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SHIFTING FROM PRIESTLY TO NON-PRIESTLY LEGAL
AUTHORITY: A COMPARISON OF THE DAMASCUS
DOCUMENT AND THE MIDRASH SIFRA

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1. *Introduction*

With the recent publication of legal texts from Qumran, especially *Miqṣat Ma'āse Ha-Torah* and the Cave 4 fragments of the Damascus Document, attention is rightly shifting back to the Qumran community's legal literature and practices.¹ These developments have stimulated a re-opening of questions concerning the nature and history of Jewish legal traditions and their transmission in second temple times, as well as their relation to the formation of *halakhah* in early rabbinic Judaism. Although the legal writings of the rabbis and those of the Qumran community are separated, at least in the extant texts available to us, by a minimum of two centuries, there is much to be gained from a systematic comparison of these two bodies of legal teaching, both for their forms and their contents. Notwithstanding the importance of other sources for ancient Jewish legal history, the Dead Sea Scrolls and early rabbinic literature are our *only* extensive ancient collections which can, with *relative* certainty, be connected to particular studying and practicing Jewish communities that we can locate in time and place and whose religious ideology and social organization we can describe.² Such comparisons can highlight not only lines of

¹ I say "back" because the early years of study of the Dead Sea Scrolls and, before their discovery, of the Damascus Document, focused more on this aspect of the scrolls than was the case in the subsequent years. 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 *Miqṣat Ma'āse Ha-Torah* (4QMMT)," *Tarbiz* 59 (1989-90) 11-12 (Heb.).

² By contrast, this is much harder to say for the legal traditions found in the writings of individuals such as Josephus and Philo, or the apocalyptic writings which are pseudepigraphically attributed to biblical patriarchs and prophets. In using "Qumran community," I presume a connection between the Dead Sea Scrolls, especially those

continuity between the two communities, but also the distinctive contours of each community's legal self-understanding, organization, rhetoric, and practice.

As simple as the question may appear, we need to ask: What exactly are we comparing in juxtaposing legal texts from Qumran and early rabbinic Judaism? In neither case are these, at the textual level at least, jurisprudential sources in the simple sense of being systematic codes of law to be applied by courts or magistrates, since in both cases they contain in significant proportion rules that can be presumed to have been *inapplicable* to the historical circumstances of their time and place. Rather, the legal writings of these two communities (like their narrative accompaniments) need to be understood firstly as texts of teaching (Hebrew: *torah*; Greek: *paideia*), which while determining practice also served pedagogically to define or reinforce their members' distinctive self-understanding in relation to sacred scriptures, the rest of Israel, and the larger context of Israelite sacred history. In particular, the study of rules (*mishpat* at Qumran; *halakhah* among the rabbis) served rhetorically, through a variety of textual practices, to justify and solidify each community in its claim to be the true covenantal embodiment and for its leaders to be the authoritative transmitters and mediators of continuing divine revelation.³

With these caveats behind us, let us narrow our focus to a single set of Qumranic and rabbinic texts whose parallels have long been noted,⁴ but whose deeper and broader significance has not been adequately appreciated or explored.

termed "sectarian," and the archeological remains of a settlement at Khirbet Qumran, regardless whether the community that inhabited that settlement in antiquity is identified with the Essenes of ancient sources.

³ For the Qumran community as a studying community, and comparisons with early rabbinic Judaism, see S.D. Fraade, "Interpretive Authority in the Studying Community at Qumran," *JJS* 44 (1993) 46-69. On the need to attend to the pedagogical force and function of rabbinic literature, see S. Handelman, "The 'Torah' of Criticism and the Criticism of Torah: Recuperating the Pedagogical Moment," *JR* 74 (1994) 356-71.

⁴ S. Schechter, *Documents of Jewish Sectaries*, Vol. 1, *Fragments of a Zadokite Work* (Cambridge: Cambridge University Press, 1910; repr. New York: Ktav, 1970) 85 n. 22; L. Ginzberg, *An Unknown Jewish Sect* (trans. of German orig., 1922, New York: Jewish Theological Seminary of America, 1976) 124 n. 74, 294, 358 n. 45; Ch. Rabin (ed.), *The Zadokite Documents* (Oxford: Clarendon Press, 1958) 65 (where in a note to line 6, "Sifre" should be "Sifra"); Ch. Albeck, סדר סדרות: ששה סדרים משנה: סדר סדרות, Dvir, 1958/9) 552 (additional note to m. Neg. 3:1); L.H. Schiffman, *Halakhah at Qumran* (Leiden: Brill, 1975) 39-40 n. 111; idem, *The Eschatological Community of the Dead Sea Scrolls* (Atlanta: Scholars Press, 1989) 27; J.H. Charlesworth (ed.), *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations*, vol. 2, *Damascus Document, War Scroll, and Related Documents* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1995) 55 n. 197.

2. CD 13:2-7

The Damascus Document, in a passage stipulating the internal discipline and organization of the “assembly of the camps” in the present “age of wickedness,” presents the following set of rules:

- [1] ובמקום עשרה אל ימש איש כהן מבונן בספר ההגני. על פידו ישקן כולם.
 [2] ואם אין הוא בחון בכל אלה ואיש מהלויים בחון באלה ויצא הנורל לצוא ולבוא על פידו כל באי המחנה.
 [3] ואם משפט לתורה נגע יהיה באיש ובא הכון ועמד במחנה והבינו המבקר בפרוש התורה.
 [4] ואם פחי הוא הוא יסגירו כי להם המשפט.⁵

[1] And in a place of ten [men], let there not lack a priest who is learned in the Book of Meditation.⁶ By his authority shall they all be ruled.

[2] But if he is not proficient in all of these [rules] and a man from among the Levites is proficient in these, then let it be determined that the members of the camp shall come and go according to his [the Levite's] authority.⁷

[3] And if [there arises] a judgment involving the law (*torah*) of *if there be a skin affection on a man*,⁸ then the priest shall come and stand in the camp and the Overseer shall instruct him in the specific application of the law.

[4] And should he [the priest] be a simpleton, he would [still] lock him [the afflicted man] away, for judgment is theirs [the priests'].

