

Law and Society in the Dead Sea Scrolls: Preliminary Remarks*

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1. *Terms and Context*

Any examination of the legal material in the Dead Sea Scrolls inevitably necessitates conjectures on two methodological concerns of contextualization. First, whether an archaeological discovery of texts, overburdened by fortuitous circumstances of various sorts, is sufficient to constitute a corpus; and second, if it is a corpus, how does the legal material of the scrolls relate to other postbiblical material, either Jewish or Christian, and how should one approach the task of comparing these separate corpora.

Regarding the first concern, I deem the archaeological circumstances insufficient, which is why I try to avoid declinations of “Qumran” as adjectives or adverbs. The cache of texts is indeed “Qumranic,” but the sect reflected in it, their views, and practices were certainly never Qumranic, since that name for the location would not have come into existence at that point. This is not to detach the sect from the site, as some have proposed.¹ 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

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1 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, MA: Hendrickson, 2004).

unsound, since the scrolls are, first and foremost, an archeological discovery and artifact.² In order to demonstrate the problems associated with assuming a corpus based on the find, we may consider the various expansions, retellings of, or allusions to Genesis 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 known as 4Q252 were not preserved in churches (and no evidence of such translations has been found), and, thus, are not categorized as “Pseudepigrapha,” but as material peculiar to the scrolls. If, by chance of history, the *Genesis Apocryphon* would have been translated into Greek and then into Ge’ez and *Jubilees* was not, then these labels would have been reversed. In sum, there is nothing inherent in any of those texts to define them as particularly “Qumranic” or “Pseudepigraphic.” Hence the mere discovery of legal material in the same place is insufficient to define these texts as one corpus.

Nevertheless, 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*, *Damascus Document*, *4QMMT*, *War Scroll*, as well as the sect described by Josephus, reflect – for the most part – a shared tradition. As many have noticed, the *Temple Scroll* is a marked exception.³ This is not to ignore or undermine the significance of those studies that emphasize the differences and even contradictions between these texts and traditions, most notably in the works of

- 2 Jodi Magness, *The Archaeology of Qumran and the Dead Sea Scrolls* (Grand Rapids, MI: Eerdmans, 2002), 1-16.
- 3 On the relation of the Temple Scroll to sectarian writings, see Lawrence H. Schiffman, *The Courtyards of the House of the Lord: Studies on the Temple Scroll*, ed. Florentino García Martínez (Leiden: Brill, 2008), esp. 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: Apocrypha, Pseudepigrapha, Qumran Sectarian Writings, Philo, Josephus*, ed. Michael E. Stone (Assen: Van Gorcum; Philadelphia: Fortress Press, 1984), 2:483-550; 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, IN: Eisenbrauns, 1990), 167-87.

Baumgarten and Regev.⁴ These differences, however, can and did exist within a society that upheld some shared tenets.⁵ This society, group, or ideological milieu is probably still best described as “Essene.”⁶ *Yahad* is clearly too specific, labeling the ostensibly celibate group living in Qumran.⁷ “The Community of the Renewed Covenant,” as Talmon insisted on calling the sectarians,⁸ 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.⁹

I choose to re-employ the label “Essenes” in reference to the more extensive aspects of the sect, including the shared legal traditions as reflected in the

- 4 Albert I. Baumgarten, *The Flourishing of Jewish Sects in the Maccabean Era: An Interpretation* (JSJSup 55; 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; Eyal Regev, *Sectarianism in Qumran: A Cross-Cultural Perspective* (Berlin: de Gruyter, 2007); idem, “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.
- 5 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: Ben Zvi, 2009), 601-12 (Hebrew).
- 6 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, MI: Eerdmans, 2010), 122-65.
- 7 On *Yahad*, see 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).
- 8 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: Mohr 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 Press, 1997), 115-45.
- 9 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.

to echo Newsom once more,⁷⁶ would consider it as yet another means of control, dispensing the policing power to the priests and thwarting any possibility of insubordination before it can take form.

Nevertheless, the formulation of the law does entail that if somehow ten people should happen to gather in one place with none of them being a priest, they would have to disband. We may imagine them wanting to have a member designated to study the law at all times, but it is just as equally possible that when members need a rest from the intense study, they would require code-words, insinuating gestures, or self-imposed initiatives of dispersing, so as not to reach the inconveniencing quorum. When taking into account the ever-existing gaps between the written law and the practiced law, which also consists of the tension between the spirit of the law and the loopholes sought to avoid it, we can and must recognize that these are possible derivatives. Imagining such considerations vivifies the predominance of Essene law on all aspects of social life as it extended far beyond the explicit concerns of the text.

Another example pertains to social interactions, following several statutes in the Damascus Document and their counterparts in the Community Rule:⁷⁷

2b] ואשר [יקום את רעהו שלו בעצה [והו]בדל שנה אחת ונע[נ]ש
3	ש[שה חודשים] ואשר ידבר בפיה[ו] דבר נבל ונענש ע[שר]ים
4	[יום והובדל] שלושה חודשים ואשר ידבר בתוך דברי רעהו [ו]פרע
5	[ונענש עשרת] ימים [ואשר ישכ]ב [ו]ישן ב[מו]שב הרבים או בעצה
6	[והובדל] שלושים יום [ו]נענש עשרת ימים וכן לאיש הנפטר
7	[אשר] לר בעצת הרב[ו]ים [וה]נם ⁷⁷ שלוש פע[מ]ים על מושב] אחד
8	[ונענש] עשרה ימים אם [יזקפו] ונפטר [במושב שלושים]
9a	[יום]

76 Newsom, *Self as Symbolic Space*, 140.

77 4QD^a 10 ii, 2-9. Lines 3b-9a are quoted almost verbatim in 1QS 7.9-12. Cf. also 1QS 6.10-13 for further legislation concerning speech in the Council of the Many, and 1QS 5.25-26, 4Q264a 1.6-8 for other restrictions on speech.

