“If a Case is Too Baffling for You to Decide . . .” (Deut 17:8–13): Between Constraining and Expanding Judicial Autonomy in the Temple Scroll and Early Rabbinic Scriptural Interpretation

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1 Introduction

While the present paper will compare two early, and radically opposite, efforts to understand Moses's prescription for the establishment of an autonomous high court upon the Israelites' entering into the land of Canaan following his imminent death (Deut 17:8–13), it is useful first to recall, by comparison and contrast, several previous biblical narratives that deal with the establishment of a judiciary that served under Moses during the period of wilderness wandering. Only then can we consider the relationship between the “inner-biblical” variations and their “extra-biblical” interpretations and seek to understand the grounds, argued by some to be polemical, for the strong alterities among the latter.

The three extant accounts are remarkable for their differences from one another as well as for what they share in contrast to the court prescribed in Deut 17. In Exod 18:13–27, it is Jethro, Moses’s Midianite father-in-law, who, just...
prior to the revelation at Mt. Sinai, suggests the establishment of a system of judges to adjudicate conflicts between the Israelites as a way of lessening the burden upon Moses, who up to that point had been the sole judge of such conflicts among the people, serving as an intermediary between them and God in such matters of conflict (Exod 18:15–16). However, even after Moses assigns the “small matters” (הדבר הקטן) to the newly-selected judges, the “major” (הדבר велик) or “difficult” (הדבר הקשה) matters (Exod 18:22, 26) are to be brought to Moses, who would still bring them to God (Exod 18:19–20). Although biblical scholars such as Nahum Sarna emphasize here the “secular nature of the judicial agency,” even as judiciary facilitation devolves closer to “the people” the judicial structure and line of command remains very much under the ultimate authority of God via Moses as his prophetic communicator.

A similar, although somewhat separate, tradition must lie behind the narrative of Num 11:10–17, 24–25, set in the period of wilderness wandering, that is, post-Sinai(-revelation), in which God, in response to Moses’s complaining about the burden of taking responsibility for the people by himself, instructs him to gather a council of seventy experienced elders, with whom he can share the burden of leadership. In this account, the council of elders is brought to the tent of meeting, where they directly experience divine communication and receive a portion of the (divine) spirit from Moses. Although it is unclear here what their exact leadership or judiciary role is, their charismatic authority is both divinely and Mosaically conferred.

Finally, in Deut 1:9–18, placed soon after leaving Horeb (Deut 1:6), Moses himself takes credit for having instituted a judicial body of wise and discerning men to lead the people and adjudicate their disputes as a way of lessening the burden on Moses of having to do so alone, while still referring the difficult cases to Moses. Whether Moses decides such referred cases on his own or, as in Exodus, by seeking God’s judgment, or perhaps by oracular means, is not clear. Once again, the tradition of Exod 18 is re-chronologized so that Moses’s judicial innovation, now at his own initiative, occurs post-Sinai(-revelation).

3 Since ancient times interpreters have suggested that this narrative should be relocated to after the revelation at Mt. Sinai. See Mek. Yitro 1 (ed. Horovitz-Rabin, 188); b. Zebah. 116a; Ibn Ezra on Exod 18:1.

4 He continues: “Its organizational structure is humanly devised and its personnel are drawn ‘from among all the people’ (v. 21), from ‘all Israel’ (v. 25)—from the civil and not the ecclesiastical sphere.” Nahum M. Sarna, The JPS Torah Commentary: Exodus (Philadelphia: Jewish Publication Society, 1991), 100.


What these accounts of juridical innovation have in common is that they all take the form of narratives, rather than direct prescriptions, and are all \textit{ad hoc} responses, however differently ascribed (to Jethro, God, or Moses), to Moses’s predicament of having to lead the people and adjudicate their interpersonal disputes alone. They do not prescribe judicial institutions beyond the period of the wilderness wandering and the life and leadership of Moses (as early rabbinic interpretations understand them to do).\footnote{For similar comparisons, see Jeffrey Stackert, “Before and After Scripture: Narrative Chronology in the Revision of Torah Texts,” \textit{JAJ} 4 (2003): 168–85, esp. 181–85, with references to previous scholarship. For early rabbinic texts that find in these biblical passages prototypes for later rabbinic courts and legal authority, especially in the role of the anonymous “elders,” see, for example, \textit{m. Rosh HaShanah} 2:9; \textit{t. Rosh HaShanah} 1:18; \textit{m. Sanhedrin} 1:6.}

By contrast, Deut 17:8–13 is legal in form, mandating the formation of a high court, located in \textit{המקום אשר יבחר יהוה} (“the place that the Lord your God will have chosen”) (v. 8; cf. v. 10), to which difficult cases are to be referred after settlement in the land of Canaan. It is similar in its referral (rather than appellate) function to the \textit{ad hoc} juridical bodies just discussed.\footnote{Early rabbinic texts amalgamate the \textit{ad hoc} and permanent bodies. See previous note.} However, it differs significantly in several regards, the first being the prominent role assigned to the “levitical priests” (הכהנים הלוים) and to an unspecified (but note the definite article) singular \textit{השפט} (“the judge” [NJPS: “the magistrate”]). There is no role assigned here to a prophet (on whom see Deut 18:9–22), or, for that matter, a monarch (on whom see Deut 17:14–20) in overseeing or authorizing the high court’s deliberations and decisions.\footnote{For the singular \textit{השפט}, see also Deut 17:12.} Unlike Exod 18:21, 25 and Deut 1:13, 15, no qualifications are given for the appointment of judges, except for their priestly lineage, not previously specified.

While it is unclear what methods are to be employed by this body in reaching its verdict (e.g., scriptural interpretation, reason, oracular means, or some combination thereof),\footnote{For the juridical role of the priests according to Deuteronomy, see 19:17; 21:5; 33:10. In other biblical books, see Ezek 44:24; 2 Chron 19:8–11.} the text emphasizes that the court’s verdict is
authoritative and final, with a death penalty stipulated for anyone who willfully disobeys its ruling (Deut 17:12). In short, and in particular contrast to (and in hermeneutical dialogue with) its pre-Deuteronomic, wilderness-period antecedents, the central Deuteronomic court of Deut 17:8–13 (like the local courts suggested by Deut 17:2–7) functions fully autonomously and with complete authority, without explicit recourse to prophetic, high priestly, or royal oversight—in modern parlance, without “checks and balances.”

I shall argue that this *inner-biblical* Deuteronomic shift to a more autonomous, less prophetically- and royally-guided court for the post-Mosaic Israelite “constitution” generates strikingly different hermeneutical responses (both in form and in substance) in our earliest “post-biblical” reflections thereon—in the paraphrase of the *Temple Scroll* from the Dead Sea Scrolls and in the commentary of *Sifre Deuteronomy* from the early strata of Tannaitic rabbinic literature, the possible reasons for which we shall consider in conclusion. Or, viewed conversely, to what extent do the later hermeneutical responses, divergent as they are from one another, extend a debate, as it were, already implicit in Deuteronomy’s own transformation of its scriptural antecedents?