⁵ The text is from M. Broshi (ed.), *The Damascus Document Reconsidered* (Jerusalem: The Israel Exploration Society, 1992) 35. Although I have added the punctuation, the division into numbered sections corresponds to extra spaces left by the scribe before each אַם. Fragments of the text are preserved, with only minor variants, in 4Q266 9 ii 14-17 (DJD 18.69); 4Q267 9 iv 1-3 (DJD 18.108); 4Q271 5 ii 20-21 (DJD 18.183).

⁶ For various understandings of this term, see S.D. Fraade, “Hagu, Book of,” *Encyclopedia of the Dead Sea Scrolls* (New York: Oxford University Press, forthcoming). Compare the parallel to our passage in IQS 6:6-8, both of which appear to be reworkings of Josh. 1:8 (with an echo also of Ps. 1:2).

⁷ The expression “to come and to go” (לצוא ולבוא) derives from Num. 27:17; cf. 1 Sam. 18:16. It denotes the leader, especially the military leader, who both precedes his charges when they go out and come in, and by exercising control over them determines when and how they are to go out and come in. It is difficult to know whether the expression here and elsewhere in the scrolls is to be taken in a physical or spiritual sense or both. For this as a Levite function, under the ultimate authority of the Zadokite priests, see IQSa 1:22-24.

⁸ Perhaps a *paraphrase* of Lev. 13:9 (נגע צרעה כי חרה באדם) or 29 (איש או אשה) elsewhere in the Damascus Document, 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,” *Sha'arei Talmon: Studies in the Bible, Qumran, and the Ancient Near East Presented to Shemaryahu Talmon* (eds M. Fishbane, E. Tov, and W. Fields; Winona Lake, IN: Eisenbrauns, 1992) 119 (Heb.). For this phenomenon in 4QMMT, see DJD 10.140-41. Alternatively, if no biblical passage is being paraphrased, we might translate: “And if a man has a judgment involving the law of skin affection. . . .” The word תורה is used with respect to skin affections in Lev. 13:59; 14:54, 57. I have not been able to locate this particular construction (. . . משפט לתורה) elsewhere in the Dead Sea Scrolls.

Our interpretation of this text will depend partly on how we understand the relation of its sections to one another, that is, whether the three-fold ואם (“and/but if/should”) serves to nest successive sections, with the latter as a dependent instance of the former, or simply to join them in series.⁹ The first section establishes the presence and authority of a learned priest as a precondition for the formation of a minimal community of ten. The authority of the hereditary priesthood at Qumran, and their priority in matters of battle, judgment, teaching, worship, meeting, and meals, both in the present time and the awaited messianic time, is well-known from the sectarian scrolls.¹⁰

The second section qualifies the first, allowing for the possibility that a community might lack a priest with the requisite knowledge and experience, in which case a proficient Levite would fulfill the priestly leadership function, thereby giving expertise the edge over priestly heredity alone. However, the selection of a knowledgeable Levite reflects a compromise between heredity and expertise, the Levite’s status also being, we may presume, hereditary.¹¹

The third section deals with a specific area of purity law, skin affections (נגעים , or צרעה , commonly, but imprecisely, translated “leprosy”), which demanded a particularly sophisticated expertise, both of the law and of the variety of types of skin affections that had to be recognized and judged in relation to it. In this case, the biblically assigned authority of the priest is affirmed even as legal expertise is vested in the Overseer (מבקר , who was most likely a Levite).¹² In general, the Overseer, while subservient to the authority of the priests, is in more direct con-

⁹ From the other ten instances of ואם in CD (seven of which are legal in nature), it is difficult to generalize as to its usage. In six other cases, ואם is preceded by a space in the manuscript of CD. In all cases, what follows ואם is related to what precedes, but the nature of the relationship—e.g., qualification, variation, specification—varies in its degree of dependence. A similar range exists for the eighteen occurrences of ואם in the 4QD fragments, fifteen in 1QS, three in 1QSa, seventeen in 11QTemple, and three in 4QOrd. For the present passage, I will consider the second section to be a subset of the first, and the fourth to be a subset of the third, but the third to be related to, while not strictly dependent on, the second.

¹⁰ See, for example, J.M. Baumgarten, *Studies in Qumran Law* (Leiden: Brill, 1977) 44-45.

¹¹ However, there remains the possibility that “Levites” denotes a type of quasi-priestly functionary, and not necessarily a hereditary line. On the Levites in late biblical and second temple sources, see below, nn. 23, 24.

¹² For the Overseer being a Levite, compare CD 14:3-18 (the functions and authority of the Overseer) with 1QSa 1:22-25 (those of the Levites). Note also 4QTohorot B (4Q275) 3 i 3, in which the Overseer recites the covenantal curses, which according to 1QS 1:18-2:18 and Deut. 27:14-26 are recited by the Levites. On the Overseer, more generally, see the next note.

tact with the members, being responsible for their conduct and being the one to whom they turn with specific legal questions or complaints.¹³ However, it is unclear from the structure of our passage whether the Overseer played the role assigned to him here in *all* cases of skin affection, or only (as a subset of the second section) when the priest lacked the necessary knowledge. If the former, as I prefer,¹⁴ then it would appear that this was an area of priestly law that had devolved to the Overseer's purview, possibly because of the detailed and specialized

