Women in the Bible, Qumran and Early Rabbinic Literature

Studies on the Texts of the Desert of Judah

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Women in the Bible, Qumran and Early Rabbinic Literature

Their Status and Roles

By

Paul Heger

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To my family and worldwide friends, who encouraged me to take the demanding path of transition to academic activity at an advanced age, and assisted me in overcoming the manifold obstacles on that uphill road.

Contents

Preface and Acknowledgements

I began this book in hopes of having it published to mark my ninetieth birthday and the culmination of my academic career, begun in 1996 after the awarding of my doctorate. My intensive studies in a renowned Yeshiva in Jerusalem in my youth (until the age of 19), my various activities, travels and life in many countries and finally my academic studies instilled in me the determination to perform a comparison among the attitudes towards women exhibited by the three main sources of Jewish culture: Scripture, Qumran, and early rabbinic writings. I hope in this book to have succeeded in presenting to readers a well-documented, rational, and unbiased portrayal of the different aspects of the approach to women in these sources from historical and practical perspectives.

The maxim: לא טוב היות האדם לבדו "It is no good for the man to be alone," (Gen 2:18), the biblical foundation of the gender issue, may be interpreted as intending that a person cannot succeed alone. I am deeply indebted to those who כי הביאתני עד הלם "have brought me this far" (2 Sam 7:18): my mentors and teachers, who guided and assisted me in the challenging transition from my previous activities into my academic pursuits, and my transmutation from a businessman into an academic scholar. I cannot recount here all my teachers at York University, where I started my academic studies, and at the University of Toronto, which conferred Bachelors, Masters, and Doctoral degrees on me; I appreciate all those individuals who contributed to my intellectual development, and thank them anonymously. I am, however, most particularly indebted to Professor Harry Fox, who guided my first steps at the University of Toronto, prepared for me an array of courses to provide the necessary fundamental knowledge, and facilitated the challenging adaptation of my general *Weltanschaung* to academic perspectives. He counselled me in the choice and writing of my dissertation, and graciously continues to provide me with invaluable advice. Similarly, it is my great pleasure to thank Professor Florentino García Martínez, who guided my entry into the world of Qumran in general, and edited my two previous books on Qumran subjects. His personal kindness towards his disciples, among whom I am honoured to count myself, greatly facilitated my learning from him and rendered his guidance as enjoyable as it was beneficial. At this juncture of my life and my academic activity, I also wish to thank Professor Günter Stemberger, who edited my book on the Talmud and enhanced its quality by his tireless advice and invaluable suggestions, founded on a vast knowledge of the subject. Last but not least, I am indebted to Professor Otto Kaiser, who accepted my first book for publication in the *Series BZAW*, and encouraged me to make academic research the focus of this second stage of my life.

I wish to thank my friend Professor Herbert Basser, who consistently reads my writings, offering valuable comments and advice; I am much indebted to him for the avoidance of possible pitfalls. Finally I extend my appreciation to Ms. Sylvia Hunter and Dr. Tom Moss Gamblin, the editors of this book.

Introduction

The status of women in contemporary society has lately become a matter of great interest in the context of women's desire to gain equal rights in Western and, increasingly, global society. Some writers and thinkers, feminist and otherwise, blame the Bible, both Old and New Testaments, as a significant factor in, if not the source of, women's historically disadvantaged status in Western societies. The narratives of the Creation and of the Fall were interpreted in both Jewish and Christian writings in ways highly detrimental to women. On the other hand, one must consider that these interpretations were at least partially portraying the real conditions in the societies of their period, and these writings should not be perceived as the primary instigators of these conditions; they should rather be considered as justifying the prevailing state of affairs regarding the status of women and supporting their continuation. These circumstances in Israelite society were more favourable for women than in the surrounding cultures in some respects, and more disadvantageous in others. The Israelites absorbed and adapted to their own creed and philosophy many of the rules and customs of the neighbouring nations, but their original, foreign source may still be apprehended in many instances. Since the Old Testament—particularly the narratives about Creation and Fall, which influenced the Israelites' approach towards women—preceded reinterpretations in the New Testament and in Qumran and rabbinic writings by many centuries, it seems appropriate to analyse the original Old Testament texts without preconceptions, attempting as far as possible to exclude the influence of their interpretation by the later traditional writings with which we are imbued. A close independent reading of the relevant Old Testament texts is likely to offer clues for sociological scholars about the social changes that occurred during the centuries between their redaction and their first written interpretations. The same applies to social changes in the interval between the Qumran and rabbinic writings, which may well have been strongly influenced by the quite distinct circumstances before and after the Temple's destruction; the impact of the Hellenistic culture, with its antagonistic stance on women, may also have contributed to the evolution of a negative posture towards them.

This book compares attitudes towards women in general, with particular reference to the relevant *halakhot* and conduct guidelines relating to women, in the Old Testament, in Qumran writings, and in rabbinic literatures.[1] Since

1 For practical reasons, I use the term *Qumran* to denote the writings found in the Dead Sea region; my use of this terminology is not intended to convey any assumption regarding

we may assume that the authors of both the latter literatures deduced their divergent doctrinal and legal principles and decisions from their particular interpretations of Scripture, the intention of the book in the first instance is to reveal scriptural attitudes by means of such an unbiased reading of the relevant biblical texts.

The book is divided into two parts. Part 1 undertakes a thorough analysis of the biblical narratives of the Creation of humans and of the Fall, and discusses implicit Qumranic and explicit rabbinic interpretations of these biblical texts. In contrast to the rabbis, who generated an ample literature of *midrashim* and aphorisms as well as rules of conduct and *halakhot* founded on their interpretations of the relevant biblical texts, as emerges from their diverse literature, we do not possess a comparable wealth of writings from the Qumran library, and must attempt to deduce or infer the Qumran scholars' presumed interpretations from the scarcity of texts that are available relating to women. The comparison of the results offers us a fairly credible comprehension of the underlying attitude towards women in both corpora, with particular respect to women's legal and social status, insofar as one can deduce actual circumstances from textual evidence.

In Part 2, I widen the scope of the research to examine in more depth the great variety of legal and doctrinal consequences of the interpretations of the relevant biblical texts in the two later corpora. These rules offer us a wider perspective on these societies' attitudes towards women and their social and legal status, as well as some insight on the Qumranic and rabbinic frame of mind regarding the ethics and implications of sexual activity in general, according to the presumption of each group that it possessed the requisite knowledge for the correct understanding of the Torah's decrees and its underlying intent and philosophy.

I shall not examine whether these writings express actual circumstances or desired conditions in Israelite society,[2] nor shall I discuss the archives from

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the authors of these texts or whether the site called Qumran represented the centre of the Essenes' culture.

2 Susan Niditch, "Portrayals of Women in the Hebrew Bible," in *Jewish Women in Historical Perspective* (2nd ed.; ed. Judith R. Baskin; Detroit: Wayne State University Press, 1998) 25–45 at 29, states that "we must always remember that biblical law is material edited, preserved, codified, and presented in literature, and not necessarily a reflection of actual lives." Sidnie White Crawford, "Not According to Rule: Women, The Dead Sea Scrolls and Qumran," in *Emanuel: Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov* (ed. Shalom M. Paul et al.; Leiden: Brill, 2002) 127–50 at 129, writes, "therefore what they [the Qumran writings] have to say about women is primarily prescriptive and presents what is to them the ideal situation." Tal Ilan, "Women in Jewish Life and Law," in *The Cambridge History*

the Dead Sea, that is, of Babatha and Salome, since they appear to refer to circumstances and legal documents formulated according to Roman and Greek laws rather than according to Jewish law, the subject of this inquiry. I shall also avoid making judgements as to whether Christianity improved or worsened the status of women, although reflecting on this topic may sometimes be unavoidable when parallel texts are compared. Instead, I intend to concentrate on comparing the attitude towards women that transpires from an unbiased reading of Scripture (i.e., without the influence of rabbinic or Qumranic interpretations) with those of the two later corpora. We must discern between a reading of Scripture in terms of biblical lexicon, syntax, and grammar, and Scripture as read by the rabbis, who convey their view of God's will,[3] asserting that this is God's intended message.[4] Rabbinic sources will be more abundantly quoted, since they offer us a great array of *midrashim* that tend to reflect the rabbis' various overall psychological and practical disposition towards women, the foundation of the matter-of-fact nature of their *halakhot*. Qumran sources do not contain comparable texts, and we can only attempt to deduce their authors' attitude towards women from the few halakhic and doctrinal writings on this topic that appear in these sources.[5]

My thesis contests the conventional opinion that the narrative of the Fall[6] in Gen 3 attaches a stigma to women, accusing them of causing humankind's

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of Judaism, Vol. 4 (ed. W.D. Davies and Louis Finkelstein; Cambridge: Cambridge University Press, 2006) 627–46 at 628, writes that legal codices "posit an ideal society, and many of their rulings may hint more at behaviour they wish to encourage or to combat than at standards currently practised."

