence not necessarily denoting that the addressee is a king. That said, it is also possible that the authors of 4QMMT were familiar with the exegetical expansion of Deut 17 in 11Q19. If so, they could assume that their addressee was also aware of it and thus chose to include the Law of the King in their letter and link it with the curses and blessings of Deut 27-30.

Although equally inconclusive, these two possibilities put together enable to view 4QMMT in the view supported throughout the chapter, as serving a range of purposes: both as an historical letter, which evokes the kings as particularly relevant for the original addressee, and a text for study, where their mention serves as a model. In this sense, I subscribe to Grossman's suggestion to consider a range of uses for 4QMMT. This range enfolds a potential understanding of the unique character and rhetoric of this text. As a text intended for both extramural negotiations and intramural

---

the Temple Scroll see Najman, *Seconding Sinai*, 19-69; Crawford, *Rewriting Scripture*, 93-102; Simone Paganini, "*Nicht darfst du zu diesen Wörtern etwas hinzufügen': Die Rezeption des Deuteronomiums in der Tempelrolle: Sprache, Autoren, Hermeneutik* (Wiesbaden: Harrassowitz, 2009); Yoav Barzilay, "The Law of the King in the Temple Scroll: Its Original Characteristics and Later Redaction," *Tarbiz* 72.1-2 (2003): 59-84 (in Hebrew); Brin, *Studies in Biblical Law*, 113-20; Steven 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*, ed. James R. DaVila (Leiden: Brill, 2003): 195-219; Serge Frolov, "'King's Law' of the Temple Scroll: Mishnaic Aspects," *JJS* 50.2 (1999): 298-307; Robert J. V. Hiebert, "Deuteronomy 22:28-29 and Its Premishnaic Interpretations," *CBQ* 56.2 (1994): 203-20; Himmelfarb, *Kingdom of Priests*, 85-95; Schiffman, "The Deuteronomic Paraphrase of the Temple Scroll," *RevQ* 15.4 (1992): 543-67; idem, "The Temple Scroll and the Halakhic Pseudepigrapha of the Second Temple Period," in *Pseudepigraphic Perspectives: The Apocrypha and Pseudepigrapha in Light of the Dead Sea Scrolls*, ed. Esther G. Chazon and Michael E. Stone (Leiden: Brill, 1999), 121-31; Weinfeld, "God versus Moses in the Temple Scroll"; Zahn, "New Voices, Ancient Worlds."

study, it resonates with 11QT and 1QS, as well as other texts, some of which may remain unknown to us. Therefore, despite its internal use it is not strictly sectarian, because it was initially intended to extend beyond the compounds of the sect. It appeals to those outside the sect, both by relying on the authority stored in specific alluded texts (the Torah, the prophets, and possibly the Hebrew Bible as a whole and the Temple Scroll), and by diminishing controversial sectarian-specific language. At the same time the clear connections between 4QMMT and distinctively sectarian texts cannot be denied. These multifaceted aspects render 4QMMT a Janus-faced text, with one side facing the wider community and its leadership in Jerusalem, and the other side facing the selected members of the sect.

3.3.4.1. *Blessings and Curses as Inclusion and Exclusion in 1QS*

The use of blessings and curses in 1QS (2.1-18) is notably different from their employment in 4QMMT, where the curses are primarily evoked as a call to action. 1QS, on the other hand, not only combines threats of punishments and promises for rewards but actually uses the blessings and curses as a form of demarcation. It presents a dichotomous reality in which one is either in the inner circle of the blessed or the external circle of the accursed. Col. 2 of 1QS begins as follows:

1b והכוהנים מברכים את כול
2 אנשי גורל אל ההולכים תמים בכול דרכיו ואומרים יברככה בכול
3 טוב וישמורכה מכול רע ויאר לבכה בשכל חיים ויחונכה בדעת עולמים
4 וישא פני חסדיו לכה לשלום עולמים והלויים מקללים את כול אנשי
5 גורל בליעל וענו ואמרו ארור אתה בכול מעשי רשע אשמתכה יתנכה
6 אל זעוה ביד כול נוקמי נקם ויפקוד אחריכה כלה ביד כול משלמי
7 גמולים ארור אתה לאין רחמים כחושך מעשיכה וזעום אתה
8 באפלת אש עולמים לוא יחונכה אל בקוראכה ולוא יסלח לכפר עוונך
9 ישא פני אפו לנקמתכה ולוא יהיה לכה שלום בפי כול אוחזי אבות
10 וכול העוברים בברית אומרים אחר המברכים והמקללים אמן אמן
11 *vacat* והוסיפו הכוהנים והלויים ואמרו ארור בגלולי לבו לעבור
12 הבא בברית הזות ומכשול עוונו ישים לפניו להסוג בו והיה
13 בש֯מעו את דברי הברית הזות יתברכ בלבבו לאמור שלום יהי לי
14 כיא בשרירות לבי אלכ ונספתה רוחו הצמאה עם הרווה לאין
15 סליחה אפ אל וקנאת משפטיו יבערו בו לכלת עולמים ודבקו בו כול

16 אלות הברית הזות ויבדילהו אל לרעה ונכרת מתוך כול בני אור בהסוגו
17 מאחרי אל בגלוליו ומכשול עוונו יתן גורלו בתוך ארורי עולמים
18 וכול באי הברית יענו ואמרו אחריהם אמן אמן

1b And the priests bless all
2 the people of God's lot who walk perfectly in all his ways, and the say, "May He bless with everything
3 good, and protect you from all evil. May He illuminate your heart with the intellect of life and favor you with eternal knowledge
4 and may He lift up the countenance of his grace for you for eternal peace *vacat* And the Levites curse all the people of
5 the lot of Belial, and they shall speak and say: Accursed are you! Your guilt is in all the deeds of wickedness! May God hand you over
6 to terror in the hand of all avengers, May he visit upon you destruction in the hand of all who reward
7 in retribution. Accursed are you with no mercy, according to the darkness of your deeds. You are sentenced
8 in the gloom of everlasting fire. May God not favor you when you call, and may He not forgive so as to atone for your iniquities
9 May he lift the countenance of his wrath to take revenge in you, and may you not have peace in the mouths of all who hold (the name of) the fathers[110]
10 And all those entering the covenant repeat after the blessing-utterers and the curse utterers, 'Amen and Amen'
11 *vacat* And the priests and Levites shall add and say: Accursed by the idols of his heart to transgress[111]
12 who enters this covenant, and places the obstacle of his iniquity before him, to retreat from it. And when
13 he hears the words of this covenant, he will bless himself in his heart, saying: May I have peace
14 though I walk in the stubbornness of my heart. His spirit will be obliterated, the thirsty one with the saturated, with no
15 forgiveness. May God's wrath and the zeal of His judgments blaze in him for a destruction of eternity. May all
16 the curses of this covenant cling to him, and may God separate him for evil, that he shall be excised from the midst of the Children of Light when he retreats
17 from behind God on account of his idols, and the obstacle of his iniquity will assign his lot among those cursed for eternity.
18 And all those who enter the covenant will respond and repeat after them: Amen and Amen.

[110] I.e., intercessors.

[111] **לעבור**. The verb is used in l. 10 to refer to those entering the covenant, and may be interpreted in the same way in this line, but since the next line has a different word for the one entering the covenant insincerely, it seems better to read this as transgression, i.e. "whose idols of his heart cause him to transgress."

In the ritual described here, all the members of the community join in an annual ceremony, in which they themselves and their ideological partners are declared worthy of the highest blessings and any outsiders – as enemies doomed to eternal damnation. However, in light of the determinism that characterizes the sectarian worldview, the function of this ritual in the life of the sect becomes unclear. While those absent from the annual ritual have supposedly chosen not to be part of the sect, in the sectarian view it is not a matter of choice, but of destiny: they have been allotted the fate of the Children of Darkness.[112] Thus, if those outside the sect are inherently damned, those performing the ritual could not have assumed the curse to be the instigator of this damnation since it has already been initiated by a divine verdict.[113] Following Anthony Cohen's discussion of the symbolic construction of communities through ritual, I contend that the significance of this ritual in the sectarian life was first and foremost as a performative rite of demarcation.[114] By explicitly stating the fate of the damned, the sect is reaffirming its boundaries, drawing a strict line between insiders and outsiders. In other words, it is precisely the absence of those damned that marks the sociological significance of an official ceremonial expression of this exclusion.

The curses are instrumental insofar that they emphasize their counterpart blessings. The Blessing of the Priests, borrowed from Num 6

---

[112] This view becomes poignantly apparent in 4Q175, where the word "accursed" in Joshua 6:26 is interpreted to imply Belial (l. 23). Notwithstanding the political and historical impetus for this interpretation, demonstrated by Hanan Eshel, "Historical Background of the Pesher Interpreting Joshua's Curse on the Rebuilder of Jericho," *RevQ* 15.3 (1992): 409-20, the interpreter freely equates "accursed" with Belial without further explanation. The same view is clearly seen in the second column of 1QS and in the parallel of this column in 4Q280, which damns specifically *Melki-reša'* (frg. 2, l. 2). See Arnold, *Social Role of Liturgy*, 159-64.

[113] A commentary on Genesis found in Qumran, which states that Noah cursed his grandson Canaan and not his Son Ham for their mutual sin because Ham had already been blessed by God (4Q252 ii, frgs. 1, 3, 6-7), similarly demonstrates the sectaraian perception that human actions cannot supplement a divine verdict. See Moshe J. Bernstein, "Noah and the Flood at Qumran," in *The Provo International Conference on the Dead Sea Scrolls*, ed. Donald W. Parry and Eugene Ulrich (Leiden: Brill, 1999), 199-231; Dorothy M. Peters, *Noah Traditions in the Dead Sea Scrolls. Conversations and Controversies of Antiquity* (Atlanta: SBL, 2008), 163-5.

[114] See Anthony P. Cohen, *The Symbolic Construction of Community* (London: Routledge, 1985), 50-63.

and paraphrased here as a curse, demonstrates well the internal role of the exclusionary rhetoric. By predicting a grim future for those outside the circle, the curses fortify the bonds and the commitment of those within.[115] In this context of the curses' social significance, it is quite telling that the final and most bitter curse is reserved for those who go astray after joining the sect. This conclusion of the curses and blessings section in 1QS 2 is presumably intended primarily to deter anyone from leaving the sect after being initiated, or entering the sect with the intent to violate the covenant. But such a curse also corroborates the role of exclusion within a closed community: to reinforce the status of those included and the steadfast obligation among them. Such a curse expresses the notion that a violation of this bond destabilizes this delicate tissue of the community and will be responded with all necessary severity, with the direct assault against whoever presented the threat.

This is not to deny, of course, the evident fact that the members of the sect certainly believed that their words carried a power to affect reality. Russell Arnold's distinction between curses of "boundary formation" and "cosmological significance" in the texts from Qumran is highly significant in this context.[116] Therefore it could be said that alongside its internal performative significance, this ritual also served to actively strengthen the Children of Light against the Children of Darkness and the dominion of Belial by further weakening the already damned ones through curses. The same notion is seen in the role played by the blessings and curses in the War Scroll:

---

115 This is further achieved by the use of biblical language: see Newsom, *Self as Symbolic Space*, 111-2; Judith H. Newman, *Praying by the Book. The Scripturalization of Prayer in Second Temple Judaism* (Atlanta: Scholars, 1999).

116 Arnold, *Social Role of Liturgy*, 162. For a more general discussion of the notion of the power of words in Qumran, see also Esther G. Chazon, "Hymns and Prayers in the Dead Sea Scrolls," in *The Dead Sea Scrolls after Fifty Years. A Comprehensive Assessment*, ed. Peter W. Flint and James C. VanderKam (Leiden: Brill, 1998), 1:244-70; Esther Eshel, "Apotropaic Prayers in Second Temple Period," in *Liturgical Perspectives: Prayer and Poetry in Light of the Dead Sea Scrolls*, ed. Esther G. Chazon (Leiden: Brill, 2003), 69-88; David Flusser, "Qumrân and Jewish 'Apotropaic' Prayers," *IEJ* 16.3 (1966): 194-205; Penner, *Patterns of Daily Prayer*, 180-189; and Newsom's comments on language as symbolic action, in *Self as Symbolic Space*, 77-9.

1 ואחיו הֿ[כו]הֲנים והלויים וכול זקני הסרך עמו וברכו על עומדם את אל ישראל ואת כול מעשי אמתו וזעֲמו
2 שם אֹת בֿ[לי]על ואת כול רוחי גורלו וענו ואמרו ברוך אל ישראל בכול מחשבת קודשו ומעשי אמתו וב[ר]וֹכים
3 כול מְשֻׁרָתיו בצדק יודעיו באמונה *vacat*
4 ואֲרוּר בליעל במחשבת משטמה וזעום הואה במשרת אשמתו וארורים כול רוחי גורלו במחשבת
5 *vacat* רשעם וזעומים המה בכול עבודת נדת טמאתם כיא המה גורל חושך וגורל אל לאור
6 [עולמ]ים *vacat*

1 And his brethren the p[r]iests and the Levites and all the elders of the rule with him. And they shall bless from their position the God of Israel and all the deeds of His truth, and they shall scourge
2 there Be[li]al and all the spirits of his lot, and they shall respond and say, Blessed is the God of Israel in all the intent of His holiness and all the deeds of His truth. And b[le]ssed
3 are all who serve Him righteously, who know Him by faith *vacat*
4 And curded is Belial in the intent of Mastemah, and he is scourged in the princedom of his guilt. And cursed are all the spirits of his lot in the intent
5 *vacat* of their wickedness, and they are scourged in all the work of their defiled uncleanliness, for they are the lot of darkness, and the lot of God is for light
6 [of eterni]ty. *vacat*

The performative role of the curse, which bears concrete implications for the battle to be, is evident, and the constitution of this text as a law (rather than fiction or poetry) cannot be overstressed. It is marked by the legal language it shares with other legal texts, specifically in the explicit use of the word סרך, "rule", and the designation of hierarchical rankings and order for the performance, reminiscent of the ritual in 1QS, as Fraade has noted.[117]

3.4. *Initiation as Inclusion and Exclusion*

The rhetoric found in 4QMMT or in the descriptions of curses and blessings ceremonies in 1QS and several other texts of Qumran reflect

[117] Fraade, "Rhetorics and Hermeneutics," 159; cf. Arnold, *Social Role of Liturgy*, 162; Schultz, *Conquering the World*, 286-7.

indeed a clear exclusionary perception. And yet, the major sign of exclusionary practices in the Dead Sea Scrolls remains the initiation ceremony described in the Community Rule (1QS 6.13-23):

13b וכולה מתנדב מישראל
14 להוסיף על עצת היחד ידורשהו האיש הפקוד ברואש הרבים לשכלו ולמעשיו ואם ישיג מוסר יביאהו
15 בברית לשוב לאמת ולסור מכול עול ו֯בינהו בכול משפטי היחד ואחר בבואו לעמוד לפני הרבים ונשאלו
16 הכול על דבריו וכאשר יצא הגורל על עצת הרבים יקרב או ירחק ובקורבו לעצת היחד לוא יגע בטהרת
17 הרבים עד אשר ידרושהו לרוחו ומעשו עד מ֯לאת לו שנה תמימה וגם הואה אל יתערב בהון הרבים
18 ובמולאת לו שנה בתוכ היחד ישאלו הרבים על דבריו לפי שכלו ומעשיו בתורה ואם יצא לו הגורל
19 לקרוב לסוד היחד על פי הכוהנים ורוב אנשי בריתם יקרֵ֯בו[118] גם את הונו ואת מלאכתו אל יד האיש
20 המבקר על מלאכת הרבים וכתבו בחשבון בידו ועל הרבים לוא יוציאנו אל יגע במשקה הרבים עד
21 מולאת לו שנה שנית בתוכ אנשי היחד ובמולאת לו השנה השנית יפקודהו על פי הרבים ואם יצא לו
22 הגורל לקרבו ליחד יכתובהו בסרך תכונו בתוכ אחיו לתורה ולמשפט ולטו֯רה ולערב את הונו ויה֯ עצתו
23 ליחד ומשפטו *vacat*

13b And anyone from Israel who volunteers
14 to increase the Council of the Yahad, will be studied by the man appointed at the head of the Many for his intellect and deeds. If he fits the discipline, he shall bring him
15 into the covenant, to return to the truth and steering away from all iniquity, and he shall teach him in all the rules of the Yahad,. And afterwards, when he comes to stand before the Many, they shall all be asked
16 on his words.[119] And according to his cast lot by the counsel of the Many, he shall approach or depart. And when he approaches the counsel of the Yahad, he will not touch the Purity

[118] The י was marked with two dots for erasure, still visible, and subsequently erased, leaving an empty space in the word. See Emanuel Tov, *Scribal Practices and Approaches Reflected in the Texts found in the Judean Desert* (Leiden: Brill, 2004).

[119] דבר, as the Greek λόγος, can mean "word" but also has a vast abstract use, here in the sense of inquiring about everything concerning him, or about his matters.

17 of the Many, until they study him for his spirit and his deed, in the completion of a full year. Moreover, let him not associate with the goods of the Many
18 and when he has completed a year amidst the Yahad, the Many shall ask concerning his words, according to his intellect and his deeds of the Torah, and should his lot be cast
19 to approach the assembly of the Yahad, according to the priests and the multitudes of the people of their covenant, they shall bring his goods and earnings to the hand of the man
20 who oversees the earning of the Many, and they shall write the reckon in his hand, but they shall not spend it on the Many. He shall not touch the drink of the many until
21 the completion of a second year amidst the people of the Yahad, and upon the completion of the second year, he will be examined according to the many, and if his lot is cast
22 to bring him near the Yahad, they shall write him in the rule of his regulation amidst his brethren of the Torah, the judgment, and the purity, and to mix his goods, and his counsel
23 will be for the Yahad, as well as his judgment. *vacat*

The existence of an initiation ceremony proves, more than anything else, that this is a community that practices exclusion and inclusion as a daily manner, and that admission is not easily achieved.

Since initiation rites are prevalent mostly in tribal or religious communities, scholarship on the subject mostly focuses on anthropology and religion.[120] However, the ceremony described in 1QS presents a clear juncture between law, performance and demarcation.

Demarcation, as I stressed in the discussion of blessings and curses ceremonies, is instrumental in forging boundaries not only by designating those outside the group, but also by elevating those inside and furnishing them with a sense of distinction. Performance of the law serves to intensify its place as a living foundation of the society, while imbuing it with social meaning.[121] Thus, it is significant to note the reciprocal relation between law and performance as encapsulated in the initiation ceremony. The ceremony

---

[120] See, for example, classic studies such as Arnold van Gennep's *Rites of Passage* (trans. Monika B. Vizedom and Gabrielle L. Caffee; Chicago: University of Chicago Press, 1960), and Mircea Eliade, *Rites and Symbols of Initiation*, (trans. Willard R. Trask; Dallas: Spring, 1994). See also Ronald L. Grimes, *Deeply into the Bone* (Berkeley: University of California Press, 2000); Catherine Bell, *Ritual. Perspectives and Dimensions* (Oxford: Oxford University Press, 1997), 91-101.

[121] The social meaning of the law is a recurrent topic of this study, but in the context of this section it is helpful to remember Lessig's argument that social meaning is constructed by law, just as much as law is fashioned after established social meanings. Both are susceptible to change in a dialectic process. See Lawrence Lessig, "The Regulation of Social Meaning," *UChicLRev* 62.3 (1995): 949-64; cf. Lars D. Eriksson, "Making Society through Legislation," in *Legisprudence: A New Theoretical Approach to Legislation*, ed. Luc Wintgens (Oxford: Hart, 2002), 41-7.

is prescribed by law, and is a result of the law. At the same time, the law is only applicable to those who have been initiated – i.e., accepted into the community as a result of the initiation ceremony.

A study by Donald Korobkin which discusses bankruptcy law as performance provides a relevant modern example for such reciprocal relation between law and performance. While well-aware of the financial and legal aspects of bankruptcy, Korobkin suggests that within the bankruptcy procedure law-enforcers use the debtor as means to affirm and reinscribe the norms and values of the legal system.[122] And if a bankruptcy procedure can be seen as a medium for a reaffirmation of the law, this is all the more true regarding an initiation rite. Unlike a bankruptcy procedure, which holds practical implications, an initiation rite serves no other purpose than the admittance of a new member, and is directed at the novices being initiated as well as at the entire community present at the ceremony.[123]

In this sense, initiation ceremonies are not only a form of exclusionary demarcation rite, clearly marking the boundary between those outside the sect and those within it, they also signify inclusion insofar as they bind the new members to the laws of the inner-circle.[124]

---

[122] Donald R. Korobkin, "Bankruptcy Law, Ritual, and Performance," *Columbia Law Review* 103.8 (2003): 2146.

[123] Similarly, various contemporary forms of art and entertainment represent law for their own purposes but inadvertently serve to inculcate the notion and values of the rule of law as normative and authoritative. See Richard Sherwin's *When Law Goes Pop* (Chicago: University of Chicago Press, 2000); Peter Goodrich, "Screening Law," *Law and Literature* 21.1 (2009): 1-23; Daniel Joyce, "Photography and the Image-Making of International Justice," *Law and Humanities* 4.2 (2010): 229-49; Elayne Rapping, *Law and Justice as Seen on TV* (New York: New York University Press, 2003) and a special image of *Parallax* dedicated to law and visual culture (edited by Cornelia Vismann, see also her introduction, "Image and Law – a Troubled Relationship").

[124] A crucial element in legal thought regarding such rites is therefore the Right of Exit which is necessary for signifying that the initiation is voluntary, free, and thus reversible. See Leslie Green, "Rights of Exit," *Legal Theory* 4.2 (1998): 165-85; Amy Gutmann, "Freedom of Association: An Introductory Essay," in *Freedom of Association*, ed. Amy Gutmann (Princeton: Princeton University Press, 1998), 3-32; Chandran Kukathas, "Are There Any Cultural Rights?" *Political Theory* 20.1 (1992): 105-39; Martha R. Mahoney, "Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings," *Southern California Law Review* 65 (1991-1992): 1283-1319; Avishai Margalit and Moshe Halbertal, "Liberalism and the Right to Culture," *Social Research* 71.3 (2004): 529-48; Oonagh Reitman, "On Exit," in *Minorities within Minorities. Equality, Rights and Diversity*, ed. Avigail Eisenberg and Jeff Spinner-Halev, (Cambridge: Cambridge University Press, 2005), 189-208; Michael Walzer, *Politics and Passion* (New Haven: Yale University Press, 2004), 1-20.

In addition to the annual ceremony of blessings and curses which also included the induction of new members, the Community Rule describes an elaborately gradual process of initiation, spanning over two years. At first the neophyte is examined by the overseer (1QS 6.13-15). If approved by the overseer, the neophyte is brought into the Covenant for a period of study, after which he comes "before the Many" (**לפני הרבים**) for interrogation (1QS 6.15-16). These two periods – the overseer approval period and the period of study and interrogation – are not limited in time according to 1QS but each could be assumed to have required an extended period of time. While the overseer could have approved someone immediately for the preliminary stage of learning, it is equally likely, perhaps even more so, that the overseer would have been suspicious, and would therefore require considerable efforts and time to become convinced that the applicant is sincere in his intentions and trustworthy. Similarly, the next stage would have been completed only after the novice was prepared to answer the questions of the Many. It is not specified who would have made this decision, nor who would have mentored the novice. It is possible that it is the overseer, but the fact that this is not made explicit allows for other possibilities, such as random assignment of tutors, or joining an established study group within the community. In any case, the decision to bring the novice before the Many for his first interrogation would have been either in the hands of the overseer or of someone else who was mentoring him, and neither of those would risk bringing an unprepared disciple. Thus, while this stage too could have been fairly quick (if the novice was a fast learner, or familiar with the laws of the sect from before), it is more likely to have been much more extended. According to 1QS, it is only after the initial interrogation by the Many and the approval of "the Council of the Many" (**עצת הרבים**) that the neophyte would begin his first year of membership. During this first year, the novice is not allowed to touch "the Purity of the Many" (**טהרת הרבים**, an epithet which most scholars agree means the food of the community[125]), nor is his fortune to be mixed with that of the community (1QS 6.16-17).

[125] Cf. 4Q274 3 i and 4QMMT CT 64-71 and see Charlotte Hempel, "Who Is Making Dinner at Qumran?" *JThS* 63.1 (2012): 49-65; Jacob Milgrom, "4QTohora[a]: An Unpublished Qumran Text on Purities," in *Time to Prepare the Way in the Wilderness*, ed. Devorah Dimant and Lawrence H. Schiffman, (Leiden: Brill, 1995), 61; Stephen J. Pfann, "A Table in the Wilderness: Pantries and Tables, Pure Food and Sacred Space at Qumran," in *Qumran, the Site of the Dead Sea Scrolls*, ed. Katharina Galor, Jean-Baptiste Humbert and

Since it is obvious that these restrictions would also apply to the novice of the initial stage, some assume the first three stages overlap within one year.

As Michael Knibb duly notes, "it is possible to read the two accounts in such a way as to ignore the differences between them, and equally in such a way as to make too much of them; but neither method is very helpful."[126] The middle path between the two is precisely the approach adopted in this study.[127] My goal is neither to definitively identify the Essenes described in Josephus with the community of 1QS, nor to prove one more truthful than the other, for example on the question of whether the admission process lasted two years or three. As I mentioned previously one must keep in mind two things: first, that Josephus was an outsider, and the knowledge outsiders have on a sect is starkly different from the intimate knowledge insiders hold; and second, that while 1QS is clearly an insiders' document, it is a written document, which usually differs to some degree from the living, practiced law.

From a socio-legal point of view, these texts share an important insight: the existence of a hierarchy of membership in the Yahad, beginning with study and followed by a preliminary initiation, which still excludes the member from the food, the possessions, and the drinks of the community. Thus, exclusion does not operate only outwards, to deter or repel unwanted outsiders, but also within the sect itself, circles are formed and constituted by law, marking various degrees of membership.

3.5. *Regulating Exclusion through Law*

While the similarities between different rites of exclusion described in the Dead Sea Scrolls might imply that the sectarian practice involved a single type of exclusion, the image reflected in the various sectarian texts is in fact more complicated. The rejection of all "Children of Darkness" as it is declared in several sectarian texts would primarily point to the sect's

---

Jürgen Zangenberg (Leiden: Brill, 2006), 159-78; Lawrence H. Schiffman, "Communal Meals at Qumran," *RevQ* 10.1 (1979): 45-56.

[126] Knibb, *The Qumran Community* (Cambridge: Cambridge University Press, 1987), 120.

[127] See introduction. For a passionate argument in favor of stressing the differences, see A. I. Baumgarten, "Who Cares and Why Does It Matter?" See assessment of contesting views by D. R. Schwartz, "The Dead Sea Sect and the Essenes."

opponents within the Jewish people, but essentially and practically exclude the entire world population as well. However, in addition to this vehement rejection which is so central to the sect's rhetoric, there are specific laws within these texts that either bar entrance *a priori*, or allow the expulsion of transgressing members. I suggest distinguishing these two categories as separate types of exclusion: a fixed purity-based exclusion and a fluctuating punitive exclusion.[128]

The first category reflects the permanent prohibition of certain individuals from partaking in the congregation. Such lists of prohibited individuals appear in the Damascus Document (CD 15:15-18; cf. 4QD^a 8 I.4-9), the Rule of the Congregation (1QS^a 2.3-9) and in the War Scroll (1QM 7.3-7).[129] These three lists are yet another example for the usefulness of addressing the shared tradition, worldview, and laws at the heart of these texts. The differences between the lists are unquestionably important, as are the distinct circumstances they envisage. For example, the eschatological war envisioned in the War Scroll requires laws of purity similar to those required for a ritual event. Nevertheless, in present-time this future-war is understood to a certain extent as a-historical: it has yet to have happened. Thus, the author of the War Scroll, who was most likely familiar with the Damascus Document and the Community Rule (and plausibly with other sectarian texts, such as the *Hodayot*), did not expect the war to be a recurring routine event as those described in the Damascus Document and the Rule of Congregation. But it is precisely these differences that emphasize all the

---

[128] I began by referring to these two types of exclusion as "static-purity" and "dynamic-punitive," but chose to substitute those adjectives in order to avoid confusion with Regev's distinction of static and dynamic holiness (in his "Reconstructing Qumranic and Rabbinic Worldviews: Dynamic Holiness vs. Static Holiness," 87-112). Regev's distinction is another response to Schwartz's Realism/Nominalism hypothesis, and, like Schwartz, he posits a distinction between the two that is founded on an ontological difference. For the "Qumranites," writes Regev, "Impurity is a virtual entity" (91), following the Priestly Code in the Pentateuch, whereas for the Pharisees and the rabbis, "the whole cultic system of priests-Temple-sacrifices…lacks an inner meaning" (103). The distinction I offer here between two types of exclusion is of a different nature, but in a way serves to reinforce Rubenstein's original criticism of Schwartz's hypothesis ("Nominalism and Realism," 157-83): differences exist not only between Essene law and rabbinic law, but even within each of those systems one can find contradictory approaches. A full appraisal of a legal system requires an acknowledgment of the diverse circumstances it seeks to regulate, and as a result, of its multivalent composition.

[129] See chapter 2, pp. 90-91 for my analysis of 4QD^a 8 i, 4-9.

more the shared rationale provided in all three texts for the exclusion of deformed people. As Shemesh and Wassen have already noted, the War Scroll, the Damascus Document, and the Community Rule all present a view according to which the presence of mentally and physically challenged people would be offensive to the angels who reside amidst the holy congregation.[130] Wassen suggests that in addition to concerns of purity, this practice also reflects a fear of evil forces, namely of demons. The language in these texts does not suggest the complete equation of impurity and sin, since it relates to the exclusion of individuals with either temporary or incontrollable imperfections (e.g., a limp, young age, blindness, deafness). Yet it is only to be expected that among groups with an intense concern for impurity a certain degree of correlation between the pure\impure and good\evil dichotomies will occur.

From a societal analysis perspective, two aspects of this exclusion should be noted: it is purity-based, which is the cause for its implementation, and it is fixed, which states the manner of its implementation. Except for the special case of children, all people who manifest the listed deformations are excluded, with no possibility to appeal and with no change throughout the course of their lives. Their exclusion from the sect is not a matter on which the members of the sect can judge or change their minds, and it actually becomes one of the markers defining

---

130 Shemesh, "The Holy Angels Are in Their Council"; Wassen, "What Do Angels Have against the Blind and the Deaf?". For further analyses, see Hannah K. Harrington, "Keeping Outsiders Out: Impurity at Qumran," in *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, ed. Florentino García Martínez and Mladen Popović (Leiden: Brill, 2007), 187-203. For angelology in Qumran see Esther G. Chazon, "Liturgical Communion with the Angels at Qumran," in *Sapiential, Liturgical and Poetical Texts from Qumran*, ed. Daniel K. Falk, Florentino García Martínez and Eileen M. Schuller (Leiden: Brill, 2000), 19-23; Crispin H.T. Fletcher-Louis, "Some Reflections on Angelomorphic Humanity Texts among the Dead Sea Scrolls," *DSD* 7.3 (2000): 292-312; Hindy Najman, "Angels at Sinai: Exegesis, Theology and Interpretive Authority," *DSD* 7.3 (2000): 313-33; Peter Schäfer, *The Origins of Jewish Mysticism* (Tübingen: Mohr Siebeck, 2009), 112-53; Penner, *Patterns of Daily Prayer*, 104-36; Loren T. Stuckenbruck, "'Angels' and 'God' – Exploring the Limits of Early Jewish Monotheism," in *Early Jewish and Christian Monotheism*, ed. Loren T. Stuckenbruck and Wendy North (London: T & T Clark, 2004), 45-70; Jennifer Zilm, "Multi-Colored Like Woven Works: Gender, Ritual Clothing and Praying with the Angels in the Dead Sea Scrolls and the *Testament of Job*," in *Prayer and Poetry in the Dead Sea Scrolls and Related Literature*, ed. Jeremy Penner, Ken M. Penner and Cecilia Wassen (Leiden: Brill, 2012), 437-51.

the sect as a societal construct. Regardless of their own justifications (namely, the presence of the angels), the Essene congregations are defined, among other things, as homogenous communities that are not comprised of the full range of humans; they do not include mentally or physically deformed people.

Two exceptions to this statement are perhaps self-evident but should be noted for the sake of comprehension: the child is, by nature, an exclusionary category that can change through life. It is fixed in the sense that so long that he is a child the prohibition applies. Second, deformations can occur through the course of life. One may be born seeing and become blind. This is the inverse case of the child: so long as the affliction has not occurred, the law does not apply to him. The moment it has, the law applies and remains fixed from that point on.

Exclusion also serves as a disciplinary measure. The existence of such a punishment attests to the points stressed above: by transgressing, a member reveals himself to be of a separate group, namely under the dominion of Belial, and thus his fate cannot account among the Sons of Light. In practice, the community may well have been in a constant state of selection and evolution, while its rhetoric claimed to be a static condition ordained by God. Some would not have accepted this fate: Josephus tells us that upon expulsion, members would reach the verge of starvation, refusing to consume impurities of external people. At this point, the sect would accept "many of them" back on account of their sufferings [βάσανον] brought on by their transgressions [τοῖς ἁμαρτήμασιν αὐτῶν].[131] Thus, the punitive exclusion is defined as fluctuating since it could be modified and retracted, and serves as another example for the disparity between the written law and the practiced law in real life. We correctly imagine that this would only be the case for the punitive type of exclusion, not for the fixed exclusion of the impure.

The fluctuating nature of the punitive exclusion is apparent not only through Josephus' report of its being retracted, but already in the penal codes of CD 9-14 and 1QS 6-7 that list various punitive exclusions, ranging from the probation expulsion to the ultimate banishment or

[131] Josephus, *Jewish War* 2.8.8. Cf. Loeb edition: Josephus, *The Jewish War. Books 1-2*, trans. H. St. J. Thackeray (Cambridge: Harvard University Press, 1997), 376-379.

excommunication.[132] Various degrees and terms of exclusion are unimaginable for the purity exclusion, and demonstrate the complexity of defining the rationale, presuppositions, and purpose of exclusionary practices. On the one hand, these two separate types of exclusion correlate with the categories of sin and impurity, and thus may join to corroborate the view that sin was not conceptualized as producing impurity under Essene Law.[133] However, if it is preposterous to imagine a suspended exclusion of someone with a sight problem who is not entirely blind, it is even harder to account for the choice to expel a member for a probationary period, when his transgression raises a doubt as to his identification as a Son of Light. Bringing the argument to the extreme, one can easily imagine how the mild transgressions should actually be those leading to immediate and permanent expulsions, since they prove a person to be a Son of Darkness professing himself to be a Son of Light, and thus a danger with a potential threat far graver than the blind or the deaf whose impurity is evident. Yet in Essene law this is not the case: the exclusion of the deformed is stricter than that of the transgressors, and a testimony in Josephus reports that even after a permanent excommunication was decreed, it could be overturned. The mere acknowledgement of a hierarchy of transgressions stands at odds with the legal essentialism that characterizes Essene law.

Reconciling a legal rationale with real-life practice of jurisprudence requires acknowledgment of a simple fact: only the enforceable law is enforced. The Essenes greeted deformed people with more strict exclusionary prohibitions than they offered to offenders from among their own because their detection was simpler, rendering enforcement more straightforward. Once a judiciary process began with evidence and counter-evidence presented and open to interpretation, law took on the form of life, with little being certain.

---

[132] On the penal codes see Schiffman, *Sectarian Law in the Dead Sea Scrolls*; Aharon Shemesh, *Punishments and Sins* (Jerusalem: Magness, 2003; in Hebrew) 57-123; idem, "The Scriptural Background of the Penal Code in the Rule of the Community and Damascus Document," *DSD* 15.2 (2008): 191-224; Hempel, *Laws of the Damascus Document*, 141-8.

[133] Martha Himmelfarb, "Impurity and Sin in 4QD, 1QS, and 4Q512," *DSD* 8.1 (2001): 9-37.

3.6. *Conclusion*

This chapter delineates various approaches towards exclusion with the Essene sect. The comparison between 4QMMT and 1QS stressed the shared presuppositions of the sectarians. When read in conjunction, it allows an understanding that certain things are relevant only to insiders while others can be shared with outsiders, but the premise is shared. This double speech also provides a nuanced understanding of the role of exclusion in the legal, political and theological thought of the Essenes, a direction marked earlier by Holtz.[134]

From a Law and Society perspective, difference needs to be accepted as a given, following Rawls, Minow and Constable, realizing that the law always shapes the relationships between individuals of difference, or different groups and classes within society. The manner in which it seeks to regulate these relationships, and even the degree of its success, is dependent on the presuppositions regarding these differences, informed by ontological beliefs. In the case of the Essenes, the practices of exclusion are marked primarily by their determinist views of history and their essentialist views of nature.

In order to understand exclusion as a legal force in Essene writings, two further arguments were presented: first, that the sect is not separatist, although it is hierarchical. Therefore, it seeks to enlarge its membership, or at least, does not embrace its minority, in a way that defies its definition as elitist. At the same time, it maintains and advocates a strict hierarchical order of society.

Second, that legal practices of exclusion need to be examined as twofold, marking those who are prohibited from joining the sect or taking part in certain circles from the outset, and those who are expelled as a form of punishment. These two types enhance our understanding of the concept of exclusion, and reveal its control on manifold aspects of the legal and political conduct of the sect, including its external discourse with others, its admission process, its annual ceremonies, and the everyday penal system, maintained for enforcement of their laws.

---

[134] Holtz, "Inclusivism at Qumran," 22-54.

CHAPTER FOUR

LEGAL AND SOCIAL COMMITMENT: BETWEEN OBLIGATION, COMMUNITY, AND AUTHORITY

4.1. *Introduction*

In the previous chapter I noted the ambivalence involved in the experience of sectarianism: sects afford their members a sense of belonging to a group of peers while being distinct and separate from the surrounding society. My discussion of exclusion in the Essene sect therefore focused on the sense of distinction and separation from various groups, and the discussion of obligation will complete it by shifting the focus inwards, to the various socio-legal impacts of membership in a sect.

While obligation may be perceived as a simple notion, this chapter will aim to present and analyze the tensions between obligation and other components of sectarianism. Some of these tensions, primarily the tension between the duty of a member towards God and towards the group, would rarely, if ever come into conflict in the practical sense as the tension between them is predominantly a theoretical one. However, by analyzing such theoretical tensions, the concept of obligation can prove to be more complex than the initial simplicity it may convey. This analysis will begin by noting two different types of obligation, religious and legal, and the tensions each of those raises in its own, detached from the Essene context. Next, I will examine the concept of obligation within the context of the Scrolls. In this examination the various notions of legal, religious, moral, and communal obligation will converge, but the discernment of these different aspects will nevertheless be revealing as to the function of obligation in the sectarian life and legal system.

4.1.1. *Religious Obligation in Conflict: Obedience and Morality*

Within the context of Judaism, religious obligation is primarily understood as the believer's duty to obey God and His commandments.

Such a requirement assumes a correlation between God, His wishes, and His commandments, an assumption seldom questioned or contradicted. The famous talmudic story dubbed "The Oven of Akhnay,"[1] presents a rare case in which such a conflict is recognized in rabbinical literature. The story's ambiguity allows for various interpretations, and it is unclear whether the tension reflects an essentialist or formalist view, or whether the debate is entirely different, not on the nature of impurity, but on the elevated status of authoritative interpretation, dismissing perhaps the validity of any future prophecies. Yet whatever the meaning of the story, it testifies to the rabbis' acknowledgment that there can be a contradiction between God's intention in His commandments and their interpretation, and even between His contemporary wishes and the practiced law. Obedience is reaffirmed as adherence to human authority in the form of the learned elite that mediates between the laity and the divine.[2]

---

[1] *b.* Bava Meṣiʿa 59a-59b. See J. L. Rubenstein, *Talmudic Stories*, 34-63; Izhak Englard, "Majority Decision vs. Individual Truth: The Interpretation of the 'Oven of Achnai' Aggadah," *Tradition* 15 (1975): 137-52; Daniel Boyarin, "Old Wine in New Bottles: Intertextuality and Midrash," *Poetics Today* 8.3-4 (1987): 539-56; Christine Hayes, "Rabbinic Contestations of Authority," *Cardozo Law Review* 28.1 (2006): 123-41; Tzvi Novick, "A Lot of Learning is a Dangerous Thing: On the Structure of Rabbinic Expertise in the Bavli," *HUCA* 78 (2007): 91-107; Chaya Halberstam, "Encircling the Law: The Legal Boundaries of Rabbinic Judaism," *JSQ* 16.4 (2009): 396-424; Charlotte Elisheva Fonrobert, "When the Rabbi Weeps: On Reading Gender in Talmudic Aggadah," *Nashim* 4 (2001): 56-9. For discussion of the story from a perspective of legal theory, see Suzanne Last Stone, "In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," *HLR* 106.4 (1993): 813-94; Joshua Gutoff, "The Necessary Outlaw: The Catastrophic Excommunication & Paradoxical Rehabilitation of Rabbi Eliezer Ben Hyrcanus," *Journal of Law and Religion* 11.2 (1994-1995): 733-48; Daniel Statman, "Authority and Autonomy in the Oven of Akhnai," *Bar Ilan Law Studies* 24.2 (2009): 639-62 (in Hebrew).

[2] This is a continued theme in rabbinic literature, best exemplified in the dictum "you shall not stray from the law (Torah) they tell you, even if before your very eyes they show you that right is left and left is right" (Sifrei Deuteronomy 154, as a commentary on Deut 17:11; cf. *b.* Ber 19b; *b.* Hor 2b-4a). See Arye Edrei, "Command or Error: On the Duty to obey in Halakhik Thought," *Iyyunei Mishpat* 24.2 (2001): 510; for an English version see idem, "Erroneous Rulings," in *Windows onto Jewish Legal Culture. Fourteen Exploratory Essays*, ed. Hanina Ben-Menahem, Arye Edrei and Neil S. Hecht (London: Routledge, 2011), 1:131-72; Hanina Ben-Menahem, *Judicial Deviation in Talmudic Law: Governed by Men, Not by Rules* (Chur, Switzerland: Harwood, 1991), 165-73; Michael S. Berger, *Rabbinic Authority* (Oxford: Oxford University Press, 1998), 64-67; Shemesh, *Halakhah in the Making*, 46-47.

The Oven of Akhnay addresses the possibility of a conflict between God's commandments and the law, as well as the possibility that God's commandments are misinterpreted by humans, but it does not posit a contradiction between God's commandments and morality. Such a contradiction is presented in Søren Kierkegaard's inquiry into the story of the Aqedah (Gn 22) in his *Fear and Trembling*.[3] Kierkegaard is hardly the first to be perplexed by the Aqedah narrative and its ostensible image of God as commanding an immoral act.[4] However, what makes his interpretation distinct[5] is that he does not posit God at odds with morality, but rather designates the paradox of obedience, since Abraham's moral duties (as a father, or as adhering to a taboo on any human sacrifice),[6] derive from God. Thus Kierkegaard presents the paradox of faith as an arch which strains between the obligation of the believer to God, and the obligation to a moral conduct decreed by God, both defined by an absolute duty of

---

[3] Søren Kierkegaard, *Fear and Trembling. A Dialectic Lyric* (trans. Walter Lowrie; Princeton: Princeton University Press, 1941). For background and assessment of the volume in Kierkegaard's work, see Ronald M. Green, "'Developing' *Fear and Trembling*," in *The Cambridge Companion to Kierkegaard*, ed. Alastair Hannay and Gordon D. Marino (Cambridge: Cambridge University Press, 1998), 257-81.

[4] For responses to the story of the Aqedah in antiquity, see Moshe J. Bernstein, "Angels at the Aqedah: A Study in the Development of a Midrashic Motif," *DSD* 7.3 (2000): 263-91; John J. Collins, "Spells Pleasing to God: The Binding of Isaac in Philo the Epic Poet," in *Antiquity and Humanity. Essays on Ancient Religion and Philosophy, Presented to Hans Dieter Betz on His 70th Birthday*, ed. Adela Yarbro Collins and Margaret M. Mitchell (Tübingen: Mohr Siebeck, 2001) 99-111; Louis H. Feldman, *Josephus's Interpretation of the Bible* (Berkley: University of California Press, 1998), 248-303; idem, "Philo's Version of the 'Aqedah," *Studia Philonica Annual* 14 (2002): 66-86; Himmelfarb, "The Ordeals of Abraham"; Kugel, *Traditions of the Bible*, 295-326; Jon D. Levenson, *The Death and the Resurrection of the Beloved Son. The Transformation of Child Sacrifice in Judaism and Christianity* (New Haven: Yale University Press, 1993), 111-42; Ed Noort and Eibert J. C. Tigchelaar, eds., *The Sacrifice of Isaac. The Aqedah (Genesis 22) and Its Interpretations* (Leiden: Brill, 2002); Geza Vermes, *Scripture and Tradition in Judaism: Haggadic Studies* (Leiden: Brill, 1973), 193-227.

[5] On the use of the Bible in Kierkegaard's writing, see Iben Damgaard, "Kierkegaard's Rewriting of Biblical Narratives: The Mirror of the Text," in *Kierkegaard and the Bible*, ed. Lee C. Barrett and Jon Stewart (Farnham: Ashgate, 2010), 1:207-30.

[6] See David S. Stern, "The Bind of Responsibility: Kierkegaard, Derrida, and the Akedah of Isaac," *Philosophy Today* 47.1 (2003): 34-43; J. Aaron Simmons, "What about Isaac? Rereading *Fear and Trembling* and Rethinking Kierkegaardian Ethics," *JRE* 35.2 (2007): 319-45.

obedience.[7] For Kierkegaard, this paradox is never experienced in actual reality. It is imperative that God would prevent Abraham's ordeal from completion, because otherwise the paradox would have no longer been sustained:[8] Abraham would have violated a moral code. The paradox is sustained only by Abraham's willingness to violate it for the sake of God, and yet never committing an immoral deed.

The introduction of a true paradox into the discussion emphasizes how rare and remote the contradiction between obedience to God and moral duties are in any religious system. But its possibility nevertheless exists and defines the meaning of obligation, as it is tested under excruciating circumstances, when a believer is compelled to resolve a moral dilemma and determine the higher obligation.

Kierkegaard's analysis of the Aqedah is especially instructive in illustrating the tension between membership in a religious community and obligation to God. Although his stark sense of individualism is most emphatically elaborated in his *Either/Or*,[9] it is a pertinent theme in *Fear and Trembling*, too, where Kierkegaard harshly deems group membership as a coward's refuge from the onus of decision and the choice of obligation:

> The true knight of faith is always absolute isolation, the false knight is sectarian. This sectarianism is an attempt to leap away from the narrow path of the paradox and become a tragic hero at a cheap price. The tragic hero expresses the universal and sacrifices himself for it. The sectarian punchinello, instead of that, has a private theatre, i.e. several good friends and

---

[7] See William Bristow, "Thinking Outside the Circle: The Place of Kierkegaard in Stern's *Understanding Moral Obligation*," *Inquiry* 55.6 (2012): 606-621; R. Zachary Manis, "Kierkegaard and Evans on the Problem of Abraham," *JRE* 39.3 (2011): 474-92; John H. Whittaker, "Kierkegaard on the Concept of Authority," *International Journal for Philosophy of Religion* 46.2 (1999): 83-101.

[8] For a different interpretation of the paradox see Robert Herbert, "Two of Kierkegaard's Uses of 'Paradox'," *Philosophical Review* 70.1 (1961): 41-55.

[9] Søren Kierkegaard, *Either / Or*, ed. and trans. Howard V. Hong and Edna H. Hong (Princeton: Princeton University Press, 1987). On individualism in Kierkegaard, see Gene Outka, "Equality and Individuality: Thoughts on Two Themes in Kierkegaard," *JRE* 10.2 (1982): 171-203; Roger S. Gottlieb, "Kierkegaard's Ethical Individualism," *The Monist* 62.3 (1979): 351-67; Gregory R. Beabout and Brad Frazier, "A Challenge to the 'Solitary Self' Interpretation of Kierkegaard," *History of Philosophy Quarterly* 17.1 (2000): 75-98; George Pattison, *The Philosophy of Kierkegaard* (Chesham: Acumen, 2005), 90-115; Alastair Hannay, *Kierkegaard: A Biography* (Cambridge: Cambridge University Press, 2001), 154-79, 420-428.

> comrades who represent the universal… The manikin thinks that by uniting with several other manikins he will be able to do it. But that is quite out of the question. In the world of spirit no swindling is tolerated. A dozen sectaries join arms with one another, they know nothing whatever of the lonely temptations which await the knight of faith and which he dares not shun precisely because it would be still more dreadful if he were to press forward presumptuously. The sectaries deafen one another by their noise and racket, hold the dread off by their shrieks, and such a hallooing company of sportsmen think they are storming heaven and think they are on the same path as the knight of faith who in the solitude of the universe never hears any human voice but walks alone with his dreadful responsibility.[10]

By offering this scathing depiction of his contemporaries, Kierkegaard captures a pertinent motif of a religious community, highly relevant to the Essene community (of which Kierkegaard most likely had no knowledge, of course). Thus, his assessment that the association is founded on a joint fear, unbearable for the individual, is helpful in assessing the role of fear in the sectarian literature from Qumran, expressed directly in regards to the End of Days.[11] The communal experience relieves the burden of faith, in an almost Durkheimian sense, as membership and worship converge. Since the community is centered on worship, and God is the focus of its public

---

[10] Kierkegaard, *Fear and Trembling*, 121-2.

[11] As noted previously, the Hodayot describes the fear of the righteous from divine punishment: 1QH^a 12.31-38. For the idea that the righteous will also be afflicted in the End of Days see 1 En 47:1-4; 3 SibOr 265-81; *b.* San 97a. See J. J. Collins, *Apocalypticism in the Dead Sea Scrolls*, 52-109; idem, "The Expectation of the End in the Dead Sea Scrolls," in *Eschatology, Messianism, and the Dead Sea Scrolls*, ed. Craig A. Evans and Peter W. Flint (Grand Rapids: Eerdmans, 1997), 74-90; Torleif Elgvin, "Early Essene Eschatology: Judgment and Salvation According to Sapiential Work A," in *Current Research and Technological Developments on the Dead Sea Scrolls*, ed. Donald W. Parry and Stephen D. Ricks (Leiden: Brill, 1996), 126-65; Florentino García Martínez, *Qumranica Minora I. Qumran Origins and Apocalypticism* (Leiden: Brill, 2007), 153-226; Hogeterp, *Expectations of the End. A Comparative Traditio-Historical Study of Eschatological, Apocalyptic and Messianic Ideas*, 19-114; Alexander P. Jassen, "The Dead Sea Scrolls and Violence: Sectarian Formation and Eschatological Imagination," *BibInt* 17.1-2 (2009): 12-44; Carol A. Newsom, "Apocalyptic Subjects: Social Construction of the Self in the Qumran Hodayot," *JSP* 12.1 (2001): 3-35; Peter Schäfer, *Studien zur Geschichte und Theologie des rabbinischen Judentums* (Leiden: Brill, 1978), 244-91.

discourse, the tension between membership and worship would not become apparent, either in the Second Temple sects, or in the Church of Denmark, which Kierkegaard criticized overtly towards the end of his life,[12] and might be considering in the background of the above-quoted passage. But similarly to Kierkegaard's description of the paradox of faith, the concept of obligation within a religious community contains an inherent paradox: while the tension between the duty to God and the obligation to the community has not been tested – perhaps even cannot be tested – it is nonetheless present, and as such a significant element for the understanding of the concept of obligation to law within a religious community.[13]

4.1.2 *Legal Obligation: The Duty of Obedience*

The tensions involved in religious and moral obligations as discussed above, yield a conflict concerning the duty to obey the law. A law can correlate with morality, contradict a moral value, or be irrelevant to categories of morality. Adherence to the law, however, is often the correct moral response. A standard example offered by Raz is crossing on a red traffic light: there is nothing inherently moral or immoral in crossing the red light, but disobeying traffic laws is immoral as it endangers human life. Raz poses the question of whether one is obligated to obey the lights when it is clear there is no traffic, and disobedience will not place anyone in danger.[14] An instrumental response will be that even with no traffic in sight the obligation to the red light exists, for the sake of the slim chance of preventing danger. An approach that claims to the absolute authority of law, on the other hand, will reject such an instrumental response, since it still allows for disobedience in other cases, whereas law should be viewed as

---

[12] See Hannay, *Kierkegaard: A Biography*, 424-6; Jonathan Malesic, "Illusion and Offense in 'Philosophical Fragments': Kierkegaard's Inversion of Feuerbach's Critique of Christianity," *International Journal for Philosophy of Religion* 62.1 (2007): 43-55; Michael Plekon, "Kierkegaard at the End: His 'Last' Sermon, Eschatology and the Attack on the Church," *Faith and Philosophy* 17.1 (2000): 68-86.

[13] Indeed, this tension can exist even within a secular context, as Appiah demonstrates in his discussion of obligations to universal morality vs. ethical obligations: Appiah, *Ethics of Identity*, 230-237.

[14] Raz, *Authority of Law*, 15-25. See Dan-Cohen, *Harmful Thoughts*, 101-15; Patrick Durning, "Joseph Raz and the Instrumental Justification of a Duty to Obey the Law," *Law and Philosophy* 22.6 (2003): 597-620.

always binding its subjects, whether they understand and accept its logic or not. This is conversely contested by the possibility of immoral laws which impose a duty of civil disobedience.[15] Thus the authority of law establishes a tension of obligations to possibly conflicting values.

Hence, it seems that the obligation towards the law, or the duty of obedience, can be questioned only when law is understood as a human construct.[16] This understanding results in the realization that humans can err and legislate "wrong laws" or "bad laws"[17] which consequently would generate a moral obligation to defy the law.[18] This stance is presumed to be more easily justified by positivist lawyers, whose entire premise accentuates the human agency involved in the creation of the law.[19] However, a

---

[15] Thus Kent Greenawalt, for example, asserts the duty of obedience from a naturalist stance, but qualifies this duty in cases of unjust laws or regimes. See Greenawalt, "The Natural Duty to Obey the Law," *MichLR* 84.1 (1985): 1-62; idem, *Conflicts of Law and Morality*, 47-265.

[16] Obligation is understood here in a moral sense. Law enforcement and coercion should not be confused with the obligation of the law-abider which can exist only as a willful moral choice. See Hart, *Concept of Law*; Harry Beran, *The Consent Theory of Political Obligation* (Kent: Croom Helm, 1987); Theodore M. Benditt, *Law as Rule and Principle. Problems of Legal Philosophy* (Stanford: Stanford University Press, 1978), 117-57; George Klosko, *The Principle of Fairness and Political Obligation* (Oxford: Rowman and Littlefield, 1992), 1-16.

[17] See T. R. S. Allan, "Law, Justice and Integrity: The Paradox of Wicked Laws," *OJLS* (2009): 705-28; David Dyzenhaus, *Hard Cases in Wicked Legal Systems: Pathologies of Legality* (Oxford: Oxford University Press, 2010). I use "Bad" and "Wrong" rather than wicked to accentuate the problem of obligation to a law viewed as wrong, even if it lacks an apparent malice (such as what is known as "dumb laws").

[18] The theoretical possibility of a moral duty to disobey the law has been famously formulated by Henry David Thoreau, in his essay "Civil Disobedience" (originally published in 1849). See further on this issue by Hannah Arendt, *Crises of the Republic* (New York: Harcourt, Brace Jovanovich), 49-102; Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), 206-222; Rawls, *Theory of Justice*, 319-43; Michael Walzer, *Obligations. Essays on Disobedience, War, and Citizenship* (Cambridge: Harvard University Press, 1970), 3-45; Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon, 1973); Kimberley Brownlee, "Conscientious Objection and Civil Disobedience," in *The Routledge Companion to Philosophy of Law*, ed. Andrei Marmor (London: Routledge, 2012), 527-40. Brownlee will also be publishing this year a book entitled *Conscience and Conviction: The Case for Civil Disobedience*. See also Daube, *Civil Disobedience in Antiquity* (Edinburgh: Edinburgh University Press, 1972).

[19] The stalwart speaker of this view is probably still Joseph Raz, despite his defiance of any attempt to label him as a proponent of either Natural Law or Legal Positivism. For Raz, the existence of theoretical (and practical) cases in which civil disobedience is just, invalidates a general obligation to the law: "there is no obligation to obey the law even in a

common criticism of formalists (who, for the most part, are also positivists) holds that the emphasis on human creation of the law can result in a complete divorce of law and morals, so that one can argue in favor of an obligation to the law, regardless of its morality. Legal theorists who favor Natural Law, on the other hand, discredit "wrong laws" or "bad laws" as Law at all, and reserve the right to defy those human constructs which are misguided attempts to reveal the law, but are not truly Law. Thus, even those who reject the view of the law as a human construct must rely on human agency to tangibly question the obligation to the law. In any case, the ongoing debate on the existence of an obligation to the law reveals the entangled relationship between law and morality, law as a standard of social order, and the place of the individual within this system.