¹³ In IQS 6:11-12 it is the "Overseer of the many" who runs the community's meetings. In CD 13:11-13 and 15:6-11 it is the Overseer of the camp who is in charge of the examination and admission of new members and the recording of their status (cf. IQS 5:21). In IQS 6:13-15 it is the "Officer (פּוֹקֵד) at the head of the many," who may be the same as the Overseer, who is in charge of the investigation, instruction, and admission of new members, while in 6:19-20 it is the "Overseer of the property of the many" who receives and records the property of candidates during the second stage of their probation. The Overseer may be the same as the Master (מַשְׁכִּיל) of IQS 9:12-21, one of whose responsibilities is the admission of new members. According to 2 Chron. 30:22, the Levites were מַשְׁכִּילִים, which can also be inferred from Ezra 8:18 and Neh. 8:7-8. According to CD 9:16-23, it is the Overseer who receives and records the reproofs of members against their fellow members whose sins they have witnessed. According to the broken text of CD 15:14-15 (for which now see 4Q266 8 i 4-6), the Overseer either teaches or suspends wayward members for a year. According to CD 13:15-16, the Overseer must be notified of, and presumably approve and possibly record, all commercial agreements entered into by the members. According to CD 14:12-16, it is the Overseer and the judges who receive portions of the members' salaries and who distribute these to members in need (cf. the role of Zadok the scribe in Neh. 13:12-13). For the Overseer's more pedagogic and pastoral functions within the community, see CD 13:5-10. G. Vermes (*The Dead Sea Scrolls in English* [Harmondsworth, England: Penguin, 1975] 21-25) argues that the Overseer (מַבְקֵר) and the Master (מַשְׁכִּיל) are the same office and that both are Levites. Vermes's suggestion that they are the same as the Interpreter of the Torah (דֹרֵשׁ וְהוֹרֵה) is less certain. However, in a later edition of the same work (4th ed., 1995, p. 3), he identifies the Overseer as a priest. For the view that the Overseer is a layperson (rather than a priest or Levite), see L.H. Schiffman, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code* (BJS 33; Chico, CA: Scholars Press, 1983) 215, who sees this as a sign of the sect's "democratization." J.T. Milik (*Dix ans de découvertes dans le désert de Juda* [Paris: Éditions du Cerf, 1957] 64) considers both to be possibilities. Our present passage makes it more likely that the Overseer is a Levite (in a sense, a "quasi-priest"). For a comparative view of the Overseer, and for additional bibliography, see Schiffman, *The Halakhah at Qumran*, 29 n. 51. A recently published text and a recently published ostracron provide possible evidence that the legal and administrative functions ascribed to the Overseer by the scrolls were actually implemented in the community, although in neither is the Overseer actually mentioned. See E. Eshel, "4Q477: The Rebukes by the Overseer," *JJS* 45 (1995) 111-22 (but see the critiques of C. Hempel, "Who Rebukes in 4Q477?" *RevQ* 16 [1995] 655-56; S.A. Reed, "Genre, Setting and Title of 4Q477," *JJS* 47 [1996] 147-48); F.M. Cross and E. Eshel, "Ostraca from Khirbet Qumrân," *IEJ* 47 (1997) 17-28.

¹⁴ See above, n. 9. The third section is still derivative of the second, but in the sense that it is a more specific case of priestly authority devolving to a non-priestly expert.

knowledge that it required and possibly so as to remove the priests from direct contact with the affected, as a way of protecting the priesthood from possible contamination by contact with impurity.¹⁵ In any event, the priest is now dependent for the formal fulfillment of his juridical function on the teaching of the Overseer.

The fourth section is clearly derivative of the third,¹⁶ presenting a "worst case" scenario, stressing that even if the priest is a "simpleton,"¹⁷ the decision to quarantine the affected person is still the prerogative of the priest, even though (following section 3) we may presume he does so at the instruction of the Overseer.¹⁸ Thus, while the fourth section reaffirms the authority of the priest, as initially enunciated in the first section, it accommodates this principle to the extreme possibility (whether real or hypothetical) of a mentally incompetent priest.

¹⁵ Compare 1QSa 1:22-25, where such administrative and legal control of the community is assigned to the Levites, under the ultimate authority of the priests, but *unconditionally*. See 2 Chron. 29:34, where, from a pro-Levite perspective, it is said that the Levites were brought in to assist the priests when the latter were too few for the large number of sacrifices, and since the Levites were more conscientious about sanctifying themselves than the priests. For a negative view of the subordinate role of the Levites, see Ezek. 44:10-14; Num. 18:2-6. Note that in 1 Chron. 26:29 the Levite Chenaniah and his sons, who serve as officers and judges, are assigned "to the outside business over Israel," that is, outside the Temple proper. These are priestly functions inappropriate to officiating priests. Compare Lev. Rab. 15:8, where Moses is reported to have said: "Does this befit my brother Aaron's honor for him to be inspecting skin affections?"

¹⁶ This is evident from the use of the verb סָנַר, which is repeatedly used in Leviticus 13 to describe the priest's quarantining of the affected person, garment, or house. See Lev. 13:4, 5, 11, 21, 26, 31, 33, 50, 54; 14:38, 46. Cf. Num. 12:14, 15 (of Miriam).

¹⁷ Here the reference is not, as previously, to a priest simply lacking in Torah learning or expertise, but to one who is mentally incompetent. See Schiffman, *Halakhah at Qumran*, 39-40 n. 111. Compare the exclusion of a mentally incompetent person (שׂוֹמֵר/פִּיחִי/פִּיחִי) from communal, judicial functions, and military service in 1QSa 1:19-21. For discussion, see Schiffman, *The Eschatological Community*, 26-27. For the exclusion of the פִּיחִי from the community, lest he compromise its holiness, see CD 15:15-17 (more completely preserved in 4Q266 8 i 7; 4Q270 6 ii 8 [פִּיחִי]). There the פִּיחִי is excluded together with other handicapped persons (cf. 1QSa 2:4-11; 1QM 7:3-5; 11QTemple 45:12-14; 4QMMT B 49-54). For another negative reference, see CD 14:2 with 4Q267 9 v 5 (פִּיחִי). Ginzberg's argument (*An Unknown Jewish Sect*, 124 n. 74, 294) that פִּיחִי refers to one who is "unsophisticated," or a "layman," in contrast to a sage, may accord with biblical usage of this word but not with that in the Dead Sea Scrolls. Rabin (*The Zadokite Documents*, 64) translates, "imbecile."

¹⁸ However, it would be a mistake to conflate sections 3 and 4, as does Schiffman (*Eschatological Community*, 27): "Indeed, CD 13:4-7 provides that if the priest is a פִּיחִי, he shall be guided by the מִבְּקֵר ('examiner') in matters of quarantine." However we understand פִּיחִי (see preceding note), the מִבְּקֵר guides the priest either in all cases of skin affection, or in all such cases if the priest is insufficiently knowledgeable (that is, section 3 may be dependent on section 2, but certainly not on section 4).

In such cases, the priest's role and authority, while retained, have become purely formal and dependent on the expertise of others.