**Temple Scroll (11Q19) 56.1–11 (ed. Yadin)**

One of the earliest “rewritings”14 of Deut 17:8–13 (but extant only for vv. 9b–13) is to be found in the *Temple Scroll* (henceforth TS), discovered among the Dead

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12 But cf. below, n. 41 for the representation of the court’s membership by Philo and Josephus as including a prophet and/or High Priest.

Sea Scrolls, which exhibits several variants in both order and wording from those verses as preserved in the Masoretic Text (henceforth MT).16

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MT has יָאִל, “and to,” but cf. Deut 17:32 for לא יָא. “to.” The latter appears to lie behind the Peshitta and some manuscripts of LXX for Deut 17:9. However, some versions (Samaritan Pentateuch and Vulgate) of Deut 17:32 presume a text reading לא. See Schiffman, The Courtyards of the House of the Lord: Studies in the Temple Scroll (STDJ 75; Leiden: Brill, 2008), 93–94. Note that the only extant fragment of our scriptural passage in the Dead Sea Scrolls (2QDeutb [2Q11 in DJD 3:61], covering Deut 17:12–15) is identical to MT.

Here is not the place to enter at any length into the thorny questions of the dating and possible sectarian (whether broadly or narrowly) provenance of TS as a whole or of this section in particular. Suffice it to say that I find nothing in TS that either requires or precludes a sectarian provenance with respect to the Qumran community (or communities), or its immediate antecedents. Nor, to my mind, is framing the question of sectarian provenance in simple either/or terms the best way to proceed.

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For the sake of comparison here is MT Deut 17:8–13:

> כי אם מכל מקום></vacat> יברך ממך דבר למשפט בּין־דם לדם בין־דין לדין ובין נגע לנגע דברי ריבת בשעריך
> וקמת ועלית אל־המקום אשר יבחר יהוה אלהיך בו
> ובאת אל־הכהנים הלוים ואל־השפט אשר יהיה בימים ההם ודרשת והגידו לך את דבר
> המשפט
> ושמרו לעשות ככל אשר יורוך על־פי התורה אשר יורוך ועל־המשפט אשר־יאמרו לך תעשה לא תسور מן־הדבר
> אשר־יגידו לך ימין ושמאל
> והאיש אשר־יעשה בזדון לבלתי שמע אל־הכהן העמד לשרת שם את־יהוה אלהיך
> או אל־השפט ומת האיש ההוא ובערת הרע מישראל וכול
> והעם ישמעו ויראו ולא יזדוון עוד:​

The following chart shows the correlation between TS and MT:25

<table>
<thead>
<tr>
<th>line</th>
<th>Temple Scroll col. 56 (ed. Yadin)</th>
<th>Deuteronomy 17 (MT)</th>
<th>verse</th>
</tr>
</thead>
</table>
| 1    | אַל־הַשֹּׁפֵט אֲשֶׁר יִהְיֶה בַּיָּמִים הָהֵם וְאֶל־הַשֹּׁפֵט אֲשֶׁר יִהְיֶה בַּיָּמִים ואֲשֶׁר יִהְיֶה בַּיָּמִים | וְיָרַשְׁתָּ וְהִגִּידוּ לְךָ אֵת הַמִּשְׁפָּט: | 9
| 2    | נַעֲשָׂה עַל־פי הַדָּבָר אֲשֶׁר יַגִּידוּ לְךָ . . ./ עַל־פי הַתּוֹרָה | וְעָשִׂיתָ עַל־פִּי הַדָּבָר אֲשֶׁר יַגִּידוּ לְךָ . . ./ עַל־פי הַתּוֹרָה | 10a, 11a
| 3    | וְאַשְׁרֵי יָמַיְךָ נַעֲשָׂה עַל־פי הַנּוֹתַנְתָּ הַשֹּׁפֵט אֲשֶׁר־יוֹדוּ לְךָ | וְעָשָׂה עַל־פי הַנּוֹתַנְתָּ הַשֹּׁפֵט אֲשֶׁר־יוֹדוּ לְךָ | 11a
| 4    | אַשְׁרֵי יָמַיְךָ נַעֲשָׂה עַל־פי הַנּוֹתַנְתָּ הַשֹּׁפֵט אֲשֶׁר־יוֹדוּ לְךָ | וִיָּרַשְׁתָּ וְהִגִּידוּ לְךָ | 11a

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24 Qimron: יומת. This is uncertain in the online digital image.

25 Underlined text in both columns indicates a significant variant in wording between TS and MT. Bolded text appears in one of the texts but not the other. I begin with TS and correlate MT to it, rather than vice versa. For a similar comparison, see Gershon Brin, *Issues in the Bible and the Dead Sea Scrolls* (Tel Aviv: Tel Aviv University and Hakibbutz Hameuchad, 1994), 173–75 [Hebrew].
As noted above, several variants appear either in other ancient witnesses or are variants internal to MT, and, therefore, cannot be taken to reflect specifically on the exegetical choices of the “author” of TS. Similarly, changes from references to God in the third person to God’s speaking in the first person (lines 5, 9) are unremarkable. Overall, lines 1, 7–11 of TS appear to “follow” verses 9, 11b–13 of MT. However, verses 10 and 11a appear to have been broken and rearranged. Among the seeming changes in TS, when compared to MT, are significant changes in word order, substitution of words, and entire interpolations.

Among the most striking of such variations are the transfer of the beginning of v. 11 (על-פי התורה אשר ירדו) to an earlier position, following the beginning of v. 10 (ועשית ועל-פי הדבר אשר יגידו לך), and the interchanging of וה大大小小 for הדבר in MT (TS lines 3, 7), and also in MT for וה大大小小 (TS line 3). However, the most remarkable difference is the complete

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26 See above, nn. 17, 18, 19, 20.
27 The former interchange (ודבר for מדבר) also occurs in some witnesses to SD, for which see Finkelstein’s edition, 207 line 8 (according to the Venice printing and MS London).
interpolation of מוספר התורה וינידיו לצל בתאת, in line 4 of TS, without any equivalent in MT. Thus, where MT has in v. 11a על פי התורה אשר יורוך ("in accordance with the Teaching/Torah which they will instruct you"), TS has in lines 3–4: והולו פי החזר אשר יאמרו לצל מוספר התורה וינידיו לצל בתאת ("in accordance with the verdict which they will tell you <vacat> from the book of the Teaching [Torah] and which they will announce to you in truth"). TS here clearly stresses that the source of the ruling to be announced is the "book of Teaching/ Torah," and that it is to be communicated "in truth," that is, reliably and accurately.