In a Jewish context one might expect the question of obligation to the law to be irrelevant. Since the creator sanctioned the divine law, it should impose an utterly unquestionable obligation. Moreover, as Robert Cover notes, the duty of obedience is the cornerstone of Jewish Law, equal to the predominant role of the concept of rights in modern law:

> The principal word in Jewish law, which occupies a place equivalent in evocative force to the American legal system's "rights", is the word "mitzvah" which literally means commandment but has a general meaning closer to "incumbent obligation."[20]

However, the existence of an overarching general obligation to obey the law does not preclude challenges of obedience to specific laws. Such challenges are a result of the inevitable tension caused by a legal system of a professed divine origin which is nevertheless expanded and interpreted by human agents, who are often at odds with one another. Thus, while there is no doubt in Jewish tradition that the law as given by God is binding, there

---

good society whose legal system is just" (Raz, *Authority of Law*, 233). See also Batnitzky, "A Seamless Web?"

[20] Robert Cover, "Obligation: A Jewish Jurisprudence of the Social Order," *Journal of Law and Religion* 5.1 (1987): 65. For further discussion of the role of obligation in Jewish Law see Edrei, "Command or Error"; Abraham Sagi, "Models of Authority and the Duty of Obedience in Halakhic Literature," *AJS Review* 20.1 (1995): 1-24; Harvey Shulman, "The Political and the Sacred: Political Obligation and the Book of Deuteronomy," *Jewish Political Studies Review* 3.3-4 (2010): 23-58; Shai Wozner, "On the Duty to Obey the Law in Halakhic Thought: Reflections on the Thesis of R. Shimon Shkop," *JLAS* 20 (2010): 353-60.

is a wide range of approaches concerning what is the law on a variety of specific issues. As Arye Edrei notes, some even hold the view that the mere phenomenon of opposing views within the rabbinic tradition[21] attests to the fact that the Law of God is multiple, with no single "Right Answer."[22]

This first challenge serves as a practical problem for the Essene sect, compelled to respond to differing interpretations of the law. On a theoretical level the sectarian legal texts reject any possibility of the plurality of the law. Yet in practice they nevertheless do respond to the circumstances leading to multiple interpretations.

Another major challenge which is somewhat peculiar to the sect in the history of Judaism is an apprehension between divine obligation and communal duty. On the face of it, there should be no tension between the two: the sole purpose of the sect and its communal structures is directed at worship of God and providing the most optimal conditions for adhering to His commands.[23] However, a socio-legal analysis reveals how some of the laws are intended solely for the regulation of the community, and thus generate an implicit tension between a member's duty to God and to the

---

[21] For more on this phenomenon, see Azzan Yadin, "The Hammer on the Rock: Polysemy and the School of Rabbi Ishmael," *JSQ* 10.1 (2003): 1-17; Fraade, "Rabbinic Polysemy and Pluralism Revisited: Between Praxis and Thematization," *AJS Review* 31.1 (2007): 1-40; Hidary, *Dispute for the Sake of Heaven. Legal Pluralism in the Talmud* (Providence: Brown Judaic Studies, 2010).

[22] Edrei, "Command or Error," 510. The "Right Answer" is a Dworkinian approach, which has had a tremendous impact on the study of Jewish Law. See Dworkin, *Taking Rights Seriously*, 279-90; idem, *Matter of Principle*, 119-45; idem, *Law's Empire*, 76-85, 260-71; Hanina Ben-Menahem, "Is There Always One Uniquely Correct Answer to a Legal Question in the Talmud?" *JLA* 6 (1987): 164-75; Yaakov Elman, "Hercules within the Halakhic Tradition," *Diné Israel* 25 (2008): 7-41; Christine E. Hayes, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," *Diné Israel* 25 (2008): 73-121.

[23] In the context of this argument, it is helpful to recall Dimant's interpretation of מקדש אדם in her study "4QFlorilegium and the Idea of the Community as Temple," in *Hellenica et Judaica. Hommage à Valentin Nikiprowetzky*, ed. André Caquot, Mireille Hadas-Lebel and Jean Riaud (Leuven: Peeters, 1986), 165-89. While the interpretation of the phrase as a metaphorical temple comprising of the community members should be rejected (see Daniel R. Schwartz, "The Three Temples," 86; Kister, "Marginalia Qumranica," 320), Dimant forcefully articulated the religious and even ritual role of the communal structures of the sect. See also Esther Chazon, "The Spiritual Life of the Dead Sea Sect," in *On a Scroll of a Book. Articles on the Dead Sea Scrolls*, ed. Lea Mazor, (Jerusalem: Magnes, 1997), 85-97; Himmelfarb, *Kingdom of Priests*, 117-118.

sect.[24] As in previously discussed cases, some of these tensions remain theoretical as they have not been documented, and no observation research can be conducted. But a discussion of the gaps as they are preserved in the legal texts will allow imagining the "Living Law" as it was practiced and experienced.

4.2. *Communal Obligation and Voluntary Actions*

Obligation to obey the law assumes a law of recognition:[25] one is morally bound by the law because the law mandates its own validity. In democratic societies this also entails laws concerning the legislation of laws, in other words: the law also outlines the legal procedure to change laws. The ability to change the law, accompanied by the option not to be bound by it,[26] or to minimize one's interactions with it, reinforces one's duty to the law.

For obvious reasons, Essene law does not constitute possibilities of new legislation, let alone of alteration of the law. The Right of Exit is embedded in the supposedly voluntary association, although the concept is hard to apply because of the determinist views of the sect. If anything, the laws address expulsion, but not a voluntary departure. Still, recognition of the validity of the law is established based on divine commandment: in

---

[24] It should be noted once more that the socio-legal approach complements and adds to the political and power-based approach offered by Newsom's Foucauldian reading of 1QS (Newsom, *Self as Symbolic Space*, 91-165). See also Benedikt Eckhardt, "Meals and Politics in the *Yahad*. A Reconsideration," *DSD* 17.2 (2010): 180-209.

[25] As Hans Kelsen repeatedly claims in his *Pure Theory of Law* (trans. Max Knight; Berkeley: University of California Press, 1967), "law regulates its own creation" (pp. 312-313, cf. 15, 71, 221-222,230-236, 276-80). See also Hart, *Concept of Law*; Raz, *Authority of Law*, 90-97, 150-153 and criticism by William E. Conklin, *The Invisible Origins of Legal Positivism* (Dordrecht: Kluwer, 2001), 201-209.

[26] Right of Exit is a crucial control measure in democratic societies against the coercion of the law. The law cannot afford all individuals with a viable possibility of exit or secure its realization upon demand, but the right cannot be denied by it. Conversely, as Walzer notes (in *Politics and Passion*, 1-20), an involuntary membership does not entail recuse of duties. Even if an individual is bound to a community and unable to leave, for various reasons and circumstances, duties and obligations to that communities law still abide. See also Albert O. Hirschman, *Exit, Voice, and Loyalty* (Cambridge: Harvard University Press, 1970), 1-54 and response by Fletcher, *Loyalty*, 4-6, 171-175. For further bibliography on the Right of Exit, see chapter 3, n. 124.

several instances the Community Rule emphasizes that moral and law-abiding conduct is according to God's commandment (כאשר/אשר צוה).[27] Thus, in the Essene view the notion of obligation is closely linked to several questions raised in the previous chapter concerning membership and expulsion.

In addition to the legal foundation of the sect, ascribed to the Torah and more specifically to the Word of God, from sociological as well as legal and ethical perspectives obligation to the community is a prerequisite to the existence of the sect, or any other community for that matter. From a sociological point of view, it is clear that lack of communal obligation will result in disintegration.

In order to analyze the social aspects of sectarian law in solidifying obligation, I would like to borrow some terms from Rosabeth Moss Kanter's pioneering study of utopian communities, *Commitment and Community*. By employing a sociologist for a legal discussion, I am following a tradition of the Law and Society movement, demonstrated in the previous chapter by Dan-Cohen's use of Goffman, and perhaps best known through the impact Kai Erikson's study *Wayward Puritans*[28] had on legal theorists.[29] Kanter's discussion has gone unnoticed by scholars of the Dead Sea Scrolls, and thus merits an introduction, before I proceed to apply it. My use of "obligation" in the legal sense is mirrored in Kanter's definition of "commitment":

> Commitment thus refers to the willingness of people to do what will help maintain the group because it provides what they need.

---

[27] 1QS 1.2-3, 16-17; 3.9-10; 5.1, 8, 21-22; 8.15-22; 9.14-15, 23-25.

[28] Kai T. Erikson, *Wayward Puritans. A Study in the Sociology of Deviance* (New York: Wiley, 1966).

[29] See, for example, John R. Sutton, *Law/Society. Origins, Interactions, and Change* (Thousand Oaks: Pine Forge, 2001), 40-60; Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 1-58; Minow, *Making all the Difference*, 132-239; Roger Cotterrell, *Law's Community. Legal Theory in Sociological Perspective* (Oxford: Oxford University Press, 1995), 175-83; Robert C. Post, "Reconceptualizing Vagueness: Legal Rules and Social Orders," *CalifLR* 82.3 (1994): 491-507; Peter N. Grabosky, "Theory and Research on Variations in Penal Severity," *British Journal of Law and Society* 5.1 (1978): 103-14; Richard V. Ericson, "Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice," *University of Toronto Law Journal* 25.1 (1975): 23-41; David M. Engel, "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community," *Law & Society Review* 18.4 (1984): 551-82.

> In sociological terms, commitment means the attachment of the self to the requirements of social relations that are seen as self-expressive. Commitment links self-interest to social requirements. A person is committed to a relationship or to a group to the extent that he sees it as expressing or fulfilling some fundamental part of himself; he is committed to the degree that he perceives no conflict between its requirements and his own needs; he is committed to the degree that he can no longer meet his needs elsewhere.[30]

Kanter proceeds to outline three aspects of commitment: "retention of members, group cohesiveness and social control."[31] The impact on individuals of these different aspects can vary, but the integrity of a community depends on their solid presence. Kanter's formulation of commitment further conveys its dual nature: while the individual must be committed to the community as a whole, this commitment is achieved through a reciprocal movement by which the individual senses his needs are being fulfilled by the group. The concluding sentence of the quote is especially poignant in relation to the Essene sect: in such an isolated group, a member would indeed find that his needs are no longer met elsewhere.

Kanter's sociological explanation of commitment within a community anticipates a legal explanation: she depicts the psychological state of the committed individual within a community as the sociological movement towards communal cohesion. Such a communal commitment is ultimately formulated through law. It is true that not all communities have an explicit rule like the Community Rule, but even the most anarchist groups develop certain norms, rules, or etiquettes which regulate their conduct. Another element which should be introduced as means of introducing the legal turn is the ethical approach. Ethicist Nancy Rosenblum describes what she defines, following Rawls, as the "morality of association":

> "The morality of association" arises, as its name suggests, from membership in groups. There, individuals learn the social roles and rules impressed on them by the approval and disapproval of other members and by the group's authority. How does this happen? As Rawls explains it, members come to appreciate that

---

[30] Rosabeth Moss Kanter, *Commitment and Community. Communes and Utopias in Sociological Perspective* (Cambridge: Harvard University Press, 1972), 66.
[31] Ibid., 67.

> the group's system of cooperation requires a variety of actions and points of view, and they learn to take on the perspectives of others. Ties of friendly feeling and trust are generated as they see that others intend to do their share. As individuals become attached to these arrangements and develop mutual confidence, they are motivated to comply with the obligations of membership and to live up to the ideals of their station.[32]

Much like Kanter's depiction of communal commitment, Rosenblum's description of morality of association within a group expects the legal turn in defining such aspects while the association is still described in nascent, pre-developed terms. A study of the legal texts of Qumran cannot explore these pre-legal evolutionary stages of the sect, not reflected in the extant documents. However, the multiple documents preserve a documentation of certain legal development, and thus ascertain that some evolutionary process of legislation occurred, presumably in response to certain events. Indeed, the sect began to take shape long after the formation of biblical law, which is itself concerned with fortifying a commitment to a community.[33] Hence, it is clear that the sect was never a group of free association with no law at all, although its origins are found in laws that were not peculiar to their group. This point notwithstanding, the notions described by Kanter and Rosenblum should still be assumed for

---

[32] Nancy L. Rosenblum, *Membership and Morals. The Personal Uses of Pluralism in America* (Princeton: Princeton University Press, 1998), 50-1. See also Rawls, *Theory of Justice*, 409-13.

[33] Of the many laws of social importance in the Torah, Deuteronomy probably demonstrates the greatest concern including the Law of the Apostate City (Deut 13:13-19); the Law of the King (Deut 17:14-20); and the Law of the Rebellious Son (Deut 21:18-21). For further studies of law and society in biblical law, see Héctor Ignacio Avalos, "Legal and Social Institutions of Canaan and Ancient Israel," in *Civilizations of the Ancient Near East* (New York: Scribner, 1995), 1:615-31; David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 154-89; Joseph Fleishman, "Legal Innovation in Deuteronomy XXI 18-20," *VT* 53.3 (2003): 311-27; Richard H. Hiers, *Justice and Compassion in Biblical Law* (London: Continuum, 2009); Bernard M. Levinson, "The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah," *VT* 51.4 (2001): 511-34; Alexander Rofé, *Deuteronomy: Issues and Interpretation* (Edinburgh: T & T Clark, 2002), 103-19; Moshe Weinfeld, S*ocial Justice in Ancient Israel and in the Ancient Near East* (Minneapolis: Fortress, 1995); Raymond Westbrook, *Property and the Family in Biblical Law* (Sheffield: Sheffield Academic Press, 1991); Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel* (Louisville: Westminster John Knox Press, 2009).

understanding the laws of social conduct within the sect and their development.

As with the analysis of Essene exclusionary practices, here too the discrepancy between Essene rhetoric and practice should be emphasized. While on the one hand the sectarian texts speak of the process of joining the group as a voluntary one, this action is a limited manifestation of free will, bound by a cosmic fate designated by God.[34] This strict view of a preordained plan, however, is in turn affected by uncontrolled circumstances such as the personal choice of an individual to join the sect, personality clashes, and many other components which are undocumented, but can nevertheless be assumed to have existed and influenced the sectarian conduct.

Once the decision to join the sect has been made, however, a social and legal process ensues, designed to cultivate a commitment and inculcate a sense of obligation toward the community. Whatever actual degree of voluntary action the individual had prior to joining the sect it would have been diminished and perhaps even relinquished as he progressed in the stages of initiation. This course of socialization is regulated through law in the case of the Essene sect, and its only surviving manifestations are through the legal documents. To reiterate, these were indubitably coupled with social mechanisms, but those remain inaccessible to us.

The link between the sociological prism offered by Kanter and the legal framework suggested by Rosenblum can perhaps be more firmly established by introducing a founding figure of modern sociology, namely: Max Weber.[35] Analysis of voluntary association sways between a consideration of the group-formation as a whole, almost as a single organism, and the group members as separate individuals. The following section will consider more closely the latter, but individuals who join are, by

---

[34] The tension between voluntary actions and the authority of the law, which in its coercive powers stands in contrast to voluntarism, prevails any legal system. As Meir Dan-Cohen notes, "although it is of the essence of authority that it appeal to our voluntary obedience, it is a characteristic of all important authorities, most prominently the state, to use coercive means to back up this appeal and secure compliance" (Dan-Cohen, *Harmful Thoughts*, 94). See also Yonder Moynihan Gillihan, *Civic Ideology, Organization, and Law in the Rule Scrolls* (Leiden: Brill, 2012).

[35] This declaration is made notwithstanding some enduring criticisms of Weber's sociology of law. See Cotterrell, *Law's Community*, 124-59; Harold J. Berman and Charles J. Reid, Jr., "Max Weber as Legal Historian," in *The Cambridge Companion to Weber*, ed. Stephen Turner (Cambridge: Cambridge University Press, 2000), 223-39.

definition, entering a pre-existing group with its initiation rites and regulations. The formation of religious communities occurs, according to Weber, in an eruption of history, through the agency of a charismatic leader, a prophet, or guru of some sort.[36] This is evidently true of the Essene sect, with its leader, the Teacher of Righteousness, revered long after his passing.[37] While the initial motivation for the establishment of a new community or a new social entity is traced to a single figure, it is not the leader who defines the community, but rather the "routinization" of the community[38] through a pattern of conduct that can transcend the power of the charismatic leader and thus survive the leader's departure.[39] For Weber, a community is constituted only once "the laity has been organized into a continuous pattern of communal behavior, in which it actively participates in some manner."[40] Thus, the routinization of charisma (or enchantment, to import another Weberian term) is insufficient in itself. The non-officiating participants are crucial in defining this entity as a separate community.

---

[36] Martin Riesebrodt, "*Charisma* in Max Weber's Sociology of Religion," *Religion* 29.1 (1999): 1-14. In relation to the Essenes, see Jokiranta, *Social Identity and Sectarianism*, 25-28.

[37] See Frank Moore Cross, *The Ancient Library of Qumran* (Minneapolis: Fortress, 1995), 100-21; Loren T. Stuckenbruck, "The Teacher of Righteousness Remembered: From Fragmentary Sources to Collective Memory in the Dead Sea Scrolls," in *Memory in the Bible and Antiquity: The Fifth Durham-Tübingen Research Symposium*, ed. Stephen C. Barton, Loren T. Stuckenbruck and Benjamin G. Wold (Tübingen: Mohr Siebeck, 2007), 75-94; idem, "The Legacy of the Teacher of Righteousness in the Dead Sea Scrolls," in *New Perspectives on Old Texts*, ed. Esther G. Chazon, Betsy Halpern-Amaru and Ruth A. Clements (Leiden: Brill, 2010), 23-49; Martin G. Abegg, Jr., "Who Ascended to Heaven? 4Q491, 4Q427, and the Teacher of Righteousness," in *Eschatology, Messianism, and the Dead Sea Scrolls* ed. Craig A. Evans and Peter W. Flint (Grand Rapids: Eerdmans, 1997), 61-73; George J. Brooke, "Was the Teacher of Righteousness Considered to Be a Prophet?" in *Prophecy after the Prophets? The Contribution of the Dead Sea Scrolls to the Understanding of Biblical and Extra-Biblical Prophecy*, ed. Armin Lange and Kristin De Troyer (Leuven: Peeters, 2009), 77-97.

[38] For this term in relation to the Essenes, see Regev, *Sectarianism in Qumran*, 89-93.

[39] Max Weber, *The Sociology of Religion* (trans. Ephraim Fischoff; Boston: Beacon, 1963), 46-79. For contemporary assessments of Weber, see above and Keith Tribe, "Max Weber: The Works," *Economy and Society* 41.2 (2012): 282-98; Eleni Varikas, "Max Weber, les dames et la cage d'acier," in *Sous les sciences sociales, le genre. Relectures critiques, de Max Weber à Bruno Latour*, ed. Danielle Chabaud-Rychter et al. (Paris: La Découverte, 2010), 371-89; Deflem, *Sociology of Law*, 37-55; Richard Swedberg, "The Changing Picture of Max Weber's Sociology," *Annual Review of Sociology* 29 (2003): 283-306.

[40] Weber, *Sociology of Religion*, 64.

4.3. *Obligation as Renunciation and Transcendence*

The establishment of a community necessitates patterns for a relationship between the group as a whole and the individuals constituting it. Kanter describes two major axes of commitment-building processes: a detachment process termed "renunciation," and an attachment process defined as "communion." Through renunciation the community members sever external relationships they maintained that compete for their emotional investment and commitment, and through communion the individual becomes attached to the group as a whole, and a "we-feeling" is induced to each individual in the collective.[41] Essentially, these are two sides of the same coin, but the sociological analysis requires considering them as two parallel processes comprised of opposite "impulses," one of distancing and another of coming closer. Thus, Kanter's analysis is not only helpful for the understanding of the Essene processes of obligation and commitment, but also for the link between these processes and the exclusion practices discussed in the previous chapter.

Kanter then describes two parallel processes – mortification and transcendence:

> Mortification involves the submission of private states to social control, the exchanging of a former identity for one defined and formulated by the community. Transcendence is a process whereby an individual attaches his decision-making prerogative to a power greater than himself, surrendering to the higher meaning contained by the group and submitting to something beyond himself… Mortification causes the person to "lose himself"; transcendence permits him to find himself anew in something larger and greater.[42]

Similarly to the renunciation and communion processes, mortification and transcendence are difficult to disentangle. Together they lead the individual to a loss of any sense of selfhood and thus strengthen attachment to a community. It is peculiar that Kanter describes mortification as a process occurring between the individual and the group, i.e. as an internal process, whereas both the word itself and its designation as a detaching process

[41] Kanter, *Commitment and Community*, 72-3.
[42] Kanter, *Commitment and Community*, 74.

should point to the fact that mortification also occurs between the group-member and an external, or competing, society. By relinquishing ties to former bases of his or her identity, the individual indeed dies, or eliminates an internal former identity, in exchange for a new identity. In this sense, transcendence accurately captures the sense of elevation that compensates for this loss.

These common social terms, which are relevant to various sects throughout history, manifest themselves in the legal documents of Qumran. The Damascus Document is named after the repeated mention of Damascus as a gathering location for those who came to join the new covenant.[43] The withdrawal from the surrounding community was discussed previously in the context of exclusion and seclusion as a process of separation in search of purification.[44] However, it also bears a social meaning of severing competing relationships and thus fortifying the obligation and commitment to the community. The motif of seclusion due to the detrimental state of the external society is repeated in many sectarian texts,[45] but it is most ardently summarized in the Community Rule's interpretation of Isa 40:3:[46]

---

[43] CD 7.18-19, 8.21, 19.33-34. 20.12.

[44] Najman, "Towards a Study of the Uses of the Concept of Wilderness in Ancient Judaism," *DSD* 13.1 (2006): 105-9.

[45] In addition to the Damascus motif already mentioned and the 1QS quote of Isaiah to follow, see also 1QS 9.19-22; 4Q171 1, iii, 1-4; and a further quotation of Isa 40:3 in 4Q176 1-2, i, 6-7. 4QMMT C 7 also includes the much debated quote on seclusion ("we separated from the multitudes of the people"), discussed in the previous chapter. In addition to a willful separation, other sectarian texts allude to persecution, which might point to an entirely different cause for the settlement in the desert. See 1QpHab 11.4-6; 1QH^a 10.20-36. On the Essene sect as persecuted, see Flusser, *Judaism of the Second Temple Period*, 1-11, 214-57; Tzoref, *Pesher Nahum Scroll*, 106-9. On wilderness as exile, see Najman, "Towards a Study of the Uses of the Concept of Wilderness in Ancient Judaism," 101-5.

[46] 1QS 8.12-16. See George J. Brooke, "Isaiah 40:3 and the Wilderness Community," in *New Qumran Texts and Studies*, ed. George J. Brooke (Leiden: Brill, 1992), 117-32; James H. Charlesworth, "Intertextuality: Isaiah 40:3 and the Serek Ha-Yahad," in *The Quest for Context and Meaning. Studies in Biblical Intertextuality in Honor of James A. Sanders*, ed. Craig A. Evans and Shemaryahu Talmon (Leiden: Brill, 1997), 197-224; Devorah Dimant, "Non pas l'exil au désert mais l'exil spirituel: l'interprétation d'Isaïe 40,3 dans la *Règle de la Communauté*," in *Qoumrân et le judaïsme du tournant de notre ère*, ed. André Lemaire and Simon C. Mimouni (Paris: Peeters, 2006), 17-36. See also Armin Lange, "'Which Is Written in the Words of Isaiah, Son of Amoz, the Prophet' (CD 7:10): Quotations of and Allusions to the Book of Isaiah in Qumran Literature," in *With Wisdom as a Robe. Qumran and Other Jewish*

12b ובהיות אלה ליחד בישראל

13 בתכונים האלה יבדלו מתוך מושב הנשי העול ללכת למדבר לפנות שם את דרכ הואהא

14 כאשר כתוב במדבר פנו דרך •••• ישרו בערבה מסלה לאלוהינו

15 היאה מדרש התורה א[ש]ר צוה ביד מושה לעשות ככול הנגלה עת בעת

16a וכאשר גלו הנביאים ברוח קודשו

12b And when these become a Yahad in Israel

13 according to these regulations they shall separate from the dwelling of the men of evil, to go to the wilderness to prepare the way of He[47]

14 as it is written: "In the Wilderness prepare the way of •••• straighten in the desert a path for our God

15 This is the interpretation of the Torah which [He] commanded in the hand of Moses to do according to all that is revealed from age to age

16a and as the prophets revealed in His spirit of Holiness

This passage links the seclusion practices of the sect, which were the focus of analysis of the previous chapter, with the junction of obligation to the law and the authority of its interpretation. The seclusion is understood as a practice following a law given directly to Moses, as interpreted by the prophet Isaiah.[48] The law denotes obligation because it is a divine commandment from God to Moses. At the same time, it is not entirely

Studies in Honour of Ida Fröhlich, ed. Károly Daniel Dobos and Miklós Köszeghy (Sheffield: Sheffield Phoenix Press, 2009), 275-87.

[47] The obscure word הואהא has captured the imagination of many as a special form of the divine name. Based on the following biblical quote it is obviously a paraphrase intended to avoid unnecessary use of the Tetragrammaton , and it is best explained as a scribal error which caused a corruption of the pronoun הוא (or הואה in the common orthography of 1QS). See William H. Brownlee, "The Ineffable Name of God," *BASOR* 226 (1977): 39-46; Martin Rösel, *Adonaj. Warum Gott "Herr" gennant wird* (Tübingen: Mohr Siebeck, 1999), 207-10; Schiffman, *Sectarian Law in the Dead Sea Scrolls*, 100, 136; Tov, *Scribal Practices*, 238-9.

[48] For the Essene understanding of the prophets as lawgivers, see Alexander P. Jassen, "The Presentation of the Ancient Prophets as Lawgivers at Qumran," *JBL* 127.2 (2008): 307-37; idem, *Mediating the Divine. Prophecy and Revelation in the Dead Sea Scrolls and Second Temple Judaism* (Leiden: Brill, 2007), 113-31, 331-42. Cf. Brin, *Studies in Biblical Law*, 128-65; George J. Brooke, "Prophecy and Prophets in the Dead Sea Scrolls: Looking Backwards and Forwards," in *Prophets, Prophecy, and Prophetic Texts in Second Temple Judaism*, ed. Michael H. Floyd and Robert D. Haak (New York: T & T Clark, 2006), 151-65.

revealed upon initial delivery but in stages through God's prophets. This gradual revelation of the law constitutes the need for interpretative authority to be discussed below. Hence this passage demonstrates the proximate conceptions of seclusion and obligation. The textual evidence describes the actual practice which links between a renunciation of the external society and the obligation to the law.

However, in addition to a renunciation of the surrounding society and existing relationships, the Essenes' retreat to the desert also serves as mortification, since the desert embodies denial of convenience and earthly goods.[49] As in other ideological communities, the Dead Sea Scrolls reflect an aversion to earthly goods, particularly wealth.[50] However the laws of the sect do not speak against accumulation of wealth or of greed, as the Tenth Commandment does, for example, or the Law of the King in Deuteronomy 17. Instead, the concern of the Essene law is that personal property be handed over to the possession of the community as a whole.[51] The main cause for this law seems to be purity,[52] but from a socio-legal perspective

---

[49] In addition to Najman's article cited above, see Talmon, "The 'Desert Motif' in the Bible and in Qumran Literature," in *Biblical Motifs. Origins and Transformation*, ed. Alexander Altmann (Cambridge: Harvard University Press, 1966), 31-63; Erasmus Gaß, "Hosea zwischen Tradition und Innovation am Beispiel von Hos 2,16f.," *ZAW* 122.2 (2010): 169-84; Othmar Keel, *Symbolism of the Biblical World* (trans. Timothy J. Hallett; Winona Lake: Eisenbrauns, 1997), 76-7.

[50] E.g. 1QH^{a} 6.20; 18.29; 4QS^{d} 8.6; 4QInstruction^{b} 2, ii, 6-7; 4Q183 1, ii, 5; 4Q390 2, i, 8. See Catherine M. Murphy, *Wealth in the Dead Sea Scrolls and in the Qumran Community* (Leiden: Brill, 2002); Matthew J. Goff, *The Worldly and Heavenly Wisdom of 4QInstruction* (Leiden: Brill, 2003), 127-67; Benjamin G. Wright, "The Categories of Rich and Poor in the Qumran Sapiential Literature," in *Sapiential Perspectives. Wisdom Literature in Light of the Dead Sea Scrolls*, ed. John J. Collins, Gregory E. Sterling and Ruth A. Clements (Leiden: Brill, 2004), 101-23. For comparison between Qumran and Early Christian communities, see Regev, *Sectarianism in Qumran*, 335-44; idem, "Wealth and Sectarianism: Comparing Qumranic and Early Christian Social Approaches," in *Echoes Echoes from the Caves: Qumran and the New Testament*, ed. Florentino García Martínez (Leiden: Brill, 2009), 211-29.

[51] 1QS 1.11-13, 6.17-23, 9.7-9. See Justin Taylor, "The Community of Goods among the First Christians and among the Essenes," in *Historical Perspectives. From the Hasmoneans to Bar Kokhba in Light of the Dead Sea Scrolls*, ed. David Goodblatt, Avital Pinnick and Daniel R. Schwartz (Leiden: Brill, 2001), 147-61. Damascus Document lists distribution of salary among the duties of the Overseer, providing a further glimpse for the reality of this arrangement: CD 14.12-16 (partially preserved in 4QD^{a} 10, i, 5-10.

[52] The rationale is explicitly stated in 1QS 9.8: "and the goods of the Men of Holiness who walk in perfectness shall not be mixed (their goods) with the goods of the Men of Deceit." However, it is assumed that the Yahad could not have been entirely self-sufficient and

this is another instrument in which law implements the process of mortification, as Kanter dubs it. The individual is required to relinquish autonomous and independent property and submit it to the community for the use of all members.

Similarly, the individuals are required to surrender their voice and opinions to the community. It would be anachronistic to speak of surrendering rights, since there is no notion of human rights, and specifically freedom of speech, in the Essene community. It is still possible, however, to discern how the process of mortification, in which the individuals lose aspects of their identity and autonomy, is closely linked to the process of transcendence, whereby "an individual attaches his decision-making prerogative to a power greater than himself," as Kanter describes it (quoted above). When the "Session of the Many" (מושב הרבים) assembles, the members of the Yahad are required to speak only in turn, and not to speak anything displeasing to the Many. There are also members whose standing does not allow them to publicly speak at all, and they must seek special permission to speak to the Many, who decide whether to allow the matter to be discussed.[53] These laws will be discussed below (under section 4.5), but they are relevant first and foremost as a clear demonstration of the process of mortification and transcendence.

4.4. *Commitment to Communal Structures and Institutions*

Through a comprehensive social and legal system, the communities described in the legal texts of the Essenes (primarily 1QS and the Damascus Document) encouraged their members to submit to a power higher than themselves, and diminish their autonomous identities in exchange for participation in a greater identity. Despite the inherent reliance on divine authority at the base of Essene law, in the everyday life of the sectarian this "higher power" was not God, but a living community,

---

therefore must have traded with outsiders. Grouping money together would not prevent the sect, then, from mixing sectarian money with the money of others. However, by creating a collective treasury, the number of people and transactions required to deal with outsiders' money would have probably been diminished. For more on the relation of goods (הון) and purity see CD 6.15; 4QD[a] 11, 14-16; 1QS 6.17, 8.22-24; 1QpHab 8.12-13, 9.4-7; 4QInstruction[b] 2, iii, 5; 4QInstruction[d] 103, ii, 8-9.

[53] 1QS 6.10-13.

which was present in every moment of its members' lives. The rhetoric indeed emphasized devotion to God, and there should be no doubt that in the minds of the members the worship of God was their ultimate obligation. However, in everyday life commitment was fortified through human means, including social separation, withdrawal to the desert,[54] a long initiation process, a common depository of goods, and finally – a hierarchical political structure of officers and leaders who regulate social relationships and adjudicate disputes.

Among the institutions named in the sectarian texts are the "Session of the Many" (מושב הרבים) and the "Council of the Yahad" (עצת היחד).[55] Offices mentioned are the "Instructor" (משכיל), the "Examiner" (הפקיד), and the "Overseer" (המבקר).[56] These serve as the enforcing instruments of the law. For example, new members are approved by the Session of the Many, which also adjudicates cases of expulsion and appeals to return while reproaches and accusations are brought to the examiner or overseer. The mere existence of these institutions, by which one can reprove another member of the community or even cause his expulsion, signals the coercive element of the sect's law. The free association and obligation to societal arrangement as described above by Rosenblum is embodied here in an organizational form of power and law.

Coercion is a crucial aspect of legal authority, but it calls into question legal obligation. Meir Dan-Cohen outlines three approaches to the relationship between coercion and the authority of the law.[57] The reductive approach, which he traces back to Hobbes and Bentham, claims that the

---

[54] It is assumed that the Qumran site inhabited the Yahad sect reflected in 1QS. The Damascus Document speaks of the (probably metaphorical) retreat to Damascus, but at the same time does not reflect a celibate group. This might correspond with Josephus's account of Essenes who live in cities and marry. Therefore, social separation and geographical separation need to be distinguished.

[55] See Schofield, *From Qumran to the Yahad*, 141-7; Newsom, *Self as Symbolic Space*, 145-8; Weinfeld, *Organizational Pattern*, 10-19. The two occurrences of עצת הרבים (1QS 6.14. See also 4QD[a] 10, ii, 7) denote "Counsel of the Many" rather than "Council" and thus need not be understood as a third institution.

[56] For a survey of both the group hierarchies and the role of the officers see Jastram, "Hierarchy at Qumran." Cf. Jokiranta and Wassen, "A Brotherhood at Qumran? Metaphorical Familial Language in the Dead Sea Scrolls"; Berg, "An Elite Group within the Yahad: Revisiting 1QS 8-9."

[57] Dan-Cohen, *Harmful Thoughts*, 94-8.

only authority of the law lies within its coercion.[58] The additive approach, attributed to Hart, supports the normative (possibly moral) duty to the law with the motivational threat of coercion. In contrast to these two approaches, Dan-Cohen proposes a disjunctive approach, claiming that coercion undermines the authority of the law, as it supplies a valid requirement with an unnecessary violence. As Dan-Cohen admits, this argument addresses "only one kind of use of force by authority, force designed to enforce compliance." It does not undermine the validity of force in other contexts, such as the retributive element of punishment.[59]

This tension exists in the legal texts of Qumran: the authority of the law lies in its alleged origin and as such is indisputable. Since God is creator, legislator, and ultimate judge, all His laws are binding. However, the validity of the law and the obligation to obey it do not immediately entail the entrustment of their enforcement in the hands of any specific individual. A sectarian who believes, for example, that he is a Son of Light, and that he has been wrongfully accused by the Overseer before the Session of the Many would be forced to question the coercive authority implemented by the sect, while fully accepting the authority and validity of the law itself.

The tension between divine law and human coercion is especially striking since, as mentioned above, there are no extant laws establishing the ways an officer is elected or replaced, while so many Essene laws regulate the special status of officers, as well as fortify the internal hierarchy of the community. Among these are the exclusivity of Sons of Aaron to rule over judicial and monetary affairs;[60] the priest's privilege to eat and drink first during communal meals;[61] the priests' privilege to speak first at the Session of the Many (followed by the Elders);[62] or the Examiner's duty to approve or disapprove a volunteer's request to join the Yahad,[63] which grants him

---

[58] This was perhaps first rejected by Rousseau, who regards this approach as a senseless tautology: In *The Social Contract* he writes, "if we must obey because of force we have no need to obey out of duty, and if we are no longer forced to obey we no longer have any obligation to do so… 'Obey the powers that be'. If this means: 'Yield to force', it is a sound precept, but superfluous; I can guarantee that it will never be violated." Quoted from Jean-Jacques Rousseau, *Discourse on Political Economy and The Social Contract* (translated by Christopher Betts; Oxford: Oxford University Press, 1994), 48.

[59] Dan-Cohen, *Harmful Thoughts*, 114.

[60] 1QS 9.7

[61] 1QS 6.4-6.

[62] 1QS 6.8-9.

[63] 1QS 6.13-15.

special power over the composition of the sect. Furthermore, this law not only grants the Examiner the power to disqualify a member before anyone else in the sect had the opportunity to know him, it also creates a special relationship between the Examiner and all newcomers. They would be likely to accept his future interpretations and views, and may very well have a special feeling of gratitude, perhaps even awe, towards the person who initially introduced them to the sect and encouraged them in their preliminary stages of initiation. More importantly than the speculative social and emotional ties that the roles of officers engender is the recognition that "lawmaking rules can significantly impact policy outcomes."[64] By controlling both the lawmaking process and the judicial process the officers hold incontestable power.

In addition to laws that maintain and solidify a social hierarchy of individuals within the community, commitment is also fortified through laws which constitute respect for the community's establishments. Such is the case with laws of contempt of court or congress,[65] and perhaps laws of respect for the flag,[66] as an emblem of the community in its entirety. Thus,

---

[64] Ittai Bar-Siman-Tov, "Lawmakers as Lawbreakers," *William and Mary Law Review* 52.3 (2010):841. Cf. Barbara Sinclair, *Party Wars. Polarization and the Politics of National Policy Making* (Norman: University of Oklahoma Press, 2006): 143-233.

[65] Note that the duty to obey the ruling of the court or laws of congress supposedly establishes commitment alone, yet this is not the case, as the rulings can be imposed by force. Thus the prohibition against the criticism of the court, as found in the UK, functions alongside the enforcement of its ruling as a distinct feature reaffirming the rule of law. Furthermore, such laws regulate societal norms and conduct which instill in the individual the sense of obligation to the legal system as a whole. See C. J. Miller, *Contempt of Court* (Oxford: Oxford University Press, 2000); Todd D. Peterson, "Prosecuting Executive Branch Officials for Contempt of Congress," *New York University Law Review* 66.3 (1991): 563-632; Andrew Koppelman, "Respect and Contempt in Constitutional Law, or Is Jack Balkin Heartbreaking?" *Maryland Law Review* 71.4 (2012): 1126-43. The safeguards against contempt for legal institution should be understood as related to two aforementioned concepts: first, the relationship of law and emotions, and in this context the morality of emotions, too (see nn. 79-85 in the previous chapter, and especially for this context Nussbaum, *Hiding from Humanity*, 20-107); and second, the idea of the isolation of the law (see Introduction, pp. 11-12), here mirrored by the reverse of the popular notion that familiarity breeds contempt. See also magazine article by Judge Kyle B. Haskins, "Courtroom Etiquette & Civility: How Attorney Behavior Defines What It Means to Be a Lawyer," *Family Advocate* 31.2 (2008): 8-13.

[66] Laws of respect for the flag or a different case because while they do serve to affirm a communal commitment, they might also be founded on a conceptualization of the object of the flag as sacred. Similarly, laws of blasphemy, whether biblical or of modern times,

both 4QD and 1QS include in their penal codes punishments for those who fall asleep during a Session of the Many.[67] 1QS seems to borrow the wording directly from 4QD's earlier code,[68] and thus both distinguish between a member who lies down to sleep (**ישכוב וישן**), and one who dozes (**הנם**) up to three times in one session. The former is punished more severely than the latter (thirty days of penance as opposed to ten days). This distinction reflects the degree of the offense towards the Session of the Many, and perhaps also a consideration of intent, assuming that a member who dozes is less in control of his actions. 1QS decrees, for example, the same punishment for a member who lies down and sleeps and for one who spits in the Session of the Many,[69] pointing further that the concern here is

---

serve a societal role of preserving norms and order by reaffirming the boundaries of the community, but it is more difficult to discuss them as purely political when the laws themselves are substantiated on the validity of symbolic and religious sentiments. See Constable, *Just Silences*, 93-110; Robert Justin Goldstein, *Flag Burning and Free Speech. The Case of Texas v. Johnson* (Lawrence, Kan.: University Press of Kansas, 2000). On Blasphemy see Mark Leuchter, "The Ambiguous Details in the Blasphemer Narrative: Sources and Redaction in Leviticus 24:10–23," *JBL* 130.3 (2011): 431-50; T. M. Willis, "Blasphemy, Talion, and Chiasmus: The Marriage of Form and Content in Lev 24,13-23," *Biblica* 90.1 (2009): 68-74; Adela Yarbro Collins, "The Charge of Blasphemy in Mark 14.64," *JSNT* 26.4 (2004): 379-401; Sarah Barringer Gordon, "Blasphemy and the Law of Religious Liberty in Nineteenth-Century America," *American Quarterly* 52.4 (2000): 682-719; David Nash, "Analyzing the History of Religious Crime. Models of 'Passive' and 'Active' Blasphemy since the Medieval Period," *Journal of Social History* 41.1 (2007): 5-29; idem, *Blasphemy in the Christian World. A History* (Oxford: Oxford University Press, 2007); Russell Sandberg and Norman Doe, "The Strange death of Blasphemy," *Modern Law Review* 71.6 (2008): 971-86.

[67] 4QD[a] 10, ii, 5-8; 1QS 7.10-11.

[68] The relationship between 4QS and 1QS is difficult to trace, both as a literary and a socio-historical problem, partially due to the composite nature of the texts. See Collins, *Beyond the Qumran Community*, 12-90; Charlotte Hempel, "CD Manuscript B and the Rule of the Community - Reflections on a Literary Relationship," *DSD* 16.3 (2009): 370-87; eadem, "Emerging Communal Life and Ideology in the S Tradition," in *Defining Identities: We, You, and the Other in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, ed. Florentino García Martínez and Mladen Popović (Leiden: Brill, 2007), 43-61; Himmelfarb, *Kingdom of Priests*, 117-119; Stephen Hultgren, *From the Damascus Covenant to the Covenant of the Community* (Leiden: Brill, 2006), 141-318; Sarianna Metso, "The Relationship between the Damascus Covenant and the Community Rule," in *The Damascus Document: A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick (Leiden: Brill, 2000), 85-93; Regev, *Sectarianism in Qumran*, 163-96; idem, "Between Two Sects," 431-49.

[69] 1QS 7.13

the respect for the session and the degree of intention behind expressions of disrespect.

4.5. *Voice and Obligation: Regulating Relations within a Community*

A special focus of the penal codes of 4QD and 1QS concerns regulation of conversations in general, and arguments in particular. In an obvious manner, this is a subsection of the aforementioned greater concern of establishing commitment to the social structure of the group, its hierarchy, and its institutions. However, in this case it is not mere respect that is sought, as in the case of the priest's privilege to eat first, nor the retention of power (alongside the natural order and purity ordained by God), as in the law that decrees only priests deal with monetary and judiciary affairs. These laws reflect the conjunction of authority and commitment, as well as the enduring tension between divine law and human coercion. In an intensely ideological sect, contentions over proper conduct would have been widespread which means that each reproof bore a potential threat on the social fabric of the community. As both Kanter and Rosenblum point out, the voluntary association requires arrangements and regulations for alleviating such tensions. In addition to a list of prohibitions, the law therefore has to provide an option for members to express their concerns. As in other cases within Essene social laws, this is understood on a sociological level but also coupled by biblical laws, in this case the laws of reproof in Lev 19:16-18.

The prohibitions include speaking to a fellow-member in stubbornness or impatience,[70] defying a fellow-member who is ranked higher,[71] cursing,[72] lying,[73] talking foolishly,[74] interrupting a fellow-member's speech,[75] gossiping,[76] and complaining against a fellow-member.[77] While some of these laws offer clear-cut cases of offence (lying, interrupting a fellow-

[70] 1QS 6.25-27.
[71] 1QS 26-27.
[72] 1QS 7.1.
[73] 1QS 7.3-6.
[74] 1QS 7.9
[75] 1QS 7.9-10.
[76] 1QS 7.16-17.
[77]1QS 7.17-18.

member's speech), others are highly subjective. The prohibition on defying a higher-ranking member entrusts *de facto* all these laws to the hands of higher-ranking member. In effect, by including such a prohibition within this group of prohibitions, the law leaves the higher-ranking members to decide what would be considered stubbornness, impatience, or gossip. These laws, therefore, can be viewed as having a double function, and their actual role would depend on their implementation. They can act as conducive to respectful debates and an amicable manner among the community, by reducing disrespect, guarding against contentious manners of speech, and so forth. On the other hand, they can also be enforced to silence internal opposition, deeming valid criticism as illicit complaints, stubbornness, or defiance.

An important regulatory instrument of the proper implementation of these laws is the transmission of contention from the personal sphere to the public sphere,[78] examining the concerns through the legal institutions of the sect. To be sure, this does not eliminate the possibility of a misuse of power, but it theoretically allows even the low-ranking members to sound their voice.[79] Both 1QS and 4QD follow the biblical requirement for two

[78] Courts of Small Claims, often dubbed "the people's court," serve in a comparable social capacity, the difference being that society as a whole is not invested in the outcome or in the circumstances of the dispute, but rather in the existence of a channel for peaceful resolutions of disputes. See Richard L. Abel, "A Comparative Theory of Dispute Institutions in Society," *Law & Society Review* 8.2 (1974): 217-347; William M. O'Barr and John M. Conley, "Litigant Satisfaction versus Legal Adequacy in Small Claims Court Narratives," *Law & Society Review* 19.4 (1985): 661-702; Roselle L. Wissler, "Mediation and Adjudication in the Small Claims Court: The Effects of Process and Case Characteristics," *Law & Society Review* 29.2 (1995): 323-58; Bruce Zucker and Monica Her, "The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System," *University of San Francisco Law Review* 37.2 (2003): 315-50. Contrast with the process of small claims in a class action case: William B. Rubenstein, "Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action," *University of Missouri Kansas City Law Review* 74.3 (2006): 709-28. See also n. 85 on mediation and Gerald R. Williams, "Negotiation as a Healing Process," *Journal of Dispute Resolution* 1996.1 (1996): 1-66.

[79] While the hierarchical structure of the sect is evident and should not be confused with a democracy, it is noteworthy that this aspect is also an element of constitutional democracies. Stephen Holmes notes the significance of "securing public debate" (and not only the Freedom of Speech), as well as the limitations on self-binding, which are allowed in a democracy, but a sovereign community "cannot renounce its capacity to learn." See Stephen Holmes, "Precommitment and the Paradox of Democracy," in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1988), 232-40.

witnesses (Deut 17:6; 19:15) for the examination of alleged law-breaching.[80] However, if it is a grave matter that potentially bears capital punishment and there is only one witness, the Damascus Document allows for a public reproach:

16b	כל דבר אשר ימעל
17	איש בתורה וראה רעיהו והוא אחד אם דבר מות הוא וידיעהו
18	לעיניו *vacat* בהוכיח למבקר והמבקר יכתבהו בידו עד עשותו
19	עוד לפני אחד ושב והודיע למבקר אם ישוב וניתפש לפני
20a	אחד שלם משפטו

16b Any matter in which a man betrays
17 the Law, and his fellow saw, he being alone, if it is a matter of death [i.e., of capital punishment] he shall report it
18 before his eyes, *vacat* reproaching [him] to the Overseer. And the Overseer shall write it in his hand until he commits
19 again before one, who will again report to the Overseer. If he repeats it and is caught before
20a one, his judgment is complete.[81]

This law addresses the problem of transgressions lacking the required number of witnesses. However, it is also relevant in constructing societal relationships. If a member sees another member transgress and is not allowed report it, being a single witness, this can develop into a grudge and contentious feelings within the community. Furthermore, this law eliminates the possibility of a member arguing with another, claiming in his defense that the argument was for the sake of the law and God. If a member has such proof, he must offer it publicly, with the Overseer administering the reproof, and thus containing the argument in a controlled environment. This is a concern that is evident in further laws: both 1QS and 4QD have laws against taking vengeance,[82] with 4QD clearly fashioning itself after Lev 19.[83] Based on CD 9.4, the fragment is reconstructed to state the following: "if he brings it in his wrath, or told his elders so that they despise him, he is an avenger." The need to bring forth a reproach even with lack of witnesses thus becomes clear as a law that is more concerned

[80] See Jackson, *Essays in Jewish and Comparative Legal History*, 153-71.
[81] CD 9.16-20.
[82] 1QS 7.9.
[83] 4QD^{c} 6, iii, 17-19.

with the possible grudge of the single witness if he is prevented from reporting what he saw than with the actual transgression.

Another way in which any full member is allowed to sound his voice is before the Session of the Many. 1QS states:

12b וכול איש אשר יש אתו דבר לדבר לרבים אשר לוא במעמד האיש השואל את עצת
13a היחד ועמד האיש על רגלוהי ואמר יש אתי דבר לדבר לרבים אם יומרו לו ידבר

12b And any person who has a thing to say to the Many, who is not in the position of a man who asks the counsel

13a of the Yahad, that man will stand on his feet and say: "I have something to say to the Many." If they shall tell him [speak], he shall speak.[84]

From this law it is apparent that acceptance as a full member, who is allowed to sit in the Session of the Many, did not immediately grant speaking rights in the assembly. The only permission to speak was, in fact, for the request of a permission to speak. This law reveals, therefore, a further limitation on speech and voice within the community, but also provides a certain right to lower-ranking members, so that they are not completely silenced.

Put together, these laws reflect an effort to resolve in an organized and public manner any grudges or grievances, which are quite likely to arise within a small community, without compromising the power of its officers and institutions.[85]

---

[84] 1QS 6.12-13.

[85] Granted, law is not necessarily the first route to solve such personal grievances in a small community, and this feature is another sign of the intensely legal society reflected in the Damascus Document and the community rule. For further communal models, see William L. F. Felstiner, "Influences of Social Organization on Dispute Processing," *Law & Society Review* 9.1 (1974): 63-94; Kanter, *Commitment and Community*, 139-42; Robert A. Dentler, *American Community Problems* (New York: McGraw-Hill, 1968), 49-61. In contrast to this intensely legal system, it is interesting to note the withdrawal from courtrooms in recent times, with the rise of mediation and settlements. See Angela Garcia, "Dispute Resolution without Disputing: How the Interactional Organization of Mediation Hearings Minimizes Argument," *American Sociological Review* 56.6 (1991): 818-35; Marc Galanter, "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," *Journal of Empirical Legal Studies* 1.3 (2004): 459-570; idem, "A World without Trials?" *Journal of Dispute Resolution* 2006.1 (2006): 7-34; James Michel, "Alternative Dispute Resolution and

4.6. *Conclusion: Obligation and Authority between Interpretation and Communication*

The obligation to obey the law is absolute in the Essene perception. There are not even any discussions, as in later rabbinic literature, regarding the need to obey the law when the judges or legislators are wrong. The sectarians did not concede to such a possibility since in their view there was only one eternal law, ordained by God, and any discrepancies within it or arguments about it were explained as the gap caused between the revealed and concealed law.

However, regardless of their manifest understanding of the law and its binding status, a tension can be discerned between the Essenes' obligation to the divine law and their daily routine of human coercion. This tension is evident in the many laws that are concerned with obedience to the sect's officers and institutions, rather than to divine law. The call for this commitment reflects at least a fear from contestations of authority, if not actual responses to such challenges. These laws further complement other societal efforts to solidify the commitment to the community as a whole.

Effectively, we may say that within the sect authority was in the hands of those controlling the legal and social institutions. The officers and higher-ranked members held the authority for all practical purposes. But since the legal life of the sect relied so heavily on the biblical law, authority was primarily the claim for direct understanding of divine law and its interpretation. In the previous chapter, I discussed Dan-Cohen's juxtaposition of "interpretation" and "communication."[86] For Dan-Cohen, Interpretation is a collaborative process of constructing meaning, whereas Communication is the authoritative process by which power transmits its decisions to its subjects. It is not surprising that in a non-democratic community, the role of collaborative Interpretation is diminished in comparison to Communication. The two seem to be merged, with those in power claiming sole privileges for interpretation, too. But even within such a society, examples of ongoing tensions and various voices demanding to be heard are addressed, as reflected in the laws regulating speech and reproof. The leaders' claim for exclusivity over interpretation remained uncontested, to be sure, but the social laws of speech reflect gradual

---

the Rule of Law in International Development Cooperation," *Journal of Dispute Resolution* 2011.1 (2011): 21-46; Robert E. Goodin, *On Settling* (Princeton: Princeton University Press, 2012).

[86] Dan-Cohen, *Harmful Thoughts*, 13-36.

developments of a joint communal effort. This effort is situated within the biblical laws, but also presents independent challenges and responses of a voluntary community and its necessary arrangements to solidify commitment.

The numerous examples from the penal code are in themselves a significant indicator for the role of law in solidifying obligation. The sense of commitment was instilled through various social norms, summarized by Kanter as Mortification and Transcendence. Yet, the social process of commitment did not conclude with the detachment from the outer world, reflected in the Essene texts and complying with Kanter's analysis. Obligation to the community continued to be an issue beyond the informal social processes and relations with the external world, as is evident from the penal code which is preoccupied with the duty of members to the hierarchy and the organizational pattern of the sect.

CHAPTER FIVE

A CASE STUDY: BIBLICAL LAWS OF PREMARITAL SEX IN THE DEAD SEA SCROLLS

5.1. *Introduction*

The laws of premarital and extramarital sex in the Dead Sea Scrolls derive from their biblical formulation in Ex 22:15-16 and Deut 22:13-23:1, as well as the specific restrictions on priests in Lev 21:7, 9 and the High Priest in Lev 21:13-15. While premarital sexual relations can be conceptualized as merely a sub-category of extramarital relations, the Deuteronomic laws marks them as a different and separate category due to the special significance placed on feminine virginity upon marriage.[1] As I will discuss below, the non-virgin unmarried woman was rendered an exceptional source of danger for concerns related to both purity and chastity. The distinction between these two types of extramarital relations is emphasized in the Deuteronomic laws as well as in its postbiblical adaptations in the Scrolls.

These adaptations appear in two different works: the sectarian Damascus Document and the non-sectarian Temple Scroll. The purpose of this chapter is to examine the notions described in the previous chapters as they appear in these laws, and to account for the differences between the Damascus Document and the Temple Scroll in this case as an example for differences of wider concerns and opposing worldviews.

---

[1] Tikva Frymer-Kensky, "Virginity in the Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. by Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky (Sheffield: Sheffield Academic Press, 1998), 79-96.

5.2. *The Biblical Laws of Premarital and Extramarital Sex*

Any comprehensive legal system will include laws of sexual conduct. As societal norms change, some prohibitions are considered immoral, while past practices are reconceptualized as horrific and criminal. These distinctions and shifts follow the binary explored by feminist anthropologist Gayle Rubin in her essay "Thinking Sex."[2] Yet the idea of excluding sex from the realm of law entirely is unthinkable. This point is significant because laws against premarital and extramarital sex, including prohibition on adultery, may seem extremely conservative and antiquated to most Western readers nowadays. Regardless of one's views on the morality of adultery or premarital sex, it is widely accepted that criminalizing these acts would be an intrusion of privacy and a disproportionate infringement on individual rights.[3] The discussion of premarital sex should open with an emphasis that there is nothing antiquated or strange about the reality of laws regulating sex.[4] Nonetheless, the marked difference between the biblical law and contemporary laws in democracies is that privacy and individual rights are not a foundation of biblical law. Since contemporary law considers sex to be private, and intervenes only inasmuch as there is a danger of harm to an individual's rights and wellbeing. Biblical law considers personal purity, whether moral or ritual,[5] to be a matter that

---

[2] Gayle S. Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in *Culture, Society and Sexuality. A Reader*, ed. Richard Parker and Peter Aggleton (New York: Routledge, 2007), 143-78.

[3] E.g. Dworkin, *Taking Rights Seriously*, 240-78; Richard A. Posner, *Sex and Reason* (Cambridge: Harvard University Press, 1992), 70-82, 181-266.

[4] For contemporary discussions and examples, see Jean L. Cohen, *Regulating Intimacy. A New Legal Paradigm* (Princeton: Princeton University Press, 2002); Lori Gruen and George E. Panchias, eds. *Sex, Morality, and the Law* (New York: Routledge, 1997); Elizabeth Bernstein and Laurie Schaffner, eds., *Regulating Sex. The Politics of Intimacy and Identity* (New York: Routledge, 2005), Lessig, "Regulation of Social Meaning," 1019-25, and Posner, *Sex and Reason* (op. cit.).

[5] For the distinction of moral and ritual impurity in priestly law, see Tikva Frymer-Kensky, "Pollution, Purification, and Purgation in Biblical Israel," in *The Lord of the World Shall Go Forth. Essays in Honor of David Noel Freedman*, ed. Carol L. Meyers and M. O'Connor (Winona Lake: Eisenbrauns, 1983), 399-414; David P. Wright, "The Spectrum of Priestly Impurity," in *Priesthood and Cult in Ancient Israel*, ed. Gary A. Anderson and Saul M. Olyan (Sheffield: JSOT, 1991), 150-81; Jonathan Klawans, *Purity, Sacrifice, and the Temple* (Oxford: Oxford University Press, 2006), 53-56. For implications in postbiblical Judaism, see idem, "The Impurity of Immorality in Ancient Judaism," *JJS* 48.1 (1997): 1-16; Himmelfarb,

affects the public. Regardless of this specific issue, it also has no aversion to legislating on matters that are entirely private, since the law is claimed to be divine and pertaining to all aspects of life. The women in these laws are never fully established individuals, but always under the custody of a man, either their father or their husband.