Although our text does not take the form of a biblical commentary, or even cite Scripture explicitly, it clearly alludes to Leviticus 13, wherein the roles of examining, diagnosing, and quarantining an Israelite with skin affections are repeatedly said to be the prerogative of the priests alone.¹⁹ Our Qumran text creates, in a sense, a legal fiction, whereby the priest's authority in such matters is affirmed and formally enacted, even as the core of the priestly function—his legal expertise—is transferred to the Levites in general, and to the Overseer in particular. This is especially surprising, given the emphasis on priestly status and prerogatives elsewhere in the sectarian scrolls and in the Damascus Document especially.²⁰ The rhetorical elegance and effectiveness of the CD passage lies in the dialectical manner in which its argument unfolds in progressive steps, thereby maintaining a balance between affirming priestly authority and transitioning to non-priestly legal expertise.

Although it is difficult to know to what extent the laws of skin affections were practiced at Qumran,²¹ the question of priestly competence to fulfill biblically mandated functions, must have been real and not merely theoretical. For example, we see in a recently published text that a priest could be disqualified from the priestly role of reading Scripture if he could not do so clearly, whether because of a speech defect or mental incompetence, since an indistinct reading might result in serious consequences.²² Furthermore, this is not an isolated instance

¹⁹ In Lev. 13:1-46, "the priest" is specifically referred to forty-eight times with respect to these functions; cf. Deut. 24:8; Hag. 2:11-13. For the role of the priests in examining people with skin affections, see also Matt. 8:4 (and parallels) and Luke 17:14.

²⁰ Already Ginzberg (*An Unknown Jewish Sect*, 357) expressed surprise at this contrast. His solution was to attribute our text to circumstances in the diaspora, "where learned priests could no longer be found."

²¹ Note that according to Leviticus 14, the completion of quarantine requires sacrificial offerings of purification, which are generally thought not to have been practiced at Qumran. Similarly, the extent to which the laws of skin affections (as other laws of purity and impurity) were practiced after the destruction of the Temple within rabbinic Judaism is debated. See Tosafot to b. Ber. 5b s.v. כִּי. See also Ginzberg's comments on this question with regard to our passage: *An Unknown Jewish Sect*, 357-58.

²² See 4Q266 5 ii 1-3; 4Q267 5 iii 1-5; 4Q273 2 1. For discussion, 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* (eds J. Trebelle Barrera and L. Vegas Montaner; STDJ 11; Leiden: Brill, 1992) 2.503-15. Elsewhere (DJD 18.51), Baumgarten refers

of the central role of the Overseer in adjudicating and supervising communal compliance with sectarian rules, or of the enhanced role of the Levites in the Dead Sea Scrolls.²³ In general, there appears to have been a division of labor of what in the Torah are priestly functions between priests and Levites in the Dead Sea Scrolls. More difficult to determine is to what extent this development—the partial shifting of biblically assigned priestly functions to Levites—is specific to the Qumran

to J.T. Milik's restoration of 4Q266 to include the disqualification of one who is not "quick to understand" as a Torah reader.

²³ On the Overseer, see above, nn. 12, 13. The importance of the Levites is a recurring theme in the Temple Scroll, where the burnt offerings of the Levites emphatically precede those of the tribe of Judah during the Feast of the Wood Offering (23:9-24:11), just as the sons of Levi precede those of Judah in the eschatological battle array in the War Scroll (1QM 1:2). For the Temple Scroll's frequent assignment of priestly prerogatives to the Levites, see 60:6-9 (tithes); 57:12-15 (a place on the king's advisory council); 22:10-11 and 60:7 (assigning them the shoulder of the well-being offering); 21:[1] and 22:12 (double portions of the well-being offerings for the New Wine and New Oil festivals); 22:4 (sacrificial slaughter); 60:11 (the recitation of the priestly blessing, for which cf. 1QS 1:18-20; Tg. Ket. 2 Chron. 30:27; Deut. 10:8; LXX and Sam. Tg. Deut. 18:5). On the Levitical sympathies of the Temple Scroll, with other examples, see J. Milgrom, "Studies in the Temple Scroll," *JBL* 97 (1978) 501-6, 519, 523; idem, "The Qumran Cult: Its Exegetical Principles," *Temple Scroll Studies* (ed. G.J. Brooke; JSPSup 7; Sheffield: JSOT Press, 1989) 176-78; idem, "The Shoulder for the Levites," Y. Yadin, *The Temple Scroll* (Jerusalem: Israel Exploration Society, 1983) 1.169-76; Yadin, *ibid.*, 1.154-59. For the unwarranted view that the Temple Scroll was authored by Levites (sympathy need not denote identity), see H. Burgmann, "11QT: The Sadducean Torah," *Temple Scroll Studies*, 257-63. The Temple Scroll also interpolates Levites into biblical laws. See 11QTemple 57:11-15 with Deut. 17:20; 11QTemple 61:7-8 with Deut. 19:17. The threefold hierarchical division of priests, Levites, and laity is particularly emphasized in this scroll. This accords with the Temple Scroll's conception of the Temple as comprising three rather than two concentric courts which decrease in sanctity and exclusivity as one moves outward, with the expanded middle court serving as a buffer between the inner priestly court and the outer Israelite court, the three together corresponding to the inner divine sanctuary, the medial Levitical camp, and the surrounding Israelite camp (= "temple city") of the wilderness encampment. See B.E. Thiering, "*Mebaqer* and *Episkopos* in the Light of the Temple Scroll," *JBL* 100 (1981) 59-74; L.H. Schiffman, "Exclusion from the Sanctuary and the City of the Sanctuary in the Temple Scroll," *HAR* 9 (1985) 315, 318. The Levites also play a prominent but medial role in the eschatological holy war according to the Qumran War Scroll: 1QM 1:2; 2:2; 5:1; 7:14-16; 8:9; 13:1; 15:4; 16:7; 18:5. In late second temple times some Levites are reported to have been unhappy with their liminal status. Thus, Josephus (*Ant.* 20:216-18) disapprovingly recounts that the Levite singers petitioned and were allowed to wear the same robes as the priests, thereby blurring the distinction, set by "ancestral law," between priest and Levite. The rebellion of Korah and company (note especially Num. 16:8-11) may be a retrojected reflection of this tension. The Temple Scroll, by contrast, insists that the Priests not wear their priestly garments in the middle court (= Levitical camp), lest they thereby "communicate holiness" to the people. See 11QTemple 32:10-12; 33:1-7; 40:1-4, with Lev. 6:2-4; Ezek. 42:14; 44:19; and Y. Yadin, *The Temple Scroll*, 1.220-23, 248-49.