3 See Jacob Neusner, *How the Rabbis Liberated Women* (Atlanta, GA: Scholars Press, 1998) xiii.

4 See Paul Heger, "Halakhic Disputes between Rabbis and Qumranic Authors," *Estudios Bíblicos* 69,3 (2011) 323–336 at 325: "They [the Rabbis] implied that their interpretation, the *intentio lectoris*, the understanding of the reader of the text, and the *intentio operis*, the meaning of the text represents the genuine *intentio auctoris*, the author's intent even when it seems opposed to the plain meaning of the text." See Maxine Grossman, *Reading for History in the Damascus Document: A Methodological Study* (Atlanta, GA: SBL, 2009), 18 on the modern aspects of interpreting texts.

5 We do not appear to possess any commentaries on or use of Canticles in the Qumran literature from which to deduce their interpretations of this erotic text, though we do find many fragments of it in their Library.

6 Because rabbinic and traditional Jewish writings lack a short sobriquet for the biblical narrative of man's first disobedience to God's command and his eviction from Paradise, I use for convenience the Christian term "Fall." The impact and consequences of this event are utterly different in the two faiths, however; in effect, it has no implications for Jewish doctrines and is not a topic of intense discussion in Jewish writings. Claus Westermann, *Genesis 1–11: A Commentary* (trans. John J. Scullion SJ; Minneapolis, MN: Augsburg Publishing, 1984)

expulsion from Paradise and its consequent calamities. This ingrained opinion in Western society is a result of biased interpretations of this scriptural narrative in rabbinic and early Christian cultures.[7] This book will question such interpretations, offering an alternative unbiased reading of the biblical narrative.

Women's position in ancient Israelite society has, as I see it, two distinct aspects: legal status and social standing. Woman's legal status as a dependent entity with no right to accomplish her personal will[8] is deduced from and justified by the Creation narrative in Gen 2, which portrays woman as a part or appendage of man, and from relevant biblical language and rules. However, there are no denigrating insinuations regarding women's social standing in an unbiased reading of the Fall narrative in Gen 3, which even from the legal aspect is most accurately read as reinforcing woman's subordinate status rather than punishing her for instigating the Fall.[9] Qumran's unprejudiced legal and social attitude towards women, based on a straightforward interpretation of scriptural texts, will be contrasted with the more complex rabbinic attitude, based on midrashic locutions about the portrayal of women, their character, their legal position, and rules of behaviour with a mandatory character. Many examples will be presented to corroborate the study's postulates and conclusions.

276, writes, "The narrative of Gen 2–3 does not speak of a fall. One should avoid therefore a description which differs so much from the text and is so inaccurate and deceptive."

7 According to Dan W. Clanton, Jr., *Daring, Disreputable and Devout; Interpreting the Bible's Women in the Arts and Music* (New York: T. & T. Clark International, 2009) 1–2, many commonly held assumptions about biblical women originate from layers of retellings and commentaries; "in many cases," he writes, "these later interpreters have often adapted and altered the Bible to fit their own view(s) of the stories."

8 The husband's authority to annul his wife's vows and oaths may, for example, have been an innovation of Scripture, rather than a justification of an existent custom.

9 Cf. Dvora E. Weisberg, "Women and Torah Study in Aggadah," in *Women and Judaism: New Insights and Scholarship* (ed. Frederick E. Greenspahn; New York: New York University Press, 2009) 41–63 at 52, who in her portrayal of the rabbinic attitude towards women bundles together the consequences of the Creation and Fall narratives: "The creation story in Genesis 2 and the story of Adam and Eve's expulsion from the Garden of Eden in Genesis 3 are used by the rabbis to assert gender differences and to explain and justify the subordinate position of women."

Methodology

Scholarship on the status of women in Scripture and in Qumranic and rabbinic literatures has often been guided by biased preconceptions in both directions. Some scholars are convinced *a priori* that a negative attitude towards women is found in all three corpora; on the other hand, some feminist scholars are extremely critical of rabbinic literature's approach to women, emphasizing the negative dicta and *midrashim*, while others have attempted, by all possible means, to read into biblical and particularly Qumran literatures excessively positive attitudes towards women that, in my view, are not supported by the text. Just as some rabbinic *midrashim* use every "trick of the trade" to demonstrate an intrinsic connection between the relevant scriptural verse and their own interpretation, regardless of its philological or essential remoteness from the original text, feminist scholars have sometimes emulated this approach in order to demonstrate in Qumran writings the equality of women in the objects of their research. Cecilia Wassen and Judith Wegner criticize these biased approaches, each from different perspectives.[10] I shall endeavour, as far as possible, to detach my reading of the ancient writings, their interpretation, and my conclusions from any ideological background of a cultural nature, and from the general influence of contemporary ways of thought.

In addition to an unbiased interpretation of the biblical narratives of the Creation and the Fall, Part 1 of the book will analyse the Qumran scholars' understanding of the relevant biblical texts, as far as they can be gleaned, mostly implicitly, from their writings, as well as rabbinic perspectives on these issues, as may be observed from their ample writings on the subject, both midrashic and halakhic. Part 2 will consider ideological deductions from the writings of the three corpora, relevant to the topic of gender and its ramifications, as well as legal and practical implications for the status of women in its widest definition.

Plan of the Book

Part 1, Chapter 1 examines the biblical texts of Creation in Gen 1 and 2, proffering a meticulous interpretation of these verses, and conjectures about the

10 Cecilia Wassen, *Women in the Damascus Document* (Atlanta, GA: SBL, 2005) 15; Judith Romney Wegner, "Philo's Portrayal of Women—Hebraic or Hellenic?" in *Women Like This: New Perspectives on Jewish Women in the Greco-Roman World* (ed. Amy-Jill Levine; Atlanta, GA: Scholars Press, 1991) 41–66 at 42–45.

legal and social impact of the Creation narrative. Qumranic and rabbinic writings on this topic are then quoted, and hypotheses regarding their underlying ideologies are offered.

Chapter 2 attempts to demonstrate, by a thorough and detailed analysis of the biblical texts relevant to the Fall, unaffected as far as possible by the influence of the host of exegetical writings from antiquity to modern times, that Scripture perceives the man, not the woman, as the main culprit in the Fall event described in Gen 3.

Part 2, Chapter 3 examines the extent of the father's authority over his daughter, paying special attention to the rule of Exod 21:7–11 concerning the father's sale of his daughter as a slave and future wife, and debates conflicting scholarly interpretations of this rule.

Chapter 4 investigates which precepts women are obligated to fulfill, and from which they are exempted, and hypothesizes about the underlying philosophy of such ordinances. Scriptural, Qumranic, and rabbinic attitudes towards this topic are considered.

Chapter 5 explores the question of whether there was a distinct group named *Yahad* in the general Qumran community, as some scholars claim, and disputes this, contending that there was no such particular group with its own rules of conduct. Rather, I shall argue that all males over the age of twenty were members of the *Eda* with full obligations and rights, after the model of the Israelites' organization in the desert.

Chapter 6 investigates the legal motive for Qumran's prohibition of polygamy, and asserts that the Qumran community acknowledged the procedure of divorce.

