

BIBLICAL PERSPECTIVES: EARLY USE AND INTERPRETATION OF THE BIBLE IN LIGHT OF THE DEAD SEA SCROLLS

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LOOKING FOR LEGAL MIDRASH AT QUMRAN

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I. Introduction

From the earliest days of their discovery and publication, the Dead Sea Scrolls have added immeasurably to our knowledge of ancient Jewish scriptural interpretation and of the history of ancient Jewish law. Coming from a time following the relative fixing of the Torah's text and authority, scriptural interpretation was increasingly critical to a variety of Jewish groups in defining their distinctive ideologies and practices in exegetical relation to their shared scriptures. The Dead Sea Scrolls are particularly significant not simply for the quantity and variety of their scriptural interpretations, but also for the variety of forms in which those interpretations are expressed and arranged, both in exegetical relation to the scriptural texts upon which they are based, and in rhetorical relation to the community of "readers" they seek to shape. Also filling a previously glaring gap, has been the extensive record of the rules of that community, by which it either lived or hoped to live, with allusions to those of its opponents. Once again, as significant as the range of rules themselves, has been the varied forms by which they are composed and transmitted by the community, and the stated or implied authority by which they are propounded. Now, with the publication, or at least availability, of long-awaited legal texts from Qumran Cave 4, the question of the intersection of these two central facets of the scrolls – scriptural interpretation and post-biblical Jewish law, or, to borrow rabbinic nomenclature, *midrash* (מדרש) and *halakhah* (הלכה) – can be more fully examined.¹

¹ While the noun מדרש appears several times in the DSS, it does not usually bear the same meaning as in rabbinic literature of scriptural interpretation. See below, nn. 16, 19, 22, 24, 27, 29. See also J.M. Baumgarten, "The Unwritten Law in the Pre-Rabbinic Period," *Studies in Qumran Law* (Leiden: E.J. Brill, 1977) 31-32: "It is significant that in Qumran usage, unlike rabbinic Hebrew, the verb דרש still has predominantly the meaning 'to seek' or 'to inquire' with only isolated indications of the transition to the midrashic sense of 'expounding Scripture.'" See also 32, n. 78. The noun הלכה does not appear in the DSS, although some have suggested that the expression דרש הלכה (IQH 2:15, 32; 4QpIsa^a 23 ii 10; 4QpNah 1:2; 2:2, 4; 3:3, 6; 4QCata 9 i 4), as a designation for the Pharisees, reflects a play on הלכות. See L.H. Schiffman, *Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the Lost Library of Qumran* (Philadelphia: Jewish Publication Society of America, 1994) 250. However, the verb דרש is often employed in the scrolls (spe-

However, for all the midrash and halakhah found within the scrolls, textually they evidence very little *midrash halakhah*: the explicit citation and interpretation of Scripture as a source of or justification for law. Instead, the vast majority of legal texts from Qumran (as elsewhere in Second Temple Judaism) adapt a form of "rewritten Bible," or paraphrase.² Sectarian law is expressed in language deriving from the Hebrew Bible, but without, in most cases, explicitly citing the actual words of biblical verses. Biblical laws are intertextually re woven and topically regrouped, but much less often directly explicated.³

This phenomenon was noted long before the discovery of the Dead Sea Scrolls by early scholars of what came to be known as the Damascus or Zadokite Document. Given that document's many rules (now augmented by 4QD fragments), and their seeming affinities at points with rabbinic halakhah, the relative paucity of explicit scriptural citation and explication in its legal sections elicited early notice if not explanation. In 1922, Louis Ginzberg wrote that this document has "almost no Halakic Midrash" (to which we can now add that it has far more than any other Dead Sea Scroll).⁴ Yet, only several pages later Ginzberg writes:

cially in the *hitpa'el*) in the sense of halakhic observance, as in "walking in His will" (1QS 5:10). Cf. 1QS 9:12; CD 6:10; 12:21; 20:6.

² On the term "rewritten Bible," see my book, *From Tradition to Commentary: Torah and its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York, 1991) 171-72, nn. 4-6.

³ So as not to be misunderstood let be clear: I am *not* claiming that the activity or process of *midrash halakhah* was absent from Qumran, but that it is not well-represented in the legal discourse that has been textually preserved among the community's writings. Furthermore, by noting the relative absence of explicit scriptural citation and explication in the Qumran legal literature, I mean in no way to discount the extent to which that literature is saturated with biblical language and allusions, and in some cases structured along biblical lines.

⁴ Here and below I am quoting from the English translation and revision of L. Ginzberg's *Eine unbekannte jüdische Sekte* (1922); *An Unknown Jewish Sect* (New York: Jewish Theological Seminary of America, 1976) 192. Both in its exhortation and statutes, the Damascus Document has a higher incidence of explicit scriptural citation and explication than any other scroll, except for the pesharim, 4QFlorilegium (4Q174), and 11QMelchizedek (11Q13). This difference is even more striking in its legal section as compared with other legal texts among the DSS. The Community Rule (1QS) and the War Scroll (1QM) each contain only about four explicit scriptural citations, while the Damascus Document contains about forty (thirty in the exhortation and ten in the statutes), even though the texts are of comparable lengths. The addition of the 4QD, 4QS, and 4QM fragments does not appreciably alter these proportions. While the laws of the Temple Scroll (11QT) derive their language mainly from the Torah, they do not take the form of scriptural citation and explication, but rather of "rewritten Bible." The same is true for the fragmentary texts of 4QOrdinances (4Q159, 513-514) and the legal sections of 4QReworked Pentateuch (4Q158, 364-367). Similarly, while 4QMMT appears to cite scriptural proof-texts, it in fact does not. See below, n. 35. In the Damascus Document, the

As the document's Bible text agrees with that of the Masorah, so its method of exegesis is exactly the same as we find applied in rabbinic writings. Especially interesting is a comparison between the Halakic midrash of the Tannaim and that of our document; they are in fact identical."⁵

Seventy-two years and many discoveries later, Lawrence Schiffman produces an almost identical juxtaposition. He writes, "Somewhat rare in the scrolls is a technique of halakic Midrash in which the biblical text is quoted explicitly."⁶ Yet two pages later Schiffman concludes a chapter on "Biblical Interpretation" by stating:

Evaluated as a whole, the corpus offers forerunners and parallels to all types of interpretation we find in the later Jewish tradition as transmitted by the rabbinic sources: Targum, the Aramaic translation of the Bible; direct, simple interpretation of the sense of Scripture; aggadic expansion; and halakhic Midrash. All these techniques were available when the Pharisees were competing with the various sectarians to dominate the religious scene in Hasmonean Palestine. We have no reason to doubt the Rabbis' statements about the crucial role played by these types of interpretation during the period when

ratio of scriptural citation to lines of text in the exhortation is more than double that in the statutes (although the former contains two cases of interpretation of laws: CD 5:1-4, 8-12). Thus, while the employment of explicit scriptural exegesis marks the Damascus Document apart from the rest of the DSS, it also differentiates between its legal and non-legal sections.

⁵ *Unknown Jewish Sect*, 199. Although Ginzberg states that the "document's Bible text" agrees with that of the Masorah, a page earlier he states that "barely a quarter of the quotations agree with MT." On citations that do not agree with the MT, see J.M. Baumgarten, "A 'Scriptural' Citation in 4Q Fragments of the Damascus Document," *JJS* 43 (1992) 95-98; D. Dimant, "The Hebrew Bible in the Dead Sea Scrolls: Torah Quotations in the Damascus Document," in *"Sha'arei Talmon": Studies in the Bible, Qumran, and the Ancient Near East Presented to Shemaryahu Talmon* (ed. M. Fishbane, E. Tov and W. Fields; Winona Lake, IN: Eisenbrauns, 1992) 119 (Hebrew section). For a discussion of this phenomenon in 4QMMT, see DJD 10.140-41.