Like the king of the following section in both Deuteronomy and TS, who is to keep beside him at all times a Teaching/Torah written on a scroll, which is to govern his royal actions, so too the high court is to rule in accordance with the "book of Teaching/Torah" and to transmit that ruling in faithfulness to that text, possibly reflecting the influence of the king pericope on that of the high court. The subordination of political office to Mosaic Torah (that is, to the text of Deuteronomy itself) is a leitmotif of the larger unit of Deut 16:18–18:22.

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28 For a variety of translations oflef באמת, see Yadin ("in sincerity"). Charlesworth ("truthfully"), Vermes ("in truth"), García Martínez ("accurately"), and Wise, Abegg, and Cook ("the truth"). The last would seem to understand the prefix bet as introducing a verbal object ("they shall pronounce to you the truth"). For this use of the prepositional object in Qumran Hebrew, see Jean-Sébastien Rey, "On the Prepositional Object with bet in Qumran Hebrew," in Hebrew in the Second Temple Period: The Hebrew of the Dead Sea Scrolls and of Other Contemporary Sources (ed. Moshe Bar-Asher, Steven Fassberg, and Ruth A. Clements; STDJ 108; Leiden: Brill, 2013), 189–213. Thanks to Elitzur Bar-Asher Siegal for this reference. Yadin (The Temple Scroll, 2:251, in note to line 4) gives examples from the Dead Sea Scrolls of forms of באמת that express a sectarian (exclusive) claim to (divine) truth. See also below, n. 54.

29 According to Deut 17:8, ("He shall have a copy of this Teaching written for him on a scroll..."), TS, interestingly, omits the word המנש ("copy") from its rendition and has others (priests?) write the Torah for the king rather than his writing it for himself (11Q19 56:20–21). On this, see Yadin, The Temple Scroll, 1:344–45. For a detailed comparison of the "Torah of the King" in TS and early rabbinic literature, see S. D. Fraade, "The Torah of the King" (Deut 17:4–20) in the Temple Scroll and Early Rabbinic Law," in The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity: Papers from an International Conference at St. Andrews in 2001 (ed. J. R. Davila; STDJ 46; Leiden: Brill, 2003), 25–60.

30 For the possibility of the opposite direction of influence, see above, n. 13. Just as the king might be corrupted by excessive women and wealth, so too the judges can be corrupted by bribes. See Deut 17:17 for the former and Deut 16:8–20 (as well as Deut 1:16–17) for the latter. TS (11Q19 51:11–18) goes even further in applying the death penalty to corrupt judges, perhaps under the influence of Deut 17:12. See Yadin, The Temple Scroll, 1:383–85; 2:227–29; Stackert, "Before and After Scripture," 175–81.
One effect of the seeming transpositions and insertions in lines 3–4 is to delay, and thereby reduce the importance of, מַן‬ הָמֵכָּה (“from the place”) as the authoritative source of the ruling by preceding, and thereby upending it with מָסֶרֶת הָתֹורֶה (“from the book of Teaching”). The authority of the court’s ruling derives less from its location, as important as that remains, than from the Torah text from which it rules and communicates באָמָה (“in truth”). It is tempting to think that the space left by the scribe before מָסֶרֶת הָתֹורֶה serves to accentuate that important inserted detail. Similiarly perhaps, תS’s dropping of the demonstrative pronoun הָאָה (“this”) from מָרֶם הָאָה (“from this place”) in verse 10b of MT renders the “place” as being somewhat less determinative.

I am less certain how to understand the other major interpolation, that of transforming דִּבַּר הָמֵשָּׁפְּסָה (“the verdict in the case”) in v. 9 to דִּבַּר הָמֵשָּׁפְּסָה בַּאֲשֶׁר לֹא רֹאָה מִן הָאָה (“the matter for which you came seeking, and [for which] they will tell you the verdict”) in line 2. תS may be seeking to limit the role of the high court to deciding only cases of inter-personal dispute referred up to it from local courts, thereby excluding from its purview broader legislative decisions that are not so occasioned. This is in striking contrast to the assignment of broader legislative functions to the Sanhedrin in early rabbinic literature, which institution’s authority is grounded in Deut 17:8–13. Whether or not, or to what extent, it is advisable to read תS in light of later rabbinic exegeses of Deut 17:8–13 is a question to which we shall soon return.

Yigael Yadin, in comments to his edition of תS, interprets the interpolation of מָסֶרֶת הָתֹורֶה וְיִגְדוּ לָכוּ בַּאֲשֶׁר as follows: “There is virtually no doubt that these changes were designed to prohibit the fixing of any law according to oral tradition, i.e., any law not written and interpreted in the Pentateuch.” And

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31 We have no way of knowing how תS would have rendered אל הָמֵכָּה (“to the place”) of Deut 17:8, since it is not preserved. My contention is that through the insertion of מָסֶרֶת הָתֹורֶה prior to מַן הָמֵכָּה, תS privileges the “book of Teaching/Torah” as the immediate source (and, in a sense, the authority) of the ruling, over the place in which the ruling is made. Note especially the parallel use of the locative מִן and מִן הָתֹורֶה and respective, as denoting originating sources of judicial authority (the “book” or the “place”).

32 I offer this suggestion somewhat tentatively since the demonstrative pronoun is lacking in LXX, while present in Samaritan Pentateuch and Peshitta Deut 17:30. It should be noted that this is the only scriptural occurrence of the phrase מַן הָמֵכָּה, except for Deut 12:3, which does not refer to the Temple site.

33 For Qimron’s different reconstruction, see above, nn. 21, 22.

34 See Fraade, From Tradition to Commentary, 83–87 for the rabbinization of the sorts of rulings to be made by the high court according to SD §152.

again, “There is a plainly polemical element, casting those who do not ‘declare in sincerity’ according to the Torah.” Although he does not mention them by name, Yadin would appear to be alluding to the Pharisees as the purveyors of “oral tradition,” against whom TS is polemicizing by requiring the court’s rulings to derive directly from the written Torah “in truth.”

Since there is, it seems to me, nothing inherently polemical in the language of TS, and since we have no direct evidence for how the Pharisees would have interpreted Deut 17:8–13, Yadin’s confident claim can be tested only by looking at how the earliest rabbinic commentary to Deuteronomy interprets these same verses, in the hope of finding traces of an earlier polemic.