The detailed formulation of premarital and extramarital laws appears in Deut 22:13-23:1. The section relating to premarital sex (Deut 22:23-29) is evidently an expansion and amendment of the brief law in Ex 22:15-16. It relates to five cases in the following order:

a. The slandered bride (Deut 22:13-21)
b. The married adulteress (v. 22)
c. The betrothed maiden (vv. 23-27)
d. The unbetrothed maiden (vv. 28-29)
e. The father's (former) wife (Deut 23:1)[6]

In each of these cases, the law assumes some facts which lead to different punishments and outcomes. Before analyzing the cases in detail, I would like to summarize the law relating each case:

a. The slandered bride: If a bride accused of not being virgin after the wedding-night can prove the accusations are false, she will be acquitted, and her husband is prohibited from ever divorcing her. If the accusations are found to be true, she is to be stoned to death.

"Impurity and Sin in 4QD, 1QS, and 4Q512"; Vered Noam, "The Bounds of Non-Priestly Purity: A Reassessment," *Zion* 72.2 (2007): 127-60 (in Hebrew); eadem, "Ritual Impurity in Tannaitic Literature: Two Opposing Perspectives," *JAJ* 1.1 (2010): 65-103.

[6] Deut 23:1 belongs to this group, because it deals with illicit relations, rather than the list of those prohibited from nearing the assembly. However, except for this verse, all the laws in this group deal with extramarital or premarital sexual relations. Perhaps the fact that this verse is the odd one led to its separation in the division of chapters of the Hebrew Bible. Von Rad purports that it is of "very different origin." See Gerhard von Rad, *Deuteronomy. A Commentary* (trans. Dorothea Barton; London: SCM Press, 1966), 143; Bernard M. Levinson regards it as "a transition from marriage law to the next section," in his annotation on the verse for the *Jewish Study Bible*, ed. Adele Berlin and Marc Zvi Brettler (Oxford: Oxford University Press, 2004), 418.

b. The married adulteress: If a man and a married woman are involved in a sexual encounter, both the man and the adulteress are categorically condemned to capital punishment.
c. The betrothed maiden: The fate of a betrothed maiden who has been involved in a sexual encounter depends on the location of the scene. If the location is proven to have been a field – i.e., a deserted area, the conclusion is that she was raped and her cries for help were of no avail, and she is therefore acquitted. If, on the other hand, the location is proven to have been a town – i.e., a populated area, it confirms she did not cry for help, and therefore was not raped and is condemned to stoning. The man involved is liable in both cases.
d. The unbetrothed maiden: an unbetrothed maiden who has been involved in a sexual encounter is forced to marry the man, who in turn is prohibited from ever divorcing her.
e. The father's former wife: A man is forbidden to marry his father's former wife. Unlike the other laws in this group, this law is apodictic.[7]. It does not refer to a premarital sexual encounter but to marriage.[8] Therefore, it does not address the case of a man caught having sexual relations with his father's former wife, but simply prohibits marriage under such circumstances. This obviously assumes that sexual relations are prohibited too, but the phrasing of the law does not decree a punishment to follow.

---

[7] On the term apodictic law and its meaning, see Albrecht Alt, "The Origins of Israelite Law," in his *Essays on Old Testament History and Religion* (translated by R.A. Wilson; Oxford: Basil Blackwell, 1966), 79-132. The different wording of the father's former wife law may suggest that it does not belong to this group of laws. However, as Eckart Otto notes, the law of the married adulteress in v. 22 was also originally an apodictic law "which was superficially transformed into a casuistic legal sentence." See Eckart Otto, "False Weights in the Scales of Biblical Justice? Different Views from Patriarchal Hierarchy to Religious Equality in the Book of Deuteronomy," In *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky (Sheffield: Sheffield Academic Press, 1998), 132.

[8] For "Take a wife" (לקח אשה) as a term for marriage see Horst Seebass, "לקח – lāqah," in *Theological Dictionary of the Old Testament*, ed. G. Johannes Botterweck and Helmer Ringgren; trans. Douglas W. Stott (Grand Rapids: Eerdmans, 2006), 8:19.

5.2.1. *The Slandered Bride*

There is considerable doubt regarding whether the law of the slandered bride could have been implemented as it is written. However, in the context of its value for the study of law and society, the question of implementation is only secondary to the issue of legislation. Its formulation reveals concepts, realities, and values within a society who believed this law should be practiced.

This casuistic law begins with a case of a man who immediately after the consummation of his marriage decides he is not pleased with his newly-wed bride, and tries to dissolve the marriage by accusing the bride of not being a virgin. The nature of the accusation explains the immediateness of the event. According to biblical law, men were allowed to divorce their wives for almost any reason,[9] and since monogamy was not required, a man could also keep a wife whom he did not love and marry another woman.[10] An accusation regarding the bride's virginity would only be valid immediately after the consummation of the marriage, since it would not be plausible to request a divorce on these grounds, let alone a reimbursement of the dowry, years after the marriage had taken place. In light of all this, when trying to imagine what would lead a husband to make such an accusation immediately after his marriage, the main plausible motivation seems to be a problem with the sexual intercourse or the sexual compatibility. Any other imaginable reason is either based on information

[9] Deut 24:1. Commentators generally agree that the wording in this law does not refer to the existence of any specific problem that a husband must prove in order to divorce his wife. Rather, it assumes that any problem which may lead a husband to want a divorce constitutes as sufficient grounds. See S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy* (Edinburgh: T. & T. Clark, 1902), 269-71; Anthony Phillips, *Deuteronomy* (Cambridge: Cambridge University Press, 1973), 159-60; von Rad, *Deuteronomy*, 150; Tigay, *Deuteronomy*, 221. In contrast, Levine takes this wording to be euphemism of adultery: Baruch A. Levine. *Leviticus* (Philadelphia: Jewish Publication Society, 1989), 143-4.

[10] This is suggested by biblical regulations regarding multiple wives, Deut 21:15-17. Though Deuteronomy does not mention the circumstances that led the man to having two wives, keeping an unloved wife and marrying an additional woman is at least a plausible explanation. See also 1 Sam 1:1-8. Either choice (of divorce or taking an additional wife) would have financial consequences and as such would not be available to all. See Raymond Westbrook, *Old Babylonian Marriage Law* (Horn, Austria: Berger, 1988); idem, "The Prohibition of Marriage in Deuteronomy 24:1-4," *Scripta Hierosolymitana* 31 (1986): 387-405; Roland de Vaux, *Ancient Israel: Its Life and Institutions*; trans. John McHugh (Grand Rapids: Eerdmans, 1997, reprint), 24-36.

the husband could have known about the wife before the wedding or else premature. The husband could not have been unsatisfied with her looks or her family lineage, since those would have been known to him beforehand. On the other hand, problems such as a personality-clash, growing apart, or dislike of cooking[11] would not have arisen in time for the accusation of the virginity to still be plausible. Therefore, the husband must be complaining of a problem that arose during the sexual intercourse, but instead of admitting the problem itself, is fabricating a different problem concerning sexual intercourse.[12] This admittedly Freudian reading of the biblical law is the only explanation that seems plausible under the circumstances described.[13]

However, even when read through a Freudian prism, the accusation and verification at the base of this law suffer from several plausibility problems. Deut 22:15-17 mandates a proof, linking the question of enforceability of this law with the existence of evidence.[14] But the required evidence calls into question whether such a case would ever occur: in order for the parents to prove their daughter's virginity, it seems that the biblical author expects them to obtain the dress of the consummation. It is unclear how the parents are to obtain this and, if it is known that they will obtain it,

---

[11] This is mentioned as reasonable grounds for divorce in *m.* Gittin 9.10. Cf. Judith R. Baskin, *Midrashic Women. Formations of the Feminine in Rabbinic Literature* (Hannover: University Press of New England, 2002), 89-99; J. D. Rosenblum, *Food and Identity*, 113.

[12] For a recent analysis of the problems in this law see Bruce Wells, "Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy," *JBL* 124.1 (2005): 41-72; cf. Tigay, *Deuteronomy*, 476-7.

[13] Driver also noticed the significance of the timing of the accusation, interpreting the word "hate" in v. 13 as "turn against her, after his carnal desires have been satisfied" (Driver, *Deuteronomy*, 254). However, since most marriages in pre-modern times would include an initial aspect of "carnal satisfaction," without the accusation described here, Driver's explanation still fails to account for why one husband would turn against his wife after these desires were satisfied while another would not, or alternatively, desire his wife even more. Driver might be implying that the law is safeguarding against men who would marry solely for the sake of experiencing a sexual intercourse with a desired woman. However, this is not implied in the wording of the law, since the "hate" is reported as genuine.

[14] The linkage between enforceability and evidence is a very common notion in legal theory, and especially so for the problem of civil procedures rather than criminal ones, as is the case of the law of the slandered bride. See Mark R. Reiff, *Punishment, Compensation, and Law. A Theory of Enforceability* (Cambridge: Cambridge University Press, 2005), 227-9; Ayres and Klass, *Insincere Promises*, 113-41, 170-93.

whether the possibility of slander is undermined from the outset. In other words, if the law assumes a ritual in which a blood-stained dress is handed-over to the bride's parents in the morning after the wedding-night, the groom should have been aware of it too and not bring forth an accusation which can be debunked so easily. If the accusation rises only in the event of the lack of such evidence, the entire law is rendered irrelevant, since the accusation is no longer false. Another problem pertains to the possibility of accomplice parents. If the accusations are true, and the parents know that their daughter will be put to death and their household will be disgraced, they have an interest in producing false evidence for their daughter's virginity – for instance, by slaying an animal and staining a dress in its blood.[15] Thus, the dichotomy that the law portrays, as if only the husband can be either lying or truthful is invalidated, rendering the entire case a much more difficult trial than the straightforward solution mandated by the law.[16]

Yet despite these irresolvable plausibility problems, this law bears more significance in its context than the actual case it tries to portray. First of all, it demonstrates how in biblical society, even after a women married she was not considered an active party in a juridical procedure concerning her. The marriage was conceptualized as a procedure in which the bride switches from the legal responsibility and custody of her father to that of

---

[15] Cf. Gn 37:31. A similar concern is evident from the Baghdad custom (*minhag*) to allow intercourse by candlelight for couples on their first night, as reported in the responsa *Mishneh Halakhot* 4.197. See Menasheh Klein, *Sefer Mishneh Halakhot* (New York: Mekhon Mishneh Halakhot Gedolot, 2000), 4:306-307. See *m.* Nid 2.4 and *b.* Nid 16a-17a for further cases of candlelight intercourse in order to allow inspection of visible blood (there in the case of doubt of menstruation). The prohibition of intercourse by candlelight is found in Kallah Rabbati 1.22, and should be seen as part of a general prohibition on exposing or viewing genitals (e.g. *b.* Shab 118b; *b.* Ned 20a), also found in the Dead Sea Scrolls (1QS 7.12-14; 4QD^{a} 10 ii, 9-11; 4QD^{c} 7 i, 2-3). Modern medicine allows for cosmetic surgeries of hymen restoration which further attests to the willingness of families to use deception concerning a bride's virginity in societies that places high value on it. See Rebecca J. Cook and Bernard M. Dickens, "Hymen Reconstruction: Ethical and Legal Issues," *International Journal of Gynecology & Obstetrics* 107.2 (2009): 226-69; Vardit Rispler-Chaim, "The Muslim Surgeon and Contemporary Ethical Dilemmas Surrounding the Restoration of Virginity," *Hawwa* 5.2 (2007): 324-49.

[16] See Frymer-Kensky, "Virginity in the Bible," 94-5; Victor H. Matthews, "Honor and Shame in Gender-Related Legal Situations in the Hebrew Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky (Sheffield: Sheffield Academic Press, 1998), 108-11.

her husband. In the rare case of a dispute in which her husband wanted to call off the new arrangement, her father returned to assume the role of her custodian, since the husband could not represent her in court.[17]

The double punishment bestowed upon the husband in case of a false accusation – a fine and a prohibition to divorce the woman – seems to be the main purpose of the law, serving as a solution to two different hidden motives the husband might have. If the accusation is false and intended to dissolve the marriage, he will be deterred by the prohibition, since it might result in having to stay married to this wife for the rest of his life. Thus the law creates a situation where it is more favorable for the husband to divorce his wife by conventional means. This, of course, protects the bride to a certain extent, since a divorce is only part of the threat that false accusations may pose for her, alongside slander and humiliation. The fine might be the law's way of addressing a possible financial motive behind such false accusation, when the husband does not seek to divorce the wife, but only to gain a financial benefit.[18] For example, by making his false accusation privately and offering to spare the parents of the shame by staying married to their allegedly unchaste daughter, in return for a dowry reimbursement (since supposedly he did not get his money's worth – i.e., a virgin).[19] Such a run of events is not what is implied in the biblical law, where it is very clear that the case is publicized, both by the mention of the gates of the city, and the explicit claim that he "made a bad name for her," indicating that the allegation became public. However, the stipulation of a fine in addition to the prohibition of divorce still seems to be aimed at deterring any husband who plans on gaining back the dowry he paid by means of false accusations.

The possibility that a husband could make such a claim relies on the understanding that although biblical law does not endorse premarital sex, there is also no overt prohibition of laymen marrying women who are not

---

[17] This reality is reflected also in the case in which husbands die prematurely, and the widows are asked to return to their father's households. Cf. Gn 38:11; Ruth 1:8. See Esther Fuchs, "Structure and Patriarchal Functions in the Biblical Betrothal Type-Scene. Some Preliminary Notes," in *Women in the Hebrew Bible. A Reader*, ed. Alice Bach; London: Routledge, 1999), 45-51.

[18] Frymer-Kensky, "Virginity in the Bible," 93-4; Phillips, *Deuteronomy*, 48.

[19] Thus Tigay, *Deuteronomy*, 204, 384; Frymer-Kensky ("Virginity in the Bible," 93) argues that it is possible that the husband does actually wish to dissolve the marriage but at the same time plans to avoid returning the bride's dowry to her.

virgins. Moreover, this group of laws in Deuteronomy seems to assume that it is acceptable. In other words it could be said that according to biblical law, all people should marry in virginity ideally but not categorically. This can be deduced from several points. First, in the case of the betrothed maiden who is raped in the field (vv. 25-27), the case concludes by decreeing that nothing shall be done to her. She is completely acquitted, and the assumption is that her fiancé is free to marry her. Though the law does not address a case in which the fiancé should choose to break the engagement due to the events, there seems to be no problem with her marrying after it. The case of the unbetrothed maiden, whom is assumed to have been raped, further proves this: by ordering the rapist to marry her, it indicates that marriage to a non-virgin is legitimate in biblical law. This is not a clear-cut case as the previous one, since she must marry the one who first had sexual intercourse with her. Nevertheless, in the context of the group of laws, this case serves as a further proof that premarital sex does not exclude marriage in the eyes of the biblical legislator. The only law within this group of laws that may seem to condemn marrying a non-virgin is Deut 23:1 which prohibits a man to marry his father's wife. However, the wording of the law allows a deduction of several facts that eliminate this possibility. First, the wife in question is not the man's mother (otherwise there was no need for such law since such marriage would fall under the definition of already prohibited incest). Second, the woman in question is no longer the father's wife; hence, she is either a widow or a divorcee. If marriage of laymen to non-virgins was prohibited altogether, including widows or divorcees, there would be no need for such a law. These conclusions are also in accordance with the specific marriage laws for the priests in Lev 21, where it is specified that regular priests are not allowed to marry divorcees (but it seems they are allowed to marry widows), while the High Priest is also prohibited to marry a widow, and is explicitly commanded to marry only a virgin (Lev 21:13).[20]

5.2.2. *Laws of Premarital Sex: The Betrothed and Unbetrothed Maidens*

The conclusion of the case of the "slandered bride" raises an important issue in legal theory – namely, the discrepancy between values

[20] On the prohibition and its reasons see Jacob Milgrom, *Leviticus 17-22*, 1818-19.

promoted by the law, and breaches condoned by it for practical purposes. Such practical purposes might relate to the question of enforceability, and the effect of legislating unenforceable laws, or even to the limits of the law, conceiving its role as separate from morals.[21] The legitimacy of marrying non-virgins should be considered as such a concession and the practical aspect behind it becomes even more apparent in the distinction between the betrothed and the unbetrothed maiden. The first purpose that such a distinction serves in Deut 22:23-29 is offering a response to its parallel law in the earlier Covenant Code, in Ex 22:15-16. The Covenant Code stipulates the case of the unbetrothed maiden, and thus begs the question of the proper solution for the betrothed maiden.

The practical aspect of the law is apparent in the distinction between the solutions dictated in each case. For the first case, since the maiden is unbetrothed, the law decrees that the couple be married, and by that easily solves the problem. In this sense, Deut 22 is in keeping with Ex 22 and though it is objectionable to contemporary values of human rights, both laws are intended to protect the maiden. She is not left to a fate of a non-virgin who needs to be married, and the husband is not allowed to divorce her due to the special circumstances of the marriage. Thus, in this case the biblical law favors settling the problem of premarital sex not through punishment but rather by creating a new household. Though different in several aspects, the parallel law in Ex 22:15 presents a similar rationale regarding this point.[22]

Such a solution is obviously unavailable in the case of the betrothed maiden.[23] If the law was to decree that the betrothed maiden is to marry the

---

[21] See chapter 2, n. 20 for general references on the relationship of law and morals. On issues of enforceability see Reiff, *Punishment, Compensation, and Law*, 45-75. On limiting legal involvement in morals, see Ori J. Herstein, "Defending the Right to Do Wrong," *Law and Philosophy* 31.3 (2012): 343-65.

[22] The differences between the law of the unbetrothed maiden in Deuteronomy and Exodus will be discussed below, in relation to the Temple Scroll and its employment of both sources. For an overview of the differences between the two versions of the law, see Hiebert, "Deuteronomy 22:28-29 and Its Premishnaic Interpretations," 206-10. See also Frymer-Kensky, "Virginity in the Bible," 91-3; Otto, "False Weights in the Scales of Biblical Justice?" 132-4.

[23] For the background of the biblical concept and purpose of betrothal, see Westbrook, *Old Babylonian Marriage Law*, 29-47. See also, though with greater emphasis on rabbinic concepts of the term, Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton: Princeton University Press, 2001), 68-89.

man involved in the sexual encounter, it would deprive the betrothed man of his legal rights.[24] Furthermore, such decree would pose a threat to the ruling patriarchal order as it would cause a situation in which any woman who was unhappy with the match made for her could change it by her own choice.[25] Therefore, the law decrees that the man involved in the sexual encounter is to be put to death. The woman is acquitted due to the introduction of the possibility of rape. The novelty of the concept is reflected in the lack of a term for it, for which the legislator compensates with a compelling parallel: "for as a man rises against his fellow and murders him, so is this thing. For he found her in the field: the young woman cried out, but there was none to save her."[26]

The practical socio-legal explanation is satisfactory only to a certain degree. It accounts for the difference between the fate of the betrothed and the unbetrothed maidens, but it does not account for the separate assumptions regarding these cases. The interesting divergence is that the biblical text provides two possibilities of cases and results only in the case of the betrothed maiden (the town and the field). The test of whether it was a rape or not according to the location is offered neither for the adulteress in verse 22, nor for the unbetrothed maiden in verses 28-29. Some commentators have claimed that it is clear that if the married woman could prove she was raped she would be saved from the fate of stoning.[27] However, the text does not specify this and there is no apparent reason for such an assumption. On the contrary: that the text discusses the case of the betrothed maiden so elaborately seems to indicate that this is an exception.

---

[24] Indeed, as noted previously, a discourse of rights is not entirely appropriate in relation to ancient laws, which were not based on a developed concept of basic rights shared by all humans. Nonetheless, there are certain rights, such as rights of ownership, which even ancient laws acknowledge. In this case, the betrothed man may have paid a dowry for the betrothal and would thus be wronged if his fiancée were to be married off to another man.

[25] On the common problem of the laws that give power to virgins to choose their groom via illicit sexual relations, see Frymer-Kensky, "Virginity in the Bible," 91-3; David Rothstein, "Gen 24:14 and Marital Law in 4Q271 3: Exegetical Aspects and Implications," *DSD* 12.2 (2005): 203-4.

[26] Deut 22:26-27. Translation is based on Alter, *Five Books of Moses*, 990, but I disagree with his rendition into the subjunctive mood here ("the young woman could have cried out, and there would have been none to save her"). Quite the contrary: the wording does not include a jussive form, and it implies that surely the young woman cried out, and therefore she is acquitted.

[27] See for example Tigay, *Deuteronomy*, 207.

The text does not allow ambiguity regarding the married woman, nor regarding the unbetrothed maiden, but their fates are exact opposites. While the married woman is condemned to death and is not given the benefit of the doubt that she was raped, the unbetrothed maiden is acquitted and under no condition is put to death.

One possible solution to this puzzle lies in an unspoken assumption the law might be making regarding the factors of age and sexual desire in each of these cases. The unbetrothed maiden would have plausibly been a very young girl, who has not yet reached a marriageable age. The law therefore might assume she has no sexual desire. This assumed lack of sexual desire rules out the possibility of the unbetrothed maiden initiating a sexual encounter of her own free will and thus suggests that the loss of her virginity occurred as a result of rape. This is also implied by the language used to describe the case, markedly different from the language used in Ex 22:15-16.[28]

Regarding the married woman, the text assumes the exact opposite: not only is she of age, but she is also said to have sexual experience (בעולת-בעל). Such preconditions lead the biblical legislator to believe that any other sexual intercourse would have been a result of her consent and even desire or initiation. Therefore, no room is left for the possibility of rape and she is condemned as an adulterous – i.e., doomed to stoning.

The betrothed maiden, on the other hand, poses a borderline case for the biblical legislator. She has reached marriageable age, and is therefore considered to have sexual awareness, but her lack of experience makes for an ambiguous case, leaving the question of rape open to circumstances.

5.3. *Premarital Sex in the Damascus Document*

The Damascus Document preserves laws reworking and relying on this group of biblical laws discussed so far. In addition to addressing the same issues, they also share similar vocabulary, suggesting the dependence

---

[28] For "grab" see Ruediger Liwak. "תפש – tpś," in the *Theological Dictionary of the Old Testament*, ed. G. Johannes Botterweck and Helmer Ringgren; trans. Douglas W. Stott (Grand Rapids: Eerdmans, 2006), 15:745-53. However, Frymer-Kensky contends that this is not a strong enough sign that the text is referring to rape, especially in contrast with the law of the betrothed maiden in the field, which makes it much clearer. See Frymer-Kensky, "Virginity in the Bible," 92.

of the Damascus Document on Deuteronomy.[29] This section is not found in the copy of the Damascus Document of the Cairo Genizah (CD), and the best preserved copy of this section in the Dead Sea Scrolls is found in 4Q271, fragment 3. Other copies include the very fragmentary 4Q267, frg. 7 and 4Q270, frg. 5. The fragment in 4Q271 reads as follows:[30]

4b ואשר אמר כי [תמכור] *vacat*
5]ממכר או קנוה מיד]עֲמִיתך לוא תונו איש את עמיתו *vacat* וזה פרו[ש המשפט]
6 [להודיע איש את רעהו] בכול אשר הוא יודע אשר ימצא ◦◦◦◦ [וְגַם אל] יִתֵּן
7 [איש לאחיהו כל דב]ר והוא יודע אשר הוא מועל בו בֶּאדם וּבְהֵמה ואם
8 [את בתו יתן איש לאי]ש את כול מומיה יספר לו למה יביא עליו את משפט
9 [הארורה אשר אמר ארו]ר משגה עור בדרך וגם אל יתנהו לאשר לוא הוכן לה כי
10 [הוא כלאים כחרוש בש]ור וחמור ולבוש צמר ופשתים יחדיו *vacat* אל יבא איש
11 [אשה בברית בעם הקו]דש אשר ידעה לעשות מעשה מִבְּדבר ואשר ידעה
12 [לעשות מעשה בבית] אֲביה או אלמנה אשר נשכבה מאשר התארמלה וכול
13 [בת אשר יצא עליה ש]ם רע בבתוליה בבית אביה אל יקחה איש כי אם
14 [יבקרוה בראות נשים] נאמנות וידעות ברורות ממאמר המבֻקָר אשר על
15 [כול אנשי המחנה ואח]ר יקחנה ובלוקחו אותה ועשה כמ[ש]פטן וי[גידו] וענו

4b And concerning what He said, 'When [you sell]
5 [anything to or buy anything from] your neighbor, you shall not defraud one another.' *vacat* This is the interp[retation of the law]
6 [each man is to inform his fellow] in everything that he knows that is found in… [Moreover, let not one] give
7 [to his fellow any thin]g while knowing that he is wronging his fellow, whether it concern man or beast. And should
8 [a man give his daughter to a ma]n, he shall recount all her blemishes to him, for why should he bring upon him the judgment
9 [of the curse which He said, 'cur]sed be he who leads a blind man astray on the road.' Moreover, he should not give her to one unfit for her, for
10 [that is *kil'ayim*, as plowing with an o]x and an ass and wearing wool and linen together. *vacat* Let no man bring

[29] As Shemesh notes, "the Damascus Document contains textual units whose structure is based upon biblical verses, although the latter are not explicitly cited" – see Shemesh, "Scriptural Interpretations in the Damascus Document," 174. See also Devorah Dimant, "The Hebrew Bible in the Dead Sea Scrolls: Torah Quotations in the *Damascus Covenant*"; Wassen, *Women in the Damascus Document*, 73.

[30] For text see J. M. Baumgarten, *DJD 18*, 176.

11 [a woman into the covenant with the ho]ly [people] who knew how to perform an action with the thing[31] and who knew

12 [how to perform an action in the household of] her father, or a widow who was laid[32] since she was widowed. And any

13 [daughter upon whom there is] a bad [na]me of her virginity in her father's home, let no man take her, except

14 [upon examination, in viewing] by trustworthy [women] of repute selected by command of the Overseer of

15 [all the people of the camp. After]ward he may take her, and when he takes her he shall act in accordance with their[33] judgment, and they shall say and respond

---

[31] The elaborate euphemistic phrase is peculiar especially since it is introduced with a common biblical euphemism, "to know." As such, it almost seems to expand and explain the biblical euphemism, by explaining what knowledge is alluded in the phrase. If the reconstruction of the following line is correct, it is also curious that the text would present both "knew to perform an action with the thing" and "knew to perform an action." It is therefore possible that the odd phrase is alluding to chastity rather than virginity, abhorring any sexual encounters. The intensified term **לעשות מעשה** is probably an attempt to clarify that a specific action is in mind, despite the abstract description. The abstract word is comparable to later rabbinic uses such as **תשמיש**, **הרגל** and even **דבר** which appears in 4QD, but apparently in reference to genitalia rather than the act of intercourse. See David Biale, *Eros and the Jews: From Biblical Israel to Contemporary America* (Berkeley: University of California Press, 1997), 42-45; Shlomo Naeh, "**הרגל מצווה**," *Tarbiẓ* 65.2 (1996): 231-236; Shalom M. Paul, "An Akkadian-Rabbinic Sexual Euphemism," in *Torah lishma: Eessays in Jewish Studies in Honor of Professor Shamma Friedman*, ed. David Golinkin et al. (Jerusalem: Schechter Institute of Jewish Studies, 2007), xi-xiii. For a brief and effective survey of the various needs for euphemisms in postbiblical texts relating to the Hebrew Bible, see Abraham Tal, "Euphemisms in the Samaritan Targum of the Pentateuch," *Aramaic Studies* 1.1 (2003): 109-29.

[32] The euphemism for intercourse may sound crass in contemporary English, but the verb accurately reflects the use of "lay" as the euphemistic verb, uncharacteristically declined in the passive form of a *niphal*. Since this follows a different euphemism for intercourse (see previous note) it is possible that this was considered a more explicit expression, which might be more appropriate when discussing a widow, with no need for presumptions as to her sexual experience. Note that the only two places in the Hebrew Bible that use **שכב** in the *niphal* (Isa 13:16; Zech 14:2) are both cases of a masoretic practice in which a word is written but not read (**כתיב ולא קרי**), in this case, the more explicit verb, **תשגלנה** (cf. *b.* Meg 25b, and Carol and Eric Meyers' Anchor Bible commentary on Zechariah 9-14, 414-5). This can reinforce the notion that the mere naming of the sexual act involving a passive woman evokes a more explicit and even crass connotation. On other Masoretic practices for euphemistic purposes see Carmel McCarthy, *The Tiqqune Sopherim and Other Theological Corrections in the Masoretic Text of the Old Testament* (Freiburg: Universitätsverlag, 1981), 167-96; cf. Emanuel Tov, *Textual Criticism of the Hebrew Bible* (Minneapolis: Fortress, 2001), 58-67.

The law is presented as an interpretation of Lev 25:14, with an explicit citation[34] of Deut 27:18 as rationale for the father's obligation to report all blemishes of his daughter.[35] Nevertheless, the entire section should be read as an expansion of the laws in Deuteronomy 22, stipulating three requirements: the duty of a father to report the blemishes of his daughter; the duty of the father to give his daughter in marriage only to a suitable man; and the duty of a bachelor to choose a chaste woman. While the third stipulation is a duty of a groom rather than of the father, it is formulated with a strong emphasis on the father's household, underlining the dominant subject of the entire passage as the laws of the bride's father. The first and third stipulations are related directly to the laws of premarital sex in Deut 22:13-29. It is therefore hardly a coincidence that the second law, concerning a proper match, relies on the language of *kil'ayim* that appears shortly before the laws of premarital sex (Deut 22:9-11).[36] Thus, a law that is introduced as an interpretation of Lev 25:14 serves as an

---

[33] Contra to Baumgarten's edition for DJD, Qimron reads a final *nun* supplemented to משפט ("judgment"). The female plural possessive suffix refers clearly to the appointed women. See Qimron, *The Dead Sea Scrolls*, 34.

[34] Citation of scripture introduced in both these cases through the formula אשר אמר. See Moshe J. Bernstein, "Introductory Formulas for Citation and Re-Citation of Biblical Verses in the Qumran Pesharim: Observations on a Pesher Technique," *DSD* 1.1 (1994): 30-70. Cf. Tzoref, "Qumran Pesharim and the Pentateuch"; Alec J. Lucas, "Scripture Citations as an Internal Redactional Control: 1QS 5:1-20a and Its 4Q Parallels," *DSD* 17.1 (2010): 30-52.

[35] The quote of the curse in Deut 27:18 against leading a blindman astray concludes with דרך, meaning "path", and hence also "habit," which might bear a euphemistic sense, as in Gn 31:34 and Prov 30:19. This additional sense of דרך may have contributed to the association between the curse and the laws of marriage and safeguards against premarital sex.

[36] While the laws against mixed breeds appear also in Lev 19:19, the specific examples cited in l. 10 of plowing with an ox and a donkey and wearing wool and linen together are mentioned only in Deuteronomy, thus unmistakably associating the passage with the verses that precede the laws of premarital sex. In contrast, Bernstein considers it "unlikely that the law in 4Q271 can be related analytically to Deut 22:13-21." See Moshe J. Bernstein, "The Re-Presentation of 'Biblical' Legal Material at Qumran: Three Cases from 4Q159 (4QOrdinances[a])," in *Shoshanat Yaakov. Jewish and Iranian Stuides in Honor of Yaakov Elman,* ed. Shai Secunda and Steven Fine (Leiden: Brill, 2012), 18. On another usage of the notions of *kil'ayim* and *sha'atnez* in the scrolls, see my discussion in chapter 3 of 4QMMT B 75-82, where they are apparently used in the context of the Essene worldview regarding the essential difference between priesthood and laity.

interpretation of Deut 22:9-29, and seems to implicitly address the puzzle of the proximity of certain laws, ostensibly unrelated, in the text of Deuteronomy.

The dependence of this passage on Deuteronomy is reflected in a shared notion of an examination to determine a bride's virginity, and the groom's right to know her condition prior to marriage.[37] The Damascus Document, however, is unconcerned with the possibility of rape and does not offer any practical solutions for a non-virgin bride as Deuteronomy does. Another important difference is that the Document prescribes the examination of the bride's virginity prior to the marriage in any case of doubt or a bad reputation, whereas Deuteronomy addresses only the issue of allegations after the consummation of marriage.

Furthermore, the Damascus Document adds specific conditions concerning the marriage of a widow whereas Deut 22:9-29 offers no direct reference to a widow. However, based on the law in Deut 23:1 and the one in Lev 21:13, where marrying a widow is explicitly proscribed solely for the High Priest, it is assumed that it was permissible for a layman to marry a widow. The Damascus Document, on the other hand, condones marriage to a widow only providing that she remained chaste and did not engage in extramarital intercourse.

In light of this extra-cautious stipulation, the silence of the Damascus Document regarding the ban of marrying divorcees is peculiar. It suggests that the author has in mind an audience of priests, or one that is at least expected to adhere to the norms of priests.[38] According to biblical law, all priests are categorically prohibited from marrying divorcees (Lev 21:14), and the author thus covers all relevant statuses of women: he alludes to Deut 22, appends it with the law of the widow, and assumes the prohibition of the divorcee. The prohibition on marrying any woman who had sexual

---

[37] As Wassen notes, the obligation to disclose blemishes is also found, although extant only in a fragmentary condition, in the sapiential text 4QInstruction (preserved in 4Q415 and 4Q418) and in the Mishnah, *m.* Qidd 2:5. See Wassen, *Women in the Damascus Document*, 75. For a discussion of the law of the slandered bride in rabbinic sources see Étan Levine, *Marital Relations in Ancient Judaism* (Wiesbaden: Harrassowitz, 2009), 195-9.

[38] On the priestly provenance of the Damascus Document see J. M. Baumgarten, "The Laws of the Damascus Document – Between Bible and Mishnah," 17-26; Philip R. Davies, "The Judaism(s) of the Damascus Document," 27-35; idem, *The Damascus Covenant. An Interpretation of the "Damascus Document"* (Sheffield: JSOT Press, 1982), 202-4; Hempel, *Laws of the Damascus Document*, 38-50, 70; Himmelfarb, *Kingdom of Priests*, 98-142.

experience may also be viewed as an exegetical expansion of the Levitical law.[39]

The differences between the Damascus Document and Deut 22 on this issue raise several questions regarding the Document's attitude toward biblical law. Undoubtedly, the Damascus Document considers biblical law to be authoritative, as is evident from the citation and interpretation formulae which represent these laws as mere explanations of pre-existing rules ordained by God. Yet the divergences of 4QD from the biblical law present a tension between its ostensible claim and its practice. This tension is not peculiar to Essene law, as it exists throughout the history of Jewish legal texts.[40] The mechanisms of addressing this tension differ in the claims made concerning the biblical text, and the practice of interpretation and legislation. Christine Hayes has demonstrated how the rise of rabbinic Judaism in Palestine is characterized by the tannaitic rabbis claiming an extensive degree of authority in interpreting and adapting biblical law and boldly implementing this claim. As Hayes notes, while subsequent amoraic generations continued making similar bold claims, they were much more conservative in their interpretation of biblical law and their willingness to

---

[39] Specifically Lev 21:7, which prohibits marrying a prostitute (זונה) and a חללה. Based on context the second term is usually interpreted as another sexual category though its exact meaning remains obscure. Milgrom for example suggested that it means a woman who was raped: (for this suggestion and a survey of suggestions offered by others there, see Milgrom, *Leviticus 17-22*, 1806-8)

[40] For a foundational study of these tensions see Moshe Halbertal, *Interpretative Revolutions in the Making*. The process of interpreting and adapting law begins even before the canonization of biblical law, as part of the historical development of the Pentateuch. See B. M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*; idem, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press, 2008). For further discussion of postbiblical trends see also Israel Ta-Shma, "The Law is in Accordance with the Later Authority – *Hilkhata Kebatrei*: Historical Observations on a Legal Rule," in *Authority, Process & Method. Studies in Jewish Law*, ed. Hanina Ben-Menahem and Neil S. Hecht (Amsterdam: Harwood Academic Publishers, 1998), 101-28; Cana Werman, "Oral Torah vs. Written Torah(s): Competing Claims to Authority," in *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, ed. Steven D. Fraade, Aharon Shemesh and Ruth A. Clements (Leiden: Brill, 2006), 175-97; Haim H. Cohn, "God as Legal Fiction," in *Secular Jewish Culture. New Jewish Thought in Israel*, ed. Yaakov Malkin (Jerusalem: Keter, 2006), 396-404 (in Hebrew); cf. idem, "Some Aspects of Justice in Ancient Jewish Law," *Revista Juridica de la Universidad de Puerto Rico* 46 (1977): 433-54 (esp. 434-42). Following Cohn's view of the divine source of the law as a legal fiction substantiating its authority, the question of divergence from the earlier law is then expanded to the debate over the duty to the original intent of the legislator. See n. 21 in chapter 2.

diverge from it.[41] The author of the Damascus Document opts for the opposite strategy by making no claim for legal innovation or for authority that is separate from the divine law. Instead, the divergence from the biblical stipulations is introduced as a commentary on a distant verse, which leads to laws concerning the issues addressed in Deut 22. The interpretive choices indicate that even without declaring so, the author is in effect undermining the rationale of the biblical law by stipulating new regulations. These choices render the law in Deut 22 as exceedingly lenient in comparison to the legal reality mandated in 4QD.

The duty imposed on the father to report all blemishes is another departure from the biblical law. In Deut 22:14 the groom accuses the bride of having lost her virginity prior to the consummation of the marriage, but the grievance is not presented against the parents, and specifically the father for misrepresenting his daughter's condition. Thus, the formulation of the law assumes that the groom expected to marry a virgin, but does not report how this expectation was verified prior to the marriage. 4QD clearly changes this by placing the responsibility on the father to report the blemishes of his own accord (i.e., without waiting for a request of specifications). This does not address the specific situation of Deut 22, because the non-virgin should not be married at all, according to 4QD, and thus the inclusive "all her blemishes" (כול מומיה, 4QD[f] 3, 8) does not refer solely to the problem of premarital sex, but constitutes an important element of contract law, namely that of misrepresentation.[42] 4QD introduces this novel idea which was not found in the deuteronomic law,

---

[41] Christine Hayes, "Rabbinic Contestations of Authority," 123-41. Hayes concludes, "For the first two centuries of the Common Era, rabbis of Palestine not only talked the talk, they also walked the walk, both proclaiming and exercising their authority in a bold manner… As later fourth to sixth century rabbis, especially in Babylonia, became anxious about the activity of their predecessors they honored them in word only, but not in deed" (141). Cf. eadem, "Authority and Anxiety in the Talmuds"; eadem, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis"; Richard Hidary, "Right answers Revisited: Monism and Pluralism in the Talmud," *Diné Israel* 26-27 (2009-2010): 229-55; Christine E. Hayes, "Theoretical Pluralism in the Talmud: A Response to Richard Hidary," *Diné Israel* 26-27 (2009-2010): 257-307.

[42] See Ayres and Klass, *Insincere Promises*, 46-58, 142-69; Melvin A. Eisenberg, "Disclosure in Contract Law," *CalifLR* 91.6 (2003): 1645-91; Morton J. Horwitz, "The Historical Foundations of Modern Contract Law," *HLR* 87.5 (1974): 917-56; L. S. Sealy, "Contract. Damages for Misrepresentation," *Cambridge Law Journal* 37.2 (1978): 229-32. For an ethical discussion see M. Cathleen Kaveny, "Between Example and Doctrine: Contract Law and Common Morality," *JRE* 33.4 (2005): 669-95.

but explains it through the curse against leading a blindman astray (Deut 27:18). The introduction of an explicit biblical quote as the rationale of a glaring omission in biblical law reveals the strategy for interpretation and adaptation of biblical law, as what Lessig called "constructed tradition" or "invented tradition,"[43] following Eric Hobsbawm.[44] The application of this historiographic idea to legal theory in the context of 4QD generates a paradox, since by amending and changing the deuteronomic law without fully admitting it and by using its own language, the author of 4QD is very much in keeping with the deuteronomic tradition, emulating precisely what the deuteronomist legislator did with his previous sources and especially with the Covenant Code.

4QD expands on the law of the slandered bride, but does not address the other issues of premarital sex addressed in Deut 22:23-29. There are several explanations for this lapse. To begin with, it is possible that such laws were not preserved, but did exist in the original document. However, if indeed there was no reference to the laws of Deut 22:23-29 it can indicate either that the author considered the laws of Deuteronomy to be sufficient on this matter, or that any reservations the author may have held had been settled with the amendment to the law of the slandered bride.

In order to properly assess these possibilities, without fully dismissing the possibility of unpreserved passages, it is necessary to explain the implications of the differences between the law of the slandered bride in Deut 22 and in 4QD. The key is found in the phrase that marks both the connection of the Damascus Document law to Deut 22 and its divergence from it:[45] **ש]ם רע בבתוליה בבית אביה** (l. 13, "a bad [na]me of her virginity in her father's home").[46] 4QD employs this phrase from the law in

---

[43] Lessig, "The Regulation of Social Meaning," 978-9.

[44] See Eric Hobsbawm and Terence Ranger, eds. *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), 1-14, 263-307.

[45] I am applying here Yair Zakovitch's methodology of "mirror stories" within the Hebrew Bible to relations between postbiblical texts and their sources. The similarity of language attests to the homage the author is paying to the biblical text, while the divergence betrays the almost ineffable dispute over it. See Yair Zakovitch, "Reflection Story: Another Dimension for the Valuation of Characters in Biblical Narrative," *Tarbiz* 54.2 (1985): 165-76 (in Hebrew); idem, *Through the Looking Glass. Reflection Stories in the Bible* (Tel Aviv: Hakibbutz Hameuchad, 1995; in Hebrew).

[46] While I used 4Q271 as my base text, the **ש** is attested in 4Q270 5.20, rendering the reconstruction of "name" certain.

Deuteronomy – specifically from vv. 14, 19, 21 – but this usage also points to the temporal divergence between the two laws. In Deut 22, the groom slanders the bride, making a bad name for her, after the consummation of the marriage, and the legal process begins from that point. In 4QD, the bride is subject to examination prior to the marriage, in the shadow of an ill reputation of her chastity.

From a legal point of view, the shift of sequence between these two laws is caused by two elements, the prior circumstances and the legal response. The prior circumstances are imagined very differently by the legislator of Deut 22 and of 4QD. The latter part of the law of the Slandered Bride in Deut 22 addresses a case in which the groom is genuinely surprised to discover his wife is not a virgin, and therefore has been wronged. 4QD (and perhaps Deut 22:13-19, representing the original version of the Deuteronomic law of the slandered bride) assumes that an unchaste bride would be the subject for rumors, which must be clarified prior to the wedding, or perhaps even prior to the engagement. The option of a genuinely surprised groom following the wedding-night is not addressed in the extant text of 4QD, perhaps since it is viewed as highly implausible. Such a worldview is embedded in the social reality of the text: a secluded and tightly-knit community, especially one with a well-organized structure, with officers dedicated to examination and reproof, does not allow for many secrets.[47]

---

[47] On the role of gossip as means of social control, see Jörg R. Bergmann, *Discreet Indiscretions: The Social Organization of Gossip* (trans. John Bednarz, Jr.; Berlin: de Gruyter, 1993), 140-53; cf. Adam Jaworski and Justine Coupland, "Othering in Gossip: 'You Go out You Have a Laugh and You Can Pull Yeah Okay but Like...'," *Language in Society* 34.5 (2005): 667-94. As always, it is difficult to adduce for certain the social realities from the legal texts, but the universality of the phenomenon in various cultures and contexts, religious and secular alike, strengthens this possibility. See Niko Besnier, "Information Withholding as a Manipulative and Collusive Strategy in Nukulaelae Gossip," *Language in Society* 18.3 (1989): 315-41; Kristina L. McDonald et al. "Girl Talk: Gossip, Friendship, and Sociometric Status," *Merrill-Palmer Quarterly* 53.3 (2007): 381-411; Donald Brenneis, "Grog and Gossip in Bhatgaon: Style and Substance in Fiji Indian Conversation," *American Ethnologist* 11.3 (1984): 487-506; Tomer Einat and Gila Chen, "Gossip in a Maximum Security Female Prison: An Exploratory Study," *Women & Criminal Justice* 22.2 (2012): 108-34; Stewart R. Clegg Ad van Iterson, "Dishing the Dirt: Gossiping in Organizations," *Culture and Organization* 15.3-4 (2009): 275-89; Marit S. Haugen & Mariann Villa, "Big Brother in Rural Societies: Youths' Discourses on Gossip," *Norwegian Journal of Geography* 60.3 (2006): 209-16; Marianne Bjelland Kartzow, *Gossip and Gender: Othering of Speech in the Pastoral Epistles* (Berlin: de Gruyter, 2009), esp. 41-116; Paul Christopher Johnson, *Secrets,*

In addition to the opposing vision of prior circumstances in the background of Deut 22 and 4QD, there is also a difference in the implication of the legal response in each text. Deut 22 seeks to protect a wronged husband or a slandered bride, by deterring women from engaging in sex before marriage in the first place, and deterring husbands from wrongfully accusing their newly-wedded wives. The author of 4QD is similarly concerned with protecting chastity, but he treats chastity in an essentialist manner. The unchaste bride-to-be cannot become purified for the priestly-like groom. Moral chastity becomes conceptualized as purity. This is suggested by the addition of the law concerning a widow who engaged in sexual activity as an equal case to an unchaste bride, as well as the inclusion of the mixed breed concern as part of these laws. It is therefore quite possible that the main problem posed by the formulation of the law in Deuteronomy to the Essene legislator is that it offers too little by way of safeguards of purity, based on the restrictions of Lev 21. The unchaste bride who failed to disclose her condition would suffer capital punishment according to Deuteronomy, but the defilement of her husband cannot be undone, which is why 4QD insists on a disclosure prior to the wedding. Once again, the stern essentialist view in the background of this legislation is evident: it is insufficient to wish to marry a pure and chaste woman, because a positive intention does not erase the effects of a deed and of defilement. The man is therefore required to ensure in every

Gossip, and Gods. The Transformation of Brazilian Candomblé (Oxford: Oxford University Press, 2002), 151-76; Joseph Ginat, *Women in Muslim Rural Society: Status and Role in Family and Community* (New Brunswick: Rutgers University Press, 1982), 177-97; Ori Bet-Or, "Gossip, Community, and the Local Kibbutz Magazine," *Kibbutz Trends* 22-23 (1996): 55-63. A further problem in the context of the Dead Sea Scrolls is the biblical laws against gossip, and their reiteration in the Scrolls themselves, e.g. 1QS 7.16-17. On Jewish Law concerning gossip, see Benjamin Brown, "From Principles to Rules and from Musar to Halakhah: The Hafetz Hayim's Rulings on Libel and Gossip," *Diné Israel* 25 (2008): 171-256. However, the prohibition against gossip does not eliminate its existence, nor does it disqualify its uses for the benefit of the community. In the Hebrew Bible, gossip plays a legal role in the story of Tamar and Judah (Gn 38:13; 24), see Ofra Amihay, "The Deception: An Annotated Biblical Play," *Al hapereq* 20 (2004): 146 (in Hebrew). For a contemporary example of the confrontation of gossip within a religious Jewish community, see Lewis Glinert, Kate Miriam Loewenthal and Vivienne Goldblatt, "Guarding the Tongue: A Thematic Analysis of Gossip Control Strategies among Orthodox Jewish Women in London," *Journal of Multilingual and Multicultural Development* 24.6 (2003): 513-24.

possible way that his future wife is chaste prior to the consummation of the marriage.

The conclusion that the caution against premarital sex in 4QD stems from a purity concern relies on the conflation of the Levitical and the Deuteronomic law, but raises a problem of the conceptualization of purity in this context. Sexual relations usually engender a ritual purity, which can be purified by water (Lev 15:18). However, the marital prohibitions on priests add a further layer of concern, one that implies a moral impurity involved with sexual relations, and that cannot be expiated. The tension therefore between these two concepts of purity led to idiomatic uses of purity, but also to actual cautions from impurity that do not adhere consistently to the understanding of purity in P, but instead employ it idiomatically "to describe human imperfection and restoration."[48] The range of uses of the concept of purity for various phenomena results from the various uses in the biblical law,[49] which did not see a substitution of one system with another, but rather continued to exist side by side, in biblical times as well as post-biblical times.[50] While the recent developments of nuanced classification as offered by Klawans and Meshel improves our understanding of purity,[51] its defiance of consistency perpetrates the puzzle of interpretation as articulated by Douglas.[52]

---

[48] Himmelfarb, "Impurity and Sin in 4QD, 1QS, and 4Q512," 37, speaking of 1QS. While the distinction Himmelfarb draws stands, especially since 4QD does not explicitly employ the language of purity, there is more than a hint of conflation between purity and morality in its laws of extramarital sex.

[49] Naphtali Meshel, "Pure, Impure, Permitted, Prohibited: A Study of Classification Systems in P," in *Perspectives on Purity and Purification in the Bible*, ed. Baruch J. Schwartz et al. (New York: T & T Clark, 2008), 32-42; cf. idem, "Food for Thought: Systems of Categorization in Leviticus 11," *HTR* 101.2 (2008): 203-29.

[50] In addition to the tension between these views mentioned in n. 5 of this chapter, see also Naphtali Meshel, "P_1, P_2, P_3, and H. Purity, Prohibition, and the Puzzling History of Leviticus 11," *HUCA* 81 (2010): 1-15; Knohl, *Sanctuary of Silence* (Minneapolis: Augsburg Fortress, 1995).

[51] Following the pioneering work of Milgrom and Knohl. See Jacob Milgrom, "The Function of the *Ḥaṭṭāt* Sacrifice," *Tarbiẓ* 40.1 (1970): 1-8 (in Hebrew); "The Priestly Impurity System," *WCJS* 9a (1985): 115-117; idem, "The *Modus Operandi* of the *Ḥaṭṭāt*: A Rejoinder," *JBL* 109.1 (1990): 111-117; Knohl, "The Law of Sin-Offering"; *Sanctuary of Silence*. See also responses and assessment in Jonathan Klawans, "Ritual Purity, Moral Purity, and Sacrifice in Jacob Milgrom's *Leviticus*, 3 vols. (1992-2001)," *Religious Studies Review* 29.1 (2003): 19-28; Baruch J. Schwartz, "The Bearing of Sin in the Priestly Literature," in *Pomegranates and Golden Bells*, ed. David Pearson Wright, David Noel

If the interpretation that the premarital sex laws in 4QD follows a purity/chastity concern based on Lev 21 is correct, it also follows that this approach matches the general Essene conceptualization of law described earlier, and can also account for the lack of laws concerning the betrothed and unbetrothed maiden in 4QD. The member of the sect is not expected to have sexual relations before his marriage, and therefore those laws do not apply to him. Regardless of whether it involves a betrothed or unbetrothed maiden, or whether it takes place in a town or a field, a member of the sect should not be involved in any premarital sexual encounters whatsoever, and therefore the various cases described in Deuteronomy do not apply. Regardless of whether it is a result of rape or a willful act, the bride-to-be of sectarian cannot be a woman with sexual experience, at least outside of wedlock. The author of the Damascus Document is uninterested in the fate of the woman, whether she is at fault or innocent, whether she will be married off or not. As far as members of the sect are concerned, she is no longer marriageable. The bleak implication for the future of such a girl within the sect seems obvious, although unmentioned.

In short, the silence of the Document concerning rape suggests a tacit dispute with Deuteronomy. The biblical civil law is viewed as offering one too many concessions that contradict the priestly law and the goal of rendering all of Israel as pure as the priests. In the words of Martha Himmelfarb, "some ancient Jews believed that taken at face value the Torah was insufficiently worried about impurity."[53] The shift in sequence bears a practical implication: it seems that the Essene legislators were confident that the trustworthy women could establish or deny a woman's virginity without doubt or error. Such an unequivocally trusted procedure leaves no place for real suspicions or false accusations regarding the bride's virginity following the wedding-night.[54]

Freedman and Avi Hurvitz (Winona Lake: Eisenbrauns, 1995), 3-21; idem, "Israel's Holiness: The Torah Traditions," in *Purity and Holiness: The Heritage of Leviticus*, ed. Marcel J.H.M. Poorthuis and Joshua Schwartz (Leiden: Brill, 2000), 47-59.

[52] "All the interpretations so far fall into the one of two groups: either the rules are meaningless, arbitrary because their intent is disciplinary and not doctrinal, or they are allegories of virtues and vices." – Mary Douglas, *Purity and Danger* (London: Routledge, 1966, 2002), 54.

[53] Himmelfarb, *Kingdom of Priests*, 85-86; cf. ibid. 112-114.

[54] Thus, if after such procedure the groom would still have doubts after consummation, he would be in an unfavorable position. By bringing forth his accusation, he would not only

5.3.1. *The Damascus Document and 4Q159*

A parallel description of a mandated examination by expert women appears in 4Q159. The text reads as follows:[55]

8	כי יוצי איש שם רע על בתולת ישר[א]ל אם ב[יום][56] קחתו אותה יואמר ובקרוה [נשים]
9	נאמנות ואם לוא כחש עליה והומתה ואם בשׁ[קר] ענה בה ונענש שני מנים [ואת אשתו לוא]
10a	ישלח כול ימיו

8 Should a man give a virgin in Isr[ae]l a bad name, if on the [day] of his taking her he says (something), then she shall by examined [by women who are]

9 reliable. And if he has not lied concerning her, she shall be put to death; but if he has testified against her fa[lsley], he shall be fined two minas [and his wife] he shall [not]

10a send away[57] all his days.

---

be challenging the expertise of the appointed women but also admitting to his own defilement. This could suggest that the ritual dictated by the law served to avoid the embarrassment of the accusation after the wedding. Baumgarten's reconstruction of line 15 as a prohibition to bring forth charges (or perhaps to spread rumors) could support this suggestion and would further emphasize the shift of sequence between Deuteronomy and 4QD. However, the formalist undertone, which stands in contrast to the Essene essentialist view explained and demonstrated previously, would be out of character for the Damascus Document, and thus the new reconstruction offered by Qimron is preferred.

[55] The text was originally published by John M. Allegro, *DJD 5*, 6-9. For the text and translation I consulted Bernstein, "The Re-Presentation of 'Biblical' Legal Material at Qumran," 11. See pages 1-3 of that article for further information on the text and bibliography, and also his "4Q159: Nomenclature, Text, Exegesis, Genre," in *The Mermaid and the Partridge. Essays from the Copenhagen Conference on Revising Texts from Cave Four*, ed. George J. Brooke and Jesper Høgenhaven (Leiden: Brill, 2011), 33-55.

[56] Yigael Yadin suggested to reconstruct here ב[עת] ("at the time"). This would render the text ambiguous as to whether it refers to the time of consummation, in keeping with Deut 22, or the time of engagement, in keeping with 4QD. See Yigael Yadin, "A Note on 4Q159 (Ordinances)," *IEJ* 18.4 (1968): 250-2. Line 9, however, seems to make it clear that it is in keeping with Deut 22. If the reference was only to rumors prior to consummation, the fiancé could not have been accused of lying. Some might also point to the capital punishment being too harsh, but this is not as decisive as the claim that the groom lied, since capital punishment could also be mandated for premarital harlotry.

[57] I.e., divorce, following the Deuteronomic idiom (Deut 22:19, 29; 24:1, 3-4. Cf. Jer 3:1, 8).

This parallel description of a virginity-examination procedure, described in both texts as entrusted in the hands of "reliable women" (נאמנות), in addition to further similarities between 4Q159 and 4QD,[58] seems to point to some relationship of dependency between the texts. However, as Wassen notes, "it is hard to determine which tradition precedes the other."[59] Part of the solution to this puzzle depends on whether 4Q159 is viewed as sectarian or not. 4Q159 does not include a description of an Overseer appointing the women who administer the exam as in 4QD, which could suggest a non-sectarian provenance. On the other hand, such absence could reflect an earlier, less developed and more loosely supervised stage of the sect than that which is depicted in 4QD. Arguments in favor of viewing 4Q159 as a sectarian text include some notable sectarian language (as their use of ביד רמה or פשר), or the quorum requirement for a court of ten people and two priests, resembling sectarian quorum requirements sanctioned in 1QS and 4QD. Either of these features can also be explained if the text belongs to an earlier stage of the sect, which inspired sectarian language and rules, but was not yet the fully-developed form of the Damascus Covenant or of the Yahad, and should perhaps be viewed as "proto-sectarian."[60] The absence of the Overseer in the law of the slandered bride in the 4Q159 version might be a further clue to it preceding the Damascus Document. The authority and jurisdiction of institutional mechanisms and their officers tend to increase as a sect develops rather than diminish.[61]

---

[58] See Hempel, "4QOrd[a] (4Q159) and the Laws of the Damascus Document," 372-6; Bernstein, "The Re-Presentation of 'Biblical' Legal Material at Qumran," 16-18. See also the pioneering discussion by Francis D. Weinert, "4Q159: Legislation for an Essene Community Outside of Qumran?" *JSJ* 5.2 (1974): 179-207.