Chapter 7 surveys scriptural, Qumranic, and rabbinic texts in terms of their attitude to asceticism, and affirms that all viewed it negatively, not considering self-denial of permitted acts as either a virtue or a practice for attaining spiritual perfection. A conflicting scholarly viewpoint, that both Qumranic and rabbinic writings demonstrate aspects of asceticism, is disputed.

Chapter 8 strongly disputes scholarly arguments that genealogy—that is, the preservation of the pure Israelite race—was Ezra's motive in prohibiting exogamy, which led to significant legal consequences. Rather, Ezra acted to preserve the particular Israelite faith and way of life. A close and careful scrutiny of the relevant biblical texts and of Qumran writings challenges the former thesis and supports the latter.

Sources

Hebrew texts of Scripture, rabbinic writings, and commentators are from the *SHUT*, Bar Ilan Database. Dead Sea Scrolls text is from *The Dead Sea Scrolls Electronic Library* (*DSSEL*) (ed. Emanual Tov, Leiden: Brill, 2006). English translations of Scripture are from the NIV, unless indicated otherwise; numbering of verses is according to the MT. Translations of rabbinic and traditional commentators are my own, as are translations from German, French, or occasionally Italian scholarly sources.

PART 1

CHAPTER 1

The Creation Narrative and the Status of Women

1.1 Introduction

This chapter begins with a close analysis of the biblical texts of Creation, identifying the key differences between the narrative in Gen 1 and that in Gen 2, and continues by analysing the textual problems in Gen 2, making reasonable deductions regarding its attitude towards women. A particular focus will be whether the purpose of woman's creation as man's helper, and the scriptural facts of her later creation and her creation from man, should to any extent imply her inferiority. Citing the opinions of traditional commentators and modern scholars, the study will argue in the negative on this question. On the other hand, the woman's creation from Adam, his declaration that she is bone of his bone and flesh of his flesh, and consequently the derivation of her name from this reality affirm that the maxim "they will become one flesh" indicates woman's lack of a separate legal identity, with all the legal and practical ramifications this implies. This does not, however, create a personal inequality for women. The legal distinction between men and women is due to their distinct functions, not because of any superiority or inferiority. In the course of developing this thesis, scholarly and commentary opinions will be cited.

I shall also consider and compare Qumranic and rabbinic opinions on these issues, highlighting agreements and disagreements between them. Qumran writings do not generally interpret the scriptural texts, nor did they leave a collection of *midrashim* comparable to those of the rabbinic literature. Therefore, we can only infer the philosophy underlying Qumran's attitude towards women from the relevant available writings. Conversely, the array of *midrashim* and scattered interpretations of biblical verses in rabbinic writings enable us to uncover the basic philosophy guiding rabbinic scholars in their aim of formulating doctrines and halakhic rules.

1.2 The Biblical Text: Problems and Interpretations

1.2.1 *Key Textual Differences between the Creation Narratives of Gen 1 and 2*

Chapters 1 and 2 of Genesis present drastically different narratives of the creation of humans. As we may observe in the narrative of Gen 1:26–31, there

is no difference in any respect between man and woman. The term *Adam* is genderless and refers to "human," not to "man." Both man and woman were created at the same time, both are in God's image, and their joint purpose is to multiply and subdue all other inferior creatures of the universe (1:27–28). God has granted to man and woman equally the right to enjoy all the products of the earth, and both are superior to all other creatures, whose right to food is restricted to specified types (1:29–30).

The narrative in Gen 2 is in stark contrast to this thoroughly egalitarian portrayal of man and woman with respect to their creation, purpose, function, and place in the universe. This second narrative became crucial to the conventional interpretation of the Creation story, together with its repercussions for women's status in Jewish and Christian societies. Unlike the clear and unambiguous Creation narrative in Gen 1, this portrayal of the creation of humankind—particularly the creation of woman; God's rationale for her purpose and function before her creation (Gen 2:18); the mode of her creation (2:21–22); and the events immediately after her creation (2:23–24)—provokes many questions, divergent interpretations, and assumptions. Whereas Gen 1 describes the simultaneous creation of man and woman, Gen 2:7 records only the creation of man; the NIV, whose translation is quoted above, correctly translates the term אדם in Gen 1:27 as "mankind" (in the modern sense of humankind) and in 2:7 as "man"; the KJV has "man" in both cases, and the LXX has ἄνθρωπος, usually understood as the genderless "humankind." Moreover, whereas Gen 1 emphasizes humankind's creation in God's image, Gen 2 does not mention this; though recording that God breathed into man's nostrils the breath of life, it emphasizes his creation from the dust of the ground (2:7). Scholars have noticed these and other inconsistencies and concluded that the two narratives come from two different sources, amalgamated by the redactor.[1] I will therefore not consider this matter further.

1.2.2 *Textual Issues in the Creation Narrative of Gen 2*

Gen 2:18, recording God's afterthought to Adam's creation that "it is not good for the man to be alone," calls into question Scripture's general assumption of divine omniscience.[2] It is also remarkable that the narrative in Gen 2 omits

1 It has generally been assumed that Gen 1 is from source P and Gen 2–3 from source J. However, this presumption creates some problems: How can one explain that the later P authors contradicted the earlier J authors?

2 Scripture does not indicate how long Adam was alone between his creation and that of Eve. A *midrash* in *Lev. Rab*. 29 records that the entire event, from Adam's creation until his expulsion from the Garden, occurred in one day, that is, the sixth day. *Jubilees*, however, has another

God's conversation (or perhaps consultation) with the angels,[3] recorded in Gen 1:26.[4] Further, the literary structure of the narrative seems incongruous; the divine consideration of man's situation and consequent decision to create the woman (2:18) would logically have appeared after the man's naming of all the creatures and the realization that man is the only living creature without a partner (2:19–20). While it is evident that the phrase "I will make him a help meet for him" (2:18b) is uttered by God, it is not clear who is the subject of the phrase ולאדם לא מצא עזר כנגדו (lit. "and for the man[5] he did not find a helper 'against' him") in 2:20b. Is it God or Adam? And, indeed, in order to circumvent the dilemma, the NIV, like the KJV and the LXX, interprets this phrase in an undefined manner and translates it in the passive voice—"no suitable helper was found"—although the biblical text is in the active voice. The traditional commentators *Rashi* and Ibn Ezra interpreted it as referring to Adam, as does Umberto Cassuto,[6] following the interpretation of *Abot R. Nat.*;[7] likewise John Hartley and Claus Westermann.[8] Regarding the ramifications for the woman's status of her creation from Adam's rib, Hartley states, "just as the rib is found at the side of the man and is attached to him, even so the good wife, the rib of her husband, stands at his side to be his helper-counterpart, and her soul is

timeline. Although *Jub.* 2:14 follows Gen 1:27, *Jub.* 3:8 indicates a different date: "In the first week was Adam created, and the rib—his wife: in the second week." At any rate, according to both sources God created the woman as an afterthought.

3 See *Gen. R. parsha* 17 regarding God's discussion with the angels.

4 *Jub*. 3:4–5 "corrects" this omission.

5 Werner H. Schmidt, *Die Schöpfungsgeschichte der Priesterschrift; Zur Überlieferungsgeschichte von Genesis 1, 1-1–2,4a und 2,4b–3,24 9* (Neukirchen: Neukirchener Verlag, 1973) 199, clarifies that in Gen 2:7 and 2:18, אדם refers to the specific (singular) man, not to mankind, as in previous instances. At 200, interestingly, Schmidt argues that עזר, particularly when expressed in the masculine, does not specify the purpose and gender of the helper, nor does the text of Gen 2:18 clarify what type of helper the man needs. In fact, a *midrash* in *Abot R. Nat.* Recension b, Chapter 8, quoted in note 7 below, asserts that Adam, having seen all the living creatures and given them names (Gen 2:19–20), complained to God of being the only creature without a female companion. Hence, the type and gender of the helper in 2:18 is not yet specified.

