

Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis. By Aharon Shemesh. (The Taubman Lectures in Jewish Studies 6). Berkeley, Los Angeles, and London: University of California Press, 2009. Pp. xiv, 220. Cloth with dust jacket. £34.95. ISBN 978-0-520-25910-2.

Aharon Shemesh's book arrives at a time of renewed and intensified interest in the relation of Jewish legal texts and traditions of the Dead Sea Scrolls to those of early rabbinic literature. Although these two corpora, in their extant forms, are separated by roughly two centuries, there is much to be gained from comparing and contrasting their forms and contents, positing possible relations between the two, and extrapolating their significance for the broader nature and history of Jewish law and legal rhetoric. In all of these respects, Shemesh's book is a very welcome and valuable contribution from an accomplished scholar who is superbly competent in both bodies of legal literature. We are deeply indebted to him for the many doors that he opens to further exploration of the profound variegation in form and content of ancient Jewish legal discourse, setting all future scholarship in this burgeoning field on a firm textual and conceptual foundation. Shemesh situates his arguments in the context of a long and rich history of scholarship, never hesitating to disagree forthrightly but respectfully with fellow scholars past and present, and always careful to reference the views of those with whom he differs. Among its many virtues, this is a book that is written in clear language so as to make its arguments accessible to a wide scholarly and lay audience.

Shemesh illustrates his every argument with clear English translations and explications of selected primary sources, while thankfully providing the Hebrew-language originals in an appendix. A cumulative bibliography, index of primary sources, and general index enhance the book's long-term usability.

In his introduction, Shemesh sets out his goals and the underlying presuppositions that will frame and undergird the more topically and textually focused studies in the four chapters to follow, with concluding remarks comprising the final, fifth chapter. Space here does not allow a thorough treatment of all of the texts and topics treated by Shemesh. I shall highlight, therefore, both his salient arguments and some of my (hopefully constructive and complementary) criticisms thereof.

Shemesh uses the term "halakhah" in the *singular* to denote "the body of Jewish law that supplements scriptural law," and sets his task to "chart its development" (1) across the Dead Sea Scrolls and early rabbinic literature, even though the term is common in the latter but totally absent (as Shemesh acknowledges) in the former, or, for that matter, in any pre-rabbinic context. While the use of "halakhah" for pre-rabbinic extra-scriptural Jewish law may be unavoidable, it does create the impression of a linear teleological perspective (in the words of the book's subtitle, "the development of Jewish law from Qumran to the Rabbis"). More on this below.

Within this overarching "history of halakhah," Shemesh presents two models for understanding the relation between the religious law(s) of the Dead Sea Scrolls

and that/ose of early rabbinic literature. The one *not* favored by Shemesh, but adopted by other scholars, is what he calls the “reflective” model. To understand this model (and much else in Shemesh’s argument), we must first recognize that Shemesh counts himself among those scholars who see in late Second Temple Judaism, and especially in its legal traditions, two groupings that were in fundamental ideological opposition to one another: the priests and the Pharisees. Under the former rubric (“priestly halakhah”) can be subsumed the legal traditions of the Dead Sea Scrolls, including the Temple Scroll, as well as the allied book of Jubilees, all of which can be taken to represent “Sadducean halakhah,” with some noteworthy differences, e.g., calendar (17-19). These legal traditions and arguments represent generally those of the priestly-aligned Sadducees, whose views are otherwise scantily evidenced in the writings of Josephus, the New Testament, and early rabbinic Judaism, but nowhere directly transmitted. In opposition to the Sadducean halakhah was that of the pre-70 C.E. Pharisees, the direct forerunners of the early Rabbis. Thus, according to the “reflective” model, differences between the legal teachings of the Dead Sea Scrolls and those of early rabbinic literature are “reflective” of legal disputes between the Sadducees and the Pharisees in late Second Temple Times, residues of which can be found both in the Dead Sea Scrolls and in early rabbinic literature. By mining those residues, scholars can more fully reconstruct those disputes. This model is built upon a presumption that all Second Temple groups (of which there may have been more than we can identify from the preserved evidence), at least with respect to religious law, can be grouped under either “priestly” (Sadducean/Qumranic) or Pharisaic (protorabbinic) camps, and that an argument by one can be presumed to have been polemically directed against the other.

