

S. D. Fraade's The Damascus Document, The Oxford Commentary on the Dead Sea Scrolls



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Scholars in a variety of fields should salute the publication of Steven Fraade's new commentary on the Damascus Document. Indeed, the same could be said about the entire series, but we will be concentrating here on his volume that we are celebrating here today. It is an excellent commentary and represents the first commentary on this text making full use of the entire published corpus of Dead Sea Scrolls. Further, it represents a kind of *de facto* boundary line, since it no longer refers directly to works written about this text before the discovery of the Scrolls. So we finally have an up-to-date commentary on this document.

I would like to use my opportunity today to take the new volume as a jumping off point and to ask how the Damascus Document fits into the wider questions pertaining to the history of Jewish law. In his discussion of this topic, Fraade correctly points to the difficulties inherent in the use of the term *halakhah*, a rabbinic designation. He avoids it. In what follows, I will try to follow that pattern, but the truth is that I have found it virtually impossible to express the nature of what we call "Jewish law," which is really not what we mean by the English word "law," with any term other than *halakhah*. I should also admit at the outset that when the Cave 4 materials were being prepared for publication by our late colleague and friend Joseph Baumgarten ז"ל, I tried to convince him, unsuccessfully, to return to the original name of the text, "Fragments of a Zadokite Work." In my view, this title gives a much better sense of the text than does "Damascus Document." I take the view that Damascus in this text is a code word for Qumran and, therefore, that using it as a title is misleading. Alas, I have not succeeded in convincing anyone of this view. I probably will not convince any of you.

The topic I wish to discuss is addressed by Fraade on pages 8-9. Let me begin by summarizing his remarks: He notes that for the period between the Hebrew Bible and the Mishnah, previous to the publication of the Damascus Document and the Temple Scroll, very few first-hand legal texts were known. One could not be sure if the Mishnah drew on earlier traditions that could be reconstructed with the help of sources that we had available. He notes that the Damascus Document, as well as other Second Temple period sources, can indeed be used cautiously to fill in some of this information. He observes that the Damascus Document includes numerous examples of instructions for Israel as to the "proper fulfillment of its scriptural covenantal obligations and prohibitions." He is of course correct that this question must be asked for each specific area of Jewish law and that a general statement taking in all areas of law cannot be made. Further, he notes that the relationship between

the various rules in the Damascus Document and those in rabbinic literature lines up in two different ways. In some cases, it appears that they share a tremendous amount, that the rabbinic laws find precedent in the Damascus Document. In other cases, the positions are contrary. Indeed, sometimes rabbinic sources polemicize against the specific views that we recognize in the Damascus Document.

While I believe that these observations are correct, I think that there is much more that can be said and I would like to try to sort some of it out in this discussion. My own view is that there are in ancient Jewish law two major trends, (1) the Pharisaic-rabbinic trend, ensconced somewhat later in the Mishnah, Tosefta and baraitot, but also in evidence when argued against, implicitly or explicitly, in the Dead Sea Scrolls and the New Testament; and (2) the priestly/Zadokite/Sadducean approach that is also continued in Samaritan and Karaite halakhah (excuse the expression). It is of course beyond this discussion to even guess at how Second Temple traditions were passed down to Samaritans (who actually absorbed many of these ideas from the Karaites) and to the medieval Karaites, a matter touched on in Fraade's discussion of how the Damascus Document ended up in the Cairo genizah.

Fraade is certainly correct that when we examine Jewish laws in the Dead Sea Scrolls and compare them with the Pharisaic-rabbinic approach, we often find substantial agreement alongside the many disagreements, even polemics. This is because of a very important feature that has been termed "common Judaism." This term describes the consensus on much of Jewish practice that seems to have existed in Second Temple times, that extends even beyond things that are so explicit in the Torah that they cannot be disputed. The rabbis termed these indisputable halakhot *devarim she-ha-Şeduqim modim bahem*, "matters that (even) the Sadducees agreed to." Even assuming these two preeminent trends, one should not expect everything to fit neatly into a pattern. Further, we must always be mindful of the fact that our early rabbinic evidence comes from later than our Dead Sea Scrolls evidence. It is only when we can establish it through a form of triangulation, where we have anti-Pharisaic polemic or some other kind of evidence, that we may conclude that the Pharisaic-rabbinic view was extant in earlier Second Temple times. Indeed, this is where the MMT text has been so helpful in identifying the nature of the sectarian polemic.

Virtually all the raw material for applying this overarching scheme to the material in the Damascus Document is found in Fraade's excellent commentary, and especially in the notes.

From the point of view of the wider history of Judaism, we should note that in the Admonition of the Damascus Document there are some marriage laws that parallel early Christian practices. The text states explicitly that the "builders of the wall" are engaged in *zenut* which we usually translate with the otherwise unknown, underused, and outdated word— "fornication." One of the examples in the text is having relations with menstrually impure women. A quick look at the Cave 4 legal sections, as referred to by Fraade, indicates unquestionably what scholars have thought for years: that this is a reference to differences of opinion regarding the specifics of the laws of ritual impurity and purification. The text then goes on to define what are essentially violations of marriage laws that render subsequent unions to be violations of the text's understanding of the Torah. These are the prohibition of polygamy, the notion that divorce does not actually sever the marriage so that the divorced wife may remarry, and the prohibition of marriage to one's niece. In the case of the prohibition of polygamy and marriage to one's niece there are parallels in the Temple Scroll and in 4QHalakha A. While Fraade's notes compare the "mishnaic (Pharisaic?)" saying, "Make a fence for the Torah" from Avot, his comment suggests that the "builders" are "thought by some to refer to a rival group such as the Pharisees." Here I suspect that we disagree, since Fraade takes the Pharisaic identification of the "builders of the wall" as possible, but I (as he notes elsewhere in this volume), think that this identification is definite. While the New Testament prohibits divorce, and our text limits its effectiveness in not totally severing the bond so as to allow remarriage, the House of Shammai limits the legality of divorce to cases of adultery on the part of the wife. We should note here that a variety of examples can be found in tannaitic literature where the House of Shammai seems to retain what one might call remnants of Sadducean positions within the context of Pharisaic-rabbinic tradition. In any case, I would reconstruct the conflict here as being between the two major trends of Jewish legal thought, taking those proposed by our text as those of the Zadokite/Sadducean trend and those of their opponents, as labeled by this sectarian document, as Pharisaic-rabbinic. Interestingly, the New Testament sided with the sectarians on these matters.

