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Halakhah and History: The Contribution of the Dead Sea Scrolls to Recent Scholarship

From the beginning of modern Jewish scholarship, the nexus between *halakhah* and history was realized. Throughout Jewish history, Jewish law has played a decisive part in shaping the character of the Jewish community and has had profound effects on the political, social, and religious history of the Jews. At the same time, Jewish law has itself been affected in many ways throughout history by the historical circumstances in which it developed. Hence, it is virtually impossible to separate the two poles of our subject here from one another.

It is perhaps a curiosity that despite these virtually self-evident facts, neither one of these disciplines in the pre-modern period recognized the role of the other. Virtually all of those few medieval Jewish scholars who took up the study of history – those whom we somewhat disdainfully term historiographers – wrote their works as if the placing of the Sages of Jewish law in chronological order were sufficient to claim the title “history”¹. No attention was paid to the evaluation of the contents of Jewish law except as regards the few cases in which the legal materials themselves testify directly to their own history. Even the most cursory examination of halakhic literature will show that even though this material constitutes one of the modern scholar’s prime sources for the study of political, economic, and social history, it itself barely recognized the role that such factors had in the shaping of its content and character.

Modern conceptions of social and political evolution were quickly grafted on to traditional Jewish legal learning in the 19th century and so the field of the history of *halakhah* as we know it, indeed as we take it for granted, came into being. In fact, this field of inquiry was greatly encouraged by two interrelated non-academic factors.

First, it was to a great extent born in the feeling that the scientific investigation of the history of Jewish practice would help in dealing with the challenges posed to traditional Judaism by modernization. Such figures as Abraham Geiger and

¹ See *Gerson D. Cohen, Sefer Ha-Qabbalah, The Book of Tradition by Abraham ibn Daud* (Philadelphia 1967) L-LVI for a survey of medieval Jewish historiography and its relation to the Muslim *isnad*.

Zacharias Frankel sought to base the reform and/or preservation of Judaism on such scholarly inquiry².

Second, individual Jewish scholars, many of them pulpit rabbis, saw the academic study of the Talmudic texts in which they had been trained for the rabbinate as an effective bridge between the tradition and the modern world in which they now found themselves. One has only to peruse the *Monatsschrift für die Geschichte und Wissenschaft des Judentums* or the *Jahresberichte* of the various modern European rabbinical seminaries to see how attractive such topics were in the 19th century³.

With the emergence of Jewish studies as we know it, which, in fact, should be traced to the opening of the Hebrew University in 1925, the self-conscious vision of the study of the nexus of *halakhah* and history gave way to what proposed to be dispassionate scholarly inquiry. Henceforth, a new page was turned in the study of history of Jewish law which would primarily be carried on in universities in Israel and the United States, and, to some extent, in American rabbinical seminaries. Even here, however, ideological considerations were still present, yet a much greater degree of objectivity was certainly achieved. But by the time this transition occurred, fundamental changes in what we may define as the canon of texts in Jewish law would take place. Further, interaction between the study of ancient Judaism and the disciplines of ancient history and classics would bring about such fundamental recasting of the political, social, and economic history of the Jews in Late Antiquity as to prepare the way for a totally new vision of the links between *halakhah* and history.

When scholars of the *Wissenschaft des Judentums* first turned to the study of the history of *halakhah*, and when they first began mining halakhic sources for more conventional historical data, they immediately found themselves working with a much wider set of evidence than had been available to pre-modern students of this topic. This was because of important developments that had taken place in Jewish and Christian intellectual history. Beginning in the Renaissance, Jews, albeit a small minority, once again became conversant with Hellenistic Jewish literature which had been preserved by the Christians⁴. The works of Josephus, Philo, the Septuagint, and the Apocrypha provided numerous examples of halakhic material which appeared to be at variance with Rabbinic *halakhah* and which historically-minded scholars realized pre-dated the collections of Rabbinic material as they have been preserved. In Christian circles a series of expeditions and discoveries in the 17th, 18th, and 19th centuries brought to the attention of European scholars Jewish documents of the Second Temple period, which we today imprecisely term pseudepigrapha. These texts, most notably Jubilees and Testament of

² Ismar Schorsch, *From Text to Context, The Turn to History in Modern Judaism* (Hanover, London 1994) 177–204, 255–65, 303–33; Michael A. Meyer, *Response to Modernity, A History of the Reform Movement in Judaism* (New York, Oxford 1988) 62–99.

³ On the rise of the modern rabbinate, see Schorsch, 9–50.

⁴ See Lester A. Segal, *Historical Consciousness and Religious Tradition in Azariah de' Rossi's Me'or 'Einayim* (Philadelphia 1989) 27–86.

Levi, contain numerous halakhic materials which are at variance in some cases with Rabbinic material. More generally, the emerging picture of Second Temple Judaism was greatly advanced by the theologically colored research of those seeking to establish the background of Christianity. The research of these scholars for the most part either ignored or misunderstood the role of *halakhah* in Jewish history. The theological prejudices of these authors certainly had a major impact on their work. Nonetheless, they laid the basis for the historical study of the Second Temple period, the work of Emil Schürer, of course, being the prime example⁵.

