

# 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> These differences, however, can and did exist within a society that upheld some shared tenets.<sup>5</sup> This society, group, or ideological milieu is probably still best described as “Essene.”<sup>6</sup> *Yahad* is clearly too specific, labeling the ostensibly celibate group living in Qumran.<sup>7</sup> “The Community of the Renewed Covenant,” as Talmon insisted on calling the sectarians,<sup>8</sup> 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.<sup>9</sup>

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.

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 supplements Josephus and Philo as sources of information to the texts found in Qumran.

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 ἐκάστῃ μετοικοῦσιν πολλοί; *Jewish War* 2.8.4);<sup>10</sup> and, second, that “there is yet another order of Essenes” (Ἔστιν δὲ καὶ ἕτερον Ἐσσηνῶν τάγμα; *Jewish War* 2.8.13) who 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, as “Essenes.” Admittedly, the etymology of the word is obscure,<sup>11</sup> 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.<sup>12</sup> Nevertheless, the fact remains that it seemed reasonable

- 10 Cf. Loeb edition: Josephus, *The Jewish War. Books 1-2*, translated by H. St. J. Thackeray (Cambridge: Harvard University Press, 1997), 370.
- 11 For an overview of proposed etymologies, see 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  $\eta\psi\epsilon$ ,” *RevQ* 11.4 (1984): 483-98.
- 12 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, ON: 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’ 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 that the scrolls document an evolution of a sect, or more precisely several branches of a sect further substantiate Josephus’ report,

to him to group these factions under one label, and that is what I seek to call to mind when reverting to the somewhat outdated, considerably contested, but hopefully renewed label of “the Essenes.”<sup>13</sup>

The second concern of contextualization bears on the relation of the Essene legal material to other postbiblical sources, namely early Christian sources and rabbinic sources. It is commonly agreed that some caution is required when proceeding with a comparison of either. The preliminary excitement over the discovery of the scrolls and their implication for the study of Christian origins has subdued in recent years, replacing the quest for historical figures at Qumran<sup>14</sup> with explorations of shared traditions of exegesis<sup>15</sup> and comparable communal practices.<sup>16</sup> At the same time, the interest in comparisons between

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

- 13 For a further example, see James C. VanderKam, “The Oath and the Community,” *DSD* 16.3 (2009): 416-32.
- 14 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; Grand Rapids: Eerdmans, 1998), 211-27 and Joan E. Taylor, *The Immerser: John the Baptist within Second Temple Judaism* (Grand Rapids, MI: 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).
- 15 See, 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 and The Shrine of the Book, Israel Museum, 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.
- 16 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 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.

Essene legal texts and the earliest sources of rabbinic halakhah is flourishing.<sup>17</sup> Several reviews have commented that this increase in interest might be coming at the expense of necessary caution.<sup>18</sup> 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 life during the times of the Second Temple,<sup>19</sup> and not merely

Schiffman, and Shani Tzoref (Leiden: Brill, 2011), 413-34; 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.

- 17 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: Brill, 1975), and idem, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code* (Chico, CA: Scholars Press, 1983), I will only mention the most notable books on the topic, as articles on individual topics are indeed abundant in the past five years: 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: Ben Zvi, 2010) (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, 2011) (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: Ben Zvi, 2009), 2:409-33.
- 18 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): 131-35.
- 19 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,

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

One drawback to this endeavor has been an encumbrance on the study of Essene law with the use of 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 once in the scrolls, conspicuously absent in the legal texts.<sup>20</sup> 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.<sup>21</sup> 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 Qumran, a tendency to distinguish halakhic from non-halakhic law entails an imposition of rabbinic categories

and Menahem Stern (Jerusalem: 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.

- 20 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): 150-55.
- 21 The phrase appears in 1QH<sup>a</sup> 10.32; 4Q169 frg. 3-4 col. i, 2, 7, col. ii, 3-4, 2, 4, col. iii, 6-7 and reconstructed in 1QH<sup>a</sup> 10.15; 4Q163 23, ii 10; 4Q177 9.4. See also 4QD<sup>a</sup> 2, i, 4: *לדורשי מצוותו ולהולכים בתמים דרך* (reconstruction based on 4QD<sup>c</sup>), pointing to another possible link between *דרש* and *הלך*. See Shani Tzoref (as Shani L. Berrin), *The Peshet 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 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).

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 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 not documented in Judaism prior to the Mishnah. The only reason that they are all considered “halakhah” is because rather than using the Pentateuch as the measure of delineation of rabbinic law, we address rabbinic law on its own terms, acknowledging its canonization.<sup>22</sup> 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 much-required 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.<sup>23</sup> 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.<sup>24</sup> 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,

22 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.

23 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].

24 For my criticism in this study it is especially relevant that after surveying the various suggestions for translation, Regev, “Reconstructing Qumranic,” 99, concludes with a preference for the “Mishnaic Hebrew connotation.” 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 made.

or that they viewed stringency as an ideal. The fundamental approach reflected in Essene law would actually 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 unrequired 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 an approach that is based on contemporary legal theory in an attempt to treat Essene law as a corpus of its own. Unsurprisingly, this choice is not without its own set of problems. First of all, my choice to examine Essene law through the prism of "Law and Society" requires a response to the necessity of the second element: is not all law engaged in society?

In his seminal work, *The Authority of Law*, Joseph Raz asserts quite plainly that law is a social system, because in "one obvious sense" it is in force in a certain community; and, in another way, because of its relation 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 thesis should not obscure the equal importance of the second.<sup>25</sup>

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 here in the broadest sense of all those who make the law, including legislators and judges).<sup>26</sup>

25 Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), 151-52.