⁶ *Reclaiming the Dead Sea Scrolls*, 220. For a similar statement, see 129: "The citation of a proof-text is rare in Qumran halakhic literature." As noted above (n. 4), legal midrash involving explicit biblical quotation is mainly limited to the Damascus Document, where it is the exception. For other treatments of explicit scriptural citation in the DSS, see G. Brin, "Explicit Quotations from the Torah and Writings," *Issues in the Bible and the Dead Sea Scrolls* (Tel-Aviv: Hakibbutz Hameuchad, 1994) 137-45 (Hebrew); J. Carmignac, "Les citations de l'Ancien Testament dans la 'Guerre des fils de lumière contre les fils de ténèbres,'" *RB* 63 (1965) 234-60, 375-90; Dimant, "Hebrew Bible in the Dead Sea Scrolls," 113-122; J.A. Fitzmyer, "The Use of Explicit Old Testament Quotations in Qumran Literature and in the New Testament," *Essays in the Semitic Background of the New Testament* (London: Geoffrey Chapman, 1971) 3-58; M.H. Goshen-Gottstein, "Bible Quotations in the Sectarian Dead Sea Scrolls," *VT* 3 (1953) 7-82; E.L. Greenstein, "Misquotation of Scripture in the Dead Sea Scrolls," in *The Frank Talmage Memorial Volume* (ed. B. Walfish; Haifa: Haifa University Press, 1993) 1.71-83; G. Vermes, "Biblical Proof-Texts in Qumran Literature," *JSS* 34 (1989) 493-508; P. Wernberg-Møller, "Some Reflections on the Biblical Materials in the Manual of Discipline," *ST* 9 (1955) 40-66.

Pharisaic Judaism was evolving into the form it would later bequeath to the Judaism of the Mishnah, Midrash, and Talmud.⁷

Thus, even though the Dead Sea Scrolls are relatively devoid of explicit midrash halakhah, they establish strong Second Temple antecedents to its rabbinic formations. How so? Since it is likely that the paraphrastic legal texts of the Dead Sea Scrolls are the products, at some point, of scriptural exegesis, the scriptural verses and the exegetical methods by which those laws were generated can be recovered, employing what James Kugel aptly terms "reverse engineering."⁸ In so doing, it is natural to turn to early rabbinic midrash halakhah, our only ancient corpus of sustained explicit Jewish legal exegesis, for the models to guide such reconstructions. But there is, to my mind, an uncomfortable circularity in employing rabbinic midrash halakhah to uncover the midrashic methods by which Qumran rules can be said to have been exegetically generated, and then to claim from the results proof that these methods were there all along.

If relatively little new legal midrash has surfaced in the Dead Sea Scrolls from Ginzberg to Schiffman, we have today more reason than ever, it would appear, to expect to find it there. First, the Qumran Community,⁹ in recounting its origins and continuing prac-

⁷ *Reclaiming the Dead Sea Scrolls*, 222. Others have similarly stressed the continuity of midrash halakhah between the DSS and rabbis: Dimant, "Hebrew Bible in the Dead Sea Scrolls," 121-122; D.W. Halivni, *Midrash, Mishnah, and Gemara* (Cambridge, MA: Harvard University Press, 1986) 30-34; C. Rabin, *Qumran Studies* (Oxford: Oxford University Press, 1957) 95-111; E. Slomovic, "Toward an Understanding of the Exegesis in the Dead Sea Scrolls," *RevQ* 7 (1969) 3-15. But note the criticism of these positions by J.M. Baumgarten, "Halivni's Midrash, Mishnah and Gemara," *JQR* 77 (1986) 62-64; *idem*, "The Unwritten Law in the Pre-Rabbinic Period," in *Studies in Qumran Law* (Leiden: E.J. Brill, 1977) 33, n. 79. For other examples in Schiffman, see 219: "Halakhah, Jewish law, has always used a technique of midrashic interpretation that figures prominently in the scrolls as well. For our present purposes, Midrash may be narrowly defined as the interpretation of one biblical passage in light of another."

⁸ *In Potiphar's House: The Interpretive Life of Biblical Texts* (San Francisco: Harper and Row, 1990) 251-53. Note Schiffman's formulation (*Reclaiming the Dead Sea Scrolls*, 247): "The legal materials of the sect are to a great extent derived from biblical interpretation, an activity that took place at regular study sessions as part of sectarian life, most probably in the main center at Qumran. The decisions reached at such sessions were recorded in lists of sectarian laws called *serakhim*... When we examine the sectarian laws in detail, we will see that they were for the most part made up of snatches of biblical phrasology woven together. Only rarely do we find explicit quotation. By examining these paraphrases, we can discover the biblical basis upon which the sect arrived at its own particular views." Similarly, on 221 he states: "Other legal interpretations in the sectarian scrolls never mention the biblical sources of a law but weave the source into the language of the text in such a way that it can be teased out by close textual analysis. In these cases, the biblical texts that are being interpreted are not quoted."

⁹ For my use of the designation, "Qumran Community," see my article, "Interpretive Authority in the Studying Community at Qumran," *JJS* 44 (1993) 46,

tices, in describing how a person gains admission to the community and advances through its ranks, places intensive study of Mosaic scriptures and the communal laws deriving from those scriptures at the center of its elite self-understanding and differentiation from the rest of Israel.¹⁰ Second, we have ample evidence of highly developed forms of explicit scriptural exegesis, involving continuous commentary (*pesharim*) and complex interpretation of verses through the citation and interpretation of other verses.¹¹ Although most of these are in non-legal settings, we have, at least in the Damascus Document, a few good examples of complex legal interpretation from which to conclude that the Qumran community, or at least its teachers, had the hermeneutical wherewithal to produce legal midrash.¹²

II. The Community's Self-Description

The community, in describing its separation from the rest of Israel for a life in the wilderness, characterizes its collective activity as charting a redemptive highway of God through its ongoing revelatory activity of *בדרש התורה*, searching study of the Torah of Moses (1QS 8:12-16):¹³

n. 1. Those who question the connection between the DSS and Khirbet Qumran can substitute "Community of the Renewed Covenant" (Shemaryahu Talmon's term) or some other sectarian designation, without affecting my argument.

¹⁰ For a fuller treatment of this, see Fraade, "Interpretive Authority," 46-69.

¹¹ Besides the *pesharim* and 4QFlorilegium, note the complex exegesis of the "well midrash" (CD 6:2-11) and the "Amos-Numbers midrash" (CD 7:9-8:2 [19:5-14]). There has developed a vast scholarly literature on the phenomena of scriptural interpretation and citation at Qumran. See bibliography cited above, n. 6. For excellent overviews, with additional bibliography, see M. Fishbane, "Use, Authority and Interpretation of Mikra at Qumran," in *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity*, (ed. M.J. Mulder; CRINT 2/1; Assen/Maastricht: Van Gorcum; Philadelphia: Fortress, 1988) 339-77; G. Vermes, "Bible Interpretation at Qumran," *Eretz-Israel: Archaeological, Historical and Geographical Studies. Volume Twenty: Yigael Yadin Memorial Volume* (ed. A. Ben-Tor, J.C. Greenfield and A. Malamat; Jerusalem: Israel Exploration Society, 1989) 184-191. For literature on the *pesharim*, see below, n. 57. On 4QFlorilegium, see G.J. Brooke, *Exegesis at Qumran: 4QFlorilegium in its Jewish Context* (JSOT Supp. 29; Sheffield: JSOT Press, 1985).

¹² Unfortunately, like DSS scholarship in general, the study of scriptural interpretation at Qumran has tended to focus on the non-legal texts (or parts thereof, as in the Damascus Document), especially the interpretations of biblical prophecy, for reasons of the sociology of such scholarship. For the Damascus Document, see J.G. Campbell, *The Use of Scripture in the Damascus Document 1-8, 19-20* (Berlin; New York: W. de Gruyter, 1995). On the scholarly neglect of the legal texts of Qumran, see Y. Sussmann, "The History of Halakha and the Dead Sea Scrolls - Preliminary Observations on *Miqsat Ma'ase Ha-Torah* (4QMMT)," *Tarbiz* 59 (1989-90) 11-76 (Hebrew), esp. 11-22.