The availability of this expanded documentary evidence meant that the study of *halakhah* and its history in Second Temple times had now gone way beyond the mining of Rabbinic references to the pre-70 C.E. period. Attempts to reconstruct Sadducean or other forms of non-Pharisaic law, such as the work of Abraham Geiger⁶, the path-breaking study of Jubilees by Chanokh Albeck⁷, the work of Zacharias Frankel on the Septuagint⁸, and the somewhat later work of B. Ritter⁹ and Samuel Belkin¹⁰ on Philo had opened up new issues and in fact laid a firm basis for the study of Second Temple Jewish law as a field of study truly unthinkable without the newly expanded documentary canon with which these scholars now worked.

It was against this background that we must see the discovery of the first Dead Sea Scrolls, not by a Bedouin boy in 1947 but rather in the medieval manuscripts of the Zadokite Fragments (Damascus Document) by Solomon Schechter in 1896¹¹. It is, of course, now a commonplace that the genizah, the one hundredth anniversary of which we recently celebrate, transformed many areas of Jewish studies, including, of course, the history of *halakhah*. But in the form of this one document, preserved in two partial manuscripts, the genizah began a revolution in the history of Second Temple Jewish law. We should pause to note that the genizah yielded up not only the Zadokite Fragments but other Second Temple texts as well: partial manuscripts of Ben Sira, and parts of medieval copies of the Testa-

⁵ The renewed Jewish interest in the politics, society, and economy of the Jews in Late Antiquity stemmed in Israel from the renewal of Jewish life in the ancient land whereas in the Diaspora it was in fact the opposite consideration, the existence of a Hellenistic Diaspora and religious pluralism, which fueled this interest.

⁶ *Abraham Geiger*, *Urschrift und Übersetzungen der Bibel in ihrer Abhängigkeit von der innern Entwicklung des Judentums* (Breslau 1857); Hebrew trans. by *Y. L. Baruch*, *Ha-Miqra' ve-Targumav be-Ziqqatam le-Hitpathutah ha-Penimit shel ha-Yahadut* (Jerusalem 1948/9).

⁷ *Chanokh Albeck*, *Das Buch der Jubiläen und die Halacha* (Berlin 1930).

⁸ *Zacharias Frankel*, *Vorstudien zu der Septuaginta* (1941); *idem*, *Ueber den Einfluss der palästinischen Exegese auf die alexandrinische Hermeneutik* (Leipzig 1851).

⁹ *Bernhard Ritter*, *Philo und die Halacha* (Leipzig 1879).

¹⁰ *Samuel Belkin*, *Philo and the Oral Law, The Philonic Interpretation of Biblical Law in Relation to the Palestinian Halaka* (Cambridge, MA 1940).

¹¹ *Solomon Schechter*, *Documents of Jewish Sectaries, Volume I, Fragments of a Zadokite Work* (Cambridge 1910, reprinted New York 1970). Cf. *Yaakov Sussmann*, *Hirhurim Talmudiyim Rishonim le-'Or Megillat Miqsat Ma'ase ha-Torah, Heqer Toledot ha-Halakhah u-Megillat Midbar Yehudah*, in: *Tarbiz* 59 (1989/90) 11–22.

ments of Levi (now called the Aramaic Levi Document) and Naphtali, and the book of Tobit. The Testament of Levi should be singled out as a work of halakhic content which, together with its Qumran fragments, has great potential for contributing to the history of *halakhah*. The publication of the Zadokite Fragments was accompanied by the pioneering commentary of Solomon Schechter who came to his work with a solid training in traditional Jewish learning but with little of the ideological baggage of his *Wissenschaft* predecessors or their Christian “colleagues”. Schechter’s choice of a title for this document correctly emphasized its Zadokite/Sadducean links¹², but he incorrectly attributed the document to a group of Sadducean-type Samaritans¹³. It was ironic that Louis Ginzberg, who believed incorrectly that the document was proto-Pharisaic in origin, provided in his commentary on this work the keys to understanding virtually every line of its difficult halakhic section¹⁴.

While the work of Ginzberg, Schechter and numerous other scholars made possible a fairly thorough understanding of the halakhic content of this text, they were not able to settle the debate about either the historical ramifications of this document, that is to say the identity of the sect described in it, or its significance for the study of the history of Jewish law. Suffice it to say that between the wars, that is, in what we might call the pre-Qumran era, every possible theory was put forth about the provenance of the Zadokite Fragments¹⁵. And in regard to the importance of this material for the study of Jewish law, a great methodological error was made which must be explained at some length.

Already in the works of Abraham Geiger, it was implicit that Second Temple halakhic sources cannot be arranged in some kind of linear, chronological fashion. Geiger’s work should have shown that competing halakhic trends vied with one another in Second Temple times and that differences in *halakhah* could not be ascribed simply to differences of date. But perhaps under the influence of the theory of evolution as it had been transported to the social and historical world from its original place in the natural sciences, most early students of the history of Jewish law, even Geiger himself, had fallen into the trap of what we might call halakhic Darwinism. In fact, a Darwinian approach to the history of Jewish law may well account for the “survival of the fittest” which many scholars identify in the hegemony of Rabbinic Judaism in the aftermath of the destruction of the Temple. But the notion of a limited historical sequence which, by the way, has now been abandoned in the natural sciences, incorrectly took hold of the scholars of the history of Jewish law. Further, we can again see here tendencies towards religious reform playing a role in this process as well.