[59] Wassen, *Women in the Damascus Document*, 84.

[60] For various views on the developmental stages of the sect, see Florentino García Martínez and Adam S. van der Woude, "A 'Groningen' Hypothesis of Qumran Origins and Early History," *RevQ* 14.4 (1990): 521-41; Gabriele Boccaccini, *Beyond the Essene Hypothesis: The Parting of the Ways between Qumran and Enochic Judaism* (Grand Rapids: Eerdmans, 1998), 53-159; Regev, *Sectarianism in Qumran*, 133-96. Jonathan Klawans also distinguishes between "protosectarian" and "early sectarian" - see Klawans, *Impurity and Sin in Ancient Judaism* (Oxford: Oxford University Press, 2000), 67-91. The differences between the stages is not limited to a sectarian identity, but involves authority, contestations of authority, interpretation of texts, beliefs, and more. See Grossman, *Reading for History*, 29-36.

[61] This argument can be viewed as a version of Parkinson's law, often mentioned to mock the growth of bureaucracies, but I borrow it more specifically from Ivan Illich's vehement

But despite the differences between 4QD and 4Q159, they both equally diverge from Deuteronomy concerning the examination. In contrast to Deuteronomy, the virginity is verified not by the bloodstained cloth after the wedding-night, but by what seems to be a premarital anatomical investigation of the allegedly unchaste bride-to-be.[62] The dubious gynecological trustworthiness of such examination[63] is hardly consequential for the legal analysis. The determining factor is that the legislator considered this to be a matter that can be indisputably resolved by experienced women. More importantly, by substituting the examination, the laws in these scrolls are shifting power from the patriarchal elders (mentioned in Deut 22:15-17) to the authority of women. This was most certainly not the purpose, as there is no room to argue for a feminist revolution in the scrolls, but the implication is nevertheless evident. In a matter concerning the chastity of a young woman, older women gain the decisive word. This is somewhat reduced in 4QD, where the women are appointed by the Overseer, thus reinstituting a masculine authority. If 4QD is to be understood as a later development employing 4Q159, the introduction of the Overseer could then be interpreted as either a result of a solidification of the organizational structure of the sect, or a gender-political act, of regaining masculine authority following the unintentionally subversive shift prescribed by 4Q159. These two possibilities do not exclude each other, and what can be said for certain is that the final word, even in the version of 4QD, is still afforded to the women.

5.4. *Premarital Sex in the Temple Scroll (11Q19)*

Unlike the Damascus Document, there is a strong relationship between the Temple Scroll and Deuteronomy. The laws of premarital sex

---

criticisms of institutions, most notably in his *Deschooling Society* (New York: Harper & Row, 1971) and *Medical Nemesis* (New York: Pantheon Books, 1976). Acceptance of his critical observations or parts of his analysis does not entail an endorsement of his anarchist solutions. For a critical appreciation of Illich see Robert Meredith, "Ivan Illich and Cultural Revolution," *Soundings* 55.2 (1972): 139-62.

[62] Jeffrey H. Tigay, "Examination of the Accused Bride in 4Q159. Forensic Medicine at Qumran," *JANES* 22 (1993): 129-34.

[63] On the reliability of this test, or the lack thereof, see Wassen, *Women in the Damascus Document*, 83-8.

are reproduced with only minor, albeit significant, changes from their formulation in Deuteronomy, within a larger section of an adapted text from Deuteronomy.[64] In addition to the main copy of the Temple Scroll found in cave 11 (11Q19), some parallel fragments were found in cave 4, but not of any consequence to the present discussion. The copy from cave 4 that parallels the section under question (4Q524) is so fragmentary that its reconstruction seems to be based not only on Deuteronomy, but also on 11Q19. The other copies or assumed copies of the scroll, namely 4Q365[a], 11Q20 and 11Q21, do not include parallels or otherwise relevant passages to the discussion of marriage laws.

Since the passage from the Temple Scroll is mostly a direct quotation from Deuteronomy, it will not be reproduced here in full. Discussion will focus on the divergences from the biblical text.[65]

---

[64] On the Temple Scroll as "rewritten bible," see Schiffman, "The Temple Scroll and the Halakhic Pseudepigrapha of the Second Temple Period"; Paul Heger, "Qumran Exegesis: 'Rewritten Torah' or Interpretation?" *RevQ* 22.1 (2005): 61-87; Crawford, *Rewriting Scripture in Second Temple Times*, 84-104; Molly M. Zahn, "4QReworked Pentateuch C and the Literary Sources of the Temple Scroll: A New (Old) Proposal," *DSD* 19.2 (2012): 133-58. On methodological issues of defining a text as "rewritten," "reworked," "interpretative," or a "variant," see Michael Segal, "4QReworked Pentateuch or 4QPentatuech?" In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, ed. Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam (Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000), 391-9; idem, "Between Bible and Rewritten Bible," in *Biblical Interpretation at Qumran*, ed. Matthias Henze (Grand Rapids: Eerdmans, 2005), 10-28; Jonathan G. Campbell, "'Rewritten Bible' and 'Parabiblical Texts': A Terminological and Ideological Critique," in *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, ed. Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen (London: T & T Clark, 2005), 43-68; Crawford, *Rewriting Scripture*, 1-59, 144-9; Moshe J. Bernstein, "'Rewritten Bible': A Generic Category Which Has Outlived Its Usefulness?" *Textus* 22 (2005): 169-96; Falk, *The Parabiblical Texts*; Molly M. Zahn, "The Problem of Characterizing the 4QReworked Pentateuch Manuscripts: Bible, Rewritten Bible, or None of the Above?" *DSD* 15.3 (2008): 315-39; eadem, "Genre and Rewritten Scripture: A Reassessment," *JBL* 131.2 (2012): 271-88; Daniel A. Machiela, "Once More, with Feeling: Rewritten Scripture in Ancient Judaism—a Review of Recent Developments," *JJS* 61.2 (2010): 308-20.

[65] For the exegetical significance of divergences of the Temple Scroll when quoting from Deuteronomy, see Gershon Brin, "Concerning Some of the Uses of the Bible in the Temple Scroll," *RevQ* 12.4 (1987): 519-28; Schiffman, "The Deuteronomic Paraphrase"; idem, "Laws Pertaining to Women in the *Temple Scroll*," in *The Dead Sea Scrolls. Forty Years of Research*, ed. Devorah Dimant and Uriel Rappaport (Leiden: Brill, 1992), 220-7; Himmelfarb, *Kingdom of Priests*, 92-3; Paganini, *'Nicht darfst du zu diesen Wörtern etwas hinzufügen'*.

The divergences from Deuteronomy include an array of changes with a varying degree of significance. The use of *plene* orthography found in many scrolls from the Dead Sea area, including biblical scrolls, does not bear any significance on the interpretation of the law.[66] Such is the case, for example, with the writing of the word "this" as הזואת in 11Q19 65.8 instead of הזאת in Deut 22:14, or a lengthened form of the imperfect in the same line (ואקרבה instead of ואקרב).

A slightly different type of variations is the substitution of words, possibly addressing the problem of biblical terms that fell out of use and therefore were in need of interpretation. Since such substitutions are not explained as such, it is difficult to determine whether these are cases of exegesis or of textual variants. Even when not functioning as an interpretation of the law, intentional substitutions of words should be understood as a direct interpretation of the text. Such is the case, for example, with the substitution of צעקה with זעקה (11Q19 66.2, 7; cf. Deut 22:24, 27), and perhaps also the substitution of עלילת with עלות (11Q19 65.7, 12; cf. Deut 22::14, 17). In both cases the repeated variant strengthens the possibility of a deliberate and interpretative substitution, rather than a mere scribal error. As עלות is more difficult to interpret than the biblical עלילת, it could have been mistaken to be a haplography, but the repetition of the substitution in two different occurrences in the column, weakens that possibility. Yadin argues for an Aramaic influence here which eventually entered the Hebrew as is evident from rabbinic sources.[67] This explains the shift but does not account for why an Aramaism would appear here while

---

[66] See Emanuel Tov, "The Orthography and Language of the Hebrew Scrolls Found at Qumran and the Origin of These Scrolls," *Textus* 13 (1986): 31-57; idem, *Scribal Practices*, 19-28. Cf. Eduard Yechezkel Kutscher, *The Language and Linguistic Background of the Isaiah Scroll* (Jerusalem: Magnes, 1959; in Hebrew), 6-8, 95-140; David Noel Freedman, "The Masoretic Text and the Qumran Scrolls: A Study in Orthography," in *Qumran and the History of the Biblical Text*, ed. Frank Moore Cross and Shemaryahu Talmon (Cambridge: Harvard University Press, 1975), 196-211; Frank Moore Cross, "Some Notes on a Generation of Qumran Studies," in *The Madrid Qumran Congress. Proceedings of the International Congress on the Dead Sea Scrolls, Madrid 18-21 March, 1991*, ed. Julio Trebolle Barrera and Luis Vegas Montaner (Leiden: Brill, 1992), 1:1-14; James R. Davila, "Orthography," in *Encyclopedia of the Dead Sea Scrolls*, ed. Lawrence H. Schiffman and James C. VanderKam (Oxford: Oxford University Press, 2000), 2:625-8.

[67] Y. Yadin, *The Temple Scroll* (Jerusalem: Israel Exploration Soceity, 1977; in Hebrew), 2:206. Yadin notes several affinities of the Temple Scroll to Rabbinic Hebrew, ibid. 1:31-33.

most of the text is a verbatim reproduction of Deuteronomy. Thus the possibility of an exegetical substitution remains, although its meaning is unclear .

A much clearer case of a lexical change which serves an interpretative purpose is the substitution of the verb marking sexual intercourse in the beginning of the paragraph. The Temple Scroll replaces the Deuteronomic euphemism introducing the case of the Slandered Bride ובא אליה ("came to her") with the homophonous[68] verb ובעלה,[69] thus making the circumstances of the slander more explicit, a wording which

---

[68] The claim for homophony between ובא אליה and ובעלה, assumes a weakening of the guttural ע, which is well-attested in the Dead Sea Scrolls, including in the Temple Scroll. See Elisha Qimron, "Three Notes on the Text of the Temple Scroll," *Tarbiẓ* 51.1 (1981): 137 (in Hebrew); Kutscher, *Language and Linguistic Background of the Isaiah Scroll*, 42-45; Y. Yadin, *Temple Scroll*, 1:28. This phenomenon is not unique to Qumran literature. See the famous story in *b.* Eruv 53b on the weakening of the gutturals in Galilean dialect as well as the prohibition on Galileans to pass before the ark (*y.* Ber 4.64; *b.* Ber 32a), and Joshua Blau's study, "On the Transformations of Weakening of the Gutturals as a Living Phenomenon," *Leshonenu* 45.1 (1981): 32-9 (in Hebrew).

[69] As a verb, the root בעל is difficult to translate. It obviously denotes sexual intercourse (cf. Deut 21:13, 24:1), but its degree of explicitness is obscured, as are the possible origins of its euphemistic usages. Since the root appears in the Hebrew Bible to denote ownership, husband, a ploughed land, a rival deity, and sexual intercourse, it is an outstanding example of Freud's notion, following Carl Abel, of primal words and their ambivalent or multiple meanings, formed from sublimations of sexual speech. See Sigmund Freud, *Totem and Taboo. Some Points of Agreement between the Mental Lives of Savages and Neurotics* (London: Routledge Classics, 2001; English translation originally published 1919), 74-79. Cf. Carl Abel, "The Origin of Language" in his *Linguistic Essays* (Boston: Houghton Mifflin, 1882), 223-42. Abel did not anticipate the sexual explanation Freud would attach to it, but the affinity of ideas is demonstrated in the following quote: "Egyptian takes us back into the childhood of mankind, when the most elementary notions had to be struggled for after this laborious method. To learn what 'strength' was, the attention had, at the same time, to be directed to 'weakness;' to comprehend 'darkness,' it was necessary to contrast the notion mentally with 'light;' and to grasp what 'much' meant, the mind had to keep hold simultaneously of the import of 'little.' (ibid., 237-8). As with many single solutions of the *fin-de-siècle* era of positivist scholarship, Abel's thesis has been modified and even rejected. Regardless of the applicability of Abel and Freud to all language, they are markedly relevant to instances such as this. For another example pertinent to the study of ancient Judaism, see Yael Feldman's discussion on the term for sacrifice: Yael S. Feldman, *Glory and Agony: Isaac's Sacrifice and National Narrative* (Stanford: Stanford University Press, 2010), 34-6.

stands in accordance with the interpretation for Deuteronomy offered above.[70]

In this case, it seems the author is not seeking to change or subvert the law in Deuteronomy, but actually to clarify the wording, while still maintaining the spirit of the law in Deuteronomy.[71] Another case of such glossing can be found in the interpretation of the word "field" in the case of the betrothed maiden. After providing the quotation from Deuteronomy of the conditional clause, "but if in the field a man meets the woman" (11Q19 66.4), the author of the Temple Scroll adds "in a far-away place hidden from the city," making it clear that the biblical law is not interested in the field as an agricultural definition, but in any deserted space in which the woman's cries for help were of no avail, since no one could hear her.[72]

The differences between these laws in the Temple Scroll and Deuteronomy, however, are not limited to lexical clarifications or orthographic alterations. In the case of the unbetrothed maiden, the Temple Scroll reads:[73]

8b	כי יפתה איש נערה *vacat*
9	בתולה אשר לוא אורשה והיא רויה לו מן החוק ושכב עמה
10	ונמצא ונתן האיש השוכב עמה לאבי הנערה חמשים כסף ולוא

[70] Johann Maier, *The Temple Scroll. An Introduction, Translation & Commentary* (Sheffield: JSOT Press, 1985), 135; Schiffman, "Laws Pertaining to Women in the *Temple Scroll*," 221.

[71] Compare this do the Neofiti's Targum substituting *zmn* for Deuteronomy's "came to her" which Sokoloff interprets as "having sexual intercourse": Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period* (Ramat Gan: Bar Ilan University Press, 1990), 179. Cf. Ernest G. Clarke, *Targum Pseudo-Jonathan: Deuteronomy* (Collegeville: Liturgical Press, 1998), 61. Unfortunately, this was overlooked in McNamara's edition to the Neofiti Targum of Deuteronomy itself, published prior to Clarke's comment. See Martin McNamara, *Targum Neofiti 1: Deuteronomy* (Collegeville: Liturgical Press, 1997), 107.

[72] Maier, *Temple Scroll*, 135; Schiffman, "Laws Pertaining to Women in the *Temple Scroll*," 222. A similar concern is presented by the rabbis, who note that the significant condition is that there was none to save her, whether in a town or in a field (Sifrei Deuteronomy 243; cf. *b.* Sukk 29a; *b.* San 73a). On the interpretation of Deuteronomy in Sifrei, see Steven D. Fraade, *From Tradition to Commentary. Torah and Its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: SUNY Press, 1991), 1-68; idem, "Deuteronomy in Sifre to Deuteronomy," in *Encyclopaedia of Midrash. Biblical Interpretation in Formative Judaism*, ed. Jacob Neusner and Alan J. Avery-Peck (Leiden: Brill, 2005), 54-9. For an interesting comparison of the use of Deuteronomy in the Temple Scroll and in Sifrei, see Moshe Weinfeld, *Normative and Sectarian Judaism in the Second Temple Period* (London: T & T Clark, 2005), 189-93.

[73] 11Q19 66.8-11. Cf. Deut 22:28-29.

11a תהיה לאשה תחת אשר ענה לוא יוכל לשלחה כול ימיו

8b Should a man seduce a maiden,
9 a virgin[74] who is not betrothed, and she is fit for him according to the law, and lies with her
10 and is found, the man who lay with her shall give the father of the maiden fifty (shekels of) silver and to him
11a she shall be a wife. Because he abused her, he cannot send her away all his days

The law in the Temple Scroll has two significant divergences from the biblical text, one regarding the unbetrothed maiden, and the other regarding forbidden relations. The case of the unbetrothed maiden bears three significant differences. First, the man does not "find" (**ימצא**) the maiden as in Deut 22:28, but rather "seduces" her (**יפתה**). The Temple Scroll thus reverts to the wording of the law in the Covenant Code (Ex 22:15), suggesting at least partial blame on the maiden (who responded to the man's seduction), whereas in Deuteronomy the wording denotes passivity on the maiden's part.[75] The maiden's blame is intensified by the second difference, the omission of the word "grab" (**תפשה**) which also suggests rape, by introducing power before the statement of sexual intercourse. If the man did not find the maiden and then "grab her," but rather seduced her and laid with her (**שכב עמה**), then some consent on behalf of the maiden is assumed, even if the act was initially instigated by the man.

As suggested above, the Deuteronomic legislator's assumption of rape in the case of an unbetrothed maiden in possibly based on the fact that she had to have been very young if she was not yet betrothed. The

[74] In order to reflect the Hebrew according to the division of the lines of the scroll, I rendered "a maiden, a virgin," as appositions. Read in sequence, "virgin" should be understood as an adjective modifying the noun, i.e. "a virgin maiden."

[75] Schiffman ("Laws Pertaining to Women in the *Temple Scroll*," 223-4) discusses the harmonization of the law in Ex 22 with the law in Deut 22, but concludes that the author of the Temple Scroll assumed that Deuteronomy could not mean to use "grab" in the sense of rape, and therefore changed the wording. The difference between Schiffman's analysis and the one offered here demonstrates the difficulty to follow interpretative modes embedded in a rewritten text. Schiffman assumes the author is attempting to interpret Deuteronomy correctly, while the suggestion promoted here relies on the assumption that the author of the Temple Scroll is deliberately deviating from the law in Deuteronomy and modifying it. Cf. Maier, *Temple Scroll*, 135-6; Crawford, *Rewriting Scripture*, 101.

omission of capital punishment for the unbetrothed maiden attests to her blamelessness in the view of the Deuteronomic legislator.[76]

The wording in the Temple Scroll, therefore, allows another concession not found in Deuteronomy. Namely, that even if the unbetrothed maiden was not raped but willingly followed a seducing man, capital punishment is avoided, and marrying her off is accepted as the preferred solution to this legal entanglement. These differences seem to suggest that the author of the Temple Scroll is not only trying to harmonize Ex 22:15-16 with Deut 22:28-29, but actually allows for more flexibility than Deuteronomy does. Deuteronomy reflects an assumption that an unbetrothed maiden must have been raped, and thus the law does not contradict Exodus, while reaffirming a stance of abhorrence towards premarital sex.[77] The Temple Scroll, on the other hand, assures that the unbetrothed maiden will not be stoned even if there are any indications there was no rape. However, regarding the situations in which a marrying off solution cannot be implemented, the author of the Temple Scroll maintains the death penalty decreed in Deuteronomy and does not opt for a more flexible resolution. The betrothed maiden who has had sex with someone else is responsible as is the married wife, and the slandered bride, if indeed she had premarital sex with someone other than her husband, has caused a disgrace for both her parents and her husband.

5.4.1. *Fit according to the Law: A Parallel between 11Q19 and 4QD*

The third difference in the case of the unbetrothed maiden is the condition added in the Temple Scroll for the marriage to take place: "If a man seduces a virgin who is not betrothed, but is fit for him according to

---

[76] This is said explicitly regarding the betrothed maiden in the field in v. 26, and can therefore be applied to the case of the unbetrothed maiden.

[77] That Deut 22 is familiar with the law in Exod 22 and intentionally modifies it, seems to be quite clear in light of the connections and differences between the two texts. However, this is not necessarily the case between Deuteronomy and the Covenant Code in Exodus in general, or each set of parallels between them. Bernard M. Levinson has argued that they were revised and redacted contemporaneously, with reciprocal influences: see Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, 3-17. For another example see Yair Zakovitch, "The Book of the Covenant Interprets the Book of the Covenant: The 'Boomerang Phenomenon'," in *Texts, Temples, and Traditions. A Tribute to Menahem Haran*, ed. Michael V. Fox, et al. (Winona Lake, IN: Eisenbrauns, 1996), *59-*64 (in Hebrew).

the law." The condition is obscure, as the exact stipulations for how to discern whether a virgin is fit for someone according to the law are unspecified. The biblical special restraints on marriage relate only to priests, and none of them is fitting here. The unbetrothed virgin is obviously not a divorcee, nor can she be a prostitute. In addition, as was stated in relation to the Damascus Document, it is implausible that the law would accommodate for a priest to be involved in the case of seducing an unbetrothed maiden.

Aharon Shemesh argued that Qumran law recognized sexual relations as a legal matrimonial process. According to him, the phrase "not prepared for her" in the Damascus Document refers to a non-virgin who should therefore be considered as already married to someone else.[78] This argument is highly disputable. Its problem lies first of all in the interpretation of the words in 4QD, which could not intend "someone who is already married" especially in the context of the metaphor of mixed species provided in the text. Second, it is unlikely that texts that prescribe such great caution regarding premarital sex, and even call for chastity within a marital relationship, will allow a system of marriage by sexual intercourse alone.[79] Most significantly, Shemesh presents here a dubious attempt to harmonize rabbinic law with biblical law. This is an extreme example of the "Qumran Halakhah" tendency, which apparently does not suffice with the (already anachronistic) reading of the law in the Dead Sea Scrolls through the later rabbinic literature, but seeks to read biblical law through the same lens, although these two corpora are separated by more than a millennium.

---

[78] Shemesh, "4Q271.3: A Key to Sectarian Matrimonial Law," *JJS* 49.2 (1998): 244-63. An extended version appeared in Hebrew: idem, "Two Principles of the Qumranic Matrimonial Law," in *Fifty Years of Dead Sea Scrolls Research. Studies in Memory of Jacob Licht*, ed. Gershon Brin and Bilhah Nitzan (Jerusalem: Yad Ben Zvi, 2001), 181-203.

[79] See Rothstein, "Gen 24:14 Marital Law in 4Q271." On restrictions of sexual relations within married couples, see Moshe J. Bernstein, "Women and Children in Legal and Liturgical Texts from Qumran," *DSD* 11.2 (2004): 200; Sidnie White Crawford, "Not According to Rule. Women, the Dead Sea Scrolls and Qumran," in *Emanuel. Studies in the Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, ed. Shalom M. Paul et al. (Leiden: Brill, 2003), 134-5. It can be argued that this is precisely the case with rabbinic law, which is concerned about chastity and yet constitutes sexual relations as a form of marriage. However, the rabbis add such stipulations to make it mostly theoretical, or at least the unpreferable form of marriage, including the element of intent (that the sexual intercourse is intended as an act of marriage – *t.* Qid 1.3). The sexual act is recognized as powerful, but it requires the performance of a legal ritual to be valid, an aspect that is absent from 4QD.

Baumgarten's suggestion, that the restriction "refers to some overt incompatibility, such as great disparity in age,"[80] is somewhat more plausible, as is Brin's suggestion that it refers to a compatibility of personalities.[81] As far as 4QD is concerned, the most convincing suggestion to date is Qimron and Strugnell's, endorsed by Wassen and Crawford, according to which the Damascus Document is referring to compatibility by genealogy, promoting endogamous marriage.[82] If the meaning is the same in both documents, it would place the Temple Scroll alongside other Second Temple texts – sectarian, proto-sectarian or non-sectarian – that are concerned with breaches of endogamous marriages.[83] If the Temple Scroll does not share the same meaning as 4QD, perhaps the suitability needs to be interpreted based on the list of illicit relationships that follows.

The condition inscribed in the Temple Scroll remains obscure. That said, two concluding points are nonetheless noteworthy regarding this law. First, that its reminiscence of 4QD is the only clear connection found between the Damascus Document and the Temple Scroll in the group of the marriage laws. The other point is the absence of a legislated resolution regarding the case in which the unbetrothed maiden is not fit for the man with whom she was sexually involved according to the law in the Temple Scroll. This lacuna is left for interpretation and in light of the biblical decree regarding the daughter of the priest who went astray (Lev 21:9), it is possible that such a maiden was to be put to death. However, such an assumption cannot be asserted beyond doubt and similarly to the condition itself, the resolution for such a case remains vague.[84]

---

[80] J. M. Baumgarten, *DJD 18*, 177.

[81] Gershon Brin, "Two Laws Concerning Marriage from Qumran," *Beit Mikra* 40.3 (1995): 224-31 (in Hebrew).

[82] Wassen, *Women in the Damascus Document*, 76-80; Crawford, *Rewriting Scripture*, 101.

[83] In addition to 4QD and 4QMMT discussed previously, this concern appears in the *Aramaic Levi Document* 6:3-5, for text see Jonas C. Greenfield, Michael E. Stone, and Esther Eshel, *The Aramaic Levi Document. Edition, Translation, Commentary* (Leiden: Brill, 2004), 7; 4Q542 (Testament of Qahat), 4Q545 (Vision of Amram), cf. Duke, *Social Location of the* Visions of Amram, 49- 63, and the apocryphal books of Tobit (Tob 1:9; 6:12, 16-18) and Judith 8:2, as noted by Wassen, *Women in the Damascus Document*, 79.

[84] Note, however, that Jubilees extends the law in Lev 21:9, perhaps based on Gn 38:24, and instead of restricting it to daughters of priests alone, applies it to any daughter of Israel (Jub 20:4; cf. Jub 41:28).

5.4.2. *Illicit Relationships in the Temple Scroll*

The second divergence of the law of the Temple Scroll from the section its quoting from Deuteronomy concerns illicit relationships, for which the scroll provides a much more elaborate list than the one found in Deut 23:1. Whereas Deuteronomy mentions only the prohibition of a man marrying his father's widow or divorcee, the Temple Scroll extends this prohibition to include various relatives. Some of these relations are illicit due to direct incest while others are illicit due to incest by marriage. These include: a man's sister-in-law, half-sister, aunt, niece,[85] daughter-in-law, and granddaughter.[86]

The categories, or at least those extant in the remaining fragments of 11Q19, seem to follow the order of the laws against incest in Lev 18.[87] This raises questions as to the rationale behind the choice of the Temple Scroll author to extend the Deuteronomic prohibition by supplementing it with prohibitions from Leviticus. Himmelfarb argued that the Temple Scroll author extends certain laws of purity from the priesthood to all of Israel.[88] In other words, the interlacement of language from Leviticus with a passage from Deuteronomy holds an interpretative meaning that is

---

[85] The inclusion of the niece has exerted some discussion since it stands in contrast to the practice reflected in both biblical and rabbinic texts, supporting marriage to the niece (see *b.* Yeb 62b-63a and probably also *t.* Qid 1.4, though its motivations remain obscure). However, Brin's and Schiffman's definition of the rabbinic practice here as law is anachronistic. To the best of my knowledge, there is no evidence for the marriage to a niece being legally endorsed prior to Maimonides. See Schiffman, "Laws Pertaining to Women in the *Temple Scroll*," 227; idem, "The Relationship of the *Zadokite Fragments* to the *Temple Scroll*," in *The Damascus Document. A Centennial of Discovery*, ed. Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick (Leiden: Brill, 2000), 139-40; Gershon Brin, "Reading in *4Q524* frs. 15-22 – DJD XXV," *RevQ* 19.2 (2000): 270.

[86] The exact extension of prohibitions depends on whether the construction of 4Q524, fragments 15-22 is correct, and whether these fragments do reflect what column 67 11Q19 would have been. 11Q19 preserves the prohibition of marrying a sister-in-law, a half-sister, an aunt, and a niece. The other categories are completely based on reconstructions which should be addressed with great precaution. See Emile Puech, *Qumrân Grotte 4, XVIII. Textes Hébreux (4Q521-4Q528, 4Q576-579).* (DJD 25; Oxford: Clarendon, 1998), 103-7. Cf. Brin, "Reading in 4Q524," 265-71. Brin accepts Puech's reconstruction with no reservations. Note that this is also the pattern for Puech's reconstruction of 4Q524.

[87] Maier, *Temple Scroll*, 136.

[88] Himmelfarb, "Sexual Relations and Purity in the Temple Scroll and the Book of Jubilees," *DSD* 6.1 (1999): 11-36; eadem, *Kingdom of Priests*, 85-98.

motivated by theological concerns.[89] In this context, the relative lenient interpretation of the deuteronomic laws of premarital sex is supplemented with an emphasis against illicit relations. Furthermore, it can be seen as expansion of this section in Deuteronomy, which concludes with Deuteronomy 23:1.

This exegetical maneuver can be explained as follows:

A. The law in Deut 23:1 prohibits marrying the wife of one's father. Since the law is against marriage, and not against sexual relations, the woman's marriage is already dissolved, whether by the father's death or by divorce. The prohibition against sexual relations with relatives is listed in two more places in the Pentateuch. One is the list in Lev 18:6-19 which lists various relations, both biological and by marriage. Furthermore, the phraseology used, prohibiting the uncovering of the relative's nakedness (ערוה) seems to be more than a euphemism for sexual intercourse, but actually an inclusive prohibition which forbids much more than a sexual intercourse.[90] Lev 20 prohibits sexual intercourse with the father's wife and daughter-in-law (vv. 11-12). This prohibition follows a general prohibition of adultery (v. 10). Other prohibitions of incest are intertwined in the text, among other prohibitions of sexual misconduct.
B. If one is not allowed to have sexual intercourse with his relatives, there is no need for a prohibition of marriage. This is why Deut 23:1 should be considered as prohibition on marrying one father's widow or divorcee. The fact that the prohibitions of incest in Lev 20 follow a prohibition of adultery may point to such an

[89] Thus, Duke, for example, considers the ban on marrying a niece as an expansion of the biblical prohibition to marry an aunt. See Duke, *Social Location of the* Visions of Amram, 65. Cf. Schiffman, "Prohibited Marriages in the Dead Sea Scrolls and Rabbinic Literature"; Paul Heger, "Qumran Marriage Prohibitions and Rabbinic Equivalents," *RevQ* 24.3 (2010): 441-51.

[90] In Ex 20:23 the phrase appears in a literal sense as well as in a legal context. It seems to be literal in Ezek 16:37, but as part of a wider metaphor, and thus not as consequential as Ex 20:23. Some favor a literal reading of the related phrase in Gn 9:22 (there with the verb "saw," וירא, rather than "uncover"), but many see it as a euphemism. For a survery of views in comparison to various biblical usages of the phrase, see John Sietze Bergsma and Scott Walker Hahn, "Noah's Nakedness and the Curse on Canaan (Genesis 9:20-27)," *JBL* 124.1 (2005): 25-40.

interpretation, too. If sexual intercourse with any married woman is prohibited, there is no need for specific prohibitions on sexual intercourse with the father's wife, daughter-in-law, and so forth. This might reconcile the seeming repetition between Lev 18 and Lev 20. Lev 18 prohibits incest in all its varieties, and Lev 20 prohibits incest that was caused by marriage even after the marriage is out of effect, whether dissolved by divorce or bereavement.

C. In light of this, Deut 23:1 cannot be easily reconciled with Leviticus. Since it prohibits only marrying one father's wife, it might be interpreted as permitting a man to marry a different relative of his by marriage, after the previous marriage was dissolved. Lev 20, on the other hand, prohibits sexual intercourse even after the death of relatives.

D. The reconstruction of 4Q524 suggests that its structure offered a response to this exegetical problem. According to Puech's reconstruction, the prohibitions on marriage of an incestuous nature are followed by the law of the levirate, as it appears in Deut 25:5-10. Whether this reconstruction is correct or not is disputable, but if correct, it would mean that the Temple Scroll, following Leviticus and Deuteronomy, included the contradictory commandments of the prohibition to marry the brother's wife, and the command to marry the brother's wife if he has not had a son.[91] Following the reconstruction of 4Q524 as the correct continuation of 11Q19 could suggest not only an appendix, which expands the list of incestuous prohibited marriages, but also an intentional proximity between these prohibitions and the law of the levirate. This could have served to explain that the levirate law is an

[91] Subsequent Jewish literature offered various attempt to harmonize the laws of Lev 20 with the law of the levirate. See for example, Ibn Ezra's commentary on Lev 20:21 and Deut 25:5. Ibn Ezra contends that there is no contradiction, but that the law of the levirate is the only exception of the law in Leviticus. Notwithstanding the plausibility of this suggestion, it should be noted that the biblical text does not acknowledge at any point that the law of the levirate is an exception. Therefore, it seems that the author of the law of the levirate in Deuteronomy did not have Lev 20 in his mind. A similar mindset appears to be in the background of the rabbinic discussion of the levirate law, e.g. *b.* Yeb 3b; 17b; *b.* Ket 82b.

exception to the general prohibition of marrying relatives related by marriage.[92]

The laws of illicit relationships and premarital sex in the Temple Scroll thus present its intricate position on the relationship between the priesthood and all of Israel. As Himmelfarb notes,

> The Temple Scroll does not eliminate the boundaries between priests and other Jews; indeed, in other areas it insists on these boundaries. Rather, the Temple Scroll makes purity a more relevant category for all Jews and thus narrows the gap between priests and others.[93]

While the Temple Scroll reiterates biblical taboos on sexual relations, it relaxes the severity of premarital sexual laws, to ensure that the possibility of being married off following premarital sex is extended as much as possible. In this, the Temple Scroll stands in stark contrast to the stance of 4QD, which presents a stern position on premarital sexual relations, banning any sexual experience, and not only a full intercourse.

5.5. *Conclusion*

The process of interpretation and of reshaping the law in light of various concerns occurs already within the Hebrew Bible itself. The revision offered in Deuteronomy of the law of premarital sex in Exodus is concerned with the legal status of the women, and the way this affects solutions to the situation. Furthermore, it elaborates on the circumstances of the women and the possibility of cooperation on their behalf based on their age. The result is that both Exodus and Deuteronomy condone premarital sex when it does not infringe on the rights of a future husband and providing that the man and woman involved in the act unite in unbreakable marriage following it.

The Damascus Document offers two different types of responses to these laws. The law of the widow can be seen as an appendix, as it adds a

---

[92] The fact that the author did not include such an explanation after placing these contradicting laws together remains a puzzle. Cf. Brin, "Reading in 4Q524," 269-70.

[93] Himmelfarb, "Sexual Relations and Purity in the Temple Scroll and the Book of Jubilees," 33. Cf. eadem, *Kingdom of Priests*, 97-8.

restriction that is unmentioned in the group of laws of prohibited women for the priest in Leviticus, nor in the group of laws of extramarital and premarital sex in Deuteronomy. The second instance is *de facto* an amendment to the biblical law, although it is never explicitly stated as such. The amendment concerns the deuteronomic law regarding the slandered bride, decreeing a more practical precaution prior to the consummation of marriage, but more importantly correlating with the sectarian legal essentialism, as well as with the unique Essene stance regarding the implication of transgressions with no knowledge or intent.

Thus, the amendments to the biblical law in 4QD reflect a growing concern for purity, and a fundamental essentialist view of purity that cannot be changed or affected by laws, certainly not erroneous ones. In addition to the worldview reflected in this shift, there is also a marked legal development in 4QD that reconceptualizes the law of the slandered bride in more practical contractual terms. The emphasis on the father's duty to report his daughter's blemishes is the significant turn in this aspect, but the shift in the verification procedure, from after the consummation to before the wedding can also be viewed in this context, in addition to its motivation as a purity concern: Mark Reiff demonstrates that previolation stages of enforcement involve a higher degree of cooperation, while the postviolation circumstances shifts to a form of conflict. The degree of a law's enforceability is higher as the instances in which individuals breach the law are diminished or avoided. By definition, the breach of a contract violates a social trust which then requires rectification, while a deterrence of a breach can remain hypothetical.[94] This analysis draws a correlation between the development of the Essene worldview in regards to purity, and their legal essentialism and legal practices. The contractual aspect of 4QD's rendition of the law of the slandered bride stands apart from the chastity concerns, but it does relate to other underlying presuppositions discussed above, primarily the issues of intent and obligation, both of which are embedded in the contractual action:[95] the obligation is made explicit in requiring the father to reveal his daughter's blemishes of his own accord;

---

[94] Reiff, *Punishment, Compensation, and Law*, 76-110. Cf. Ayres and Klass, *Insincere Promises*, 87-98.

[95] "Promise creates obligation," writes Zev J. Eigen in a recent article: "When and Why Individuals Obey Contracts: Experimental Evidence of Consent, Compliance, Promise, and Performance," *Journal of Legal Studies* 41.1 (2012): 90. For the aspect of intention in contracts, see Ayres and Klass, *Insincere Promises*, 1-8.

and the intent of the groom is rendered inconsequential, when mandating the inspection of the bride, lest the groom consummates his marriage with an unchaste bride, regardless of his intentions.

As with the Damascus Document, the Temple Scroll contains no explicit admission to amending the law, with the difference being that the Damascus Document explicitly presents itself as an interpretation, whereas the Temple Scroll has no textual markers to distinguish it from other scripture. Its heavy reliance on scripture leaves no room for doubt that its authors viewed the Pentateuch as authoritative, but the implication of this authority remains ambiguous. This, however, is true also for texts that do present themselves as overt interpretation.

The law of the unbetrothed maiden in the Temple Scroll seems to follow the socio-legal rationale of the law in Deuteronomy, but by not implying a case of rape, it reinstitutes the original approach of Exodus. In the laws of illicit relationships, the Temple Scroll combines Leviticus and Deuteronomy, in a manner that avoids the seeming contradiction between the law of the levirate in Deut 25 and the laws of illicit relationships in Lev 18 and 20.

The priestly provenance of the Temple Scroll has been discussed, sometimes even taken for granted, by many scholars ever since its preliminary publication by Yigael Yadin.[96] Its special interest in priestly matters is stressed by the focus of the lion's share of the scroll, which gave its modern title. However, the last extant columns mainly employ laws from Deuteronomy, which supposedly do not bear significance for priestly life in particular. The author who decided to add these laws to the Temple Scroll apparently considered these laws to be applicable to all the people of Israel, unlike the laws of marriage concerning the priests, found in Lev 21. Perhaps the inclusion of these laws in a text mainly addressing priestly matters was based on the assumption that while such laws do not apply to the priest, they should be of interest to him in his role as a religious, social, and political leader. In other words, he would need to know them not in order to conduct his own life, but in order to lead and advise others.

---

[96] Y. Yadin, *The Temple Scroll*. Jerusalem: Israel Exploration Society, 1983. Cf. Himmelfarb, *Kingdom of Priests*, 85, 92; Maier, *Temple Scroll*, 5-7; Schiffman, "The Theology of the Temple Scroll," *JQR* 85.1-2 (1994): 109-23 (see also responses by Jacob Milgrom and James Vanderkam on pp. 125-35); Hartmut Stegemann, "The Institutions of Israel in the *Temple Scroll*," in *The Dead Sea Scrolls. Forty Years of Research*, ed. Devorah Dimant and Uriel Rappaport (Leiden: Brill, 1992), 156-85.

This hypothesis of the role of these laws in the Temple Scroll, is also of significance for the question of the relation between the Temple Scroll and the Damascus Document in particular,[97] and the development of sectarianism in the Second Temple period in general. The Essene worldview, as reflected in 1QS, 4QD, 1QH and many of the pesharim, is highly dogmatic, polarized, and uncompromising. The exclusionary world reflected in these texts is divided into Children of Light and Children of Darkness, and these categories are perceived in them as determined since creation. While seeking to extend the laws of priesthood to all of Israel, these texts still maintain a clear hierarchy based on descent and promote it through legislation.

However, this worldview did not suddenly erupt into Judaism without prior roots. The view of purity as a physical substance, albeit invisible and intangible, that can directly affect the deity, is prevalent throughout the Pentateuch. A stratified society consisting of priests and laity, in which priests have certain prerogatives but also many duties and specific restrictions, is also traced back to the Pentateuch, as is the exclusion of certain, or all, non-Jewish groups and individuals. Attempts to live in accordance with biblical law and God's demands yielded new theologies and revolutionary conceptualizations of purity, calendar, and other ritual concerns, as expressed in Jubilees and the Temple Scroll.[98]

---

[97] For the view that argues for a stronger connection between the Temple Scroll and the Damascus Document, see Philip R. Davies, "The Temple Scroll and the Damascus Document," in *Temple Scroll Studies. Papers Presented at the International Symposium on the Temple Scroll, Manchester, December 1987*, ed. George J. Brooke (Sheffield: JSOT Press, 1989), 201-10; Schiffman, "The Relationship of the *Zadokite Fragments* to the *Temple Scroll*." By contrast, see Himmelfarb, *Kingdom of Priests*, 85-114.

[98] For the relationship between Jubilees and the Temple Scroll see Joseph M. Baumgarten, "The Calendars of the Book of Jubilees and the Temple Scroll," *VT* 37.1 (1987): 71-8; James C. VanderKam, "The Temple Scroll and the Book of Jubilees," in *Temple Scroll Studies. Papers Presented at the International Symposium on the Temple Scroll, Manchester, December 1987*, ed. George J. Brooke (Sheffield: JSOT Press, 1989), 211-36; idem, "The Theology of the Temple Scroll: A Response to Lawrence H. Schiffman," *JQR* 85.1-2 (1994): 129-35; Brin, "Regarding the Connection between the Temple Scroll and the Book of Jubilees," *JBL* 112.1 (1993): 108-9; Himmelfarb, "Sexual Relations and Purity in the Temple Scroll and the Book of Jubilees"; eadem, *Kingdom of Priests*, 53-98; Najman, *Seconding Sinai*, 41-69; Regev, *Sectarianism in Qumran*, 233-41; Hanan Eshel, "*Megillat Ta'anit* in Light of Holidays Found in Jubilees and the Temple Scroll," *Meghillot* 3 (2005): 253-7 (in Hebrew); Lawrence H. Schiffman, "The Book of Jubilees and the Temple Scroll," in *Enoch and the Mosaic Torah. The Evidence of Jubilees*, ed. Gabriele Boccaccini and Giovanni Ibba (Grand Rapids:

These yielded further restrictions and debates, culminating in the harsh schism of which only faint echoes survived, as the dramatic pursuit of the Teacher of Righteousness by the Wicked Priest on the Day of Atonement,[99] or the decision to separate from the multitudes of the people.[100]

The differences between the Damascus Document and the Temple Scroll in their rendition of the premarital sex laws illustrate the problems of obligation. As explained in the previous chapter, the absolute obligation of a believer to God only seems to be a straightforward concept. Tensions arise concerning the correct interpretation and therefore the true will of God, and opposing interpretations arise, each one motivated by a firm sense of obligation.

An additional tension raised by the sense of obligation is caused by the difference between the human perception of God's expectations, and human error and fallibility. The marriage laws in the Temple Scroll allow a glimpse into some accommodations of the law that are necessary when mediating between the ideal, the reality, and the different levels of society. Its author never endorses premarital sex, and even believes it is possible to extend certain bans on marriages to the entire people, and yet condones premarital sex in certain cases. 4QD presents a stricter worldview by imposing further restrictions on its followers.

It is more than plausible that the general priesthood was willing to make concessions in regard to the law, which the sectarians could not accept. This is not to say that the other priests made these concessions in regard to themselves, or that they considered these concessions to be eternal. The ideal goal may still have been a "kingdom of priests," but until that goal was reached, the need for flexibility in everyday life was acknowledged.

The sense of obligation is also conveyed in the transformation of a supposedly personal matter to a concern of the entire community. The introduction of the Overseer and the reliable women into the legal procedures that precede the matrimony solidify the sense of obligation and

---

Eerdmans, 2009), 99-115. On Jubilees as a foundational cornerstone in the history of the Essenes, see Kister, "Concerning the History of the Essenes."

[99] 1QpHab 11.4-8.

[100] 4QMMT C 7.

commitment to the congregation as a whole, thereby reaffirming the family unit as a member of the entire community.[101]

The investigation into laws of intent and exclusion demonstrate that some flexibility between the ideals and the living law was practiced within the sectarian legal system, too. External debates with competing groups over the correct laws of purity, intermarriage, and so forth inflamed, but the strict "either/or" view reflected in the Children of Light and Darkness paradigm was quite probably never upheld to the letter, for in any given moment a member was bound to err.

[101] Since marriage ceremonies continue to this day to be part of the religious community, they also preserve this aspect of obligation, creating a tension between two systems of laws that rarely come into contact, since both the state and the Jewish institutions have laws regulating marriage. See Solomon Gutstein, "Civil Enforceability of Religious Antenuptial Agreements," *UChicLRev* 23.1 (1955): 122-32; Michelle Greenberg-Kobrin, "Civil Enforceability of Religious Prenuptial Agreements," *Columbia Journal of Law and Social Problems* 32.4 (1999): 359-99.

CONCLUSION

The case study of the laws of premarital and extramarital sex was intended as a demonstration of how the method suggested in this project for the study of the legal material in the Dead Sea Scrolls can be applied. The case study demonstrates the incorporation of established prisms of Qumran studies – such as biblical exegesis or historical analysis that distinguishes between sectarian and non-sectarian material – with legal theory that was expounded in the preceding chapters. The notions I chose to analyze in depth – Legal Essentialism, Intention, Exclusion, and Obligation – are not offered as the only relevant components for the legal worldview that stands in the background of the Essene legal texts. They appear in all the documents relevant for studying the law of the sect – the Community Rule, the Damascus Document, and 4QMMT – and as shown, they share some notions with other texts such as the War Scroll and the Temple Scroll.

The case study demonstrates how the major presuppositions discussed in the chapters that precede it interact with each other and underlie a given law: the role of intention in the law relates to the avoidance of a non-virgin regardless of the groom's desire to be chaste, but is also in the background of the questions about the original intent of the legislator and the interpretive liberties the Essene texts allow themselves when approaching a biblical text. The sense of obligation is present in the duties of the father to the groom, which are presented as religious duties and are thus an obligation to God, but at the same time also a duty towards the purity and integrity of the community as a whole. Exclusionary practices were reflected in the discussion of mixed breeds and the connection these laws engender between the prohibition of mixed breeds in Deut 22:9-11 and the proximate laws of premarital and extramarital relations in Deut 22:13-29. The dismal fate of a non-virgin as implied from 4QD presents another stringent form of exclusion. All these are best understood and explained through the Essenes' essentialist ontological view of the world, consisting of a natural order of purity and defilement, Light and Darkness, hierarchy

and fate, all ordained by God and revealed through the correct interpretation of His laws.

In addition to the exploration of these themes in the case study, I introduced the contractual element of this law. This is not a notion that is necessarily prevalent or pertinent for all Essene law, but its appearance in the marriage laws allows to examine a further contribution of legal thought for the study of these texts. This notion merits further exploration, along the lines proposed by Yonder Gillihan's study of the Yahad from a political science prism, introducing the idea of a social contract as a possible parallel to the language of Covenant found in the scrolls.[1]

The study of the Dead Sea Scrolls through legal theory allows an abstraction of notions that expose further layers of meaning than the concrete context in which specific laws are provided. It assumes a shared typology to all legal phenomena, and as such defies the notion of "Jewish exceptionalism."[2] Defiance should not be confused with denial: it is true that Jewish Law has some idiosyncratic traits, incommensurate with secular legal systems. But these distinctions should not deter scholars from harvesting the fruits of comparison, whether by gaining understanding

[1] Gillihan, *Civic Ideology, Organization, and Law in the Rule Scrolls*, 65-74, and note his rendition of ישקר (1QS 6.24; lit. "will lie") as "breaks the contract," 395.

[2] See Bernard S. Jackson, "Secular Jurisprudence and the Philosophy of Jewish Law" and further bibliography there. Cf. Chaya Halberstam, "Wisdom, *Torah*, *Nomos*: The Discursive Contours of Biblical Law," *Law, Culture, and the Humanities* 9.1 (2013): 50-58; S. L. Stone, "In Pursuit of the Counter-Text"; Christine Hayes, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," 73; Amihai Radzyner, "Between Scholar and Jurist: The Controversy over the Research of Jewish Law Using Comparative Methods at the Early Time of the Field," *Journal of Law and Religion* 23.1 (2007-2008): 189-248; David Novak, *Natural Law in Judaism*, 1-26. The idea of a legal exceptionalism of Jewish culture is derivative of a wider notion of election. See David Novak, *Election of Israel: The Idea of the Chosen People* (Cambridge: Cambridge University Press, 1995). For the ancient sources of this notion see Peter Machinist, "The Question of Distinctiveness in Ancient Israel: An Essay," in *Ah, Assyria: Studies in Assyrian History and Ancient near Eastern Historiography Presented to Hayim Tadmor*, ed. Mordechai Cogan and Israel Eph'al (Jerusalem: Magnes Press, 1991), 196-212; Joel S. Kaminsky, *Yet I Loved Jacob: Reclaiming the Biblical Concept of Election* (Nashville: Abingdon, 2007); John J. Collins, "The Idea of Election in 4 Ezra," *JSQ* 16.1 (2009): 83-96; Marc Hirshman, "Election and Rejection in the Midrash," *JSQ* 16.1 (2009): 71-82; Shani Tzoref, "Covenantal Election in 4Q252 and *Jubilees*' Heavenly Tablets," *DSD* 18.1 (2011): 74-89. See also Eliezer Schweid, "Does the Idea of Jewish Election Have Any Meaning after the Holocaust," in *Wrestling with God. Jewish Theological Responses during and after the Holocaust*, ed. Steven T. Katz, Shlomo Biderman and Gershon Greenberg (Oxford: Oxford University Press, 2007), 229-43.

through similarity or difference. Furthermore, an insistence on finding similarities can yield a higher degree of abstraction, which enables a deeper understanding when re-employed into the concrete example. Thus I attempted to demonstrate, for instance, by comparing a religious view of moral pollution with secular legislation concerning environmental pollution.

Comparison is never identification. Apples *can* be compared with oranges, and such a comparison could prove quite fruitful, to use an appropriate adjective, but there is little to learn from comparing oranges to oranges. Thus, the incorporation of contemporary legal theory into the study of Essene law should proceed with the same caution demonstrated by scholars of Jewish law in general: by recognizing the differences, and working with contemporary theory only as far as a rigorous historical approach allows, informed by literary and philological tools.[3]

One such practiced caution was demonstrated in extracting the ontological and ethical presuppositions that shaped Essene law. In short, these basic notions do not correlate with the basic notions that inform secular legal systems. Indeed, there are a few shared notions: the morality of the law and the idea of a "higher law" are powerful notions in secular legal theory, although not accepted by all. The sense of duty to the law, or the authority of law, is similarly a notion that is shared by starkly different legal systems. Nonetheless, central ideas such as human rights or equality are almost non-existent in the Essene legal system. In *Basic Concepts of Legal Thought*, George Fletcher begins his outline by describing the legal system, and then proceeds to describe its "Ultimate Values": Justice, Desert, Consent, and Equality.[4] The ultimate values of Essene law almost contrast these, and even points of similarity, such as a concern for justice, would

[3] For a methodological discussion and distinction between the tools of History and Literature in the study of ancient Judaism, see Isaiah M. Gafni, "The Modern Study of Rabbinics and Historical Questions: The Tale of the Text," in *The New Testament and Rabbinic Literature*, ed. Reimund Bieringer et al. (Leiden: Brill, 2010): 43-61.

[4] Fletcher, *Basic Concepts of Legal Thought*, 11-135. This choice of structure recalls a standard method of inquiry by legal theorists, which discloses a degree of formalism even amongst its opponents. At the outset it requires a definition of law prior to the exploration of its purported pre-existing values. In addition to Raz's *Authority of Law* mentioned above, many other works in legal theory can be cited as following this mode of discussion, but suffice it to note the following: Kelsen, *Pure Theory of Law*; Hart, *Concept of Law* and Dworkin, *Law's Empire*. An interesting, if unsurprising, divergence from this tendency is found in the structure of Fuller's *The Morality of Law*, which begins with a definition of morality before proceeding to a definition of law.

prove to be of opposing views of justice. Similarly, the lack of a notion of human rights in the Scrolls does not affect only a discussion of rights, but also notions that are extant. For example, obligation is a shared notion in contemporary legal systems and in the Scrolls, but in contemporary legal systems it is qualified based on the recognition of human rights, whose violation can necessitate a duty to disobey the law, according to some legal theorists. Thus, an obligation to the law is maintained only inasmuch as the law protects human values. The lack of a notion of human rights in the Scrolls, on the other hand, changes the meaning and the significance of obligation, by bringing it to the foreground of the legal system.[5]

As argued in the first chapter, these differences are the result of diverging ontological worldviews. A rejection of the belief that all humans are created equal, for example, discredits the merit of upholding a legal system established on the value of equality. A belief that God has determined each person to belong to the dominion of light or darkness by descent alone, drastically impacts views of desert. An examination of the few cases in which the Essene language implies certain rights of individuals and possible reconciliations of such statements with the general worldview necessitates a study of its own.[6]

The study of Jewish law and of rabbinic literature specifically has long benefitted from legal theory as well as many other disciplines which have been applied to enhance research of ancient Judaism. The study of biblical law has not been characterized by a "legal turn,"[7] but has benefitted from many lawyers who turn to the Hebrew Bible for various reasons. In a

---

[5] The tension remains in later Jewish law. See Michael J. Broyde, "Rights and Duties in the Jewish Tradition," in *Contrasts in American and Jewish Law*, ed. Daniel Pollack (New York: Yeshiva University Press, 2001), xxiii-xxix.

[6] For the question of human rights in Jewish law in general see Haim H. Cohn, *Human Rights in Jewish Law* (New York: Ktav, 1984); Michael A. Fishbane, "The Image of the Human and the Rights of the Individual in Jewish Tradition," in *Human Rights and the World's Religions*, ed. Leroy S. Rouner (Notre Dame: University of Notre Dame Press, 1988), 17-32; Menachem Elon, "The Values of a Jewish and Democratic State: The Task of Reaching a Synthesis," *Human Rights Review* 3.2 (2002): 36-84; Suzanne Last Stone, "A Jewish Perspective on Human Rights," *Society* 41.2 (2004): 17-22; David Novak, "God and Human Rights in a Secular Society: A Biblical-Talmudic Perspective," in *Jewish Bible Theology. Perspectives and Case Studies*, ed. Isaac Kalimi (Winona Lake: Eisenbrauns, 2012), 89-99.

[7] A notable exception is found in the works of Bernard M. Levinson. See his *Legal Revision and Religious Renewal in Ancient Israel*; idem, *'The Right Chorale'. Studies in Biblical Law and Interpretation* (Tübingen: Mohr Siebeck, 2008).

paper delivered at the Society of Biblical Literature's Annual Meeting,[8] I suggested an analysis of the law of unintentional homicide and the cities of refuge (Ex 21:12-14; Num 35; Deut 19:1-13), demonstrating how theories of intention, spatial theory, and socio-legal theories can illuminate biblical laws. There is still much to be done in this direction. As for Qumran studies, scholars have employed theories from the field of literature, poetics,[9] and critical theory,[10] as well as sociology, anthropology, politics and geography.[11] Thus, the proposal promoted and demonstrated

---

[8] Aryeh Amihay, "The Development of Unintentional Homicide and the Asylum Towns Law," *SBL Annual Meeting*, Atlanta, November 21, 2010.

[9] Bonnie Kittel, *The Hymns of Qumran* (Chico: Scholars, 1981); Julie A. Hughes, *Scriptural Allusions and Exegesis in the Hodayot* (Leiden: Brill, 2006); William John Lyons, "'An Unauthorized Version': The Temple Scroll in Narratological Perspective," in *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, ed. Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen (London: T & T Clark, 2005), 126-48.

[10] Carol Newsom has been a pioneering figure in this direction. See Newsom, "Kenneth Burke Meets the Teacher of Righteousness"; eadem, *Self as Symbolic Space*; eadem, "Rhetorical Criticism and the Dead Sea Scrolls," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, ed. Maxine L. Grossman (Grand Rapids: Eerdmans, 2010), 198-214. See also Andy M. Reimer, "Probing the Possibilities and Pitfalls of Post-Colonial Approaches to the Dead Sea Scrolls," in *New Directions in Qumran Studies*, 182-209 and other essays in that volume.

