

LAW AND SOCIETY IN THE DEAD SEA SCROLLS

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Probably everyone in this room knows that I came to Princeton after studying at the Hebrew University of Jerusalem. A lesser known fact is that after high school I spent a year in a commune as a member of an Israeli youth group, associated with the Kibbutz movement. It was an experience of daily reconciliations between the lofty ideology and the mundane activities. We all agreed that a commune required openness and honesty, but sometimes openness made things worse. It was clear that a communal economy required trust and friendship, but some of us did not get along with others, and nothing could change that. No member of the commune questioned that we were all equal, but that did not determine who was going to do the dishes.

Who was going to do the dishes was an intricate problem which seemed to be resolved in a completely different realm from the agreed ideology, and depended on practical considerations, such as who needs to get up in the morning and when; irrational factors, such as who was criticized last for their dishwashing technique and will therefore indignantly relieve themselves this time; and there was also the peculiar case of setting indisputable facts: a person who would go to sleep and not partake in the discussion was obviously not going to be washing dishes later on. In short, washing dishes was politics, and it was proven to be something separate from ideology altogether. There was a reciprocal relation between them, but they were not the same. Our thoughts remained ideological, while our actions were political.

My consideration of law and society in the Dead Sea Scrolls, therefore, was informed by personal experience, but with an ever-present notion of defeat: with only written evidence at hand, I could be sure that the ideology would override the realities that constituted the intricate relationships of law and society. A law might say something about who washes the dishes, so to speak, but that will not reveal that someone went to sleep before they were done.

Law, however, is also separate from ideology, and it tends to reflect some of the reconciliations that occurred between ideology and realities. The Community Rule

provides an excellent example for that in its laws of rebuke (1QS 5.23-6.1): members should not approach each other in anger, grumbling, or a stiff neck. However, the prohibition on bad feelings does not ban judgment, but rather mandates it: members should reprove their fellow sectarians in truth, humility and loving grace. They must rebuke each other for their behavior before witnesses, and if the problem persists, bring it forth to the Overseer, and then before the Assembly of the Many. These laws are trying to maintain an amicable atmosphere in a small community, and at the same time allow for reproach that would be unavoidable in a strict society as the Essenes. One can imagine that these tensions would not be resolved entirely with these laws. Politics and hard cases could play out in various ways according to these laws: who rebukes first, who forgot to have a witness for his rebuke, a member being chastised for reproaching a fellow member in anger, and so forth. A precious piece of evidence for such tensions is provided by Josephus, who reports that after being expelled from the community, members would reach the verge of starvation, refusing to consume impurities of external people. At this point, the sect would accept “many of them” back on account of their sufferings (*Jewish War* 2.8.8). The problems of applying Josephus’s testimony to the study of the Scrolls notwithstanding, this report should be taken as valid for any sect and any set of laws. It is plausible that laws were enforced in various degrees of leniency for different cases. Even Josephus’s report, however, cannot provide us with the full picture. When he says that “many” were forgiven after the initial expulsion, he also implies that some were not. There is ample room for maneuvering when a sect decides to expel people but only allows some to return, and these are precisely the realities that are beyond the law, and that are neither recorded in the documents of the past, nor can they be observed by scholarship today.

The account I’ve given so far has an element of fiction in it: looking back, I can see a continuum running from my adolescent experiences to the conclusion of my dissertation, but the process was not as straightforward and did not begin so early. It began with a reading course with my advisor, Martha Himmelfarb, where we read together the Cave 4 fragments of the Damascus Document. Believing that my main interest in Second Temple Judaism was biblical interpretation, I examined some Deuteronomic laws and their adaptation in 4QD and related texts. The gap between ideology and reality became apparent in that early discussion, but in order to explain it I had to make overarching claims about law in the scrolls that still had to be explored and proven.

This led to a new framework of examining the scrolls on their own terms, neither as post-biblical literature, nor as pre-rabbinic texts. In order to do so, I decided to talk about law

in the scrolls in as much abstraction as possible. Rather than borrow terms from biblical or rabbinic scholarship, I searched for concepts and terms from the discipline of law.

