

HALAKHAH AT QUMRAN: GENRE AND AUTHORITY*

AHARON SHEMESH AND CANA WERMAN

Bar-Ilan University

Jerusalem

Recent years have seen a shift in scholarly attention from the theological-ideological aspects of the texts found at Qumran to recognition of the centrality of halakhah and observance of the commandments in the life and thought of the sect. Indeed, halakhic issues—in particular the question of the proper manner in which the commandments should be observed—formed the crux of the rift between the sect and its opponents. If the first texts published—the War Scroll, Hodayot, and the pesharim—lent themselves more to theological-ideological analysis, with the publication of the Temple Scroll, MMT, Cave 4 fragments of the Damascus Document, and additional texts, the place of halakhah at Qumran has achieved recognition. Although of interest in and of itself, charting this change and its reasons remains beyond the scope of this article.

The halakhic passages in the works found at Qumran display wide development of biblical law;¹ their authors interpret cryptic biblical commands, harmonize contradictory verses, and even introduce halakhot not found in the Pentateuch. How did these authors justify their interpretation of pentateuchal law and their halakhic innovations? It will be argued here that there is an intrinsic link between the implicit authority base for these sectarian halakhot and their literary formulation,² that the halakhah in works found at Qumran can be categorized

in two genres that reflect two different derivational conceptions of halakhic authority, and further, that these are linked to works of a historical nature attested there. This article first addresses the two authority arguments; it then surveys the halakhic texts found at Qumran, broadly assigning them to genres; and concludes with a proposal as to how these differences arose.

Sources of Halakhic Authority

Although no Qumran work claims prophetic authority, all halakhic compositions found at Qumran embrace divine revelation of halakhah as their starting point. It does not follow that the precise nature of this revelation possesses uniformity, however. In the following we distinguish between two different points of view regarding halakhic authority—Sinaitic revelation as opposed to divinely inspired human exegetical processes—considered in conjunction with their instructive parallels to two revelational perspectives found in other Qumran works of a historical nature: apocalypse and pesher.

Two apocalyptic visions, the “Animal Apocalypse” in 1 Enoch, and Jubilees 23, conceivably lend themselves to a possible interpretation as referring to the founding of the sect.³ The Qumran sectarians placed themselves at the center of national and universal history, viewing their emergence on the stage of history as part of a divine plan declared and revealed in the past. The divine plan, including the coming of the sect, and its importance and function, is revealed to an important figure from the past, in the case of the passages in question, Enoch and Moses, respectively. In Enoch’s dream vision, a symbolic representation of history from the creation to the mid-second temple period, the nation (symbolized by sheep) began to sin (represented by blindness) even before the destruction of the first Temple (1 Enoch 89:54, 74). In punishment, God consigned the nation to the lengthy rule of seventy shepherds (the angels of the nations), who tyrannized and murdered them. Toward the end of this period a change took

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¹ A few scholarly discussions have been devoted to the adequacy of using the term “Bible” and “biblical” regarding the Dead Sea Scrolls. See recently J.C. VanderKam, “Questions of Canon Viewed through the Dead Sea Scrolls,” *BBR* 11 (2001) 269–92 (for previous bibliography see nn. 8, 24, 36). In this article we use “Bible” and “biblical” as referring to the Hebrew Bible and “Torah” as referring to Genesis–Deuteronomy.

² Confirmation of this argument reopens questions related to literary-critical methods used to analyze the source and function of the scrolls in the development of the

Qumran literary corpus. Such a discussion, however, is beyond the scope of this paper. See also L.H. Schiffman, *Reclaiming the Dead Sea Scrolls* (Philadelphia and Jerusalem: Jewish Publication Society, 1994) 252–55; J.M. Baumgarten, *Studies in Qumran Law* (SIL A 24; Leiden: Brill, 1977) 16–17 and n. 17 there.

³ In the following we accept M. Kister’s analysis of Jubilees and “The Animal Apocalypse”; see M. Kister, “Concerning the History of the Essenes” (Hebrew), *Tarbiz* 56 (1986) 1–15.

place among the sheep; a group of lambs (symbolic of the sect) opened its eyes (90:6–7). Although helpless at first (90:9), a leader—a ram that grew a big horn—then made his appearance (90:9–10). This ram—as suggested by M. Kister—stands for the Teacher of Righteousness, the founder of the sect whose eyes were opened to the correct interpretation of Torah.⁴

According to one possible reading of Jubilees 23, a similar revelation of the future appearance of the Qumran sect in the second temple period was made to Moses on Mount Sinai. To a short, apparently independent apocalyptic composition, which explains how human life had been curtailed due to sin,⁵ Jubilees adds the announcement of the future appearance of a group of children that will strive to return humankind to the correct path. These children will berate their elders for failing to keep the covenant without deviating to the right or to the left (v. 16), and for having forgotten commandment, covenant, festival, month, and Sabbath (vv. 19–20). Based on comparison to the Damascus Document and to other Qumranic works, which contain similar accusations by the sect against their opponents, M. Kister suggests that Jubilees alludes here to the founding of the Qumran sect.⁶ Accordingly, on this occasion Moses was informed of the appearance and existence of the sect that would struggle to return the nation to the proper halakhic path. Both Enoch and Jubilees display shared features in their depiction of the revelation of the sect to a figure from the past: young rebelling against old, and an entire nation that has gone astray.

⁴ The Animal Apocalypse is evidently the earliest extant description of the sect's founding. Several features are indicative of its antiquity: first of all, it is written in Aramaic, whereas sectarian texts are generally in Hebrew; second, this vision does not reflect a struggle between the ram and his followers and the remaining blind sheep, a struggle found in other sectarian writings. According to the Animal Apocalypse the battle is between the righteous group and the nations, and the turning point comes when God takes revenge on the nations (1 Enoch 90:18) and a sword is placed in the hands of the leader to fight and put the nations to death (90:19). See Kister, "History of the Essenes," 6 n. 25.

⁵ J. Kugel, "The Jubilees Apocalypse," *DSD* 1 (1994) 322–37.

⁶ Kister, "History of the Essenes," 8–9. Comparison of the accusations against humankind reveals the discrepancy between the independent composition and the addition. The independent composition speaks of corruption and impurity, whereas in the addition we find a more nuanced presentation: the children rebuke their elders because they abandon the covenant not to deviate to the right or the left (v. 16) and because they have forgotten commandment, covenant, and calendrical matters (vv. 19–20). As noted, these latter accusations are identical with the ones made by the Qumran sect against its opponents. Other verses belonging to the second stratum are those that

The apocalypse's ascription of its origins to the distant past parallels the claims found in Jubilees that the source for and authority of the halakhah and biblical interpretation found therein derive from the remote past: in this case, from Sinaitic revelation. This emerges from Jubilees' self-characterization as found in the introduction: "These are the words regarding the divisions of the times of the law (חוקי) and of the predestined history (היסטוריה) . . . as . . . related to Moses on Mt Sinai when he went up to receive the stone tablets—the law and the commandments." The law and the commandments are what we know as the Pentateuch, and Jubilees itself is designated here as "the law (חוקי) and the predestined history" presented to Moses when he went up on Sinai to take the stone tablets. Later in the chapter the author of Jubilees relates how Moses stayed on the mountain for forty days and forty nights "while the Lord showed him what (had happened) beforehand as well as that which was to come. He related to him the divisions of all the times—of the law and the predestined history." God then commanded Moses to write what he was told on the mountain in a book (1:4–5). Thus, upon his descent from Mt Sinai Moses had two written torahs in his possession: the law and the commandments (חוקי) and the law and the predestined history (היסטוריה), namely, Jubilees, which is the Torah and its exegesis.⁷ It is readily apparent that the source of and authority for the halakhah and biblical exegesis found in this work derive from Sinaitic revelation. As this places the halakhic explanations and additions to the Torah on the same level with the Torah itself, it is not surprising to find the laws in Jubilees interwoven into the biblical material with no distinction between innovation and original biblical material.