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36 This understanding of TS as mounting a polemic against “the Oral Torah” of the Pharisees is endorsed by Daniel R. Schwartz, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law,” in The Dead Sea Scrolls: Forty Years of Research (eds. D. Dimant and U. Rappaport; Leiden: Brill; Jerusalem: Magnes Press and Yad Izhak Ben-Zvi, 1992), 229–40 at 234 (referring to Joseph Baumgarten for the same view). Following Yadin, Schwartz claims that “In the Temple Scroll, the paraphrase of this passage systematically substitutes תּוֹרָה for דְּבָרָה, thus indicating that one should follow the judges only when their rulings are indeed Torah.” The semantic evidence is hardly so “systematic” (see above at n. 27), and Yadin’s and Schwartz’s polemical inference from it is thereby exaggerated.


37 I do not presume that earliest rabbinic literature provides us with a window onto the Pharisees, but that the comparison can nevertheless be mutually illuminating, regardless of the lack of chronological proximity. The question of the attitude of the Pharisees pre-70 CE to revealed “oral Torah” (as distinct from received “ancestral tradition,” however recorded) is fraught with methodological difficulties. See Josephus, Ant. 13.297; with which compare 17.41 and 18.12; Matt 15:1–12 (// Mark 7:1–13); Megillat Ta’anit scholion Tammuz 4/10 (Vered Noam, Megillat Ta’anit: Versions, Interpretation, History [Jerusalem: Yad Ben-Zvi, 2003], 78 [Hebrew]), citing Deut 17:11. For discussion, see Martin S. Jaffee, Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE–400 CE (Oxford: Oxford University Press, 2001), 38–61; S. D. Fraade, “Literary Composition and Oral Performance in Early Midrashim,” Oral Tradition 14 (1999): 33–51, esp. 39–42. On the scholion to Megillat Ta’anit Tammuz 4/10, see the articles by Kister, cited above, n. 36, as well as Cana Werman, “The Torah and the Te’udah on the Tablets,” Tarbiz 68 (1999): 473–92 (esp. 488–90) [Hebrew]. I will return more fully to this question in section 5 below.
Sifre Deuteronomy §§152–155 to Deuteronomy 17:8–12 (ed. Finkelstein)

As I have discussed this passage at length elsewhere, I shall only highlight key aspects of the commentary as it relates to our discussion of TS, cognizant that we have the commentary of Sifre Deuteronomy (henceforth SD) in full, but are missing the initial lines of TS’s “retelling” of Deut 17:8–12.

1 (§152). In commenting on v. 8, SD redefines the sorts of cases that come before the high court (and its local analogues) from civil matters of social dispute and damage to rabbinic determinations of legal categories, whether civil, criminal, or ritual, thereby expanding its role from a referral court to a legislative and scholastic body.

2 (§153). SD differentiates between the verbs עלית and באו, in vv. 8 and 9 respectively, with the former referring to ascending to the high court on the Temple Mount, and the latter being freed to include the (rabbinic) court at Yavneh (the approach to which does not require ascent): לבוא, לרבו בית דָּרֵי שָׁרְבֵּנָה (“And you shall come: this is to include the court which is in Yavneh”).

3 (§153 cont.). In its comment on v. 9, SD stresses that while Scripture mandates a court comprising priests and Levites (in Deuteronomy, “levitical priests”), a court consisting of lay judges (as signified by the השפט of the verse) alone is still qualified to rule. This implies a reading of ואל as meaning או אל.

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38 See above, n. 2.
39 See above, n. 34. To give one example, בין דם נדה לדם יולדת לדם זיבה (“Between blood and blood’ [usually taken to refer to cases of homicide]: between menstrual blood, the blood of birthing, and the blood of a flux”).
40 With regard to Yavneh as successor to the Jerusalem Temple, compare m. Rosh HaShanah 4:1–3.
41 See above, n. 17. This also implies that the singular השפט of v. 9, presumed to be non-priestly and non-levitical, can stand for a court full of lay judges. For a possible plural reading השפטים (as in Deut 19:17, 18), see above, n. 18. In Josephus’s paraphrase in Ant. 4.218, he describes the high court as comprising δὲ ἀρχιερεὺς καὶ ὁ προφήτης καὶ ἡ γερουσία (“the high priest, the prophet, and the council of elders”). Some understand the prophet here to be another designation of the High Priest, and the council of elders to be Josephus’s addition. See Louis Feldman, Flavius Josephus: Translation and Commentary. Judean Antiquities 1–4 (ed. S. Mason; Brill: Leiden, 2000), 410–411. Philo, On the Special Laws 4.190, understands the court to consist of ἡ ἱερεῖς καὶ ὁ τῶν ἱερέων ἔξαρχος καὶ ἡγεμών (“the priests, and the head and leader of the priests”). For the High Priest as the supreme legal authority, presiding on the Temple Mount, see 4Q375 (Moses Apocryphon) 118–9, on which see Liora Goldman, “The Apocryphon of Moses: A Composition Representing the High Priest as the Supreme Judicial Authority,” Megillot 10 (2013): 181–200 [Hebrew]. In any case, the singular השפט/תון כְּפִיתָה of v. 9 was understood by several ancient sources to have been
and that the single judge of the verse can stand for plural judges. Notice the
dialogical rhetoric of SD here as elsewhere in this section: ‘To the
levitical priests’; It is required of the
court that it has priests and Levites. Is it possible that even if so required, if
there are no [priests and Levites on it] it is disqualified? Scripture teaches, ‘and
[or] to the judge.’ Even though it lacks priests and Levites, it is qualified”.

4 (§153 cont.). The judges of the present should not be compared nostalgi-
cally to those of the past, but considered authoritative for their present-day
credentials. Once again, the argument is made dialogically (and sarcastically):
אמר רבי יוסי הגלילי וכי עלת על דעתך שתלך אצל שופט שאינם
בימים ההם (“Who will be [in charge] in those days’: Said R. Jose the Galilean: Did it
occur to you that you would go to a judge who is not in your days”).

5 (§154). Most radically, SD interprets v. 11,
 Vous must not deviate from the verdict that they tell you either to the
right or the left;43), to mean: 
אפילו מראים בעיניך על ימין שמאלה ועל שמאלה (“Even if they show you that right is left and left is right, obey
them”).44 The midrash understands the seemingly redundant “right or left” to
be the direct objects of “that they tell you,” rather than as adverbial accusatives
of “deviate.” Thus, rather than taking them figuratively (“do not deviate in any
way whatsoever”), SD takes them “literally” to refer to “the right (which you
know to be the left) and the left (which you know to be the right).” In other
words, ignore what you know/consider to be the “truth” in order to uphold
the judicial authority of the court, however “false” its rulings might be/seem
to you.46 That this radical understanding of not deviating “to the right or the

the High Priest. Thus, SD is unique among ancient interpreters in understanding to
designate a specifically lay leader.

42 See above, n. 18.

43 Literally, “right and left,” but the waw conjunction can have the meaning “or.” See above,
n. 17. See also Gen 24:49; 1 Macc 2:22.