6 Umberto Cassuto, *A Commentary on the Book of Genesis* (trans. Israel Abrahams; Jerusalem: Magness Press, 1961) 132–33.

7 *Abot R. Nat.* Recension b, Chapter 8 interprets Gen 2:20 thus: Adam complained to God, that He had created companions for all His creations except for him.

8 John E. Hartley, *New International Biblical Commentary: Genesis* (Peabody, MA: Hendrickson, 2000) 62; Claus Westermann, *Genesis: An Introduction* (trans. John J. Scullion, SJ; Minneapolis, MN: Augsburg Fortress, 1992), 229.

bound up with his."[9] Cassuto continues his portrayal of the Creation event with superlatives to demonstrate Adam's joy at meeting the woman, a valuable gift from God, and his realization that he now has a helper corresponding to him.[10] Cassuto depicts a fully positive ambiance created by all involved—God, Adam, and the woman—and perceives no inequality between man and woman, nor a loss of woman's individual identity by virtue of her status as a part of man, in contrast to Scripture's legal rules that indicate her to be his unequal partner.

1.2.3 *Interpreting the Phrase* עזר כנגדו

However, the scriptural phrase עזר כנגדו (Gen 2:18 and 2:20)—translated/interpreted by the NIV as "a suitable helper for him"—is in fact an ambiguous expression that cannot serve as hard evidence as to the intent of its author. The word עזר "helper" does not indicate that the helper is inferior to the person helped; a helper, or "help meet" (as the KJV translates the phrase עזר כנגדו), could be either a subordinate assistant or an equal partner. And, indeed, this term has been interpreted with different allusions, as intending an equal or lower rank, according to the preconceptions of the translators/interpreters.[11]

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9 Hartley, *Genesis*, 135.

10 Westermann, *Genesis 1–11*, 228 quotes and disputes the theory of Johannes Hempel, *Apoxysmata: Vorarbeiten zu einer Religionsgeschichte und Theologie des Alten Testaments: Festgabe zum 30. Juli 1961* (Berlin: De Gruyter, 1961), 198–229, that "God really meant the animals to be human companions, however, the man misused them and so God gave him as a punishment the woman who brought distress [of the Fall]." Westermann perceives the thrust of the narrative as leading "from the divine reflection, v. 18, to the accomplishment of the intent, v. 22, and its acknowledgment by the man, v. 23." We observe the extent of the blunders that scholarly preconceptions can generate: Hempel devised a theory that has no textual basis, and ignored the favourable attitude Adam displays towards Eve by naming her as the mother of all the living (Gen 3:20). This occurs after the Fall and Adam's awareness of God's punishment, demonstrating that he does not perceive Eve as the cause of their calamities. Robert D. Sacks, *A Commentary on the Book of Genesis* (Lewiston, NY: Edwin Mellen, 1990) 36–37, writes that Adam understands that the banishment from the Garden is not a punishment in the simple sense of the word; rather, he must leave it because "he is no longer fit to eat from the Tree of Life." He realizes, however, that "procreation must replace immortality" and that Eve "is the one who will care for the continuation of life." By naming Eve as the mother of all the living, Adam indicates his acceptance of this reality.

11 Tal Ilan, *Jewish Women in Greco-Roman Palestine: An Inquiry into Image and Status* (Tübingen: J.C.B. Mohr (Paul Siebeck), 1995) 11, charges Leonard Swidler, *Biblical Affirmations of Woman* (Philadelphia: Westminster Press, 1979), with basing his study on a biased preconception to demonstrate "Jesus' positive attitude towards women whereas that of the Hebrew Bible was negative or at best ambivalent." In my opinion, Swidler does not attribute woman's subordination and inferiority to the act of Creation; at 78 he quotes

Ed Noort disputes the interpretation of "helper" as implying a lower rank: "the word 'help' implies neither superiority nor inferiority on the part of the person giving or receiving the aid."[12] He does not, however, give adequate significance to Adam's powerful pronouncement that the woman is part of him, of his bone and flesh. Adam emphasizes the importance of this by naming her on this basis (Gen 2:23), hinting at her lack of individual identity (as becomes clear in Gen 3:16b). To avoid an interpretation contrary to this assumption of equality between male and female, Noort declares that Gen 3:16b describes the actual state of the relationship between them, rather than what ought to be according to the Creation narratives in Gen 1 and 2. I do not dispute that these narratives can be interpreted as Noort suggests, but I cannot agree with his argument that this was the intent of the ancient priestly and Yahwist writers.

The term כנגדו (the adverb נגד, usually "opposite/in front" in Scripture), with the conjunction כ "as," appears only twice in Scripture, in Gen 2:18 and 2:20, and hence we have no basis of comparison to ascertain its exact meaning. In fact, we find different interpretations of this phrase. *Tg. Onq.* translates it literally: סמך בקבליה "help opposite/against." *Tg. Ps.-J.*, adding some words for a better understanding, interprets it as אתא דתהי סמיך בקבליה "a woman which will be a help against you," but translates literally the ambiguous כנגדו. The KJV and NIV use "a helper suitable for him," whereas the NRSV gives "a helper as his partner." The LXX and the Greek *Tobit* 8:6, which record the text of Gen 2:18, use the preposition κατά, which has an almost infinite number of meanings;[13] the LXX uses the accusative case, and *Tobit* the dative. These two Greek texts differ in interpreting the phrase עזר כנגדו, which occurs in Gen 2:18 and 2:20. The LXX uses in 2:18 the adverb κατά and the accusative, but in 2:20 the dative with the addition of ὅμοιος "like to him." *Tobit*, which combines Gen 2:18 and 2:20 in one verse, also interprets the same phrase differently at its first and

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Phyllis Trible, *God and the Rhetoric of Sexuality* (Philadelphia: Fortress Press, 1978) 100, who writes that "the relationship of this couple [created by God from the same bone and flesh] is one of mutuality and equality," and agrees with Trible's statement. As I shall demonstrate, the Bible's attitude towards women is not negative, and woman's function as man's helper does not imply an inferior status. On the other hand, Tikva Frymer-Kensky, *In the Wake of the Goddesses: Women, Culture and the Biblical Transformation of Pagan Myth* (New York: Ballantine, 1992) at 119 writes that in "the position of women in society as expressed in the laws and in the narratives, we see a situation in which women are clearly subordinate to the men in the household."

12 Ed Noort, "The Creation of Man and Woman in Biblical and Ancient Near Eastern Traditions," in *The Creation of Man and Woman: Interpretation of the Biblical Narratives in Jewish and Christian Traditions* (ed. Gerard P. Luttikhuizen; Leiden: Brill, 2000) 1–18 at 12.

13 Including "down, by, according to" when followed by an accusative noun; and "down from, beneath, against" when followed by a genitive noun.

second occurrences. The KJV translates, "Thou madest Adam, and gavest him Eve his wife for an helper and stay: of them came mankind: thou hast said, It is not good that man should be alone; let us make unto him an aid like unto himself," adding "like unto himself" in the second instance. John William Wevers translates/interprets the Greek translation in 2:18 as "according what is before him" and in 2:20 as "similar to him."[14] This is simply a stylistic philological adjustment, appropriate for distinguishing God's perception in v. 18 from Adam's in v. 20 (if indeed v. 20 refers to him). We should not assume, however, that the author of these two verses, in using the same term (unique in Scripture) in both, intended it to have different meanings in two adjacent verses relating to the same subject (man). Therefore, just as the helper "for" or "like" the man is compared in 2:20 to female animals, for which there are divisions of tasks but no differences in rank, the same applies in 2:18, which represents the divine view of human gender.