¹³ Translation here and in subsequent citations of the Community Rule, unless

When these become a Community in Israel in accordance with these rules,¹⁴ they shall separate themselves from the session of the men of deceit in order to depart into the wilderness to prepare there the Way of the Lord (הוֹדָה);¹⁵ as it is written: "In the wilderness prepare the way of the Lord, make level in the desert a highway for our God" (Isa. 40:3). This (alludes to) the study of the Torah (מִדְרַשׁ הַתּוֹרָה)¹⁶ wh[ic]h he commanded through Moses to do,¹⁷ according to everything which he has revealed (נִגְלוֹה) (from) time to time (עַתָּה בְּעַתָּה),¹⁸ and according to that which the prophets have revealed (נִלֵּי) by his Holy Spirit.¹⁹

The study activity of the community is the ongoing context for their discerning and performing of God's will, as initially commanded through Moses and subsequently revealed through the inspired words of the prophets.

A similar self-definition informs the process of crossing the boundary of community membership. A neophyte undertakes an oath to return wholeheartedly to the Torah of Moses and the divine commandments (1QS 5:7-10),

otherwise noted, is from *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations. Volume 1. Rule of the Community and Related Documents* (ed. J.H. Charlesworth; Tübingen: J.C.B. Mohr, 1994) 34-37 [text of 1QS by E. Qimron and translation by Charlesworth]. The Hebrew text there (36) lists variants from 4QS fragments, none of which appreciably affect the meaning.

¹⁴ The word "Community" (לִיחָד) and the phrase "in accordance with these rules" (בְּחֻמֵי דְאֵלֵהּ) appear as supralinear additions, not found in 4QS^d. In both cases, the additions appear to be in the same scribal hand as the text itself. It is not clear to me why Charlesworth includes the former in his translation but not the latter. On these expressions, compare the preceding 1QS 8:10 בְּהַבִּיט אֱלֹהֵי בִּסְרוֹת הַיּוֹדֵד ("when these are established in the principles of the Community for two years...").

¹⁵ For this as a representation of the tetragrammaton, see Charlesworth, 37, n. 210. In the citation from Isa. 40:3 that follows, the tetragrammaton is represented in the manuscript by four dots.

¹⁶ For this phrase, see CD 20:6. For the verb דָּרַשׁ applied to Torah, see the expression דָּרַשׁ בְּיַד/דְּרוֹרָה, on which see below, n. 24. The combination of דָּרַשׁ and תּוֹרָה is already found in Ezra 7:10; Sir. 35 (32):15. Cf. Isa. 34:16, where the object is סֵפֶר ה' ("the book of the Lord"). For the noun מִדְרַשׁ elsewhere in the DSS, see 1QS 6:24; 8:26 (and 4QS^d 3 i 1), referring to judicial inquiries, on which see also below, n. 27, and 4QFlor 1:14, where the sense is exegetical.

¹⁷ I understand the relative particle אֲשֶׁר ("which") to refer to the Torah (and not the study), which was commanded by God through Moses for Israel to perform, in accord with successive revelations.

¹⁸ For this phrase denoting successive stages of revelation, each appropriate to its time, see 1QS 9:12-13. See further Fraade, "Interpretive Authority," 52, n. 18.

¹⁹ For additional notes and discussion, see Fraade, "Interpretive Authority," 51-52. For another passage that similarly characterizes the founding and ongoing life of the community in terms of scriptural study, see CD 6:2-11 ("well midrash"), discussed in *ibid.*, 58-63, and below, n. 60. That passage also employs the verb דָּרַשׁ. For the expression דְּרוֹרָה, see also CD 20:6. As will be discussed below, it is unclear how precisely to understand the verb דָּרַשׁ or the noun מִדְרַשׁ in such contexts, that is, whether a particular type of study, characterized by exegetical deriving of rules from Scripture (*midrash halakha*, מִדְרַשׁ הַלְכָה), is to be assumed.

according to everything which has been revealed from it (= the Torah) (לְכָל וְנִגְלוֹה מִמֶּנָּה) to the Sons of Zadok, the priests, who keep the covenant and seek his (= God's) will (דְּרוֹשׁ רִצּוֹנוֹ),²⁰ and according to the multitude of the men of their covenant, who devote themselves together (הַמְתַּדְבָּרִים יוֹדֵד) to his truth and to walking in his will.²¹

Conversely, as the text continues, the covenantors are to (1QS 5:10-12)

separate (לְהִבְדִּיל) from all the men of deceit who walk in the way of wickedness. For they cannot be accounted in his covenant, since they have neither sought (בִּקְשׁוּ) nor inquired after him (דָּרְשׁוּהוּ) through his statutes (בְּחֻקֵּיהוּ),²² in order to know the hidden (ways) (נִסְתָּרוֹת) in which they err, incurring guilt, nor the revealed (ways) (נִגְלוֹת) in which they treated with an arrogant hand...²³

Thus, what differentiates the covenantors and necessitates their separation from the rest of Israel is precisely their adherence to and active engagement with God's will (laws), as manifest to all of Israel in the Torah (נִגְלוֹת) and as revealed to the community alone from the Torah (נִסְתָּרוֹת). As we shall see repeatedly, however, the particular nature of the community's study activity, how and by whom their esoteric laws derived from the Torah – the relation of interpretation to revelation – is not specified.

The community's two-fold revelatory diet is ritually enacted every night by members of the community under the leadership of a priestly teacher or interpreter of the Torah (1QS 6:6-8):

²⁰ The phrase "to the sons of Zadok, the priests, who keep the covenant and seek his will" is missing in 4QS^b (4Q256) and 4QS^d (4Q258). Reference to Sons of Zadok is similarly missing in the same fragments at line 2. See G. Vermes, "Preliminary Remarks on Unpublished Fragments of the Community Rule from Qumran Cave 4," *JJS* 42 (1991) 255; A.I. Baumgarten, "The Zadokite Priests at Qumran: A Reconsideration," *DSD* 4 (1997) 137-156.

²¹ P. Wernberg-Møller, in *The Manual of Discipline* (Leiden: E.J. Brill, 1957) 95, nn. 36-39, takes all the verbs of this passage (as in 1QS 1:11) to refer to the communal activity of Torah study, among both priests and laity, whereby sectarian laws are derived from the Torah. However, this is never explicitly stated in the passage.

²² Apparently, דָּרְשׁוּהוּ (דְּרָשׁוּהוּ) has been corrected from דָּרַשׁוּ, but by the same scribe in the course of copying. Schiffman, *Reclaiming the Dead Sea Scrolls*, 247, translates, "for they did not search and did not study His laws," understanding "laws" to be direct object of both verbs, as if favoring the uncorrected form דָּרַשׁוּ (דְּרָשׁוּ). G. Vermes, *The Dead Sea Scrolls in English* (4th ed.; London: Penguin, 1995) 76, has "They have neither inquired or sought after Him concerning His laws..." Wernberg-Møller, *Manual of Discipline*, 28, translates, "since they have not sought or inquired after Him in His statutes..." In either case, the precise nature of such study or inquiry, e.g., whether it is exegetical *per se*, is unclear. As the text stands, it appears to be an adaptation of Zeph. 1:6b: לֹא בִקְשׁוּ יְהוָה וְלֹא דָרְשׁוּהוּ. If so, it would seem to disfavor Schiffman's translation. The word בְּחֻקֵּיהוּ (in the photo I examined), would have been added to the scriptural phrase to indicate that God is to be sought specifically through his laws, whether their study, practice or both.

²³ See Fraade, "Interpretive Authority," 53-54. 4QS^{b+d} do not contain the words following "men of deceit."

And where there are ten (members) there must not be lacking there a man who studies the Torah (איש יודע בתורה) day and night continually, concerning the right conduct of a man with his companion (על יפוח) (איש לרעהו).²⁴ The Many shall keep watch together (ביחד) for a third (שלישית)²⁵ of every night of the year, reading the book (לקרוא בספר),²⁶ studying law (לדרוש משפט),²⁷ and saying benedictions together (לברך ביחד).²⁸

Once again, it is difficult to discern the exact force of the verb דרש, with respect both to the man who studies the Torah continually and

²⁴ Some have suggested emending יפוח to הל'פוח (see the textual apparatus in Charlesworth's edition, 26). Thus, Charlesworth's translation (27) has "each man relieving another," suggesting that there was a rotation among the members for the role of being the "man who studies the Torah" continuously. Similarly, Wernberg-Møller (*Manual of Discipline*, 103) explains: "There was always one member of the society studying the Torah; in this way the community lived up to the ideal expressed in Ps. i 2." The emendation, however, is unwarranted and unnecessary. Without it, the "man who studies/interprets the Torah" might refer to a communal functionary, perhaps the איש הדורש of IQS 8:11-12 or דורש דוריה of CD 6:7; 7:18; 4QCatena^a 1:5 (4Q177); 4QFlor 1:11 (in the last three of which he is referred to in messianic terms). Compare CD 13:2-3, where the man who studies continually is a priest. My translation here follows that of Vermes, *Dead Sea Scrolls in English*, 77.