44 This midrashic “translation” requires the insertion of על (“concerning”) before “right” and
“left.” See Gen 24:49.

45 This ambiguity reflects the Hebrew, מראים בעיניך, literally, “make appear in your eyes,” on
which see the next note.

46 Compare Rashi and Nahmanides (RaMBaN) to Deut 17:11, with both citing SD’s interpreta-
tion, and the latter connecting it to m. Rosh HaShanah 2:9, on which see above, n. 7. See
also Midr. Tannaim Deut 17:10 (ed. Hoffmann, 103): … שמע להם אם יאמר לך 
“Even if they say to you regarding left that it is right …”); as well as Song Rab. 1:18. Compare
Midr. Leqah Tov ad loc., which represents SD’s interpretation as follows: אפיל מראים בעיניך
על ימין שמאלה ועל שמאלה (“Even if it appears to your eyes that
left” is formulated specifically to accentuate the autonomous authority of the court can be seen by the way in which SD (§162) comments on the very same idiomatic phrase in Deut 17:20, but now with respect to the king’s obligation to obey precisely his written Torah: הָלֹ֖לֶת הָרוּם מִזְמוֹר יִצְרָאֵל, שָלֵ֑א יִצְרָאֵל (“Nor deviate from the commandment to the right or to the left”: that he should not deviate from the commandment to the right or to the left”). In other words, the verse means precisely what it says, without any trace of the “creative philology” applied to the same idiomatic merism in Deut 17:11 alone.47 Whereas the king is completely subservient to the commandments of the written Teaching/Torah, which is constantly by his side to guide him, never

right is left...”), thereby shifting the falsity from the rulings of the judges to the “eyes” of the addressee, and thus blunting somewhat SD’s seemingly radical interpretation. In any case, this strikes me as one of the most direct and extreme assertions of rabbinic “nominalism” to be found anywhere. On the use of “nominalism” (versus “realism”) to characterize rabbinic approaches to law, see Schwartz, “Law and Truth,” 229–40; Jeffrey L. Rubenstein, “Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment,” DSD 6 (1999): 157–83; Christine E. Hayes, “Legal Realism and the Fashioning of Sectarians in Jewish Antiquity,” in Sects and Sectarianism in Jewish History (ed. S. Stern; 1985) 12; Leiden: Brill, 2011), 119–46. I employ this characterization here locally and not globally. With respect to the profound implications of this rabbinic “reading” of Deut 17:11, see Tigay, The JPS Torah Commentary: Deuteronomy, xxvii: “One of the most far-reaching influences of the book [of Deuteronomy] was achieved through the interpretation of 17:11 by means of which the rabbis found the warrant to create new laws when necessary, and not only to interpret the Torah. This extraordinary understanding of the verse played a major role in allowing Judaism to develop and meet the needs of new historic situations, and not become fundamentalistic and stagnant.” And again, ibid., 165: “In rabbinic exegesis this verse does not refer only to judicial verdicts but serves also as warrant for the legislative authority of the Sanhedrin and its successors, the Sages. This interpretation was as important in the development of Jewish law as was Chief Justice John Marshall’s assertion of the right of judicial review in American constitutional history.” For further discussion, see Menachem Elon, Jewish Law: History, Sources, Principles (4 vols.; Philadelphia: Jewish Publication Society, 1994), 1:236–37, 242–61, 278–80; 2:481–85; Shlomo Zalman Havlin, על "הוֹדָהְוָה הַספַּרְתָּה יִתְכָּר בְּכָר הַחֲלָף לְקַוְתַּה הָלֹלֶת" (Jerusalem: Israel Academy of Sciences and Humanities, 1983), 164–65 n. 71. Thanks to Adiel Schremer for the last reference.

47 However, this is missing in some manuscripts, but is present in ms Vatican 25. The same biblical idiom is found in Deut 2:27; 5:29; and 28:14, but there is no extant SD commentary to those verses. For a similar usage, see Josh 1:7; 23:6; and compare Jonah 4:11. Note also Isa 30:21. In none of these does the expression “right or left” directly follow a verb of speech (e.g., תָּבְדָּל) as in Deut. 17:11. Cf. y. Horayot 1.1 (45d) for the view opposite to that of SD. For its use in the Dead Sea Scrolls, see below, n. 54.
to waver at all in their observance, the high court’s authority is neither subservient to Scripture nor dependent for its authority on the accuracy of its rulings.

4 Temple Scroll and Sifre Deuteronomy Compared

Before considering more carefully whether the differences between TS and SD with regard to their very different understandings of the laws governing the conduct and constitution of the high court reflect a mutual polemic (that is between TS and Pharisaic antecedents to SD), as has been claimed by Yadin and others, their fundamental differences, as well as some surprising similarities, should be accentuated in their own rights:

1. To begin with a similarity, both texts downplay somewhat the importance of מִן-המֶּקֶם הָאָשֶׁר יֵלָדֵד יְהוָה ("from that place that the Lord will choose"), although TS does so less explicitly than does SD, as might be expected from their respective modes of discourse ("rewritten Bible" and dialogical commentary): TS by inserting the requirement that the court’s rulings derive מִן-המֶּקֶם ("from the place"); SD by extending the place where the court meets to include Yavneh, presumably as successor to the Temple mount (and Jerusalem). Clearly, the implications of the latter are greater than the former, but in each case the displacement is significant in its own right, with TS limiting the court’s rulings to being based in Scripture, and SD expanding the very geographical locus of where those rulings occur. In either case, however, the emphasis on מֶּקֶם is offset without being eliminated. That which is so transformatively innovative in Deuteronomy, the centralization of priestly and judicial authority, generates somewhat decentering interpretative innovations no less consequential for their respective interpretive communities, in effect rolling back Deuteronomy’s chief innovation, but in decidedly different ways. It would be tempting to suggest, especially if we knew that TS is of sectarian provenance, that the decentering of place plays a similar role in TS, if representing a community in exile from the Temple and Jerusalem, as it does in SD,

48 See also above, n. 31. See my article, "Memory and Loss in Early Rabbinic Text and Ritual," in Memory and Identity in Ancient Judaism and Early Christianity: A Conversation with Barry Schwartz (ed. Tom Thatcher; Semeia Studies 78; Atlanta: Society of Biblical Literature, 2014), 113–27.
if representing a community living in the aftermath of the destruction of the Temple and Jerusalem. I shall, for now, resist that temptation.49

2. As already emphasized, while TS appears specifically to restrict the purview of the court to its biblically mandated function of deciding difficult cases of intra-communal conflict that are referred to it by lower courts,50 SD expands those kinds of cases to matters of scholarly dispute regarding the categories of ritual and religious law as well as criminal and civil law.