community or symptomatic of a legal shift of authority more widely current in second temple Judaism.²⁴ This, in turn, touches on a larger methodological issue in the study of the Dead Sea Scrolls: to what extent are their prescribed practices representative of wider Jewish practices of the time, or at least of other similarly-minded groups, and to what extent are they sectarian rejections of contemporary norms or the practices of their rivals. Sometimes we have contemporary legal sources outside the Dead Sea Scrolls with which to approach this question, but often we do not, in which case the use of later rabbinic sources can be both promising and problematic.²⁵ Before addressing this larger question, let us turn to two later rabbinic “parallels” for comparison and contrast.

3. *Mishnah Nega'im 3:1*

The Mishnah devotes an entire tractate to rules relating to skin and related affections. The following passage is striking for its reduction of the priestly role in adjudicating such cases to a mere formality:

²⁴ According to post-exilic scriptural traditions, the Levites are not only entrusted with carrying the ark and safeguarding the Torah within it (Deut. 31:25-26; 1 Chron. 15:2 [based on Deut. 10:8]; 2 Chron. 5:4; but cf. 1 Kgs 8:3-4), but are responsible for teaching the Torah to the people (Deut. 33:10; Ezra 8:16; Neh. 8:7, 9; 2 Chron. 17:7-9; 35:3-6) and for administering Torah law and affairs of state (as שופרים) (1 Chron. 23:4; 26:29; 2 Chron. 19:8, 11 [cf. LXX]; 29:5-36; 34:8-14; as well as Josephus, *Ant.* 4:214; and *Sifre Deut.* 15). The latter two functions are also connected with the Levites in Jub. 31:15. In these ways the Levites are said to carry out functions more generally or previously assigned to the priests, thereby increasingly acting as inter-mediaries between the Aaronite priests and the people. The eventual assignment of the role of Temple gate-keepers to the Levites (Neh. 7:1; 12:25 [compare Ezra 2:42; Neh. 7:45]; 1 Chron. 9:18; 16:38; 23:5; 26:1-19; 2 Chron. 34:9 [compare 2 Kgs 12:10; 22:4]; Philo, *Spec.* 1:156) may similarly reflect an increasingly intermediary role between priestly and Israelite realms. For the growing importance of the Levites in second temple times, especially as reflected in the retrojections of the Chronicler, see R. de Vaux, *Ancient Israel: Its Life and Institutions* (trans. John McHugh; New York: McGraw Hill, 1961) 388-94. On the Levites more generally, see B.A. Levine, “Levites,” *Encyclopedia of Religion* 8 (1987) 523-32.

²⁵ For a critically aware but less cautious approach to this question, see A.I. Baumgarten, “Rabbinic Literature as a Source for the History of Jewish Sectarianism in the Second Temple Period,” *DSD* 2 (1995) 14-57. Compare, for example, the interpretation of Deut. 17:7-13 in second temple sources (including Dead Sea Scrolls) and the early rabbinic midrash *Sifre Deut.* 152-53, discussed at length in S.D. Fraade, *From Tradition to Commentary: Torah and its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991) 83-87 (with notes). While this biblical passage mandates the supreme judicial authority of a high court of levitical priests and/or a magistrate in a variety of cases, including נגעים (however understood), it is taken by the midrash as warrant for rabbinic authority in the absence

- [1] הכל כסמאין בנגעים, חוץ מן הגוים ונר תושב.
 [2] הכל כשרים לראות את הנגעים, אלא שהסמאה והסרה בידו כהן.
 [3] אומרים לו: אומר "סמא" והוא אומר "סמא". אומר "סדור" והוא אומר "סדור".²⁶

[1] All are rendered impure by skin affections, except for gentiles and a resident alien.

[2] All are eligible to inspect skin affections, but purity and impurity are [declared only] by a priest.

[3] They say to him [the priest]: Say, "Impure!" and he says "Impure!" [Or they say to him]: Say, "Pure!" and he says "Pure!"

Sections 1 and 2 are parallel in structure. They begin with an inclusive ruling ("all"), which is then qualified with an exclusion ("except," "but"). Notwithstanding (and perhaps masked by) this formal parallelism, it is the second rule that is the more radical, requiring the explication of section 3. Just as all (within Israel proper) can be rendered impure by contact with skin affections, all are able to inspect and diagnose skin affections (but not to declare them "pure" or "impure"). The latter is, of course, in stark contrast to Leviticus 13, which emphatically assigns these functions to the hereditary priesthood alone, as is presumed elsewhere in the Mishnah.²⁷ The present mishnah, presumably, is not eliminating the qualifications of expertise in inspecting skin affections in light of Torah law, but is affirming that this function is *not* dependent upon priestly lineage per se. Just as all can be affected, so too all are qualified to inspect, so long as they acquire the necessary knowledge (which for the Mishnah would suggest a sage, whether or not a priest). Nevertheless, in striking similarity to the Damascus Document, our mishnah qualifies its bold statement of non-priestly inclusivity by affirming the authority of the priest alone to pronounce the verdict. Also like the Damascus Document, it resolves this inclusive/exclusive dialectic by relegating the priest's role to a merely formal function. The priest simply repeats verbatim the words that he is told to say.

In a sense, the Mishnah goes further than the Damascus Document

of qualified (expert) priests or Levites. While second temple sources similarly separate "levitical priests" into priests and Levites (see *ibid.*), they do not derive from this biblical passage a shift in authority between them, or from them to lay legal authorities as do the rabbis. Nevertheless, might the rabbinic exegesis predate its earliest extant textual embodiment and underlie a similar shift in legal authority in second temple varieties of Judaism? Without further evidence, it is impossible to say.

²⁶ The text is according to Ch. Albeck, סדר סדור, 206. The only significant manuscript variant is in MS Kaufmann, which has כהן מפי כהן ("from the mouth of a priest") instead of כהן בידו כהן in line 2. MSS Parma De Rossi 138 and Cambridge have כהן בידו כהן.