²⁵ Charlesworth translates "the third part," denoting a particular period of nightly watch. Similarly, Wernberg-Møller (*Manual of Discipline*, 104) explains: "The text refers to vigils in the third part of the night, i.e. the members were to get up at two o'clock in the morning in order to recite and expound Scripture and say benedictions." W.H. Brownlee (*The Dead Sea Manual of Discipline: Translation and Notes* [BASOR Supplementary Studies Nos. 10-12; New Haven, CT: ASOR, 1951] 24, n. 14) interpreted the phrase to mean that the community studied the whole night long in three shifts. Neither of these interpretations, however, is sustained by the text.

²⁶ "The book" most likely refers to the "Book of Torah," as in Josh. 1:8, elsewhere referred to in the scrolls as ספר הדגו/הרגי as "book of utterance" or "meditation"), as in the parallel to our passage in CD 13:2-3. For the expression דוריה דרש, see CD 5:2; 4QD^a (4Q266) 5 ii 2-3. For the latter see J.M. Baumgarten, "The Disqualifications of Priests in 4Q Fragments of the 'Damascus Document,' A Specimen of the Recovery of pre-Rabbinic Halakha," in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18-21 March 1991* (ed. J. Trebelle Barrera and L. Vegas Montaner; Madrid: Editorial Complutense; Leiden: E.J. Brill, 1992) 2.506. The same text appears in 4QD^b (4Q267) 5 iii 5; 4QD^c (4Q273) 2,1. The expression also appears in 4QCatena^a 1:14 (DJD 5 [1968] 68), where because of the fragmentary nature of the text the reference is uncertain. See Fraade, "Interpretive Authority," 66-67, n. 68.

²⁷ Following Schiffman, *The Eschatological Community of the Dead Sea Scrolls* (Atlanta: Scholars Press, 1989) 13; *idem*, *The Halakhah at Qumran* (Leiden: E.J. Brill, 1975) 42-47, I take משפט to be a designation for the community's esoteric laws. For the verb דרש used with משפט, see Isa. 1:17; 16:5; IQS 8:24. Cf. IQS 6:24. Following the last two examples, the phrase לדרוש משפט could also mean "to seek a judgment," but in the present context, that seems unlikely. For biblical usages of the verb דרש with other words for law or command, see Ps. 119:45, 94, 155; 1 Chron. 28:8. Cf. IQS 5:8-12, treated above, for the expressions רצו דרש ("seekers of his will") and דרשו ("inquired after him through his statutes"). On the latter, see above, n. 22.

²⁸ In both cases, the Hebrew word translated here as "together" is יחד, בייחד, also being the term for the elect community. Thus, an alternative translation might be

the Many who study communal laws for a third of the night. Does it denote general inquiry into or meditation upon these texts and laws, or, more specifically as has been presumed by some, exegetical activity that derives the communal laws from the Torah?²⁹ In other words, it is not at all clear what the relation is between the discreet activities of reading the book and searching/studying the laws. But it would appear that, at a minimum, their combination in nightly communal study suggests some consideration of their interconnection.³⁰ Furthermore, their nightly combination with the communal recitation of blessings suggests that such study, whatever its form, had a liturgical, and not just intellectual, quality and function.

Finally, in one of our most recently published and important legal texts, *Miqsat Ma'ase Ha-torah* (4QMMT), following a list of some twenty-two rules that distinguish the sectarian community from its opponents, we find (C7-11):

[And you know that] we have separated ourselves (פרטנו) from the multitude of the people [and from all their impurity] and from being involved with these matters and from participating with [them] in these things... [And] we have [written] to you so that you may study (carefully) the book of Moses (ספר משה) and the books of the Prophets and (the writings of) David [and the events of] ages past.³¹

The addressee, however identified, is told that the correctness of the community's rules, and hence the reason for its separation from the rest of Israel, can be discerned through close study of

"as a Community." For this passage as an elaboration of Josh. 1:8 (with echoes of Ps. 1:2), see the fuller discussion in Fraade, "Interpretive Authority," 56-58.

²⁹ Such cannot be presumed from earlier uses of this verb with respect to laws, for which see above, n. 27. Schiffman presumes this in claiming that it was at these nightly study sessions that the activity of *midrash halakhah* produced the laws which appear in the Scrolls without scriptural proof. See Schiffman, *Reclaiming the Dead Sea Scrolls*, 247, 248, as well as above, n. 8, for fuller citations. If, as Schiffman himself repeatedly argues, the core legal stratum of CD, 11QTemple, and 4QMMT predates the Qumran settlement and is shared with the Sadducean stream, it is contradictory to assume that its laws are the exegetical products of nightly study sessions at Qumran.

³⁰ Compare the rabbinic usages לקרא מקרא and לשנוא משנה, to read Scripture and to repeat oral teaching. For other examples of the Qumran dual diet of study, see Fraade, "Interpretive Authority," 57.

³¹ Translation from *Qumran Cave 4. V. Miqsat Ma'ase Ha-Torah* (ed. E. Qimron and J. Strugnell; DJD 10; Oxford: Clarendon Press, 1994) 59. The text is usually characterized as a "letter" from the leader of the Qumran community (or some antecedent) to a ruling priest in Jerusalem (usually, early Hasmonean), and hence its polemic is viewed as outwardly directed. However, since our evidence for the text is from six copies dating from the first century BCE and found in Cave 4, we should presume that whatever its original form and originally intended addressee, the text as we have it circulated internally within the Qumran community at that later time. As such, the text's rhetoric would be directed internally to the members of the community, justifying their continued separation from the rest of Israel and their dis-

Scripture.³² Elisha Qimron, in his discussion of the halakhah of the scroll, states:

The term *בספר הבין* refers to an exact study of Scripture, according to exegetical methods similar to the midrash of the rabbis. The members of the sect believed that all the particulars of the commandments had been written down in the Bible, which contained both "clear laws" (*גלויות*) and "hidden laws" (*נסתרות*). The latter, in their view, could be discovered by thorough, careful and intensive searching in the Scripture.³³

Once again, the precise nature of the study suggested, and in particular the extent to which and actual manner in which specific sectarian laws would have been exegetically linked to specific scriptural verses is not provided. Notwithstanding this concluding admonition, *not one* of the preceding rules is framed in explicitly exegetical form. However these rules were derived or justified through close study of Scripture, *the products of such labor are presented without its process*.³⁴ This is even more striking considering the fact that eleven times the text uses the passive form *כרויב* to introduce what we might expect to be the scriptural proof of its rule, but without a single instance of an actual scriptural citation.³⁵ The underlying scriptures are paraphrased or alluded to but never explicitly cited.³⁶

tinctive practices of Torah law as being divinely ordained and destined for divine reward.

³² The passage has been taken to suggest a tripartite canonical division of Scripture at Qumran: Torah, Prophets, and Writings. See DJD 10.59 (note to line 10), 111-12. Elsewhere, as we have seen, the Qumran texts speak of previous divine revelation having been through Moses (Torah) and the Prophets (1QS 1:2-3; 8:15-16; and perhaps CD 5:21-6:1). The addition here of a third (and possibly fourth) class of writings need not imply, however, that the "canon" of the community's revealed writings was "closed." For David as an inspired author, see 11QP^a-DavComp (DJD 4 [1965] 92). For New Testament and Second Temple Jewish parallels, see Fraade, "Interpretive Authority," 52, n. 17.

³³ DJD 10.132.

³⁴ DJD 10.133, n. 23: "It should be noted that MMT deals with the observance of commandments, not with the manner in which they are deduced; it makes only passing reference to such fundamental questions." My larger point is that this approach characterizes the legal texts from Qumran in general, notwithstanding some remarkable exceptions that we shall examine.