3. Not only does SD broaden both the location and purview of the court, it also loosens the bounds of its membership so as to allow for a court without any priestly or levitical members. I find no hints of any of these exegetical moves in TS, which would appear to require a priestly-levitical majority, even if possibly weakening the importance of its location.51 At most, the plural form [..אוס] in line 1 of TS, mainly reconstructed and conjectural,52 concords with SD's allowance of a court made up of more than a singular lay judge,53 but it would not seem to carry the same expansive understanding as it does for SD.

4. Finally, and possibly most importantly, we have the fundamental contrast between TS's interpolation of מספר התורה ויגידו לכה באמת ("from the book of the Teaching [Torah] and which they will announce to you in truth"), and SD's radical interpretation of v. 11, לא תסר מן־הדבר אשר־יגידו לך ימין ושמאל ("You must not deviate from the verdict that they tell you either to the right or the left"), as אף עלียว מעין על ימין שמעון שמעון על שמאלו שמעון ימין שמעון הלם ("Even if they show you that right is left and left is right, obey them"). The former insists that the court rule according to scriptural (revealed) "truth," while the latter stresses the binding authority of the present-day court regardless of whether its subjective rulings are "true" or not.54

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49 See above, n. 15.
50 See above, at n. 33 and Levinson, Deuteronomy, 127–30.
51 Cf. 11Q19 57.11–15 for the priestly dominated composition of the council of the king. For Yadin's connecting it to Deut 17:9–13, see above, n. 13.
52 See above, nn. 18, 19.
53 For the singular judge being the High Priest according to Philo and Josephus, following, presumably the LXX, see above, n. 41.
54 See above, n. 46. Although TS represents v. 11b without variation (except for “replacing התורה with התורה, on which see above, n. 27), it should be noted that similar uses of “right or left," in the context of requiring absolute and unwavering obedience to the true law, can be found elsewhere in the Dead Sea Scrolls: 1QS i, 15; ii, 111, 10 (=4Q257 1 iii 14); 4Q266 (4QDa) 17–18; 4Q504 (4QDibHam) 1–2 ii 14 (restored); CD (MS B) XX, 29b–30a, 30b–31a. The language of 1QS i, 15 is particularly apt in relation to our case:olah לዝו mechanically אומתוolah ליצוב ימין ושמאלאלא ("and not to turn aside from his true laws [by] going either [to] the
Arguing with Arguments for Polemic

As noted above, several distinguished scholars have argued that TS reflects, first and foremost, a polemical response to the Pharisaic claim for the authority of the laws contained in the “oral Torah” (תורה שבעל פה), and even that SD contains the residue of a Pharisaic, or at least early rabbinic, anti-sectarian response affirming the authority claimed for the same. I will focus on the two central arguments for this polemical understanding, that of Yigael Yadin (followed by Daniel Schwartz) and that by Menahem Kister. Yadin claimed that TS intentionally, systematically, and polemically replaces the word דבר in its proto-MT base-text with תора on the assumption that the former denotes an oral legal pronouncement (oral Torah), while the latter denotes one grounded in the written Torah alone. Whether or not these lexical assumptions are valid, the textual evidence from the sources we have examined is far from consistent in supporting Yadin’s claim: TS once retains דבר (TS line 2 in relation to MT verse 9), twice replaces דבר with תורה, and once replaces תורה with דבר (the last directly contravening Yadin’s argument). The fact that the change from דבר to תורה also occurs in SD (according to excellent textual witnesses), contrary, again, to Yadin’s presumptions, suggests that these variations are the products of scribal carelessness (whether ancient or medieval, whether ascribed to errors of copying or of memory), due to the repetitiveness of the scriptural phrasing, carrying thereby no ideological cargo.

Kister’s argument for a mutual polemic is more interesting, and while resting, as I shall demonstrate, on weak ground, cannot be as easily dismissed. Kister relies on the scholion to Megillat Ta’anit Tammuz 4/10, which comes right or [to] the left”, as noted by Kister “Marginalia Qumranica,” 316. For the addition of אמת (“truth”) in the Dead Sea Scrolls to biblical idioms wherein it is absent, see 1QS I, 5; VII, 2 (and its parallel in 4Q59 [4Q259]); IX, 17 (and its parallels in 4Q59 [4Q259]); 11Q5 (11Q13 [Psalm to the Creator]) xxvi, 10–11. Therein אמת (“truth”) is added to the scriptural idioms צדק ומשפט (“righteousness and justice”) and צדק משפט (“righteous justice”). Compare the above Dead Sea Scrolls texts with Gen 18:19; Prov 21:3; Ps 33:5 for the former, and Deut 16:18; Isa 1:21 for the latter. So far as I could determine, these biblical idioms never appear with אמת in all of classical rabbinic literature. Note also the expression יד אמת/ comunità (“community of [his] truth”) in IQS 11, 24, 26 (partly restored); 111, 7.

The term, of course, is not to be found in any pre-rabbinic source. See above, n. 37.

See above, nn. 36, 37.

For publications, see above, n. 36.

For specifics, see above, at n. 27 and n. 36.

See above, n. 27.
down to us in two main recensions as represented by MS Oxford (henceforth “O”) and MS Parma (henceforth “P”). They speak of the Sadducees (P) or Boethusians (O) as having had a מסר גזרתא/ғәзирата/ғәзират ("book of decrees"), which was destroyed on Tammuz 4 (P) or 10 (O), thereby qualifying that day as a semi-festive day on which fasting and eulogizing are prohibited. In the longer version (O), it is the "sages" who rebuke the Boethusians for having recorded their extra-scriptural laws in written form. This manuscript (but not P) then cites two verses in support, Exod 34:27 and Deut 17:11, with the conclusion that מְלַמֵּד שֶׁאֵין כְּתוּבִין בְּסֶפֶר ("[this] teaches that they [=one] should not write [extra-scriptural laws] in a book [=scroll]"). The two prooftexts share the phrase פי על, meaning "according to," followed by either ה דברים ("the verdicts/commandments") in Exod 34:27, or התורה ("the teaching/instruction") in Deut 17:11. In the first case, the continuation of the verse designates the commandments as the basis of the (renewed) covenant, while in the second case, the continuation of the verse stresses complete obedience to the decisions handed down by the high court.

Although not stated explicitly by the scholion, in both cases, the scriptural phraseעל פי is understood, literally, as "by mouth," thereby requiring the oral, rather than written, means of recording and transmitting non-scriptural laws and judgments, hence supplying midrashic warrant for the sages' denial of legitimacy and authority to the Boethusians' "book of decrees." Kister wishes to see this interpretation of Deut 17:11 as the polemical opposite (not just in effect, but in intent and practice) to TS’s requirement that the high court’s rulings derive from written scripture: מהפרת התורה ("from the book of the Teaching/

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61 The Boethusians, whose name (בֹּיתוֹסִים), variously spelled and understood, appears only in rabbinic literature, are variously identified or associated with, among other groups, the Sadducees and the Essenes.