²⁷ E.g., m. Neg. 2:3.

in relegating to the priest a purely mechanical function: he is not taught the law and its application (as in section 3 of the Damascus Document), but simply told (and the Mishnah does not say by whom) what words to repeat. Furthermore, the Mishnah does not make such an arrangement conditional on the lack of expertise or competence of a particular priest, but rather implies that in *all* cases of skin affection any priest's role (qua priest) is limited, formal, and vestigial.²⁸

4. *Sifra Tazri'a Parashat Nega'im pereg 1:8-10*

Even more striking for its similarities to the Damascus Document is the Sifra to Lev. 13:2, which in typical midrashic fashion atomizes that verse to facilitate commentary:

- [1] והבא אל אהרן: אין לי אלא אהרן עצמו. מנין לרבות כהן אחר? תלמוד לומר הכהן.
 [2] מנין לרבות בעלי מומים? תלמוד לומר מבניו.
 [3] או יכול שאני מרבה הללים? תלמוד לומר הכהנים. יצאו הללים.
 [4] ומנין לרבות כל ישראל? ת"ל או אל אחד.
 [5] אם סופיע לרבות כל ישראל מה תלמוד לומר או אל אחד מבניו הכהנים? אלא ללמד שאין פוטמאה ופורה אלא מפי כהן.
 [6] הא כיצד? חכם שכישדאל רואה את הנגעים ואומר לכהן, אעפ"י שוסת, אומר "שמא" והוא אומר "שמא". אומר "סהור" והוא אומר "סהור".²⁹

[1] *He shall be brought to Aaron* (Lev. 13:2). I only know about Aaron himself. Whence can I deduce to include another priest? Scripture teaches, *the priest* (ibid.).

[2] Whence can I deduce to include [priests] who are blemished? Scripture teaches, [any] among his sons (ibid.).

[3] Is it possible therefore to include illegitimate priests? Scripture teaches, *the priests* (ibid.), thereby excluding illegitimate ones.

²⁸ Compare t. Neg. 1:1-2, which stress that expertise "in them and their names" is a condition for inspecting skin affections, without differentiating between priests and non-priests. A requirement of expertise need not, ipso facto, require the transfer of priestly functions to non-priests, only to qualified priests, as is presumed elsewhere in the Mishnah; cf. b. Shevu. 6a; b. 'Arak. 3a; and tosafot to both. I noted above that the Damascus Document (section 3) is ambiguous whether the Overseer plays this role in all cases of judging skin affections, or only in the event that the presiding priest lacks sufficient knowledge. I favored the latter, taking this to be a regular function of the Overseer.

²⁹ The text is from Weiss's edition, 60b. The punctuation and line divisions are mine. I have checked the editio princeps (Venice, 1545) and the major manuscripts (Vatican 66, Vatican 31, Oxford, London, Parma, Breslau/JTSA), none of which differs significantly from the printed version. According to the catalogue of M. Kahana (*Manuscripts of the Halakhic Midrashim: An Annotated Catalogue* [Hebrew] [Jerusalem: The Israel Academy of Sciences and Humanities; Yad Izhak Ben-Zvi, 1995]), there are no extant Geniza fragments for this passage.

[4] Whence can I deduce to include all of Israel? Scripture teaches, *or to [any] one* (ibid.).

[5] If we can go so far as to include all of Israel, what does Scripture teach [when it says], *or to one of his sons, the priests* (ibid.)? Rather, it comes to teach that impurity and purity are declared [only] by a priest.

[6] But how [does this work]? A sage of Israel observes the skin affections and tells the priest, even if he is a simpleton: Say "Impure," and he says "Impure." Say "Pure," and he says "Pure."

Like the Mishnah, but more hermeneutically so, the Sifra constructs a dialectical strategy of inclusive and exclusive moves. In the first two of a series of rhetorical questions and answers, the commentary midrashically derives from Lev. 13:2 an inclusive understanding of who among the priests examines persons with skin affections, including even priests with physical blemishes.³⁰ However, according to section 3, the offspring of illegitimate priestly unions are excluded from such service, since they are disqualified as priests. We might be surprised, therefore, by the radical and hermeneutically daring move of section 4, in which *all* of Israel (priests and non-priests alike) are included in the scriptural rule. This most inclusive move occasions a logical and potentially undermining question (section 5): If all of Israel is included, why does Scripture single out the priests? It is to teach that only the priests can formally declare someone to be pure or impure with respect to skin affections. The Sifra (section 6) then asks how such a division of labor (non-priestly examination and priestly declaration) can be achieved, and resolves the tension similarly to the Mishnah: the priest simply declares what he is told to say by the examining "sage of Israel" (for whose status priestly lineage is irrelevant). Thus, once again, the priest retains a merely formal role, with knowledge and experience residing with the (rabbinic) sage.

Most striking, especially in comparison with the Damascus Docu-

³⁰ But cf. m. Neg. 2:3, where, in interpretation of Lev. 13:12, the blind or seeing-impaired priest is disqualified from inspecting skin affections. It is difficult to know how the Dead Sea Scrolls would have considered blemished or handicapped priests in this regard. In several places, people with physical blemishes and physical or mental handicaps are barred from participation in the community or entry into the Temple or Temple city: 1QS_a 2:4-11; 1QM 7:4-5; 11QTemple 45:12-14; 4QMMT B49-54. From this we might assume that priests with such handicaps would have been barred from any priestly service (cf. Lev. 21:17-23; 2 Sam. 5:8). However, as we have seen, the Damascus Document preserves a priestly role (albeit reduced) for a priestly "simpleton" for purposes of quarantining persons with skin affections. For the exclusion of people with blemishes or handicaps in the Dead Sea Scrolls, see Yadin, *The Temple Scroll*, 1.289-91; Schiffman, *The Eschatological Community*, 37-52; A. Shemesh, "'The Holy Angels are in Their Council': The Exclusion of Deformed Persons from Holy Places in Qumranic and Rabbinic Literature," *DSD* 4 (1997) 179-206.

ment, is the Sifra's insistence that the priest retain his formal role of declaring the status of the affected person, even if he is a "simpleton" (שׂוֹמֵן; parallel to CD's פְּתוּי).³¹ Thus, in the Sifra's juxtaposition of the roles of priest and sage, what is defining of one is irrelevant to the other: whereas the priest retains his vestigial status and function by virtue of his ancestral pedigree alone, the sage acquires his central status and function by virtue of his learning and interpretive skills alone. The former need not be mentally competent and the latter need not have a hereditary lineage.