- 2b And whoever takes vengeance⁷⁸ of his fellow outside of⁷⁹ the council [shall be] separated for one year and punis[he]d
3 for si[x months]. And anyone who speaks in his mouth the words of a debased man, will be punished t[wen]ty
4 [days and shall be separated] for three month[s and he who shall] speak within the wor[ds of his fellow and] rowdily
5 [shall be punished for ten]days [and whoever lies down and] sleeps at the [s]ess[ion of the many or in the council]
6 [shall be separated for] thirty days [and] punished for ten days. [And likewise for one who le]aves
7 Without the counsel of the many, doing so⁸⁰ up to three tim[es in] one [session]
8 sh[all be punished] for ten days. And if [they are standing] and he leaves [the session, he shall be punished for thirty
9 da]ys]

The operative words are the repeated forms of gathering, **עצת הרבים** and **מושב הרבים**, disclosing that these laws only regulate speech during the assembly of the council, and, as such, are an understandable measure necessary for any

- 78 Baumgarten and Hempel read **יצהה**, and translate “insult.” Following Qimron, I read **יקום**. See Elisha Qimron, *The Dead Sea Scrolls: The Hebrew Writings*, Vol. 1 (Jerusalem: Yad Ben Zvi, 2010), 55. The sense of vengeance is not entirely clear, but might be associated with admonition or public chastisement for offences based on Lev 19:17-18. In other words, within the security of the public sphere and its regulations, the reprimand is permissible and even mandated, as **הרוכהה**. Outside of the council, it is vengeance, and thus prohibited.
- 79 **שלו** should be amended to **שלוה**. Since **עצה** is used for both “council” and “counsel,” the meaning is ambiguous. Baumgarten and Hempel both read this to mean “counsel” as in “[ins]ults his neighbor without conferring” (Hempel, *The Laws of the Damascus Document*, 142). As I explain below, the series of laws are concerned with the public sphere in which the transgressions occur, and, therefore, **עצה** should be understood here as the institution.
- 80 **הנם** is unclear in this line. I provisionally follow Baumgarten’s translation, although there is a possibility of it meaning sleep, reverting to the previous law, and perhaps distinguishing between a slumber and a doze. That would suit the threefold occurrence, which might be more appropriate for a prohibition on dozing off than a prohibition on leaving without permission. However, the repetition is confusing, and thus I cannot fully endorse this proposal.

communal gathering. Similarly, the penalty for falling asleep in the Council of the Many serves to admonish the disrespect involved in such an act. However, in a sect that strives to live a moral and pure life in every moment, these basic rules of conduct could be expected to be transported into everyday life. A member who knew he could be punished for interrupting a fellow's speech during a session of the council would be prone to develop restraint when conversing with his fellows outside of the sessions. The Community Rule includes this paragraph almost verbatim, but also additional laws concerning speech, including a hierarchy of speaking turns and a prohibition to proclaim something that would be displeasing to the many (1QS 6.10-11). Laws of rebuke and reproach (1QS 5.25-6.1) moderate disputes and ill relations outside of official gatherings. Combined, these laws reflect an elaboration on the laws concerning speech and conduct in the council as they are preserved in 4QD. Some room for caution is necessary in light of the fragmentary preservation of the Damascus Document, but the elaborations that appear in the context of immediate quotations allow us to follow the expected tendency to employ laws that originally governed the council alone into the daily lives of the sectarians. When we add to this the prescribed presence of a priest for any gathering of ten, it is evident that even the most basic social interactions of communal life were governed – perhaps even increasingly governed – by the laws that tempered the deliberations of the community in its council.

7. Conclusion

These preliminary remarks are intended to propose a framework for thinking of Essene law in general, and specifically in the context of community construction, acknowledging the decisive role law plays in this enterprise. While I focused on laws that mandate social conduct for the purpose of this study, I also tried to point to the manner in which the presuppositions that inform these laws apply equally to laws that are echoed in later rabbinic literature. It is no surprise that the sectarian laws are, by and large, peculiar to the sect and are not emulated in rabbinic texts in any way, but this does not mean that they belong to a legal stratum separate from other Essene laws or that they can be treated in isolation from one another. The entire Essene corpus should be treated as such, even by those who will consider my choice of label a misnomer. That being said, I should reiterate that I have no intention of discrediting the study of differences and nuances within the corpus. In the fields surrounding the study of the Dead Sea Scrolls it is clear that one can say “biblical,” “rabbinic,” or “early Christian” and refer to the corpus as a single mindset, while not denying the

multiple strands, the historical developments and the various voices enfolded within those corpora. The Essene corpus is no different: shared worldviews, laws, and practices resurface and are reflected in various texts of the scrolls, despite very different genres. It is imperative that scholarship addresses the unity no less than the diversity. The laws, even with their differences, reflect shared presumptions regarding the origin of the law, the authority to interpret it, and the implications of transgressions. While these presuppositions, which are practically never made explicit, are starkly different from those that furnish modern legal systems, reverting to a scholarly framework and terminology of lawyers could prove helpful when assessing “some of the acts of the law.”