¹² The text is now known mostly as the “Damascus Document” because of the few references to Damascus, which in our view is a code word for Qumran. The designation Zadokite Fragments should have been retained, however, since it correctly indicates the character of the legal traditions in the text.

¹³ *Schechter*, XXI–XXVI.

¹⁴ *Louis Ginzberg*, *Eine unbekannte jüdische Sekte* (New York 1922); English translation with additional chapters, *An Unknown Jewish Sect* (New York 1976).

¹⁵ For a short survey, see *Lawrence H. Schiffman*, *Halakhah at Qumran* (Leiden 1975) 1–2.

Scholars simply assumed that the law had progressed from the stricter to the more lenient, clearly a reflection of their desire to see more lenient approaches applied in their own time, a trend common even amongst traditional Jewish scholars. So there was born the הלכה ישנה, the “old law”, a peculiar construct of Jewish scholarship which assumed that the old law was reflected in such texts as Jubilees, and the Zadokite Fragments, as well as in some references in Rabbinic literature to earlier practice (משנה ראשונה), and that this old law had been gradually replaced through an evolutionary process with what we may call a “new law” – that of the Pharisaic-Rabbinic tradition. This theory, ironically, had the peculiar effect of rendering the Mishnah the “New Testament” of the Jewish people in a curious aping, no doubt unconscious, of classical Christian belief.

This entire notion, however, as we now know, was entirely false. Both the canon of documentary evidence and the perspective with which the material was approached were radically altered as the result of the discovery of the Dead Sea Scrolls. The first to realize the connection between the Zadokite Fragments and the scrolls after the discovery of Qumran Cave 1 in 1947 was Eleazar L. Sukenik¹⁶ who was effectively the founder of Israeli (read: Jewish) archaeology¹⁷. Even though by 1954 the seven major scrolls from Cave 1 were in the hands of Israel¹⁸, a series of circumstances, historical, political and religious, joined together to create an environment in which the study of the scrolls would be dominated by a group of Christian scholars with little interest in Jewish law. This group, because of its unique position in the editorial process and its exclusive access to much of the evidence, especially the Cave 4 collection, was essentially able to shape the history of research until quite recently¹⁹.

Before examining that research, it is important to briefly survey the new materials and their significance for the study of Jewish law. The Cave 1 collection to which we have already alluded, yielded two major scrolls with halakhic content, albeit mixed in with sectarian teachings. The Rule of the Community provides, among its initiation rites, information on the purity system of the sectarians as well as about their understanding of the theology of Jewish law. The Rule of the Congregation, a messianic document, sets out a kind of eschatological *halakhah*. The War Scroll contains an entire version of the Deuteronomistic laws of war as understood by the sectarians. In addition, the War Scroll alludes to sacrificial law and rules of ritual impurity. It was Cave 4 that yielded manuscripts of the Zadokite Fragments and other halakhic works describing an entire system of Jewish law concerning Sabbath, marriage, purity, priestly status, etc. The now famous or infamous MMT document provided in a sectarian context even Pharisee-Saddu-

¹⁶ Eleazar L. Sukenik, *Megillot Genuzot mi-tokh Genizah Qedumah she-nimše'ah be-Midbar Yehudah* (Jerusalem 1948) 21–24.

¹⁷ See Neil Asher Silberman, *A Prophet from Amongst You, The Life of Yigael Yadin* (Reading, MA 1993).

¹⁸ The story of their acquisition is told in *Yigael Yadin, The Message of the Scrolls* (New York 1957) 15–52.

¹⁹ Cf. Lawrence H. Schiffman, *Reclaiming the Dead Sea Scrolls* (Philadelphia 1994) 3–35.

cean disputes regarding sacrificial and purification laws. The caves also yielded phylacteries and mezuzot, and the biblical scrolls revealed much information on the scribal *halakhah* of the times. Cave 11 yielded the Temple Scroll, a rewriting of the Torah designed to put forward the author's views on a variety of topics of Jewish law, most notably relating to the Temple, sacrifices, and purity. This document, however, did not surface until the '67 War, when it played an exceedingly significant role in the history of research.

But the Qumran corpus is not the sum total of the material discovered in the Judean Desert. Exceedingly important for the study of Jewish law are the Samaria papyri from Wadi el-Daliyeh which provide numerous legal documents from the fourth century B.C.E. as well as the so-called Bar Kokhba documents which include a large number of legal documents pertaining to marriage and divorce and economic transfers, most notably land transfers and loans of various sorts. We should parenthetically note that these documents came to light at the very same time that much new archaeological evidence for early synagogues and *miqva'ot* was also being discovered and analyzed.