It is well known that this integrative, interpretive, and expansive style also characterizes the Temple Scroll. Although the first column of the scroll has not been preserved, contextual clues enable us to

allude to the Hasmonean kings: "Those who escape will not turn from their wickedness to the right way because all of them will elevate themselves for (the purpose of) cheating and through wealth so that one takes everything that belongs to another. They will mention the great name but neither truly nor rightly. They will defile the holy of holies with the impure corruption of their contamination" (v. 21). As other scholars have noted, these accusations are the same as the ones made in Pesher Habakkuk against the Evil Priest.

⁷ C. Werman, "The Torah and the Tablets on the Heavenly Tablets," *DSD* 9 (2002) 75–103. For a different analysis, see H. Najman, "Angels at Sinai: Exegesis, Theology and Interpretive Authority," *DSD* 7 (2000) 313–33; idem, "Interpretation as Primordial Writing: *Jubilees* and its Authority Confering Strategies," *JST* 30 (1999) 379–410. See also M. Kister, "Two Formulae in the Book of Jubilees," *Tarbiz* 70 (2001) 294–300, and n. 62.

infer that the underlying rationale for its halakhic authority resembled that of Jubilees, namely, it was grounded in Sinaitic revelation. Col. 2, a rewriting of biblical material based mainly on Exodus 34, describes Moses' second ascent to Mt Sinai to receive the second set of tablets. This opening, of Moses receiving the Torah on Sinai, common to Jubilees and the Temple Scroll, supports our contention that both works based their halakhic authority on the notion that they belonged to Sinaitic revelation.

The pesharim, on the other hand, represent a type of revelation unlike the one found in the apocalyptic works referred to above: revelational exegesis of prophetic texts. According to the pesharim, one of the community's leaders (perhaps one of its founders), known as the Teacher of Righteousness, was the one "to whom God made known all the mysteries of the words of his servants the prophets" (1QpHab 7:4–5), that is, "in whose [heart] God has put understanding to interpret all the words of his servants the prophets, through [whom] God has foretold everything that is to come upon his people and [his land]" (2:8–10). The import of this declaration is that the Teacher of Righteousness has received from God the requisite tools to interpret the words of the prophets, spoken many generations earlier, as applying to the events of his day and to the role of the sect in the present and in the end time. These pesharim are grounded in the assumption that the prophecies contain information of which the prophets themselves were unaware and whose current and future context only the Teacher of Righteousness can elicit.

The Damascus Document, along with other halakhic works found at Qumran, approaches the issue of the authority base for its biblical exegesis and halakhic expansions in a manner that resembles the historical argument found in the pesharim; namely, that specific individuals have been inspired to arrive at a correct understanding of biblical texts. The Damascus Document's division of the commandments into "revealed" ones, explicitly found in the Torah, and "hidden" ones, interpretations and laws revealed only to the members of the sect, is well known. As only members of the sect know the "hidden commandments," they alone can fulfill the commandments in their entirety; consequently, the rest of the nation, which is not aware of these commandments, sins and is liable to punishment.⁸ The Damascus

Document describes the process by which the hidden things are revealed via a homiletical interpretation of Num. 21:18, the song of the well, which it interprets as follows:

הַבַּיִת הַזֶּה הוּא הַתּוֹרָה וְהַתּוֹרָה הִיא שְׂמֵי יִשְׂרָאֵל הַיְצִיטִים מֵאֵין יְדִירָה . . . וְהַמְדַּבְּרִים הֵם
דְּרוֹשׁ הַתּוֹרָה אֲשֶׁר אָמַר יְשׁוּעָה כְּלִי לְמִשְׁפַּחָהוּ, "וְיָרִיב הַפֶּה זֶה הַבַּיִת לְכַרְתָּ אֶת
הַבַּיִת בְּמַדְבְּקָתוֹ אֲשֶׁר הִקֵּק הַמְדַּבְּרִים.

The "well" is the Torah and those who "dig" it are the penitents of Israel who depart from the land of Judah . . . and the "ruler" is the interpreter of the Torah of whom Isaiah said, "He takes out a tool for his work" [Isa. 54:16]. And the "nobles of the people" are those who come to excavate the well with the statutes that were ordained by the ruler. (CD 6:3–9)

According to this allegory, the princes and nobility are the members of the sect and the ruler is the Interpreter of the Torah, whose function is elucidated via comparison to a smith and the citation of Isa. 54:16: "It is I who created the smith to fan the charcoal fire and produce the tools for his work." The Interpreter of the Torah has been sent by God to create the appropriate tools to interpret the Torah, that is, the statutes. These tools were bequeathed in turn by the Interpreter to the sect's members.⁹ Here the author of the Damascus Document depicts halakhic creativity as a combination of human activity and divine inspiration-revelation. Although it is the wise men of the sect who explain the Torah and discover the hidden things, this exegesis is made possible only because the tools for this activity were provided via divine revelation. In line with this notion, the Damascus Document's halakhic formulations differ substantially from those found in the Temple Scroll, in that they differentiate between the biblical text and exegesis.

⁸ A. Shemesh and C. Werman, "Hidden Things and Their Revelation," *RevQ* 18 (1998) 409–27 and bibliography there, n. 1.

⁹ The Damascus Document's author does not explicate what these tools are. As the beginning of the passage, however, calls those who study the Torah "wise men" and "men of discernment," we can assume that intellectual activity is involved, probably interpretive hermeneutical principles. For previous discussions of this passage, see J. Fraenkel, *עבודת ה' (Giv'atayim: Yad LaTalmud*, 1991) 2:480; M. Fishbane, "The Well of Living Water: A Biblical Motif and Its Ancient Transformations," *Shatarei Talmud: Studies in the Bible, Qumran, and the Ancient Near East Presented to Shmaryahu Talmun* (eds M. Fishbane et al.; Winona Lake, IN: Eisenbrauns, 1992) 3–16; S.D. Prasad, "Interpretive Authority in the Studying Community at Qumran," *JIS* 44 (1993) 58–63.

Halakhic Genres at Qumran

The bulk of the halakhic formulations in works from Qumran can be assigned to two broad genres, consistent with the authority-bases outlined above. In the following discussion we group the Temple Scroll, Jubilees, and related texts as representative of one genre, and the Damascus Document and its related texts as representative of the other. This examination of almost all the halakhic literature found at Qumran evinced that each of these genres has different shadings, and some compositions juxtapose halakhot belonging to both.