Although the Sifra is consistent with the Mishnah, it differs from it rhetorically in several significant ways. While the midrash (like the mishnah) expands the biblical rule so as to include "all of Israel" as examiners of skin affections, thereby removing the priests' privileged position (section 4), it subsequently (section 6) assigns this role to a "sage of Israel," presumably a rabbi. While "all of Israel" is scripturally derived, the "sage of Israel" is not, being slipped in metonymically at the end. Thus, the sage both stands for "all of Israel" and is distinguished among them by his learning and experience in such matters. By contrast, the Mishnah makes no explicit mention of a sage. Although, we can presume the Mishnah has the sage in mind, its rhetoric serves to juxtapose the priest and "everyone," subordinating the former to the latter. The midrash's rhetoric, by contrast, is even more dialectical, moving in a series of hermeneutical steps from Aaron, to all (legitimate) priests, to all of Israel, to the sage of Israel, to the vestigial priest. By stressing that even a simpleton priest can fulfill what remains of the priestly function, the midrash stresses how mechanistic and devoid of learning and understanding the priest's role has become. Structurally, therefore, the simpleton priest stands for Aaron, while the sage stands for all of Israel, to whom priestly roles have been extended. Rhetorically, the sage emerges as the central figure, even as his hermeneutical grounding is the weakest.

In certain respects, the Sifra seems closer to the Damascus Document in its step-like rhetorical strategy, with the sage of the former

³¹ It should be noted that like the Mishnah, the Sifra elsewhere assumes the biblical role of the priest in inspecting skin affections. Thus, at the conclusion of the Sifra's commentary to Lev. 1:10, it stresses that a single priest examines those with skin affections. Similarly, at the very end of the Sifra's commentary to this section of law (*Metzor'a pereq* 5:16 [ed. Weiss, 74d]), it cites the following interpretation of "to instruct" (Lev. 14:57): "This is to teach that he [the priest] does not inspect skin affections until he has been instructed by his master." This interpretation simply requires expertise of the priest; cf. t. Neg. 1:1, 2, and discussion above, n. 28.

occupying the place held by the Overseer in the latter, and in both cases the priest being reduced, in a sense, to a "simpleton."³² However, an important distinction remains. As best we can tell, the Overseer is a *specific* community functionary (one per camp), who, if I am correct that he is a Levite,³³ still derives his authority, in part at least, from his hereditary status. By contrast, the sage denotes a group of men whose membership was open to all Israelite males, dependent only on their acquiring the requisite learning, behavior, and experience. All (male) Israelites could, ideally at least, become sages, but not all Qumranites could (or need) become Overseers. In both cases, however, we witness a dialectical shift from authority vested entirely in the hereditary priesthood to authority assigned to non-priests by virtue of their learning and experience in matters of Torah law and its application. The difference between the Damascus Document and the Sifra in this regard is less one of kind than of degree: the shift from hereditary priestly authority to non-priestly expertise is more advanced, and perhaps less conditioned, in the Sifra than in the Damascus Document.

However, notwithstanding these similarities between the Damascus Document and the Sifra, another important difference remains. The Sifra takes the form of a biblical legal commentary (*midrash halakhah*), with a dialogical rhetoric of question and answer, whereas the Damascus Document is closer in form to the Mishnah, with its simple, declarative statements of a sequence of rules.³⁴ Thus, although the Damascus Document's overall strategy and some of its specifics are closer to those of the Sifra, its textual practice is closer to that of the Mishnah.

³² This is not to say that for either document most priests are considered simpletons. However, both documents, by allowing the priestly function to be fulfilled even by a simpleton, are saying, in effect, that the priest might as well be a simpleton, since his function is not predicated on knowledge and understanding.

³³ If I am wrong, and the Overseer need not necessarily have been a Levite, then my argument needs only slightly to be modified, with the gap between the Damascus Document and the Sifra, that is, between the Overseer and the Sage, being narrower but still significant.

³⁴ On the *relative* absence of explicit *midrash halakhah* in the extant Dead Sea Scrolls, see S.D. Fraade, "Looking for Legal Midrash at Qumran," *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls* (eds M.E. Stone and E.G. Chazon; Leiden: Brill, 1998) 59-79. For a broader discussion of the relation of rabbinic midrashim to the Dead Sea Scrolls, see idem, "Midrashim," *Encyclopedia of the Dead Sea Scrolls* (New York: Oxford University Press, forthcoming).

5. *Conclusions*

The complex web of rhetorical concordance and discordance that we have traced renders impossible any simple depiction of the historical or literary continuities or discontinuities between these Qumranic and rabbinic texts. This modest exercise is emblematic, I believe, of both the dangers and possibilities of the broader enterprise of relating the legal corpora of the Dead Sea Scrolls and early rabbinic literature to one another. The previous error of regarding the practices of the Qumran community as entirely disconnected from those of early rabbinic Judaism should not be replaced by a no less myopic view of their continuities. Since our evidence for these two communities' religious cultures is deepest in the textual practices of their extant corpora of rules and commentaries, it is there that the richest potential for comparisons and contrasts, with broader sociological and ideological implications, remain to be made.