³⁵ B27, B38, B66, B70, B76, B77, C6, C11, C12 (2x), C21. In several of these (B66, B67, B70, B76, 77), what follows is a paraphrase of a verse that can be identified. In others (B76, C11), however, the reference is to a general scriptural idea. In one case (B38), the reference may be to a sectarian law. In another (B76), what might be a citation of two words from Jer. 2:3 is generally thought not to be. See DJD 10.54-55, 140-41, and above, n. 5. However, cf. M.J. Bernstein, "The Employment and Interpretation of Scripture in 4QMMT," in *Reading 4QMMT: New Perspectives on Qumran Law and History* (ed. J. Kampen and M.J. Bernstein; Atlanta: Scholars Press, 1996) 45.

³⁶ See DJD 10.136: "In most of the halakhot there are allusions to the biblical

III. Examples of Explicit Legal Midrash

As mentioned earlier, not only might the scrolls' depictions of their "community of readers" lead us to expect texts of explicit legal midrash, but we have ample reason to conclude that that community had the hermeneutical ability to produce legal midrash, as can be seen from the following parade example (and exception), from the Damascus Document (CD 9:2-8):

And as to that which he said (*אמרת משה*), "You shall not take vengeance nor keep a grudge against the sons of your people" (Lev. 19:18), anyone of those who enter the covenant who brings a charge against his neighbor without reproof before witnesses, but brings it in his burning wrath or tells it to his elders to put him to shame, is taking vengeance and bearing a grudge. It is written only, "He [God] takes vengeance against his adversaries and keeps a grudge against his enemies" (Nah. 1:2).³⁷ If he was silent from day to day³⁸ and in his burning wrath charged him with a capital offense, his iniquity is upon him, for he did not fulfill the ordinance of God which says to him, "You shall surely reprove your neighbor (*רעך*) so that you do not bear sin because of him" (Lev. 19:17).³⁹

Of interest for the present discussion are the following features that distinguish this passage as legal midrash: 1. It begins with the citation of a verse of the Torah (Lev. 19:18) to be legally explicated, rather than with a rule for which a proof text or scriptural allusion is provided. 2. The crux of the exegesis is the relation between the suc-

passages on which the particular halakha is based." A list of the laws and their underlying scriptures is provided on the same page.

³⁷ In MT, the citation begins with the tetragrammaton, for which the pronoun *הוא* is here substituted, whether to avoid use of the tetragrammaton (see above, n. 15) or to emphasize, as explained below, that it is God alone who takes vengeance.

³⁸ The language of being "silent from day to day" appears to derive from Num. 30:15, where it is said that if a husband does not object to his wife's vows, he is assumed to confirm them. However, 4QD^b has "from month to month."

³⁹ Translation is from *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations. Volume 2. Damascus Document, War Scroll, and Related Documents* (ed. J.H. Charlesworth; Tübingen: J.C.B. Mohr, 1995) 43 [translation of CD by J.M. Baumgarten and D. Schwartz]. Note that MT Lev. 19:17 has *עמיתך* where our text has *רעך*. For other negative references to bearing a grudge, see CD 7:2-3; 8:5; 1QS 7:8-9. On the obligation of reproof see also 1QS 5:25-6:1; 9:16-17; CD 7:2-3; 9:18; 4Q477. In none of these is Scripture cited. On the last see E. Eshel, "4Q477: The Rebukes by the Overseer," *JJS* 45 (1995) 111-22; C. Hempel, "Who Rebukes in 4Q477?," *RQ* 16.4 (64) (December 1995) 655-56; S.A. Reed, "Genre, Setting and Title of 4Q477," *JJS* 47 (1996): 147-48. On the general topic, see L.H. Schiffman, "Reproof as a Requisite for Punishment in the Law of the Dead Sea Scrolls," *Jewish Law Association Studies II: The Jerusalem Conference Volume* (ed. B.S. Jackson; Atlanta: Scholars Press, 1986) 59-74; *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code* (Chico: Scholars Press, 1983) 88-109.

cessive verses of Lev. 19:17-18 (the obligation to reprove and the prohibition not to bear a grudge), which are here textually separated so as to be exegetically relinked through a series of rhetorical steps, beginning with the latter verse and culminating in the former. 3. These verses from the Torah are explicated by reference to a verse from the Prophets: the bearing of a grudge against one's fellow is not only a violation of the Torah but is precluded by the prophets.⁴⁰ The resulting rule, as it unfolds through the intertextual interpretation of Lev. 19:17-18, *requires* a member of the community to reprove his fellow in the presence of witnesses before the transgressor can be charged with a capital offense, lest the member harbor bad feeling towards his fellow. One who fails to so reprove his fellow violates both a positive (v. 17) and negative (v. 18) commandment, and is liable for the penalty which the transgressor would have received ("so that you do not bear sin because of him"). The far more common way in the Dead Sea Scrolls for such a law to be formulated and transmitted is through a paraphrastic interweaving of scriptural phrases in such a way as to dissolve the scriptural verses and their interpretation into the new sectarian rule.⁴¹

Although the Sabbath rules of the Damascus Document are frequently cited as examples of legal midrash at Qumran, their explicit midrashic formulations are in small proportion to the list of Sabbath rules overall. In one of the longest *serakhim*, or topically grouped collections of rules, twenty-six rules are given concerning prohibited activities on the Sabbath.⁴² Of these, scriptural proof-texts are provided for only two, the first and last, as if structurally to bracket an otherwise scriptureless list with scriptural citations.⁴³ Thus, this section begins (CD 10:14-17):

⁴⁰ For the possibility that yet another verse is drawn upon, see n. 37. Schiffman (*Reclaiming the Dead Sea Scrolls*, 222, 277) stresses that Qumran legal midrash is to be differentiated from that of the rabbis by its willingness to derive laws from prophetic texts. But as we shall see below, early rabbinic legal midrash evidences similar use of prophetic verses. Compare Ginzberg, *Unknown Jewish Sect*, 185. The exegetical force of the citation of Nah. 1:2 is not clear. It is usually understood to emphasize that God alone (and not humans) "takes vengeance and keeps a grudge." See Schiffman, *Reclaiming the Dead Sea Scrolls*, 220. However, Dimant ("Hebrew Bible in the Dead Sea Scrolls," 117) understands the citation of the verse to mean that one is allowed to take vengeance and bear a grudge against one's *enemy* (outside the sectarian community), but not one's *fellow* (within the community), thereby understanding the rule to be intramurally directed.

⁴¹ This is in fact what we find in every other reference in the DSS to reproof and bearing a grudge. See above, n. 39.

⁴² CD 10:14-11:18. Ginzberg, *Unknown Jewish Sect*, 108, estimates that this section makes up more than a third of the legal part of CD.

⁴³ Schiffman (*Halakhah at Qumran*, 85) refers to this as a "literary framework." Cf. Dimant, "Hebrew Bible in the Dead Sea Scrolls," 121; A. Goldberg, "The Early

Concerning the Sabbath to guard it according to its precept (לשמרה) (כבשפט): Let no man do work on the sixth day from the time when the sphere of the sun is distant from the gate by its fullness; for that is what he said (כי דוא אשר אמר): "Guard (שמרה) the Sabbath day to make it holy" (Deut. 5:12).⁴⁴

Although Deut. 5:12 is cited in support of the preceding statement, the passage does not specify the hermeneutical relation between the two. Is the verse cited in support of the general obligation to "guard" rigorously (לשמרה) the Sabbath according to the precepts that follow (כבשפט), or the more specific requirement to begin such guarding shortly prior to the actual setting of the sun? Most scholars, on the basis of early rabbinic interpretation, favor the latter, and cite this passage as an example of legal midrash at Qumran akin to that of the Rabbis, finding in our document a pre-rabbinic attestation of the rabbinic principle חוספה מלאכה or חוספה שבה, adding to the Sabbath and its work restrictions.⁴⁵ But the analogy is not that tight, since in our earliest rabbinic interpretations, Deut. 5:12, in exegetical combination with Exod. 20:8, is taken to denote the extending of the Sabbath at its conclusion, rather than its beginning. But more significantly, the *form* that legal midrash takes in its early rabbinic context is notably different from what we find in the Damascus Document, as can be seen from the following passage from the Mekilta of R. Ishmael:

and the Late Midrash," *Tarbiz* 50 (1982) 99, n. 16 (Hebrew). Compare Jub. 50:6-13, where a similarly long list of Sabbath prohibitions begins with a biblical citation (Exod. 20:9, although not identical with the MT or any biblical version). However, in Jubilees the verse is not introduced with citation terminology. Compare as well CD 16:6-9, where Deut. 23:24 is cited at the beginning of a series of scriptureless rules regarding oaths and vows (including CD 16:10-12, where citation language is used to introduce an allusion to Num. 30:9), as might have been the case for CD 9:8-10 (where the citation is not of an actual scriptural verse).