Temple Scroll and Related Texts

As the Temple Scroll is primarily a halakhic work, a description of its halakhic approach is equivalent to describing its literary genre. Put briefly, its language is biblical in nature and this text may be assigned to the broad category of rewritten Bible. Even the pericopes containing innovative content are worded in biblical form. Witness the Temple Scroll's presentation of the deuteronomic law permitting those living at a distance from the Temple to slaughter sheep and cattle for consumption (Deuteronomy 12), to which it introduces two changes: one halakhic and the other linguistic:

ואכלוהו בשערי־כרד ודשודת דמסכת בכרד יחדוי בכרד יחדוי אכיל דודב, על דאיןן השקפננן בכרד וסכרד בשער, כי דודם הוא תופס ולוא דחאבאל אה תופס עוב דבשר לכלבן יתפ לכלב ולתבוכה אוריהה עד עולם ותעשרוה דישך דמסכת לפני איהו דא אלהיהו.
 And you shall eat in your towns, the clean and the unclean among you alike (may eat) as though it were a gazelle or a hart. Only be sure that you do not eat the blood; you shall pour it out upon the earth like water, and *cover it with dust*; for the blood is the life, and you shall not eat the life with the flesh, that all may go well with you and with your children after you for ever. *And you shall do what is right and good in my sight, for I am the Lord your God.* (53:4–8)

Halakhically, the main difference between the pentateuchal pericope and the Temple Scroll lies in the latter's addition of the obligation to cover the blood with dust, taken from Lev. 17:13, where it relates to a captured bird or wild animal. The deuteronomic verse, on the other hand, speaks of consuming cattle. In rabbinic tradition, the requirement to cover the blood of a slaughtered animal applies only to wild animals or to birds, whereas the Temple Scroll's incorporation of Leviticus' *cover it with dust* in the deuteronomic halakhah extends this obligation to cattle as well. This type of exegesis, which applies details regarding one matter to a second similar one, typifies the

priestly halakhah's solution of contradictions between different biblical commandments.¹⁰ What is noteworthy is that the biblical source is indistinguishable from the exegetical innovation, which is seamlessly incorporated into the biblical text.¹¹ The exegesis is implicit, never explicit as in formal commentaries, such as the *peshtarim*.

The second change is linguistic in nature. Another prominent feature of the scroll is its use of direct divine speech, often shifting from biblical third to divine first person, as in the conclusion of our passage: "And you shall do what is right and good in my sight, for I am the Lord your God." This contrasts with the biblical "for you will be doing what is right in the eyes of the Lord." The intent of this characteristic shift is to convey the statements in question as the unmediated words of God: not Moses speaking in God's name as in Deuteronomy but as a direct divine command issued at Sinai.¹² In short, the Temple Scroll does not refer to the biblical text; rather, it presents itself as Torah. Such a presentation is in harmony with its underlying derivation of authority as described in the preceding: this authority emerges from its self-perception as part of divine Sinaitic revelation.

The Temple Scroll is not the sole exemplar of a halakhic text from Qumran written in pentateuchal style. To the Temple Scroll we must add Jubilees, as well as the group of texts known as Reworded Pentateuch.¹³ These latter documents, viewed by their editors as different exemplars of the same composition, are not primarily halakhic in

¹⁰ C. Werman and A. Shemesh, "The Halakha in the Dead Sea Scrolls" (Hebrew), *The Dead Sea Scrolls* (Jerusalem: Yad Ben-Zvi Press, forthcoming).

¹¹ See Y. Yadin, *The Temple Scroll* (Jerusalem: Israel Exploration Society, Institute of Archaeology of the Hebrew University of Jerusalem, Shrine of the Book, 1983) 1:73–77; A. Goldberg, "The Early and Late *Midrash*" (Hebrew), *Tarbiz* 50 (1980/81) 96–97. Preservation of biblical language is also characteristic of parts of the scroll that are innovations by its author. Thus, for example, we find the biblical injunction regarding a king, "he shall not have many wives" (Deut. 17:17) explained as follows: "And he shall not take a wife from all the daughters of the nations, but from his father's house he shall take unto himself a wife, from the family of his father. And he shall not take upon her another wife, for she alone shall be with him all the days of her life. But should she die, he may take unto himself another (wife) from the house of his father, from his family" (11QT 57:15–19). Here we find the general biblical injunction interpreted particularly as prohibiting a king from marrying more than one wife and enjoining that she be from his family. This halakhic innovation is worded in biblical language not easily distinguished from the biblical text itself (as in the use of וְיָשָׁב וְיָשָׁב and וְיָשָׁב וְיָשָׁב instead of וְיָשָׁב commonly used in Qumran and rabbinic language).

¹² Yadin, *Temple Scroll*, 1:71–73.

¹³ E. Tov and S. White, "Reworded Pentateuch," in H. Attridge et al., *Qumran Cove*

nature; rather, they contain citations (or paraphrases) of different biblical pericopes, some of which happen to be halakhic. What is of importance here is that these texts share the distinctive attributes of the Temple Scroll outlined above, namely, they are written in biblical language with no differentiation between innovation and pentateuchal text.¹⁴ In several places the text joins verses taken from various places in the Pentateuch to create a single harmonious unit,¹⁵ a trait shared by these texts and the Temple Scroll. The reworking consists also of additions not parallel to the Masoretic text, mainly exegetical in nature, which range from one to eight lines in length.¹⁶ At least one of these (4Q365 frag. 23) is a halakhic addition found nowhere in the Pentateuch treating the Festivals of Wood and of Fresh Oil.¹⁷ It is important to stress that these additions, exegeses, and harmonistic alterations are all formulated in biblical language and compose an organic text, linguistically indistinguishable from their pentateuchal base.

The Damascus Document and Related Texts

This brings us to the second halakhic genre represented at Qumran. Within Qumran sectarian literature the Damascus Document is indisputably the sectarian work containing the largest organized corpus of laws. The wording of the halakhot in the Damascus Document and its use of biblical citations in particular point to a completely different view of the source of halakhah from the one represented by the Temple Scroll and the related works discussed in the preceding. The primary divine source for the halakhah is the Torah; unlike the Temple Scroll, however, the Damascus Document makes a clear distinction

between biblical source and exegesis or realization in the details of the law, exemplified by topical organization and the use of topical rubrics.

These headings appear in three variations: “concerning the rule” (cf. 16:13); a citation from a related biblical verse marked by “as to that which is said” (cf. 16:6), and some with a heading combining the two: “concerning the rule, as to that which is said” (cf. 9:8). The laws themselves are mainly worded apodictically, without scriptural proof, and can be worded either as positive commandments—“it means to abide by every binding oath in which a man promises to do anything from the Law” (16:7–8), or as negative ones—“a man may not go about in the field to do his desired activity on the Sabbath” (10:20).

Even in those instances where the halakhic unit opens with a citation, it does not necessarily follow that the halakhot in question were derived from the verse itself. Rather, the citation functions as a topical heading. We would like to stress that these halakhot, which clearly represent sectarian practice, provide no clues as to the exegetical process whereby they were derived. Even if scholars can provisionally reconstruct the exegetical process, in any event, as presented, the intent of the halakhah as stated is to establish its existence rather than to reveal to the reader how it was created.

This is illustrated by the following example:

ואשר אסר מוצא שפודד תשמוד לרקבם כל שבורת אסר אשר יקום איש על נפש לעשות רכב בן ההורה עד מודד מות אל פדונו כל אשר יקום איש על נפש ללכת בן דחורה עד מודד מות אל יקומו.

As for the passage “observe what comes out of your lips” (Deut. 23:24), it means to abide by every binding oath in which a man takes upon himself to do anything from the Law: he may not break it, even at the price of death. Anything by which a man takes upon himself to depart from the Law let him not fulfill it, even at the price of death. (16:6–9)

4.VIII: *Parabiblical Texts, Part 1* (DJD 13; Oxford: Clarendon Press, 1994) 187–351. According to the editors both these texts and 4Q158 are copies of one composition.
¹⁴ On the problematic nature of defining this text and the question of its aim and function, see M. Segal, “4QReworked Pentateuch or 4QPentateuch?” *The Dead Sea Scrolls: Fifty Years after Their Discovery: Proceedings of the Jerusalem Congress, July 20–25, 1997* (eds L.H. Schiffman, E. Tov, and J.C. VanderKam; Jerusalem: Israel Exploration Society and Shrine of the Book, 2000) 391–99; M. Bernstein, “Contours of Genesis Interpretation at Qumran: Contents, Contexts and Nomenclature,” *Studies in Ancient Midrash* (ed. J. Kugel; Cambridge, MA: Harvard University Press, 2000) 58–60; VanderKam, “Questions of Canon,” 276–81.
¹⁵ Such as 4Q364 frag. 23 which combines Num. 20:17–18 and Deut. 2:8–14 (DJD 13:230–31).

