This paper will investigate evidence from the Dead Sea Scrolls for pre-Maccabean Jewish law and its relationship with the Hebrew Bible and the legal materials preserved there. To be discussed are issues of both content and form, showing how both midrashic and apodictic forms of law appear in both collections, and how, in particular, the priestly tradition was continued beyond the last books of the Hebrew Bible. Along the way observations will be made about the state of Jewish legal materials in the early second temple period.

Any attempt to investigate the nature of pre-Maccabean halakhah must, by definition, be a complex, triangulated extrapolation. The extrapolation proceeds on two axes. One axis is that of chronology, in that certain differences that we observe between corpora written at different times can result from historical development. But other differences between corpora result from the existence of competing approaches to Jewish life and law in different, often competing, groups within the Jewish community. Because these two factors, the issues of chronology and competing approaches, often termed sectarianism, are operative simultaneously in the entire period we will be discussing, we are presented with one of the fundamental methodological challenges for our study. How do we determine if a specific difference between sources results from historical development or from differing halakhic trends, evidence for which happens to be sporadically represented? Closely related to this methodological problem is a paucity of sources. For this study, in particular, we are confronted immediately by the need for extrapolation in order to reach any conclusions at all.
First, however, we need to clarify the periodization of our study. “Pre-Maccabean” designates the period between the end of the biblical story line, ca. 450 BCE, and the Maccabean revolt of 168–164 BCE. We speak, then, about the end of the Persian period, the famous dark age of Jewish history for which we have only archaeological evidence, and the Hellenistic age of Alexander’s conquest of the land of Israel through the Seleucid conquest in 198 BCE, up through the Hellenistic reform and the Maccabean revolt. If we propose to talk about the state of halakhah in this period with such limited source material, we have no choice but to extrapolate.

To be precise, we face the problem of extrapolating forward from the early second temple period biblical texts, through a variety of Persian period or early Hellenistic period Aramaic sources, mostly preserved in the Dead Sea Scrolls. We must also extrapolate back from the later second temple texts and early tannaitic traditions into the earlier period, but also factoring in some pre-Qumranian Hebrew texts from the second century BCE, most prominently Jubilees.

When this chronological, diachronic extrapolation is merged with the synchronic problem of the contemporaneous, competing approaches of Judaism, we arrive at what I have termed triangulation. Only in this way can we possibly construct, or better reconstruct, a halakhic history, or at least the outlines thereof, from the materials at hand. Accordingly, our first task will be to survey the nature of the materials at our disposal, and only then to overlay a framework for providing a general reconstruction.

I. Biblical Materials

The primary biblical sources for our study are various elements embodied in the books of Ezra and Nehemiah. These books, thought by many to be authored by the Chronicler, contain material pertaining

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3 On the date of Jubilees, see J.C. VanderKam, “Jubilees, Book of,” EDSS 1.434–38, who dates it to 150–140 BCE. Cf. Schürer, 3.1.312–13 who dates Jubilees to soon after the death of Judah the Maccabee in 160 BCE.