While Shemesh finds cases of legal dispute that fit the “reflective” model, and while he recognizes that the two models need not be mutually exclusive (nor, I would add, are they the only possible models), he overall prefers the “developmental” model, by which differences between the legal teachings of the Dead Sea Scrolls (priestly/Sadducean) and those of early rabbinic literature reflect the linear development of “halakhah” over time. In other words, the “halakhah” as expressed in early rabbinic literature (or at least with respect to the specific sorts of cases for which we have comparative evidence) is not simply chronologically later than that of the Dead Sea Scrolls (which is indisputable at least for their extant expressions), but represents a progressive advancement (subjectively, we might say, an improvement), both in its contents and its modes of argumentation.

Although such development comes to its fullest expression in rabbinic literature (in some cases in its later strata), its early stages may already be discerned in (or attributed to) the legal traditions of the pre-70 Pharisees. Although Shemesh is careful to say that his argument is not dependent upon any genetic relationship between the Dead Sea Scrolls and early rabbinic literature (e.g., that the tradents of the latter directly knew of the former), there is a sense here of “halakhah” as a unitary organism (not withstanding its internal multiformity and multivocality)

whose linear history and development, both in contents and form, can be traced progressively over time.

While Shemesh allows for the possibility that such development was a response to changing external historical circumstances (e.g., the destruction of the Second Temple by Rome in 70 C.E. and its aftermath), he prefers to emphasize development as a function of an internal maturation that began *prior* to the destruction of the Temple. In some cases the development has its roots in the disputes between the Pharisees and the Sadducees, while in others between the “schools” of Hillel and Shammai, which have left polemical traces in both the Dead Sea Scrolls and the earliest strata of rabbinic literature, thereby establishing continuity between the two, notwithstanding their more widespread differences. While these two understandings of historical developmental causality (internal and external) are hardly exclusive of one another, Shemesh seems to prefer the more internally-focused version of the model, in part so as to locate its early stages in the late Second Temple period, *prior* to the destruction of the Second Temple, for which the Dead Sea Scrolls provide us with our best (but probably not comprehensive) evidence. The developmental model, like the reflective one, assumes a bi-polar (priestly/Pharisaic, realistic/nominalistic) legal landscape, but now preferring to view them *diachronically* (from “old” to “new”) rather than *synchronically* (or dialectically). This model has the advantage, at least, of being a corrective to the reductive view of rabbinic Judaism as the product of (or response to) the destruction of the Jerusalem Temple (or, perhaps more properly, of the failed Bar-Kokhba revolt sixty-five years later, that sealed its this-worldly fate). Rather than seeing rabbinic Judaism as born of rupture, Shemesh’s model posits its having roots extending deep into late Second Temple times. Shemesh enables us to tweak these two developmental options (continuity vs. rupture) in recognition of one another.

A great strength of Shemesh’s book (the “proof of the pudding...”) lies in the specific textual “test cases” that he provides and carefully unpacks, covering thereby a rich range of legal topics treated both in the Dead Sea Scrolls and in early rabbinic literature, while drawing in other Second Temple Sources (e.g., Josephus and Jubilees). He repeatedly demonstrates that the similarities and differences between discrete legal texts of the Dead Sea Scrolls and of early rabbinic literature are revealing of broader features, especially theological, of the two corpora overall. Shemesh is particularly adroit at exploring the relation of these legal teachings not just to one another, but to their scriptural hermeneutical undergirdings, both explicit and implicit. Some examples of legal topics so treated are fourth-year fruits, the penal code, the death penalty, the false prophet, incest, uncle-niece marriage, minimal measure, and divorce and remarriage. Some of these are more tightly illustrative of the developmental model than are others.

Shemesh is to be lauded for attending not just to legal content but to legal form, wherein the contrast between the legal texts of the Dead Sea Scrolls and those of early rabbinic literature is the sharpest and most demanding of contextualization, notwithstanding some important, but more limited similarities. In

particular, he discusses the tendency of early rabbinic literature to include multiple, often conflicting, legal opinions and scriptural interpretations as viable alternatives, as compared to the Dead Sea Scrolls' adducing of univocal rules and interpretations. This reflects, according to Shemesh, different claims for the source of textual and legal authority (and continuing revelation), "divine" for the Dead Sea Scrolls and "human" for the early rabbinic literature, which distinctions, while valid, he draws too sharply. He similarly discusses the Dead Sea Scrolls' relative lack of *explicit* scriptural interpretation for the authoritative grounding of laws, as compared to the much more robust use of *midrash halakhah* in early rabbinic literature. Notwithstanding these defining differences, Shemesh points to aspects of the Dead Sea Scrolls that "anticipate" the later rabbinic structural aspects, and to traces of the "old" approach preserved in rabbinic literature. Shemesh finds the developmental model best able to explain both these fundamental differences and the more limited similarities between the two textual cultures.