62 Space does not permit me to treat the continuation of the scholion according to O, introduced by דבר אחר ("another matter"), for which see the articles by Kister and Werman cited above, nn. 36, 37, as well as the treatment by Noam (*Megillat Ta'anit*, 206–16 [Hebrew]); and her other writings on this passage, cited above, n. 60.
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Torah”) in line 4. However, for these to be not just in ideational opposition, but more specifically in polemical response, one to the other, requires a chronological alignment (even if not exact) that Kister presumes, but which, as I shall presently argue, cannot be ascertained.63

In the absence of internal evidence by which to date the various scholia to Megillat Ta’anit, that task is notoriously difficult. Their language suggests either Tannaitic (first two centuries CE) or Amoraic (third-fifth centuries CE) provenance, a broad chronological range. Of course, the scholia may certainly incorporate traditions that are earlier than their present textualized forms, possibly stretching well back into late Second Temple times. However, identifying such early rabbinic traditions in the scholia as having originated with proto-rabbinic tradents such as the Pharisees (of late Second Temple times) is particularly difficult given our lack of any extant Pharisaic sources. Since, in the end, each case needs to be judged on its own merits, what do we find with respect to parallels to the scholion’s interpretation of על פי in Deut 17:11 as denoting oral recording and transmission of law (in opposition to its rendering in TS), as well as in Exod 34:27, that might assist us in dating, if only in a relative way, their underlying exegetical traditions to Second Temple times?

To begin with Deut 17:11, which is most relevant to our case, it is noteworthy that the only Tannaitic source which interprets it is our own SD (plus a parallel in Midrash Tannaim). While the verse is cited frequently in later Amoraic and post-Amoraic sources, in not one (that I could find) is the phrase על פי interpreted as referring to “oral Torah” (or to orality of any sort). Thus, the interpretation of על פי in Deut 17:11 as denoting orality is found only in our scholion (and only in one of the two main recensions). Especially telling is the fact that SD, which correlates most closely with TS with respect to Deut 17:11 (and is our earliest evidence for early rabbinic interpretation of that verse) shows a total lack of interest in the phrase על פי as denoting orality of legal teaching, understanding it in its usual meaning, “according to.”

63 To some extent Kister builds his argument on that of Cana Werman (see above, n. 37), who argues for a polemical relation between the latter half of the scholion and Jubilees (roughly contemporaneous and in some ideational accord with TS), based on the scholion’s use of Exod 24:12 and Deut 31:19, which she argues are alluded to in Jubilees in the latter’s valorization of written revelation as its source. Again, however, the assumption of a direct polemical relation between the two texts rests on tenuous ground. The possibility that the two can be placed in ideational (or exegetical) opposition to one another does not necessarily require that they are responding to one another (or unknown intertexts).
By contrast, the phrase על פי in Exod 34:27, the first of the two verses cited by the scholion (in version O alone), is frequently and quite explicitly interpreted in rabbinic literature, both Palestinian and Babylonian, as referring to “oral Torah,” but never in a pre-Talmudic source (that is, never in a Tannaitic or even an early Amoraic collection), and never ascribed to a Tannaitic tradent. Thus, in the absence of any pre-Amoraic parallel interpretations of either Deut 17:11 or Exod 34:27 (and no rabbinic evidence at all for the former, aside from the scholion), the default position must be to date the longer recension (O) of the scholion at the earliest to Amoraic times. In the absence of any parallels from pre-Amoraic (let alone Second Temple) times, the contained traditions of this scholion cannot with any confidence be retrojected to an earlier time that would allow it to be in direct or indirect polemical exchange with TS.

Finally, to remind ourselves, there is no evidence that TS’s rendition of Deut 17:8–13 pays any particular attention to the phrase על פי of Deut 17:11 (or 17:10). Nor is there any such evidence from any other Second Temple source. TS’s major innovation in this regard is to stress that the high court’s rulings derive from the written book/scroll of the Torah, which would exclude as much the Sadducean or Boethusian “book of decrees” as it would the rabbinic “oral Torah,” if such a concept existed already in late Second Temple times, for which we have no clear and reliable evidence.

64 For a representative list of parallel sources, see Noam, in the “sources” note to her edition (Megillat Ta’anit, 78–79 [Hebrew]), to which could be added many post-Amoraic midrashic sources. For the Talmudic sources, see y. Pe’ah 2:4 (17a); y. Meg. 4:1 (74d); y. Hag. 1:8 (76d); b. Git. 60b; b. Tem. 14b. Interestingly, Exod 34:27 is cited once in the DSS, in a fragment of the Damascus Document from cave 4 (4Q271 4 ii 3 [1910 18:178], partially paralleled in CD 16:1). Unfortunately, the text preceding the citation is broken, leaving us unable to determine how and for what purpose the verse is being cited. It appears, however, to be cited for purposes of emphasizing covenant formation and entry, with no reference to the written and/or oral nature of authorized covenantal teaching: that is, without any focus on the phrase על פי of the verse. So far as I can determine, this is the only citation of or allusion to Exod 34:27 in all of Second Temple literature. This text and its interpretation are discussed by Kister, “Two Formulae,” 299, who suggests that it be understood in relation to the scholion to Megillat Ta’anit Tammuz 4/10. Any such direct alignment, it seems to me, is highly unlikely.

65 Given the lack of any parallel, early or late, to the implied interpretation of the phrase על פי in Deut 17:11 in the O version of the scholion, we might entertain the possibility that the citation of that verse is an even later accretion to the text, an added scriptural citation to that of Exod 34:27, occasioned by the phrase על פי in both verses. If so, the use of this scholion to establish an exegetical polemical relation between it and the interpretation of Deut 17:11 in TS becomes even more precarious.

66 See above, n. 37.
In the absence of any concrete textual evidence upon which to hang it, or a chronological bridge to allow it, the proposal for a mutual polemic between TS and SD, or between TS and the scholion to Megillat Ta'anit Tammuz 4/10, collapses. Of course, we must leave open the possibility that such a polemic could have existed. Kister's argument that the contrast between TS's and SD’s interpretations of Deut 11:7 is so stark, and the latter's interpretation of Deut 11:7 is so radical, that a polemical relation between the two must be presumed certainly needs to be seriously considered. However, I would resist the temptation to equate strong interpretation with polemic in any externally targeted sense of the word. Strong interpretations can just as easily be intended for intramural ears. At most, in this particular case, the interpretation could be directed at anyone who holds to the seemingly plain meaning of the verse (follow the high court’s rulings without deviation) in accord with a legal realist view of jurisprudence (for its rulings correlate with objective/revealed “truth”), without any relation to orality per se. At the very least, the mere contrasting of the two interpretations of the same verse has proven to be of great value. However, we cannot avoid the fact that a direct polemic leaves no explicit traces at the textual level of the sources that we have examined, however much we might want to wish it into existence.