26 Roger Cotterrell, *The Sociology of Law: An Introduction*, 2<sup>nd</sup> ed. (London: Butterworths, 1992), 16-18. On the popular conception of law, see also Lawrence M. Friedman,

Various trends of “Law and...” scholarship testify to sincere attempts to contest and breach this isolation, and likely also point to another cause for this isolation, at least in scholarship: the tendency toward categorization and firm disciplinary boundaries characteristic of modern scholarship. “Law and...” would then, in turn, be viewed as a scholarly byproduct of postmodern currents of interdisciplinarianism.

The pendulum has begun its swing back in the other direction, as demonstrated in a recent criticism against the various “Law and...” movements.<sup>27</sup> My article, with its betraying title, is admittedly part of an interdisciplinary trend, and even calls for more of it, as I advocate a stronger reliance on legal theory among those studying 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 not part of the “Law and Society” movement in the general realm of the study of law: Cotterrell did not define his interest as “Law and Society,” but rather the “Sociology of Law.” As such, he insisted that the discipline requires empirical research and data that will inform the study of the “Living Law.”<sup>28</sup> As this is impossible with Essene law, the title “Law and Society” seeks to underscore its interest in the “Living Law” of the Essenes, inasmuch as it is possible to unravel the living law and extract it from the remaining documents. It also reaffirms the evident political aspect of Essene law, since, contrary to the claims made in these texts, the law is not divine, nor is it a straightforward interpretation of the laws of the Torah. It is, ultimately, a social product.

In his *Basic Concepts of Legal Thought*, legal theorist George Fletcher begins his outline by describing the legal system, and then proceeds to describe its “Ultimate Values”: Justice, Desert, Consent, and Equality.<sup>29</sup> My discussion begins with Ultimate Values, partially because the full nature of the legal system of the Essenes remains unavailable, and partially because these values

“Law, Lawyers, and Popular Culture,” *Yale Law Journal* 98.8 (1989): 1579-1606.

- 27 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.
- 28 Cotterrell, *Sociology of Law*, 28-43. See also his, “Living Law Revisited: Communitarianism and Sociology of Law,” in *Communitarianism in Law and Society*, ed. Paul van Seters (Lanham: Rowman and Littlefield, 2006), 33-48.
- 29 George P. Fletcher, *Basic Concepts of Legal Thought* (Oxford: Oxford University Press, 1996), 11-135.

serve as the foundation on which that system rests.<sup>30</sup> However, as is the case with all values, Essene values are founded on certain ontological beliefs that in this context are of a legal substance just as much as they are philosophical. To return to the values outlined by Fletcher, it is clear that their acceptance assumes certain ontological and historical beliefs. 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. The following will describe the ontological and ethical beliefs presupposed by Essene law as their premises. After describing these basic tenets, which are Nature and Creation, Authority and Obligation, I will examine some specific cases in which these tenets inform actual laws that shape the community. These include laws of initiation, exclusion, social structure and offices, and, finally, social conduct within the sect. In some of these cases I will examine not only particular laws, but also the rhetoric of justification embedded in the law.

## 2. *Premises of Essene Law*

The premises of Essene law are not listed in an explicit manner. In order to reconstruct the worldview and presumptions that are assumed as given in the wording of the law, one must extrapolate them from various excerpts of rhetoric, admonition, and justification, as well as closely examine the laws themselves. The most significant contribution to this exploration lies in a series of articles

30 Conversely, Fletcher's choice of order recalls a standard method of inquiry by legal theorists, which discloses a degree of formalism even amongst its opponents: the outset 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 classics: Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967); H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961); and Ronald Dworkin, *Law's Empire* (Cambridge: Belknap Press of Harvard University Press, 1986). An interesting, if unsurprising, divergence from this tendency is seen in the structure of Lon L. Fuller's *The Morality of Law* (New Haven: Yale University Press, 1964), which begins with a definition of morality before proceeding to a definition of law.

by Daniel R. Schwartz,<sup>31</sup> who, following Yohanan Silman,<sup>32</sup> hypothesized the “realism/nominalism” paradigm, claiming that priestly Sadducean law was realist, while rabbinic Pharisaic law was nominalist. 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.<sup>33</sup>

For the purposes of this study, I am setting aside the points of criticism raised against Schwartz’s paradigm, including the question of identification or relation of Sadducees to the Essenes (or to the “Qumranites,” as those who do not wish to identify them with the Essenes might put it), the relation of the rabbis to the Pharisees, and the justification of labeling rabbinic law as essentially nominalist. Rather, I contend that through this series of articles, Schwartz has persuasively shown that Essene law has a deep strand of “realism,” which I prefer to call henceforth as the Essene version of natural law, following Rubenstein.<sup>34</sup> In one of Schwartz’s more recent responses to his critics, he