Elsewhere we have analyzed the process by which the Qumran material was contextualized in New Testament studies and interpreted in a Christianized fashion²⁰. The first generation of Qumran scholars, because of both training and *Tendenz*, did not effectively continue the work of Schechter, Ginzberg – not even of Schürer – but sought to find in the sectarians – identified as Essenes – the monastic proto-Christians. Accordingly, for these scholars, Qumran research was carried on with little or no attention to the entire second half of the preserved Genizah manuscripts of the Zadokite Fragments or to the halakhic materials in the remainder of the Qumran corpus, most of which were left unpublished²¹. The notable exception was the publication by J. T. Milik of the Jewish legal contracts from Wadi Murabba'at²². Despite the virtual ignoring of *halakhah* by the mainstream of Dead Sea Scrolls researchers in the years between 1948 and 1967, a number of important contributions were made by isolated Jewish scholars. Most notable are the early papers by the great Talmudist Saul Lieberman²³, the work of Chaim Rabin²⁴, whose edition of the genizah manuscripts of the Zadokite Fragments became standard, and the work of Joseph M. Baumgarten²⁵. We should note, however, that perhaps the most popular of all these works, the Rabin edition

²⁰ Lawrence H. Schiffman, Confessionalism and the Study of the Dead Sea Scrolls, in: Jewish Studies 31 (1991) 5–14; *idem*, Reclaiming 16–19.

²¹ The halakhic section of the text was ignored in the otherwise incisive study of Philip R. Davies, The Damascus Covenant (Sheffield 1983) although the legal aspects of the Admonition, the text's sectarian ideological introduction, are discussed, pp. 105–42.

²² Josef T. Milik, in: Les grottes de Murabba'at (Discoveries in the Judean Desert II, Oxford 1960) 93–154.

²³ Saul Lieberman, The Discipline in the So-Called Dead Sea Manual of Discipline, in: JBL 71 (1951) 199–206; *idem*, Light on the Cave Scrolls from Rabbinic Sources, in: PAAJR 20 (1951) 395–404.

²⁴ Chaim Rabin, The Zadokite Documents (Oxford 1954).

²⁵ Joseph M. Baumgarten, Studies in Qumran Law (Leiden 1977).

of the Zadokite Fragments, was effectively a summary of the work of his predecessors, providing for the wider scholarly world a watered-down although improved version of the halakhic researches of Schechter and Ginzberg. In fact, in its efforts to attain usefulness, this book accidentally obscured from its readers the complexity of the halakhic material and its analysis, a lack partly remedied in Rabin's important book, *Qumran Studies*²⁶. It is remarkable that during this period, works of excellent and fair-minded Christian scholars continued to give little attention to the halakhic aspects of the scrolls.

To be sure, the political situation in the Middle East was a factor here. Israeli scholars limited their research primarily to the scrolls bought by Israel now housed in the Shrine of the Book. The excellent commentaries of Yigael Yadin on the War Scroll²⁷ and Jacob Licht on the Rule Scroll²⁸ certainly dealt with halakhic issues. Yadin's commentary was more influential due to its translation into English²⁹ and to his renowned expertise in military matters. But Israeli scholars did little to investigate the halakhic aspects of those texts published by the international team operating on the other side of the Mandelbaum Gate, and, of course, they were denied access to the unpublished manuscripts.

Accordingly, in the pre-1967 period, little headway was made in the topic that we are addressing here. Neither the internal history of Jewish law nor its interaction with aspects of political, social, and economic history of the Jews was given any serious treatment in synthetic works published at this time, and the Qumran scrolls were largely treated as a kind of curiosity. Ironically, with all the Christian exegesis of the sectarian corpus, synthetic works on the New Testament and early Christianity likewise demonstrated little impact of the Dead Sea Scrolls corpus, despite the raucous public debate which went on after the publication of the work of Edmund Wilson³⁰.

By contrast, this very same period, essentially from 1947–67, saw major advances regarding the similar issues raised in the study of Jewish law in the biblical, medieval and modern periods. One has only to peruse Jewish studies journals and synthetic works on Jewish history to see the tremendous progress made in these areas. A few examples will be helpful for comparative purposes.

It is during this period that biblical scholars mined the newly available Nuzi documents, sometimes even too enthusiastically, for parallels to biblical law. Indeed, the history of biblical law and its place within the ancient Near Eastern context advanced substantially. The Cairo Genizah materials continued to yield documentary evidence for the geonic period in which the history of the development of post-Talmudic legal institutions was set out. For the modern period, these same

²⁶ *Chaim Rabin*, *Qumran Studies* (Oxford 1957).

²⁷ *Yigael Yadin*, *Megillat Milḥemet bene 'Or bi-Vene Ḥoshekh mi-Megillot Midbar Yehudah* (Jerusalem 1955).

²⁸ *Jacob Licht*, *Megillat ha-Serakhim mi-Megillot Midbar Yehudah* (Jerusalem 1965).

²⁹ *Yigael Yadin*, *The Scroll of the War of the Sons of Light against the Sons of Darkness*, trans. *Batya Rabin* and *Chaim Rabin* (Oxford 1962).