6 Conclusion

To some extent, comparisons between TS and SD are hampered by the fact that they employ very different rhetorical forms, resulting in TS’s being more subtle and less direct in its rewriting of the high court biblical pericope than is SD in its employment of dialogical commentary in interpreting the same. In

67 See above, n. 64.

68 Even if we were to presume that TS is a polemic, the most we could say is that its polemical targets are all those who (from the “author’s” perspective) do not derive their rules or rulings “from the book of the Torah” and do not declaim them “in truth,” which could just as easily be the Sadducees as the Pharisees, or, for that matter, anyone outside of the community of the “author.”

69 For the possibility of viewing early rabbinic scriptural commentary, at least heuristically, as a kind of “rewritten Bible,” notwithstanding its very different style and form of rhetoric, see S. D. Fraade, “Rewritten Bible and Rabbinic Midrash As Commentary,” in Current Trends in the Study of Midrash (ed. C. Bakhos; JSJSup 106; Leiden: Brill, 2006), 59–78. For the interdependency of the two forms in the work of Philo of Alexandria, see idem, “Between Rewritten Bible and Allegorical Commentary: Philo’s Interpretation of
a sense, SD through its form draws attention to its interpretations as TS does not. Nevertheless, their shared exegetical focus, and interestingly correlated interpretations, makes comparison between them inevitable if not simple. As I have argued (I hope not too polemically), unlike Yadin and his successors, I find no firm evidence for framing that comparison in terms of polemic, that is, in viewing TS as reflecting a polemical response to the exegeses articulated in SD (even if allowing for its having had Pharisaic antecedents which have not survived), or vice versa. Yet, in several significant ways, as we have seen, TS and SD pull the scriptural text in notably opposite directions. How might this be accounted for if not by assuming a direct (or even indirect) “conversation” between the two?

I suggest that the solution lies in the biblical text itself, which is to say, already in its inner-biblical interpretation and demand for interpretation. As I demonstrated at the outset, when viewed in its larger biblical context, the high court of Deut 17:8–13 is remarkably autonomous when compared to the earlier Pentateuchal narratives of courts or councils established to alleviate Moses’s leadership burden by adjudicating lower-level interpersonal disputes and damages. By contrast, there is no explicit requirement that this court consult with any other human or divine source, or that its rulings are anything less than final and binding.70 This is all the more remarkable in light of both Deuteronomy’s and TS’s frank recognition of the corruptibility of judges.71

This judicial autonomy is similarly noteworthy when compared to the law of the king (Deut 17:14–20), immediately following our pericope, wherein the king’s autonomy is severely limited. As I have previously demonstrated, here too TS further constrains his authority and autonomy, whereas Tannaitic texts expand it.72 As suggested above, TS’s inclusion of ספר תורה as the source of

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70 The only possibility for the court’s consulting anything outside of its membership (and book of Teaching/Torah) would be if we were to adopt Qimron’s reading of TS as ודרשתה ("they shall seek"), rather than Yadin’s reading of ודרשה (MT: ודרשה) ("you shall seek"), and understand the former as denoting the seeking of an oracular verdict. For the verb דרש in this sense, see Gen 25:22; Exod 18:15; 1 Sam 9:9; 2 Kgs 22:18; Jer 37:7. See above, nn. 11, 20. For a more scholastic use of the verb in this context, see the rabbinic sources referenced below, n. 75.

71 See above, n. 30.

the court’s rulings might reflect the influence of the law of the King, with its requirement that the king be constantly guided by a written Torah by his side.73

The innovatively autonomous court of Deut 17:8–13 elicited directly opposite responses from TS and SD. The former found it too autonomous for comfort and sought, therefore, to reign it in, especially with respect to the “book of Teaching/Torah” as the sole source of legal rulings and “truth” as its principal measure. The latter found in that very same judicial autonomy (or at least the appearance thereof) an exegetical opportunity to further broaden its scope, loosen its reins, and extend its location so as to encompass the autonomous court(s) of the rabbinic sages, whether imagined or real, with their dichotomous teachings and rulings.

This is consistent with TS’s employment of “rewritten Bible” as its exegetical platform and implied conceit of absolute truth (speaking as it does in the first-person divine voice), staying relatively close to the written text of Scripture, albeit with significant relocations and elaborations that limit the court’s autonomy (and render it more “sectarian” with respect to “truth”). It is similarly consistent with SD’s employment of dialogical commentary as its exegetical platform and implied conceit of relative truth, whereby it is able to transform the high court and its jurisprudence into something even more audaciously autonomous (and rabbinic). Both exegetical trajectories, while pointing in virtually opposite directions and employing very different rhetorical media, represent exegetical trajectories that originate from and are nourished by the same scriptural text (and its own innovative reworking of antecedent scriptural texts).74

Inseparable from these different renditions of the composition and functions of the high court are the different rhetorical platforms that they employ (rewritten Bible and dialogical commentary), representing and instantiating two very different approaches to both scripture and to legal authority (and “truth”). The one (TS) I would characterize as oracular and declarative, and the other (SD) as dialogical and deliberative.75 While both can be at times expan-

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73 For TS’s modification, see above, nn. 29, 30. For possible bleeding between the two pericope (high court and king), see above, nn. 13, 30.

74 For a similar experiment, see Jeffrey Stackert, “Before and After Scripture.”

75 For the more “deliberative” aspects of SD’s rendition, see its comment on Deut 17:8 (§152), in which the litigants/disputing scholars ascend through a series of three courts, with
sive and at times constrictive of exegetical meaning, the one (TS) overall construes both exegetical and judicial truth as monological, absolute, and closed, while the other as dialogical, relative, and open. At least in this case, their media suit their messages remarkably well. A final, seeming irony: While TS takes significant liberties in “rewriting” its scriptural text, while claiming, implicitly, to transmit it “in truth,” SD preserves its scriptural text without change, while radically transforming its meaning through its explicit employment of commentary.

which compare m. San. 11:2; t. Ḥag. 2:9; t. San. 7:3; b. San. 86b; y. San. 11:3 (29d). Since my focus here has been on TS and SD in particular, and only on a small part of each, I resist making broader comparative characterizations of the corpora in which they are preserved: the Dead Sea Scrolls and early rabbinic literature. But see above, n. 46.
Sibyls, Scriptures, and Scrolls

John Collins at Seventy

VOLUME 1

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