[11] Sociology is perhaps the external discipline best represented in Qumran studies for obvious reasons. See chapter 3, n. 6 for a partial bibliography. For the employment of anthropology in Qumran studies, see Crispin H. T. Fletcher-Louis, *All the Glory of Adam. Liturgical Anthropology in the Dead Sea Scrolls* (Leiden: Brill, 2002); Louise J. Lawrence, "'Men of Perfect Holiness' (1QS 7.20): Social-Scientific Thoughts on Group Identity, Asceticism and Ethical Development in the *Rule of the Community*," in *New Directions in Qumran Studies*, 83-100. As mention above, see Gillihan, *Civic Ideology, Organization, and Law in the Rule Scrolls*, for application of political science to the study of the scrolls. For geographical aspects and spatial theory in relation to the Scrolls see James M. Scott, "Geographic Aspects of Noachic Materials in the Scrolls at Qumran," in *The Scrolls and the Scriptures: Qumran Fifty Years After*, ed. Stanley E. Porter and Craig A. Evans (Sheffield: Sheffield Academic Press, 1997), 368-81; Lied, "Another Look at the Land of Damascus"; Daniel A. Machiela, "'Each to His Own Inheritance': Geography as an Evaluative Tool in the Genesis Apocryphon," *DSD* 15.1 (2008): 50-66; Regev, "Access Analysis of Khirbet Qumran"; Eibert J.C. Tigchelaar, "The Character of the City and the Temple of Aramaic 'New Jerusalem'," in *Other Worlds and Their Relation to This World: Early Jewish and Ancient Christian Traditions*, ed. Tobias Nicklas et al. (Leiden: Brill, 2010), 117-31; Alison Schofield, "Re-placing Priestly Space: The Wilderness as Heterotapia in the Dead Sea Scrolls," in *A Teacher for All Generations. Essays in Honor of James C. VanderKam*, ed. Eric F. Mason et al. (Leiden: Brill, 2012), 1:469-90.

throughout this study to introduce legal theory into the study of Qumran literature is in accordance with a growing trend in the field.[12] At the same time, it is offered with a sense of urgency, lest the study of law in the Dead Sea Scrolls transforms to a mere precursor of rabbinic law. By incorporating language from a distant discipline, the study of Essene law is enhanced, but with a firm insistence on its autonomy.

[12] In addition to the survey offered briefly in this conclusion, see more on interdisciplinary approaches in Qumran studies in Penner, *Patterns of Daily Prayer*, 25-28; Angela Kim Harkins, *Reading with an 'I' To the Heavens. Looking at the Qumran Hodayot through the Lens of Visionary Traditions* (Berlin and Boston: de Gruyter, 2012), 1-68; Mladen Popović, "Physiognomic Knowledge in Qumran and Babylonia: Form, Interdisciplinarity, and Secrecy," *DSD* 13.2 (2006): 150-76; idem, "The Jewish Revolt against Rome: History, Sources and Perspectives," in *The Jewish Revolt Against Rome. Interdisciplinary Perspectives*, ed. Mladen Popović (Leiden: Brill, 2011), 1-25.

BIBLIOGRAPHY

Abbreviations

AB	Anchor Bible
AGAJU	Arbeiten zur Geschichte des antiken Judentums und des Urchristentums
AJEC	Ancient Judaism and Early Christianity
BASOR	Bulletin of the American Schools of Oriental Research
BETL	Bibliotheca Ephemeridum Theologicarum Lovaniensium
BibInt	Biblical Interpretation
BJS	Brown Judaic Studies
BKAT	Biblischer Kommentar: Altes Testament
BRLJ	Brill Reference Library of Judaism
BZABR	Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte
BZNW	Beihefte zur Zeitschrift für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche
CalifLR	California Law Review
CBC	Cambridge Bible Commentary
CBQ	Catholic Biblical Quarterly
CQS	Companion to the Qumran Scrolls
CRINT	Compendia Rerum Iudaicarum ad Novum Testamentum
DJD	Discoveries in the Judaean Desert
DSD	Dead Sea Discoveries
DSSSE	Florentino García Martínez & Eibert J.C. Tigchelaar, eds. *Dead Sea Scrolls Study Edition*. Leiden and New York: Brill, 1997-1998.
FAT	Forschungen zum Alten Testament
GCT	Gender, Culture, Theory
HAR	Hebrew Annual Review
HBM	Hebrew Bible Monographs
HLR	Harvard Law Review
HousLRev	Houston Law Review
HSM	Harvard Semitic Monographs
HTR	Harvard Theological Review
HUCA	Hebrew Union College Annual
ICC	International Critical Commentary
IEJ	Israel Exploration Journal
IJSSJ	Institute of Jewish Studies' Studies in Judaica

JAJ	Journal of Ancient Judaism
JANES	Journal of the Ancient Near Eastern Society
JAOS	Journal of the American Oriental Society
JBL	Journal of Biblical Literature
JECS	Journal of Early Christian Studies
JJS	Journal of Jewish Studies
JLA	Jewish Law Annual
JLAS	Jewish Law Association Studies
JNES	Journal of Near Eastern Studies
JQR	Jewish Quarterly Review
JRE	Journal of Religious Ethics
JSJ	Journal for the Study of Judaism
JSJS	Supplements to the Journal for the Study of Judaism
JSNT	Journal for the Study of the New Testament
JSNTSup	Journal for the Study of the New Testament Supplement Series
JSOT	Journal for the Study of the Old Testament
JSOTSup	Journal for the Study of the Old Testament Supplement Series
JSP	Journal for the Study of the Pseudepigrapha
JSPSup	Journal for the Study of the Pseudepigrapha Supplement Series
JSQ	Jewish Studies Quarterly
JThS	Journal of Theological Studies
KBL	Koehler, Ludwig, and Walter Baumgartner. *The Hebrew and Aramaic Lexicon of the Old Testament*. Leiden: Brill, 1995.
LCL	Loeb Classical Library
LHBOTS	Library of Hebrew Bible/Old Testament Studies
LNTS	Library of New Testament Studies
LSTS	Library of Second Temple Studies
MichLR	Michigan Law Review
NICOT	The New International Commentary on the Old Testament
NTOA	Novum Testamentum et orbis antiquus
NTSup	Supplements to Novum Testamentum
OBO	Orbis biblicus et orientalis
OJLS	Oxford Journal of Legal Studies
OTL	Old Testament Library
RevQ	Revue de Qumrân
RRJ	Review of Rabbinic Judaism
SBL	Society of Biblical Literature
SBLAB	SBL Academia Biblica Series
SBLDS	SBL Dissertation Series
SBLEJL	SBL Early Judaism and Its Literature Series
SBLMS	SBL Monograph Series
SBLSP	SBL Seminar Papers
SBLSS	SBL Symposium Series

SDSSRL	Studies in the Dead Sea Scrolls and Related Literature
SJLA	Studies in Judaism in Late Antiquity
StanfLR	Stanford Law Review
STDJ	Studies on the Texts of the Desert of Judah
SVTP	Studia in Veteris Testamenti pseudepigrapha
TBN	Themes in Biblical Narrative
TexLR	Texas Law Review
TSAJ	Texts and Studies in Ancient Judaism
UChicLRev	University of Chicago Law Review
VT	Vetus Testamentum
VTSup	Supplements to Vetus Testamentum
WCJS	Proceedings of the World Congress in Jewish Studies
WUNT	Wissenschaftliche Untersuchungen zum Neuen Testament
ZABR	Zeitschrift für altorientalische und biblische Rechtsgeschichte
ZAW	Zeitschrift für die alttestamentliche Wissenschaft

Abegg, Martin G. Jr. "Who Ascended to Heaven? 4Q491, 4Q427, and the Teacher of Righteousness." In *Eschatology, Messianism, and the Dead Sea Scrolls*, SDSSRL, edited by Craig A. Evans and Peter W. Flint, 61-73. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 1997.

Abel, Carl. *Linguistic Essays*. Boston: Houghton Mifflin, 1882.

Abel, Richard L. "A Comparative Theory of Dispute Institutions in Society." *Law & Society Review* 8.2 (1974): 217-347.

———, ed. *The Law & Society Reader*. New York and London: New York University Press, 1995.

———. "Redirecting Social Studies of Law." *Law & Society Review* 14.3 (1980): 805-29.

Ackerman, Bruce. *We the People: Transformations*. Cambridge, Mass.: Belknap Press of Harvard University Press, 1998.

Agamben, Giorgio. *The Coming Community*, translated by Michael Hardt. Minneapolis, Minn.: University of Minnesota Press, 1993.

Allan, T. R. S. "Law, Justice and Integrity: The Paradox of Wicked Laws." *OJLS* 29.4 (2009): 705-28.

Allegro, J. M. *The Dead Sea Scrolls*. London: Penguin, 1956.

Alexander, Philip S. "Predestination and Free Will in the Theology of the Dead Sea Scrolls." In *Divine and Human Agency in Paul and His Cultural Environment*, LNTS 335, edited by John M. G. Barclay and Simon Gathercole, 27-49. London: T&T Clark, 2006.

———. "Qumran and the Genealogy of Western Mysticism." In *New Perspectives on Old Texts*, STDJ 88, edited by Esther G. Chazon, Betsy Halpern-Amaru and Ruth A. Clements, 215-35. Leiden: Brill, 2010.

———. "The Redaction History of Serekh Ha-Yahad: A Proposal." *RevQ* 17.1-4 (1996): 437-56.

Alexander, Philip S. and Geza Vermes. *Qumran Cave 4, xix: 4QSerekh Ha-Yaḥad and Two Related Texts*, DJD 26. Oxford: Clarendon Press, 1998.

Alt, Albrecht. *Essays on Old Testament History and Religion*. Translated by R.A. Wilson. Oxford: Basil Blackwell, 1966.

Alter, Robert. *The Art of Biblical Poetry*. New York: Basic Books (division of HarperCollins), 1985.

———. *The Five Books of Moses. A Translation with Commentary*. New York and London: Norton, 2004.

Altmann, Alexander. "Saadya's Conception of the Law." *Bulletin of the John Rylands Library* 28.2 (1944): 3-24. Reprinted in Steven T. Katz, ed. *Saadiah Gaon*, Jewish Philosophy, Mysticism and the History of Ideas. New York: Arno, 1980.

Amihay, Aryeh. "Intentionality and the 'High Hand' in the Pentateuch and the Dead Sea Scrolls." *Jewish Law Association Studies* 23 (2012): 1-12.

———. "Law and Society in the Dead Sea Scrolls: Preliminary Remarks." *Diné Israel* (forthcoming, 2013).

———. "Noah in Rabbinic Literature." In *Noah and His Book(s)*, SBLEJL 28, edited by Michael E. Stone, Aryeh Amihay and Vered Hillel, 193-214. Atlanta, Ga.: SBL and Leiden: Brill, 2010.

Amihay, Ofra. "The Deception: An Annotated Biblical Play." *Al hapereq* 20 (2004): 130-51 (in Hebrew).

Andersen, Francis I. and David Noel Freedman. *Hosea*, AB 24. Garden City: Doubleday, 1980.

Anderson, Gary A. "The Expression of Joy as a Halakhic Problem in Rabbinic Sources." *JQR* 80.3-4 (1990): 221-52.

———. "Intentional and Unintentional Sin in the Dead Sea Scrolls." In *Pomegranates and Golden Bells. Studies in Biblical, Jewish, and Near Eastern Ritual, Law and Literature in Honor of Jacob Milgrom*, edited by David Pearson Wright, David Noel Freedman and Avi Hurvitz, 49-64. Winona Lake, Ind.: Eisenbrauns, 1995.

———. *Sin. A History*. New Haven, Conn.: Yale University Press, 2009.

———. "The Status of the Torah before Sinai. The Retelling of the Bible in the Damascus Covenant and the Book of Jubilees." *DSD* 1.1 (1994): 1-29.

———. "The Status of the Torah in the Pre-Sinaitic Period: St. Paul's Epistle to the Romans." In *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls*, STDJ 28, edited by Michael E. Stone and Esther G. Chazon, 1-23. Leiden: Brill, 1998.

———. *A Time to Mourn, a Time to Dance. The Expression of Grief and Joy in Israelite Religion*. University Park, Pa.: Pennsylvania State University Press, 1991.

Angel, Joseph. "The Use of the Hebrew Bible in Early Jewish Magic." *Religion Compass* 3.5 (2009): 785-98 [online journal, DOI: 10.1111/j.1749-8171.2009.00167.x].

Anscombe, G. E. M. *Intention*. Ithaca, N.Y.: Cornell University Press, 1957.

Appiah, Kwame Anthony. *The Ethics of Identity*. Princeton: Princeton University Press, 2005.

Arendt, Hannah. *Crises of the Republic*: *Lying in Politics, Civil Disobedience, On Violence, Thoughts on Politics, and Revolution*. New York: Harcourt, Brace Jovanovich, 1972.

Arkush, Allan. "Biblical Criticism and Cultural Zionism prior to the First World War." *Jewish History* 21.2 (2007): 121-58.

Arnold, Russell C.D. *The Social Role of Liturgy in the Religion of the Qumran Community*, STDJ 60. Leiden and Boston: Brill, 2006.

Ashley, Timothy R. *The Book of Numbers*, NICOT. Grand Rapids, Mich.: Eerdmans, 1993.

Atkinson, Kenneth and Jodi Magness. "Josephus's Essenes and the Qumran Community." *JBL* 129.2 (2010): 317-42.

Attridge, Harold W. "The Gospel of John and the Dead Sea Scrolls." In *Text, Thought, and Practice in Qumran and Early Christianity*, STDJ 84, edited by Ruth A. Clements and Daniel R. Schwartz, 109-26. Leiden and Boston: Brill, 2009.

Audi, Robert. *Action, Intention, and Reason*. Ithaca, N.Y.: Cornell University Press, 1993.

Aune, David E. "Dualism in the Fourth Gospel and the Dead Sea Scrolls: A Reassessment of the Problem." In *Neotestamentica et Philonica: Studies in Honor of Peder Borgen*, NTSup 106, edited by David E. Aune, Torrey Seland and Jarl Henning Ulrichsen, 281-303. Leiden and Boston: Brill, 2003.

Avalos, Héctor Ignacio. "Legal and Social Institutions of Canaan and Ancient Israel." In *Civilizations of the Ancient near East*, edited by Jack M. Sasson, 1:615-31. New York: Scribner, 1995.

Ayres, Ian and Gregory Klass. *Insincere Promises: The Law of Misrepresented Intent*. New Haven, Conn.: Yale University Press, 2005.

Baillet, Maurice. *Qumrân Grotte 4,iii (4Q482-520)*, DJD 7. Oxford: Clarendon Press, 1982.

Bandes, Susan A., ed. *The Passions of Law*. Critical America. New York and London: New York University Press, 1999.

Bar-Asher Siegal, Michal. "The Unintentional Killer. Midrashic Layers in the Second Chapter of Mishnah Makkot." *JJS* 61.1 (2010): 30-47.

Bar-Siman-Tov, Ittai. "Lawmakers as Lawbreakers." *William and Mary Law Review* 52.3 (2010): 805-71.

Barak, Aharon. *Purposive Interpretation in Law*, translated by Sari Bashi. Princeton: Princeton University Press, 2005.

Barbour, Jennie. *The Story of Israel in the Book of Qohelet. Ecclesiastes as Cultural Memory*. Oxford: Oxford University Press, 2012.

Barmash, Pamela. "The Narrative Quandary: Cases of Law in Literature." *VT* 54.1 (2004): 1-16.

Barzilay, Yoav. "The Law of the King in the Temple Scroll: Its Original Characteristics and Later Redaction." *Tarbiz* 72.1-2 (2003): 59-84 (in Hebrew).

Baskin, Judith R. *Midrashic Women. Formations of the Feminine in Rabbinic Literature*. Hannover, N.H.: University Press of New England, 2002.

Batnitzky, Leora. "From Politics to Law: Modern Jewish Thought and the Invention of Jewish Law." *Diné Israel* 26-27 (2009-2010): 7-44.

———. "A Seamless Web? John Finnis and Joseph Raz on Practical Reason and the Obligation to Obey the Law." *OJLS* 15.2 (1995): 153-75.

Baumgarten, Albert I. "'But Touch the Law and the Sect Will Split:' Legal Disputes as the Cause of Sectarian Schism." *RRJ* 5.3 (2002): 301-15.

———. *The Flourishing of Jewish Sects in the Maccabean Era: An Interpretation*, JSJS 55. Leiden: Brill, 1997.

———. "He Knew That He Knew That He Knew That He Was an Essene." *JJS* 48.1 (1997): 53-61.

———. "Legal Disputes as the Cause of Sectarian Schism." In *Fifty Years of Dead Sea Scrolls Research. Studies in Memory of Jacob Licht*, edited by Gershon Brin and Bilhah Nitzan, 155-65. Jerusalem: Yad Ben Zvi, 2001 (in Hebrew).

———. "Literacy and the Polemics surrounding Biblical Interpretation in the Second Temple Period." In *Studies in Ancient Midrash*, edited by James L. Kugel, 27-41. Cambridge, Mass.: Harvard University Center for Jewish Studies, 2001.

———. "Rabbinic Literature as a Source for the History of Jewish Sectarianism in the Second Temple Period." *DSD* 2.1 (1995): 14-57.

———. *Second Temple Sectarianism. A Social and Religious Historical Essay*, Broadcast University. Tel Aviv: Ministry of Defence, 2001 (in Hebrew).

———. "Who Cares and Why Does It Matter? Qumran and the Essenes, Once Again!" *DSD* 11.2 (2004): 174-90.

Baumgarten, Joseph M. "The Avoidance of Death Penalty in Qumran Law." In *Reworking the Bible: Apocryphal and Related Texts at Qumran*, STDJ 58, edited by Esther G. Chazon, Devorah Dimant and Ruth A. Clements, 31-38. Leiden and Boston: Brill, 2005.

———. "The Calendars of the Book of Jubilees and the Temple Scroll." *VT* 37.1 (1987): 71-8.

———. "The Exclusion of *Netinim* and Proselytes in 4QFlorilegium." *RevQ* 8.1 (1972): 87-96.

———. "The Laws of the Damascus Document – between Bible and Mishnah." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 17-26. Leiden, Boston, and Köln: Brill, 2000.

———. *Studies in Qumran Law*, SJLA 24. Leiden: Brill, 1977.

———. "The Unwritten Law in the Pre-Rabbinic Period." *JSJ* 3.1 (1972): 7-29. Reprinted in his *Studies in Qumran Law*, SJLA 24, 13-35. Leiden: Brill, 1977.

Baumgarten, Joseph M. and Daniel R. Schwartz. "Damascus Document (CD)." In *Damascus Document, War Scroll, and Related Documents*. Princeton Theological Seminary Dead Sea Scrolls Project 2, edited by James H. Charlesworth, 4-57. Tübingen: Mohr Siebeck and Louisville: Westminster John Knox Press, 1995.

Baumgarten, Joseph M. et al. *Qumran Cave 4, xiii. The Damascus Document (4Q266-273)*, DJD 18. Oxford: Clarendon Press, 1996.

Bazak, Jacob. "The Element of Intention in the Performance of *Mitsvot* Compared to the Element of Intention in Current Criminal Law." *JLAS* 14 (2004): 9-15.

———. "Is a Consequence Considered 'Intended,' When It Is Foreseen as Highly Probable? A Comparative Study in *Halakha* and in Modern Criminal Law." *JLAS* 10 (2000): 1-9.

Beabout, Gregory R. and Brad Frazier, "A Challenge to the 'Solitary Self' Interpretation of Kierkegaard." *History of Philosophy Quarterly* 17.1 (2000): 75-98.

Beckwith, Roger T. "Formation of the Hebrew Bible." In *Mikra: Text, Translation, Reading and Interpretation of the Bible in Ancient Judaism and Early Christianity*, CRINT 2.1, edited by Martin Jan Mulder, 39-86. Assen: Van Gorcum and Philadelphia: Fortress Press, 1988.

———. "The Modern Attempt to Reconcile the Qumran Calendar with the True Solar Year." *RevQ* 7.3 (1970): 379-96.

Beitz, Charles R. "Cosmopolitan Ideals and National Sentiment." *Journal of Philosophy* 80.10 (1983): 591-600.

———. "The Distribution of Membership." In *Boundaries. National Autonomy and Its Limits*, Maryland Studies in Public Philosophy, edited by Peter G. Brown and Henry Shue, 1-35. Totowa, N.J.: Rowman and Littlefield, 1981.

———. *The Idea of Human Rights*. Oxford and New York: Oxford University Press, 2009.

Bell, Catherine. *Ritual. Perspectives and Dimensions*. Oxford: Oxford University Press, 1997.

Bellefontaine, Elizabeth. "The Curses of Deuteronomy 27: Their Relationships to the Prohibitives." In *A Song of Power and the Power of Song. Essays on the Book of Deuteronomy*, Sources for Biblical Theological Study 3, edited by Duane L .Christensen, 256-68. Winona Lake, Ind.: Eisenbrauns, 1993.

Ben-Dov, Jonathan. "Exegetical Notes on Cosmology in the Parables of Enoch." In *Enoch and the Messiah Son of Man. Revisiting the Book of Parables*, edited by Gabriele Boccaccini, 143-50. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2007.

———. "Treasures of Light." In *On the Border Line. Textual Meets Literary Criticism. Proceedings of a Conference in Honor of Alexander Rofé on the Occasion of His Seventieth Birthday*, Beer-Sheva 18, edited by Zipora Talshir and Dalia Amara, 155-62. Beer-Sheva: Ben-Gurion University of the Negev Press, 2005 (in Hebrew).

Ben-Dov, Jonathan and Stéphane Saulnier. "Qumran Calendars: A Survey of Scholarship 1980—2007." *Currents in Biblical Research* 7.1 (2008): 124-68.

Ben-Menahem, Hanina. "Is There Always One Uniquely Correct Answer to a Legal Question in the Talmud?" *JLA* 6 (1987): 164-75.

———. *Judicial Deviation in Talmudic Law: Governed by Men, Not by Rules*, Jewish Law in Context 1. Chur, Switzerland: Harwood, 1991.

Ben-Menahem, Hanina, Neil S. Hecht, and Shai Wosner, eds. *Controversy and Dialogue in the Jewish Tradition. A Reader*, Institute of Jewish Law, Boston University School of Law Publication 31. Abingdon and New York: Routledge, 2005.

Ben-Zvi, Ehud. *Hosea*, Forms of the Old Testament Literature 31a. Grand Rapids, Mich.: Eerdmans, 2005.

Benditt, Theodore M. *Law as Rule and Principle. Problems of Legal Philosophy*. Stanford, Calif.: Stanford University Press, 1978.

Beran, Harry. *The Consent Theory of Political Obligation*, International Series in Social and Political Thought. Kent and New York: Croom Helm, 1987.

Berg, Shane. "An Elite Group within the *Yaḥad*: Revisiting 1QS 8-9." In *Qumran Studies: New Approaches, New Questions*, edited by Michael T. Davis and Brent A. Strawn, 161-77. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2007.

———. "Religious Epistemology and the History of the Dead Sea Scrolls Community." In *The 'Other' in Second Temple Judaism. Essays in Honor of John J. Collins*, edited by Daniel C. Harlow, Karina Martin Hogan, Matthew J. Goff and Joel S. Kaminsky, 333-49. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2011.

Berger, Michael S. *Rabbinic Authority*. Oxford: Oxford University Press, 1998.

Bergmann, Jörg R. *Discreet Indiscretions: The Social Organization of Gossip*. Translated by John Bednarz, Jr. Berlin and New York: de Gruyter, 1993.

Bergsma, John Sietze, and Scott Walker Hahn. "Noah's Nakedness and the Curse on Canaan (Genesis 9:20-27)." *JBL* 124.1 (2005): 25-40.

Berkowitz, Beth A. *Execution and Invention. Death Penalty Discourse in Early Rabbinic and Christian Cultures*. Oxford and New York: Oxford University Press, 2006.

Berlin, Adele. *The Dynamics of Biblical Parallelism*, Biblical Resource Series, 2nd edition. Grand Rapids, Mich.: Eerdmans, 2007.

Berman, Harold J. and Charles J. Reid, Jr., "Max Weber as Legal Historian." In *The Cambridge Companion to Weber*, edited by Stephen Turner, 223-39. Cambridge: Cambridge University Press, 2000.

Bernstein, Elizabeth and Laurie Schaffner, eds. *Regulating Sex. The Politics of Intimacy and Identity*, Perspectives on Gender. New York and Abingdon, UK: Routledge, 2005.

Bernstein, Moshe J. "4Q159: Nomenclature, Text, Exegesis, Genre." In *The Mermaid and the Partridge. Essays from the Copenhagen Conference on Revising Texts*

from Cave Four, STDJ 96, edited by George J. Brooke and Jesper Høgenhaven, 33-55. Leiden: Brill, 2011.

———. "4Q159 Fragment 5 and The 'Desert Theology' Of the Qumran Sect." In *Emanuel. Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, VTSup 94, edited by Shalom M. Paul et al., 43-56. Leiden and Boston: Brill, 2003.

———. "Angels at the Aqedah: A Study in the Development of a Midrashic Motif." *DSD* 7.3 (2000): 263-91.

———. "Biblical Interpretation in the Dead Sea Scrolls: Looking Back and Looking Ahead." In *The Dead Sea Scrolls and Contemporary Culture. Proceedings of the International Conference Held at the Israel Museum, Jerusalem (July 6-8, 2008)*, STDJ 93, edited by Adolfo D. Roitman, Lawrence H. Schiffman and Shani Tzoref, 141-59. Leiden: Brill, 2011.

———. "The Employment and Interpretation of Scripture in 4QMMT: Preliminary Observations." In *Reading 4QMMT. New Perspectives on Qumran Law and History*, SBLSS 2, edited by John I. Kampen and Moshe J. Bernstein, 29-51. Atlanta, Ga.: Scholars Press, 1996.

———. "Interpretation of Scriptures." In *Encyclopedia of the Dead Sea Scrolls*, edited by Lawrence H. Schiffman and James C. VanderKam, 1:376-83. Oxford and New York: Oxford University Press, 2000.

———. "Introductory Formulas for Citation and Re-Citation of Biblical Verses in the Qumran Pesharim: Observations on a Pesher Technique." *DSD* 1.1 (1994): 30-70.

———. "Noah and the Flood at Qumran." In *The Provo International Conference on the Dead Sea Scrolls*, STDJ 30, edited by Donald W. Parry and Eugene C. Ulrich, 199-231. Leiden, Boston and Köln: Brill, 1999.

———. "Pentateuchal Interpretation at Qumran." In *The Dead Sea Scrolls after Fifty Years. A Comprehensive Assessment*, edited by Peter W. Flint and James C. VanderKam, 128-59. Leiden, Boston, and Köln: Brill, 1998.

———. "The Re-Presentation of 'Biblical' Legal Material at Qumran: Three Cases from 4Q159 (4QOrdinances[a])." In *Shoshanat Yaakov. Jewish and Iranian Stuides in Honor of Yaakov Elman*, BRLJ 35, edited by Shai Secunda and Steven Fine, 1-20. Leiden and Boston: Brill, 2012.

———. "'Rewritten Bible': A Generic Category Which Has Outlived Its Usefulness?" *Textus* 22 (2005): 169-96.

———. "Women and Children in Legal and Liturgical Texts from Qumran." *DSD* 11.2 (2004): 191-211.

Bernstein, Moshe J. and Shlomo A. Koyfman. "The Interpretation of Biblical Law in the Dead Sea Scrolls: Forms and Methods." In *Biblical Interpretation at Qumran*, SDSSRL, edited by Matthias Henze, 61-87. Grand Rapids, Mich.: Eerdmans, 2005.

Berthelot, Katell. "4QMMT et la question du canon de la Hébraïque Bible." In *From 4QMMT to Resurrection. Mélanges Qumraniens en hommage à Émile Puech*, STDJ 61, edited by Florentino García Martínez, Annette Steudel and Eibert J.C. Tigchelaar, 1-14. Leiden and Boston: Brill, 2006.

Besnier, Niko. "Information Withholding as a Manipulative and Collusive Strategy in Nukulaelae Gossip." *Language in Society* 18.3 (1989): 315-41.

Besser, Anne Cucchiara and Kalman J. Kaplan. "The Good Samaritan: Jewish and American Legal Perspectives." *Journal of Law and Religion* 10.1 (1993-1994): 193-219.

Bet-Or, Ori. "Gossip, Community, and the Local Kibbutz Magazine." *Kibbutz Trends* 22-23 (1996): 55-63.

Bhabha, Jacqueline. "'Get Back to Where You Once Belonged': Identity, Citizenship, and Exclusion in Europe." *Human Rights Quarterly* 20.3 (1998): 592-627.

Biale, David. *Eros and the Jews: From Biblical Israel to Contemporary America*. Berkeley, Calif.: University of California Press, 1997.

Birenboim, Hannan. "'The Place Which the Lord Shall Choose,' the 'Temple City,' and the 'Camp' in 11QT[a]." *RevQ* 23.3 (2008): 357-69.

Birnhack, Michael D. "The Dead Sea Scrolls Case: Who Is an Author?" *European Intellectual Property Review* 23.3 (2001): 128-42.

Blau, Joshua. "On the Transformations of Weakening of the Gutturals as a Living Phenomenon." *Leshonenu* 45.1 (1981): 32-9 (in Hebrew).

Blenkinsopp, Joseph. *Opening the Sealed Book: Interpretations of the Book of Isaiah in Late Antiquity*. Grand Rapids, Mich.: Eerdmans, 2006.

Boccaccini, Gabriele. *Beyond the Essene Hypothesis: The Parting of the Ways between Qumran and Enochic Judaism*. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 1998.

Bockmuehl, Markus. "1QS and Salvation at Qumran." In *Justification and Variegated Nomism. Vol. 1, The Complexities of Second Temple Judaism*, WUNT 2.140, edited by D.A. Carson, Peter T. O'Brien, and Mark A. Seifrid, 381-414. Tübingen: Mohr Siebeck and Grand Rapids, Mich.: Baker, 2001.

Bornstein, Brian H. and Richard L. Wiener, eds. *Special Issue: Emotion in Legal Judgment and Decision Making* (Law and Human Behavior 30.2). New York: Springer, 2006.

Borkowski, Andrew. *Textbook on Roman Law*, 2nd edition. London: Blackstone, 1997.

Bourdieu, Pierre. "The Force of Law: Toward a Sociology of the Juridical Field." Translated by Richard Terdiman. *Hastings Law Journal* 38.5 (1987): 814-53.

———. *Pascalian Meditation*s. Translated by Richard Nice. Stanford: Stanford University Press, 2000.

Boyarin, Daniel. "Old Wine in New Bottles: Intertextuality and Midrash." *Poetics Today* 8.3-4 (1987): 539-56.

———. "'This We Know to Be the Carnal Israel': Circumcision and the Erotic Life of God and Israel." *Critical Inquiry* 18.3(1992): 474-505.

Bradshaw, Paul F., Maxwell E. Johnson, and L. Edward Phillips. *The Apostolic Tradition*, Hermeneia. Minneapolis, Minn.: Fortress Press, 2002.

Branaman, Ann. "Interaction and Hierarchy in Everyday Life: Goffman and Beyond." In *Goffman's Legacy*. Legacies of Social Thought, edited by A. Javier Treviño, 86-126. Lanham, Md.: Rowman and Littlefield, 2003.

Bratman, Michael. *Faces of Intention. Selected Essays on Intention and Agency*. Cambridge Studies in Philosophy. Cambridge: Cambridge University Press, 1999.

———. *Intention, Plans, and Practical Reason*. Cambridge, Mass.: Harvard University Press, 1987.

———. "What Is Intention?" In *Intentions in Communication*, edited by Philp R. Cohen, Jerry Morgan and Martha E. Pollack, 15-31. Cambridge, Mass.: Bradford (for MIT Press), 1990.

Brenneis, Donald. "Grog and Gossip in Bhatgaon: Style and Substance in Fiji Indian Conversation." *American Ethnologist* 11.3 (1984): 487-506.

Brin, Gershon. "Concerning Some of the Uses of the Bible in the Temple Scroll." *RevQ* 12.4 (1987): 519-28.

———. "Reading in *4Q524* frs. 15-22 – DJD XXV." *RevQ* 19.2 (2000): 270.

———. "Regarding the Connection between the Temple Scroll and the Book of Jubilees." *JBL* 112.1 (1993): 108-9.

———. *Studies in Biblical Law. From the Hebrew Bible to the Dead Sea Scrolls*, JSOTSup 176. Sheffield: Sheffield Academic Press and JSOT Press, 1994.

———. "Two Laws Concerning Marriage from Qumran." *Beit Mikra* 40.3 (1995): 224-31 (in Hebrew).

Bristow, William. "Thinking Outside the Circle: The Place of Kierkegaard in Stern's *Understanding Moral Obligation*." *Inquiry* 55.6 (2012): 606-621.

Brooke, George J. "Biblical Interpretation at Qumran." In *The Bible and the Dead Sea Scrolls*, edited by James H. Charlesworth, 287-319. N. Richland Hills, Tex.: BIBAL Press, 1997.

———. "Biblical Interpretation in the Qumran Scrolls and the New Testament." In *The Dead Sea Scrolls: Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 60-73. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

———. "Body Parts in Barkhi Nafshi and the Qualifications for Membership of the Worshipping Community." In *Sapiential, Liturgical and Poetical Texts from Qumran*, STDJ 35, edited by Daniel K. Falk, Florentino García Martínez and Eileen M. Schuller, 79-94. Leiden: Brill, 2000.

———. *The Dead Sea Scrolls and the New Testament: Essays in Mutual Illumination*. London: Society for Promoting Christian Knowledge (SPCK), 2005.

———. "The Explicit Presentation of Scripture in 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, STDJ 23, edited by Moshe J. Bernstein, Florentino García Martínez and John I. Kampen, 67-88. Leiden, New York, and Köln: Brill, 1997.

———. "From Bible to Midrash: Approaches to Biblical Interpretation in the Dead Sea Scrolls by Modern Interpreters." In *Northern Lights on the Dead Sea Scrolls. Proceedings of the Nordic Qumran Network, 2003-2006*, STDJ 80, edited by Anders Klostergaard Petersen et al., 1-19. Leiden and Boston: Brill, 2009.

———. "From Jesus to the Early Christian Communities. Modes of Sectarianism in the Light of the Dead Sea Scrolls." In *The Dead Sea Scrolls and Contemporary Culture*, STDJ 93, edited by Adolfo D. Roitman, Lawrence H. Schiffman and Shani Tzoref, 413-34. Leiden: Brill, 2011.

———. "Isaiah 40:3 and the Wilderness Community." In *New Qumran Texts and Studies. Proceedings of the First Meeting of the International Organization for Qumran Studies, Paris 1992*, STDJ 15, edited by George J. Brooke, 117-32. Leiden, New York, and Köln: Brill, 1992.

———. "Levi and the Levites in the Dead Sea Scrolls and the New Testament." In *Mogilany 1989. Papers on the Dead Sea Scrolls*, edited by Zdzislaw J. Kapera, 105-29. Kraków: Enigma Press, 1993.

———. "Prophecy and Prophets in the Dead Sea Scrolls: Looking Backwards and Forwards." In *Prophets, Prophecy, and Prophetic Texts in Second Temple Judaism*, LHBOTS 427, edited by Michael H. Floyd and Robert D. Haak, 151-65. New York and London: T&T Clark, 2006.

———, ed. *Temple Scroll Studies. Papers Presented at the International Symposium on the Temple Scroll, Manchester, December 1987*, JSPSup 7. Sheffield: JSOT Press, 1989.

———. "Was the Teacher of Righteousness Considered to Be a Prophet?" In *Prophecy after the Prophets? The Contribution of the Dead Sea Scrolls to the Understanding of Biblical and Extra-Biblical Prophecy*, edited by Armin Lange and Kristin De Troyer, 77-97. Leuven, Paris, and Walpole, Mass.: Peeters, 2009.

Brooks, Peter. *Reading for the Plot. Design and Intention in Narrative*. Cambridge, Mass.: Harvard University Press, 1992.

Broshi, Magen. "The Archeology of Qumran: A Reconsideration." In *The Dead Sea Scrolls: Forty Years of Research*, STDJ 10, edited by Devorah Dimant and Uriel Rappaport, 103-15. Leiden, New York, and Köln: Brill and Jerusalem: Magnes and Yad Ben-Zvi, 1992.

———, ed. *The Damascus Document Reconsidered*. Jerusalem: Israel Exploration Society and the Shrine of the Book, Israel Museum, 1992.

———. "Qumran and Its Scrolls: Stocktaking." *Cathedra* 100 (2001): 165-82 (in Hebrew).

Brown, Benjamin. "From Principles to Rules and from Musar to Halakhah: The Hafetz Hayim's Rulings on Libel and Gossip." *Diné Israel* 25 (2008): 171-256.

Brownlee, Kimberley. "Conscientious Objection and Civil Disobedience." In *The Routledge Companion to Philosophy of Law*, edited by Andrei Marmor, 527-40. London and New York: Routledge, 2012.

Brownlee, William H. "Biblical Interpretation among the Sectaries of the Dead Sea Scrolls." *Biblical Archaeologist* 14 (1951): 54-76.

———. "The Habakkuk Midrash and the Targum of Jonathan." *JJS* 7.3-4 (1956): 169-86.

———. "The Ineffable Name of God." *BASOR* 226 (1977): 39-46.

———. *The Midrash Pesher of Habakkuk*, SBLMS 24. Missoula, Mont.: Scholars Press, 1979.

Broyde, Michael J. "Rights and Duties in the Jewish Tradition." In *Contrasts in American and Jewish Law*, edited by Daniel Pollack, xxiii-xxix. New York: Yeshiva University Press, 2001.

Brutti, Maria. "The Council of Elders During the Pre-Hasmonean Period." *European Journal of Jewish Studies* 3.2 (2009): 171-81.

Burnett, D. Graham. *Trying Leviathan. The Nineteenth-Century New York Court Case That Put the Whale on Trial and Challenged the Order of Nature*. Princeton, N.J. and Oxford, UK: Princeton University Press, 2007.

Burrows, Millar. *The Dead Sea Scrolls*. New York: Viking, 1955.

Campbell, Jonathan G. "4QMMT^{d} and the Tripartite Canon." *JJS* 51.2 (2000): 181-90.

———. *The Exegetical Texts*, CQS 4. London and New York: T&T Clark International, 2004.

———. "'Rewritten Bible' and 'Parabiblical Texts': A Terminological and Ideological Critique." In *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, LSTS 52, edited by Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen, 43-68. London and New York: T & T Clark (a Continuum Imprint), 2005.

Cantwell, Marilyn L. and Margaret Meitus Sanik, "Leisure before and after Parenthood." *Social Indicators Research* 30.2-3 (1993): 139-47.

Carmignac, Jean. "Le genre littéraire du 'péshèr' dans la *Pistis-Sophia*." *RevQ* 4.4 (1964): 497-522.

Carrasco, Cristina and Maribel Mayordomo, "Beyond Employment: Working Time, Living Time." *Time & Society* 14.2-3 (2005): 231-59.

Carter, Stephen L. *Integrity*. New York: Basic Books, 1996.

Certeau, Michel de. *The Practice of Everyday Life. Volume 2: Living & Cooking*. Translated by T. J. Tomasik. Minneapolis, Minn.: University of Minnesota Press, 1998.

Chapman, Graham et al., *Monty Python's The Life of Brian (of Nazareth)*. New York: F. Jordan Books, 1979.

Charlesworth, James H. "Have the Dead Sea Scrolls Revolutionized Our Understanding of the New Testament?" In *The Dead Sea Scrolls. Fifty Years after*

Their Discovery, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 116-32. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

———. "Intertextuality: Isaiah 40:3 and the Serek Ha-Yahad." In *The Quest for Context and Meaning. Studies in Biblical Intertextuality in Honor of James A. Sanders*, BibInt 28, edited by Craig A. Evans and Shemaryahu Talmon, 197-224. Leiden, New York, and Köln: Brill, 1997.

———. "John the Baptizer and Qumran Barriers in Light of the Rule of the Community." In *The Provo International Conference on the Dead Sea Scrolls*, STDJ 30, edited by Donald W. Parry and Eugene C. Ulrich, 353-75. Leiden, Boston and Köln: Brill, 1999.

Chavel, Simeon. *Oracular Law and Narrative History: The Priestly Literature of the Pentateuch*. Tübingen: Mohr Siebeck, forthcoming.

Chazon, Esther G. "Hymns and Prayers in the Dead Sea Scrolls." In *The Dead Sea Scrolls after Fifty Years. A Comprehensive Assessment*, edited by Peter W. Flint and James C. VanderKam, 1:244-70. Leiden, Boston, and Köln: Brill, 1998.

———. "Liturgical Communion with the Angels at Qumran." In *Sapiential, Liturgical and Poetical Texts from Qumran*, STDJ 35, edited by Daniel K. Falk, Florentino García Martínez and Eileen M. Schuller, 19-23. Leiden: Brill, 2000.

———. "The Spiritual Life of the Dead Sea Sect." In *On a Scroll of a Book. Articles on the Dead Sea Scrolls*, edited by Lea Mazor, 85-97. Jerusalem: Magnes, 1997.

Chazon, Esther G., Devorah Dimant, and Ruth A. Clements. *Reworking the Bible: Apocryphal and Related Texts at Qumran*, STDJ 58. Leiden and Boston: Brill, 2005.

Chriss, James J. "Role Distance and the Negational Self." In *Goffman and Social Organization. Studies in a Sociological Legacy*. Routledge Studies in Social and Political Thought 17, edited by Greg Smith, 64-80. London and New York: Routledge, 1999.

Christiansen, Ellen Juhl. *The Covenant in Judaism & Paul: A Study of Ritual Boundaries as Identity Markers*, AGAJU 27. Leiden, New York, and Köln: Brill, 1995.

Clarke, Ernest G. *Targum Pseudo-Jonathan: Deuteronomy*, Aramaic Bible 5b. Collegeville, Minn.: Liturgical Press, 1998.

Clayton, Susan D. and Faye J. Crosby. *Justice, Gender and Affirmative Action*. Critical Perspectives on Women and Gender. Ann Arbor: University of Michigan Press (published in cooperation with the Society for the Psychological Study of Social Issues), 1992.

Clegg, Stewart R. and Ad van Iterson. "Dishing the Dirt: Gossiping in Organizations." *Culture and Organization* 15.3-4 (2009): 275-89.

Clements, Ruth A. and Daniel R. Schwartz. *Text, Thought, and Practice in Qumran and Early Christianity*, STDJ 84. Leiden and Boston: Brill, 2009.

Cohen, Anthony P. *The Symbolic Construction of Community*, Key Ideas. London and New York: Routledge, 1985.

Cohen, Jean L. *Regulating Intimacy. A New Legal Paradigm*. Princeton: Princeton University Press, 2002.

Cohen, Naomi G. "'Al Taseg Gevul Olim' (Peah 5:6, 7:3)." *HUCA* 56 (1985): 145-66.

Cohen, Shaye J.D. "From the Bible to the Talmud: The Prohibition of Intermarriage." *HAR* 7 (1983): 23-29.

———. "Sabbath Law and Mishnah Shabbat in Origen *De Principiis*." *JSQ* 17.2 (2010): 160-89.

———. *The Significance of Yavneh and Other Essays in Jewish Hellenism*, TSAJ 136. Tübingen: Mohr Siebeck, 2010.

———. "Solomon and the Daughter of Pharaoh: Intermarriage, Conversion, and the Impurity of Women." *JANES* 16-17 (1987): 23-37. Reprinted in his *The Significance of Yavneh and Other Essays in Jewish Hellenism*, TSAJ 136. Tübingen: Mohr Siebeck, 2010.

Cohn, Haim H. "God as Legal Fiction." In *Secular Jewish Culture. New Jewish Thought in Israel*, edited by Yaakov Malkin, 396-404. Jerusalem: Keter, 2006 (in Hebrew).

———. *Human Rights in Jewish Law*. New York: Ktav, 1984.

———. "Some Aspects of Justice in Ancient Jewish Law." *Revista Juridica de la Universidad de Puerto Rico* 46 (1977): 433-54.

Collins, Adela Yarbro. "The Charge of Blasphemy in Mark 14.64." *JSNT* 26.4 (2004): 379-401.

Collins, John J. *Apocalypticism in the Dead Sea Scrolls*, Literature of the Dead Sea Scrolls. London and New York: Routledge, 1997.

———. *Beyond the Qumran Community: The Sectarian Movement of the Dead Sea Scrolls*. Grand Rapids, Mich.: Eerdmans, 2010.

———. "Beyond the Qumran Community: Social Organization in the Dead Sea Scrolls." *DSD* 16.3 (2009): 351-69.

———. *Daniel*, Hermeneia. Minneapolis, Minn.: Fortress Press, 1993.

———. "Epilogue: Genre Analysis and the Dead Sea Scrolls." *DSD* 17.3 (2010): 418-30.

———. "The Expectation of the End in the Dead Sea Scrolls." In *Eschatology, Messianism, and the Dead Sea Scrolls*, SDSSRL, edited by Craig A. Evans and Peter W. Flint, 74-90. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 1997.

———. "Forms of Community in the Dead Sea Scrolls." In *Emanuel. Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, VTSup 94, edited by Shalom M. Paul et al., 97-111. Leiden and Boston: Brill, 2003.

———. "A Herald of Good Tidings: Isaiah 61:1-3 and Its Actualization in the Dead Sea Scrolls." In *The Quest for Context and Meaning. Studies in Biblical Intertextuality in Honor of James A. Sanders*, BibInt 28, edited by Craig A. Evans and Shemaryahu Talmon, 225-40. Leiden, New York, and Köln: Brill, 1997.

———. "The Idea of Election in 4 Ezra." *JSQ* 16.1 (2009): 83-96.
———. "Qumran, Apocalypticism, and the New Testament." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 133-38. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.
———. "Spells Pleasing to God: The Binding of Isaac in Philo the Epic Poet." In *Antiquity and Humanity. Essays on Ancient Religion and Philosophy, Presented to Hans Dieter Betz on His 70th Birthday*, edited by Adela Yarbro Collins and Margaret M. Mitchell, 99-111. Tübingen: Mohr Siebeck, 2001.
———. "The Yahad and the Qumran Community." In *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb*, JSJS 111, edited by Charlotte Hempel and Judith M. Lieu, 81-96. Leiden and Boston: Brill, 2006.
Collins, John J., and Craig A. Evans, eds. *Christian Beginnings and the Dead Sea Scrolls*, Acadia Studies in Bible and Theology. Grand Rapids, Mich.: Baker Academic, 2006.
Collins, Matthew A. *The Use of Sobriquets in the Qumran Dead Sea Scrolls*, LSTS 67. London: T & T Clark, 2009.
Conklin, William E. *The Invisible Origins of Legal Positivism. A Re-Reading of a Tradition.* Law and Philosophy Library. Dordrecht, The Netherlands and Norwell, Mass.: Kluwer, 2001.
Connolly, William E. *Identity/Difference. Democratic Negotiations of Political Paradox*. Ithaca, N.Y.: Cornell University Press, 1991.
Constable, Marianne. *Just Silences. The Limits and Possibilities of Modern Law*. Princeton: Princeton University Press, 2005.
———. *The Law of the Other. The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge*, New Practices of Inquiry. Chicago: University of Chicago Press, 1994.
Cook, Rebecca J. and Bernard M. Dickens, "Hymen Reconstruction: Ethical and Legal Issues." *International Journal of Gynecology & Obstetrics* 107.2 (2009): 226-69.
Cotterrell, Roger. *Law's Community. Legal Theory in Sociological Perspective*, Oxford Socio-Legal Studies. Oxford: Oxford University Press, 1995.
———. *Living Law. Studies in Legal and Social Theory*, Collected Essays in Law. Aldershot and Burlington, Vt.: Ashgate, 2008.
———. *The Sociology of Law: An Introduction*, 2nd edition. London: Butterworths, 1992.
Cover, Robert. "Nomos and Narrative." In *Narrative, Violence, and the Law. The Essays of Robert Cover*, Law. Meaning, and Violence, edited by Martha Minow, Michael Ryan and Austin Sarat, 95-172. Ann Arbor: University of Michigan Press, 1993.
———. "Obligation: A Jewish Jurisprudence of the Social Order." *Journal of Law and Religion* 5.1 (1987): 65-74. Reprinted in *Narrative, Violence, and the Law. The Essays of Robert Cover*, edited by Martha Minow, Michael Ryan and Austin Sarat, 239-48. Ann Arbor: University of Michigan Press, 1992.

Coyle, Sean. "Hart, Raz and the Concept of a Legal System." *Law and Philosophy* 21.3 (2002): 275-304.

Crane, Paul T. ""True Threats' and the Issue of Intent." *Virginia Law Review* 92.6 (2006): 1225-1277.

Crawford, Sidnie White (as Sidnie Ann White). "A Comparison of the A and B Manuscripts of the Damascus Document." *RevQ* 12.4 (1987): 537-53.

———. "Not According to Rule. Women, the Dead Sea Scrolls and Qumran." In *Emanuel. Studies in the Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, VTSup 94, edited by Shalom M. Paul et al., 127-50. .Leiden: Brill, 2003.

———. *Rewriting Scripture in Second Temple Times*, SDSSRL. Grand Rapids, Mich.: Eerdmans, 2008.

———. "The Use of the Pentateuch in the Temple Scroll and the Damascus Document in the Second Century B.C.E." In *The Pentateuch as Torah. New Models for Understanding Its Promulgation and Acceptance*, edited by Gary N. Knoppers and Bernard M. Levinson, 301-17. Winona Lake, Ind.: Eisenbrauns, 2007.

Crook, J. A. *Law and Life of Rome, 90 B.C. –A.D. 212*, Aspects of Greek and Roman Life. Ithaca, N.Y.: Cornell University Press, 1967.

Cross, Frank Moore. *The Ancient Library of Qumran*, 3rd edition. Minneapolis, Minn.: Fortress Press, 1995.

———. "Some Notes on a Generation of Qumran Studies." In *The Madrid Qumran Congress. Proceedings of the International Congress on the Dead Sea Scrolls, Madrid 18-21 March, 1991*, STDJ 11.1, edited by Julio Trebolle Barrera and Luis Vegas Montaner, 1:1-14. Leiden, New York, and Köln: Brill, 1992.

Daise, Michael A. "Biblical Creation Motifs in the Qumran Hodayot." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 293-305. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

Damgaard, Iben. "Kierkegaard's Rewriting of Biblical Narratives: The Mirror of the Text." In *Kierkegaard and the Bible*, edited by Lee C. Barrett and Jon Stewart, 1:207-30. Farnham, UK and Burlington, Vt.: Ashgate, 2010.

Dan-Cohen, Meir. *Harmful Thoughts. Essays on Law, Self, and Morality*. Princeton, N.J. and Oxford, UK: Princeton University Press, 2002.

Daube, David. *Civil Disobedience in Antiquity*. Edinburgh: Edinburgh University Press, 1972.

———. "The Civil Law of the Mishnah: The Arrangement of the Three Gates." *Tulane Law Review* 18.3 (1944): 351-407

———. *The Deed and the Doer in the Bible. David Daube's Gifford Lectures, Volume 1*, edited & compiled by Calum Carmichael. West Conshohocken, Pa.: Templeton Foundation Press, 2008.

———. "Jewish Law in the Hellenistic World." In *Jewish Law in Legal History and the Modern World*, JLA 2, edited by Bernard S. Jackson, 45-60. Leiden: Brill, 1980.

———. *Studies in Biblical Law*. Cambridge: Cambridge University Press, 1947.

Davidson, Donald. "Actions, Reasons and Causes." Reprinted in his *Essays on Actions and Events*, 3-19. Oxford and New York: Oxford University Press, 2001. Originally published in *Journal of Philosophy* 60.23 (1963): 685-700.

———. "Intending." In his *Essays on Actions and Events*, 83-102. Oxford and New York: Oxford University Press, 2001.

Davies, Philip R. "Biblical Interpretation in the Dead Sea Scrolls." In *A History of Biblical Interpretation*, edited by Alan J. Hauser and Duane F. Watson, 144-66. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2003.

———. *The Damascus Covenant. An Interpretation of the "Damascus Document"*, JSOTSup 25. Sheffield: JSOT Press, 1982.

———. "The Judaism(s) of the Damascus Document." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 27-43. Leiden, Boston, and Köln: Brill, 2000.

———. "Life of Brian Research." In *Biblical Studies / Cultural Studies. The Third Sheffield Colloquium*, JSOTSup 266 and GCT 7, edited by J. Cheryl Exum and Stephen D. Moore, 400-14. Sheffield: Sheffield Academic Press, 1998.

———. "Sects from Texts: On the Problems of Doing a Sociology of the Qumran Literature." In *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, LSTS 52, edited by Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen, 69-82. London and New York: T & T Clark (a Continuum Imprint), 2005.

———. "The Temple Scroll and the Damascus Document." In *Temple Scroll Studies. Papers Presented at the International Symposium on the Temple Scroll, Manchester, December 1987*, JSPSup7, edited by George J. Brooke, 201-10. Sheffield: JSOT Press, 1989.

Davila, James R. "Orthography." In *Encyclopedia of the Dead Sea Scrolls*, edited by Lawrence H. Schiffman and James C. VanderKam, 2:625-8. Oxford and New York: Oxford University Press, 2000.

Deflem, Mathieu. *Sociology of Law. Visions of a Scholarly Tradition*. Cambridge: Cambridge University Press, 2008.

Delamarter, Steve. "Sociological Models for Understanding the Scribal Practices in the Biblical Dead Sea Scrolls." In *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, edited by Maxine L. Grossman, 182-97. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

Dentler, Robert A. *American Community Problems*, McGraw-Hill Social Problems Series. New York: McGraw-Hill, 1968.

Dihle, Albrecht. *The Theory of Will in Classical Antiquity*. Sather Classical Lectures 48. Berkeley, Los Angeles and London: University of California Press, 1982.

Dimant, Devorah. "4QFlorilegium and the Idea of the Community as Temple." In *Hellenica et Judaica. Hommage à Valentin Nikiprowetzky*, edited by André Caquot, Mireille Hadas-Lebel and Jean Riaud, 165-89. Leuven and Paris: Peeters, 1986.

———. "Between Qumran Sectarian and Non-Sectarian Texts: The Case of Belial and Mastema." In *The Dead Sea Scrolls and Contemporary Culture. Proceedings of the International Conference Held at the Israel Museum, Jerusalem (July 6-8, 2008)*, STDJ 93, edited by Adolfo D. Roitman, Lawrence H. Schiffman, and Shani Tzoref, 235-56. Leiden: Brill, 2011.

———. "The Composite Character of the Qumran Sectarian Literature as an Indication of Its Date and Provenance." *RevQ* 22.4 (2006): 615-30.

———. "Criteria for the Identification of Qumran Sectarian Texts." In *The Qumran Scrolls and Their World*. Between Bible and Mishnah, The David and Jemima Jeselsohn Library, edited by Menahem Kister, 1:49-86. Jerusalem: Yad Ben-Zvi, 2009 (in Hebrew).

———. "The Hebrew Bible in the Dead Sea Scrolls: Torah Quotations in the Damascus Covenant." In *Sha'arei Talmon. Studies in the Bible, Qumran, and the Ancient Near East presented to Shemaryahu Talmon*, edited by Emanuel Tov and Michael Fishbane, *113-122. Winona Lake, Ind.: Eisenbrauns, 1992 (in Hebrew).

———. "Men as Angels: The Self-Image of the Qumran Community." In *Religion and Politics in the Ancient Near East*, Studies and Texts in Jewish History and Culture, edited by Adele Berlin, 93-103. Bethesda, Md.: University Press of Maryland, 1996.

———. "Non pas l'exil au désert mais l'exil spirituel: l'interprétation d'Isaïe 40,3 dans la *Règle de la Communauté*." In *Qoumrân et le judaïsme du tournant de notre ère*, Collection de la Revue des etudes juives 40, edited by André Lemaire and Simon C. Mimouni, 17-36. Paris and Louvain: Peeters, 2006.

———. "Qumran Sectarian Literature." In *Jewish Writings of the Second Temple Period: Apocrypha, Pseudepigrapha, Qumran Sectarian Writings, Philo, Josephus*, *CRINT* 2.2, edited by Michael E. Stone, 483-550. Assen: Van Gorcum and Philadelphia: Fortress Press, 1984.

———. "The Volunteers in the *Rule of the Community*: A Biblical Notion in Sectarian Garb." *RevQ* 23.2 (2007): 233-45.

Doering, Lutz. "The Concept of the Sabbath in the Book of Jubilees." In *Studies in the Book of Jubilees*, TSAJ 65, edited by Matthias Albani, Jörg Frey and Armin Lange, 179-205. Tübingen: Mohr Siebeck, 1997.

———. "Jewish Law in the Dead Sea Scrolls: Some Issues for Consideration." In *The Hebrew Bible in Light of the Dead Sea Scrolls*, edited by Nóra Dávid et al., 449-62. Göttingen: Vandenhoeck & Ruprecht, 2012.

———. "Marriage and Creation in Mark 10 and CD 4-5." In *Echoes from the Caves: Qumran and the New Testament*, STDJ 85, edited by Florentino García Martínez, 133-63. Leiden: Brill, 2009.

———. "New Aspects of Qumran Sabbath Law from Cave 4 Fragments." 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*, STDJ 23, edited by Moshe J. Bernstein, Florentino García Martínez and John I. Kampen, 251-74. Leiden, New York, and Köln: Brill, 1997.

———. "Purity Regulations Concerning the Sabbath in the Dead Sea Scrolls and Related Literature." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 600-609. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

Donato, James. "Dworkin and Subjectivity in Legal Interpretation." *StanfLR* 40.6 (1988): 1517-41.