¹⁶ See, for example, the “Song of Miriam” in 4Q365 6a ii and 6c (DJD 13:269–70),
¹⁷ 4Q365 frag. 23 (DJD 13:290–91); Yadin was of the opinion that this passage belonged to a recension of the Temple Scroll. See Yadin, *Temple Scroll*, 2.44.

This pericope contains two injunctions: the first enjoins anyone who has taken a vow to observe a biblical commandment to keep his oath, and the second treats the converse, forbidding an individual who has taken an oath to transgress a biblical commandment to fulfill this oath, requiring that he not deviate from the Torah. As the rubric testifies, these two halakhot are linked to the biblical injunction found in Deut. 23:24. We can even conjecture that the Damascus Document’s double halakhah is grounded in the duality of the verse: “you are to keep, and you are to do”; “keep”—avoid doing what is prohibited; “do”—implement what should be done. Nonetheless, we must stress that this is our reconstruction: no explicit statement as such appears in the halakhah

standing of the verse, inherent to which is recognition of the distinction between verse and exegesis.²⁴

A textual unit found in a Cave 4 fragment of the Damascus Document, which deals with skin diseases, discharges, and impurity after childbirth, requires separate consideration.²⁵ Despite the close links between the halakhot in this unit and the related biblical pericopes, including linguistic and structural similarities—the combining of these three topics in one unit as in Leviticus 12–16 and adherence to the biblical sequence²⁶—this text displays what we have identified as the characteristic feature of the Damascus Document, to wit, it differentiates between text and exegesis.

The first section, which treats the laws concerning *צָרַעַת*, is of especial interest. Here we find exegesis of biblical verses alongside explanations for the laws taught. Following the citation of Lev. 13:2, “When a person has on the skin of his body a swelling, a scab, or a discoloration . . .” an explanation is appended: “and the scab [is] a blow of wood, stone, or any blow.” In addition, the sectarian author adds a theological-medical explanation for the disease to the biblically grounded halakhot,²⁷ according to which the appearance of *צָרַעַת* is a result of “when the spl[irit] comes and takes hold] of the artery, making the blood recede upwards and downwards” and its cure finds expression “if the [spl]irit of life moves up and down and the flesh has grown . . . is healed.” One of the biblical symptoms of *צָרַעַת*, a black hair that becomes yellow, receives botanical imagery in our text: “for it is like a plant which has a worm under it that severs its root and makes its blossom wither.” Finally, the text contains a rationale for

the biblical injunction enjoining the stricken person to shave off his hair except for the area of the scall (Lev. 13:33). Concerning this matter this fragment of the Damascus Document states: “And as to that which is said, ‘And the priest shall order that they shave his head, but not the scall,’ this is in order that the priest may count the dead and live hair and see whether any has been added from the live to the dead during the seven days, (in which case) he is unclean; while if none has been added from the live to the dead, and the artery is filled with b[lood] and the spirit of life moves up and down in it, the plague is [healed].”²⁸

For our purposes, what must be emphasized is that despite this text’s stylistic similarity to Reworked Pentateuch and the Temple Scroll, in that it is a halakhic narrative rewritten in free biblical style with explanatory passages, it still retains the main feature of the halakhic style defined as characteristic of the Damascus Document: a clear distinction between biblical quotation and additions or exegesis. Twice we find the introductory formula *אָמַר אֱלֹהִים*: “[. . . and as to that which] is said, ‘he shall quarantine him [for seven days]’” (Lev. 13:26) and “And (as to that) which is said, ‘And the priest shall order²⁹ and they will shave the head, but the scall they shall not shave’” (Lev. 13:33). Generally speaking, although some of the Cave 4 halakhic fragments show greater affinity to biblical style, nonetheless in their essential characteristics they closely resemble the known halakhic units from the Cairo Genizah manuscript.

The fragment of the Damascus Document (4Q266 6 ii) dealing with the laws of a woman who has given birth is exceptional in this regard, as its style more resembles that of the Temple Scroll, making no distinction between biblical original and addition:

אָמַר אֱלֹהִים [הוֹרֵי]ת יִלְדָה זָכָר [וּמִסְתַּח אֵלַי שְׁבַע יָמִים] [דְּרִיבָהּ]
 [כָּל יָמֶיהָ] וְזָרָה [וְאִתָּהּ וְהָיָה הַשְּׂמֵינִי יָמֶיךָ בְּשֵׁרָה עֲלֵיךָ] [וּלְבָרְךָ]
 [וְלִפְלִיטָה וְשִׁלּוּשִׁים יָמִים תִּשָּׁב בָּרֶם שְׂדֵרוֹתָ וְיָמִים תִּקַּח חֹלֶיךָ]
 [וּמִסְתַּח שְׁבַע יָמִים בְּהֵרָה [וְאִתָּהּ] [לְשִׁעִים יָמִים תִּשָּׁב בְּרֶם]
 [וּמִסְתַּח וְהָיָה] [לֹא תִחַל] [קֹדֶשׁ וְלֹא תִבֵּן אֶל תִּקְרָשׁ]
 [כִּי בְּשִׁשִּׁשׁ חֹה חֵתָהּ]
 [וְהָיָה לְבַקֵּךְ בְּשֵׁרָתָהּ]
 [וְיָמִים לֹא תִשָּׁב יָדֶיךָ דִּי שֵׁה לְקַחְתָּ כִּן יִתֵּר אַךְ חֵרַךְ לְעִלְיָהּ]
 [וְיָמִים לֹא תִשָּׁב יָדֶיךָ דִּי שֵׁה לְקַחְתָּ כִּן יִתֵּר אַךְ חֵרַךְ לְעִלְיָהּ]
 [וְיָמִים לֹא תִשָּׁב יָדֶיךָ דִּי שֵׁה לְקַחְתָּ כִּן יִתֵּר אַךְ חֵרַךְ לְעִלְיָהּ]

²⁴ Frag. 5 of this document (4Q159) is unusual as it is essentially a *pesher* (evidently to Lev. 16:1). Indeed, some scholars argue that its attribution to this document is mistaken (see F.D. Wienter, “4Q159: A Legislation for an Essene Community outside Qumran?” *JJS* 5 [1974] 179–207). On the other hand, in a personal communication Prof. Moshe Bernstein noted that paleographically the passage is part of the document and should not be rejected just because we have no ready explanation for its inclusion here. In any event, the incorporation of *pesher* with Damascus Document-type halakha is in harmony with our proposal above that views these two literary genres as related in their understanding of exegesis and their relationship to the text being explained.

²⁵ Baumgarten, DJD 18:52–55, 188–89.

²⁶ Not all the biblical laws of *צָרַעַת* are dealt with in this passage. The author deals only with human afflictions and therefore omits the laws of affected clothing or houses; nor does he treat the description of the purification ceremony.

²⁷ J.M. Baumgarten, “The 4Q Zadokite Fragments on Skin Disease,” *JJS* 41 (1990) 153–65.

²⁸ Baumgarten, “4Q Zadokite Fragments,” 159.

²⁹ The words *וְהָיָה הַשְּׂמֵינִי יָמֶיךָ בְּשֵׁרָה עֲלֵיךָ* are not attested in MT. See Baumgarten, “4Q Zadokite Fragments,” 154; C. Hempel, *The Laws of the Damascus Document: Sources, Tradition and Redaction* (STDJ 29, Leiden: Brill, 1998) 48 n. 77.