J.T.A.G.M. van Ruiten analyses this problem in depth and demonstrates that according to the LXX, עזר כנגדו would mean "a helper matching him," and according to *Tobit*, "a helper fit for him."[15] Having analysed and compared the Creation narratives in *Jubilees*, the *Sibylline Oracles*, and *2 Enoch* (*Slavonic Apocalypse*), he states, "The investigation has shown that the reception of the narrative of the creation of man and woman in Early Jewish literature has been diverse."[16] L. Teugels translates כנגדו as "corresponding to him," which makes it impossible to deduce from this phrase that man and woman have different ranks.[17] Westermann's interpretation is most auspicious: "The phrase 'a helper for him' refers neither to the sexual nature of woman (so Augustine) nor to the help which she could offer to the farmer. Any such limitation destroys the meaning of the passage. What it means is the personal community of man and woman in the broadest sense, bodily and spiritual community." Regarding the relationship between man and woman, he concludes that "the narrative in Gen 2 reflects a stage in civilization which was aware of the great importance of the role of a woman in the existence of humankind."[18]

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14 John William Wevers, *Notes on the Greek Text of Genesis* (Atlanta, GA: Scholars Press, 1993).

15 J.T.A.G.M. van Ruiten, "The Creation of Man and Woman in Early Jewish Literature," in *The Creation of Man and Woman: Interpretation of the Biblical Narratives in Jewish and Christian Traditions* (ed. Gerard P. Luttikhuizen; Leiden: Brill, 2000) 34–62 at 36–39.

16 Ibid., 61.

17 L. Teugels, "The Creation of the Human in Rabbinic Interpretation," in *The Creation of Man and Woman: Interpretation of the Biblical Narratives in Jewish and Christian Traditions* (ed. Gerard P. Luttikhuizen; Leiden: Brill, 2000) 107–27 at 120. Teugels claims in note 40 that his "translation is more literal and fits better with the midrashic interpretation in *b. Yeb*.," cited below.

18 Westermann, *Genesis 1–11*, 232. See the next paragraph for a similar rabbinic opinion.

The rabbis were likewise aware of the ambiguity of כנגדו, and indeed interpreted it in a double sense in *b. Yeb. 63a*: זכה עוזרתו לא זכה כנגדו "If he [the husband] deserves, she [the wife] will be his help; if he does not deserve, she will be against him." In fact, they interpret כנגדו as "opposite/against" in the literal sense of opposition. It is noteworthy that the rabbis, who used biblical verses or phrases in far-fetched ways to create *midrashim* justifying woman's inferiority or wickedness, do not use the phrase עזר כנגדו to substantiate their theory;[19] this demonstrates that, in their learned opinion, the purpose of woman's creation and her function as helper do not, in themselves, indicate inequality between man and woman or woman's subservient status, as some scholars argue. Indeed, the pragmatic rabbis appreciated woman's importance for man's benefit, understanding woman's function as man's helper. We can observe this in an *aggadah* in *b. Yeb*. 63a, in which Elijah elucidates to Rabbi Jose that woman's helpfulness to man consists in the transformation of raw substances brought home by him, such as grain and flax, into useful items. The rabbis do not conjecture about the abstract issue of woman's inferiority, reflecting instead on the relationship between man and woman in practice and on her function as man's helper. From other rabbinic *halakhot* and deliberations we can again deduce a concept of equality in their interpretation of the woman's function as a helper. *M. Ket*. 5:5 enumerates the wife's obligatory functions for her husband, but if she brought maiden slaves with her in her dowry, they can do the work for her, and she can sit on her throne, doing nothing.[20] Hence, her functions for or services to her husband are not perceived as low-grade domestic, but as equivalent and complementary to the husband's obligations for his wife's benefit, as we read in *m. Ket*. 4:4, supplemented in *b. Ket*. 47b[21] and edited by Maimonides in *Mishne Torah Hil. Ishut* 12:1–2.[22]

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19 For example, see a *midrash* by Rabbi Joshua of Sakhnin on the term ויבן in Gen 2:22 (p. 42).

20 A disputing Rabbi contends that she must at least work with wool, because idleness breeds libidinousness. *B. Ket.* 61a offers a different qualification of the wife's task: she must fill his cup with wine, prepare his bed, and wash his face, hands, and feet, because these are intimate functions that only a wife may accomplish for her husband.

21 The *mishna* enumerates the husband's obligations towards his wife, and is complemented in the *Gemara*, which justifies each of his obligations by the privileges he enjoys in marrying her. We observe again the rabbinic equalization of the mutual obligations between husband and wife. Exod 21:10, the foundation of these rabbinic ordinances, is quoted and deliberated upon.

22 We read that at his wedding, the husband will incur ten obligations to his wife and will obtain ten entitlements; the Torah is the source of three, and the other seven are rabbinic stipulations.

1.2.4 *Implications of Man's Prior Creation*

Scholars have considered the difference between Gen 1:27, which announces the simultaneous creation of man and woman, and Gen 2:20–22, which records woman's later creation as a divine afterthought, thus arguably demonstrating her inferiority. Various interpretations are employed to repudiate this interpretation and offer other conclusions, among them the contrary deduction that only after the creation of woman was the divine creation finally accomplished, making her the pinnacle of creation.[23] Noort writes that Gen 1:27 "aims at the credo that the separation in male and female belongs to creation from the beginning. There is no priority." He disputes the rabbinic *midrash* of *Gen. Rab*. *parsha* 8:1 that man was initially created androgynous,[24] but at the same time declares, "it is unlikely that the priestly writer [of Gen 1] should *correct* the older story of creation [of Gen 2] in aiming at an equal position for males and females."[25] Thus, like the traditional commentators, Noort does not perceive a contrast between the Creation narratives in Gen 1 and Gen 2,[26] although other scholars do not accept this explanation. He alleges that the male and female are differentiated in Gen 1:27 "because it foreshadows the blessing of fertility of Gen 1:28."[27] It seems to me that there is some contradiction between Noort's comments on Gen 1 and 2 and the concluding sentence of his study. Debating

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23 See on p. 44 the rabbinic *midrash* in *b. Yeb*. 63a on the phrase זכר ונקבה בראם (Gen 5:2).

24 Noort, "The Creation," 8–9. We read in *Gen. Rab*. *parsha* 8:1 Rabbi Jeremiah's statement that when God created the first man, He created him an androgyny, that being the meaning of the phrase זכר ונקבה ברא אתם "male and female he created them" (Gen 1:27); Rabbi Samuel expanded on this, explaining the mechanism: God created Adam the First with two faces, and then sawed him, and made of him two backs, one to one side and one to the other side, and cut them in two parts (literally) shoulders, one to one side and the other to another side.

25 Ibid., 7. The common opinion that the later P version is the source of Gen 1 has lately been questioned by computer scientists from Bar Ilan University in Ramat Gan who created a program that detects joint or distinct sources of given texts, and have concluded that Gen 1 is not a priestly document. A possible validation of this allegation might greatly influence scholarly conjectures regarding the two creation narratives.

26 Ibid., 3: "In the final text, we have the sequence that man is created first as male and female and afterwards a detailed account tells us man is created first and woman after him." Noort's explanation concords exactly with the traditional elucidation expressed in *Rashi*'s comment on Gen 1:27: "Here, he informs you that both [man and woman] were created on the sixth day, and did not explain to you how their creation proceeded; that, he explained in another place [in Chapter 2]."

27 Ibid., 8.

Carol Meyers,[28] he says of the differentiation between male and female in the payments for the commutation of vows in Lev 27:2–7 that "it must be that the Priestly Code [Gen 1] is written in a social context where a male is worth more."[29] Hence, if I understand him correctly, even the priestly Creation narrative in Gen 1 considers the woman inferior to man. On the other hand, he concludes the chapter by stating that "In the real world of the narrator man and woman are not equal. The narrator of the poetic scene of Gen 2 shows, however, that this [inequality] is not the original plan of Yahwe Elohim."[30] Here Noort seems to be asserting that the texts of Gen 1 and 2 indicate that man and woman are equal.