- 31 Daniel R. Schwartz, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law,” in *The Dead Sea Scrolls: Forty Years of Research*, eds. 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-hashqafot be-tarbut Yisra’el* 2 (1992): 63-79 (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),” *Tarbiz* 74.1 (2004): 21-41 (Hebrew); idem, “Arguments of *Qal va-homer* as Sadducean Realism,” *Masekhet* 5 (2006): 145-56 (Hebrew); idem, “Yannai and Pella, Josephus and Circumcision,” *DSD* 18.3 (2011): 339-59.
- 32 Yohanan Silman, “Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations,” *Diné Israel* 12 (1984-1985): 249-66 (Hebrew).
- 33 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 Press, 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; 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.
- 34 Rubenstein, “Nominalism and Realism,” 158-59. Christine Hayes has criticized Rubenstein for this and upheld Schwartz’s terminology, claiming that “natural law” vs. “legal positivism” is a schism of legal theory, while Schwartz is pointing towards an ontological and epistemological stance. See 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), 119-46. I laud the question

has noted that despite the fact that some Essene laws seem to contradict his argument, they do not occur in points of contention. There is an important nuance here that needs to be emphasized: no legal system is an emblem of philosophical consistency. By their very nature, legal systems tend to be the result of compromises between various political forces, ideological motivations, and unpredicted circumstances, which in their summation constitute the law. The more elaborate a legal system becomes, the less consistent it is, and if we had Essene proceedings of jurisprudence<sup>35</sup> in addition to their documents of legislation, we indubitably would have been even more perplexed by the apparent contradictions between the written law and its application. Even the brief report by Josephus notes that the laws of excommunication are not observed in full, and are often reverted. The penal code in the Community Rule, however, does not give any clue that the legal practices were more lenient than its own decrees.

Following close readings of the texts of Essene law, I argue that the version of natural law reflected in these texts is comprised of the following: the law is divine in origin and everything else derives from this. The legislator is also the creator, and therefore laws concerning time or place reflect natural phenomena and attributes that the creator imbued in them. As a result, any transgression of the law entails a disruption of balance in the world, and causes a physical reality. Schwartz aptly likens this to drinking poison: whether or not a person is aware of consuming the poisonous substance, the results will be the same.<sup>36</sup> Similarly, the strict version of natural law by the Essenes extends beyond the views that law is pre-existing and that it is the duty of humans to reveal it, and actually conceptualizes law as strongly involved in the course of nature,

Hayes raises, namely the exact substance and content of the debate, but favor the legal terms precisely because my aim is to emphasize the legal nature of these texts. Hayes is correct in arguing that Schwartz is addressing the ontological and epistemological views reflected in these texts, but the ontological stances reflected in these texts appear only in a presupposed form in the context of lawmaking. The existence of such presuppositions underlying the text does not preclude the texts from the realm of law, and the scholarly framework used to analyze them should strive to restore them back to this context.

35 4Q477 is a faint trace of the rich jurisprudential reality at Qumran, with practically no records preserved. See Esther Eshel, "4Q477: The Rebukes by the Overseer," *JJS* 45.1 (1994): 111-22; Charlotte Hempel, "Who Rebukes in 4Q477?" *RevQ* 16.4 (1995): 655-56.

36 Schwartz, "Between Sages and Priests," 65-66.

concomitantly governing nature and dominated by it.<sup>37</sup> The prime example of the polemic over the calendar<sup>38</sup> demonstrates this: the seasons and the annual cycle of the sun are conceived as operating by a preordained law of the creator, and, in doing so, stipulate certain behavior and rituals to be followed in the same diligence and order in which the sun rises.<sup>39</sup>

This view of law places a tremendous significance on authority. The primary authority is that of the text, the biblical law that is allegedly followed to the letter. However, since many of the laws of the sect are either interpretations of biblical laws or entirely new inventions not founded on the Pentateuch at all, authority denotes also the power to those who are responsible for the correct interpretation, application, and enforcement of the law, namely, the leaders of the sect.<sup>40</sup>

37 Of course, it is precisely these foundations that make natural law a concept that permeates many aspects of Judaism, as can be seen in David Novak's *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998). The majority of the discussion extends beyond anything that would have been known to the Essenes, but see pp. 27-61 for the biblical background of the notion.

38 The definitive study of calendars in the Second Temple period is Jonathan Ben-Dov's *Head of All Years: Astronomy and Calendars at Qumran in Their Ancient Context* (Leiden: Brill, 2008). See also Ben-Dov's survey, together with Stéphane Saulnier, "Qumran Calendars: A Survey of Scholarship 1980-2007," *Currents in Biblical Research* 7.1 (2008): 124-68, as well as James C. VanderKam's introductory, *Calendars in the Dead Sea Scrolls: Measuring Time* (London and New York: Routledge, 1998). Shorter studies of significance include Shemaryahu Talmon, "The Calendar Reckoning of the Sect from the Judean Desert," in *Aspects of the Dead Sea Scrolls*, ed. Chaim Rabin and Yigael Yadin (Jerusalem: Magnes, 1958), 162-99; idem, "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 C. Ulrich (Leiden: Brill, 1999), 379-95; Menahem Kister, "Concerning the History of the Essenes," *Tarbiz* 56.1 (1986): 1-18 (Hebrew); Uwe Glessmer, "Explizite Aussagen über kalendarische Konflikte im Jubiläenbuch: Jub 6,22-32.33-38," in *Studies in the Book of Jubilees*, ed. Matthias Albani, Jörg Frey, and Armin Lange (Tübingen: Mohr Siebeck, 1997), 127-64; Liora Ravid, "The Book of Jubilees and Its Calendar – A Reexamination," *DSD* 10.3 (2003): 371-94; Robert A. Kugler, "Of Calendars, Community Rules, and Common Knowledge: Understanding 4QS<sup>e</sup>-4QOtot, with Help from Ritual Studies," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods*, ed. Maxine L. Grossman (Grand Rapids, MI: Eerdmans, 2010), 215-28.