Donfried, Karl Paul. "Paul and Qumran: The Possible Influence of סרך on 1 Thessalonians." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 148-56. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

Dorff, Elliot N. *For the Love of God and People: A Philosophy of Jewish Law*. Philadelphia: Jewish Publication Society, 2007.

Dorman, Johanna. *The Blemished Body: Deformity and Disability in the Qumran Scrolls*. Groningen: Rijksuniversiteit, 2007 [published online: http://irs.ub.rug.nl/ppn/303227966; retrieved June 1st, 2010].

Douglas, Mary. *Purity and Danger. An Analysis of the Concepts of Pollution and Taboo*, Routledge Classics. London and New York: Routledge, 2003 (originally published 1966).

Driver, S. R. *A Critical and Exegetical Commentary on Deuteronomy*, ICC. Edinburgh: T. & T. Clark, 1902.

Duff, R. A. *Intention, Agency and Criminal Liability. Philosophy of Action and the Criminal Law*. Philosophical Introductions. Oxford: Basil Blackwell, 1990.

Duhaime, Jean. *The War Texts. 1QM and Related Manuscripts*, CQS 6. London and New York: T&T Clark, 2004.

Duke, Robert R. *The Social Location of the* Visions of Amram *(4Q543-4Q547)*, Studies in Biblical Literature 135. Frankfurt am Main, Bern, and New York: Peter Lang, 2010.

Dünne, Jörg und Stephan Günzel, eds. *Raumtheorie. Grundlagentexte aus Philosophie und Kulturwissenschaften*, Suhrkamp Taschenbuch Wissenschaft 1800. Frankfurt am Main: Suhrkamp, 2006.

Durkheim, Émile. *The Elementary Forms of Religious Life*. Translated by Karen E. Fields. New York: Free Press, 1995.

Durning, Patrick "Joseph Raz and the Instrumental Justification of a Duty to Obey the Law." *Law and Philosophy* 22.6 (2003): 597-620.

Dutton, Dennis. "Why Intentionalism Won't Go Away." In *Literature and the Question of Philosophy*, edited by Anthony J. Cascardi, 192-210. Baltimore: Johns Hopkins University Press, 1987.

Dworkin, Ronald. "Law as Interpretation." *TexLR* 60 (1982): 527-50.

———. *Law's Empire*. Cambridge, Mass.: Belknap Press of Harvard University Press, 1986.

———. *A Matter of Principle*. Oxford and New York: Oxford University Press, 1985.

———. *Taking Rights Seriously*. Cambridge, Mass.: Harvard University Press, 1977.

Dyzenhaus, David. *Hard Cases in Wicked Legal Systems: Pathologies of Legality*, 2nd edition. Oxford and New York: Oxford University Press, 2010.

Eckhardt, Benedikt. "Meals and Politics in the *Yahad*. A Reconsideration." *DSD* 17.2 (2010): 180-209.

Edlin, Douglas E. *Judges and Unjust Laws. Common Law Constitutionalism and the Foundations of Judicial Review*. Ann Arbor: University of Michigan Press, 2008.

Edrei, Arye. "Command or Error: On the Duty to Obey in Halakhik Thought." *Iyyunei Mishpat* 24.2 (2001): 463-517 (in Hebrew).

———. "Erroneous Rulings." In *Windows onto Jewish Legal Culture. Fourteen Exploratory Essays*, edited by Hanina Ben-Menahem, Arye Edrei and Neil S. Hecht, 1:131-72. London and New York: Routledge, 2011.

———. "'Should a Person Offend Errantly': Responsibility without Guilt? On the Responsibility of the Inadvertent Sinner in the Hebrew Bible and Rabbinic Literature." *Shnaton ha-Mishpat ha-'ivri* 24 (2007): 1-62 (in Hebrew).

Ego, Beate, and Helmut Merkel, eds. *Religiöses Lernen in der biblischen, frühjüdischen und frühchristlichen Überlieferung*, WUNT 2.180. Tübingen: Mohr Siebeck, 2005.

Eigen, Zev J. "When and Why Individuals Obey Contracts: Experimental Evidence of Consent, Compliance, Promise, and Performance." *Journal of Legal Studies* 41.1 (2012): 67-93.

Eilberg-Schwartz, Howard. *The Human Will in Judaism. The Mishnah's Philosophy of Intention*, BJS 103. Atlanta, Ga.: Scholars Press, 1986.

Einat, Tomer and Gila Chen. "Gossip in a Maximum Security Female Prison: An Exploratory Study." *Women & Criminal Justice* 22.2 (2012): 108-34.

Eisenberg, Melvin A. "Disclosure in Contract Law." *CalifLR* 91.6 (2003): 1645-91.

Eisenman, Robert. "'Sicarii Essenes,' 'the Party of the Circumcision,' and Qumran." In *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70, edited by Florentino García Martínez and Mladen Popović, 247-60. Leiden and Boston, Brill: 2007.

Ekirch, A. Roger. *At Day's Close: Night in Times Past*. New York: Norton, 2005.

Elchardus, Mark and Wendy Smits, "The Persistence of the Standardized Life Cycle." *Time & Society* 15.2-3 (2006): 303-26.

Elgvin, Torleif. "Early Essene Eschatology: Judgment and Salvation According to Sapiential Work A." In *Current Research and Technological Developments on the Dead*

Sea Scrolls, STDJ 20, edited by Donald W. Parry and Stephen D. Ricks, 126-65. Leiden, New York, and Köln: Brill, 1996.

Eliade, Mircea. *Rites and Symbols of Initiation. The Mysteries of Birth and Rebirth*. Translated by Willard R. Trask. Dallas: Spring Publications (distributed by Continuum), 1994.

———. *The Sacred and the Profane. The Nature of Religion*. Translated by Willard R. Trask. New York: Harcourt, 1959.

Elkin-Koren, Niva. "Of Scientific Claims and Proprietary Rights: Lessons from the Dead Sea Scrolls Case." *HousLRev* 38.2 (2001): 445-62.

Elman, Yaakov. "Hercules within the Halakhic Tradition." *Diné Israel* 25 (2008): 7-41.

———. "Some Remarks on 4QMMT and the Rabbinic Tradition, or, When Is a Parallel Not a Parallel?" In *Reading 4QMMT: New Perspectives on Qumran Law and History*, SBLSS 2, edited by John I. Kampen and Moshe J. Bernstein, 99-128. Atlanta, Ga.: Scholars Press, 1996.

Elon, Menachem. *Jewish Law. Its Origins, Sources and Principles*. Jerusalem: Hebrew University of Jerusalem, 1973 (in Hebrew).

———. "The Values of a Jewish and Democratic State: The Task of Reaching a Synthesis." *Human Rights Review* 3.2 (2002): 36-84.

Engel, David M. "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community." *Law & Society Review* 18.4 (1984): 551-82.

Engel, David M. and Frank W. Munger. *Rights of Inclusion. Law and Identity in the Life Stories of Americans with Disabilities*. Chicago Series in Law and Society. Chicago: University of Chicago Press, 2003.

Englard, Izhak. "Majority Decision vs. Individual Truth: The Interpretation of the 'Oven of Achnai' Aggadah." *Tradition* 15 (1975): 137-52.

Ericson, Richard V. "Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice." *University of Toronto Law Journal* 25.1 (1975): 23-41.

Erikson, Kai T. *Wayward Puritans. A Study in the Sociology of Deviance*. New York: Wiley, 1966.

Eriksson, Lars D. "Making Society through Legislation." In *Legisprudence: A New Theoretical Approach to Legislation. Proceedings of the Fourth Benelux-Scandinavian Symposium on Legal Theory*, European Academy of Legal Theory Series, edited by Luc Wintgens, 41-47. Oxford and Portland, Ore.: Hart, 2002.

Eshel, Esther. "4Q477: The Rebukes by the Overseer." *JJS* 45.1 (1994): 111-22.

———. "4QLev^{d}: A Possible Source for the Temple Scroll and Miqṣat Maʿaśe Ha-Torah." *DSD* 2.1 (1995): 1-13.

———. "Apotropaic Prayers in Second Temple Period." In *Liturgical Perspectives: Prayer and Poetry in Light of the Dead Sea Scrolls*, STDJ 48, edited by Esther G. Chazon, 69-88. Leiden and Boston: Brill, 2003.

———. "Hermeneutical Approaches to Genesis in the Dead Sea Scrolls." In *The Book of Genesis in Jewish and Oriental Christian Interpretation*, Traditio Exegetica Graeca 5, edited by Judith Frishman and Lucas van Rompay, 1-12. Leuven: Peeters, 1997.

———. "Mastema's Attempt on Moses' Life in the 'Pseudo-Jubilees' Text from Masada." *DSD* 10.3 (2003): 359-64.

Eshel, Hanan. "4QMMT and the History of the Hasmonean Period." In *Reading 4QMMT. New Perspectives on Qumran Law and History*, SBLSS 2, edited by John I. Kampen and Moshe J. Bernstein, 53-65. Atlanta, Ga.: Scholars Press, 1996.

———. *The Dead Sea Scrolls and the Hasmonean State*, SDSSRL. Translated by David Louvish and Aryeh Amihay. Grand Rapids, Mich. and Cambridge, UK: Eerdmans and Jerusalem: Yad Ben-Zvi, 2008.

———. "Historical Background of the Pesher Interpreting Joshua's Curse on the Rebuilder of Jericho." *RevQ* 15.3 (1992): 409-20.

———. "*Megillat Ta'anit* in Light of Holidays Found in Jubilees and the Temple Scroll." *Meghillot* 3 (2005): 253-7 (in Hebrew).

Falk, Daniel K. *The Parabiblical Texts. Strategies for Extending the Scriptures among the Dead Sea Scrolls*, CQS 8, LSTS 63. London and New York: T & T Clark, 2007.

Farber, Daniel A. "The Inevitability of Practical Reason: Statutes, Formalism, and the Rule of Law." *Vanderbilt Law Review* 45.3 (1992): 533-60.

Feldbrugge, F. J. M. "Good and Bad Samaritans: A Comparative Survey of Criminal Law Provisions concerning Failure to Rescue." *American Journal of Comparative Law* 14.4 (1965): 630-57.

Feldman, Louis H. *Josephus's Interpretation of the Bible*. Berkley: University of California Press, 1998.

———. "Philo's Version of the 'Aqedah." *Studia Philonica Annual* 14 (2002): 66-86.

———. *Studies in Josephus' Rewritten Bible*, JSJS 58. Leiden: Brill, 1998.

Feldman, Yael S. *Glory and Agony: Isaac's Sacrifice and National Narrative*. Stanford: Stanford University Press, 2010.

Felman, Shoshana (with responses by Stanley Cavell and Judith Butler). "The Literary Speech Act." In *The Claims of Literature. A Shoshana Felman Reader*, edited by Emily Sun, Eyal Peretz and Ulrich Baer, 111-51. New York: Fordham University Press, 2007.

Felstiner, William L. F. "Influences of Social Organization on Dispute Processing." *Law & Society Review* 9.1 (1974): 63-94.

Fennell, Phil. "Convention Compliance, Public Safety, and the Social Inclusion of Mentally Disordered People." *Journal of Law and Society* 32.1 (2005): 90-110.

Fields, Weston W. "Discovery and Purchase." In *The Encyclopedia of the Dead Sea Scrolls*, edited by Lawrence H. Schiffman and James C. VanderKam, 208-12. Oxford and New York: Oxford University Press, 2000.

Finnis, John. *Natural Law and Natural Rights*, 2nd edition. Oxford and New York: Oxford University Press, 2011.

Fish, Stanley. "Interpretation and the Pluralist Vision." *TexLR* 60.3 (1982): 495-505.

———. "Working on the Chain Gang: Interpretation in Law and Literature." *TexLR* 60.3 (1982): 551-67.

Fishbane, Michael A. *Biblical Interpretation in Ancient Israel*. Oxford: Clarendon Press, 1985.

———. "The Image of the Human and the Rights of the Individual in Jewish Tradition." In *Human Rights and the World's Religions*, edited by Leroy S. Rouner, 17-32. Notre Dame, Ind.: University of Notre Dame Press, 1988.

———. "Use, Authority and Interpretation of Mikra at Qumran." In *Mikra: Text, Translation, Reading and Interpretation of the Bible in Ancient Judaism and Early Christianity*, CRINT 2.1, edited by Martin Jan Mulder, 339-77. Assen: Van Gorcum and Philadelphia: Fortress Press, 1988.

Fiss, Owen. *The Law as It Could Be*. New York: New York University Press, 2003.

Fitzgerald, John T. *Friendship, Flattery, and Frankness of Speech: Studies on Friendship in the New Testament World*, NTSup 82. Leiden, New York, and Köln: Brill, 1996.

Fitzmyer, Joseph A. *The Dead Sea Scrolls and Christian Origins*, SDSSRL. Grand Rapids, Mich.: Eerdmans, 2000.

Flamm, Michael W. *Law and Order. Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s*. New York: Columbia University Press, 2005.

Fleishman, Joseph. "Legal Innovation in Deuteronomy XXI 18-20." *VT* 53.3 (2003): 311-27.

Fletcher, George P. *Basic Concepts of Legal Thought*. Oxford: Oxford University Press, 1996.

———. *Loyalty. An Essay on the Morality of Relationships*. Oxford and New York: Oxford University Press, 1993.

Fletcher-Louis, Crispin H. T. *All the Glory of Adam. Liturgical Anthropology in the Dead Sea Scrolls,* STDJ 42. Leiden, Boston, and Köln: Brill, 2002.

———. "Some Reflections on Angelomorphic Humanity Texts among the Dead Sea Scrolls." *DSD* 7.3 (2000): 292-312.

Flores, Imer B. "The Quest for Legisprudence, Constitutionalism v. Legalism." In *The Theory and Practice of Legislation. Essays in Legisprudence*, edited by Luc J. Wintgens, 26-52. Aldershot and Burlington, Vt.: Ashgate, 2005.

Flusser, David. *Judaism of the Second Temple Period. Volume 1: Qumran and Apocalypticism*. Translated by Azzan Yadin. Jerusalem: Magnes and Grand Rapids, Mich.: Eerdmans, 2007.

———. "Qumrân and Jewish 'Apotropaic' Prayers." *IEJ* 16.3 (1966): 194-205. Reprinted in his *Judaism and the Origins of Christianity*, 214-25. Jerusalem: Magnes Press, 1988.

———. "'The Secret Things Belong unto the Lord Our God': Ecclesiasticus and the Essens." *Tarbiz* 67.3 (1998): 407-410 (in Hebrew). Reprinted in his *Judaism of the Second Temple Period. Qumran and Apocalypticism*, edited by Serge Ruzer, 252-5. Jerusalem: Yad Ben Zvi and Magnes, 2002.

———. *The Spiritual History of the Dead Sea Scrolls*, Broadcast University. Tel Aviv: Ministry of Defence, 1985 (in Hebrew).

Fonrobert, Charlotte Elisheva. "When the Rabbi Weeps: On Reading Gender in Talmudic Aggadah." *Nashim* 4 (2001): 56-83.

Forster, Paul. *Peirce and the Threat of Nominalism*. Cambridge and New York: Cambridge University Press, 2011.

Forte, David F., ed. *Natural Law and Contemporary Public Policy*. Washington, D.C.: Georgetown University Press, 1998.

Foucault, Michel. *Discipline and Punish. The Birth of the Prison*. Translated by Alan Sheridan, 2nd edition. New York: Vintage Books, 1995.

Fowler, Harold North. *Plato, volume I: Euthyphro, Apology, Crito, Phaedo, Phaedrus*, LCL 36. Cambridge, Mass.: Harvard University Press, 1914.

Fraade, Steven D. "Deuteronomy in Sifre to Deuteronomy." In *Encyclopaedia of Midrash. Biblical Interpretation in Formative Judaism*, edited by Jacob Neusner and Alan J. Avery-Peck, 54-9. Leiden and Boston: Brill, 2005.

———. *From Tradition to Commentary. Torah and Its Interpretation in the Midrash Sifre to Deuteronomy*, SUNY Series in Judaica. Albany, N.Y.: SUNY Press, 1991.

———. "Hagu, Book Of." In *Encyclopedia of the Dead Sea Scrolls*, edited by Lawrence H. Schiffman and James C. VanderKam, 1:327. Oxford and New York: Oxford University Press, 2000.

———. "Interpretive Authority in the Studying Community at Qumran." *JJS* 44.1 (1993): 46-69.

———. *Legal Fictions. Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages*, JSJS 147. Leiden and Boston: Brill, 2011.

———. "Literary Composition and Oral Performance in Early Midrashim." *Oral Tradition* 14.1 (1999): 33-51.

———. "Nomos and Narrative before *Nomos and Narrative*." *Yale Journal of Law and the Humanities* 17.1 (2005): 81-96.

———. "Rabbinic Polysemy and Pluralism Revisited: Between Praxis and Thematization." *AJS Review* 31.1 (2007): 1-40.

———. "Review: *Halakhah in the Making*." *JSJ* 43.1 (2012): 131-135.

———. "Rhetorics and Hermeneutics in Miqṣat Maʿaśe Ha-Torah (4QMMT): The Case of the Blessings and Curses." *DSD* 10.1 (2003): 150-61.

———. "Shifting from Priestly to Non-Priestly Legal Authority: A Comparison of the Damascus Document and the Midrash Sifra." *DSD* 6.2 (1999): 109-25.

———. "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*, STDJ 46, edited by James R. DaVila, 195-219. Leiden and Boston: Brill, 2003.

———. "To Whom It May Concern: 4QMMT and Its Addressee(s)." *RevQ* 19.4 (2000): 507-26.

Fraade, Steven D. Aharon Shemesh and Ruth A. Clements, eds. *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, STDJ 62. Leiden: Brill, 2006.

Fraser, David. *Law after Auschwitz: Towards a Jurisprudence of the* Holocaust. Durham, N.C.: Carolina Academic Press, 2005.

Freedman, David Noel. "The Masoretic Text and the Qumran Scrolls: A Study in Orthography." In *Qumran and the History of the Biblical Text*, edited by Frank Moore Cross and Shemaryahu Talmon, 196-211. Cambridge, Mass.: Harvard University Press, 1975.

Freud, Sigmund. *Totem and Taboo. Some Points of Agreement between the Mental Lives of Savages and Neurotics*. London: Routledge Classics, 2001 (English translation originally published 1919).

Friedman, Lawrence M. *Crime and Punishment in American History*. New York: Basic Books, 1993.

———. "The Law and Society Movement." *StanfLR* 38.3 (1986): 763-780.

———. "Law, Lawyers, and Popular Culture." *Yale Law Journal* 98.8 (1989): 1579-1606.

Frödin, Olle. "Political Order and the Challenge of Governance: Moving beyond the Nationalism-Cosmopolitanism Debate." *Distinktion* 14.1 (2013): 65-79.

Frolov, Serge. "'King's Law' of the Temple Scroll: Mishnaic Aspects." *JJS* 50.2 (1999): 298-307.

Frymer-Kensky, Tikva. "Virginity in the Bible." In *Gender and Law in the Hebrew Bible and the Ancient Near East*, JSOTSup 262, edited by Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky, 79-96. Sheffield: Sheffield Academic Press, 1998.

———. "Pollution, Purification, and Purgation in Biblical Israel." In *The Lord of the World Shall Go Forth. Essays in Honor of David Noel Freedman in Celebration of His Sixtieth Birthday*, edited by Carol L. Meyers and M. O'Connor, 399-414. Published for the American Schools of Oriental Research. Winona Lake, Ind.: Eisenbrauns, 1983.

Fuchs, Esther. "Structure and Patriarchal Functions in the Biblical Betrothal Type-Scene. Some Preliminary Notes." In *Women in the Hebrew Bible. A Reader*, edited by Alice Bach, 45-51. New York and London: Routledge, 1999.

Fuglseth, Kåre Sigvald. *Johannine Sectarianism in Perspective: A Sociological, Historical, and Comparative Analysis of the Temple and Social Relationships in the Gospel of John, Philo, and Qumran*, NTSup 119. Leiden: Brill, 2005.

Fuller, Lon L. *The Morality of Law*, Storrs Lectures on Jurisprudence, revised edition. New Haven, Conn.: Yale University Press, 1969.

Furstenberg, Yair. "Impurity and Social Demarcation: Resetting Second Temple Halakhic Traditions in New Contexts." *The Thirteenth International Orion Symposium*, Jerusalem, 22-24 February 2011. The lecture is available online at http://orion.mscc.huji.ac.il/symposiums/13th/papers/Furstenberg.pdf (retrieved: August 13, 2013).

Gafni, Isaiah M. "The Modern Study of Rabbinics and Historical Questions: The Tale of the Text." In *The New Testament and Rabbinic Literature*, JSJS 136, edited by Reimund Bieringer et al., 43-61. Leiden and Boston: Brill, 2010.

———. "Studies on Antiquity in Zion: The First Seventy-Five Years." *Zion* 75.4 (2010): 465-71 (in Hebrew).

Galanter, Marc. "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts." *Journal of Empirical Legal Studies* 1.3 (2004): 459-570.

———. "A World without Trials?" *Journal of Dispute Resolution* 2006.1 (2006): 7-34.

Garcia, Angela. "Dispute Resolution without Disputing: How the Interactional Organization of Mediation Hearings Minimizes Argument." *American Sociological Review* 56.6 (1991): 818-35.

García Martínez, Florentino. "Creation in the Dead Sea Scrolls." In *The Creation of Heaven and Earth. Re-Interpretations of Genesis I in the Context of Judaism, Ancient Philosophy, Christianity, and Modern Physics*, TBN 8, edited by George H. van Kooten, 49-70. Leiden: Brill, 2005.

———. "Divine Sonship at Qumran: Between the Old and the New Testament." In *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb*, JSJS 111, edited by Charlotte Hempel and Judith M. Lieu, 109-32. Leiden and Boston: Brill, 2006.

———. "The End of the World or the Transformation of History? Intertestamental Apocalyptic." In *Qumranica Minora I. Qumran Origins and Apocalypticism*, STDJ 63, edited by Eibert J. C. Tigchelaar, 1:169-93. Leiden and Boston: Brill, 2007.

———. *Qumranica Minora I. Qumran Origins and Apocalypticism*, STDJ 63. Leiden and Boston: Brill, 2007.

García Martínez, Florentino and Adam S. van der Woude. "A 'Groningen' Hypothesis of Qumran Origins and Early History." *RevQ* 14.4 (1990): 521-41.

García Martínez, Florentino, and Mladen Popović, eds. *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70. Leiden and Boston: Brill, 2007.

Garvey, Stephen P. "The Moral Emotions of the Criminal Law." *Quinnipiac Law Review* 22 (2003): 89-108.

———. "Restorative Justice, Punishment, and Atonement." *Utah Law Review* 2003.1 (2003): 303-17.

———. "What's Wrong with Involuntary Manslaughter?" *TexLR* 85.2 (2006): 333-83.

Gaß, Erasmus. "Hosea zwischen Tradition und Innovation am Beispiel von Hos 2,16f." *ZAW* 122.2 (2010): 169–84.

Geller, Stephen A. *Parallelism in Early Biblical Poetry*, HSM 20. Missoula, Mont.: Scholars Press, 1979.

Gennep, Arnold van. *The Rites of Passage*. Translated by Monika B. Vizedom and Gabrielle L. Caffee. Chicago: University of Chicago Press, 1960.

George, Robert P. *In Defense of Natural Law*. Oxford: Clarendon Press and Oxford and New York: Oxford University Press, 1999.

———, ed. *The Autonomy of Law. Essays on Legal Positivism*. Oxford: Clarendon Press, 1996.

———, ed. *Natural Law Theory. Contemporary Essays*. Oxford: Oxford University Press, 1992.

Giere, S. D. *A New Glimpse of Day One. Intertextuality, History of Interpretation, and Genesis 1.1-5*, BZNW 172, Berlin and New York: de Gruyter, 2009.

Gillette, Clayton P. "Limitations on the Obligation of Good Faith." *Duke Law Journal* 1981.4 (1981): 619-665.

Gillihan, Yonder Moynihan. *Civic Ideology, Organization, and Law in the Rule Scrolls. A Comparative Study of the Covenanters' Sect and Contemporary Voluntary Associations in Political Context*, STDJ 97. Leiden and Boston: Brill, 2012.

Ginat, Joseph. *Women in Muslim Rural Society: Status and Role in Family and Community*. New Brunswick, N.J.: Rutgers University Press, 1982.

Ginsburskaya, Mila. "The Right of Counsel and the Idea of Purity in the *Rule of the Community* (1QS) and the *Rule of the Congregation* (1QSa)." In *Qumran Cave 1 Revisited. Texts from Cave 1 Sixty Years after Their Discovery: Proceedings of the Sixth Meeting of the IOQS in Ljubljana*, STDJ 91, edited by Daniel K. Falk et al., 77-90. Leiden and Boston: Brill, 2010.

Ginzberg, Louis. *An Unknown Jewish Sect*. Moreshet 1. Revised and updated translation of the author's *Eine unbekannte jüdische Sekte*, 1922 edition. New York: Jewish Theological Seminary of America and Ktav, 1976.

Glinert, Lewis, Kate Miriam Loewenthal and Vivienne Goldblatt, "Guarding the Tongue: A Thematic Analysis of Gossip Control Strategies among Orthodox Jewish Women in London." *Journal of Multilingual and Multicultural Development* 24.6 (2003): 513-24.

Goff, Matthew J. "Qumran Wisdom Literature and the Problem of Genre." *DSD* 17.3 (2010): 315-35.

———. *The Worldly and Heavenly Wisdom of 4QInstruction*, STDJ 50. Leiden and Boston: Brill, 2003.

Goffman, Erving. *Encounters. Two Studies in the Sociology of Interaction*. Indianapolis: Bobbs-Merrill, 1961.

———. *The Presentation of Self in Everyday Life*. Garden City, N.Y.: Doubleday, 1959.

Golb, Norman. *Who Wrote the Dead Sea Scrolls? The Search for the Secret of Qumran*. New York: Scribner, 1995.

Golden, Lonnie. "A Brief History of Long Work Time and the Contemporary Sources of Overwork." *Journal of Business Ethics* 84.2 (2009): 217-27.

Goldstein, Robert Justin. *Flag Burning and Free Speech. The Case of Texas v. Johnson*, Landmark Law Cases & American Society. Lawrence, Kan.: University Press of Kansas, 2000.

Goldzwig, Steven R. and Patricia A. Sullivan, "Robert Francis Kennedy (1925-1968)." In *American Voices. An Encyclopedia of Contemporary Orators*, edited by

Bernard K. Duffy & Richard W. Leeman, 238-47. Westport, Conn.: Greenwood, 2005.

Good, Anthony. "Cultural Evidence in Courts of Law." *Journal of the Royal Anthropological Institute* 14 (2008): s47-s60.

Goodblatt, David. *Elements of Ancient Jewish Nationalism*. Cambridge and New York: Cambridge University Press, 2006.

———. *The Monarchic Principle*, TSAJ 38. Tübingen: J.C.B. Mohr (Paul Siebeck), 1994.

Goodenough, Erwin R. "Kingship in Early Israel." *JBL* 48.3-4 (1929): 169-205.

Goodin, Robert E. *On Settling*. Princeton: Princeton University Press, 2012.

Goodman, Martin. *Judaism in the Roman World: Collected Essays*, AJEC 66. Leiden: Brill, 2007.

Goodrich, Peter. "Screening Law." *Law and Literature* 21.1 (2009): 1-23.

Goranson, Stephen. "'Essenes': Etymology from עשה." *RevQ* 11.4 (1984): 483-98.

———. "The Exclusion of Ephraim in Rev. 7:4-8 and Essene Polemic against Pharisees." *DSD* 2.1 (1995): 80-85.

Gordis, Robert. "The Assertive *Kaph* in Ugaritic and Hebrew." *JAOS* 63.2 (1943): 176-178. Reprinted in his *The Word and the Book. Studies in Biblical Language and Literature*, 211-213. New York: Ktav, 1976.

Gordon, Sarah Barringer. "Blasphemy and the Law of Religious Liberty in Nineteenth-Century America." *American Quarterly* 52.4 (2000): 682-719.

Goshen-Gottstein, Moshe. "'Sefer Hagu' – the End of a Puzzle." *VT* 8.3 (1958): 286-88.

Gottlieb, Roger S. "Kierkegaard's Ethical Individualism." *The Monist* 62.3 (1979): 351-67.

Grabbe, Lester L. "4QMMT and Second Temple Jewish Society." 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*, STDJ 23, edited by Moshe J. Bernstein, Florentino García Martínez and John I. Kampen, 89-108. Leiden, New York, and Köln: Brill, 1997.

Grabosky, Peter N. "Theory and Research on Variations in Penal Severity." *British Journal of Law and Society* 5.1 (1978): 103-14.

Gray, George Buchanan. *A Critical and Exegetical Commentary on Numbers*, ICC. Edinburgh: T. & T. Clark, 1903.

Green, Leslie. "Rights of Exit." *Legal Theory* 4.2 (1998): 165-85.

Green, Ronald M. "'Developing' *Fear and Trembling*." In *The Cambridge Companion to Kierkegaard*, edited by Alastair Hannay and Gordon D. Marino, 257-81. Cambridge: Cambridge University Press, 1998.

Greenawalt, Kent. *Conflicts of Law and Morality*, Clarendon Law Series. Oxford: Clarendon Press and Oxford and New York: Oxford University Press, 1987.

———. *Legal Interpretation. Perspectives from Other Disciplines and Private Texts*. Oxford and New York: Oxford University Press, 2010.

———. "The Natural Duty to Obey the Law." *MichLR* 84.1 (1985): 1-62.

Greenfield, Jonas C. "The Root *GBL* in Mishnaic Hebrew and in the Hymnic Literature from Qumran." *RevQ* 2.2 (1960): 155-62.

Greenfield, Jonas C., Michael E. Stone, and Esther Eshel. *The Aramaic Levi Document. Edition, Translation, Commentary*, SVTP 19. Leiden and Boston: Brill, 2004.

Grimes, Ronald L. *Deeply into the Bone. Re-Inventing Rites of Passage*. Berkeley: University of California Press, 2000.

Grossman, Maxine L. "Reading 4QMMT: Genre and History." *RevQ* 20.1 (2001): 3-22.

———. "Reading for Gender in the Damascus Document." *DSD* 11.2 (2004): 212-39.

———. *Reading for History in the Damascus Document. A Methodological Study*, STDJ 45. Leiden and Boston: Brill, 2002.

———. "Women and Men in the Rule of the Congregation: A Feminist Critical Assessment." In *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, edited by Maxine L. Grossman, 229-45. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

Grosz, Elizabeth. "Conclusion: A Note on Essentialism and Difference." In *Feminist Knowledge. Critique and Construct*, Routledge Library Editions: Feminist Theory, edited by Sneja Gunew, 332-44. Abingdon and New York: Routledge, 1990.

Grubb, Michael et al. *The Kyoto Protocol. A Guide and Assessment*. London: Royal Institute of International Affairs, Energy and Environmental Programme and Washington, D.C.: Brookings Institution, 1999.

Gruen, Lori and George E. Panchias, eds. *Sex, Morality, and the Law*. New York: Routledge, 1997.

Grund, Alexandra. *Die Entstehung des Sabbats. Seine Bedeutung für Israels Zeitkonzept und Erinnerungskultur*, FAT 75. Tübingen: Mohr Siebeck, 2010.

Gunkel, Hermann. *Schöpfung und Chaos in Urzeit und Endzeit. Eine religionsgeschichtliche Untersuchung über Gen 1 und Ap Joh 12*. Göttingen: Vandenhoeck & Ruprecht, 1895. Published in English as *Creation and Chaos in the Primeval Era and the Eschaton. Religio-Historical Study of Genesis 1 and Revelation 12*, translated by K. William Whitney, Jr. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2006.

Gutmann, Amy. "Freedom of Association: An Introductory Essay." In *Freedom of Association*, edited by Amy Gutmann, 3-32. Princeton: Princeton University Press, 1998.

Gutoff, Joshua. "The Necessary Outlaw: The Catastrophic Excommunication & Paradoxical Rehabilitation of Rabbi Eliezer Ben Hyrcanus." *Journal of Law and Religion* 11.2 (1994-1995): 733-48.

Habba, Ya'acov. "Intention as Part of the Actus Reus in Jewish Law and Israeli Law." *Bar Ilan Law Studies* 20.1 (2003): 177-90 (in Hebrew).

———. "Tools for Determining the Culpability Degree of Murder Crimes in Jewish Law." *Qiryat ha-Mishpat* 2 (2002): 265-93 (in Hebrew).

Habermas, Jürgen. *Communication and the Evolution of Society*, translated by Thomas McCarthy. Cambridge: Polity Press, 1991 (first English edition published in Boston: Beacon Press, 1979).

———. *The Theory of Communicative Action: Reason and the Rationalization of Society*, translated by Thomas McCarthy. Boston: Beacon Press, 1984.

Halberstam, Chaya. "The Art of Biblical Law." *Prooftexts* 27.2 (2007): 345-64.

———. "Encircling the Law: The Legal Boundaries of Rabbinic Judaism." *JSQ* 16.4 (2009): 396-424.

———. "Wisdom, *Torah*, *Nomos*: The Discursive Contours of Biblical Law." *Law, Culture, and the Humanities* 9.1 (2013): 50-58.

Halbertal, Moshe. *Interpretative Revolutions in the Making. Values as Interpretative Considerations in Midrashei Halakhah*. Jerusalem: Magnes, 1997 (in Hebrew).

Halpern-Amaru, Betsy. "Joy as Piety in the Book of Jubilees." *JJS* 56.2 (2005): 185-205.

Hannay, Alastair. *Kierkegaard: A Biography*. Cambridge: Cambridge University Press, 2001.

Hantzis, Catharine Wells. "Legal Innovation within the Wider Intellectual Tradition: The Pragmatism of Oliver Wendell Holmes, Jr." *Northwestern University Law Review* 82.3 (1988): 541-95.

Hare, R. M. *Practical Inferences*, New Studies in Practical Philosophy, 44-58. Berkeley and Los Angeles: University of California Press, 1971.

Harkins, Angela Kim. "The Community Hymns Classification: A Proposal for Further Differentiation." *DSD* 15.1 (2008): 121-54.

———. "A New Proposal for Thinking about 1QH^a Sixty Years after Its Discovery." In *Qumran Cave 1 Revisited. Texts from Cave 1 Sixty Years after Their Discovery: Proceedings of the Sixth Meeting of the IOQS in Ljubljana, STDJ* 91, edited by Daniel K. Falk, Sarianna Metso, Donald W. Parry and Eibert J.C. Tigchelaar, 101-34. Leiden and Boston: Brill, 2010.

———. "Observations on the Editorial Shaping of the So-Called Community Hymns from 1QH^a and 4QH^a (4Q427)." *DSD* 12.3 (2005): 233-56.

———. *Reading with an 'I' To the Heavens. Looking at the Qumran Hodayot through the Lens of Visionary Traditions*, Ekstasis 3. Berlin and Boston: de Gruyter, 2012.

Harrington, Hannah K. "Biblical Law at Qumran." In *The Dead Sea Scrolls after Fifty Years: A Comprehensive Assessment*, edited by Peter W. Flint and James C. VanderKam, 1: 160-85. Leiden, Boston, and Köln: Brill, 1998.

———. "Keeping Outsiders Out: Impurity at Qumran." In *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70, edited by Florentino García Martínez and Mladen Popović, 187-203. Leiden: Brill, 2007.

Hart, H. L. A. *The Concept of Law*. Oxford: Clarendon Press, 1961.

———. "Positivism and the Separation of Law and Morals." In his *Essays in Jurisprudence and Philosophy*, 49-87. Oxford: Clarendon Press, 1983.

Hartman, Geoffrey H. "Midrash as Law and Literature." *Journal of Religion* 74.3 (1994): 338-55.

Hartman, Louis F. and Alexander A. Di Lella. *The Book of Daniel*, AB 23. Garden City, N.Y.: Doubleday, 1978.

Haskins, Kyle B. "Courtroom Etiquette & Civility: How Attorney Behavior Defines What It Means to Be a Lawyer." *Family Advocate* 31.2 (2008): 8-13.

Haslam, Nick, Louis Rothschild, and Donald Ernst. "Essentialist Beliefs about Social Categories." *British Journal of Social Psychology* 39.1 (2000): 113-27.

Hathaway, Oona A. "Between Power and Principle: An Integrated Theory of International Law." *UChicLRev* 72.2 (2005): 469-536.

Haugen, Marit S. & Mariann Villa. "Big Brother in Rural Societies: Youths' Discourses on Gossip." *Norwegian Journal of Geography* 60.3 (2006): 209-16.

Hayes, Christine E. "Authority and Anxiety in the Talmuds: From Legal Fiction to Legal Fact." In *Jewish Religious Leadership. Image and Reality*, edited by Jack Wertheimer, 1: 127-54. New York: Jewish Theological Seminary, 2004.

———. *Gentile Impurities and Jewish Identities. Intermarriage and Conversion from the Bible to the Talmud*. Oxford: Oxford University Press, 2002.

———. "Legal Realism and the Fashioning of Sectarians in Jewish Antiquity." In *Sects and Sectarianism in Jewish History*, IJSSJ 12, edited by Sacha Stern (Leiden: Brill, 2011), 119-46.

———. "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis." *Diné Israel* 25 (2008): 73-121.

———. "Rabbinic Contestations of Authority." *Cardozo Law Review* 28.1 (2006): 123-41.

———. "Theoretical Pluralism in the Talmud: A Response to Richard Hidary." *Diné Israel* 26-27 (2009-2010): 257-307.

Heger, Paul. "The Development of Qumran Law: *Nistarot*, *Niglot* and the Issue of 'Contemporization'." *RevQ* 23.2 (2007): 167-206.

———. "Qumran Exegesis: 'Rewritten Torah' or Interpretation?" *RevQ* 22.1 (2005): 61-87.

———. "Qumran Marriage Prohibitions and Rabbinic Equivalents." *RevQ* 24.3 (2010): 441-51.

———. "Stringency in Qumran?" *JSJ* 42.2 (2011): 188-217.

Hempel, Charlotte. "4QOrd^{a} (4Q159) and the Laws of the Damascus Document." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 372-6. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

———."CD Manuscript B and the Rule of the Community - Reflections on a Literary Relationship." *DSD* 16.3 (2009): 370-87.

———."Community Structures in the Dead Sea Scrolls: Admission, Organization, Disciplinary Procedures." In *The Dead Sea Scrolls after Fifty Years. A Comprehensive Assessment*, edited by Peter W. Flint and James C. VanderKam, 2:67-92. Leiden: Brill, 1999.

———. "The Context of 4QMMT and Comfortable Theories." In *The Dead Sea Scrolls. Texts and Context*, STDJ 90, edited by Charlotte Hempel, 275-92. Leiden and Boston: Brill, 2010.

———. *The Damascus Texts*, CQS 1. Sheffield: Sheffield Academic Press, 2000.

———. "Emerging Communal Life and Ideology in the S Tradition." In *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70, edited by Florentino García Martínez and Mladen Popović, 43-61. Leiden and Boston: Brill, 2007.

———. "Interpretative Authority in the Community Rule Tradition." *DSD* 10.1 (2003): 59-80.

———. *The Laws of the Damascus Document. Sources, Tradition and Redaction*, STDJ 29. Leiden, Boston, and Köln: Brill, 1998.

———. "The Laws of the Damascus Document and 4QMMT." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 69-84. Leiden, Boston, and Köln: Brill, 2000.

———. "Who is Making Dinner at Qumran?" *JThS* 63.1 (2012): 49-65.

———. "Who Rebukes in 4Q477?" *RevQ* 16 (1995): 655-6.

Hengel, Martin. *Judentum und Hellenismus. Studien zu ihrer Begegnung unter besonderer Berücksichtigung Palästinas bis zur Mitte des 2. Jh.s v. Chr.*, WUNT 10, 2nd edition. Tübingen: J.C.B. Mohr (Paul Siebeck), 1973.

———. "Qumran und der Hellenismus." In *Qumrân: Sa piété, sa théologie et son milieu*, BETL 46, edited by Mathias Delcor, 333-72. Paris and Gembloux: Ducolt and Leuven: Leuven University Press, 1978.

Henze, Matthias, ed. *Biblical Interpretation at Qumran*, SDSSRL. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2005.

Herbert, Robert "Two of Kierkegaard's Uses of 'Paradox'." *Philosophical Review* 70.1 (1961): 41-55.

Herstein, Ori J. "Defending the Right to Do Wrong." *Law and Philosophy* 31.3 (2012): 343-65.

Hidary, Richard. *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud*, BJS 353. Providence, R.I.: Brown Judaic Studies, 2010.

———. "Right answers Revisited: Monism and Pluralism in the Talmud." *Diné Israel* 26-27 (2009-2010): 229-55.

Hiebert, Robert J.V. "Deuteronomy 22:28-29 and Its Premishnaic Interpretations." *CBQ* 56.2 (1994): 203-20.

Hiers, Richard H. *Justice and Compassion in Biblical Law*. London and New York: Continuum, 2009.

Himmelfarb, Martha. "'Found Written in the Book of Moses': Priests in the Era of Torah." In *Was 70 CE a Watershed in Jewish History? On Jews and Judaism before and after the Destruction of the Second Temple*, AJEC 78, edited by Daniel R. Schwartz and Zeev Weiss, 23-41. Leiden: Brill, 2012.

———. "Impurity and Sin in 4QD, 1QS, and 4Q512." *DSD* 8.1 (2001): 9-37.

———. *A Kingdom of Priests. Ancestry and Merit in Ancient Judaism*, Jewish Culture and Contexts. Philadelphia: University of Pennsylvania Press, 2006.

———. "Levi, Phinehas, and the Problem of Intermarriage at the Time of the Maccabean Revolt." *JSQ* 6.1 (1999): 1-24.

———. "The Ordeals of Abraham: Circumcision and the *Aqedah* in Origen, the *Mekhilta*, and *Genesis Rabbah*." *Henoch* 30.2 (2008): 289-310.

———. "Sexual Relations and Purity in the Temple Scroll and the Book of Jubilees." *DSD* 6.1 (1999): 11-36.

Hirschfeld, Yizhar. *Qumran in Context: Reassessing the Archaeological Evidence*. Peabody, Mass.: Hendrickson, 2004.

Hirschman, Albert O. *Exit, Voice, and Loyalty. Responses to Decline in Firms, Organizations, and States*. Cambridge, Mass.: Harvard University Press, 1970.

Hirshman, Marc. "Election and Rejection in the Midrash." *JSQ* 16.1 (2009): 71-82.

Hobsbawm Eric and Terence Ranger, eds. *The Invention of Tradition*, Past and Present Publications. Cambridge and New York: Cambridge University Press, 1983.

Hogeterp, Albert L. A. *Expectations of the End. A Comparative Traditio-Historical Study of Eschatological, Apocalyptic and Messianic Ideas in the Dead Sea Scrolls and the New Testament*, STDJ 83. Leiden: Brill, 2009.

Holm-Nielsen, Svend. *Hodayot. Psalms from Qumran*, Acta Theologica Danica 2. Aarhus: Universitetsforlaget, 1960.

Holmes, Stephen. "Precommitment and the Paradox of Democracy." In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad, 195-240. Cambridge and New York: Cambridge University Press, 1988.

Holton, Richard. *Willing, Wanting, Waiting*. Oxford: Clarendon Press and Oxford and New York: Oxford University Press, 2009.

Holtz, Gudrun. "Inclusivism at Qumran." *DSD* 16.1 (2009): 22-54.

Hood, Ralph W., Jr., Peter C. Hill and Bernard Spilka. *The Psychology of Religion. An Empirical Approach*, fourth edition. New York: Guilford Press, 2009.

Hopkins, Denise Dombrowski. "The Qumran Community and 1QHodayot: A Reassessment." *RevQ* 10.3 (1981): 323-64.

Horwitz, Morton J. "The Historical Foundations of Modern Contract Law." *HLR* 87.5 (1974): 917-56.

———. "The Rise of Legal Formalism." *American Journal of Legal History* 19.4 (1975): 251-64.

Huang, Peter H. "International Environmental Law and Emotional Rational Choice." *Journal of Legal Studies* 31.S1 (2002): S237-S258.

Hughes, Julie A. *Scriptural Allusions and Exegesis in the Hodayot*, STDJ 59. Leiden and Boston: Brill, 2006.

Hultgren, Stephen. *From the Damascus Covenant to the Covenant of the Community. Literary, Historical, and Theological Studies on the Theme of "Covenant" in the Dead Sea Scrolls*, STDJ 66. Leiden: Brill, 2006.

Husak, Douglas. "Why Punish Attempts at All? Yaffe on 'The Transfer Principle'." *Criminal Law and Philosophy* 6.3 (2012): 399-410.

———. "Why Punish the Deserving?" *Noûs* 26.4 (1992): 447-64.

Hyamson, Moses. *Mosaicarum et Romanarum Legum Collatio*. London, New York, Toronto, Melbourne, and Bombay: Oxford University Press, 1913.

Høgenhaven, Jesper. "Rhetorical Devices in 4QMMT." *DSD* 10.2 (2003): 187-204.

Illich, Ivan. *Deschooling Society*. New York: Harper & Row, 1971.

———. *Medical Nemesis. The Expropriation of Health*. New York: Pantheon Books, 1976.

Jackson, Bernard S. "Damascus Document IX,16-23 and Parallels." *RevQ* 9.3 (1978): 445-50.

———. *Essays in Jewish and Comparative Legal History*, SJLA 10. Leiden: Brill, 1975.

———. "Secular Jurisprudence and the Philosophy of Jewish Law. A Commentary on Some Recent Literature." *JLA* 6 (1987): 3-44.

Jacobs, Jerry A. and Kathleen Gerson. *The Time Divide. Work, Family, and Gender Inequality*, The Family and Public Policy 3. Cambridge, Mass.: Harvard University Press, 2004.

Jacobs, Jonathan. "Judaism and Natural Law." *Heythrop Journal* 50.6 (2009): 930-47.

Jacobsen, Michael Hviid. *The Contemporary Goffman*, Routledge Studies in Social and Political Thought. New York and Abingdon: Routledge, 2010.

Jaffee, Martin S. "Mishnaic Literary History and the History of a Mishnaic Idea. On the Formation of the Mishnah's Theory of Intention, with Special Reference to Tractate Ma'aserot." *AJS Review* 11.2 (1986): 135-55.

———. *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE*. Oxford and New York: Oxford University Press, 2001.

Jansen, Nils. "Comparative Law and Comparative Knowledge." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmerman, 305-38. Oxford: Oxford University Press, 2006.

Jassen, Alexander P. "The Dead Sea Scrolls and Violence: Sectarian Formation and Eschatological Imagination." *BibInt* 17.1-2 (2009): 12-44.

———. *Mediating the Divine. Prophecy and Revelation in the Dead Sea Scrolls and Second Temple Judaism*, STDJ 68. Leiden: Brill, 2007.

———. "The Presentation of the Ancient Prophets as Lawgivers at Qumran." *JBL* 127.2 (2008): 307-37.

Jastram, Nathan. "Hierarchy at Qumran." 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*, STDJ 23, edited by Moshe J.

Bernstein, Florentino García Martínez and John I. Kampen, 349-76. Leiden: Brill, 1997.

Jastrow, Marcus. *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*. London: Luzac and New York: Putnam, 1903.

Jaworski, Adam and Justine Coupland. "Othering in Gossip: 'You Go out You Have a Laugh and You Can Pull Yeah Okay but Like...'." *Language in Society* 34.5 (2005): 667-94.

Joachimsen, Kristin. *Identities in Transition. The Pursuit of Isa. 52:13-53:12*, VTSup 142. Leiden and Boston: Brill, 2011.

Johnson, Kim Howard. *Monty Python's Tunisian Holiday. My Life with Brian*. New York: St. Martin's Press, 2008.

Johnson, Paul Christopher. *Secrets, Gossip, and Gods. The Transformation of Brazilian Candomblé*. Oxford: Oxford University Press, 2002.

Jokiranta, Jutta. "An Experiment on *Idem* Identity in the Qumran Movement." *DSD* 16.3 (2009): 309-29.

———. "Sectarianism." In *The Eerdmans Dictionary of Early Judaism*, edited by John J. Collins and Daniel C. Harlow, 1209-11. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

———. *Social Identity and Sectarianism in the Qumran Movement*, STDJ 105. Leiden and Boston: Brill, 2012.

———. "Social-Scientific Approaches to the Dead Sea Scrolls." In *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, edited by Maxine L. Grossman, 246-63. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

Jokiranta, Jutta, and Cecilia Wassen. "A Brotherhood at Qumran? Metaphorical Familial Language in the Dead Sea Scrolls." In *Northern Lights on the Dead Sea Scrolls. Proceedings of the Nordic Qumran Network, 2003-2006*, STDJ 80, edited by Anders Klostergaard Petersen et al., 173-203. Leiden and Boston: Brill, 2009.

Joyce, Daniel. "Photography and the Image-Making of International Justice." *Law and Humanities* 4.2 (2010): 229-49.

Joyce, Richard. "Theistic Ethics and the Euthyphro Dilemma." *JRE* 30.1 (2002): 49-75.

Kaminsky, Joel S. *Yet I Loved Jacob: Reclaiming the Biblical Concept of Election*. Nashville: Abingdon, 2007.

Kampen, John I. "4QMMT and New Testament Studies." In *Reading 4QMMT. New Perspectives on Qumran Law and History*, SBLSS 2, edited by John I. Kampen and Moshe J. Bernstein, 129-44. Atlanta, Ga.: Scholars Press, 1996.

———. "A Reexamination of the Relationship between Matthew 5:21-48 and the Dead Sea Scrolls." *SBLSP* 29 (1990): 34-59.

———. "'Righteousness' in Matthew and the Legal Texts from Qumran." 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*,

STDJ 23, edited by Moshe J. Bernstein, Florentino García Martínez and John I. Kampen, 461-87. Leiden, New York, and Köln: Brill, 1997.

———. "The Significance of the Scrolls for the Study of the Book of Matthew." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 157-69. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

Kampen John I. and Moshe J. Bernstein, eds. *Reading 4QMMT. New Perspectives on Qumran Law and History*, SBLSS 2. Atlanta, Ga.: Scholars Press, 1996.

Kanter, Rosabeth Moss. *Commitment and Community. Communes and Utopias in Sociological Perspective*. Cambridge, Mass.: Harvard University Press, 1972.

Kartzow, Marianne Bjelland. *Gossip and Gender: Othering of Speech in the Pastoral Epistles*, BZNW 164. Berlin and New York: de Gruyter, 2009.

Kass, Leon R. "The Wisdom of Repugnance." In *The Ethics of Human Cloning*, edited by Leon R. Kass and James Q. Wilson, 3-59. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1998.

Katz, Steven T. "Man, Sin, and Redemption in Rabbinic Judaism." In *The Cambridge History of Judaism*. Vol. IV: The Late Roman-Rabbinic Period, edited by Steven T. Katz, 925-45. Cambridge: Cambridge University Press, 2006.

Kaveny, M. Cathleen. "Between Example and Doctrine: Contract Law and Common Morality." *JRE* 33.4 (2005): 669-95.

Keating, Gregory C. "Reasonableness and Rationality in Negligence Theory." *StanfLR* 48.2 (1996): 311-84.

Keel, Othmar. *Symbolism of the Biblical World: Ancient near Eastern Iconography and the Book of Psalms*. Translated by Timothy J. Hallett. Winona Lake, Ind.: Eisenbrauns, 1997.

Kelsen, Hans. *General Theory of Law and State*. Translated by Anders Wedberg, imprint of Harvard University Press 1945 edition. Clark, N.J.: Lawbook Exchange, 2007.

———. *Pure Theory of Law*, translated by Max Knight. Berkeley: University of California Press, 1967.

Kemp, Jerome. "Flattery and Frankness in Horace and Philodemus." *Greece and Rome* 57.1 (2010): 65-76.

Kierkegaard, Søren. *Either/Or*, edited and translated by Howard V. Hong and Edna H. Hong. Princeton: Princeton University Press, 1987.

———. *Fear and Trembling. A Dialectic Lyric*. Translated by Walter Lowrie. Princeton: Princeton University Press, 1941.

Kister, Menahem. "4Q392 1 and the Conception of Light in Qumran 'Dualism'." *Meghillot* 3 (2005): 125-42 (in Hebrew).

———. "A Common Heritage: Biblical Interpretation at Qumran and Its Implications." In *Biblical Perspectives: Early Use of and Interpretation of the Bible in Light of the Dead Sea Scrolls*, STDJ 28, edited by Michael E. Stone and Esther G. Chazon, 101-11. Leiden, Boston, and Köln: Brill, 1998.

———. "Concerning the History of the Essenes. A Study of the *Animal Apocalypse*, the *Book of Jubilees* and the *Damascus Covenant*." *Tarbiz* 56.1 (1986): 1-18 (in Hebrew).

———. "Demons, Theology and Abraham's Covenant (CD 16:4-6 and Related Texts)." In *The Dead Sea Scrolls at Fifty. Proceedings of the 1997 Society of Biblical Literature Qumran Section Meetings*, SBLEJL 15, edited by Robert A. Kugler and Eileen M. Schuller, 167-84. Atlanta, Ga.: Scholars Press, 1999.

———. "Divorce, Reproof and Other Sayings in the Synoptic Gospels: Jesus Traditions in the Context of 'Qumranic' and Other Texts." In *Text, Thought, and Practice in Qumran and Early Christianity*, STDJ 84, edited by Ruth A. Clements and Daniel R. Schwartz, 195-229. Leiden and Boston: Brill, 2009.

———. "Marginalia Qumranica." *Tarbiz* 57.3 (1988): 315-25 (in Hebrew).

———. "A Qumranic Parallel to 1Thess 4:4? Reading and Interpretation of 4Q416 2 ii 21." *DSD* 10.3 (2003): 365-70.

———. "Studies in 4QMMT and its World – Halakhah, Theology, Language and Calendar." *Tarbiz* 68.3 (1999): 317-71 (in Hebrew).

Kittel, Bonnie. *The Hymns of Qumran*, SBLDS 50. Chico, Calif.: Scholars Press, 1981.

Klauck, Hans-Josef. "Gütergemeinschaft in der klassischen Antike, in Qumran und im Neuen Testament." *RevQ* 11.1 (1982): 47-79.

Klawans, Jonathan. "The Dead Sea Scrolls, the Essenes, and the Study of Religious Belief: Determinism and Freedom of Choice." In *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, edited by Maxine L. Grossman, 264-83. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

———. *Impurity and Sin in Ancient Judaism*. Oxford and New York: Oxford University Press, 2000.

———. "The Impurity of Immorality in Ancient Judaism." *JJS* 48.1 (1997): 1-16.

———. *Purity, Sacrifice, and the Temple. Symbolism and Supersessionism in the Study of Ancient Judaism*. Oxford and New York: Oxford University Press, 2006.

———. "Ritual Purity, Moral Purity, and Sacrifice in Jacob Milgrom's Leviticus, 3 vols. (1992-2001)." *Religious Studies Review* 29.1 (2003): 19-28.

Klein, Menasheh. *Sefer Mishneh Halakhot*, volume 4, fifth reprint. New York: Mekhon Mishneh Halakhot Gedolot, 2000.

Klosko, George. *The Principle of Fairness and Political Obligation*. Oxford and Lanham, Md.: Rowman and Littlefield, 1992.

Knibb, Michael A. "Isaianic Traditions in the Apocrypha and Pseudepigrapha." In *Writing and Reading the Scroll of Isaiah. Studies of an Interpretive Tradition*, VTSup 70.2, edited by Craig C. Broyles and Craig A. Evans, 633-50. Leiden: Brill, 1997.

———. *The Qumran Community*, Cambridge Commentaries on Writings of the Jewish & Christian World, 200 BC to AD 200 2. Cambridge: Cambridge University Press, 1987.

Knobe, Joshua. "The Concept of Intentional Action. A Case Study in the Uses of Folk Psychology." In *Experimental Philosophy*, edited by Joshua Knobe and Shaun Nichols, 129-47. Oxford and New York: Oxford University Press, 2008.

———."Intentional Action in Folk Psychology: An Experimental Investigation." *Philosophical Psychology* 16 (2003): 309-324.

Knohl, Israel. "The Law of Sin-Offering of the 'Holiness School'." *Tarbiz* 59.1-2 (1990): 1-9 (in Hebrew).

———. *The Sanctuary of Silence. The Priestly Torah and the Holiness School*, translated by Jackie Feldman and Peretz Rodman. Minneapolis, Minn.: Augsburg Fortress, 1995.

———. "The Sin Offering Law in the 'Holiness School' (Numbers 15.22-31)." In *Priesthood and Cult in Ancient Israel*. JSOTSup 125, edited by Gary A. Anderson and Saul M. Olyan, 192-203. Sheffield: JSOT Press, 1991.

Kolber, Adam J. "Unintentional Punishment." *Legal Theory* 18.1 (2012): 1-29.