⁴⁴ Translation is from *Dead Sea Scrolls* (ed. Charlesworth) 47. The text is also found in 4QD^c 10 v 1-3. Schiffman (*Halakhah at Qumran*, 85) refers to this as "one of the few *halakhot* in the *Zadokite Fragments* which is expressly derived from a scriptural quotation," and as "a *midrash halakhah*." He similarly refers to the scriptural citation at the end of the Shabbat *serekh* (CD 11:17-18): "This is a clear example of *midrash halakhah*" (128).

⁴⁵ Ginzberg, *Unknown Jewish Sect*, 56-57, 108, 183, 199-200; Schiffman, *Halakhah at Qumran*, 84-87. Cf. Dimant ("Hebrew Bible in the Dead Sea Scrolls," 120), who, while drawing a similar connection, understands the CD formulation as a polemic against the Pharisaic position, with the former being more stringent in requiring an earlier cessation of work on the eve of the Sabbath. This interpretation, however, hinges on one's understanding of the "gate" of our passage. Dimant (119-20, n. 38) favors viewing it as the physical western gate of Jerusalem or of the sect's camp, rather than the symbolic gate of the horizon, as it is usually understood. The former would presumably result in an earlier time for the cessation of work. This accords with Dimant's general understanding of CD laws for which scriptural citations are provided as being polemical statements against the rules of other groups.

"Remember the Sabbath Day to keep it holy" (Exod. 20:8). "Remember" (זכור) and "observe" (שמור) (Deut. 5:12) were both spoken as one utterance... "Remember" and "observe." Remember it before it comes and observe it after it has gone. Hence they say (מכאן אמרו): We should always increase what is holy by adding to it some of the non-holy.⁴⁶

The rabbinic text, hermeneutically sensitive to the possible redundancy of different formulations of the fourth commandment of the Decalogue in its two pentateuchal settings, asserts that the two expressions, זכור and שמור, are to be taken as one: add to the holiness of the Sabbath both before its arrival (זכור) and after its departure (שמור). It is impossible to know whether such a midrash halakhah lies behind the terse formulation of the Damascus Document. The Qumran text is simply not interested in sharing with its readers the hermeneutical specifics and dynamics of its citation of Deut. 5:12. Do we have here the tip of a more complex, underlying midrash halakhah, the specifics of which we can supply from a later rabbinic midrash, or simply the citation of a scriptural phrase to stress the importance of guarding the sanctity of the Sabbath with particular rigor?⁴⁷

Similarly, scholars have sought to recover the legal midrash that underlies the Damascus Document's prohibition of talk (or thought) about work on the Sabbath and to connect it to early rabbinic parallels. But it is precisely the formal and rhetorical differences in expression between the two that are noteworthy. The Damascus Document simply lists its rules without scriptural reference (10:17-21):

And on the Sabbath day a man shall not talk disgraceful and empty talk. He shall not demand payment from his neighbor for anything. He shall not make judgments concerning wealth and gain. He shall not talk about the work and the task to be done the next morning. Let no man walk in the field to do his workday business (on) the Sabbath.⁴⁸

⁴⁶ Bahodesh (Yitro) 7 (ed. and trans. J. Lauterbach) 2.252. The same basic exegesis can be found in the Mekilta of R. Simeon bar Yohai ad Exod. 20:8 (ed. Epstein-Melamed) 148, in the name of Shammai the Elder, and in Midrash Tannaim ad Deut. 5:12 (ed. D. Hoffmann) 1.21. In all of these, שמור of Deut. 5:12 is taken to refer to the extending of the Sabbath *after* its departure.

⁴⁷ This appears to be how Fitzmyer ("Use of Explicit Old Testament Quotations in Qumran Literature and in the New Testament," 19) understands CD's citation of Deut. 5:12, including this passage under the category of cases in which the "Qumran author quotes the Old Testament in the same sense in which it was used in the original writing" (17-18).

⁴⁸ Translation is from *Dead Sea Scrolls* (ed. Charlesworth) 47. Jub. 50:8 condemns one "who says anything about work on it - that he is to set out on a trip on it, or about any selling or buying." Translation is from J.C. VanderKam, *The Book of Jubilees* (CSCO 510-511; Louvain: E. Peeters, 1989) 2.326.

By contrast, the Mekilta's comment to Exod. 20:9 has:

"Six days you shall labor and do all you work": But is it possible for a human being to do all his work in six days? It simply means: Rest on the Sabbath as if all your work were done. Another interpretation (דבר אחר): Rest even from the thought of labor. And it says: "If you turn away your foot because of the Sabbath [from pursuing your affairs on My holy day...And if you honor it and go not your ways nor look to your affairs, nor strike bargains]" (Isa. 58:13) and then it says: "Then you shall delight yourself in the Lord," etc. (ibid. v. 14).⁴⁹

Even if the Damascus Document's rule is based on a combined exegesis of Exod. 20:9 and Isa. 58:13, which would be difficult to determine with any certainty,⁵⁰ it shows no interest in transmitting that rule in exegetical form, not to mention employing the dialogical rhetoric characteristic of rabbinic midrash halakhah.

Finally, the Damascus Document's list of Sabbath laws concludes with an explicit scriptural citation (CD 11:17-18):

Let no man bring on the altar on the Sabbath (any offering) except the burnt offering of the Sabbath, for thus it is written (כי כן נאמר), "Apart from your Sabbaths (מלבד שבתותיכם)" (Lev. 23:38).⁵¹

While not explicit, this rule appears to prohibit the offering of festival sacrifices when they would coincide with the Sabbath. The phrase from Lev. 23:38 is scripturally preceded by a list of types of offerings to be brought at their assigned festival times. Our text clearly understands the word מלבד to mean "apart from," thereby distinguishing the Sabbath offerings from the others. Only the prescribed Sabbath sacrifice is to be offered on the Sabbath, presumably since the bringing of the festival offerings would entail forbid-

⁴⁹ Mekilta of R. Ishmael Bahodesh (Yitro) 7 (ed. Lauterbach) 2.253. Cf. Mekilta of R. Simeon bar Yohai ad Exod. 20:9 (ed. Epstein-Melamed) 149; Midrash Tannaim ad Deut. 5:13 (ed. Hoffmann) 1.22. See also Mekilta Shabbata 1, ed. Lauterbach, 3.197, cited in a similar regard by Baumgarten, "Unwritten Law in the Pre-Rabbinic Period," 17, n. 15.

⁵⁰ See Ginzberg, *Unknown Jewish Sect*, 58-59, 108-09; Schiffman, *Halakhah at Qumran*, 87-91; *Reclaiming the Dead Sea Scrolls*, 221-22. Schiffman argues for dependence on Isa. 58:13 based on phrases of that verse that are woven into the CD passage, especially עשה דפצך דבר and דבר דבר. He further argues that the prohibition of walking one's field on the Sabbath for the purposes of contemplating business is based on "turning back your foot on the Sabbath." Strangely, Schiffman (*Reclaiming the Dead Sea Scrolls*, 222) makes a point of contrasting CD's exegetical dependence on a prophetic verse with the rabbis' reluctance to do so. Yet, it is in the Mekilta passage that Isa. 58:13 is cited and not in CD. In his earlier work (*Halakhah at Qumran*, 89), he stressed that Isa. 58:13 informed both the Qumran and early rabbinic midrash halakhah on this topic. See above, n. 40.