Some scholars have attempted to dismiss the suggested significance of man's prior creation by appealing to the *midrash* of *Gen. Rab*. 8:1, cited above, which argues for an androgynous creation (as recorded in Gen 1:27), subsequently divided by God into man and woman (as recorded in Gen 2:21–22); thus, they assert a simultaneous creation of both genders.[31] However, this interpretation does not resolve the claim that man holds favoured status because of his prior creation, if indeed this implies superiority over the later-created woman. It solves the apparent contradiction between the statements in Gen 1:27 that both man and woman were created together, and the divine pronouncement in 2:18 indicating the woman's later creation, but not the claim that man was not created prior to woman. In fact, according to the *midrash*, the man was in essence created first, and the woman was only subsequently shaped from him. Further, because this is only one of the rabbis' various imaginative explanations of the apparently simultaneous creation of man and woman, it cannot serve as evidence for an interpretation of the scriptural narrative, which implies that woman was a later creation.

I dispute Susan Niditch's assertion that the rabbinic *midrash* of the androgynous creation was intended to resolve "the tension between male and female, the tempted and the temptress, by insisting that maleness and femaleness

28 Carol L. Meyers, "Gender roles and Genesis 3:16 revisited," in *The Word of the Lord Shall Go Forth; Essays in Honor of David Noel Freedman in Celebration of His Sixtieth Birthday* (eds. Carol L. Meyers and M. O'Connor, Winona Lake, IN: Eisenbrauns, 1983) 337–354, at 346 argues that the woman's "pregnancy and parturition together [cited in Gen 3: 16], along with the subsequent nurturing, constitute the reproductive function of women in society."

29 Noort, "The Creation," 7.

30 Ibid., 18.

31 Trible, *God and the Rhetoric of Sexuality* at 140 offers a similar but different concept. Before the creation of the woman, the divine earth creature was still sexually undifferentiated; it was "not androgynous or bisexual, since sexuality was still to be created."

were characteristic of the first man himself."[32] Rather it is evident from the *midrash* that its purpose is to solve the contradiction between the phrase זכר ונקבה בראם (Gen 5:2) in the plural, "He created them male and female," and בצלם אלהים ברא אתם (Gen 1:27) "in the image of God created he him" (KJV translation), in the singular.[33] Rabbi Jeremiah states that the first creation was androgynous, and this is the meaning of the verse in Gen 5:2.[34] In *b. Erub*. 18a Rabbi Abuhu points explicitly to the contradiction between the contents of the two verses and he resolves it by advancing the notion that initially God intended to create two [humans], but then created only one.

In view of the solution proffered in *Gen R.*, a further question was raised regarding the contradiction between the claim of an androgynous creation and subsequent separation of two faces and two backs, as explained by Rabbi Samuel, and the assertion of Gen 2:21–22 that the woman was created from Adam's rib.[35] This query is solved by a reply that the term צלע in Gen 2:22, commonly translated as "rib," also has other meanings, such as "side/along," as for example צלע המשכן "side of the tabernacle" in Exod 36:31 and בצלע ההר "along the hillside" in 2 Sam 16:13. Thus, the term צלע in Gen 2:21 is compatible with the separation of the androgynous creation.[36] These deliberations clearly indicate the motive and scope of these *midrashim*, namely the resolution of

32 Susan Niditch, "The Cosmic Adam: Man as Mediator in Rabbinic Literature," *JSJ* 34, 2 (1983): 137–46 at 140–41.

33 One may wonder why the *midrash* of *b. Erub*. queried the apparent contradiction between the plural of Gen 5:2 and the singular in Gen 1:27, since we encounter both plural and singular in the same verse Gen 1:27: בצלם אלהים ברא אתו זכר ונקבה ברא אתם (literally) in God's image he created "him" male and female he created "them." The question is even more acute, since in the dictum of Rabbi Abuhu, quoted in *b. Ber*. 61a, he cites the contradiction between the use of plural in Gen 5:2 and of singular in Gen 9:6; the answer is identical in both sources. Is it a deliberate choice, which has some hidden motive, such as the issue of whether only man or both man and woman were created in God's image, or just a random choice without any underlying intentions? This is, however, an issue we cannot deliberate upon here. As it seems to me, the text of Gen 9:6 in singular form must be interpreted as referring to humankind; hence, it should not be perceived as really expressing a singular creation, but rather indicating that both man and woman were created in God's image.

34 See note 24.

35 See also Teugels, "Creation of the Human," 112–13 on this issue.

36 Victor P. Hamilton, *The Book of Genesis Chapters 1–17* (Grand Rapids, MI: Eerdmans, 1990) 178, suggests translating צלע as "side," supporting his argument with further appropriate quotations. He disputes the idea of an androgynous creation, arguing that "such teaching goes beyond the statements of Genesis," since the text states that Eve was formed from the side of Adam.

the obvious contradictions between the biblical narratives about the woman's creation; the philosophical cogitations presumed by Niditch were not on the minds of the authors and redactors of these deliberations, or indeed of the subsequent *midrashim*, asserting that God initially created Adam as an amorphous entity lying from one end of the world to the other, and describing Adam's enormous proportions—from East to West, from North to South, filling the entire space of the world. The traditional commentators connect these *midrashim* to the preceding as other solutions to the apparent contradiction between humankind's creation as androgynous, subsequently separated, and the biblical assertion that woman was created from man's rib.

In conclusion, I permit myself to remark that we are obviously justified in interpreting ancient writings in accordance with our contemporary thoughts, but to impose modern views on ancient writers is inappropriate. Niditch's claim that the author of this *midrash* intended to address a tension between the sexes is untenable for two reasons. First, such tension is a modern concept, inconceivable in the society in which the author lived, since the overwhelmingly dominant position held by men excluded gender-based tension between husband and wife. Second, the authors' and redactors' precisely targeted use of the *midrashim* indicates their intent, as they understood it. Thus, there is no way to impose on these *midrashim* a philosophical background of gender politics.

To conclude the discussion of woman's later creation: in my opinion, the simultaneous creation of woman does not indicate equality, nor does her later creation imply inferiority. Other circumstances may influence such conjectures. According to the biblical narrative, the creation of woman is prompted by God's own conclusion that she was indeed missing in his previous creation of man. Further, she is created personally by God—not by intermediate powers such as angels or other messengers, which might hint at an inferior rank of creation.[37] Woman's later creation may instead denote her significance: without her, God's creation was not fully and perfectly accomplished.[38] Further,

37 We see the consideration and significance given to God's "personal" intervention in the rabbinic literature in *Mek. Bo, Mas. D'Piska, parsha* 7 emphasizing in Exod 12:12 God's personal intervention in punishing the Egyptians, and conversely, in Exod 33:3, God's ceasing to escort the Israelites because of their sin with the Golden Calf. *Genesis*/בראשית: *The Traditional Hebrew Text with the New JPS Translation*, commentary by Nahum M. Sarna (Philadelphia: Jewish Publication Society, 1989) at 21 draws attention to the fact that whereas "the creation of man is told briefly, in a single verse, the creation of woman is described in six verses," which underlines the significance of the woman's creation.

38 Thomas L. Brodie, *Genesis as Dialogue: A Literary, Historical, and Theological Commentary* (Oxford: Oxford University Press, 2001) 141, writes: "Human aloneness leads God to say—

there is no doubt that according to the Creation narrative the creation of humans constitutes the pinnacle of God's creation, to "fill the earth and subdue it"—to rule over all that was created before. This paradigm and the sequence of the ascending order of creation demonstrate that the latest creation was the most important.[39] Thus, it is illogical to argue that woman is inferior because of her later creation. It seems to me that scholarly efforts to minimize the significance of man's prior creation were intended to debunk Paul's justification of his decree that woman must be submissive because of her later creation: "For Adam was formed first, then Eve" (1 Tim 2:13).