39 See 1QS 9.26-10.10.

40 Thus the law is effectively legislated by those with the authority to interpret previous laws, which ironically is quite a rabbinic notion, one that supposedly would have

The significance of authority implies a strong sense of obligation, expected of all members of the sect, towards the laws of God and those responsible for its interpretation. While this obligation is supposedly required as a premise of the law, I shall argue below that this is one of the elements fortified in the societal relations of the sect through the law, not only substantiating the law, but actually guarded by it, too.<sup>41</sup>

been anathema to the Essenes. On relations between interpretative authority and legislation, see Steven D. Fraade, "Interpretive Authority in the Studying Community at Qumran," *JJS* 44.1 (1993): 46-69; Charlotte Hempel, "Interpretative Authority in the Community Rule Tradition," *DSD* 10.1 (2003): 59-80; Hindy Najman, "The Law of Nature and the Authority of Mosaic Law," *Studia Philonica Annual* 11 (1999): 55-73; eadem, *Past Renewals: Interpretative Authority, Renewed Revelation and the Quest for Perfection in Jewish Antiquity* (Leiden: Brill, 2010); Abraham Sagi, "Models of Authority and the Duty of Obedience in Halakhic Literature," *AJSR* 20.1 (1995): 1-24; Azzan Yadin, "4QMMT, Rabbi Ishmael, and the Origins of Legal Midrash," *DSD* 10.1 (2003): 130-49. See also Suzanne Last Stone, "In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," *Harvard Law Review* 106.4 (1993): 813-94. For further discussion on this notion in contemporary times, see Ronald Dworkin, "Law as Interpretation," *Texas Law Review* 60 (1982): 527-50; Robin West, *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1993); Jane S. Schacter, "The Pursuit of 'Popular Intent': Interpretive Dilemmas in Direct Democracy," *Yale Law Journal* 105.1 (1995): 107-76; Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton: Princeton University Press, 1998); Aharon Barak, *Purposive Interpretation in Law*, trans. Sari Bashi (Princeton: Princeton University Press, 2005). The notion that the rabbis used interpretation to subvert the authority of the Hebrew Bible and claim more power to themselves is perhaps best represented in Moshe Halbertal's *Interpretative Revolutions in the Making* (Jerusalem: Magnes, 1997) (Hebrew), whereas Christine Hayes claims that the rabbis' rhetoric does not stand the test of their actual legislations. See 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) 127-54; eadem, "Rabbinic Contestations of Authority," *Cardozo Law Review* 28.1 (2006): 123-41.

41 As is the case with other tenets of Essene law, there are parallels with subsequent Jewish law, despite the prevailing peculiarities of the Essenes. For the duty to obey the law in Judaism, see Robert Cover, "Obligation: A Jewish Jurisprudence of the Social Order," *Journal of Law and Religion* 5.1 (1987): 65-74; Arye Edrei, "On the Duty of Obedience in Halakhic Thought," *Iyyunei Mishpat* 24.2 (2001): 463-517; 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," *Jewish Law Association Studies* 20 (2010): 353-60.

Before concluding my overview of the premises of Essene law, I should note that these are not obvious components at all. Respect for the legal authorities is superficially reminiscent of law-obedience in modern, democratic societies. However, democracies rely on very different premises, primarily on the ideas of human rights, freedom, and equality, as stated above. Duty of obedience to officials granted with the authority of interpretation and legislation are merely necessary instruments devised to protect foundational values.<sup>42</sup> In Essene law we find no trace of ideas about human rights or freedom, and the idea of equality is explicitly contradicted through the notion of an ancestry-based hierarchy. In contemporary legal and ethical theory, obligation to the law is often dependent on the adequacy of the law to maintain and preserve those rights.<sup>43</sup> This is not the case in Essene law where the law is conceived as the true manifestation of the will of God, part and parcel of the natural order. Authority and obligation are not political constructions devised to maintain social order, but rather naturally and divinely ordained requirements, necessary for the proper conduct of the universe and of history.

### 3. *The Impossible Paradox of Voluntary Association and Fate*

Having described my methodological approach to the study of Essene law, as well as the major foundations of this law, I now turn to explore the relations between law and society as reflected in these texts. This exploration is by no means comprehensive. I begin, in fact, by glossing over a very important aspect that has been treated sufficiently by others, primarily by Steven Fraade,<sup>44</sup> namely that the community itself is constituted through law, legislating an elaborate procedure of admission and culminating with a ceremonial rite of

- 42 Austin Sarat, ed., *The Blackwell Companion to Law and Society* (Oxford: Blackwell, 2004), 131-230. See also Debra Livingston, "Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing," *Columbia Law Review* 97.3 (1997): 551-672.
- 43 E.g., Kent Greenawalt, *Conflicts of Law and Morality* (Oxford: Clarendon Press, 1987); Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon Press, 1973); Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton: Princeton University Press, 2005).
- 44 Steven D. Fraade, "Rhetoric and Hermeneutics in Miqṣat Ma'ase Ha-Torah (4QMMT): The Case of the Blessings and Curses," *DSD* 10.1 (2003): 150-61.

passage and admission.<sup>45</sup> Not all communities require an admission process, and this initial step profoundly expresses the decisive role law plays in the life of the sect, and the manifold ways in which it administrates and constructs societal relations.