Now I would like to give an example of a different phenomenon, where in the spirit of common Judaism sectarian law is to a great extent in agreement with that of the Pharisaic-rabbinic approach. Here I am alluding to Sabbath law. I want to discuss one phenomenon among these parallels. A well-known fact about rabbinic law is that it distinguishes between Torah prescriptions (*de-'oraita*) and those of the rabbis (*de-rabbanan*). However, those of the Damascus Document make no such distinction and this is indeed the case also with the Sabbath mini-code found toward the end of Jubilees. Whereas most rabbinic views consider the requirement to start the Sabbath sometime before astronomical sunset to be rabbinic, our text sees it as a Torah regulation, quoting Deut 5:12 in support. This text is quoted directly by the Damascus Document. As noted by Fraade, this biblical passage is indeed quoted in the rabbinic text that asserts that this as a Torah prescription. I have no problem with somebody disagreeing with me, and perhaps Steven does. I see this as an example where the sectarians argue that it is a Torah law and the majority view in the Pharisaic-rabbinic tradition says that it is rabbinic.

However, I think we have a clearer example. Soon after, the text quotes a number of laws that stem from Isaiah 58. Here we have a series of prohibitions, including speaking on the Sabbath about lewd or idle matters, demanding payment, discussing wealth and profit or perhaps entering into legal discussions about them, speaking about and presumably planning work to be done after the Sabbath, and it seems that the discussion of business would also be included here. Because these laws are derived from the prophet Isaiah, rabbinic tradition considers them to be rabbinic laws. But the status of rabbinic ordinances or some other kind of second level commandments does not exist in the sectarian corpus. Nowhere is it suggested that the *nistar*, laws derived from sectarian exegesis of the Torah, is less authoritative than the *nigleh*, laws explicit in the Torah. This is certainly the import of the manner in which the Temple Scroll weaves its own rulings into the language of the Torah. It sees all laws as Torah laws. In fact, most of the Sabbath laws in the Damascus Document are also made up of parts of Torah verses upon which they are based. So here we have two things happening: we have a bunch of prohibitions that are part of common Judaism, shared by the Pharisaic-rabbinic tradition and the document under discussion. Some of these, by the way, are paralleled in 4QMiscellaneous Rules that includes Sabbath laws. This, of course, is cited by Fraade in his notes. So here we see another general principle of the Dead Sea Scrolls approach, presumably shared by the Zadokite/Sadducean approach, namely that all laws are Torah laws, as can be seen in Jubilees. Yet at the same time, this disagreement about derivation in no way interferes with the fact that the content of these laws in the sectarian and tannaitic versions is essentially the same.

When we get to laws of courts and testimony we have a very different situation. While there are some parallels with the Rule of the Community, especially regarding the Penal Code, the court system and laws of testimony have little parallel material elsewhere in the Qumran corpus. What is most striking here is that a different system of hermeneutics has clearly yielded a system of law that is substantially different from that of the tannaim. For example, courts of ten are not known in rabbinic literature. Nor is there a distinction in the number of witnesses as defined here between those for capital and noncapital matters. Without going into detail, here we see that the two trends are seriously at odds with one another. If we had time, we could show this for detail after detail.

Nor do we have time here to discuss in any detail the laws of purity that appear in the Damascus Document, that are especially notable in the Cave 4 fragments. Yet one thing is clear. The existence here of the Sadducean principle that the person undergoing purification remains totally impure until the completion of the final day of his or her purification ritual at sunset, is consistently followed. In contrast, this individual, known in rabbinic parlance as the *tevul yom*, "one who immersed that day," is considered as pure for certain functions not connected with the Temple or sacrificial offerings. This is an example of a place where the views of the two halakhic trends are diametrically opposed.

What I have tried to show in this brief selection of examples is that there is an overriding dichotomy between these two approaches, and that this dichotomy can take different forms. In the case of the material we discussed from the Admonition, serious differences existed regarding marriage and divorce. In the case of Sabbath law, the important differences have to do with derivation, but the substance as common Judaism was virtually the same. In the case of courts and testimony, it seems that the sectarians went their own way or perhaps, and this needs further investigation, were closer to the practices actually followed under the Hasmoneans. Finally, in the case of the final day of purification, we simply deal with an example of an absolute disagreement.

One who digs into the comments and notes of Fraade will find the raw material for making such comparisons for virtually every single detail of the text. Hopefully, as this research continues, we will arrive at a point when the role of these two major trends of Jewish law will be clear to readers of this text. In the meantime, we congratulate Steven on this important commentary that brings together all of the resources needed for a wider understanding of the Damascus Document and its place in the history of Jewish law. Mazal Tov!