1.2.5 *The Creation of Woman from Man* (*Gen 2:21–24*)

The Hebrew תרדמה in Gen 2:21–24 is translated by the KJV and NIV as "deep sleep"; the LXX goes a step further, translating it as ἔκστασις "trance." *Tg. Neof.* and *Tg. Ps. J.* also interpret it as שינתא עמיקתא "deep sleep," but the latter adds to the end of the verse the exact identification of the rib: "it [was] the thirteenth rib of the right side." Both ancient commentators and modern scholars have probed why Adam had to be sleeping during the creation of the woman. The *JPS Commentary* suggests that the sleep had the "dual function of rendering the man insensible to the pain of the surgery, and oblivious to God at work."[40] I do not find this explanation satisfactory; if the reader believes that God can create the entire world and, specifically, a woman from one of man's ribs, then he could have done so without causing pain to Adam.[41] As we shall

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for the first time—that something 'is not good' (Gen 2:18)." Brodie further notes that the woman is "the high point of creation." Hamilton, *The Book of Genesis*, 177, calls our attention to the fact that, in contrast to the Israelite Creation narrative, "None of Israel's neighbours had a tradition involving a separate account of the creation of the female."

39 See Swidler, *Biblical Affirmations*, at 76 for a more extended treatise on this issue, concluding that "prior creation indicates not superiority but inferiority." Joseph Blenkinsopp, *Creation, Un-Creation, Re-Creation: A Discursive Commentary on Genesis 1–11* (London: T & T Clark International, 2011) 60, comments that in the second Creation narrative, in Gen 2, the order of creation is reversed: the "human being is created before the wild animals and birds—and presumably also before aquatic creatures, which are not mentioned." Such deduction would not conflict with our assertion that ancient Israelites believed that mankind was the last creation and its pinnacle. For them, Gen 2 was not a different narrative of the Creation, the basis of Blenkinsopp's deduction, but a detailed supplementary portrayal of the concise narrative given in Gen 1, in which unquestionably humans were the last stage of Creation.

40 Sarna, *Genesis*/בראשית.

41 Mieke Bal, "Sexuality, Sin and Sorrow; The Emergence of the Female Character (A reading of Genesis 1–3)," in *Poetics Today* 6, 1–2 (1985) 21–42, at 26, following Trible's theory that man was asexual before the woman's creation, interprets the phrase עזר כנגדו as neutral

see, the rabbis do not use this expedient to resolve the same question. Modern scholars have argued that "man ought not to be a witness of the work of creation," but Westermann disputes this, arguing that "it is too rational an explanation for this ancient motif."[42] Likewise, Cassuto perceives it as introducing into the biblical passage "a philosophical concept that is completely foreign to it."[43] *B. Sanh*. 39a offers a different solution to this conundrum while discussing another aspect of woman's creation from man (paraphrased and condensed): Caesar said to Rabban Gamaliel, "Your God is a thief, since he took a rib from Adam in his sleep." Gamaliel's daughter said to Caesar, "Robbers raided us last night and took from us a silver cup and left us instead a golden cup." Caesar told her, "We would like such a robber to come to us every day," but she replied, "Wasn't it advantageous to Adam the First, from whom one rib was taken, that he was given instead a handmaiden to serve him?" Caesar replied, "I meant to say that God could have taken the rib overtly—not in his sleep." Then she said, "Bring me a plate with raw meat"; they brought it to her, and she put it under her armpit and took it out, saying to him, "Eat it," but he said, "It is repulsive." She said to him, "The same would have happened to Adam; if he had seen the creation process, she would have been loathsome to him."

A similar narrative appears in *Abot R. Nat*. Recension b, 8, in which Rabbi Joshua is questioned by a woman who accuses God of theft and answers her with a parable in which he compares God's act to the replacement of an earthen brick in a wall with a golden brick. However, although in both narratives the woman is deemed important for the benefit of man, the first compares her to a servant, whereas the second compares her to a precious golden brick. While this distinction may have been deliberate,[44] indicating a different ideological background regarding woman's status, equally these similes may have been

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"corresponding to it" instead of in the masculine as it is written. She states further that the man's sleep signifies "the death of the undifferentiated earth creature." Consequently, the woman was created from the amorphous asexual creature, and hence there is no contradiction between the narratives in Gen 1 and 2. The two sexual humans were created only at their separation.

42 Westermann, *Genesis 1–11*, 230.

43 Cassuto, *Commentary on Genesis*, 133. See my extended study on the topic of imposing modern thoughts on ancient authors and readers in Paul Heger, *Challenges to Conventional Opinions on Qumran and Enoch Issues* (*STDJ* 100; Leiden: Brill, 2011) 103–58, particularly at 104–8.

44 The author uses a downgrading expression, depicting the married woman's status as שפחה לשמשו "a maidservant/female slave to serve him." The term לשמשו is often used in rabbinic literature as a euphemism for sexual relations, but in this context associated with the term שפחה it must be interpreted as maidservant or female slave.

chosen at random to give logical answers to the posited questions, without any underlying ideological agenda.

It seems to me that the author's emphasis in Gen 2:23 seen in Adam's pronunciation that the woman is "bone of my bones and flesh of my flesh" indicates its significance for the relationship between man and woman, created from his body and thus an integral part of him.[45] As I will argue below, the phrase (Gen 2:22b) acknowledging that God created the woman from the rib that "he has taken from the man" seems superfluous, since the preceding verse 21 describes the procedure of God taking one of man's ribs and closing up the resulting hole with flesh. The repetition therefore seems to emphasize the author's desire to underscore the significance of Adam's assertion and its legal implications. Thus, women's subordinate legal status is derived from the Creation narrative, while the idea that women are generally inferior to men is derived from an erroneous interpretation of the Fall narrative (as I shall demonstrate in the next chapter), which various subsequent biblical interpreters have exploited to create this negative image of women.

What scholars have generally overlooked or granted too little significance with respect to women's legal status, as implied in the Gen 2 narrative, is woman's creation from man's rib.[46] Likewise, they do not accord enough importance to Adam's outright statement that the woman is part of him, bone of his bones and flesh of his flesh, and the fact that he names her,[47] whereas

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45 Hamilton, *The Book of Genesis*, 179, perceives Gen 2:23 as significant because "for the first time in Scripture the words of a human being are recorded in direct discourse." He also suggests that *flesh* symbolizes weakness and frailty, while *bones* represents the opposite, the symbol of individual strength, hence the human character. Walter Brueggemann, "Of the Same Flesh and Bone (Gen 2.23a)," *CBQ* 32 (1970), 532–542, writes that the phrase "my/your flesh and bone" represents a covenant formula; that is, a reciprocal loyalty between man and woman.

46 Carol A. Newsom and Sharon H. Ringe, eds., *The Women's Bible Commentary* (Louisville, KY: Westminster John Knox Press, 1998) at 16 state that "Jewish and Christian traditions postdating the Hebrew Bible and a long history of Western scholarship have viewed woman's creation in Genesis 2 as secondary and derivative—evidence of her lower status." My own view, to be substantiated in subsequent chapters, is that woman's dependent legal status is, instead, the consequence of her creation from man.

47 John J. Collins, *Genesis 1–4: A Linguistic, Literary, and Theological Commentary* (Phillipsburg, NJ: P&R Publishing, 2006) at 138 writes, "Naming seems also to be an exercise of authority." He deduces this from the fact that Adam, who named the creatures, was given dominion over them (Gen 1:28). Trible, *God and the Rhetoric of Sexuality*, 99–100, states that Adam did not name the woman in 2:23; instead, he was identifying their commonality in difference. The terms man and woman "convey the respective sexuality of each of them."

his own name, Adam, was given by God (Gen 2:16).[48] These details of woman's creation seem to me significant as a guideline for perceiving the biblical point of view on woman's legal status. I suggest that the narrative of the woman's creation, rather than that of the Fall, was the primary basis for woman's subordinate legal status, which developed into submissiveness to her husband, as implied in the Fall narrative. The text of the divine verdict and the woman's specific position, which is to desire her husband and to be ruled by him, would be utterly unreasonable, as I will show, if not for her standing as a part of the man. I would not exclude the possibility that God's announcement to the woman in Gen 3:16 is a later interjection in the Fall narrative, as I shall discuss in Chapter 2.