³⁰ *Edmund Wilson*, *The Scrolls from the Dead Sea* (London 1955).

years saw the rise of modern Jewish history as we know it, and it was the great accomplishment of Israeli scholarship, especially in the work of Jacob Katz, which understood that *halakhah* both responded to the massive societal changes that passed over the Jewish people at this time, and at the same time helped to shape the manner in which they responded to those changes³¹.

That the study of the *halakhah* of the Dead Sea Scrolls – indeed of the Second Temple period as a whole – escaped this golden age is only to be understood as resulting from the unique – even bizarre – circumstances which led to the continued suppression of much of the required evidence of the scrolls as well as the absence of cross-fertilization of ideas between Jewish and Christian scholars. This situation would soon change, however, as the result, not of academic trends, but of political affairs.

From the beginning, the study of the Dead Sea Scrolls had a strange interconnection with the political affairs in the turbulent Middle East. Sukenik purchased the first lot of scrolls on the very eve of the division of the city of Jerusalem by barbed wire. By the time the dust of the War of Independence had settled, Qumran had passed from British Mandatory Palestine to Jordanian rule. The remaining large scrolls were purchased by Israel from the Syrian Metropolitan under cover of secrecy while the newly discovered lots from Caves 4 and 11 as well as the Wadi Murabba'at documents were being sold by the Bedouin to Jordanian authorities. Of course, the oddest of all the results of the political situation was the creation of a *judenrein* Dead Sea Scrolls publication team in Jordanian East Jerusalem. Like the Holy City, the scrolls were divided, east and west, only to be reunited in 1967.

The 1967 War was indeed a turning point for Dead Sea Scrolls studies. In the course of the War, Israel recovered the Temple Scroll and took nominal control of the unpublished materials still in the Rockefeller Museum. Yadin's preliminary lectures which accompanied the announcement of the recovery of the Temple Scroll³² as well as its publication first in Hebrew³³ and then in English³⁴ set before the scholarly world, not simply a full-length halakhic work, but perhaps even more importantly for much of the scroll, Yadin's full-length halakhic commentary which demonstrated the complexity and significance of this material both for the history of *halakhah* and for Dead Sea Scrolls research.

We have elsewhere discussed the impact of this particular discovery and its publication on the reconceptualization of the Dead Sea Scrolls as Second Temple Jewish documents, a process in which we are proud to have shared along with a fairly large group of Jewish and Christian colleagues. But in the present context, we need to explain that the Temple Scroll effectively re-energized the study of the his-

³¹ See Jacob Katz, *Halakhah ve-Qabbalah, Mehqarim be-Toledot Dat Yisra'el 'al Medorcha ve-Ziqqatah ha-Hevratit* (Jerusalem 1984) 1–6.

³² Cf. Yigael Yadin, The Temple Scroll, in: BA 30 (1967) 135–9; *idem*, in: *New Directions in Biblical Archaeology*, ed. David N. Freedman and Jonas C. Greenfield (Garden City, NY 1971) 156–66.

³³ Yigael Yadin, *Megillat ha-Miqdash*, 3 vols. (Jerusalem 1977).

³⁴ Yigael Yadin, *The Temple Scroll*, 3 vols. (Jerusalem 1983).

tory of Second Temple Jewish law, setting forth what would become an agenda for years to come. Further, the beautiful Hebrew edition of the scroll, replete with Rabbinic quotations and citations, drew the attention of Talmudic scholars and historians of Second Temple Judaism to this fascinating work.

Throughout the analysis of this document, in Yadin's commentary and in the works of other scholars who dealt with the scroll, the Darwinian theory which had spawned the "old" and "new" *halakhah* never reared its head. By this time, students of the history of *halakhah* in other periods, whether in the Rabbinic corpus, in the medieval Rabbanite-Karaite debate, or the scientific study of the rise of new movements in modern Judaism, had all made clear the need to recognize that varying opinions coexisted at the same time and that debate and dispute often characterized the history of Jewish law. Further, by this time, new studies of the law of Jubilees and other Second Temple documents had greatly enhanced the sense that alongside the law of the Pharisees, later enshrined and developed into the Rabbinic tradition, other ideas competed in the halakhic marketplace.

Further, the historical context of this situation was now easily understood since the previous half-century had brought with it tremendous strides in the study of the history of the Jews in Late Antiquity, most of which are summarized in the new Schürer. In the interim, however, the history of Rabbinic *halakhah* had itself entered into a period of furious debate as a result of the challenges to the methods for reconstructing the history of both Rabbinic literature and Judaism in Late Antiquity from Rabbinic sources, bringing to bear methods and questions derived from recent progress in New Testament studies. Jacob Neusner challenged the assumption that later sources could be used to testify to periods far removed chronologically. He argued that a general approach of credulity and lack of critical sense had led to the construction of a historically skewed picture of Rabbinic tradition³⁵. Further, and perhaps most important for the present context, Neusner saw Rabbinic Judaism as primarily the creation of the post-70 Rabbis. In this respect, he had essentially appropriated a now discredited, originally anti-Semitic idea. Nineteenth-century Protestant scholars had seen "rabbinitism" as a post-30 C.E. development echoing the Christian notion that with the rejection of the messiahship of Jesus – indeed with his crucifixion – Judaism had strayed from its prophetic origins and had entered into a period of legalistic decline. Neusner's theory simply moved the date of this supposed transition forty years later, seeing a profound discontinuity – an almost unbreachable chasm – between pre-70 and post-70 C.E. Judaism. It was not far from this assumption to the provocative claim that ancient Judaism was really "ancient Judaisms" and that what separated different approaches to Judaism in this period was greater than what united them. As regards the Second Temple period, Neusner applied this approach as well. But in truth, these claims would not stand up to the evidence of the Dead Sea Scrolls.