⁵¹ Translation from Charlesworth, 49. MT has מלבד שבתותיהם, but continues מלבד שבתותיהם, which may have influenced CD's citation.

den labor on the Sabbath.⁵² This ruling is in contrast to that of early rabbinic midrash halakhah, according to which festival sacrifices were offered in addition to the Sabbath offering when they coincided, based on the same scriptural word מלבד, now understood to mean "besides." In commenting on Lev. 23:38, the Sifra asks:

From whence do we know that the additional Sabbath sacrifices are to be offered with the festival sacrifices? Scripture teaches, "Besides the Sabbaths of the Lord."⁵³

As significant as the opposite interpretations of CD and rabbinic legal midrash are their differences in rhetorical style. The rabbinic midrash formulates a rhetorical legal question, to which Scripture provides the answer, whereas CD provides the rule, to which is appended its scriptural warrant. While the scriptural citation is integral to the structure of the rabbinic argument, it is not required by the sectarian rule. Therefore, it is not clear why this rule of CD requires a scriptural proof-text whereas its predecessors in the list do not.⁵⁴ The citation of Lev. 23:38 works well, however, in providing the end bracket to the overall section of scriptureless Sabbath rules. Just as the opening citation establishes the importance of safe-guarding the sanctity of the Sabbath with respect to the preceding profane day, the closing citation asserts the unique and superior status of the Sabbath with respect to the sacred festivals.

IV. Conclusions

In completing our tour, we find that there is relatively little legal midrash to be found at Qumran, at least at or above the textual surface. Rather than regard this primarily as a negative datum requiring us to look below that surface in search of, or in reconstruction of, legal midrash at Qumran, we should view this firstly as a positive datum for how the Qumran community chose to formulate and

⁵² For this interpretation, and its ramifications, see J.M. Baumgarten, "Halakhic Polemics in New Fragments from Qumran Cave 4," *Biblical Archaeology Today: Proceedings of the International Congress on Biblical Archaeology, Jerusalem, April 1984* (Jerusalem: Israel Exploration Society, 1985) 395-396. Baumgarten argues, against others, that CD does not mean to exclude the daily (תמיד) sacrifice on the Sabbath, as is emphatically allowed in Jub. 50:10-11.

⁵³ Sifra Emor parashah 12:10 (ed. Weiss) 102b.

⁵⁴ Dimant ("Hebrew Bible in the Dead Sea Scrolls," 120-21) argues that since the Pharisees of second temple times can be presumed to have held the same view as the later rabbis, the CD rule, in polemical response to it, requires a proof-text for support. However, even if her polemical presumption is valid, it is not clear that the scriptural citation is included for this reason.

transmit its legal traditions in relation to the Torah of Moses and the ongoing revelatory process in which it viewed itself as the latest and consummate stage.

Cultural history requires us to take seriously the *forms* by which a culture transmits its knowledge, and thereby shapes its members' competencies and self-conceptions. As Roger Chartier asks:

How are we to understand the ways in which the form that transmits a text to its readers or hearers constrains the production of its meaning? The appropriation of discourse is not something that happens without rules or limits. Writing deploys strategies that are meant to produce effects, dictate a posture, and oblige the reader... If we want to understand the appropriations and interpretations of a text in their full historicity, we need to identify the effects in terms of meaning that its material forms produced.⁵⁵

Translating Chartier's agenda to our own, we need to ask: How does the mainly non-midrashic form of Qumran legal discourse address its community of readers and hearers? What effects does it seek to produce, what posture does it evince, how does it oblige and privilege its audience?

The fact that some form of study of תורה and משפט (the precise nature of which we do not know) was required of the Qumran community's members under the guidance of its inspired priestly/Levitical teachers does not necessitate that they viewed their laws as the exegetical *products* of such ritualized communal study.⁵⁶ We have seen that in each passage where communal study is described or prescribed, the precise nature of that study remains unclear. Although from the perspective of the Qumran pesharim and the retrospective of rabbinic midrash halakhah we might presume that sectarian legal study took the form of explicit biblical exegesis, in no case do the Qumran texts evidence such a connection between sectarian rules and scriptural interpretation as the primary mode of legal study.⁵⁷ In

⁵⁵ *Forms and Meanings: Texts, Performances, and Audiences from Codex to Computer* (Philadelphia: University of Pennsylvania Press, 1995) 1-2.

⁵⁶ Furthermore, given the relative paucity of contemporary Jewish legal literature outside the Dead Sea Scrolls, we have little way of knowing which of the sectarian laws found in the scrolls were the product of the Qumran community and which had been inherited from previous, pre-Qumranic contexts, or were shared with other Jewish groups.

⁵⁷ It should be noted that the pesharim represent a form of Qumran commentary specific to the actualizing interpretation of biblical prophecies. In addition to continuous pesharim to books of the Prophets (and Psalms), more isolated commentary, with or without the specific peshar terminology, can be found in other works (but mainly the Damascus Document), where the main verse being commented upon is prophetic in nature or understood to be so: CD 4:14-15 and 4QFlor 1:14, 19 (with peshar terminology); CD 3:20-4:4; 6:2-11; 7:9-21; 8:9-12 (without peshar terminology).

other words, the proper פרוש דהורה which the community taught and followed is never claimed to be the hermeneutical result of their collective life of חזרה. מדרש חזרה.⁵⁸ Rather, their rules are regularly described as having been revealed, whether to and through the Teacher of Righteousness, the successor inspired teachers, or, ideally at least, the elect community as whole.⁵⁹ At most, we can say that the community's collective life of regular מדרש, in the root sense of searching for and inquiring after God's will through revealed scriptures and laws, was the social and soteriological context in which they experienced or expected such revelation to continue. But, to repeat, nowhere is it suggested that the laws themselves were uncovered through the methods of scriptural exegesis.⁶⁰ The Qumran community viewed itself as being doubly privileged: to be engaged in the search for God's will and to have had it divinely revealed to them. As Joseph Baumgarten states:

gy). On the rhetorical nature and ideological underpinnings of pesher commentary, in comparison with that of early rabbinic midrash, see my book, *From Tradition to Commentary*, 1-23, esp. 3-6. Because the pesharim were among the first of the DSS discovered and published, because of their allusions to events and persons in the sect's history, and because of their significance for the history of biblical interpretation, they have gained a prominence that has led some to regard them as defining Qumran scriptural exegesis overall. However, given the fact that they all exist in single copies and display a specific type of actualized prophetic exegesis, it would be a mistake to exaggerate their importance or to assume that they characterize the broad range of Qumran use of Scripture. For major works on the pesharim, see M.P. Horgan, *Pesharim: Qumran Interpretations of Biblical Books* (Washington, DC: Catholic Biblical Association, 1979); B. Nitzan, *Pesher Habakkuk: A Scroll from the Wilderness of Judaea (1QpHab)* (Jerusalem: Bialik Institute, 1986) (Hebrew).

⁵⁸ For the former expression, see CD 4:8; 6:14; 13:6; as well as CD 6:18, 20; 14:18. For the latter expression, see CD 20:6; 1QS 8:15; as well as CD 6:7; 7:18; 1QS 6:6; 4QFlor 1:11.

⁵⁹ Besides the texts examined above, note passages which refer to the community's "first rules" (משפטים ראשונים), in one case said to have been taught to them by the Teacher of Righteousness: 1QS 9:10-11 (=4QS^a 3 i 9); CD 20:31-33; cf. CD 4:8. It is never said or implied that these foundational sectarian rules were uncovered through scriptural exegesis. For the community as a whole (the יחד or רבים) as the overall context for continued revelation, see the fuller argument in my "Interpretive Authority."