And a woman who [conceiv]es and bears a male child [shall be unclean] for the seven [days, as] in [the day]s of her menstrual impurity. And on the eighth day the flesh of his] foreskin [shall be circumcised. For thirty-three days she shall remain in her blood purification. If she bears a female child she shall remain in her blood purification. And she] shall not eat [any hallowed thing, nor come into the sanctuary, for] *it is a capital offense* [. . . let her give the] child to a nurse *[who can nurse it] in purity*] [And] if she cannot afford [a lamb, she shall take a turtledove or a pigeon for a burnt offering and she] shall substitute [it for the lamb].³⁰

This unit is a rewriting (or perhaps even a quotation) of Lev. 12: 2–8 to which two additional halakhot have been introduced: the death penalty for entering the Temple unpurified,³¹ and the obligation to give the child to a nurse who can nurse it in purity.³² The possible significations of the integration of this linguistically exceptional passage into the Damascus Document will be treated in the final part of this article.

What we have noted as an exceptional style for the Damascus Document forms the central stylistic characteristic of 4QHalakha A,³³ which contains various halakhic units exhibiting variegated literary styles. This scroll is extremely fragmentary; neither its beginning nor its end has been preserved and we only have partially preserved units, which makes drawing a total picture of this text's bent difficult. Some parts are rewritten Pentateuch, resembling the Temple Scroll, and some parts are abstract halakhot similar in style to the Damascus Document. The first extant fragment³⁴ contains some laws concerning the Sabbath laid out in the style of the Damascus Document: *אלא יצא אש בוקקו כל בל דשבת וכן הדוץ אל רביה וכן רביה אל לקרא בספר* [Let no] one carry (anything) out of his place for the entire Shabbat from the outside to the house [and from the house to the outside]to it to expound and to read in a book on [Shabb]a.³⁵ The fragment that follows is in the form of rewritten Pentateuch as

³⁰ Baumgarten, DJD 18:55.

³¹ A. Shemesh, "The Dispute between the Pharisees and the Sadducees on the Death Penalty" (Hebrew), *Tarbiz* 70 (2000) 17–33.

³² J.M. Baumgarten, "Purification after Childbirth and the Sacred Garden in 4Q265 and Jubilees," *New Qumran Texts and Studies: Proceedings of the First Meeting of the International Organization for Qumran Studies, Paris, 1992* (ed. G.J. Brooke; STDJ 15; Leiden: Brill, 1994) 3–10.

³³ E. Larson, M.R. Lehmann, and L. Schiffman, "4QHalakha A," in J.M. Baumgarten et al., *Qumran Cave 4 XXV: Halakhic Texts* (DJD 35; Oxford: Clarendon Press, 1999) 25–52.

³⁴ Larson, Lehmann, and Schiffman, DJD 35:25–52.

³⁵ Larson, Lehmann, and Schiffman, DJD 35:28.

exemplified by the Temple Scroll and includes laws concerning damage done by beasts based on Exod. 21:18–32, followed by a unit in the Damascus Document style that concerns first fruits of agricultural produce. A similar combination is attested in the remainder of the scroll. Indeed, the integration of these two so distinct halakhic styles seemingly indicates that the work in question was copied from different works.³⁶

To sum up to this point, with regard to the literary genres that represent the halakhic tradition at Qumran, two main branches can be distinguished, each of which presents the halakhah differently and each of which has a different authority base: works such as Jubilees and the Temple Scroll rewrite the pentateuchal law, making no distinction between the biblical passage and sectarian interpretation, as they perceive themselves and their halakhic authority as grounded in Sinaitic revelation. In contrast, the second main literary genre, represented by the Damascus Document and related works, confers independent status on the halakhah it presents, distinguishing it from its biblical sources, generally citing its halakhah without biblical citations, and where found, such citations generally serve only as rubrics for the halakhic issue under discussion. This distinction dovetails with its conception of halakhic authority, which admits the role of divinely inspired human intellectual activity in the creation of the halakhah.

Explicit Halakhic Exegesis at Qumran

We have stressed repeatedly that neither halakhic genre at Qumran, whether rewritten Pentateuch or exegetical in nature, explains the derivation of its halakhah. This generalization notwithstanding, there are some exceptions to this rule. The Damascus Document and MMT contain instances where biblical laws are accompanied by exegetical references used to support the sectarian viewpoint. In the case of the Damascus Document there is a single example where we find explicit halakhic dialectic. Unexpectedly, this example appears in the first, non-halakhic part of this work. In it, the author accuses the "builders of the barrier" of sinning in two halakhic areas, one of which is unchastity:

³⁶ An interesting example of this is 4Q251 frags 4–7 (DJD 35:31), which is equivalent in its content to 4Q364 frag. 13a–b (DJD 13:220) from the group of 4QRP. Both use biblical language (or something close to it) of Exod. 21:16–20 (despite some minor differences between them).

רום ירחפשים בשמים כמות.

לקחה שתי נשים בנדיהם וסודו הברואה ובר ונקבה ברא אורח וכאן הודיכה שנים שנים כאן אל הודיכה ועל הנשיא כותב לא ידכה לו נשים
 ולקבוקים איש את אה אהיה ואת בה אחותו ונשיא אצל אל אחותו אצל לא קרקב שאר אהיה
 ואת הנשפם העריות לזכרים הוא כותב וכדום הנשים ואת הנזלה בה ואת את ערות אה
 אהיה ודוד שאר.

They are caught in fornication twice by taking two wives in their lifetime, whereas the principle of creation is, "Male and female created he them" (Gen. 1:27). Also, those who entered the ark went in two by two (Gen. 7:9). And concerning the phrase [נשפ], it is written, "He shall not multiply wives to himself" (Deut. 17:17) . . . and they marry each one his brother's daughter or sister's daughter. But Moses said, "To your mother's sister you may not draw near, for she is the flesh of your mother" (Lev. 18:13). Now the precept of incest is written from the point of view of males, but the same (law) applies to women, so that if a brother's daughter uncovers the nakedness of a brother of her father, she is the flesh (of her father). (CD 4:20–5:11)

In this passage its author disputes two halakhic points with his opponents: first, polygamy, his opposition to which he backs with three biblical citations (Gen. 1:27; 7:9; and Deut. 17:17).³⁷ It is not our intent here to analyze the nature of the prooftexts cited; for our purposes, what is important is simply the fact of the presentation of biblical sources as backing for this stance. The initial biblical citation also clarifies what the author views as the underlying rationale for the halakhah: "the principle of creation is 'Male and female created he them.'" Humans were created as a single male and a single female, and not as a single male with several females; therefore this is the correct practice.

The second halakhah is even more intriguing. In this instance, not only does the author disclose its biblical source, but also its underlying exegetical logic. The author of the Damascus Document opposed the Pharisaic practice of uncle-niece marriages, viewing it as included in the prohibited incestuous marriages detailed in Leviticus 18, which explicitly forbids marrying an aunt (v. 13). As revealed by the author of the Damascus Document, the underlying exegetical principle used to derive the prohibition against marrying a niece is that although the language of the Torah is directed toward males, these injunctions must be read as also applying to females. Therefore, just as the Torah forbids a man to marry his maternal aunt, so too are women forbidden to marry their paternal uncles by pentateuchal law.

³⁷ This prohibition is explained in the Temple Scroll as a limitation to one wife:

This explanatory exegetical phenomenon, unusual in the Damascus Document, is a central characteristic of yet another Qumran document, *Miqsat Ma'ase ha-Torah* (4QMMT). Although this document's poor preservation hampers attempts to establish the precise meaning of the halakhah it sets forth or their rationales, nonetheless the following two examples suffice to demonstrate the wording of the halakhah in this text.