It should also be clear, however, that the deterministic view of the sect<sup>46</sup> prevents us from viewing this initiation process as entirely voluntary. Those admitted to the sect have chosen to live righteously, but it is nevertheless understood that they do so because their fate has destined them to be among the Sons of Light.<sup>47</sup> The tension between choice and volition on the one hand and between fate and destiny on the other is evident in the recurring vocabulary and rhetoric of both these notions. An excerpt from column 1 of 1QS will serve as an example:

ולאהוב כול	3b
אשר בחר ולשנא את כול אשר מאס לרחוק מכול רע	4
ולרבוק בכול מעשי טוב ולעשות אמת וצדקה ומשפט	5
בארצ ולוא ללכת עוד בשרירות לב אשמה ועיני זנות	6
לעשות כול רע ולהבי את כול הנדכים לעשות חוקי אל	7
בברית חסד להיחד בעצת אל ולהתהלכ לפניו תמים כול	8
הנגלות למועדי תעודותם ולאהוב כול בני אור איש	9
כגורלו בעצת אל ולשנא כול בני חושך איש כאשמתו	10

45 1QS 1.1-2.18, cf. CD 15.5-16.2; Josephus, *Jewish War* 2.8.7. See on these texts Sarianna Metso, *The Textual Development of the Qumran Community Rule* (Leiden: Brill, 1997), 129-33; Charlotte Hempel, *The Laws of the Damascus Document: Sources, Tradition, and Redaction* (Leiden: Brill, 1998), 73-90.

46 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; 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; Jonathan Klawans, "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*, ed. Maxine L. Grossman (Grand Rapids, MI: Eerdmans, 2010), 264-83.

47 See further on this point by 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 (Grand Rapids, MI: Baker, 2001), 381-414.

- 3b and to love all
- 4 that he has chosen and to hate everything that he has rejected,  
and to stay away from all evil
- 5 and to cling to all deeds of goodness, and to do truth and righteousness and justice
- 6 on earth and to walk no longer in the stubbornness of the heart,  
in guilt, and in the eyes of harlotry
- 7 doing all that is evil, and to bring all those who willfully dedicate  
themselves to do the laws of El<sup>48</sup>
- 8 into a covenant of grace, to yaḥadize<sup>49</sup> in the counsel of El, and to  
walk before him perfectly (in accordance with) all
- 9 the revealed (laws) of their appointed times, and to love all the  
Sons of Light, each one
- 10 according to his fate in the counsel of El, and to hate all the Sons  
of Darkness, each one according to his guilt

The voluntary choice to follow the laws (7) and join the Yaḥad (8) is further reflected in words of action (“to love” – 3; “to cling” – 5, “to walk” – 6, 8), emphasizing that man directs his own actions out of volition and choice. In the same brief passage, however, choice and election is explicitly and strongly associated with the decree of God concerning what is good and what is evil (4), in addition to language of “fate” (10) and “appointed” (9), diminishing for

48 “El” seems to be used in 1QS as a proper noun, possibly as a means of avoiding the Tetragrammaton. As such, it is inaccurate to translate it as “God,” which commonly renders אֱלֹהִים in biblical translations.

49 The awkward translation I offer here is intended to stress that the authors who decided to use יָחַד 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*, 139; cf. *DSSSE* 1:71, Collins, *Beyond the Qumran Community*, 71), “enrolling” (*DSSSE* 1:83), “joined” (Wise, Abegg and Cook, *Dead Sea Scrolls*, 127), “to make common cause” (Wise, Abegg and Cook, *Dead Sea Scrolls*, 133), 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, “form a... community” for 1QS 9.6 (*DSSSE* 1:91). I accept this interpretation, 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 Yaḥad. On the rhetorical use of יָחַד see Carol A. Newsom, *The Self as Symbolic Space: Constructing Identity and Community at Qumran* (Leiden: Brill, 2004), 184-85.

all practical purposes the role of human volition. The similarities between the language here and the language in the Damascus Document<sup>50</sup> have long been noted,<sup>51</sup> and provide a further example to the shared ideas and the larger framework addressed in this study as “Essene law.”

Another tension that arises is the tension between exclusion and inclusion. The sect simultaneously fashions itself as a select group of people, the Sons of Light, separate and better than the rest of the people. At the same time, they manifest not only their disdain for their compatriots, but also a sincere concern and an attempt to change their ways.<sup>52</sup> An illustrious example of this tension rests in the mere existence of 4QMMT, when read as copies of an originally authentic epistle.<sup>53</sup> While stressing their separateness,<sup>54</sup> the authors of 4QMMT nevertheless show true concern for the misconduct of the addressee,

50 CD A 2.14-18, partially preserved in 4QD<sup>a</sup> 2 ii.

51 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 Glickler Chazon, and Avital Pinnick (Leiden: Brill, 2000), 85-93. However, as already noted, several scholars focus on the differences between these branches. In addition to aforementioned studies, see also Himmelfarb, *A Kingdom of Priests: Ancestry and Merit in Ancient Judaism*, 115-42.

52 For further discussion on this nuance from a different perspective, see Gudrun Holtz, “Inclusivism at Qumran,” *DSD* 16.1 (2009): 22-54 and survey of previous bibliography there. See also 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.

53 This is disputed by many. For a survey of views, see Hanne von Weissenberg, *4QMMT: Reevaluating the Text, the Function, and the Meaning of the Epilogue* (Leiden: Brill, 2009), 144-67. Grossman’s response to Fraade’s groundbreaking essay on the issue accentuates the multiple possible uses of the text and serves as an important point to keep in mind when considering the purpose of several copies archived in Qumran. See Steven D. Fraade, “To Whom It May Concern: 4QMMT and Its Addressee(s),” *RevQ* 19.4 (2000): 507-26 and Maxine L. Grossman, “Reading 4QMMT: Genre and History,” *RevQ* 20.1 (2001): 3-22. However, that its initial purpose was as an epistle with a specific addressee in mind seems to me evident from its rhetoric, as well as the extant laws, which do not include any laws that would be of exclusive concern to the inner circle of the sect. See Menahem Kister, “Studies in 4QMiqsat Ma’ase Ha-Torah and Related Texts: Law, Theology, Language and Calendar,” *Tarbiz* 68.3 (1999): 317-71 (Hebrew).