⁶⁰ See my translation and discussion of CD 6:2-11 ("Interpretive Authority," 58-63): "The well' is the Torah, and those who dug it are the Converts of Israel who went out from the Land of Judah and sojourned in the Land of Damascus. God called all of them 'princes' because they sought him (דרשוהו) and their renown was not disputed by anyone. And 'the scepter' (מזיקק) is the Interpreter of the Torah (הורש חזרה), of whom Isaiah said: 'He produces a tool for His work' (54:16). And 'the nobles of the people' are those who come to dig the well with the ordinances (מזיקקו) that 'the scepter' ordained (חקק) for them to walk by for the duration of the time of wickedness, and without which they will attain nothing, until the appearance of the one who will teach righteousness at the end of days." The digging of the wells, usually taken to denote Torah study, does not produce the laws, which are rather ordained (חקק) by the הורש חזרה. In two passages (1QS 8:11-12; CD 6:19,

Such searching was a regular aspect of the cultic life of the community and derives from the expectation that "from time to time" [עו בעת] a new revelation might be disclosed to an earnest seeker. While scriptural readings and exposition of the Law were part of the devotional pattern, the esoteric illuminations of the Qumran teachers were looked upon as an indispensable source of halakha...All arguments based on exegesis of the Torah would be overshadowed by the Qumran belief in esoteric apocalyptic writings which supplemented the Mosaic Law.⁶¹

Despite our initial expectations that the Dead Sea Scrolls should contain much legal midrash, we can now see the internal logic of its relative absence. The Qumran community understood its esoteric legal writings to be the most recent stage of divine revelation to Israel, following and consummating those to Moses and the Prophets. Whereas the earlier revelation was נגלה, revealed to all of Israel, the more recent revelation was נסתר, hidden from unworthy Israel as a whole and made known to the covenantal returnees alone. They received such continuing, but now esoteric, revelation via the Teacher of Righteous and a successive line of priestly/Levitical teachers and leaders, as well as through the community as a whole, by virtue of their dedicated life of collective study and practice of God's will. Whatever hermeneutical processes actually produced their rules (and we should not assume that that process necessarily took place at Qumran),⁶² the documents in which they are *textually* produced and transmitted at Qumran present them mainly as revelation rather than as interpretation. The Qumran community claimed divine authority for their rules not by virtue of their reasoned derivation from sacred scriptures, but by virtue of the divine election, inspiration, and dedication of their priestly leaders and holy community.⁶³ This stands in sharp contrast not simply to later rab-

but note the emended text suggested by E. Qimron in *The Damascus Document Reconsidered*, 21), the verb מצא is used to refer to esoteric laws "found" by the community or its leaders. A similar usage occurs in 4QD^a (4Q266) 11 6 and 4QD^c (4Q270) 7 i 20. However, there is no reason to presume that this means that these laws were produced or uncovered by means of exegesis of Scripture *per se*. Cf. 4QMMT C30 with DJD 10.93 (3.5.2.22).

⁶¹ "Unwritten Law in the Pre-Rabbinic Period," 33-34. Note especially Baumgarten's disagreement with E. Urbach, N. Wieder, C. Rabin, and E. Slomovic in this regard. See also above, n. 7. A. Goldberg ("Early and the Late Midrash") distinguishes the manner of legal presentation of the Temple Scroll, devoid of explicit scriptural "proof," from that of later (post-70 CE) midrash halakhah. Goldberg assumes that the early Pharisaic mode of legal presentation would have been like that of the Temple Scroll, a claim for which we have no evidence.

⁶² See above, nn. 29, 56.

⁶³ Note how Vermes relates this difference not only to what he calls the Qumran community's "exegetical elasticity," but also to the "textual elasticity of the Qumran Bible" ("Biblical Proof-Texts in Qumran Literature," 508, n. 18): "When in a commu-

binic midrash halakhah, but to the Qumran pesharim, which systematically employ explicit scriptural commentary to prophetic texts to trace the sacred history of the community as the privileged fulfillment of prophetic predictions.⁶⁴

However we view the community's self-conception with regard to scriptural text and time (inner-biblical, post-biblical or, most probably, in transition between the two), its members understood their teachers to be the divinely chosen and inspired successors to Moses, the prophets, and David, and their Holy Congregation (עדה קודש)⁶⁵ to be the sacred locus for the continued revelation, ritualized study, and rigorous practice of God's will, at least in the interim between exile and messianic restoration. If we wish to look for legal midrash, as a *textually* transmitted form of Jewish discourse, we will not find it as a principal mode of teaching at Qumran; nor should we any longer be surprised.⁶⁶

Since the Dead Sea Scrolls provide us with our most extensive corpus of Second Temple legal texts, it is tempting to extrapolate from them to the character of pre-rabbinic Jewish legal discourse more broadly. Here, however, the methodological hurdles are particularly high. While we may assume that many of the laws of the Dead Sea Scrolls were shared by contemporary Jewish groups (e.g.,

nity, the ultimate legal and religious rules are based on Scripture, its text must be absolutely fixed. But if 'orthodoxy' depends on privileged priestly teaching, the particular wording of the Bible seems to be less important." Thus, the same community which does not need to root its rules in scriptural exegesis, can be "elastic" in its occasional "citation" of scriptural verses. On "pseudo-citations" in the DSS, see above, nn. 5, 35.

⁶⁴ On the problem of generalizing from the pesharim to Qumran use of Scripture more generally, see above, n. 57.

⁶⁵ Or "Congregation of Holiness." See 1QS 5:20; 1QSa 1:9, 13; 4QM^a (4Q491) 11 i 14; 4Q181 1 i 4. Alternatively, עצה קודש (Holy Council) in 1QH 7:10; 1QM 3:4; 1QS 2:25; 8:21; 1QSa 2:9; and בית קודש (Holy House) in 1QS 8:5; 9:6.

⁶⁶ We would still need to ask why explicit legal midrash appears at all in the DSS, and why it appears where it does (as one might ask of the Mishnah). To begin with, it needs to be noted, as we have above, that such explicit legal midrash is limited almost entirely to the Damascus Document, a document unique among the non-commentary texts of the DSS for its high incidence of explicit scriptural exegesis in general. In some instances, explicit legal midrash in CD appears to function as a literary marker to the beginning and/or end of a section of rules of like topic. See above, n. 43. But this does not account for all instances. Perhaps a systematic explanation that accounts positively for each instance is not necessary. While the authority of CD's rules is not scripturally dependent, a peppering of CD's text with periodic scriptural exegeses serves rhetorically to affirm, but non-systematically, the interconnection of or continuity between sectarian rules and the Torah and Prophets. For an attempt at a more systematic explanation, see Dimant, "Hebrew Bible in the Dead Sea Scrolls," who argues that explicit legal midrash is specifically employed for sectarian rules that are at polemical odds with those of other groups (e.g., the Pharisees). However, Dimant's polemical characterizations of specific rules rest on textual interpretations that are at times forced to suit her model. See above, nn. 40, 45, 54. Following her model, we should expect 11QT and 4QMMT to contain explicit legal midrash, which they do not.

Pharisees and Sadducees), even as others were disputed, we have little way of knowing how those other groups formulated and transmitted their laws in relation to Scripture, since they have not been directly preserved.⁶⁷ In other words, it is impossible to know whether the Qumran community, in internally transmitting their laws mainly (but not exclusively) as revelation rather than as exegesis, represents the norm or an exception. More specifically, we should like to know whether the pre-70 CE Pharisees practiced, in their study and transmission of ἡ παραδόσις τῶν πρεσβυτέρων, a form of midrash halakhah similar to that preserved in early rabbinic texts or something closer to the manner of the Temple Scroll and Damascus Document.⁶⁸ For now at least, even with our vastly increased knowledge of the nature of Qumran legal discourse, that question must remain unanswered. But we are in a much better position to understand how at least that one community, examined in its own right, formulated its rules in keeping with its particular socio-religious self-understanding as the elect recipient and bearer of continued divine revelation.⁶⁹

⁶⁷ I find attempts to infer the Sadducean (or Pharisaic) mode of legal teaching from the much later talmudic gloss to Megilat Ta'anit for 4 Tammuz to be methodologically precarious. See Halivni, *Midrash, Mishnah, and Gemara*, 38-41.

⁶⁸ See above, n. 61.

⁶⁹ I have consciously resisted here drawing full-blown comparisons between the Qumran community's legal writings and self-understanding and those of the early rabbis. For some preliminary gestures in that direction, see my "Interpretive Authority," 68-69. For a comparison of these two legal cultures, see the important article by D.R. Schwartz, "Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law," in *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant and U. Rappaport; Leiden: E.J. Brill; Jerusalem: Magnes Press and Yad Izhak Ben-Zvi, 1992) 229-40, whose observations accord well with my present conclusions.