[ע]ל שט כרות] איש כי ישט בכותב אה ישט] כותב לכותב שר ונשפ יטע כי] בתולין
 וכותב ואתו תשפם שדמקיש שמשכן אורח כמעד הוא ו]ירשעל]ים] כותב הוא הודעה
 לכותב] הוא הודעה לירשעלים]ואם כותב ער]ואם כותב ער]ואם כותב ער]ואם כותב ער]ואם
 ו]תשפם את רשע]תלכות עשיר]ופים שם את הרשעה כי ירשעלים] הוא הכותב אה
 [כותב כי כותב עשיר]יש ירשעל].

[And concerning] that it is written: [if a person slaughters inside the camp, or slaughters] outside the camp cattle or sheep or goat; for [. . . in] the northern part of the camp. And we are of the opinion that the sanctuary [is the "tent of meeting"] and that Jerusalem is the "camp," and that "outside the camp" [is outside Jerusalem], that is the encampment of their settlements. It is "outside the camp" where one should . . . the purification-offering and] take out the ashes of [the] altar and burn the purification-offering. For Jerusalem] is the place which [he has chosen] from among all the tribes [of Israel.]. (B 27–33)

The question under consideration here is in what locations and at what distance from the Temple animals may be slaughtered for secular consumption. The discussion in MMT takes Lev. 17:3–4, cited at the beginning of the pericope, as its starting point. The plain meaning of the injunction as interpreted by MMT is that only meat slaughtered in the Tabernacle as a *shelamin* offering is permissible for consumption. The writers' opponents restricted this prohibition to the period during which the Israelites wandered in the desert; with the entry into the land of Israel and the founding of the Temple in the place chosen by God, secular slaughter was deemed permissible as was the consumption of meat because of a craving as outlined in Deut. 12:20–38. MMT's author rejects this interpretation, setting limits on secular slaughter and applying levitical law to the land of Israel. In opposing his disputants' opinion, MMT's author writes "and we are of the opinion that the sanctuary [is the 'tent of meeting'] and that Jerusalem is the 'camp,' and that 'outside the camp' [is outside Jerusalem]." Therefore, in his view, in all places that correspond to the "camp" or to "outside the camp" secular slaughter is forbidden.

This halakhah contains an organized exegesis of the verse in Leviticus, presented in the pericope as the source for this halakhah. But the exegete takes the process one step further in attempting to prove the validity of his interpretation by referring to the obligation to burn

certain organs of sacrificial animals "outside the camp" (Lev. 6:4; Num. 19:3-5), with regard to which there is blanket agreement that they are burned outside of Jerusalem.³⁸

A second example relates to forbidden marriages:

ועל הנהגת הנשים הנורא דעם הדפדפני בלוי (ויקרא) קדש נשבעת קדש ישראל ועל הנהגת הנשים הנורא
 כרות שלא לרבעה כליות ועל לרבעתן כרות שלא [אחרי] ידוע ששלא תכלית לומר שיהיו וכליות
 בגלל שיהיו קדושים וכו' אחריו קוראים אותם ידועים שקראו אותם הכותים ורובם חתומים
 דתם בתרומתם והשארם [ואם] ויקראו אותן [אם] ויקראו אותן [אם] עם הנהגת.

And concerning the practice of illegal marriage that exists among the people: (this practice exists) despite their being so[un]d of holy [seed], as is written, Israel is holy. And concerning his (i.e., Israel's) [clean animal], it is written that one must not let it mate with another species; and concerning his clothes [it is written that they should not] be of mixed stuff; and he must not sow his field and vineyard with mixed species. Because they (Israel) are holy, and the sons of Aaron are [most holy.] But you know that some of the priests and [the lady mingle with each other] [and they] unite with each other and pollute the [holy] seed [as well as] their own [seed] with women whom they are forbidden to marry. (B 75-82)

The author complains here about a type of intermarriage practiced by the priests, which he sees as prohibited and against which he inveighs.³⁹

As backing for his halakhic approach the author uses what resembles an *a fortiori* argument: if the Torah prohibited mixing animal species and the wearing of a garment of combined species as well as sowing a field or vineyard with מִזְרָע, then even more so is it forbidden for the sons of Aaron, who are most holy, to intermarry with individuals that pollute the holy seed.

What these passages and the above-cited passage from the Damascus Document share is their polemical nature. Evidently, the presence of formal explanations to support the process by which the halakhah was derived is not coincidental. In contesting the opinions of their opponents, the Qumran authors conduct the debate in line with their opponents' rules, even in those cases where the immediate target is the home audience, that is, the members of the sect.⁴⁰ These rules

³⁸ D. Henshke, "The Sanctity of Jerusalem: The Sages and Sectarian *Halakha*" (Hebrew), *Tarbiz* 67 (1998) 22-27.

³⁹ On the nature of the intermarriage mentioned here, see the discussion by E. Qimron and J. Strugnell, *Qumran Cave 4.V: Miqsat Ma'ase Ha-Torah* (DJD 10; Oxford: Clarendon Press, 1994) 171-75; C. Hayes, "Intermarriage and Impurity in Ancient Jewish Sources," *HTR* 92 (1999) 25-35; M. Kister, "Studies in 4QMiqsat Ma'ase Ha-Torah and Related Texts: Law, Theology, Language and Calendar" (Hebrew), *Tarbiz* 68 (1999) 343-47.

⁴⁰ This is certainly true of the passage from the Damascus Document. From its context in the Damascus Document (as from the work as a whole) it is clear that its pur-

require the writer to convince his readers that his exegesis is preferable to others without employing the argument that his exegesis is the correct one because it is based on divine revelation, an argument that holds no water for his opponents, who deny this claim. Indeed, the very mention of the other party's opinion is by way of admission that the biblical source is open to alternative interpretations. This in turn weakens the argument concerning divine authority for the exegesis, which admits only a single binding interpretation.

It appears then that there is a close relationship between the manner in which a halakhah is presented and the literary context in which it appears. In those compositions and halakhic pericopes aimed at presenting the halakhah, demanding unmitigated adherence by members of the sect, their authors feel no need either to justify their halakhic stance, or to explain its source or derivation from biblical verses. Only in polemical contexts, when the sectarians confront their opponents' halakhic stances, do they find it germane to explain the exegetical process by means of which they reached their conclusions.

The Relationship between the Two Halakhic Genres at Qumran

The coexistence of two genres in the halakhic compositions found at Qumran, with their distinct arguments regarding authority, admits several possible explanations. One possibility is to see the genres as unrelated and as created in the context of different groups. There are scholars who do not attribute sectarian origins to the Temple Scroll or to Jubilees. L.H. Schiffman, for example, argues that the Temple Scroll is a Zadokite composition, using its different ascription of halakhic authority as compared to the Damascus Document as one argument backing his stance.⁴¹ From this viewpoint, the fact that the redactor of the Damascus Document introduced a section worded in Temple Scroll style means that he had Zadokite material before him

pose is to strengthen the self-awareness of the sect's members. With regard to MMT, written as a letter to a person living in Jerusalem, Fraade has recently suggested that it is not really a letter but a composition intended for internal propaganda ("To Whom It May Concern: 4QMMT and Its Addressee(s)," *RevQ* 19 [2001] 507-26).

⁴¹ Schiffman, *Reclaiming*, 252-55; H. Stegemann, "The Origins of the Temple Scroll," *Congress Volume: Jerusalem, 1986* (ed. J.A. Emerton; VTSup 40; Leiden: Brill, 1988) 235-56; M.O. Wise, *A Critical Study of the Temple Scroll from Qumran Cave II* (SAOC 49; Chicago: Oriental Institute of the University of Chicago, 1990) 189-94.

that he incorporated as is (evidently for the purposes of its halakhic content) without paying heed to the theological implications of the "biblical" wording of the halakhot.