54 I am referring here to the famous proclamation: [וש]פרשנו מרוב העוֹם (‘‘that we have separated ourselves from the multitudes of the people’’) in 4QMMT<sup>d</sup> (4Q397) 14-21, 7 [Composite Text: MMT C, 7].

and by implication disclose an assessment that they do believe there is hope for change. These tensions once again evoke the lack of consistency revealed when examining an ideology against the realities of its practiced life. It calls us to proceed with more caution when examining inconsistencies between the texts, and to consider not only the factual contradictions, but also the context and possible causes for these contradictions.

Some will argue that joining 4QMMT and 1QS into one discussion is a methodological flaw, especially since the historical circumstances and the social milieu in which and for which 4QMMT was authored are so disputed. I therefore reiterate that my methodological stance is to analyze these texts as "Essene law," recognizing that "Essene" denotes various factions operating over a considerable time period, and, therefore, differences and opposing views are not surprising. It is the shared elements that concern me. Both 4QMMT (Composite Text C, 76-80) and 1QS (9.5-7) express a clear distinction of hierarchy between priesthood and laity, which must be maintained as part of religious life and the socio-legal reality. Within 1QS the concerns would have been for the structure of the sect itself. But the concern extends beyond the conduct of the sect itself, reflecting precisely the tension I am addressing here, between exclusion and inclusion. The sect does not suffice with mandating hierarchical constructions for itself but is concerned with maintaining this hierarchy outside of its circles. Following the readings of 4QMMT by Fraade and Grossman, I note that the existence of several copies testify to a continuing interest in this text, even if it did belong to an earlier stage of the sect, as some have argued. Whether studied by novices or by all sectarians, their study inculcates a sense of responsibility for the temple in Jerusalem, even if the members have withdrawn from it. The existence of the texts, thus, reveals to us that a sincere concern for erring outsiders, as well as a scathing admonition to them, remained a vital element of this secluded sect.

This concern for hierarchical boundaries is markedly related to Schwartz's point concerning "realism," or to the Essene view of natural law. Hierarchies are a result of natural phenomena (such as age, gender, lineage) and thus are part of the natural order and movement of the world, preordained by God. The errors of the priests contaminate the temple and the holy city, and separating from the multitudes would have probably been viewed as insufficient for purposes of purification, and, ultimately, salvation.

#### 4. *Two Types of Exclusion*

In addition to the sect's separation from the multitudes of the people and the inherent tensions in such an act of exclusion, there are also the exclusionary practices within the sect itself. Here we encounter two major types of exclusion: a fixed purity exclusion and a fluctuating punitive exclusion.<sup>55</sup> The first category reflects those who are permanently prohibited from partaking in the congregation. Such lists of prohibited individuals appear in the Damascus Document (CD 15.15-18; cf. 4QD<sup>a</sup> 8 i), the Rule of the Congregation (1QS<sup>a</sup> 2.3-9), and the War Scroll (1QM 7.3-7). These three lists are once more an example for the usefulness of labeling these texts "Essene" and pointing to their shared tradition, worldview, and laws.<sup>56</sup> The differences between the lists are definitely important, as well as the separate circumstances they imagine. The eschatological war envisioned in the War Scroll requires laws of purity as if it were a ritual event, but nevertheless it is understood as ahistorical: it does not depict a past event, and its author, who quite certainly was familiar with the Damascus Document and the Community Rule (and plausibly other sectarian texts, such as the Hodayot), did not expect the war to be a recurring event of routine as those described in the Damascus Document and the Rule of Congregation. But it is precisely these differences that emphasize all the more the shared rationale provided in all three texts for the exclusion of deformed

55 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," as cited above, n. 23). 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: differences exist not only between Essene law and rabbinic law, but even within each of those systems we can find contradictory approaches. A full appraisal of a legal system requires an acknowledgement of the diverse circumstances it seeks to regulate, and as a result, of its multivalent composition.

56 For comparison of the War Scroll and the Rule of Congregation, see Brian Schultz, *Conquering the World: The War Scroll (1QM) Reconsidered* (Leiden: Brill, 2009), 327-65.

people, as noted already by Shemesh,<sup>57</sup> Wassen,<sup>58</sup> and Dorman<sup>59</sup>: the presence of these deformed people would be offensive to the angels. Wassen suggests that in addition to concerns of purity, this practice also reflects a fear of evil forces, namely demons. The language in any of these texts does not allow us to equate impurity with sin, let alone evil, although it should be agreed that there is a correlation between the degree of concern for impurity in a certain group and the possibility of conflation between the dichotomy of pure\impure and the dichotomy of good\evil.

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. 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 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 homogeneous 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 comprehensiveness: the child is, by nature, an exclusionary category that can change through life. It is fixed in the sense that so long as 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.

- 57 Aharon Shemesh, "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.
- 58 Cecilia Wassen, "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*, ed. Wayne O. McCready and Adele Reinhartz (Minneapolis: Fortress Press, 2008), 115-29.
- 59 Johanna Dorman, *The Blemished Body: Deformity and Disability in the Qumran Scrolls* (Groningen: Rijksuniversiteit, 2007). Full text of this dissertation can be found online at <http://irs.ub.rug.nl/ppn/303227966>.

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].<sup>60</sup> 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.<sup>61</sup>

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 excommunication.<sup>62</sup> 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

60 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), 376-79.

61 In addition to aforementioned studies by Shemesh, Wassen, and Dorman, 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.