Koppelman, Andrew. "Respect and Contempt in Constitutional Law, or Is Jack Balkin Heartbreaking?" *Maryland Law Review* 71.4 (2012): 1126-43.

Korobkin, Donald R. "Bankruptcy Law, Ritual, and Performance." *Columbia Law Review* 103.8 (2003): 2124-59.

Kratz, Reinhard Gregor. "'The Place Which He Has Chosen'. The Identification of the Cult Place of Deut. 12 and Lev. 17 in 4QMMT." *Meghillot* 5-6 (2007): *57-*80.

Kress, Ken. "The Interpretive Turn." *Ethics* 97.4 (1987): 834-60.

Kruse, Colin G. "Community Functionaries in the Rule of the Community and the Damascus Document: A Test of Chronological Relationships." *RevQ* 10.4 (1981): 543-51.

Kugel, James L. *The Idea of Biblical Poetry. Parallelism and Its History*. New Haven, Conn. and London: Yale University Press, 1981.

———. *Traditions of the Bible. A Guide to the Bible as It Was at the Start of the Common Era*. Cambridge, Mass.: Harvard University Press, 1998.

Kugler, Robert A. "The Priesthood at Qumran: The Evidence of References to Levi and the Levites." In *The Provo International Conference on the Dead Sea Scrolls*, STDJ 30, edited by Donald W. Parry and Eugene C. Ulrich, 465-79. Leiden, Boston, and Köln: Brill, 1999.

———. "Rethinking the Notion of 'Scripture' in the Dead Sea Scrolls: Leviticus as a Test Case." In *The Book of Leviticus. Composition and Reception*, VTSup 93, edited by Rolf Rendtorff, Robert A. Kugler and Sarah Smith Bartel, 342-57. Leiden and Boston: Brill, 2003.

Kuhn, Heinz Wolfgang. "The Impact of the Qumran Scrolls on the Understanding of Paul." In *The Dead Sea Scrolls. Forty Years of Research*, STDJ 10, edited by

Devorah Dimant and Uriel Rappaport, 327-39. Leiden: Brill and Jerusalem: Magnes Press, 1992.

Kukathas, Chandran. "Are There Any Cultural Rights?" *Political Theory* 20.1 (1992): 105-39.

Kutscher, Eduard Yechezkel. *The Language and Linguistic Background of the Isaiah Scroll*. Jeruslam: Magnes, 1959 (in Hebrew).

Kwall, Roberta Rosenthal. "Inspiration and Innovation: The Intrinsic Dimension of the Artistic Soul." *Notre Dame Law Review* 81.5 (2006): 1945-2012.

Lange, Armin. "'Which Is Written in the Words of Isaiah, Son of Amoz, the Prophet' (CD 7:10): Quotations of and Allusions to the Book of Isaiah in Qumran Literature." In *With Wisdom as a Robe. Qumran and Other Jewish Studies in Honour of Ida Fröhlich*, HBM 21, edited by Károly Daniel Dobos and Miklós Köszeghy, 275-287. Sheffield: Sheffield Phoenix Press, 2009.

———. *Weisheit und Prädestination: Weisheitliche Urordnung und Prädestination in den Textfunden von Qumran*, STDJ 18. Leiden: Brill, 1995.

Lanham, Richard A. "Barbie and the Teacher of Righteousness: Two Lessons in the Economics of Attention." *HousLRev* 38.2 (2001): 499-540.

Lavi, Shai. "Turning the Tables on 'Law and…': A Jurisprudential Inquiry into Contemporary Legal Theory." *Cornell Law Review* 96.4 (2011): 811-38.

Lawrence, Louise J. "'Men of Perfect Holiness' (1QS 7.20): Social-Scientific Thoughts on Group Identity, Asceticism and Ethical Development in the *Rule of the Community*." In *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, LSTS 52, edited by Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen, 83-100. London and New York: T & T Clark (a Continuum Imprint), 2005.

Le Déaut, Roger. "Le thème de la circoncision du coeur (Dt. xxx 6, Jér. iv 4) dans les versions anciennes (LXX et Targum) et à Qumrân." In *Congress Volume. Vienna 1980*, VTsup 32, edited by John A. Emerton, 178-205. Leiden, Brill: 1981.

Lefebvre, Henri. *La production de l'espace*, 3ème edition. Paris: Anthropos, 1986.

———. *The Production of Space*. Translated by Donald Nicholson-Smith. Oxford: Blackwell, 1991.

Leibowitz, Yeshayahu. *Five Books of Faith*. Jerusalem: Keter, 1995 (in Hebrew).

Lemke, Werner E. "Circumcision of the Heart: The Journey of a Biblical Metaphor." In *A God So Near. Essays in Old Testament Theology in Honor of Patrick D. Miller*, edited by Brent A. Strawn and Nancy R. Bowen, 299-319. Winona Lake, Ind.: Eisenbrauns, 2003.

Lennon, Kathleen. *Explaining Human Action*. La Salle, Ill.: Open Court, 1990.

Lessig, Lawrence. "The Regulation of Social Meaning." *UChicLRev* 62.3 (1995): 943-1045.

Leuchter, Mark. "The Ambiguous Details in the Blasphemer Narrative: Sources and Redaction in Leviticus 24:10–23." *JBL* 130.3 (2011): 431-50.

Leveen, Adriane. *Memory and Tradition in the Book of Numbers*. Cambridge: Cambridge University Press, 2008.

Levenson, Jon D. *The Death and the Resurrection of the Beloved Son. The Transformation of Child Sacrifice in Judaism and Christianity*. New Haven, Conn.: Yale University Press, 1993.

Levin, Michael. "Understanding the Euthyphro Problem." *International Journal for Philosophy of Religion* 25.2 (1989): 83-97.

Levine, Baruch A. *Leviticus*, JPS Torah Commentary. Philadelphia: Jewish Publication Society, 1989.

———. *Numbers 1-20. A New Translation and Commentary*, AB 4a. New York: Doubleday, 1993.

Levine, Étan. *Marital Relations in Ancient Judaism*, BZABR 10. Wiesbaden: Harrassowitz, 2009.

Levine, Lee I. "The Political Struggle between Pharisees and Sadducees in the Hasmonean Period." In *Jerusalem in the Second Temple Period*, edited by Aharon Oppenheimer, Uriel Rappaport and Menahem Stern, 61-83. Jerusalem: Yad Ben Zvi and Tel Aviv: Ministry of Defense, 1980 (in Hebrew).

Levinson, Bernard M. "Deuteronomy: Introduction and Annotations." In *The Jewish Study Bible*, edited by Adele Berlin and Marc Zvi Brettler, 356-450. Oxford and New York: Oxfrod University Press, 2004.

———. *Deuteronomy and the Hermeneutics of Legal Innovation*. Oxford: Oxford University Press, 1997.

———. *Legal Revision and Religious Renewal in Ancient Israel*. Cambridge: Cambridge University Press, 2008.

———. "The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah." *VT* 51.4 (2001): 511-34.

———. *'The Right Chorale'. Studies in Biblical Law and Interpretation*, FAT 54. Tübingen: Mohr Siebeck, 2008.

———. "You Must Not Add Anything to What I Command You: Paradoxes of Canon and Authorship in Ancient Israel." *Numen* 50.1 (2003): 1-51.

Levinson, Sanford V. "Law as Literature." *TexLR* 60.3 (1982): 373-403.

Lewis, J. David and Andrew J. Weigert, "The Structures and Meanings of Social Time." *Social Forces* 60.2 (1981): 432-62.

Lewy, Hans, Alexander Altmann and Isaak Heinemann, eds. *Three Jewish Philosophers*. New York: Atheneum, 1974.

Licht, Jacob. "An Analysis of the Treatise on the Two Spirits in DSD." In *Aspects of the Dead Sea Scrolls*, Scripta Hierosolymitana 4, edited by Chaim Rabin and Yigael Yadin, 88-100. Jerusalem: Magnes, 1958.

———. "The Attitude to Past Events in the Bible and in Apocalyptic Literature." *Tarbiz* 60.1 (1991): 1-18 (in Hebrew)

———. *.A Commentary on the Book of Numbers [XI-XXI]*. Jerusalem: Magnes, 1991 (in Hebrew).

———. *The Rule Scroll. A Scroll from the Wilderness of Judaea*. Jerusalem: Bialik Institute, 1965 (in Hebrew).

———. *The Thanksgiving Scroll. A Scroll from the Wilderness of Judaea*. Jerusalem: Bialik Institute, 1957 (in Hebrew).

———. "Time and Eschatology in Apocalyptic Literature and in Qumran." *JJS*16.3-4 (1965): 177-82.

Lied, Liv Ingeborg. "Another Look at the Land of Damascus: The Spaces of the *Damascus Document* in the Light of Edward W. Soja's Thirdspace Approach." In *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, LSTS 52, edited by Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen, 101-25. London and New York: T & T Clark (a Continuum Imprint), 2005.

———. "Approaching Heavenly Promised Lands. Jewish, Eschatological Geography from Edward W. Soja's Thirdspace Perspective." Stored online on www.hf.uib.no/i/ikrr/proak/Lied%20Approaching.pdf (retrieved on July 20, 2006).

———. *The Other Lands of Israel. Imaginations of the Land in 2 Baruch*, JSJS 129. Leiden: Brill, 2008.

Lim, Timothy H. "Intellectual Property and the Dead Sea Scrolls." *DSD* 9.2 (2002): 187-98.

Lim, Timothy H., Hector L. MacQueen, and Calum M. Carmichael, eds. *On Scrolls, Artefacts and Intellectual Property*, JSPSup 38. Sheffield: Sheffield Academic Press, 2001.

Livesey, Nina E. *Circumcision as a Malleable Symbol*, WUNT 2.295. Tübingen: Mohr Siebeck, 2010.

———. "Theological Identity Making: Justin's Use of Circumcision to Create Jews and Christians." *JECS* 18.1 (2010): 51-79.

Liwak, Ruediger. "תפש – tpś." In *Theological Dictionary of the Old Testament*, edited by G. Johannes Botterweck and Helmer Ringgren. Translated by Douglas W. Stott, 15:745-53. Grand Rapids, Mich.: Eerdmans, 2006.

Llewellyn, Karl N. *Jurisprudence. Realism in Theory and Practice*, with a new Introduction by James J. Chriss. New Brunswick, N.J. and London: Transaction, 2008.

Lohfink, Norbert. *Qoheleth. A Continental Commentary*. Translated by Sean McEvenue. Minneapolis: Fortress Press, 2003.

Lucas, Alec J. "Scripture Citations as an Internal Redactional Control: 1QS 5:1-20a and Its 4Q Parallels." *DSD* 17.1 (2010): 30-52.

Lundström, Catrin and France Winddance Twine. "White Migrations: Swedish Women, Gender Vulnerabilities and Racial Privileges." *European Journal of Women's Studies* 18.1 (2011): 67-86.

Lyons, William John. "'An Unauthorized Version': The Temple Scroll in Narratological Perspective." In *New Directions in Qumran Studies. Proceedings of the*

Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003, LSTS 52, edited by Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen, 126-48. London and New York: T & T Clark (a Continuum Imprint), 2005.

Macaskill, Grant. "Creation, Eschatology and Ethics in 4QInstruction." In *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70, edited by Florentino García Martínez and Mladen Popović, 217-45. Leiden and Boston: Brill, 2007.

Machiela, Daniel A. *The Dead Sea Genesis Apocryphon. A New Text and Translation with Introduction and Special Treatment of Columns 13-17*, STDJ 79. Leiden and Boston: Brill, 2009.

———. "'Each to His Own Inheritance': Geography as an Evaluative Tool in the Genesis Apocryphon." *DSD* 15.1 (2008): 50-66.

———. "Once More, with Feeling: Rewritten Scripture in Ancient Judaism—A Review of Recent Developments." *JJS* 61.2 (2010): 308-20.

Machinist, Peter. "The Question of Distinctiveness in Ancient Israel: An Essay." In *Ah, Assyria: Studies in Assyrian History and Ancient near Eastern Historiography Presented to Hayim Tadmor*, Scripta Hierosolymitana 33, edited by Mordechai Cogan and Israel Eph'al, 196-212. Jerusalem: Magnes Press, 1991. Reprinted in *Essential Papers on Israel and the Ancient Near East*, edited by Frederick E. Greenspahn, 420-42. New York: New York University Press, 1991.

Magness, Jodi. *The Archaeology of Qumran and the Dead Sea Scrolls*. Grand Rapids, Mich.: Eerdmans, 2002.

Mahoney, Jon. "Objectivity, Interpretation, and Rights: A Critique of Dworkin." *Law and Philosophy* 23.2 (2004): 187-222.

Mahoney, Martha R. "Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings." *Southern California Law Review* 65 (1991-1992): 1283-1319.

Maier*,* Johann. *The Temple Scroll. An Introduction, Translation & Commentary*, JSOTSup 34. Sheffield: JSOT Press, 1985.

Malesic, Jonathan "Illusion and Offense in 'Philosophical Fragments': Kierkegaard's Inversion of Feuerbach's Critique of Christianity." *International Journal for Philosophy of Religion* 62.1 (2007): 43-55.

Malm, H. M. "Bad Samaritan Laws: Harm, Help, or Hype?" *Law and Philosophy* 19.6 (2000): 707-750.

Manis, R. Zachary. "Kierkegaard and Evans on the Problem of Abraham." *JRE* 39.3 (2011): 474-92.

Margalit, Avishai and Moshe Halbertal. "Liberalism and the Right to Culture." *Social Research* 71.3 (2004): 529-48.

Maroney, Terry A. "Law and Emotion: A Proposed Taxonomy of an Emerging Field." *Law and Human Behavior* 30.2 (2006): 119-42.

Martin, Luther H. "The Anti-Individualistic Ideology of Hellenistic Culture." *Numen* 41.2 (1994): 117-40.

Martone, Corrado. "Qumran and Stoicism: An Analysis of Some Common Traits." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 617-22. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

Marx, Alfred. "Y a-t-il une prédestination à Qumran?" *RevQ* 6.2 (1967): 163-81.

Mason, Eric F. "Interpretation of Psalm 2 in 4QFlorilegium and in the New Testament." In *Echoes from the Caves: Qumran and the New Testament*, STDJ 85, edited by Florentino García Martínez, 67-82. Leiden: Brill, 2009.

———. *'You Are a Priest Forever': Second Temple Jewish Messianism and the Priestly Christology of the Epistle to the Hebrews*, STDJ 74. Leiden: Brill, 2008.

Mason, Steve. "Essenes and Lurking Spartans in Josephus' *Judean War*: From Story to History." In *Making History: Josephus and Historical Method*, JSJS 110, edited by Zuleika Rodgers, 219-61. Leiden: Brill, 2007.

———. "What Josephus Says about the Essenes in his 'Judean War'." In *Text and Artifact in the Religions of Mediterranean Antiquity: Essays in Honour of Peter Richardson*, edited by Stephen G. Wilson and Michel Desjardins, 423-55. Waterloo, Ont.: Wilfrid Laurier University Press, 2000.

Matthews, Victor H. "Honor and Shame in Gender-Related Legal Situations in the Hebrew Bible." In *Gender and Law in the Hebrew Bible and the Ancient Near East*, JSOTSup 262, edited by Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky, 97-112. Sheffield: Sheffield Academic Press, 1998.

Mazor, Lea. "On Bible and Zionism: The Tribal Conception of Territory as Reflected in Israeli Place Names during the First Years of Statehood." *Cathedra* 110 (2003): 101-22 (in Hebrew).

McCarthy, Carmel. *The Tiqqune Sopherim and Other Theological Corrections in the Masoretic Text of the Old Testament*, OBO 36. Freiburg: Universitätsverlag and Göttingen: Vandenhoeck and Ruprecht, 1981.

McDonald, Kristina L. et al. "Girl Talk: Gossip, Friendship, and Sociometric Status." *Merrill-Palmer Quarterly* 53.3 (2007): 381-411.

McLuhan, Marshall. *Understanding Media. The Extensions of Man*. New York: Signet, 1964.

McNamara, Joanne. "The Frustration of Pentheus: Narrative Momentum in Ovid's *Metamorphoses*, 3.511–731." *Classical Quarterly* 60.1 (2010): 173-93.

McNamara, Martin. *Targum Neofiti 1: Deuteronomy*, Aramaic Bible 5a. Collegeville, Minn.: Liturgical Press, 1997.

McPherran, Mark L. "Justice and Pollution in the *Euthyphro*." *Apeiron* 35.2 (2002): 105-29.

Meier, John P. "Is There Halaka (the Noun) at Qumran?" *JBL* 122.1 (2003): 150-155.

Mendels, Doron. *The Rise and Fall of Jewish Nationalism*. Grand Rapids, Mich.: Eerdmans, 1997.

Meredith, Robert. "Ivan Illich and Cultural Revolution." *Soundings* 55.2 (1972): 139-62.

Mermelstein, Ari. "Love and Hate at Qumran: The Social Construction of Sectarian Emotion." *DSD* 20.2 (2013): 237-63.

Meshel, Naphtali. "Food for Thought: Systems of Categorization in Leviticus 11." *HTR* 101.2 (2008): 203-29.

———. "P_1, P_2, P_3, and H. Purity, Prohibition, and the Puzzling History of Leviticus 11." *HUCA* 81 (2010): 1-15.

———. "Pure, Impure, Permitted, Prohibited: A Study of Classification Systems in P." In *Perspectives on Purity and Purification in the Bible*, LHBOTS 474, edited by Baruch J. Schwartz et al., 32-42. New York and London: T & T Clark, 2008.

Metso, Sarianna. "Problems in Reconstructing the Organizational Chart of the Essenes." *DSD* 16.3 (2009): 388-415.

———. "The Redaction of the Community Rule." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 377-84. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

———. "The Relationship between the Damascus Covenant and the Community Rule." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 85-93. Leiden, Boston, and Köln: Brill, 2000.

———. *The Serekh Texts*, CQS 9, LSTS 62. London and New York: T & T Clark, 2007.

———. *The Textual Development of the Qumran Community Rule*, STDJ 21. Leiden, New York, and Köln: Brill, 1997.

———. "The Textual Traditions of the Qumran Community Rule." 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*, STDJ 23, edited by Moshe J. Bernstein, Florentino García Martínez and John I. Kampen, 141-7. Leiden, New York, and Köln: Brill, 1997.

———. "Whom Does the Term Yahad Identify?" In *Biblical Traditions in Transmission. Essays in Honour of Michael A. Knibb*, JSJS 111, edited by Charlotte Hempel and Judith M. Lieu, 213-35. Leiden: Brill, 2006.

Mettinger, Tryggve N. D. *The Dethronement of Sabaoth. Studies in the Shem and Kabod Theologies*, Coniectanea Biblica. Old Testament Series 18. Translated by Fredrick H. Cryer. Lund, Sweden: CWK Gleerup, 1982.

Meyers, Carol L., and Eric M. Meyers. *Zechariah 9-14. A New Translation with Introduction and Commentary*, AB 25c. New York, Doubleday, 1993.

Michel, James. "Alternative Dispute Resolution and the Rule of Law in International Development Cooperation." *Journal of Dispute Resolution* 2011.1 (2011): 21-46.

Milgrom, Jacob. "4QTohora[a]: An Unpublished Qumran Text on Purities." 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*, STDJ 16, edited by Devorah Dimant and Lawrence H. Schiffman, 59-68. Leiden: Brill, 1995.

———. "The City of the Temple – A Response to Lawrence H. Schiffman." *JQR* 85.1-2 (1994): 125-8.

———. "The Function of the *Ḥaṭṭāt* Sacrifice." *Tarbiẓ* 40.1 (1970): 1-8 (in Hebrew).

———. "H_R in Leviticus and Elsewhere in the Torah." In *The Book of Leviticus. Composition and Reception*, VTSup 93, edited by Rold Rendtorff, Robert A. Kugler and Sarah Smith Bartel, 24-40. Leiden and Boston: Brill, 2003.

———. *Leviticus 17-22. A New Translation with Introduction and Commentary*, AB 3a. New York: Doubleday, 2000.

———. "The Modus Operandi of the *Ḥaṭṭāt*: A Rejoinder." *JBL* 109.1 (1990): 111-117.

———. *Numbers*, JPS Torah Commentary. Philadelphia: Jewish Publication Society, 1990.

———. "The Priestly Impurity System." *WCJS* 9a (1985): 115-117, 120.

Mill, John Stuart. *A System of Logic; Ratiocinative and Inductive. Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation*, ninth edition. London: Longmans, Green, Reader, and Dyer, 1875.

Miller, C. J. *Contempt of Court*, 3rd ed. Oxford and New York: Oxford University Press, 2000.

Minow, Martha. *Making All the Difference. Inclusion, Exclusion, and American Law*. Ithaca, N.Y.: Cornell University Press, 1990.

———. *Not Only for Myself. Identity, Politics, and the Law*. New York: New Press (distributed by Norton), 1997.

Moore, Michael S. "Good without God." In *Natural Law, Liberalism and Morality*, edited by Robert P. George, 221-70. Oxford: Oxford University Press, 1996.

———. *Placing Blame. A General Theory of the Criminal Law*. Oxford: Clarendon Press, 1997.

———. "A Taxonomy of Purposes of Punishment." In *Foundations of Criminal Law*, edited by Leo Katz, Michael S. Moore and Stephen J. Morse, 60-78. Oxford: Oxford University Press, 1999.

Morag, Shelomo. "Language and Style in *Miqṣat Maʿaśe Ha-Torah* – Did *Moreh Ha-Ṣedeq* Write This Document?" *Tarbiẓ* 65.2 (1996): 209-23 (in Hebrew).

Moran, Rachel F. "Law and Emotion, Love and Hate." *Journal of Contemporary Legal Issues* 11 (2001): 747-84.

Moran, William L. "The Ancient Near Eastern Background of the Love of God in Deuteronomy." *CBQ* 25.1 (1963): 77-87. Reprinted in *Essential Papers on Israel and the Ancient Near East*, edited by Frederick E. Greenspahn, 103-15. New York: New York University Press, 1991.

Moscovitz, Leib. *Talmudic Reasoning. From Casuistics to Conceptualization*, TSAJ 89. Tübingen: Mohr Siebeck, 2002.

Muffs, Yochanan. *Love & Joy: Law, Language, and Religion in Ancient Israel*. New York and Cambridge, Mass.: Jewish Theological Seminary of America (distributed by Harvard University Press), 1992.

Murphy, Catherine M. *Wealth in the Dead Sea Scrolls and in the Qumran Community*, STDJ 40. Leiden, Boston, and Köln: Brill, 2002.

Murphy, Colleen. "Lon Fuller and the Moral Value of the Rule of Law." *Law and Philosophy* 24.3 (2005): 239-62.

Murphy, Jeffrie G. and Jean Hampton. *Forgiveness and Mercy*. Cambridge and New York: Cambridge University Press, 1988.

Naeh, Shlomo. "הרגל מצווה." *Tarbiz* 65.2 (1996): 231-236 (in Hebrew).

Nagle, John Copeland. *Law's Environment. How the Law Shapes the Places we Live*. New Haven, Conn.: Yale University Press, 2010.

Najman, Hindy. "Angels at Sinai: Exegesis, Theology and Interpretive Authority." *DSD* 7.3 (2000): 313-33.

———. *Seconding Sinai. The Development of Mosaic Discourse in Second Temple Judaism*, JSJS 77. Leiden and Boston: Brill, 2003.

———. "Towards a Study of the Uses of the Concept of Wilderness in Ancient Judaism." *DSD* 13.1 (2006): 99-113.

Nash, David. "Analyzing the History of Religious Crime. Models of 'Passive' and 'Active' Blasphemy since the Medieval Period." *Journal of Social History* 41.1 (2007): 5-29.

———. *Blasphemy in the Christian World. A History*. Oxford and New York: Oxford University Press, 2007.

Nel, Marius. "View of Time in Ancient Cultures and the Origin of Apocalypticism in Jewish Thought in the Centuries before Christ." In *Stimulation from Leiden*, edited by Hermann Michael Niemann and Matthias Augustin, 207-17. New York, Bern, and Frankfurt am Main: Peter Lang, 2006.

Nelken, David. "Changing Paradigms in the Sociology of Law." In *Autopoietic Law. A New Approach to Law and Society*, European University Institute A8, edited by Gunther Tuebner, 191-216. Berlin: de Gruyter, 1987.

Nelson, David W. "Oral Orthography: Early Rabbinic Oral and Written Transmission of Parallel Midrashic Tradition: In the Mekhilta of Rabbi Shimon B. Yohai and the Mekhilta of Rabbi Ishmael." *AJS Review* 29.1 (2005): 1-32.

Netanel, Neil Weinstock. "From the Dead Sea Scrolls to the Digital Millennium. Recent Developments in Copyright Law." *Texas Intellectual Property Law Journal* 9.1 (2000): 19-63.

Newfield, Jack. *RFK: A Memoir*, 4th edition. New York: Nation Books, 2003.

Newman, Judith H. *Praying by the Book. The Scripturalization of Prayer in Second Temple Judaism*, SBLEJL 14. Atlanta, Ga.: Scholars Press, 1999.

Newsom, Carol A. "Apocalyptic and the Discourse of the Qumran Community." *JNES* 49.2 (1990): 135-44.

———. "Apocalyptic Subjects: Social Construction of the Self in the Qumran Hodayot." *JSP* 12.1 (2001): 3-35.

———. "Constructing 'We, You and the Others' through Non-Polemical Discourse." In *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70, edited by Florentino García Martínez and Mladen Popović, 13-21. Leiden and Boston: Brill, 2007.

———. "Kenneth Burke Meets the Teacher of Righteousness: Rhetorical Strategies in the *Hodayot* and the *Serek Ha-Yahad*." In *Of Scribes and Scrolls. Studies on the Hebrew Bible, Intertestamental Judaism, and Christian Origins Presented to John Strugnell on the Occasion of His Sixtieth Birthday*, College Theology Society Resources in Religion 5, edited by Harold W. Attridge, John J. Collins and Thomas H. Tobin, 121-31. Lanham, Md., New York and London: University Press of America, 1990.

———. "Rhetorical Criticism and the Dead Sea Scrolls." In *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, edited by Maxine L. Grossman, 198-214. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

———. "'Sectually Explicit' Literature from Qumran." In *The Hebrew Bible and Its Interpreters*, Biblical and Judaic Studies from the University of California, San Diego 1, edited by William Henry Propp, Baruch Halpern and David Noel Freedman, 167-87. Winona Lake, Ind.: Eisenbrauns, 1990.

———. *The Self as Symbolic Space. Constructing Identity and Community at Qumran*, STDJ 52. Leiden and Boston: Brill, 2004.

Nickelsburg, George W. E. "Polarized Self-Identification in the Qumran Texts." In *Defining Identities:* We*,* You*, and the* Other *in the Dead Sea Scrolls. Proceedings of the Fifth Meeting of the IOQS in Groningen*, STDJ 70, edited by Florentino García Martínez and Mladen Popović, 23-31. Leiden and Boston: Brill, 2007.

———. "Revealed Wisdom as a Criterion for Inclusion and Exclusion: From Jewish Sectarianism to Early Christianity." In *"To See Ourselves as Others See Us". Christians, Jews, "Others" In Late Antiquity*, edited by Jacob Neusner, Ernest S. Frerichs and Caroline McCracken-Flesher, 73-92. Chico, Calif.: Scholars Press, 1985.

Niederwimmer, Kurt. *The Didache*, Hermeneia. Minneapolis, Minn.: Fortress Press, 1998.

Niehoff, Maren R. "Circumcision as a Marker of Identity: Philo, Origen and the Rabbis on Gen 17:1-14." *JSQ* 10.2 (2003): 89-123.

Nimmer, David. "Authorship and Originality." *HousLRev* 38.1 (2001): 1-217.

Noam, Vered. "The Bounds of Non-Priestly Purity: A Reassessment." *Zion* 72.2 (2007): 127-60 (in Hebrew).

———. "'Choosing the Path of Lenience': Qumranic Stringency or Tannaitic Leniency?" *Meghillot* 8-9 (2010): 211-26 (in Hebrew).
———. *From Qumran to the Rabbinic Revolution. Conceptions of Impurity*. Jerusalem: Yad Ben Zvi, 2010 (in Hebrew).
———. "'The Later Rabbis Add and Innovate': On the Development of a Talmudic *Sugya*." *Tarbiẓ* 72.1-2 (2003): 151-75 (in Hebrew).
———. "Ritual Impurity in Tannaitic Literature: Two Opposing Perspectives." *JAJ* 1.1 (2010): 65-103.
———. "Stringency in Qumran: A Reassessment." *JSJ* 40.3 (2009): 342-55.
Noetscher, F. "Himmlische Bücher und Schicksalsglaube in Qumran." *RevQ* 1.3 (1959): 405-11.
Noort, Edward. "The Creation of Light in Genesis 1:1-5: Remarks on the Function of Light and Darkness in the Opening Verses of the Hebrew Bible." In *The Creation of Heaven and Earth. Re-Interpretations of* Genesis *I in the Context of Judaism, Ancient Philosophy, Christianity, and Modern Physics*, TBN 8, edited by George H. van Kooten, 3-20. Leiden: Brill, 2005.
Noort, Ed and Eibert J. C. Tigchelaar, eds. *The Sacrifice of Isaac. The Aqedah (Genesis 22) and Its Interpretations*, TBN 4. Leiden, Boston, and Köln: Brill, 2002.
Noth, Martin. *Numbers. A Commentary*, OTL, translated by James D. Martin. London: SCM Press, 1968.
Novak, David. *Covenantal Rights. A Study in Jewish Political Theory*, New Forum Books. Princeton: Princeton University Press, 2000.
———. "The Dialectic between Theory and Practice in Rabbinic Thought." In *Tradition in the Public Square. A David Novak Reader*, Radical Traditions, edited by Randi Rashkover and Martin Kavka, 21-33. Grand Rapids, Mich.: Eerdmans, 2008.
———. *Election of Israel: The Idea of the Chosen People*. Cambridge: Cambridge University Press, 1995.
———. "God and Human Rights in a Secular Society: A Biblical-Talmudic Perspective." In *Jewish Bible Theology. Perspectives and Case Studies*, edited by Isaac Kalimi, 89-99. Winona Lake, Ind.: Eisenbrauns, 2012.
———. "Is Natural Law a Border Concept between Judaism and Christianity?" *JRE* 32.2 (2004): 237-54.
———. *Natural Law in Judaism*. Cambridge: Cambridge University Press, 1998.
Novick, Tzvi. "Law and Loss: Response to Catastrophe in Numbers 15." *HTR* 101.1 (2008):1-14.
———. "A Lot of Learning Is a Dangerous Thing: On the Structure of Rabbinic Expertise in the Bavli." *HUCA* 78 (2007): 91-107.
———. "Tradition and Truth: The Ethics of Lawmaking in Tannaitic Literature." *JQR* 100.2 (2010): 223-43.
Nussbaum, Martha C. *Frontiers of Justice. Disability, Nationality, Species Membership*. Cambridge, Mass.: Harvard University Press, 2006.

———. *Hiding from Humanity: Disgust, Shame, and the Law*. Princeton: Princeton University Press, 2004.

O'Barr, William M. and John M. Conley. "Litigant Satisfaction versus Legal Adequacy in Small Claims Court Narratives." *Law & Society Review* 19.4 (1985): 661-702.

Oakes, James L. "The Dead Sea Scrolls: A Live Copyright Controversy." *HousLRev* 38.1 (2001): 219-97.

Oberthür, Sebastian and Hermann E. Ott, in collaboration with Richard G. Tarasofsky. *The Kyoto Protocol. International Climate Policy for the 21st Century*. New York: Springer, 1999.

Olyan, Saul M. "Exodus 31:12-17 – The Sabbath According to H, or the Sabbath According to P and H ?" *JBL* 124.2 (2005): 201-209.

Omi, Michael and Howard Winant, *Racial Formation in the United States. From the 1960s to the 1990s*. New York: Routledge, 1994.

Osiel, Mark. "The Banality of Good: Aligning Incentives against Mass Atrocity." *Columbia Law Review* 105.6 (2005): 1751-1862.

Otto, Eckart. "False Weights in the Scales of Biblical Justice? Different Views from Patriarchal Hierarchy to Religious Equality in the Book of Deuteronomy." In *Gender and Law in the Hebrew Bible and the Ancient Near East*, JSOTSup 262, edited by Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky, 128-46. Sheffield: Sheffield Academic Press, 1998.

Otto, Rudolf. *The Idea of the Holy. An Inquiry into the Non-Rational Factor in the Idea of the Divine and Its Relation to the Rational. T*ranslated by John W. Harvey. London: Milford, 1923.

Outka, Gene. "Equality and Individuality: Thoughts on Two Themes in Kierkegaard." *JRE* 10.2 (1982): 171-203.

Paganini, Simone. *"Nicht darfst du zu diesen Wörtern etwas hinzufügen." Die Rezeption des Deuteronomiums in der Tempelrolle: Sprache, Autoren, Hermeneutik*, BZABR 11. Wiesbaden: Harrassowitz, 2009.

Pattison, George. *The Philosophy of Kierkegaard*, Continental European Philosophy. Chesham, UK: Acumen, 2005.

Paul, Shalom M. "An Akkadian-Rabbinic Sexual Euphemism." In *Torah lishma: Eessays in Jewish Studies in Honor of Professor Shamma Friedman*, edited by David Golinkin et al., xi-xiii. Jerusalem: Schechter Institute of Jewish Studies, 2007.

Paulson, Stanley L. "Lon L. Fuller, Gustav Radbruch, and the 'Positivist' Theses." *Law and Philosophy* 13.3 (1994): 313-59.

Pélisse, Jérôme. "From Negotiation to Implementation. A Study of the Reduction of Working Time in France (1998–2000)." *Time & Society* 13.2-3 (2004): 221-44.

Penner, Jeremy. *Patterns of Daily Prayer in Second Temple Period Judaism*, STDJ 104. Leiden and Boston: Brill, 2012.

Peters, Dorothy M. *Noah Traditions in the Dead Sea Scrolls. Conversations and Controversies of Antiquity*, SBLEJL 26. Atlanta, Ga.: SBL and Leiden: Brill, 2008.

Peterson, Todd D. "Prosecuting Executive Branch Officials for Contempt of Congress." *New York University Law Review* 66.3 (1991): 563-632.

Pfann, Stephen J. "A Table in the Wilderness: Pantries and Tables, Pure Food and Sacred Space at Qumran." In *Qumran, the Site of the Dead Sea Scrolls. Archaeological Interpretations and Debates. Proceedings of a Conference Held at Brown University, November 17-19, 2002*, STDJ 57, edited by Katharina Galor, Jean-Baptiste Humbert and Jürgen Zangenberg, 159-78. Leiden: Brill, 2006.

Phillips, Anthony. *Deuteronomy*, CBC. Cambridge: Cambridge University Press, 1973.

Pinto, Meital. "What Are Offences to Feelings Really About? A New Regulative Principle for the Multicultural Era." *OJLS* 30. 4 (2010): 695-723.

Plekon, Michael. "Kierkegaard at the End: His 'Last' Sermon, Eschatology and the Attack on the Church." *Faith and Philosophy* 17.1 (2000): 68-86.

Ploeg, J. P. M. van der. *Le Rouleau de la Guerre*, STDJ 2. Leiden: Brill, 1959.

Popović, Mladen. "The Jewish Revolt against Rome: History, Sources and Perspectives." In *The Jewish Revolt Against Rome. Interdisciplinary Perspectives*, JSJS 154, edited by Mladen Popović, 1-25. Leiden and Boston: Brill, 2011.

———. "Physiognomic Knowledge in Qumran and Babylonia: Form, Interdisciplinarity, and Secrecy." *DSD* 13.2 (2006): 150-76.

Posner, Eric A. "Law and the Emotions." *Georgetown Law Journal* 89 (2001): 1977-2012.

Posner, Richard A. "Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution." *Case Western Reserve Law Review* 37.2 (1986-1987): 179-217.

———. *The Problematics of Moral and Legal Theory*. Cambridge, Mass.: Belknap Press of Harvard University Press, 1999.

———. *Sex and Reason*. Cambridge, Mass.: Harvard University Press, 1992.

Post, Robert C. "Reconceptualizing Vagueness: Legal Rules and Social Orders." *CalifLR* 82.3 (1994): 491-507

Pryke, John. "John the Baptist and the Qumran Community." *RevQ* 4.4 (1964): 483-96.

———. "'Spirit' and 'Flesh' in the Qumran Documents and Some New Testament Texts." *RevQ* 5.3 (1965): 345-60.

Puech, Emile. *Qumrân Grotte 4, XVIII. Textes Hébreux (4Q521-4Q528, 4Q576-579)*, DJD 25. Oxford: Clarendon Press, 1998.

Qimron, Elisha. *The Dead Sea Scrolls. The Hebrew Writings, volume 1*, Between Bible and Mishnah, The David and Jemima Jeselsohn Library. Jerusalem: Yad Ben Zvi, 2010 (in Hebrew).

———. "The Distinction between *waw* and *yod* in Documents from the Judaean Desert." *Beit Mikra* 18 (1973): 102-12.

———. "The Law of the Avenger and the Grudge-Bearer in the Dead Sea Scrolls." In *The Path of Peace. Studies in Honor of Israel Friedman Ben-Shalom*, edited

by Dov Gera and Miriam Ben-Zeev, 499-505. Beer Sheva: Ben Gurion University and Sapir College, 2005 (in Hebrew).

———. "Three Notes on the Text of the Temple Scroll." *Tarbiẓ* 51.1 (1981): 135-7 (in Hebrew).

———. "On Unintentional and Intentional Sins in the Dead Sea Scrolls. A Study in the Terms Used for their Designation." *WCJS* 10a (1990): 103-110 (in Hebrew).

Qimron, Elisha and James H. Charlesworth. "Rule of the Community." In *Rule of the Community and Related Documents*, Princeton Theological Seminary Dead Sea Scrolls Project 1, edited by James H. Charlesworth, 1-51. Tübingen: Mohr Siebeck and Louisville: Westminster John Knox Press, 1994.

Qimron, Elisha and John Strugnell. *Qumran Cave 4, v. Miqṣat Ma'aśe Ha-Torah*, DJD 10. Oxford: Clarendon Press, 1994.

Rabin, Chaim. *Qumran Studies*. Oxford: Oxford University Press, 1957.

Rabinowitz, Isaac. "The Qumran Authors' *SPR HHGW/Y*." *JNES* 20.2 (1961): 109-14.

Rad, Gerhard von. *Deuteronomy. A Commentary*, OTL. Translated by Dorothea Barton. London: SCM Press, 1966.

Radzyner, Amihai. "Between Scholar and Jurist: The Controversy over the Research of Jewish Law Using Comparative Methods at the Early Time of the Field." *Journal of Law and Religion* 23.1 (2007-2008): 189-248.

Rakoff, Todd D. *A Time for Every Purpose. Law and the Balance of Life*. Cambridge, Mass.: Harvard University Press, 2002.

Rapping, Elayne. *Law and Justice as Seen on TV*. New York: New York University Press, 2003.

Ravid, Liora. "The Book of Jubilees and Its Calendar. A Reexamination." *DSD* 10.3 (2003): 371-94.

Rawls, John. *The Law of Peoples, with The Idea of Public Reason Revisited*. Cambridge, Mass.: Harvard University Press, 1999.

———. *A Theory of Justice*, revised edition. Oxford and New York: Oxford University Press, 1999.

———. "Two Concepts of Rules." *Philosophical Review* 64.1 (1955): 3-32.

Raz, Joseph. *The Authority of Law. Essays on Law and Morality*. Oxford: Clarendon Press and Oxford and New York: Oxford University Press, 1979.

———. "Responsibility and the Negligence Standard." *OJLS* 30.1 (2010): 1-18.

Regev, Eyal. "Access Analysis of Khirbet Qumran: Reading Spatial Organization and Social Boundaries." *BASOR* 355 (2009): 85-99.

———. "Between Two Sects: Differentiating the Yahad and the Damascus Covenant." In *The Dead Sea Scrolls. Texts and Context*, STDJ 90, edited by Charlotte Hempel, 431-49. Leiden and Boston: Brill, 2010.

———. "Comparing Sectarian Practice and Organization: The Qumran Sects in Light of the Regulations of the Shakers, Hutterites, Mennonites and Amish." *Numen* 51.2 (2003): 146-81.

———. "Reconstructing Qumranic and Rabbinic Worldviews: Dynamic Holiness vs. Static Holiness." In *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls*, STDJ 62, edited by Steven D. Fraade, Aharon Shemesh and Ruth A. Clements, 87-112. Leiden: Brill, 2006.

———. "The Ritual Baths near the Temple Mount and Extra-Purification Before Entering the Temple Courts." *IEJ* 55.2 (2005): 194-204.

———. *Sectarianism in Qumran. A Cross-Cultural Perspective,* Religion and Society 45. Berlin and New York: de Gruyter, 2007.

———. "Temple and Righteousness in Qumran and Early Christianity: Tracing the Social Difference between the Two Movements." In *Text, Thought, and Practice in Qumran and Early Christianity*, STDJ 84, edited by Ruth A. Clements and Daniel R. Schwartz, 63-87. Leiden and Boston: Brill, 2009.

———. "Wealth and Sectarianism: Comparing Qumranic and Early Christian Social Approaches." In *Echoes from the Caves: Qumran and the New Testament*, STDJ 85, edited by Florentino García Martínez, 211-29. Leiden: Brill, 2009.

Reif, Stefan C. "The Damascus Document from the Cairo Genizah: Its Discovery, Early Study and Historical Significance." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 109-31. Leiden, Boston, and Köln: Brill, 2000.

Reiff, Mark R. *Punishment, Compensation, and Law. A Theory of Enforceability*, Cambridge Studies in Philosophy and Law. Cambridge and New York: Cambridge University Press, 2005.

Reimer, Andy M. "Probing the Possibilities and Pitfalls of Post-Colonial Approaches to the Dead Sea Scrolls." In *New Directions in Qumran Studies. Proceedings of the Bristol Colloquium on the Dead Sea Scrolls, 8-10 September 2003*, LSTS 52, edited by Jonathan G. Campbell, William John Lyons and Lloyd K. Pietersen, 182-209. London and New York: T & T Clark (a Continuum Imprint), 2005.

Reinhartz, Adele. "We, You, They: Boundary Language in 4QMMT and the New Testament Epistles." In *Text, Thought, and Practice in Qumran and Early Christianity*, STDJ 84, edited by Ruth A. Clements and Daniel R. Schwartz, 89-105. Leiden and Boston: Brill, 2009.

Reitman, Oonagh. "On Exit." In *Minorities within Minorities. Equality, Rights and Diversity*, edited by Avigail Eisenberg and Jeff Spinner-Halev, 189-208. Cambridge and New York: Cambridge University Press, 2005.

Resnik, Judith. "Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry." *Yale Law Journal* 115.7 (2006): 1564-1670.

Richland, Justin B. "The State of Hopi Exception: When Inheritance Is What You Have." *Law and Literature* 20.2 (2008): 261-78.

Richter, Sandra L. "The Place of the Name in Deuteronomy." *VT* 57.3 (2007): 342-66.

Riesebrodt, Martin. "*Charisma* in Max Weber's Sociology of Religion." *Religion* 29.1 (1999): 1-14.

Rispler-Chaim, Vardit. "The Muslim Surgeon and Contemporary Ethical Dilemmas Surrounding the Restoration of Virginity." *Hawwa* 5.2 (2007): 324-49.

Roberts, J. J. M. "The Importance of Isaiah at Qumran." In *The Bible and the Dead Sea Scrolls*, edited by James H. Charlesworth (N. Richland Hills, Tex.: BIBAL Press, 1997), 273-86.

Rodogno, Raffaele. "Guilt, Anger, and Retribution." *Legal Theory* 16.1 (2010): 59-76.

Rösel, Martin. *Adonaj. Warum Gott "Herr" gennant wird*, FAT 29. Tübingen: Mohr Siebeck, 1999.

Rofé, Alexander. "4QMidrash Samuel? Observations Concerning the Character of 4QSam^{a}." *Textus* 19 (1998): 63-74.

———. *Deuteronomy: Issues and Interpretation*, Old Testament Studies. Edinburgh and New York: T & T Clark (a Continuum imprint), 2002.

Rosen, Gilla Ratzersdorfer. "Between Thought and Action. The Role of Intent in the Performance of *Mitzvot*." In *Jewish Legal Writings by Women*, edited by Micah D. Halpern and Chana Safrai, 202-30. Jerusalem: Urim Publications and Brooklyn, N.Y.: Lambda Publishers, 1998.

Rosen-Zvi, Ishay. *Demonic Desires. 'Yetzer Hara' and the Problem of Evil in Late Antiquity*, Divinations: Rereading Late Ancient Religion Series. Philadelphia: University of Pennsylvania Press, 2011.

Rosenblum, Jordan D. *Food and Identity in Early Rabbinic Judaism*. Cambridge and New York: Cambridge University Press, 2010.

———. "'Why Do You Refuse to Eat Pork:' Jews, Food, and Identity in Roman Palestine." *JQR* 100.1 (2010): 95-110.

Rosenblum, Nancy L. "Justice and the Experience of Injustice." In *Breaking the Cycles of Hatred. Memory, Law and Repair*, edited by Martha Minow and Nancy L. Rosenblum, 77-106. Princeton: Princeton University Press, 2002.

———. *Membership and Morals. The Personal Uses of Pluralism in America*. Princeton: Princeton University Press, 1998.

Rosenfeld, Michel. "Dworkin and the One Law Principle: A Pluralist Critique." *Revue Internationale de Philosophie* 233 (2005): 363-92.

Ross, Alf. "Validity and the Conflict between Legal Positivism and Natural Law." In *Normativity and Norms. Critical Perspectives on Kelsenian Themes*, edited by Stanley L. Paulson and Bonnie Litschewski Paulson, 147-63. Oxford: Clarendon Press, 1998.

Rothstein, David. "Gen 24:14 and Marital Law in 4Q271 3: Exegetical Aspects and Implications." *DSD* 12.2 (2005): 189-204.

Rousseau, Jean-Jacques. *Discourse on Political Economy and The Social Contract*, World's Classics. Translated by Christopher Betts. Oxford and New York: Oxford University Press, 1994.

Rubens, Brian. "Common Law versus Regulatory Fraud: Parsing the Intent Requirement of the Felony Penalty Provision of the Food, Drug, and Cosmetic Act." *UChicLRev* 72.4 (2005): 1501-32.

Rubenstein, Jeffrey L. "Elisha Ben Abuya: Torah and the Sinful Sage." *Journal of Jewish Thought and Philosophy* 7.2 (1997): 139-225.

———. "Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment." *DSD* 6.2 (1999): 157-83.

———. *Talmudic Stories. Narrative Art, Composition and Culture*. Baltimore, Md.: Johns Hopkins University Press, 1999.

Rubenstein, William B. "Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action." *University of Missouri Kansas City Law Review* 74.3 (2006): 709-28.

Rubin, Gayle S. "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality." Reprinted in *Culture, Society and Sexuality. A Reader*, Sexuality, Culture and Health, edited by Richard Parker and Peter Aggleton, 143-78. New York and Abingdon: Routledge, 2007 (originally published in 1984).

Rüpke, Jörg. "You Shall Not Kill. Hierarchies of Norms in Ancient Rome." *Numen* 39.1 (1992): 58-79.

Rundle, Kristen. "The Impossibility of an Exterminatory Legality: Law and the Holocaust." *University of Toronto Law Journal* 59.1 (2009): 65-125.

Ruzer, Serge. "Exegetical Patterns Common to the Dead Sea Scrolls and the New Testament, and Their Implications." In *Text, Thought, and Practice in Qumran and Early Christianity*, STDJ 84, edited by Ruth A. Clements and Daniel R. Schwartz, 231-51. Leiden and Boston: Brill, 2009.

Sagi, Abraham. "Models of Authority and the Duty of Obedience in Halakhic Literature." *AJS Review* 20.1 (1995): 1-24.

Sagi, Avi and Daniel Statman. "Divine Command Morality and Jewish Tradition." *JRE* 23.1 (1995): 39-67.

Samuelson, Norbert M. "Possible and Preferred Relations between Reason and Revelation as Authority in Judaism." In *Studies in Jewish Philosophy*, Studies in Judaism, edited by Norbert M. Samuelson, 127-42. Lanham, Md.: University Press of America, 1987.

Sandt, Huub van de. "Two Windows on a Developing Jewish-Christian Reproof Practice: Matt. 18:15-17 and Did. 15:3." In *Matthew and the Didache: Two Documents from the Same Jewish-Christian Milieu?* edited by Huub van de Sandt, 173-92. Assen: Royal Van Gorcum and Minneapolis, Minn.: Fortress Press, 2005.

Sandberg, Russell and Norman Doe. "The Strange death of Blasphemy," *Modern Law Review* 71.6 (2008): 971-86.

Sanger, Carol. "The Role and Reality of Emotions in Law." *William and Mary Journal of Women and the Law* 8 (2001): 107-13.

Sarason, Richard S. "The Petihtot in Leviticus Rabba: 'Oral Homilies' or Redactional Constructions?" *JJS* 33.1-2 (1982): 557-67.

Sarat, Austin. "Vitality Amidst Fragmentation: On the Emergence of Postrealist Law and Society Scholarship." In *The Blackwell Companion to Law and Society*, edited by Austin Sarat, 1-11. Malden, Mass. and Oxford, UK: Blakwell, 2004.

Satlow, Michael L. *Creating Judaism. History, Tradition, Practice*. New York: Columbia University Press, 2006.

———. *Jewish Marriage in Antiquity*. Princeton: Princeton University Press, 2001.

Scalia, Antonin. *A Matter of Interpretation: Federal Courts and the Law*. Princeton: Princeton University Press, 1998.

Schacter, Jane S. "The Pursuit of 'Popular Intent': Interpretive Dilemmas in Direct Democracy." *Yale Law Journal* 105.1 (1995): 107-76.

Schäfer, Peter. *The Origins of Jewish Mysticism*. Tübingen: Mohr Siebeck and Princeton: Princeton University Press, 2009.

———. "Rabbis and Priests, Or: How to Do Away with the Glorious Past of the Sons of Aaron." In *Antiquity in Antiquity: Jewish and Christian Pasts in the Greco-Roman World*, TSAJ 123, edited by Gregg Gardner and Kevin Osterloh, 155-72. Tübingen: Mohr Siebeck, 2008.

———. *Studien zur Geschichte und Theologie des rabbinischen Judentums*, AGAJU 15. Leiden: Brill, 1978.

Schaper, Joachim. "Exilic and Post-Exilic Prophecy and the Orality/Literacy Problem." *VT* 55.3 (2005): 324-42.

Schechter, Solomon. *Documents of Jewish Sectaries, edited from Hebrew Mss. in the Cairo Genizah collection, now in the possession of the University Library, Cambridge. Volume 1: Fragments of a Zadokite Work*. Library of Biblical Studies. New York: Ktav, 1970 (reprint edition of original 1910 publication).

Schiffman, Lawrence H. "Biblical Exegesis in the Passion Narratives and the Dead Sea Scrolls." In *Biblical Interpretation in Judaism and Christianity*, LHBOTS 439, edited by Isaac Kalimi and Peter J. Haas, 117-30. London: T&T Clark, 2006.

———. "The Book of Jubilees and the Temple Scroll." In *Enoch and the Mosaic Torah. The Evidence of Jubilees*, edited by Gabriele Boccaccini and Giovanni Ibba, 99-115. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2009.

———. "Communal Meals at Qumran." *RevQ* 10.1 (1979): 45-56.

———. *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, STDJ 75, edited by Florentino García Martínez. Leiden: Brill, 2008.

———. "Dead Sea Scrolls, Biblical Interpretation in." In *Encyclopaedia of Midrash. Biblical Interpretation in Formative Judaism*, edited by Jacob Neusner and Alan J. Avery-Peck, 1:40-54. Leiden and Boston: Brill, 2005.

———. "The Deuteronomic Paraphrase of the Temple Scroll." *RevQ* 15.4 (1992): 543-67. Reprinted in his *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, STDJ 75, edited by Florentino García Martínez, 443-69. Leiden: Brill, 2008.

———. *The Eschatological Community of the Dead Sea Scrolls. A Study of the Rule of the Congregation*, SBLMS 38. Atlanta, Ga.: Scholars Press, 1989.

———. "Exclusion from the Sanctuary and the City of the Sanctuary in the Temple Scroll." *HAR* 9 (1985): 301-20. Reprinted in his *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, STDJ 75, edited by Florentino García Martínez, 381-401. Leiden: Brill, 2008.

———. "From the Cairo Genizah to Qumran: The Influence of the Zadokite Fragments on the Study of the Qumran Scrolls." In *The Dead Sea Scrolls. Texts and Context*, STDJ 90, edited by Charlotte Hempel, 451-66. Leiden and Boston: Brill, 2010.

———. *The Halakhah at Qumran*, SJLA 16. Leiden: Brilll, 1975.

———. "Laws Pertaining to Women in the *Temple Scroll*." In *The Dead Sea Scrolls: Forty Years of Research*, STDJ 10, edited by Devorah Dimant and Uriel Rappaport, 210-28. Leiden: Brill and Jerusalem: Magnes Press and Yad Ben Zvi, 1992. Reprinted in his *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, STDJ 75, edited by Florentino García Martínez, 519-40. Leiden: Brill, 2008.

———. "The Place of 4QMMT in the Corpus of Qumran Manuscripts." In *Reading 4QMMT. New Perspectives on Qumran Law and History*, SBLSS 2, edited by John I. Kampen and Moshe J. Bernstein, 81-98. Atlanta, Ga.: Scholars Press, 1996.

———. "Prohibited Marriages in the Dead Sea Scrolls and Rabbinic Literature." In *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, STDJ 62, edited by Steven D. Fraade, Aharon Shemesh and Ruth A. Clements, 113-25. Leiden: Brill, 2006.

———. *Reclaiming the Dead Sea Scrolls. Their True Meaning for Judaism and Christianity*, Anchor Bible Reference Library. New York: Doubleday, 1994.

———. "The Relationship of the *Zadokite Fragments* to the *Temple Scroll*." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 133-45. Leiden, Boston, and Köln: Brill, 2000. Reprinted in his *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, STDJ 75, edited by Florentino García Martínez, 149-62. Leiden: Brill, 2008.

———. *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code*, BJS 33. Chico, Calif.: Scholars Press, 1983.

———. "The Temple Scroll and the Halakhic Pseudepigrapha of the Second Temple Period." In *Pseudepigraphic Perspectives. The Apocrypha and Pseudepigrapha in Light of the Dead Sea Scrolls*, STDJ 31, edited by Esther G. Chazon and Michael E. Stone, 121-31. Leiden, Boston Köln: Brill, 1999.

———. "The Theology of the Temple Scroll." *JQR* 85.1-2 (1994): 109-23. Reprinted in his *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, STDJ 75, edited by Florentino García Martínez, 19-32. Leiden: Brill, 2008.

———. "Utopia and Reality: Political Leadership and Organization in the Dead Sea Scrolls Community." In *Emanuel. Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, VTSup 94, edited by Shalom M. Paul et al., 413-27. Leiden and Boston: Brill, 2003.

Schilbrack, Kevin. "Heresy, Humanism and Heroism in *Monty Python's Life of Brian*." In *Monty Python and Philosophy: Nudge Nudge, Think Think!* Popular Culture and Philosophy 19, edited by Gary L. Hardcastle and George A. Reisch, 13-23. Chicago: Open Court (a division of Carus Publishing), 2006.

Schniedewind, William M. "The Evolution of Name Theology." In *The Chronicler as Theologian. Essays in Honor of Ralph W. Klein*, JSOTSup 371, edited by M. Patrick Graham, Steven L. McKenzie and Gary N. Knoppers, 228-39. London: T&T Clark, 2003.

Schofield, Alison. *From Qumran to the Yahad. A New Paradigm of Textual Development for the Community Rule*, STDJ 77. Leiden and Boston: Brill, 2009.

———."Re-Placing Priestly Space: The Wilderness as Heterotapia in the Dead Sea Scrolls." In *A Teacher for All Generations. Essays in Honor of James C. VanderKam*, JSJS 153, edited by Eric F. Mason et al., 1:469-90. Leiden and Boston: Brill, 2012.

———. "Rereading S: A New Model of Textual Development in Light of the Cave 4 Serekh Copies." *DSD* 15.1 (2008): 96-120.

Schofer, Jonathan Wyn. *Confronting Vulnerability. The Body and the Divine in Rabbinic Ethics*. Chicago: University of Chicago Press, 2010.

Scholem, Gershom G. *Major Trends in Jewish Mysticism*, 3rd edition. London: Thames and Hudson, 1955.

Schremer, Adiel. "Seclusion and Exclusion: The Rhetoric of Separation in Qumran and Tannaitic Literature." In *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, STDJ 62, edited by Steven D. Fraade, Aharon Shemesh and Ruth A. Clements, 127-45. Leiden: Brill, 2006.