³⁵ The fullest statement of this view is in *Jacob Neusner, The Rabbinic Traditions about the Pharisees Before 70*, 3 vols. (Leiden 1971).

Throughout Yadin's commentary on the Temple Scroll, he alluded to the polemical nature of the text. A casual reader of the scroll, however, would have been impressed by the ironic tone of the author or compiler who chose to build his polemics into positive statements of his own views. But this text is correctly seen as a reformist document, calling for changes in the Temple structure, sacrificial practice, even government and military practices in the Hasmonean state in which the author lived. So Yadin was correct in observing that numerous statements of the author constituted polemics against what he termed the הלכה מנוכשת (lit. "the solidified law") of the Sages. Over and over Yadin pointed to such ideas, but most scholars outside the State of Israel had been sufficiently convinced by the work of Neusner regarding the late date of Rabbinic traditions, including those dealing with the pre-70 period, that they implicitly ignored these claims of Yadin. After all, how could a sectarian author writing in the year 120 B.C.E., using sources that went back to the pre-Maccabean period (as we now know), polemicize against views supposedly formulated in the later first century C.E.³⁶

The nature of these polemics would not be understood until 1984, but we must first discuss the substantial progress which occurred in the study of other aspects of Qumran halakhic material and the history of Jewish law in the years between the publication of the Temple Scroll in 1973 and the announcement of MMT in 1984. This was a period which in scrolls research in general can now be seen in retrospect to have been one of the widening of the circle of scrolls scholars. During this period, the number of scrolls scholars not part of the international team was swelled substantially by the researches of a group of mostly younger scholars who to a large extent dedicated themselves to research on the published scroll corpus. A number of these scholars, including the present writer, dealt with materials which bore directly on Second Temple *halakhah*³⁷. What typified this group of scholars, already inherent in the work of Baumgarten, was the bridging of the gaps in their training that had resulted from their respective religious backgrounds. Jewish scholars began to understand the value of the New Testament and other early Christian materials for the study of ancient Judaism even as regards the study of Jewish law. Christians, initially drawn to the study of Jewish sources in this period because of their value for the background of Christianity, now entered fully into the evaluation of Second Temple Jewish legal sources for this purpose and were drawn even into Rabbinic literature in a first-hand manner because of their study of the Dead Sea Scrolls.

There is no question that these tendencies, along with recent ecumenical progress in Israel, America, and Europe, have substantial roots in the quest for a new

³⁶ On the sources of the Temple Scroll, see Lawrence H. Schiffman, *The Temple Scroll and the Nature of its Law: The Status of the Question*, in: *The Community of the Renewed Covenant*, ed. Eugene Ulrich and James VanderKam (Notre Dame, IN 1994) 46–51.

³⁷ Most of the works of these contemporary scrolls scholars are listed in Florentino García Martínez and Donald W. Parry, *A Bibliography of the Finds in the Desert of Judah, 1970–95* (Leiden 1996).

interreligious understanding which followed from the delayed awareness of the Holocaust as a major event in human history. Nonetheless, this research was for the most part pursued according to the highest standards of academic research and would soon have profound significance for the study of the scrolls. Specifically, the work of these scholars opened up the study of the scrolls to a wider public and gradually replaced the Christianizing approach with one which investigated in a balanced manner the Judaism of the Second Temple period, only then using the results of such studies to understand the later history of Judaism and the background and history of early Christianity.

More importantly, it is the collective work of a new generation of scholars which was the cause of the successful movement for the release of the scrolls which then catapulted this new generation of scholars to the center of Qumran research. This process, along with, and to some extent a result of, the publication and discussion of the Temple Scroll, in turn placed the study of *halakhah* and its relevance to Second Temple Jewish history squarely in the center of the debate where it properly belonged.

With the discovery of the Temple Scroll, another aspect was illuminated as regards the study of Jewish law. One of the profound issues which divided scholars of the history of *halakhah* was the intractable question of which came first – Midrash or Mishnah? Did exegesis of the scriptures generate general, abstract halakhic statements or did halakhic statements requiring explanation generate a literature of secondary scriptural justification³⁸? Or, possibly, did a complex interactive process allow the simultaneous creation of both genres of tradition?