A second possibility is to attribute the different genres to a historical development within the sect itself. This argument can be stated as follows. The justification for the application of pesharim to the understanding of historical processes and of exegetical tools to the derivation of halakhah is related to the presence of leaders: the Teacher of Righteousness and the Interpreter of the Torah. God endowed the Teacher of Righteousness with the ability to arrive at pesharim; the Interpreter of the Torah was the figure sent to endow the sect with the tools of exegesis.⁴² The "Sinaitic" argument for halakhic authority, on the other hand, whose basis lies in the distant past, does not necessarily require the existence of a leader in the present. Thus, one could argue that the compositions grounded in Sinaitic authority were created prior to the emergence of the sect's leaders, and that the Damascus Document and the pesharim were authored at a later date, following the appearance of the sect's charismatic leaders, thereby explaining the theological construct that views these individuals as mediating between the Torah and its interpretation.⁴³

We would like to propose a third possibility here. Perhaps the two distinct claims for authority and their related genres have their basis not in different origins, or in different periods, but rather in the audiences to which they were addressed. As we saw above, as worded, the halakhot in the Damascus Document assume a prior commitment by the target audience to their contents. Therefore only the results of the exegesis—the hidden things that were revealed—are presented, but the exegetical or the logical processes via which these conclusions were reached are not made explicit. On the other hand, in turning to a non-sectarian audience the writer cannot rely upon an argument grounded in the authoritative status of the Interpreter of the Torah; no outsider would accept halakhot based on sectarian exegesis simply because they emerge from the understanding granted to the divinely inspired

⁴² On this figure, see Fraade, "Interpretive Authority in the Studying Community," 62–63.

⁴³ This is Collins' view regarding the disappearance of the apocalyptic genre with the coming of the Teacher of Righteousness. See J.J. Collins, "Was the Dead Sea Sect an Apocalyptic Movement?" *Archaeology and History in the Dead Sea Scrolls: The New York University Conference in Memory of Yigael Yadin* (ed. L.H. Schiffman; JSPS Sup 8; JSOT/ASOR Monographs 2; Sheffield: JSOT Press, 1990) 25–51.

Interpreter.⁴⁴ Such a reader would demand to be convinced on the basis of the exegetical process itself. As we have seen, there are at Qumran exceptional instances, as in MMT, where the author makes the exegetical process explicit for the reader. Such an option is of course more risky for the Qumranic author, and as such, is employed only when absolutely necessary. In turning to an audience outside the bounds of the sect without entering into a detailed argument regarding the correct interpretation of each and every verse, such an author will back his halakhot with an argument more suited to his opponents' worldview, one that does not rely on the authority or abilities of the sect's leaders.

We would like to suggest further that the claim of Sinaitic authority inherent in the Temple Scroll and Jubilees may be such an outward-looking argument, directed particularly to the *QSTB* (simple ones) whom the sect wished to draft into their ranks.⁴⁵ Such an audience might find the claim of a second Torah written at Sinai persuasive, given its fundamental similarity to another claim with which it was familiar, which was that a second, *oral* Torah was transmitted to Moses at Sinai along with the written Torah. The centrality of the concept of the oral Torah as the theological basis for the validity and authority of rabbinic halakhic tradition is well known. Although there are those who argue otherwise,⁴⁶ it appears that we will not miss the mark if we claim that the principle of the oral Torah was accepted among the Pharisees even before the destruction of the Temple, and that the "ancestral traditions" to which they were loyal⁴⁷ received its backing from the argument that this tradition was given at Sinai.⁴⁸

⁴⁴ Nor would he accept the pesharim of the Teacher of Righteousness as he does not share the belief that God has bestowed understanding on him, to interpret the words of the prophets, precisely the accusation appearing at the beginning of Peshar Habakuk (1:16–2:10).

⁴⁵ See the hopes expressed in Peshar Nahum (3–4 iii 3–5).

⁴⁶ Fraade argues that there is no proof that the Pharisees held that the ancestral traditions important to them were given at Sinai or that they had to be transmitted orally and not in writing during the second temple period. In his opinion only in the Tannaitic period do we find the inception of the use of the term "oral Torah" with the accompanying argument that this was given at Sinai. See S.D. Fraade, "Literary Composition and Oral Performance in Early Midrashim," *Oral Tradition* 14 (1999) 40–41.

⁴⁷ Josephus, Ant. 18:297; Matt. 15:2; Mark 7:3; Gal. 1:14. See also Baumgarten, *Qumran Law*, 19–23, where he shows that the Pharisees do not record their Torah in writing.

⁴⁸ On the relationship between the Pharisees, who were a small group, and the majority, see M. Goodman's perceptive analysis ("A Note on Josephus, the Pharisees and Ancestral Tradition," *JIS* 50 [1999] 19–20), in which he distinguishes between

Evidence for a dispute regarding whether the Sinaitic revelation was written or oral has been preserved in the scholion to Megillat Taanit. The dispute in question is between the Boethusians and the Pharisees:⁴⁹

שתי בריכות קוראין בתוכן הלכות בכסף ואדם שישאל ותדעין לו בכסף. אמרו לום דבמות והלא כבר נאמר "על פי הדברים האלה כרתו את ברית ואם ישאלהו": "על פי הדברים אשר יודרך וכו', בלמד שאין בתוכו בכסף. וכן אמר... אמרו לום דבמות (לברייתא): והלא כבר נאמר "והחזקת הדברים אשר כרתו ליהודים" וכדון "יענה כחכו ללם את השירה והאת למודת את בני ישראל עימה במומים": "לכדתה"ו בקראת "שימח במומים" אלא הלכות.

For the Boethusians would write the laws in a book, so that when a person asks, they show him [the answer] in the book. The Rabbis said to them: Has it not been said already [in Scripture]: "... for in accordance with these words I make with you a covenant and with Israel" (Exod. 34:27); "in accordance with the Torah that they shall teach you etc." (Deut. 17:11)—implying that it is forbidden to write [these laws] in a book. Another interpretation: ... The Rabbis said to them: Has it not been said already [in Scripture]: "the Torah and the Commandment which I have written down to instruct them" (Exod. 24:12), and it is further written, "Therefore, write down this poem and teach it to the people of Israel; put it in their mouths" (Deut. 31:19)? [That is to say]: "teach it"—that is the Written Law, "put it in their mouths"—these are the *halakhot* [the Oral Law]. (MS Oxford, Noam edition, 35–36)

The Boethusians⁵⁰ are described here as those who "write the laws in a book, so that when a person asks, they show him [the answer] in the book." Undoubtedly, the purpose of pointing at a book is to answer the question of the authority-basis for the halakha, which

practices unique to the Pharisees and ancestral traditions adhered to by the people which the Pharisees accepted as binding.

⁴⁹ Although a relatively late work, the scholion has preserved authentic early traditions. See V. Noam, *Megillat Taanit and the Scholion: Their Nature, Period and Sources, accompanied by a Critical Edition* (Hebrew University Ph.D. Dissertation: Jerusalem, 1997) 309–19. The authenticity of the tradition discussed here is enhanced by the fact that in presenting itself as Torah from Sinai, Jubilees, composed in the 2nd century BCE, uses the same proof-texts the scholion places in the mouths of the Boethusians. See Werman, "דבריהם ודבריהם," 488–90.