62 On the penal codes see Schiffman, *Sectarian Law in the Dead Sea Scrolls*; Aharon Shemesh, *Punishments and Sins* (Jerusalem: Magnes, 2003) (Hebrew); 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*, 141-48.

impurity under Essene law.<sup>63</sup> However, if it is preposterous to imagine a suspended exclusion of someone with a sight problem who is not entirely blind, it is difficult 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 we know this is not the case: we know that the exclusion of the deformed is stricter than that of the transgressors, and we have a testimony that even after a permanent excommunication was decreed, it could be overturned.

Reconciling a legal rationale with real-life practice of jurisprudence requires acknowledgement 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.

### 5. *Community Structure and Officers*

The interrelations of law and society are not restricted to the boundaries of that society through the acts of law. The society is regulated through laws, and the rules for enforcing those laws and assigning roles and authority are themselves products of legislative activity. While the Essenes conceived of the law as divine in origin and not by inspiration alone, the legacy of the Torah left a tension as to the origin of appointing officers for the practice of jurisprudence. Exod 18:13-27 famously recounts how Moses delegated his jurisprudential roles to chiefs of thousands, hundreds, fifties, and tens following the advice of his Midianite father-in-law. Num 11:14-17 suggests that God initiates the delegation of authority from Moses to seventy elders and overseers (שטררים) in response to a complaint from Moses. In either case, the establishment of legal institutions based on hierarchy and merit is said to date back to the times of Moses. The precise roles of the elders, which appear to pre-exist this

63 Martha Himmelfarb, "Impurity and Sin in 4QD, 1QS, and 4Q512," *DSD* 8.1 (2001): 9-37.

establishment, is not made explicit and while it clearly concerns legal matters, it comprises a variety of duties.<sup>64</sup>

Similarly, the Essenes do not explicitly claim their social structures to be divinely sanctioned,<sup>65</sup> although they do claim to have access to knowledge of divine origin.<sup>66</sup> The structure of the sect is regulated through law on two levels: first, communities are divided into tiers based on ritual roles, singling out the priests, descent (reflected in terms such as the sons of Zadok, the sons of Aaron, and the sons of Israel), and age, exemplified in the priority of elders. In addition to this hierarchy of the community as a whole, the laws assign specific

- 64 For further study of the elders, see Hanoch Reviv, *The Elders in Ancient Israel: A Study of a Biblical Institution*, trans. Lucy Plitmann (Jerusalem: Magnes, 1989); Timothy M. Willis, *The Elders of the City: A Study of the Elders-Laws in Deuteronomy* (Atlanta: Society of Biblical Literature, 2001); Michael Walzer, *In God's Shadow: Politics in the Hebrew Bible* (New Haven: Yale University Press, 2012), 185-98.
- 65 In a personal exchange, Alex Jassen drew my attention to the fact that "1QS 2:21-22 reuses language from Ex. 18:21, 25; Deut. 1:15, thus implicitly linking its communal hierarchy to the system established by Moses" (personal communication, August 29, 2012). I wholeheartedly accept this point that draws on a significant attribute of Second Temple Literature, namely establishing authority through allusion to scripture. In relation to this tendency in 1QS, see Sarianna Metso, "The Use of Old Testament Quotations in the Qumran Community Rule," in *Qumran between the Old and New Testaments*, ed. Fredrick H. Cryer and Thomas L. Thompson (Sheffield: Sheffield Academic Press, 1998), 217-31; Aharon Shemesh, "The Scriptural Background of the Penal Code in the Rule of the Community and Damascus Document," *DSD* 15.2 (2008): 191-224; Bilhah Nitzan, "The Decalogue Pattern in the Qumran Rule of the Community," in *Qumran Cave 1 Revisited: Texts from Cave 1 Sixty Years After Their Discovery*, ed. Daniel K. Falk et al. (Leiden: Brill, 2010), 57-75. For more general comments see n. 41, and 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; Judith H. Newman, *Praying by the Book: The Scripturalization of Prayer in Second Temple Judaism* (Atlanta: Scholars Press, 1999); Sidnie White Crawford, *Rewriting Scripture in Second Temple Times* (Grand Rapids, MI: Eerdmans, 2008).
- 66 The prime example being 1QpHab 7.3-5 and its commentary on Hab 2:2 as referring to secrets entrusted to the Teacher of Righteousness. See Loren T. Stuckenbruck, "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 Clements (Leiden: Brill, 2010), 23-49. For "knowledge" in the context of Second Temple literature, see Alexander P. Jassen, *Mediating the Divine: Prophecy and Revelation in the Dead Sea Scrolls and Second Temple Judaism* (Leiden: Brill, 2007), 241-78.

roles to individual officers, namely the priest (הכוהן), the Instructor (המשכיל), the examiner (הפקיד), and the overseer (המבקר).<sup>67</sup> There are no clear laws as to how one is appointed to office, or even the degree of convergence between these various roles.<sup>68</sup> Still, it is correctly assumed that only priests could become officers.<sup>69</sup> This is a lack of what Hart called primary rules,<sup>70</sup> which are the laws that govern the legal process by establishing the obligation to adhere to the laws and stipulating the manner in which laws are legislated. Their absence can be explained in various manners, such as attributing it to an underdeveloped legal system or pointing out to the Torah as a basic “Rule of Recognition” accepted by all the members of the sect, but hypotheses regarding deficiencies are ultimately confined to the realm of speculation. While the political process that entrusted the officers with authority remains unknown, it is certain that these officers play a major role in administering and enforcing the law within practically every social interaction. This “overarching organization,” as Steven Fraade has called it,<sup>71</sup> does not only seek to monitor and manipulate the conduct of individuals, effectively argued in Carol Newsom’s Foucauldian reading of 1QS,<sup>72</sup> but also the conduct of the community as an undivided unit.

