NOMINALISM AND REALISM IN QUMRANIC AND RABBINIC LAW: A REASSESSMENT

JEFFREY L. RUBENSTEIN
New York University

D.R. Schwartz’s noteworthy article, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law,” proposes a powerful new theory for conceptualizing the fundamental difference between Qumran-Sadducean and Pharisaic-rabbinic law.1 Previous studies generally sufficed with the vague characterization of Qumran law as “priestly” without defining exactly what this means or how it relates to specific legal issues. Schwartz, in contrast, examines numerous particular disputes between these two legal systems and explains how they devolve from two conflicting understandings of law. The rabbis were legal nominalists while the Qumran-Sadducean exegetes were legal realists, defined as follows:

From a systematic point of view, the contrast between the nominalist and realist trends is bound up with the contrast in principle concerning the actual nature of the link between God and the laws of the Torah—the contrast between a view of the commandments as orders resultant from the will of the commanding God, on the one hand, and, on the other hand, a view of the commandments as guidelines based in independently existing situations, which man, due to the grace of the wisdom-giving God, may introduce among his considerations by accepting the yoke of the commandments.2


2 Schwartz, “Law and Truth,” 231 n. 8. Schwartz borrows this definition from

© Koninklijke Brill NV, Leiden, 1999
Dead Sea Discoveries 6, 2
Schwartz surpasses previous studies by relating this difference in legal philosophy to different views of repentance, predestination and contemporary divine revelation, thus illuminating the common ground of law and theology. He then links law to socio-cultural considerations by explaining how realism makes sense in a priestly worldview whereas nominalism better fits the situation of rabbis and sages. This insightful argument has gained a following at academic conferences and has been adopted by other scholars.\(^3\) All who share an interest in ancient Jewish law should appreciate this contribution to the field.

However, like many innovative perspectives, Schwartz’s position is somewhat overstated. In the following discussion I make three general arguments. First, I present some considerations which militate against classifying rabbinic law as nominalist, and hence against seeing nominalism versus realism as the fundamental dispute between the rabbis and Qumran. Second, I argue that the specific legal disputes Schwartz analyzes fail to unequivocally support his conclusions. Finally, I will suggest some modifications to Schwartz’s theory. I hope that my engagement with Schwartz’s ideas will contribute to a deeper understanding of the two systems of law.

I

The sources of Schwartz’s conceptual apparatus should give us reason to pause before classifying rabbinic law as nominalist. Schwartz borrowed the terminology “realism” and “nominalism” from Y. Silman’s article “Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations.”\(^4\) He quotes and endorses Silman’s definition of the two approaches.\(^5\) Silman’s article was in

---

\(^1\) Y. Silman, “Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations,” *Dine Yisrael* 12 (1984-85) 251 (Hebrew); see below.


\(^5\) See n. 2. This definition and the subsequent use of the term is confusing. Nominalism and realism are philosophical terms related primarily to ontology (where nominalism holds that material objects do not exist independent of our perceptions and realism holds that they do), or to the problem of universals (whether universals have an objective existence or not) but Silman and Schwartz use them to refer to views of the “nature of law” (Schwartz, “Law and Truth,” 230). “Legal realism,” as used in contemporary legal discourse, has little to do with philosophical realism. It also differs from Silman’s definition. Legal realists are skeptical of the claim that law is an independent, self-sufficient system of rules. Therefore, they encourage judges to take into