⁵⁰ On the question of the identification of the Boethusians, see the comments of Y. Sussmann, "The History of *Halakha* and the Dead Sea Scrolls: A Preliminary to the Publication of 4QMMT" (Hebrew), *Tarbiz* 59 (1989/90): 48–55. Note that in rabbinic literature calendrical disputes are cited only between the sages and the Boethusians and not between the former and the Sadducees (*ibid.*, 49 n. 166). It appears that the Boethusians were a group with close affinities to the Qumran community as there is no evidence that the Sadducees followed a calendar differing from the Pharisaic one. See A.I. Baumgarten, "Who Were the Sadducees? The Sadducees of Jerusalem and Qumran," *The Jews in the Hellenistic-Roman World: Studies in Memory of Menahem Stern* (eds I.M. Gafni et al.; Jerusalem: Zalman Shazar Center for Jewish History and the Historical Society of Israel, 1996) 396–405.

naturally incorporates the claim that the book originated at Sinai. Indeed, the rabbinic position posits that this claim is inherently false because the Boethusians themselves wrote the laws in the book. In their answer to the Boethusian argument that a second written Torah was given at Sinai the rabbis cite two verses: one from Exodus and the other from Deuteronomy. The deuteronomic verse serves as the basis for rabbinic authority: "You shall act in accordance (כִּי) with the Torah that they shall teach you and the ruling that they tell you; you must not deviate from the verdict that they announce to you either to the right or to the left" (17:11). Comparison of this verse to the one in Exodus indicates that the instructions handed down by them are an inseparable part of the Sinaitic covenant (Exod. 34:27). This covenant was made כִּי, that is, orally (כִּי). Therefore, the pharisaic position views the binding tradition accompanying the written Torah as an oral one and not as halakhot recorded in a book.

The second argument, prefaced by דבר אחר, is similar in nature to the first, adding to it the force of the oral traditions to interpret the written law. The rabbis here undertake a close reading of the verses: while there is a written Torah and a written poem, alongside them there is oral transmission "which I have written down to instruct them," "write down—put it in their mouths." The rabbinic claim was that alongside the written law an oral tradition was transmitted whose purpose was to shape what had been transmitted in writing (as found in the midrash).⁵¹

For our purposes what is important is that the scholion describes the Boethusians as those who attempt to convince others of the validity of their halakhic tradition by dint of its being written in a book. It is not necessarily farfetched to surmise that this book could have been the Temple Scroll, Jubilees, or other similar works, that claim Sinaitic origin.⁵² This in turn may support our conjecture that writings in Temple Scroll style were directed to the public at large and not necessarily for internal sectarian consumption.

⁵¹ On the question of the identification of the Boethusians, see the comments of Y. Sussmann, "The History of *Halakha* and the Dead Sea Scrolls: A Preliminary to the Publication of 4QMMT" (Hebrew), *Tarbiz* 59 (1989/90): 48–55. Note that in rabbinic literature calendrical disputes are cited only between the sages and the Boethusians and not between the former and the Sadducees (*ibid.*, 49 n. 166). It appears that the Boethusians were a group with close affinities to the Qumran community as there is no evidence that the Sadducees followed a calendar differing from the Pharisaic one. See A.I. Baumgarten, "Who Were the Sadducees? The Sadducees of Jerusalem and Qumran," *The Jews in the Hellenistic-Roman World: Studies in Memory of Menahem Stern* (eds I.M. Gafni et al.; Jerusalem: Zalman Shazar Center for Jewish History and the Historical Society of Israel, 1996) 396–405.

⁵² S. Naeh ("The Structure and Division of *Torot Kohanim*," (A): Scrolls" [Hebrew], *Tarbiz* 66 [1997] 483–515) has shown that Midrash *Torat Kohanim* (the halakhic midrash to Leviticus) was recorded in written form at an early time. Accordingly, he suggests that the prohibition against recording the Oral Torah was directed at "halakhot" because "they parallel in nature the laws of the written Torah, and even rival them in some instances... in contrast, midrash, the rabbinic interpretation of the

In addition to this principled dispute, the scholion to Megillat Ta'anit contains additional testimony to local disputes between Sadducees/Boethusians and Pharisees regarding the interpretation of specific pentateuchal halakhot. These disagreements include an explicit debate regarding the correct way to interpret the biblical text,⁵³ with each side presenting its exegetical principles. These disputes resemble the ones found in MMT.

Thus, even if somewhat hazily, the scholion to Megillat Ta'anit has preserved traces of traditions testifying that the two types of authority found in Qumran literature as described here were known outside Qumran. On this basis we have suggested that the Temple Scroll genre was meant for a broad public, which might find the Sinaitic-origins argument for its authority more palatable. Explicit exegetical arguments, on the other hand, were directed at a learned sector (the Temple priests and the educated Pharisees). And indeed MMT was addressed to an important individual who apparently possessed expertise in the varied practices; therefore, convincing exegetical proofs were necessary.

We have seen that, as a rule, Qumran texts do not provide a window into the exegetical underpinnings of their halakha. Rather, halakhic passages at Qumran may be ascribed to two broad genres: Temple Scroll style, in which no distinction is made between text and exegesis, and Damascus Document style, in which exegesis and text are differentiated via topical organization and rubrics. On this basis we conclude that halakhic *derrashah* as a genre is absent from the Dead Sea Scrolls,⁵⁴ associating its absence with the notion that halakhic exegesis is the

Torah, with its literary form as comments on the Torah, which does not parallel the written Torah in nature—not does it rival it—is rather an accompanying exegetical text; it is unnecessary to restrict its recording in writing” (506–7; see also n. 109). It is therefore obvious that Zadokite-type writing, so troublesome to the Pharisees, was of the nature of the Temple Scroll and related texts, which compete with and replace the Torah, and not literature of the Damascus Document genre, which resembled Tannaitic midrash in its distinction between biblical text and exegesis.

⁵³ On the disputes related to the dates of 8 Nisan (regarding the date of the Omer offering and Shavuot according to ms Parma and ms Oxford) and 24 Av (regarding inheritance by a daughter, according to ms Oxford), see Noam, Megillat Ta'anit and the Scholion, 2:21–23, 41.

⁵⁴ We refer here to midrash characterized by dialectical processes and exegetical negotiation. See Fraade, “Looking for Legal Midrash at Qumran,” 59–79; M. Kister, “A Common Heritage: Biblical Interpretation at Qumran and Its Implications,” *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls* (eds M.E. Stone and E.G. Chazon; STDJ 28; Leiden: Brill, 1998) 101–11. For other aspects of midrash that are found in Qumran literature, see A. Shemesh, “Scriptural Interpretation in the Damascus Document and Their Parallels in Rabbinic

result of divine revelation and its corollary that pentateuchal laws admit only one binding interpretation. Disclosure of the exegetical process brings with it the raising and admission of the very existence of other exegetical options, which must then be rejected. Apart from the exceptions of MMT and one passage in the Damascus Document noted above, with their polemical overtones, Qumran halakhic texts avoid provision of the halakhic-exegetical dialectic. This is perhaps also the reason why the disputes so characteristic of rabbinic halakhic literature are absent from all halakhic units at Qumran.

Midrash,” *The Damascus Document: A Centennial of Discovery* (eds J.M. Baumgarten et al.; STDJ 34; Leiden: Brill, 2000) 161–75; A. Schremer, “[T]he[y] Did Not Read in the Sealed Book”: Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism,” *Historical Perspectives: From the Hasmonaean to Bar Kokhba in Light of the Dead Sea Scrolls. Proceedings of the Fourth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 27–31 January 1999* (eds D. Goodblatt, A. Pinnick, and D.R. Schwartz; STDJ 37; Leiden: Brill, 2001) 105–26.