The discovery of the Zadokite Fragments presented scholars with a mishnah-like document in which apodictic legal statements dominated, in which some casuistic statements were included as well, and in which a small number of justificatory scriptural proof-texts also appeared. This actually led some scholars to conclude that the Mishnaic type was the earliest form. This view makes the questionable assumption that the sectarian texts and the Pharisaic-Rabbinic materials would have undergone a similar history. Now, however, the Temple Scroll shows how the very words of the Torah were rewritten to express the legal traditions and polemics of the author(s)³⁹. The very same laws are sometimes found both in this “midrashic” text and in “mishnah” form in the Zadokite Fragments, MMT, or other texts. It is clear, therefore, that at least for some Jews already in the second century B.C.E., both forms coexisted among students of the Torah just as they coexisted in tannaitic circles by the second century C.E.

The polemics which Yadin had noticed against views inherent in later Rabbinic literature were soon to be understood by scholars in light of the MMT document, the significance of which was first announced in 1984⁴⁰. Based on a short allusion

³⁸ See David Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA, London 1986) for a recent treatment of this issue.

³⁹ Yadin, *Temple Scroll*, vol. 1, 71–88.

⁴⁰ Elisha Qimron and John Strugnell, *An Unpublished Halakhic Letter from Qumran*, in:

to this document and a brief quotation which had been earlier published under the title of 4QMishnique⁴¹, it had already been proposed that this document as well as the Temple Scroll included some Sadducean laws⁴². Indeed, at the very beginning of modern Jewish research, studies of Jewish law by Geiger had sought to reconstruct the influence of the Sadducean tradition. Further, early reformers were, for a variety of reasons, fascinated with the Karaite movement which they saw as a predecessor in revolting against Rabbinic authority⁴³. As a result, the Sadducees, as the supposed spiritual – even physical – ancestors of the Karaites, had received considerable attention in the early days of the *Wissenschaft des Judentums*. But the only real information on the halakhic differences between the Pharisees and the Sadducees then available was that contained in tannaitic sources. Josephus had reported only theological differences between the Pharisees and Sadducees, not mentioning any specific halakhic disputes. Now, for the first time, in MMT a Second Temple text was available which, as its editors showed⁴⁴, discussed numerous halakhic disputes, some of which were directly parallel to the Pharisee-Sadducee disputes of tannaitic texts. Further, other disputes in this document easily lent themselves to interpretation along the same lines for they clearly involved differences of opinion which could be understood as arising from the hermeneutical assumptions of the Sadducees or as a result of their priestly and Temple-centered piety. Clearly, in this document and in the tannaitic material, we were dealing not with Sadducees bent on Hellenization, but rather with highly committed Jews whose homiletical and legal tradition differed from those of the Pharisees.

It now became clear that the polemics of the Temple Scroll and other halakhic documents from Qumran represented the views of this group whose traditions and interpretations were already to some extent crystallized before the Maccabean Revolt. But perhaps, more surprisingly, the aggregate of all such polemics in the halakhic material in the scrolls, whether direct or indirect, pointed toward the existence, certainly by about 150 B.C.E., of a considerably developed Pharisaic system of laws against which these particular priestly sectarian circles were arguing. While these conclusions have important relevance to the question of the identity of the Dead Sea sect, that issue must remain beyond the scope of this study. What does need to be said is that the conclusion that Sadducean-type law lies at the root of both the schism and the laws of the sectarian documents is

Biblical Archaeology Today: Proceedings of the International Conference on Biblical Archaeology, Jerusalem, April 1984, ed. Janet Amitai (Jerusalem 1985) 400–407.

⁴¹ Josef T. Milik, in: Les 'Petites Grottes' de Qumran, ed. M. Baillet, J. T. Milik, and R. de Vaux (Discoveries in the Judaean Desert III, Oxford 1962) 225. He described the text as "écrit pseudépigraphique mishnique."

⁴² Joseph M. Baumgarten, The Pharisaic Sadducean Controversies about Purity and the Qumran Texts, in: JJS 31 (1980) 157–70. Cf. Manfred Lehmann, The Temple Scroll as a Source of Sectarian Halakhah, in: RevQ 9 (1978) 579–88.

⁴³ Schorsch, 324, 349.

⁴⁴ See the halakhic analysis of Elisha Qimron, in: DJD X (Oxford 1994) 123–77 and the appendix by Yaakov Sussmann, 179–200. The full version of that appendix is available in Hebrew, in: Tarbiz 59 (1989/90) 11–76.

widely accepted, even by many of those who still maintain the traditional “Es-sene” theory regarding the sect.

This indeed constitutes a major conclusion for the history of Jewish law. For not only was direct evidence for the Sadducean approach recovered but, more importantly, it was established conclusively that the Pharisaic-Rabbinic tradition was deeply rooted in the Hasmonean period. In fact, these conclusions are in marked contrast to the claim of radical discontinuity between the pre- and post-70 period that had been put forward by some scholars, most notably by Neusner.