Returning to the specific Qumranic and rabbinic documents we have examined, their similarities and difference might be due, at least in part, to the similarities and differences between their primary audiences and pedagogical purposes. The Sifra's primary audience, like that of other early rabbinic midrashim, is one of study circles of individual sages and their disciples, whose gradual ascendancy as the teachers, leaders, and judges of third-century Galilean Jewish society it sought internally to advance and justify. The Damascus Document's primary audience, like that of other sectarian scrolls, is one of community members and neophytes whose socialization to communal study and discipline under its priestly and levitical leadership it similarly sought internally to advance and justify. While study was an essential practice for both communities, the more decentralized rabbinic study circles depended more heavily (but not entirely) on the discursive process of dialogical commentary to draw and transform its students into a rabbinic self-understanding.³⁵

It is tempting to interpret the striking similarities between the rules

³⁵ For this function of the dialogical nature of early rabbinic midrash, in comparison to its antecedents, see S.D. Fraade, *From Tradition to Commentary*, chap. 1; idem, "Literary Composition and Oral Performance in Early Midrashim," *Oral Tradition* (forthcoming). In contrast to early rabbinic Judaism, we find nothing resembling the master-disciple relationship at Qumran. Neophytes joined the community as a whole and advanced through its ranks, studying its texts and practicing its rules, under the instruction of its priestly and levitical teachers, but with no indication of *individual* master-disciple relations or circles.

and rhetorical practices of our Qumranic and rabbinic documents as a sign not just of morphological confluence, but of historical inter-connection. For example, might the rabbinic shapers of the Sifra have been familiar with, and perhaps responsive to, the text or traditions of the Damascus Document?³⁶ Conversely, might the parallels to the Sifra in the Damascus Document suggest that the former's legal traditions originate in late second temple times, when they might have been known by and influenced the shapers of the Damascus Document?³⁷ Failing a determination of direct influence in either direction, might the similarities between our two texts point to a shared tradition upon which they both drew? While each of these is possible, none can be established with any degree of certainty. The similarities between the Damascus Document and the Sifra, while very striking, are more of argument than of actual language and form. They need not reflect borrowing, but rather the parallel phenomena of two studying communities rooted in shared scriptures, each with its own need to shift legal authority, albeit to different degrees, from hereditary priests to non-priestly learned experts. However, this disclaimer of influence in either direction need not negate the historical significance of the comparison of these texts, and the light thereby shed by each on the other's contours.

Perhaps we might argue קל וחומר (*a fortiori*): if in the case of the Damascus Document, which like other sectarian scrolls places so much emphasis on the privileged status and role of the priesthood, some of the biblically assigned priestly roles have been shifted, but not entirely, to Levites and non-priests with greater expertise in certain laws and their application, how much more so might this have been a tendency of second temple Judaism more broadly.³⁸ Similarly,

³⁶ Given the fact that the Damascus Document survived outside of Qumran, as attested by its disposal in the Cairo Geniza, such a scenario cannot be ruled out as a possibility.

³⁷ Thus, Ginzberg (*An Unknown Jewish Sect*, 357) attributes the Damascus Document's reduction of priestly privilege in our passage to rabbinic ("talmudic" [sic]) influence, based in part, however, on his confusion of this tradition with another ascribed to Hillel. Given the fact that several fragments of our CD passage were found at Qumran (see above, n. 5), we know for certain that it pre-existed the destruction of the Temple and is not a later insertion. Assuming that the *Sifra* in its present form dates approximately to the mid-third century, there is no reason not to presume, given its anthological nature, that some of its traditions might predate considerably the collection as a whole. However, this is still a far cry from identifying particular parts of its text as deriving from second temple times. Cf. L. Finkelstein, "The Core of the Sifra: A Temple Textbook for Priests," *JQR* 80 (1989) 15-34.

³⁸ See above, nn. 23, 24. On this development generally in second temple Judaism, see M. Himmelfarb, "'A Kingdom of Priests': The Democratization of the Priesthood

if in a central document of early rabbinic Judaism, which claimed for the rabbinic sages the (once-priestly) roles of covenantal teachers and mediators to Israel, the priests retain an authoritative legal role, albeit attenuated, how much more so can we assume that outside rabbinic circles, priests continued to claim and/or exert legal influence in Jewish society after the destruction of the Temple.³⁹ If so, then the shift from priestly to non-priestly legal authority and expertise did not happen overnight nor automatically with the destruction of the Second Temple. Rather, it was a gradual, and not simply linear, process that had important antecedents before and was significantly accelerated after the destruction of the Temple. If our passage from the Damascus Document might represent one such striking antecedent in that process, then our passage from the Sifra might reflect its acceleration, even though, as we have seen, the shift is in process within both. If so, the passages we have examined would represent, if viewed historically, not so much “parallels” as successive points on a shared continuum. However, if viewed phenomenologically, we might say that to the extent that these two passages partially converge, they do so from opposite directions. But whether viewed historically or phenomenologically, the shift, as momentous as it appears with distant hindsight, was one that was accomplished—at the local, pedagogical level of each studying community—with dialectical finesse.⁴⁰

in the Literature of Second Temple Judaism,” *Journal of Jewish Thought and Philosophy* 6 (1997) 89-104. It is difficult to know, however, whether such assignment of priestly functions to the laity, whether to Israel as a whole or to non-priestly leadership, represents a linear historical development of “democratization,” an idealization of the people/community, or a persistent and unresolved dialectic of elitism and egalitarianism. For an argument for the opposite development at Qumran, that is, from collective to priestly authority, based on differences between 1QS and the 4QS fragments, see A.I. Baumgarten, “The Zadokite Priests at Qumran: A Reconsideration,” *DSD* 4 (1997) 137-56.

³⁹ It is simplistic to assume that no sooner than the Temple was destroyed, the priesthood lost all its scripturally based and traditionally confirmed prerogatives and influence. Although the Temple with its sacrificial worship was the center of priestly authority and influence, the priests could claim leadership roles and legal authority independent of and outside the Temple. For further discussion and bibliography, see S.D. Fraade, *From Tradition to Commentary*, 73, 232 n. 20. More recently, see S. Schwartz, *Josephus and Judaeon Politics* (Leiden: Brill, 1990) 58-109; D.M. Goodblatt, *The Monarchic Principle: Studies in Jewish Self-Government in Antiquity* (Tübingen: J.C.B. Mohr [P. Siebeck], 1994) 176-231.

⁴⁰ This article originated as a paper at the session “Rabbinic Halakha and Qumran,” History and Literature of Early Rabbinic Judaism Section, Society of Biblical Literature 1997 Annual Meeting. On that occasion I benefited from the responses of Joseph Baumgarten and Lawrence Schiffman and the comments of John Kampen and James Kugel. The written version has benefited from readings by Christine Hayes, Martha Himmelfarb, Martin Jaffee, Chaim Milikowsky, and Shlomo Nach.