CHAPTER EIGHT
LOOKING FOR LEGAL MIDRASH AT QUMRAN

1. Introduction

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

1 While the noun מְדַרְשָׁה appears several times in the DSS, it does not usually bear the same meaning as in rabbinic literature of scriptural interpretation. See below, nn. 16, 19, 22, 24, 27, 29. See also Joseph M. Baumgarten, “The Unwritten Law in the Pre-Rabbinic Period,” in Studies in Qumran Law (Leiden: Brill, 1977), 31–32: “It is significant that in Qumran usage, unlike rabbinic Hebrew, the verb דָּרַשׁ still has predominantly the meaning ‘to seek’ or ‘to inquire’ with only isolated indications of the transition to the midrashic sense of ‘expounding Scripture.’” See also 32 n. 78. The noun הָלָכָה does not appear in the DSS, although some have suggested that the expression רְדוֹרֶשׁ הָלָכָה (1 QH 2.15, 32; 4QpIsa 23 ii 10; 4QpNah 1.2; 2.2, 4; 3.3, 6;
However, for all the midrash and halakhah found within the scrolls, textually they evidence very little midrash halakhah: the explicit citation and interpretation of Scripture as a source of or justification for law. Instead, the vast majority of legal texts from Qumran (as elsewhere in Second Temple Judaism) adapt a form of “rewritten Bible,” or paraphrase. Sectarian law is expressed in language deriving from the Hebrew Bible, but without, in most cases, explicitly citing the actual words of biblical verses. Biblical laws are intertextually rewoven and topically regrouped, but much less often directly explicated.

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

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4QCat* 9 i 4), as a designation for the Pharisees, reflects a play on תלות. See Laurence H. Schiffman, Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the Lost Library of Qumran (Philadelphia: JPS, 1994), 250. However, the verb תלות is often employed in the scrolls (especially in the hitpaʿel) in the sense of halakhic observance, as in “walking in His will” (1QS 5.10). Cf. 1QS 9.12; CD 6.10; 12.21; 20.6.


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

4 Here and below I am quoting from the English translation and revision of Louis Ginzberg’s Eine unbekannte jüdische Secte (1922): An Unknown Jewish Sect (New York: Jewish Theological Seminary of America, 1976), 192. Both in its exhortation and statutes, the Damascus Document has a higher incidence of explicit scriptural citation and explication than any other scroll, except for the pēšarim, 4QFlorilegium (4Q174), and 11QMelchizedek (11Q13). This difference is even more striking in its legal section as compared with other legal texts among the DSS. The Community Rule (1QS) and the War Scroll (1QM) each contain only about four explicit scriptural citations, while the Damascus Document contains about forty (thirty in the exhortation and ten in the statutes), even though the texts are of comparable lengths. The addition