———. "'[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*, STDJ 37, edited by David Goodblatt, Avital Pinnick and Daniel R. Schwartz, 105-26. Leiden, Boston, and Köln: Brill, 2001.

Schultz, Brian. *Conquering the World. The War Scroll (1QM) Reconsidered*, STDJ 76. Leiden: Brill, 2009.

Schwartz, Baruch J. "The Bearing of Sin in the Priestly Literature." In *Pomegranates and Golden Bells. Studies in Biblical, Jewish, and near Eastern Ritual, Law and Literature in Honor of Jacob Milgrom*, edited by David Pearson Wright, David Noel Freedman and Avi Hurvitz, 3-21. Winona Lake, Ind.: Eisenbrauns, 1995.

———. *The Holiness Legislation. Studies in the Priestly Code*. Jerusalem: Magnes, 1999 (in Hebrew).

———. "Israel's Holiness: The Torah Traditions." In *Purity and Holiness: The Heritage of Leviticus*, Jewish and Christian Perspectives 2, edited by Marcel J.H.M. Poorthuis and Joshua Schwartz, 47-59. Leiden, Boston, and Köln: Brill, 2000.

Schwartz, Daniel R. "Arguments of *Qal va-ḥomer* as Sadducean Realism." *Masekhet* 5 (2006): 145-56 (in Hebrew).

———. "Between Sages and Priests in the Times of the Second Temple." *Migvan de'ot ve-hashkafot be-tarbut Yisrael* 2 (1992): 63-79 (in Hebrew). Reprinted in *Studies in Jewish History of the Second Temple Period*, edited by Daniel R. Schwartz, 403-419. Jerusalem: Zalman Shazar Center for Jewish History, 1995.

———. "The Dead Sea Sect and the Essenes." In *The Qumran Scrolls and Their World*, Between Bible and Mishnah, The David and Jemima Jeselsohn Library / The Ancient Literature of Eretz Israel and Its World Series, edited by Menahem Kister, 2:601-12. Jerusalem: Yad Ben-Zvi, 2009 (in Hebrew).

———. "From Priests at Their Right to Christians at Their Left? On the Interpretation and Development of a Mishnaic Story (m. Rosh Hashanah 2:8-9)." *Tarbiẓ* 74.1 (2004): 21-41 (in Hebrew).

———. "Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law." In *The Dead Sea Scrolls: Forty Years of Research*, STDJ 10, edited by Devorah Dimant and Uriel Rappaport, 229-40. Leiden: Brill and Jerusalem: Magnes Press and Yad Ben Zvi, 1992.

———. "On Two Aspects of a 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*, JSPSup 8 and JSOT / ASOR Monographs 2, edited by Lawrence H. Schiffman, 157-79. Sheffield: JSOT Press, 1990.

———. "The Three Temples of 4QFlorilegium." *RevQ* 10.1 (1979): 83-91.

———. "Yannai and Pella, Josephus and Circumcision." *DSD* 18.3 (2011): 339-59.

Schwartz, Seth. "The Composition and Publication of Josephus's *Bellum Iudaicum* Book 7." *HTR* 79.4 (1986): 373-86.

Schweid, Eliezer. "Does the Idea of Jewish Election Have Any Meaning after the Holocaust." In *Wrestling with God. Jewish Theological Responses during and after the Holocaust*, edited by Steven T. Katz, Shlomo Biderman and Gershon Greenberg, 229-43. Oxford: Oxford University Press, 2007.

Scott, James M. "Geographic Aspects of Noachic Materials in the Scrolls at Qumran." In *The Scrolls and the Scriptures: Qumran Fifty Years After*, JSPSup 26,

edited by Stanley E. Porter and Craig A. Evans, 368-81. Sheffield: Sheffield Academic Press, 1997.

Scott, S. P. *The Civil Law, including the Twelve tables, the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo*. Cincinnati: Central Trust Company, 1932.

Scott, Shirley V. "Is There Room for International Law in Realpolitik?: Accounting for the US 'Attitude' Towards International Law." *Review of International Studies* 30.1 (2004): 71-88.

Sealy, L. S. "Contract. Damages for Misrepresentation." *Cambridge Law Journal* 37.2 (1978): 229-32.

Seebass, Horst. *Numeri*, BKAT iv 2,2. Neukirchen-Vluyn: Neukirchener Verlag, 1995.

———. "לקח – lāqah." In *Theological Dictionary of the Old Testament*, edited by G. Johannes Botterweck and Helmer Ringgren. Translated by Douglas W. Stott, 8:19. Grand Rapids, Mich.: Eerdmans, 2006.

Seely, David R. "The 'Circumcised Heart' in 4Q434 'Barki Nafshi'." *RevQ* 17.1-4 (1996): 527-35.

Segal, Michael. "4QReworked Pentateuch or 4QPentatuech?" In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 391-9. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

———. "Between Bible and Rewritten Bible." In *Biblical Interpretation at Qumran*, SDSSRL, edited by Matthias Henze, 10-28. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2005.

———. *The Book of Jubilees. Rewritten Bible, Redaction, Ideology and Theology*, JSJS 117. Leiden and Boston: Brill, 2007.

Seron, Carroll, ed. *The Law and Society Canon*, The International Library of Essays in Law and Society. Aldershot and Burlington, Vt.: Ashgate, 2006.

Seters, John van. "The Formula *ʾašakkēn šəmô šām* and the Centralization of Worship in Deuteronomy and DH." *Journal of Northwest Semitic Languages* 30.2 (2004): 1-18.

Shavit, Yaacov and Mordechai Eran. *The Hebrew Bible Reborn: From Holy Scripture to the Book of Books. A History of Biblical Culture and the Battles over the Bible in Modern Judaism*, Studia Judaica 38, translated by Chaya Naor. Berlin: de Gruyter, 2007.

Shaw, Brent D. "Raising and Killing Children: Two Roman Myths." *Mnemosyne* 54.1 (2001): 31-77.

Shemesh, Aharon. "4Q271.3: A Key to Sectarian Matrimonial Law." *JJS* 49.2 (1998): 244-63.

———. "Expulsion and Exclusion in the Community Rule and the Damascus Document." *DSD* 9.1 (2002): 44-74.

———. *Halakhah in the Making. The Development of Jewish Law from Qumran to the Rabbis*, Taubman Lectures in Jewish Studies 6. Berkeley: University of California Press, 2009.

———. "The Holy Angels Are in Their Council: The Exclusion of Deformed Persons from Holy Places in Qumranic and Rabbinic Literature." *DSD* 4.2 (1997): 179-206.

———. *Punishments and Sins. From Scripture to the Rabbis*. Jerusalem: Magnes, 2003 (in Hebrew).

———. "Rebuke, Warning and the Obligation to Testify – in Judean Desert Writings and Rabbinic Halakha." *Tarbiẓ* 66.2 (1997): 149-68 (in Hebrew).

———. "The Scriptural Background of the Penal Code in the Rule of the Community and Damascus Document." *DSD* 15.2 (2008): 191-224.

———. "Scriptural Interpretations in the Damascus Document and Their Parallels in Rabbinic Midrash." In *The Damascus Document: A Centennial of Discovery*, STDJ 34, edited by Joseph M. Baumgarten, Esther G. Chazon and Avital Pinnick, 161-75. Leiden, Boston, and Köln: Brill, 2000.

———. "Traces of Sectarian Halakhah in Tannaitic Literature." *Meghillot* 2 (2004): 91-103 (in Hebrew).

———. "Two Principles of the Qumranic Matrimonial Law." In *Fifty Years of Dead Sea Scrolls Research. Studies in Memory of Jacob Licht*, edited by Gershon Brin and Bilhah Nitzan, 181-203. Jerusalem: Yad Ben Zvi, 2001 (in Hebrew).

Shemesh, Aharon and Cana Werman, "Hidden Things and their Revelation." *Tarbiẓ* 66.4 (1997): 471-82 (in Hebrew).

———. "Hidden Things and Their Revelation." *RevQ* 18.3 (1998): 409-27.

Sher, George. *Desert. Studies in Moral, Political, and Legal Philosophy*. Princeton: Princeton University Press, 1987.

Sherwin, Richard K. *When Law Goes Pop. The Vanishing Line between Law and Popular Culture*. Chicago and London: University of Chicago Press, 2000.

Shields, Rob. *Lefebvre, Love & Struggle. Spatial Dialectics*. London and New York: Routledge, 1999.

Shulman, Harvey. "The Political and the Sacred: Political Obligation and the Book of Deuteronomy." *Jewish Political Studies Review* 3.3-4 (2010): 23-58.

Sidel, Victor W. "The Right to a Just and Peaceful Social and International Order." *Health and Human Rights* 3.2 (1998): 110-25.

Silberg, Moshe. "The Order of Holy Things as a Legal Entity." *Sinai* 52.1 (1962): 8-18 (in Hebrew).

Silman, Yohanan. "Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations." *Diné Israel* 12 (1984-1985): 249-66 (in Hebrew).

———. "Introduction to the Philosophical Analysis of the Normative-Ontological Tension in the Halakha." *Daat* 31 (1993): v-xx.

——— (as Yochanan David Silman). *The Voice Heard at Sinai. Once or Ongoing?* Jerusalem: Magnes, 1999 (in Hebrew).

Simester, A. P. "Moral Certainty and the Boundaries of Intention." *OJLS* 16.3 (1996): 445-69.

Simmons, J. Aaron. "What about Isaac? Rereading *Fear and Trembling* and Rethinking Kierkegaardian Ethics." *JRE* 35.2 (2007): 319-45.

Simon-Shoshan, Moshe. *Stories of the Law. Narrative Discourse and the Construction of Authority in the Mishnah.* Oxford and New York: Oxford University Press, 2012.

Sinclair, Barbara. *Party Wars. Polarization and the Politics of National Policy Making*, Julian J. Rothbaum Distinguished Lecture Series 10. Norman: University of Oklahoma Press, 2006.

Singer, Peter. *Democracy and Disobedience.* Oxford: Clarendon Press, 1973.

Singer, Richard G. *Just Deserts. Sentencing Based on Equality & Desert*. Cambridge, Mass.: Ballinger, 1979.

Smith, Mark S. "Light in Genesis 1:3—Created or Uncreated: A Question of Priestly Mysticism?" In *Birkat Shalom. Studies in the Bible, Ancient near Eastern Literature, and Postbiblical Judaism Presented to Shalom M. Paul on the Occasion of His Seventieth Birthday*, edited by Chaim Cohen et al., 125-34. Winona Lake, Ind.: Eisenbrauns, 2008.

Smith, Martyn. *Religion, Culture, and Sacred Space*. New York: Palgrave Macmillan, 2008.

Sokoloff, Michael. *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period.* Ramat Gan: Bar Ilan University Press, 1990.

Stallman, Robert C. "Levi and the Levites in the Dead Sea Scrolls." *JSP* 10 (1992): 163-89.

Starkova, K.B. "The Ideas of Second and Third Isaiah as Reflected in the Qumran Literature." *Qumran Chronicle* 2.1 (1992): 51-62.

Statman, Daniel. "Authority and Autonomy in the Oven of Akhnai." *Bar Ilan Law Studies* 24.2 (2009): 639-62 (in Hebrew).

Stegemann, Hartmut. "The Institutions of Israel in the *Temple Scroll*." In *The Dead Sea Scrolls. Forty Years of Research*, STDJ 10, edited by Devorah Dimant and Uriel Rappaport, 156-85. Leiden: Brill and Jerusalem: Magnes and Yad Ben Zvi, 1992.

———. *The Library of Qumran: On the Essenes, Qumran, John the Baptist and Jesus*. Leiden: Brill and Grand Rapids, Mich and Cambridge, UK.: Eerdmans, 1998.

———. "The 'Teacher of Righteousness' and Jesus: Two Types of Religious Leadership in Judaism at the Turn of the Era." In *Jewish Civilization in the Hellenistic-Roman Period*, edited by Shemaryahu Talmon, 196-213. Sheffield: JSOT Press, 1991.

Stegemann, Hartmut, with Eileen Schuller et al. *1QHodayot^{a} with Incorporation of 1QHodayot^{b} and 4QHodayot^{a-f}*, DJD 40. Oxford: Clarendon Press, 2009.

Steiner, Richard C. "The *mbqr* at Qumran, the *Episkopos* in the Athenian Empire, and the Meaning of *lbqr'* in Ezra 7:14: On the Relation of Ezra's Mission to the Persian Legal Project." *JBL* 120.4 (2001): 623-46.

Steinmetz, Devora. *Punishment and Freedom. The Rabbinic Construction of Criminal Law*. Philadelphia: University of Pennsylvania Press, 2008.

———. "Sefer Hehago: The Community and the Book." *JJS* 52.1 (2001): 40-58.

Stemberger, Günter. "Review: *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls*." *DSD* 17.2 (2010): 227-30.

Stendahl, Krister, ed. *The Scrolls and the New Testament*. New York: Harper & Brothers, 1957.

Stern, David S. "The Bind of Responsibility: Kierkegaard, Derrida, and the Akedah of Isaac." *Philosophy Today* 47.1 (2003): 34-43.

Stern, Sacha. "Fictitious Calendars: Early Rabbinic Notions of Time, Astronomy, and Reality." *JQR* 87.1-2 (1996): 103-29.

———. *Time and Process in Ancient Judaism*. Oxford and Portland, Ore: Littman Library of Jewish Civilization, 2003.

Steudel, Annette. "God and Belial." In *The Dead Sea Scrolls. Fifty Years after Their Discovery*, edited by Lawrence H. Schiffman, Emanuel Tov and James C. VanderKam, 332-40. Jerusalem: Israel Exploration Society and The Shrine of the Book, Israel Museum, 2000.

Stone, Julius. "Leeways of Choice, Natural Law and Justice in Jewish Legal Ordering." *JLA* 7 (1988): 210-251.

Stone, Michael E. *Fourth Ezra. A Commentary on the Book of Fourth Ezra*, Hermeneia. Minneapolis, Minn.: Fortress Press, 1990.

———. "Lists of Revealed Things in the Apocalyptic Literature." In *Magnalia Dei: The Mighty Acts of God. Essays on the Bible and Archaeology in Memory of G. Ernest Wright*, edited by Frank Moore Cross, Werner E. Lemke and Patrick D. Miller, Jr., 414-52. Garden City, N.Y.: Doubleday, 1976. Reprinted in his *Selected Studies in Pseudepigrapha and Apocrypha with Special Reference to the Armenian Tradition*, SVTP 9, 379-418. Leiden, New York, and Köln: Brill, 1991.

———. "Some Considerations on the Categories 'Bible' and 'Apocrypha'." In *New Approaches to the Study of Biblical Interpretation in Judaism of the Second Temple and in Early Christianity*, STDJ 106, edited by Gary A. Anderson, Ruth A. Clements and David Satran, 1-18. Leiden: Brill, 2013.

Stone, Suzanne Last. "A Jewish Perspective on Human Rights." *Society* 41.2 (2004): 17-22.

———. "In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory." *HLR* 106.4 (1993): 813-94.

Stout, Jeffrey. "Truth, Natural Law, and Ethical Theory." In *Natural Law Theory. Contemporary Essays*, edited by Robert P. George, 71-102. Oxford: Oxford University Press, 1992.

Strauss, Leo. *Natural Right and History*, Charles R. Walgreen Foundation Lectures. Chicago: University of Chicago Press, 1953.

Strugnell, John. "MMT: Second Thoughts on a Forthcoming Edition." In *The Community of the Renewed Covenant. The Notre Dame Symposium on the Dead Sea Scrolls*, edited by Eugene C. Ulrich and James C. VanderKam, 57-73. Notre Dame, Ind.: University of Notre Dame Press, 1994.

Stuckenbruck, Loren T. "'Angels' and 'God': Exploring the Limits of Early Jewish Monotheism." In *Early Jewish and Christian Monotheism*, JSNTSup 263, edited by Loren T. Stuckenbruck and Wendy North, 45-70. London: T & T, 2004.

———. "An Approach to the New Testament through Aramaic Sources: The Recent Methodological Debate." *JSP* 8 (1991): 3-29.

———. "The Legacy of the Teacher of Righteousness in the Dead Sea Scrolls." In *New Perspectives on Old Texts*, STDJ 88, edited by Esther G. Chazon, Betsy Halpern-Amaru and Ruth A. Clements, 23-49. Leiden: Brill, 2010.

———. "The Teacher of Righteousness Remembered: From Fragmentary Sources to Collective Memory in the Dead Sea Scrolls." In *Memory in the Bible and Antiquity: The Fifth Durham-Tübingen Research Symposium (Durham, September 2004)*, WUNT 2.212, edited by Stephen C. Barton, Loren T. Stuckenbruck and Benjamin G. Wold, 75-94. Tübingen: Mohr Siebeck, 2007.

Sussman, Yaakov. "The History of Halakha and the Dead Sea Scrolls: Preliminary Observations on MIQSAT MA'AŚE HA-TORAH [4QMMT]." In *DJD 10*, 179-200.

Sutton, John R. *Law/Society. Origins, Interactions, and Change*, Sociology for a New Century. Thousand Oaks, Calif.: Pine Forge Press and London: Sage, 2001.

Swedberg, Richard. "The Changing Picture of Max Weber's Sociology." *Annual Review of Sociology* 29 (2003): 283-306.

Syn, Roger. "© Copyright God: Enforcement of Copyright in the Bible and Religious Works." *Regent University Law Review* 14.1 (2001-2002): 1-34.

Ta-Shma, Israel. "The Law Is in Accordance with the Later Authority – *Hilkhata Kebatrei*: Historical Observations on a Legal Rule." In *Authority, Process & Method. Studies in Jewish Law*, Jewish Law in Context 2, edited by Hanina Ben-Menahem and Neil S. Hecht, 101-28. Amsterdam: Harwood Academic Publishers, 1998.

Tadmor, Haim. "'And if Given the Strength – Eighty Years': The Terms for Longevity in Akkadian, Biblical Hebrew, and Mishnaic Hebrew." In *Tehillah Le-Moshe. Biblical and Judaic Studies in Honor of Moshe Greenberg*, edited by Mordechai Cogan, Barry L. Eichler and Jeffrey H. Tigay, *93-*97. Winona Lake, Ind.: Eisenbrauns, 1997 (in Hebrew).

Tal, Abraham. "Euphemisms in the Samaritan Targum of the Pentateuch." *Aramaic Studies* 1.1 (2003): 109-29.

Talmon, Shemaryahu. "Calendar Controversy in Ancient Judaism: The Case of the 'Community of the Renewed Covenant'." In *The Provo International Conference on*

the Dead Sea Scrolls, STDJ 30, edited by Donald W. Parry and Eugene Ulrich, 379-95. Leiden: Brill, 1999.

———. "The 'Dead Sea Scrolls' or 'the Community of the Renewed Covenant'?" In *The Echoes of Many Texts: Reflections on Jewish and Christian Traditions. Essays in Honor of Lou H. Silberman*, edited by William G. Dever and J. Edward Wright, 115-45. Atlanta, Ga.: Scholars Press, 1997.

———. "The 'Desert Motif' in the Bible and in Qumran Literature." In *Biblical Motifs. Origins and Transformation*, edited by Alexander Altmann, 31-63. Cambridge, Mass.: Harvard University Press, 1966. Reprinted in Talmon's *Literary Studies in the Hebrew Bible: Form and Content*, 216-54. Jerusalem: Magnes and Leiden: Brill, 1993.

———. "The Essential 'Community of the Renewed Covenant': How Should Qumran Studies Proceed?" In *Geschichte – Tradition – Reflexion. Festschrift für Martin Hengel zum 70. Geburtstag*, edited by Hubert Cancik, Hermann Lichtenberger and Peter Schäfer, 323-52. Tübingen: J. C. B. Mohr-Paul Siebeck, 1996.

———. "Synonymous Readings in the Textual Traditions of the Old Testament." *Scripta Hierosolymitana* 8 (1961): 335-83.

Tamanaha, Brian Z. *Beyond the Formalist-Realist Divide. The Role of Politics in Judging*. Princeton, N.J. and Oxford, UK: Princeton University Press, 2010.

Taylor, Joan E. *The Immerser. John the Baptist within Second Temple Judaism*. Grand Rapids, Mich.: Eerdmans, 1997.

———. "Women, Children, and Celibate Men in the Serekh Texts." *HTR* 104.2 (2011): 171-90.

Taylor, Justin. "The Community of Goods among the First Christians and among the Essenes." In *Historical Perspectives. From the Hasmoneans to Bar Kokhba in Light of the Dead Sea Scrolls*, STDJ 37, edited by David Goodblatt, Avital Pinnick and Daniel R. Schwartz, 147-61. Leiden, Boston, and Köln: Brill, 2001.

Tempska, Urszula. "'Originality' after the Dead Sea Scrolls Decision: Implications for the American Law of Copyright." *Marquette Intellectual Property Law Review* 6 (2002): 119-46.

Thackeray, H. St. J. *Josephus. The Jewish War. Books I-II*, LCL 203. Cambridge, Mass.: Harvard University Press, 1927, rebound 1997.

Thiering, Barbara. *Jesus and the Riddle of the Dead Sea Scrolls. Unlocking the Secrets of His Life Story*. San Francisco: HarperCollins, 1992.

———. "*Mebaqqer* and *Episkopos* in the Light of the Temple Scroll." *JBL* 100.1 (1981): 59-74.

Thomas, Samuel I. *The 'Mysteries' of Qumran. Mystery, Secrecy, and Esotericism in the Dead Sea Scrolls*, SBLEJL 25. Atlanta, Ga.: SBL and Leiden: Brill, 2009.

Thoreau, Henry David. "Civil Disobedience." In *Walden and Civil Disobedience*, with an introduction by Michael Meyer, Penguin Classics. London: Penguin Books, 1986 (originally published in 1849).

Tigay, Jeffrey H. *Deuteronomy*, JPS Torah Commentary. Philadelphia: Jewish Publication Society, 1996.

———. "Examination of the Accused Bride in 4Q159. Forensic Medicine at Qumran." *JANES* 22 (1993): 129-34.

Tigchelaar, Eibert. "The Character of the City and the Temple of Aramaic 'New Jerusalem'." In *Other Worlds and Their Relation to This World: Early Jewish and Ancient Christian Traditions*, JSJS 143, edited by Tobias Nicklas et al., 117-31. Leiden and Boston: Brill, 2010.

———. "The Dead Sea Scrolls." In *The Eerdmans Dictionary of Early Judaism*, edited by John J. Collins and Daniel C. Harlow, 163-80. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

Toeg, Aryeh. "A Halakhic Midrash in Num. XV:22-31." *Tarbiẓ* 43.1-4 (1974): 1-20 (in *Hebrew*).

Tov, Emanuel. "The Orthography and Language of the Hebrew Scrolls Found at Qumran and the Origin of These Scrolls." *Textus* 13 (1986): 31-57.

———. *Scribal Practices and Approaches Reflected in the Texts Found in the Judean Desert*, STDJ 54. Leiden: Brill, 2004.

———. *Textual Criticism of the Hebrew Bible*, 2nd revised edition. Minneapolis: Fortress Press and Assen: Van Gorcum, 2001.

Trever, John C. *The Untold Story of Qumran*. Westwood, N.J.: Fleming H. Revell, 1965.

Tribe, Keith "Max Weber: The Works." *Economy and Society* 41.2 (2012): 282-98.

Tsevat, Matitiahu. "The Basic Meaning of Biblical Sabbath." In his *The Meaning of the Book of Job and Other Biblical Studies. Essays on the Literature and Religion of the Hebrew Bible*, 39-52. New York: Ktav and Dallas, Tex.: Institute for Jewish Studies, 1980.

Turner, Bryan S., ed. *The New Blackwell Companion to the Sociology of Religion*. Malden, Mass. and Oxford: Wiley-Blackwell, 2010.

Tzoref, Shani. "Covenantal Election in 4Q252 and *Jubilees*' Heavenly Tablets." *DSD* 18.1 (2011): 74-89.

———. "The 'Hidden' and the 'Revealed': Esotericism, Election, and Culpability in Qumran and Related Literature." In *The Dead Sea Scrolls at 60. Scholarly Contributions of New York University Faculty and Alumni*, STDJ 89, edited by Lawrence H. Schiffman and Shani Tzoref, 299-324. Leiden: Brill, 2010.

———. "The 'Hidden' and the 'Revealed': Progressive Revelation of Law and Esoterica." *Meghillot* 7 (2009): 157-90 (in Hebrew).

——— (as Shani L. Berrin). *The Pesher Nahum Scroll from Qumran: An Exegetical Study of 4Q169*, STDJ 53. Leiden: Brill, 2004.

———. "Qumran Pesharim and the Pentateuch: Explicit Citation, Overt Typologies, and Implicit Interpretive Traditions." *DSD* 16.2 (2009): 190-220.

——— (as Shani L. Berrin). "The Use of Secondary Biblical Sources in Pesher Nahum." *DSD* 11.1 (2004): 1-11.

Ulrich, Eugene C. "Methodological Reflections on Determining Scriptural Status in First Century Judaism." In *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, edited by Maxine L. Grossman, 145-61. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

———. "The Non-Attestation of a Tripartite Canon in 4QMMT." *CBQ* 65.2 (2003): 202-14.

Unwin, Tim. "A Waste of Space? Towards a Critique of the Social Production of Space." *Transactions of the Institute of British Geographers* 25.1 (2000): 11-29.

Urbach, Ephraim *The Sages. Their Concepts and Beliefs*. Jerusalem: Magnes, 1975 (in Hebrew).

VanderKam, James C. "The *Aqedah*, *Jubilees*, and Pseudojubilees." In *The Quest for Context and Meaning. Studies in Biblical Intertextuality in Honor of James A. Sanders*, BibInt 28, edited by Craig A. Evans and Shemaryahu Talmon, 241-61. Leiden, New York, and Köln: Brill, 1997.

———. *Calendars in the Dead Sea Scrolls: Measuring Time*, Literature of the Dead Sea Scrolls. London and New York: Routledge, 1998.

———. *The Dead Sea Scrolls Today*, 2nd edition. Grand Rapids, Mich. and Cambridge, UK: Eerdmans, 2010.

———. "Greek at Qumran." In *Hellenism in the Land of Israel*. Christianity and Judaism in Antiquity 13, edited by John J. Collins and Gregory E. Sterling, 175-81. Notre Dame, Ind.: University of Notre Dame, 2001.

———. "The Oath and the Community." *DSD* 16.3 (2009): 416-32.

———. "The Temple Scroll and the Book of Jubilees." In *Temple Scroll Studies. Papers Presented at the International Symposium on the Temple Scroll, Manchester, December 1987*, JSPSup7, edited by George J. Brooke, 211-36. Sheffield: JSOT Press, 1989.

———. "The Theology of the Temple Scroll: A Response to Lawrence H. Schiffman." *JQR* 85.1-2 (1994): 129-35.

———. "Those Who Look for Smooth Things, Pharisees and Oral Law." In *Emanuel: Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov*, VTSup94, edited by Shalom M. Paul et al., 465-77. Leiden: Brill, 2003, 465-77.

VanderKam, James and Peter Flint. *The Meaning of the Dead Sea Scrolls. Their Significance for Understanding the Bible, Judaism, Jesus, and Christianity*. San Francisco: HarperSanFrancisco and London and New York: T&T Clark (a Continuum Imprint), 2002.

Varikas, Eleni. "Max Weber, les dames et la cage d'acier." In *Sous les sciences sociales, le genre. Relectures critiques, de Max Weber à Bruno Latour*, edited by Danielle Chabaud-Rychter et al., 371-89. Paris: La Découverte, 2010.

Vaux, Roland de. *Ancient Israel: Its Life and Institutions*. Biblical Resource Series, translated by John McHugh, Grand Rapids, Mich.: Eerdmans, 1997 (reprint of 1961 English edition).

Vermes, Geza. *The Complete Dead Sea Scrolls in English*. London and New York: Allen Lane and Penguin Press, 1997.

———. "The Etymology of 'Essenes'." *RevQ* 2.3 (1960): 427-43.

———. "The Qumran Interpretation of Scripture in Its Historical Setting." *Annual of Leeds University Oriental Society* 6 (1969): 85-97.

———. *Scripture and Tradition in Judaism: Haggadic Studies*, Studia Post-Biblica 4, 2nd edition. Leiden: Brill, 1973.

———. *Scrolls, Scriptures and Early Christianity*, LSTS 56. London: T & T Clark International (an Imprint of Continuum), 2005.

Vermeule, Adrian. "Interpretation, Empiricism, and the Closure Problem." *UChicLRev* 66.3 (1999): 698-709.

Vismann, Cornelia. "Image and Law – A Troubled Relationship." *Parallax* 14.4 (2008): 1-9.

———, ed. *Law and Visual Culture* (Parallax 14.4, special issue). London and New York: Routledge, 2008.

Wacholder, Ben Zion. "The 'Sealed' Torah versus the 'Revealed' Torah: An Exegesis of Damascus Covenant V, 1-6 and Jeremiah 32, 10-14." *RevQ* 12.3 (1986): 351-68.

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*, 2nd edition. Oxford and New York: Oxford University Press, 2009.

Wagner, Andreas. *Emotionen, Gefühle und Sprache im Alten Testament: Vier Studien*, Kleine Untersuchungen zur Sprache des Alten Testaments und seiner Umwelt 7. Waltrop: Spenner, 2006.

Walzer, Michael. *Obligations. Essays on Disobedience, War, and Citizenship*. Cambridge, Mass.: Harvard University Press, 1970.

———. *Politics and Passion: Toward a More Egalitarian Liberalism*. New Haven, Conn.: Yale University Press, 2004.

Wassen, Cecilia. "What Do Angels Have against the Blind and the Deaf? Rules of Exclusion in the Dead Sea Scrolls." In *Common Judaism. Explorations in Second-Temple Judaism*, edited by Wayne O. McCready and Adele Reinhartz, 115-29. Minneapolis, Minn.: Fortress Press, 2008.

———. *Women in the Damascus Document*, SBLAB 21. Atlanta, Ga.: SBL and Leiden: Brill, 2005.

Wassen, Cecilia, and Jutta Jokiranta. "Groups in Tension: Sectarianism in the *Damascus Document* and the *Community Rule*." In *Sectarianism in Early Judaism: Sociological Advances*, edited by David J. Chalcraft, 205-45. London: Equinox, 2007.

Watson, Alan. *Roman Law and Comparative Law*. Athens, Ga. and London: University of Georgia Press, 1991.

———. *The Spirit of Roman Law*, The Spirit of the Laws. Athens, Ga. and London: University of Georgia Press, 1995.

Watson, Rod. "Reading Goffman on Interaction." In *Goffman and Social Organization. Studies in a Sociological Legacy*, Routledge Studies in Social and Political Thought 17, edited by Greg Smith, 138-55. London and New York: Routledge, 1999.

Weber, Max. *The Sociology of Religion*. Translated by Ephraim Fischoff. Boston: Beacon Press, 1963.

Weinert, Francis D. "4Q159: Legislation for an Essene Community Outside of Qumran?" *JSJ* 5.2 (1974): 179-207.

Weinfeld, Moshe. *Deuteronomy and the Deuteronomic School*. Oxford: Oxford University Press, 1972.

———. "God versus Moses in the Temple Scroll: 'I Do Not Speak on My Own but on God's Authority' (Sifrei Deut. Sec. 5; John 12,48)." *RevQ* 15.1-2 (1991): 175-80.

———. *Normative and Sectarian Judaism in the Second Temple Period*, LSTS 54. London and New York: T & T Clark (a Continuum imprint), 2005.

———. *The Organizational Pattern and the Penal Code of the Qumran Sect. A Comparison with Guilds and Religious Associations of the Hellenistic-Roman Period*, NTOA 2. Fribourg: Editions Universitaires and Göttingen: Vandenhoeck & Ruprecht, 1986.

———. *The Place of the Law in the Religion of Ancient Israel*, VTSup 100. Leiden: Brill, 2004.

———. *Social Justice in Ancient Israel and in the Ancient Near East*. Minneapolis, Minn.: Fortress Press and Jerusalem: Magnes, 1995.

Weinrib, Ernest J. "Legal Formalism: On the Immanent Rationality of Law." *Yale Law Journal* 97.6 (1988): 949-1016.

———. "The Jurisprudence of Legal Formalism." *Harvard Journal of Law and Public Policy* 16.3 (1993): 583-96.

Weissenberg, Hanne von. *4QMMT: Reevaluating the Text, the Function and the Meaning of the Epilogue*, STDJ 82. Leiden and Boston: Brill, 2009.

Weitzman, Steven. *Surviving Sacrilege. Cultural Persistence in Jewish Antiquity*. Cambridge, Mass.: Harvard University Press, 2005.

———. "Warring against Terror. The *War Scroll* and the Mobilization of Emotion." *JSJ* 40.2 (2009): 213-41.

Wellington, Harry H. *Interpreting the Constitution: The Supreme Court and the Process of Adjudication*. New Haven, Conn.: Yale University Press, 1990.

Wells, Bruce. "Sex, Lies and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy." *JBL* 124.1 (2005): 41-72.

Werman, Cana. "Jubilees 30: Building a Paradigm for the Ban on Intermarriage." *HTR* 90.1 (1997): 1-22.

———. "Narrative in the Service of Halakha: Abraham, Prince Mastema, and the Paschal Offering in *Jubilees*." In *Law and Narrative in the Bible and in Neighbouring Ancient Cultures*, FAT 54, edited by Klaus-Peter Adam, Friedrich Avemarie, and Nili Wazana, 225-42. Tübingen: Mohr Siebeck, 2012.

———. "Oral Torah vs. Written Torah(s): Competing Claims to Authority." In *Rabbinic Perspectives. Rabbinic Literature and the Dead Sea Scrolls*, STDJ 62, edited by Steven D. Fraade, Aharon Shemesh and Ruth A. Clements, 175-97. Leiden: Brill, 2006.

———. "What Is the Book of Hagu?" In *Sapiential Perspectives: Wisdom Literature in Light of the Dead Sea Scrolls*, STDJ 51, edited by John J. Collins, Gregory E. Sterling and Ruth A. Clements, 125-40. Leiden and Boston: Brill, 2004.

Werman, Cana and Aharon Shemesh. "The Halakhah in the Dead Sea Scrolls." In *The Qumran Scrolls and Their World*. Between Bible and Mishnah, The David and Jemima Jeselsohn Library, edited by Menahem Kister, 2:409-33. Jerusalem: Yad Ben-Zvi, 2009 (in Hebrew).

———. *Revealing the Hidden: Exegesis and Halakha in the Qumran Scrolls*. Jerusalem: Bialik Institute, 2011 (in Hebrew).

Wernberg-Møller, P. *The Manual of Discipline*, STDJ 1. Leiden: Brill, 1957.

Westbrook, Raymond. *Old Babylonian Marriage Law*, Archiv für Orientforschung 23. Horn, Austria: Berger, 1988.

———. "The Prohibition of Marriage in Deuteronomy 24:1-4." *Scripta Hierosolymitana* 31 (1986): 387-405.

———. *Property and the Family in Biblical Law*, JSOTSup 113. Sheffield: Sheffield Academic Press, 1991.

Westbrook, Raymond and Bruce Wells. *Everyday Law in Biblical Israel. An Introduction*. Louisville, Ky.: Westminster John Knox Press, 2009.

Westenholz, Ann. "Identity, Times and Work." *Time & Society* 15.1 (2006): 33-55.

White, James Boyd. "Law as Language: Reading Law and Reading Literature." *TexLR* 60.3 (1982): 415-45.

Whittaker, John H. "Kierkegaard on the Concept of Authority." *International Journal for Philosophy of Religion* 46.2 (1999): 83-101.

Wilkof, Neil. "Copyright, Moral rights and the Choice of Law: Where Did the *Dead Sea Scrolls* Court Go Wrong?" *HousLRev* 38.2 (2001): 463-97.

Williams, Bernard. *Shame and Necessity*. Berkeley: University of California Press, 1993.

Williams, Gerald R. "Negotiation as a Healing Process." *Journal of Dispute Resolution* 1996.1 (1996): 1-66.

Willis, T.M. "Blasphemy, Talion, and Chiasmus: The Marriage of Form and Content in Lev 24,13-23." *Biblica* 90.1 (2009): 68-74.

Wimsatt, W. K. and M. C. Beardsley. "The Intentional Fallacy." *Sewanee Review* 54.3 (1946): 468-88.

Wise, Michael, Martin Abegg, Jr. and Edward Cook. *The Dead Sea Scrolls. A New Translation*, revised edition. San Francisco: HarperSanFrancisco (imprint of HarperCollins), 2005.

Wissler, Roselle L. "Mediation and Adjudication in the Small Claims Court: The Effects of Process and Case Characteristics." *Law & Society Review* 29.2 (1995): 323-58.

Wittgenstein, Ludwig. *Philosophical Investigations*, translated by G. E. M. Anscombe, revised 4th edition. Malden, Mass.: Wiley-Blackwell, 2009.

Wolde, Ellen van. "Sentiments as Culturally Constructed Emotions: Anger and Love in the Hebrew Bible." *BibInt* 16.1 (2008): 1-24.

Wolff, Hans Walter. *Hosea*, Hermeneia. Translated by G. Stansell. Philadelphia: Fortress Press, 1974.

Wong, Jane. "The Anti-Essentialism v. Essentialism Debate in Feminist Legal Theory: The Debate and Beyond." *William and Mary Journal of Women and the Law* 5 (1998-1999): 273-96.

Woodmansee, Martha. "Response to David Nimmer." *HousLRev* 38.1 (2001): 231-237.

Wozner, Shai. "On the Duty to Obey the Law in Halakhic Thought: Reflections on the Thesis of R. Shimon Shkop." *JLAS* 20 (2010): 353-60.

Wright, Benjamin G., III. "The Categories of Rich and Poor in the Qumran Sapiential Literature." In *Sapiential Perspectives. Wisdom Literature in Light of the Dead Sea Scrolls*, STDJ 51, edited by John J. Collins, Gregory E. Sterling and Ruth A. Clements, 101-23. Leiden and Boston: Brill, 2004.

———. "Joining the Club: A Suggestion about Genre in Early Jewish Texts." *DSD* 17.3 (2010): 289-314.

Wright, David Pearson. "The Compositional Logic of the Goring Ox and Negligence Laws in the Covenant Collection (Ex 21:28-36)." *ZABR* 10 (2004): 93-142.

———. "The Spectrum of Priestly Impurity." In *Priesthood and Cult in Ancient Israel,* JSOTSup 125, edited by Gary A. Anderson and Saul M. Olyan, 150-81. Sheffield: JSOT, 1991.

Wright, R. George. "Welfare." In *Natural Law and Contemporary Public Policy*, edited by David F. Forte, 280-97. Washington, D.C.: Georgetown University Press, 1998.

Xeravits, Géza G., ed. *Dualism in Qumran*, LSTS 76. London and New York: T&T Clark, 2010.

Yadin, Azzan. "4QMMT, Rabbi Ishmael, and the Origins of Legal Midrash." *DSD* 10.1 (2003): 130-49.

———. "The Hammer on the Rock: Polysemy and the School of Rabbi Ishmael." *JSQ* 10.1 (2003): 1-17.

Yadin, Yigael. *The Dead Sea Scrolls from the Judean Desert*, 2nd edition. Jerusalem and Tel Aviv: Schocken, 1958 (in Hebrew).

———. "A Note on 4Q159 (Ordinances)." *IEJ* 18.4 (1968): 250-2.

———. *The Scroll of the War of the Sons of Light against the Sons of Darkness*. Jerusalem: Bialik Institute, 1955 (in Hebrew).

———. *The Scroll of the War of the Sons of Light against the Sons of Darkness*. Translated by Batya and Chaim Rabin Oxford: Oxford University Press, 1962.

———. *The Temple Scroll*. Jerusalem: Israel Exploration Society, 1983 (in Hebrew).

Yaffe, Gideon. *Attempts: In the Philosophy of Action and the Criminal Law*. Oxford and New York: Oxford University Press, 2010.

Zahn, Molly M. "4QReworked Pentateuch C and the Literary Sources of the Temple Scroll: A New (Old) Proposal." *DSD* 19.2 (2012): 133-58.

———. "Genre and Rewritten Scripture: A Reassessment." *JBL* 131.2 (2012): 271-88.

———. "New Voices, Ancient Words: The Temple Scroll's Reuse of the Bible." In *Temple and Worship in Biblical Israel*, LHBOTS 422, edited by John Day, 435-68. London: T & T Clark International, 2005.

———. "The Problem of Characterizing the 4QReworked Pentateuch Manuscripts: Bible, Rewritten Bible, or None of the Above?" *DSD* 15.3 (2008): 315-39.

Zaibert, Leo. *Five Ways Patricia Can Kill Her Husband. A Theory of Intentionality and Blame*. Chicago: Open Court, 2005.

Zakovitch, Yair. "The Book of the Covenant Interprets the Book of the Covenant: The 'Boomerang Phenomenon.'" In *Texts, Temples, and Traditions. A Tribute to Menahem Haran*, edited by Michael V. Fox, et al., *59-*64. Winona Lake, IN: Eisenbrauns, 1996.

———. "Reflection Story: Another Dimension for the Valuation of Characters in Biblical Narrative." *Tarbiz* 54.2 (1985): 165-76 (in Hebrew).

———. *Through the Looking Glass. Reflection Stories in the Bible*. Tel Aviv: Hakibbutz Hameuchad, 1995 (in Hebrew).

Zeitlin, Solomon. "A Note on the Principle of Intention in Tannaitic Literature." In *Alexander Marx Jubilee Volume*, 631-6. New York: Jewish Theological Seminary of America, 1950.

Zilm, Jennifer. "Multi-Colored like Woven Works: Gender, Ritual Clothing and Praying with the Angels in the Dead Sea Scrolls and the *Testament of Job*." In *Prayer and Poetry in the Dead Sea Scrolls and Related Literature. Essays on Prayer and Poetry in the Dead Sea Scrolls and Related Literature in Honor of Eileen Schuller on the Occasion of Her 65th Birthday*, STDJ 98, edited by Jeremy Penner, Ken M. Penner and Cecilia Wassen, 437–51. Leiden and Boston: Brill, 2012.

Zucker, Bruce and Monica Her. "The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System." *University of San Francisco Law Review* 37.2 (2003): 315-50.

ACKNOWLEDGMENTS

The completion of my dissertation is a milestone in my education, which I realize did not begin in Graduate School, nor should it conclude there. I therefore find this an appropriate point to offer an extended gratitude, one that is biographical in nature. I know it is uncustomary and realize some will find this exaggerated, but I doubt I will have a better opportunity of contemplating on transformative experiences and expressing my gratitude and appreciation in such a comprehensive manner.

First and last, I thank Ofra.

My first teachers are my parents, Yoel and Shoshi (but simply Abba and Marmey to me), who raised me lovingly in a home furnished by books and vinyl records, and with a strong presence of the Jewish traditions. In more ways than I know this has made me what I am. In an early childhood memory, I am looking over the red hills of Judea at dusk, focusing my gaze on the chipped hill of Herodium, completely enamored by it. This was my first consideration of the Second Temple period, conducted from my bedroom window.

My father taught me to read and write in English. A couple of years later I learned to read and write in Hebrew. To this day I remember my first homework assignment, coming home and practicing how to write the *Qamaṣ* and the *Pataḥ*. Five years later, in a morbid turn of events, my homeroom teacher of first grade, Nava Karniel, was the one to find the body of the great Second Temple historian Menahem Stern in the Valley of the Cross, whose work I have enjoyed reading so much in later years, using those early literacy skills. Other early teachers of Jewish texts included Mira Noyman, Rivka Beigel, and Dalia Sasson, who taught me an early lesson in pedagogy, that each of us has a role to play in any educational system. I recall sitting in Dalia's class during the morning prayer, reading under the table Pirkei Avot in my siddur, because it seemed much more interesting to read a new text than to recite a text I already knew, and was going to recite again on Saturday in the Synagogue. Liora Elias Bar-Levav ז״ל taught me rabbinic literature when I was in eighth grade, using a memorable sourcebook she compiled herself on sin and repentance. This sourcebook included midrashim on Cain and Abel, selections from Maimonides' *Hilkhot Teshuvah*, and even the story of Eliezer ben Dordia, no obvious selection for

an audience of 14-year-olds. Liora's sourcebook was my first introduction to the wealth, breadth, diversity, and surprises of Jewish literature.

In High School I was fortunate to study Hebrew Bible and Hebrew Literature with teachers who loved teaching and adored these texts: Ora Weingarten, a Hebrew Bible teacher, introduced me to Hebrew poetry and the importance of reading it through biblical allusions. Noa Poleg, my homeroom and literature teacher, overlooked my absences from class which I used for visiting friends, exhibitions, and second-hand bookstores in Jerusalem, and thus taught me the necessary benevolence of not following the law to the letter. Tami Ezer and Leah Saban completed the excellent Hebrew Bible staff, including a textbook composed by Tami on the Book of Genesis, which exposed me to the Documentary Hypothesis for the first time. With Anat Yisraeli I studied my first lessons of reading a Talmud page, as an extra-curricular activity. A year in Oranim College after high-school allowed me to explore Jewish studies further, continuing my studies with Anat, reading Hebrew poetry with Shlomit Oren and Jewish Thought with Moshe Shner. I am most grateful to Oded Balaban for a wonderful course on Form and Content in Kant's and Hegel's thought. I will never forget his 8am class on November 5th, 1995 after an almost sleepless night, and a tearful ride to campus.

Before beginning my time at the Hebrew University of Jerusalem, I spent a few months in England with my uncle, Mark Rosenblatt, who taught me the significance and futility of planning ahead. This was an important lesson for a scholar-to-be.

At the Hebrew Bible department of Hebrew University I found a wonderful home with teachers who were accessible, attentive and willing to enter a critical dialogue with the most relentless undergrads. For their wisdom and support, I am indebted to Lea Mazor, Michael Segal, Baruch Schwartz, Avi Hurvitz, Yair Zakovitch, Noam Mizrahi, Jonathan Ben-Dov, and Ronnie Goldstein. I also had the pleasure of taking a course with Peter Machinist when he was a visiting professor in Jerusalem, and learned from him the importance of studying the history of a discipline. I am indebted to my French tutor, Ruth Bleitrach, and my German tutor, Gidon Windecker. Shortly before coming to Princeton I was fortunate to serve as the penultimate research assistant of Moshe Weinfeld, and I fondly remember his encouragement, his insightfulness, and his persistence to conduct research despite his ailing health. I will always cherish his friendship and that of his wife Shoshana.

I began my first steps into an academic career with crucial orientation tips from Nili Wazana. Following her advice, I sought new and challenging courses outside my home department, and thus met Michael Stone. Michael has had a decisive influence on me. He taught me the importance of maintaining a database, the benefits of combining Hebrew philology with classical history, and served as a unique model of a teacher who cultivates students into colleagues. Simultaneously demanding and friendly, he remains a role model for finding pleasure in the best quality of scholarship. During my time in Princeton there has not been a week where I haven't either mentioned him, or thought of him, or used something I learned from him. I am proud that my first publication was a joint effort that came out of his seminar.

As a result of my relationship with Michael, my graduate studies at Hebrew University was marked by a growing interest in Second Temple literature in general, and the Dead Sea Scrolls in particular. I enjoyed the teachings and special encouragement of Esther Chazon, who as head of the Orion Center gave me the opportunity of my first public lecture, Moshe Bernstein, Emanuel Tov, and Menahem Kister. Menahem also welcomed me as a visiting research fellow at the Orion Center while I was writing the third chapter of my dissertation, and I am grateful for his help and good advice.

At Princeton I benefited from the expertise and generosity of many teachers. I am grateful to my dissertation readers, Leora Batnitzky, who guided me through contemporary legal theory and offered crucial comments for this project, and Naphtali Meshel, for his knowledge of Hebrew philology, biblical law and for many helpful insights. I was fortunate to study with Peter Schäfer, AnneMarie Luijendijk, who also commented on an early draft of the second chapter, Elaine Pagels, Jeff Stout, Buzzy Teiser, Brent Shaw, and Andrew Ford. At the Department of Religion, John Gager, Simi Chavel, and Eric Gregory all offered encouragement and helpful advice throughout my years as a graduate student. I also received support and feedback from professors outside the university, but before thanking them, I must acknowledge the superb administrative staff in the Religion Department and the Judaic Studies Program, who were always ready to help with any need I had: I am grateful for and appreciative of the professionalism of Pat Bogdziewicz, Marcie Citron, Lorraine Fuhrmann, Kerry Smith, Mary Kay Bodnar, and Baru Saul.

I owe special thanks for the friendship of Loren Stuckenbruck, who offered much encouragement through helpful discussions, and for Suzanne

Stone, who read and offered feedback on the second chapter, and also supported my exploration of legal theory as a fellow at the Cardozo Center for Jewish Law. I benefited from the advice and encouragement of Jodi Magness, Bernie Levinson, Allan Arkush, Chris Hayes, John Collins, Bernard Jackson, Shane Berg, Moshe Halbertal, Gary Rendsburg, Stephen Holmes, Larry Schiffman, Max Grossman, Judith Newman, Sidnie White Crawford, James Charlesworth, and Pamela Barmash.

Naturally, such a long path requires not only teachers, but also friends. I wish to thank my childhood friend Ittai Bar-Siman-Tov for partaking in a unique conversation during and on adolescence, which proved very formative and continued into our years as graduate students. With Eilam Gal I gathered the courage to read poetry out loud, and learned to engage in artistic endeavors as an intellectual and spiritual imperative. With my commune friends Eilam, Yaniv Carmel, Michal Klein Sar Shalom, Itai Oren, Eran Gal, Gilad Perry, Yael Belkind-Eran, Nitsan Oz, Tomer Aboody, Yuval Warshavsky, Uri Lapidot, Uri Metuki, and later Tali Pinsky I shared a brave experience that informed me of the obligations to a community, the inevitability of exclusion, and the dynamics by which a group reaches its agreed practices and conduct, whether codified or not.

Friends and colleagues have been vital in the process of writing the dissertation. I presented earlier drafts of the second and third chapters at a departmental seminar led by Martha Himmelfarb and received helpful criticism from my fellow graduate students in the department, David Jorgensen, Geoff Smith, Alex Kocar, Mika Ahuvia, and David Grossberg. David Jorgensen became a close friend, allowing me to share not only the scholarly aspect of my work, but to express personal implications and concerns of the experience at Princeton. Friends at Princeton were not limited to my subfield or even the department, and all offered support and encouragement in the long process of graduate school. I am grateful to Levi McLaughlin, Aoibheann Ní Mhearáin, Lital Levy, Michael Waldman, Rachel Lindsey, Bryan Lowe, Ryan Harper, Yosef Witztum, Anthony Petro, Rachel Gross, April Armstrong, Eli Sacks, Kevin Wolfe, Molly Farneth, and Doug Gildow. As a Graduate Prize Fellow at the University Center for Human Values I presented another draft of the second chapter. I thank Chuck Beitz and Anthony Appiah for leading such a thought-provoking seminar, and for my colleagues Josh Gillon, Julie Rose, Dan Walker, Brookes Brown, Loubna El Amine, and Andrew Huddleston for their significant criticism of my work.

I am grateful for the friendship and for benefitting from an ongoing academic discussion with Shani Tzoref, who offered substantial critique of an early draft of the first chapter, Ruth Clements, Vered Hillel, Alex Jassen, Ari Mermelstein, Ariel Feldman, Xandy Frisch, Aaron Tugendhaft, Gregg Gardner, Eric Miller, Jordan Rosenblum, Yitzchak Lewis, Jennie Grillo, Matthias Weigold, Eduard Iricinschi, Jason Rubenstein, Jonathan Stökl, Gaia Lemby, Bobby Duke, Jacob Feeley, Lance Jenott, Janelle Peters, Ingrid Lilly, Jeffrey García, Shira Billet, Mordechai Levy-Eichel, Michael Rosenberg, Nadav Sharon, and Veronika Bachmann.

Dan Machiela and Jeremy Penner have both been remarkable friends, ever since we met at Michael Stone's seminar in Jerusalem. We have had the pleasure of meeting together with our families, and forging a bond that begins with a mutual appreciation of each other's capabilities as careful readers of the Dead Sea Scrolls, but goes well beyond our shared professional interests.

In the long process of being a graduate student, I was also fortunate to find an online community of graduate students and other intellectuals, some of whom I met in person, and others whom I have yet to meet, but all have stimulated my thought and encouraged me to continue my theoretical endeavors. It helps to know I am not alone in experiencing hardships or anxieties, and at times it can be vital to experience appreciation. For their honesty, attentiveness, good humor and insights, I am grateful to Tom Erez and Anna Deters, Yair Wallach, Dubi Kanengisser, Nur Bar-On, Mouli Bentman, Nadav Perez-Vaisvidovsky, Yinnon Geva, David Biron, Eran Belinsky, Ayelet Oz, Shlomi Sasson, Aharon Rose, Aviv Levinsky, and Netta Nashilevich.

The final stages of my dissertation were completed while I was a fellow at Lawrence University. Martyn Smith, Karen Carr, and Karen Park offered invaluable support in my transition to Appleton, from the technical needs of finding an apartment or moving my books into the office, to insights and advice as I faced my first challenges as a teacher. I am also grateful to welcoming faculty members as Tim Spurgin, Peter Blitstein, Monica Rico, Kevin Tracy, Jane Parish Yang and Eilene Hoft-March. Lori Rose and Valerie Carlow attended my administrative needs with efficiency and friendliness, and the excellent library staff ensured that I was never short of resources. At the library I am especially thankful for its director, Pete Gilbert, and the circulation desk supervisor, Cindy Patterson.

I conclude my acknowledgments of colleagues and friends with a warm and loving gratitude to my siblings, whom I am proud to include as my most precious friends: Ami and his family, Yoni, Ezra, Yirmi, and Naama.

***

I sometimes fear that I will always remain a misfit in academia, since I complete my years as a PhD candidate without gaining a single anecdote of trouble or distress from my advisor. Martha Himmelfarb is an exceptional teacher and throughout my studies I considered myself the most fortunate graduate student to have her as my advisor. Her criticism and close readings improved my work in every aspect, from the minutiae of style, content, rhetoric, grammar, and proper citation, to the substantial questions of our field. Her rich knowledge of ancient Judaism and her exacting method as a historian have been inspiring and stirred envy, as I witnessed Martha carefully extract facts that can be asserted, and distinguish them from assumptions which should be regarded more suspiciously. By attending an undergraduate class of Martha's I learned precious pedagogical lessons of conducting a class conversation, and how to respectfully treat students without compromising the quality of the discussion. In addition, Martha's approach to people and to problem-solving has been the most balanced, perceptive, sincere, and down-to-earth that I have ever encountered. It was crucial at certain points, and I hope I succeeded in learning from her these important life lessons. Whether I can successfully implement them or not, I will carry these memories wherever I go, and will do my best to model my teaching after her own unique style and spirit. Through Martha I also had the good fortune of meeting her husband, Steve Weiss. His rare combination of kindness, modesty, and knowledge makes me grateful for every time we meet.

***

In trying to thank my beloved, partner and spouse, I am lost for words. They are not only too weak to describe my feelings, but this is the only acknowledgment that seems somewhat strange to offer in public, something of interest to the two of us alone. In Ofra I have found a partner in a relationship that is corporeal, intellectual, and emotional. Together we weave a continuous, sincere, and supportive conversation of every aspect of our life. We have cried and grieved together over our losses; we have had the wildest laughs taking a photo in a phone-booth in Dublin. We have had the biggest argument over the proper way to cut vegetables for a soup, and

found ourselves engrossed in a heated debate over the proper course for Zionism in the twenty-first century, considering the Israeli-Palestinian conflict. In short, we care about what the other does and thinks and how the other perceives us in a way that no-one else can care for us, for our actions and thoughts. Together with Ofra I was able to fulfill my longtime dream and to go on a pilgrimage to Bad Blumau, and together we continue to pursue our joint and separate goals. Long before we met, I was practicing my piano-playing and Ofra studied voice music, each of us unaware that this was a preparation for a partnership. When we finally met, it was at an evening commemorating Yehuda Amichai, and this event lent our love its joint name. In addition to being a life partner, Ofra is also deeply involved in my work, and copyedited the entire dissertation before I submitted the first draft to Martha. Her suggestions improved my style, clarified my arguments, and emphasized or softened my phrasing in numerous appropriate instances. Remaining flaws are due to my own obstinacy. As with everything else in our life, Ofra revised my work with the greatest care for detail, an unparalleled intellectual and emotional engagement, and treated every word with the responsibility and consideration it merits. It is thanks to Ofra that I am able to live my life according to the most priceless piece of advice biblical Wisdom has to offer: רְאֵה חַיִּים עִם־אִשָּׁה אֲשֶׁר־אָהַבְתָּ כָּל־יְמֵי חַיֵּי הֶבְלֶךָ אֲשֶׁר נָתַן־לְךָ תַּחַת הַשֶּׁמֶשׁ.