Of particular interest and significance is Shemesh's reconstruction (ch. 3) of the split between the Sadducees and the Pharisees with respect to whether legal authority rests on Scripture alone (the former) or on tradition (the latter). From Josephus's highly ambiguous statement (*Ant.* 13.297) that the Sadducees objected to the Pharisees' reliance on ancestral tradition not recorded in Scripture, Shemesh deduces that the Sadducees relied on Scripture alone for legal authority ("text-based"), while the Pharisees relied on tradition alone ("tradition-based"), and that in this regard the Sadducees were the reformist innovators in rejecting "normative halakhic customs" (73). This is a very heavy burden to be borne by one ambiguous statement of Josephus's, esp. as it becomes for Shemesh the foundation for a much broader reconstruction of the origins of rabbinic midrash as a polemical response to the Sadducees' insistence on Scripture alone (with minimal midrash) as the source of legal authority. According to this reconstruction, once rabbinic midrash was freed from its polemical (anti-Sadducean) origins, it was able to develop more creative halakhic and homiletical midrashic forms of its own, enabling the ultimate developmental success of the Pharisees/Rabbis over the Sadducees/Priests, by, in effect, beating them at their own midrashic game.

Still, despite Shemesh's frequent use of the term "development," I found myself struggling to understand what exactly he means by it, beyond simple chronological sequence. If not mainly the response to external events and conditions, is such development an inexorable result of ideational evolution? If so, should we imagine that Pharisaic legal teaching (for which we have no direct evidence) was closer, in form and in content, to that of the Dead Sea Scrolls than to its rabbinic successors two centuries later, and that the community (or communities) of the Dead Sea Scrolls, had they survived to the second/third century C.E., would have evolved in their legal teaching to something resembling the Mishnah and *midrash halakhah*? Does such a conception of development presume that what comes later (rabbinic literature) is an advancement (improvement) over what preceded it (the

Dead Sea Scrolls), thereby skewing the very endeavor of comparison? This, I must admit, is a danger of hindsight, when comparing later texts with earlier ones, that is difficult to avoid, especially for those of us (including myself) trained primarily in (and, to whatever extent, living by) the later of the two. Of course, this could be greatly appreciated as a much-needed corrective to a different “developmental” model, so long regnant in the study of the Hebrew Bible (“Old Testament”) and “intertestamental” Judaism as constituting, from the skewed hindsight of the New Testament and early Christianity, *praeparatio evangelica*. I raise this not as an accusation but as a caution to us all.

I should strongly stress that I do not deny many of the differences (and similarities) that Shemesh successfully identifies and elucidates between the legal contents and rhetoric of the Dead Sea Scrolls on the one hand and of early rabbinic literature on the other, but question whether the adoption of a overly linear developmental model to explain these might be based on some shaky presuppositions that lead to some unfortunate consequences of denigrating the former for the teleological sake of the latter. Let me illustrate this risk with one telling quote from the end of Shemesh’s book, where he explains what he argues is the more “stringent” nature of “priestly halakhah” in comparison to that of the Pharisees/Rabbis in pop-psychological terms (130-31): “Lacking the confidence that the Pharisees enjoyed as a result of their adherence to their ancestors’ traditions, the sectarians lived in constant anxiety about whether they were fulfilling their religious commitments properly, which resulted in an ever-growing tendency toward strict halakhic norms. The sectarian rhetoric against the Pharisees is an expression of their psychological and theological frustration in the face of their rivals’ religious behavior [etc.]” Here Shemesh’s developmental argument assumes a narrative momentum of its own, outpacing the textual evidence that he elsewhere follows so carefully and astutely.

In sum, Shemesh’s *Halakhah in the Making* is a very important contribution to a burgeoning scholarly literature that considers the Dead Sea Scrolls in relation to early rabbinic literature, especially in the area of Jewish law, with significant implications for their respective places in the broader cultural and intellectual history of Judaism. Its detailed yet accessible treatments of legal subjects common to both corpora, together with its bold arguments characterizing the textual strategies and religious ideologies of the two societies that produced them, raise very serious and significant questions regarding this critical juncture in the history of Jewish legal thought, practice, and, I would add, imagination, that no scholar of either can ignore. Like the texts of the Dead Sea Scrolls and of early rabbinic literature that are its focus, Shemesh’s book will long reward those who savor its textual riches, and will challenge those who enter its critical debates.

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