The increase in our knowledge regarding the Pharisees went hand in hand with some previous conclusions drawn by scholars from the Zadokite Fragments and the pesher literature. These documents had polemicized against a group known as the דורשי חלקה⁴⁵ who preached supposedly false teachings under the leadership of איש הכזב, the “man of lies”⁴⁶. Among the designations of the דורשי חלקה was that they were said to be “builders of the wall”, בני החיץ.⁴⁷ Previously, scholars had suggested that the term דורשי חלקה was a pun on the word הלכות (loosely translated as “laws”), and that this derogatory sobriquet, best translated “false interpreters”, referred to the Pharisees. Further, the term “builders of the wall” was understood in view of the Rabbinic adage עשו סג לחורה, “make a fence around the Torah”⁴⁸, to refer as well to the Pharisees. In one passage it was said about this same group אשר בחלמוד שקרם, “that their teaching (*talmud*) is their dishonesty”⁴⁹. It had been suggested that the term חלמוד referred here to an early variety of legal methodology practiced by the Pharisees already in the Hasmonean period⁵⁰. Taken together, the evidence of the Temple Scroll, MMT, the Zadokite Fragments, and the pesher literature had in fact provided substantial reflection of Pharisaic teaching and law. Along with what we seem now to be learning about Sadducean *halakhah*, the scrolls have radically altered our picture of Jewish law of the Second Temple period.

The discovery of the manuscripts from Qumran, as well as those from the other Judean Desert sites about which much less has been said here, has come at a time in the history of the study of Second Temple Jewish law which is most fortunate. They have provided extremely important information and indeed a needed corrective which hopefully will help to dispel some false notions and bring proper balance to the field.

Specifically, the Qumran materials have provided us with what we now know to be an entirely alternative system of Jewish law from Second Temple times, dating at least from the Hasmonean period, and in the case of some laws and even

⁴⁵ 1QH2: 15, 32; 4QpNah 3–4 I 2, 7; CD 1:18.

⁴⁶ 1QpHab 2:2, 5:11; CD 20:15.

⁴⁷ CD 4:19, 8:12, 18, 19:25, 31.

⁴⁸ M. Avot 1:1.

⁴⁹ 4QpNah 3–4 ii 8.

⁵⁰ Ben Zion Wacholder, A Qumran Attack on Oral Qumran Exegesis? The Phrase אשר בחלמוד שקרם in 4Q Pesher Nahum, in: RevQ 5 (1966) 351–69.

texts, to the pre-Maccabean period. These documents point to the Sadducean priestly heritage as the locus from which these traditions originate and have allowed us to understand an entirely different system of biblical interpretation which was previously not available.

These documents push back the date of some of the various halakhic debates known from tannaitic sources into the Hasmonean period and also show us that the Pharisaic-Rabbinic tradition, at least in certain areas of law and specific *halakhot*, was well developed and distinct already in the Hasmonean period. In this respect certain false notions recently put forth need to be abandoned.

Perhaps most importantly, the new scrolls allow us to clarify that the linear or evolutionary approach to the history of *halakhah* will not satisfactorily explain the various halakhic traditions available to us in Second Temple materials. Rather, we must reckon with the notion that competing trends, what we might call priestly/Sadducean and Pharisaic/proto-Rabbinic were operative throughout this period. In this respect some of the earlier studies were correct in emphasizing Sadducean approaches in some of the so-called schismatic or sectarian traditions, and some supposedly “credulous” scholars were correct in assuming that certain Pharisaic traditions were to be dated much earlier than the tannaitic texts in which they were embedded.

We are now set for tremendous advances in this field of study as is evident from articles already in the pipeline in various journals and the renewed interest which the release of the scrolls has sparked in this area of research⁵¹. Several other aspects of Second Temple and early Rabbinic research will also intersect so as to stimulate even greater success in the near future.

First, the importance of the other collections of Judean Scrolls for the study of Jewish law is becoming clearer as they are being fully published and analyzed. The Wadi el-Daliyeh texts as well as the Hebrew, Aramaic and Greek documents from the so-called Bar Kokhba caves have yet to have the impact they should have, since they have been widely ignored by scholars of the history of Jewish law. The importance of these texts for their testimony about the symbiosis of Jewish and other systems of law, whether Mesopotamian in the first instance or Hellenistic/Roman in the second, means that these texts have important historical implications. Those working on them are sure to continue to illumine these aspects through their work.

Second, archaeological studies have opened up other areas of inquiry regarding ritual objects such as Tefillin (phylacteries), *miqva'ot*, burial customs and other issues. Now that we can approach these questions with a much more sophisticated approach to the history of Jewish law as a religious and cultural phenomenon, we will better be able to assimilate the important information that these researchers

⁵¹ See the reviews of Lawrence H. Schiffman, *Milḥemet ha-Megillot: Hitpathuyot be-Ḥeqer ha-Megillot ha-Genuzot*, in: *Cathedra* 61 (1991) 3–23 and the more recent survey of Emanuel Tov, *Megillot Qumran le-’Or ha-Meqar he-Ḥadash*, in: *Jewish Studies* 34 (1994) 37–67.

are providing. Such a synthesis of archaeological data – evidence of the real world – is essential to the history of *halakhah*.

Finally, we have argued that *halakhah* and history have a symbiotic relationship. Jewish law had an effect on the history of the Jews in every generation, yet the historical circumstances helped to shape and form the development of the law. It is this dynamic symbiosis which makes this area so fruitful and yet so challenging.