As a foundation for the argument, I approached the debate on the ontology underlying Essene law. Danny Schwartz described it as “realist” (in contrast to the rabbis’ “nominalism”), but the terminology obfuscated the debate, as can be seen in various responses to him. For a long time I considered Jeffrey Rubenstein’s suggestion to define this “realism” as Natural Law, but Leora Batnitzky pointed out important differences between my account in chapter 1 and the arguments for Natural Law, and – perhaps most importantly – the difference between Natural Law and Divine Law. Following a discussion with Leora, I favored the label “Legal Essentialism,” that did not deny the ontological foundation at the heart of the debate, but still emphasized that this was primarily a legal issue, not a philosophical one.

The chapter on intention in Essene law provides another level for the discussion of its ontology. The significance of intent questions the essentialist element of the law, but at times intent is rendered inconsequential, thus reaffirming essentialism as an important element of the law.

The following two chapters deal with actual laws that constitute and regulate the community: first, I deal with exclusion, as a factor that shapes the community in every aspect. Through its admission process, the sect is defined as closed and selective, and through its penal system the sect expels errant members and regulates itself. These movements of entrance and exit are controlled by the legal institutions of the sect, and serve both practical purposes (by regulating membership) and ideological purposes (by defining the reasons for which one shall not return). The degree of the seclusion of the sect is further questioned through 4QMMT, which I view as a historical epistle, even though the copies we have are evidently not the copies sent to Jerusalem. Both the issues in the letter and the rhetoric employed to convince the addressee convey a sense of responsibility which should be applied for the self-understanding of the sectarians as part of the nation, and their ideological willingness for openness, however limited this was in practice.

I then proceed with a discussion on obligation, describing the two processes by which the commitment of a member to a community is fortified. Borrowing terms from sociologist Rosabeth Moss Kanter, I examine laws that encourage these processes, namely “mortification” and “transcendence,” the former leading to a detachment of the member from his previous surroundings and relations, and the latter driving the member towards a greater dependence on his community. The various laws of the penal code in 1QS

concerning proper conduct among the many, serves a good example for this transcendence process, and through them I also discuss the issue of hierarchy in the sect, based on genealogy on the one hand, and on political roles on the other. As a theoretical contribution that will not be attested explicitly in the scrolls, I discuss the possibility of a contradiction between a sectarian's religious obligation and his communal obligation. Specific cases cannot be discussed, but by exploring this possibility, with the aid of Kierkegaard, I hope to convey the significance of this topic to inquiry of religious sectarianism on the one hand, and the significance of theoretical advancements in the study of the Dead Sea scrolls.

The final chapter serves as a case study for the arguments provided beforehand, and is intended to tie together these elements with other pertinent issues for the study of the scrolls, including my initial interest in biblical interpretation in the scrolls, questions of gender, and the relationship between different texts among the scrolls, which I purposefully and methodologically avoided for most of the study, as part of my argument in favor of a revived usage of the label "Essene".

Looking on to the future, I would like to develop this study with an even greater distinction between the theoretical part and the socio-legal part of the dissertation. While such a distinction can be sensed in the shift from chapters 1 and 2 to chapters 3 and 4, I would like to make a clearer division between theory and practice, perhaps in a way that is beyond the scope of the dissertation.

I am sure there are other remaining imperfections and that some of which will be discussed shortly, but I would like to conclude by giving thanks to the tremendous and wonderful support I had for this project. I owe to Martha's guidance more than I have time to describe here, but I do want to point out two important points of gratitude: first, through Martha's work, writing and teaching, I learned the important shift from literature to history, which is obligatory for the scholar. The fact that certain texts are bound in one or two volumes in English, should not mislead us to believe that their authors are all acquainted with the same texts, and this mode of thinking, when trying to leap from the written word to the reality behind it was pivotal for my entire project; second, Martha suggested and drew in an excellent team that made this dissertation what it is: I already mentioned the significant legal and philosophical insights I received from Leora, and Naphtali Meshel contributed immensely from a philological aspect, providing important references and comments on biblical Hebrew and biblical law on numerous occasions. It is therefore to the department's credit that I was able to write an interdisciplinary dissertation from within it, and I consider myself fortunate to have spent here seven eye-

opening years of study, gaining from a simple truth of Proverbs: **הולך את חכמים יחכם**,
“he who walks with the wise gets wisdom” (Pr 13:20).