67 For a survey of both the group hierarchies and the role of the officers see 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. Published in Honour of Joseph M. Baumgarten, ed. Moshe J. Bernstein, Florentino García Martínez, and John I. Kampen (Leiden: Brill, 1997), 349-76. Cf. 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; Shane Berg, “An Elite Group within the Yahad: Revisiting 1QS 8-9,” in *Qumran Studies: New Approaches, New Questions*, ed. Michael Thomas Davis and Brent A. Strawn (Grand Rapids, MI: Eerdmans, 2007), 161-77.

68 Jastram, “Hierarchy at Qumran,” 356-59.

69 1QS 9.7. Cf. Baumgarten, *Flourishing of Jewish Sects*, 46-48.

70 H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 77-120.

71 In contrast to rabbinic חבורה. See Steven D. Fraade, “Qumran *Yahad* and Rabbinic *Hābūrā*: A Comparison Reconsidered,” *DSD* 16.3 (2009): 433-53 (quote from p. 451).

72 Newsom, *Self as Symbolic Space*, 91-190.

### 6. Laws Regulating Social Conduct

In order to investigate the preponderate nature of law over the community, I proceed by exploring several cases in which law regulates quotidian social conduct. In 1QS 6.3-8 we read:

ובכול מקום אשר יהיה שם עשרה אנשים מעצת החיד אל ימש מאתם איש	3b
כוהן ואיש כתכוננו ישבו לפניו וכן ישאלו לעצתם לכול דבר והיה כיא יערוכו השולחן לאכול או התירוש	4
לשתות הכוהן ישלח ידו לרשונה להברך בראשית הלחם או התירוש לשתות הכוהן ישלח ידו לרשונה	5
להברך בראשית הלחם והתירוש ואל ימש במקום אשר יהיו שם העשרה איש דורש בתורה יומם ולילה	6
תמיד עליפות <sup>73</sup> איש לרעהו והרבים ישקודו ביחד את שלישיית כול לילות השנה לקרוא בספר ולדרוש משפט ולברך ביחד	7 8

- 3b And in every place where there are ten men of the Council of the Yahad, let not lack among them a man
- 4 who is a priest. And each one shall sit according to his rank before him, and thus too they shall ask their counsel on every matter. And when they prepare the table for eating, or the new wine
- 5 for drinking, the priest will send out his hand first to bless (or: be blessed) in the first (piece and drop)<sup>74</sup> of the bread and the wine <for drinking, the priest will send out his hand first

73 Read: חליפות.

74 Despite the usage of ראשית as "first fruit" (Hos 9:10) and in contrast to previous translations, it does not seem in context to refer to ראשית as such. The law is mandating conduct for every dinner on a set table, and one can hardly imagine that every dinner would include "first fruit," bread, or wine. García Martínez and Tigchelaar suggest reading this as an interpolation of a specific law concerning first fruits, but I see no reason to see anything else but the first bite of the bread and first drop of the wine.

- 6 to bless (or: be blessed) in the first (piece and drop) of the bread and the wine>. And in a place where there are ten, let not lack among them a man to study the law, day and night
- 7 always, relieving one another. And the Many shall be watchful together (or: in the Yaḥad) for a third of each night of the year to read the book, and seek justice
- 8a and bless together (in the Yaḥad).

There are several issues of interest in these statutes concerning the duties of the priest in the sect. His stated prerogative to be the first to send out his hand for the bread or the new wine is not simply the privilege of the elite to choose their portions, since it is enveloped in two separate laws that do not allow him to enjoy benefits of his status, but rather impose on him duties and make demands on his time. These two laws mandate that any gathering of ten members of the sect will include a priest, and that any gathering of ten people will include a designated member who will study the law.<sup>75</sup> It seems plausible that complying with these stipulations was not a challenging task, given the assumption that many members of the sect were priests. A Foucauldian reading,

75 These two laws also have noteworthy implications for the study of spatial conceptualizations in Qumran, specifically in the context of the social production of space, which will be the focus of a projected study of mine, employing Henri Lefebvre's *La production de l'espace*, 3rd ed. (Paris: Anthropos, 1986). For the purpose of this discussion, note how the happenstance space (ובכרול מקום) becomes a significant, designated place by the people occupying it. On the distinction between "space" and "place" I am relying on Yi-Fu Tuan, *Space and Place* (Minneapolis: University of Minnesota Press, 1977). My usage of modern spatial theory in reading Second Temple texts is indebted to Liv Ingeborg Lied, *The Other Lands of Israel: Imaginations of the Land in 2 Baruch* (Leiden: Brill, 2008). See also idem, "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*, ed. Jonathan G. Campbell, William John Lyons, and Lloyd K. Pietersen (London: T & T Clark, 2005), 101-25. For further developments in spatial theory and the study of the Dead Sea Scrolls, see Alison Schofield, "Re-placing Priestly Space: The Wilderness as Heterotopia 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; 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.

to echo Newsom once more,<sup>76</sup> 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:<sup>77</sup>

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[ש]ר[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 [ונענש עשרת ימים]   וכן לאיש הנפטר
7	[אשר] לו בעצת הרב[ו]ים [וה]נם <sup>77</sup> שלוש פע[מ]ים על מושב[ו] אחד
8	[ונענש] עשרה ימים אם [יזקפו] ונפטר [במושב שלושים]
9a	[יום]

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

77 4QD<sup>a</sup> 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 vengeance<sup>78</sup> of his fellow outside of<sup>79</sup> 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 so<sup>80</sup> 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 **הוכחה**. 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.”