Gen 2:22, exceptionally, uses the verb בנה, which normally refers to building a house, in contrast to the neutral verbs used elsewhere in the Creation narrative: עשה, ברא and יצר. The traditional *Targumim*, *Tg. Onq.* and *Tg. Ps.-J.*, usually translate עשה as ברא עבד, יצר as ברא, and בנה as בנה. The *Sam. Tg*. is more precise, translating יצר in Gen 2:7, 8, and 19 with צור "to form, shape, paint," an expression that emphasizes the specific shaping of man and animals in the relevant biblical contexts, in contrast to the generic, undefined עבד. The LXX also translates ברא and עשה with the generic ποιέω "to make/create/etc.," but translates יצר with the more specific πλάσσω "to form/mould/shape." The term בנה, however, is translated with the generic οἰκοδομέω "to build a home." Only *Tg. Neof.* makes an exception, translating עשה, ברא, and יצר as ברא (with one exception: עבד in Gen 1:31) but interpreting בנה in Gen 2:22 as שכלל "to form/adorn/complete."[49] The use of בנה for the woman's creation alone induced the rabbis, the authors of ancient *Targumim*, traditional commentators, and modern scholars to seek a motive for this exception.

The rabbis, as usual, offer a great array of *midrashim* explaining this apparent oddity; some are neutral towards women and seem only to relate to the rationale for the term used, while others are inspired by positive or negative preconceptions about the character of women. We read in *b. Erub*.18b that God built Eve like a granary, which is narrow at its top and wide at its bottom to receive the fruits; so is the woman slim in her upper body and stocky in her lower part to bear a child. *B. Ber* 61a states, slightly more kindly, that God braided Eve's hair and brought her to Adam, since in some cities by the sea they call a

48 The LXX here interprets האדם as a proper name, τῷ Αδαμ, instead of the generic ἄνθρωπος "mankind." See Wevers, *Notes on Genesis*, on this verse.

49 Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi and the Midrashic Literature* (Leipzig, 1903; Jerusalem: Horeb, n.d.); Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic* (Jerusalem: Bar Ilan University, 1990).

hairdresser *binyatta* (similar to the Hebrew בנה "to build"). We can assume that the *Tg. Neof.* interpretation שכלל, quoted above, has an affinity with this and other similar rabbinic *midrashim* that accentuate God's "personal" effort to make the encounter of man and woman as pleasant and effective as possible, indicating the importance of a harmonious family life.[50] Further rabbinic *midrashim* on the term בנה, some favourable to women and others most denigrating, are quoted on pages 42–45.

The modern but traditionally minded commentator Cassuto generally prefers the favourable rabbinic *midrashim* and perceives the use of the verb *to build* as "suited to the theme; just as a builder builds, with the raw materials of stones and dust, an edifice of grace and perfection, so from an ordinary piece of bone and flesh the Lord God fashioned the most comely of his creatures."[51] Modern scholars consider the use of "built" a remnant of ancient Near Eastern mythologies, such as the Akkadian and Ugaritic, which used this term to describe how the gods created human beings.

1.2.6 *God's Presentation of Eve to Adam, and His Reaction*

The next phrase, "and he brought her unto the man," is used in rabbinic *midrashim* to emphasize that God adorned her and acted as her bridal attendant; he led her to the wedding ceremony, as parents lead their daughter to the wedding canopy, according to Jewish custom. We read in *Gen. Rab*. 18: "he brought her to Adam after adorning her with twenty-four jewels." *B. Ber.* 61a interprets the phrase "and he brought her unto the man" (v. 22b) as showing that God acted as Adam's best man.

The odd beginning of Gen 2:23 has inspired many interpretations aimed at resolving its peculiarity. Its literal translation, "this time a bone from my bones and flesh from my flesh," sounds awkward; it does not have a verb, and it is not clear who or what is the subject of the demonstrative pronoun "this." The NIV/KJV translation, "This is now bone of my bones," suggests that "this" refers to the woman, but the adverb "now" raises a further question, since it seems to allude to some unknown thing that occurred before. The LXX, as Wevers comments, translates "this" in neutral form, agreeing with "bones" (a neutral noun), rather than in feminine form, as one would expect if it refers to the woman. Wevers conjectures that the LXX "probably means 'now' in the sense of 'at last, finally' ";[52] this raises the same problem as the NIV translation, which

50 Newsom and Ringe, *Women's Bible Commentary*, 16, state: "The conjugal couple is the foundation of social and cultural relationships for the writers of Genesis."

51 Cassuto, *Commentary on Genesis*, 135.

52 Wevers, *Notes on Genesis*.

probably follows the LXX. The *JPS* translation gives "This one at last," relating the pronoun to the woman, and explains that Adam is contrasting the woman with the animals (Gen 2:20), who already have mates,[53] as Wevers also suggests. However, two sentences divide the naming of the animals from Adam's exclamation (Gen 2:23), and a great many events take place, including Adam's deep sleep and the surgical operation; this interpretation, therefore, does not offer an adequate solution. Cassuto relates the pronoun "This" to the woman and explains the sense as follows: "this creature, this time [that is, at last], is in truth a helper corresponding to me."[54] He connects Adam's exclamation to Gen 2:20, arguing that whereas in v. 20 Adam did not find a helper among the animals, now he proclaims that he has finally found a suitable helper.

This last interpretation follows rabbinic *midrashim*. We read in *Abot R. Nat.* Recension b, Chapter 8 (paraphrased): Adam complained to God, "Master of the World, for all the creatures you created in the world you created a mate, yet I don't have a mate" (see Gen 2:20); hence, when Adam saw Eve, he said, "This is my mate." *Gen. Rab.* 18 *parsha* 4 offers another explanation for what happened before, namely that God first brought the woman to Adam right after her creation, but seeing her full of slime and blood repulsed Adam, so God took her back and created her anew; this would explain why Adam says that "this time" he is happy. Commentators and scholars agree that Adam's announcement indicates his happiness at having a mate, describing his utterance as, for example, "a cry of ecstatic elation," "a jubilant welcome," and "enthusiasm and heart's joy."[55] Since many *midrashim*, commentators, and scholars interpret the entire verse as a whole, I will discuss them after elucidating some textual problems.

Some rabbinic *midrashim* interpret the phrase "This time" differently, simply as "time," intending to emphasize "this time and no more." *Abot R. Nat.* Recension b, Chapter 8, states: "This time was the woman created from 'man,' but from now on 'a man' marries the daughter of his friend and is obligated to fulfill the precept of procreation; another interpretation is that this time

53 Sarna, *Genesis*/בראשית.

54 Cassuto, *Commentary on Genesis*, 135.

55 On this foundation, it seems, John Milton, in *Paradise Lost*, changed the biblical story, such that when Adam finds out that Eve has broken God's commandment and is going to die, he decides of his own will to eat the fruit also, and die with her, rather than survive without her—thereby forsaking Paradise and eternal happiness for himself and the world for love of Eve. Milton's Adam uses the biblical language of Gen 2:23: "The link of Nature draw me: flesh of flesh,/ Bone of my bone thou art, and from thy state/ Mine never shall be parted, bliss or woe" (*Paradise Lost*, Book VIII).

God was the best man, but from now on a man has to provide a best man for himself." *Tg. Ps. J.* interprets as follows: "The man said: this time and no more will the woman be created from 'a man' as this one." *Tg. Neof.* interprets this verse similarly, using the Aramaic term בר נש instead of גבר in *Tg. Ps. J.* We observe that both translators/interpreters distinguish between "Adam," the first subject, and "man" from whom woman was created in the second part of the verse; this indicates that Adam after Eve's creation is not the same entity as beforehand. Thus, they emphasize that woman was created from man, like the LXX, which interprets איש as ἀνδρός (ἀνήρ) "man" and אשה as γυνή "woman" to emphasize the different genders. Both Westermann and Cassuto note the affinity of the expression that associates bones and flesh with other similar biblical expressions, as for example in Gen 29:14, that imply a permanent relationship between man and woman.[56] The traditional commentator *Rashbam* interprets the verse as follows: "Only this time the woman is a bone of my bones, but from now on it is not so, but (the opposite:) the man comes forth from the woman." Ibn Ezra links this verse to v. 20 and to Adam's complaint about not having a suitable helper: "After [the woman was brought to Adam,] he said, 'This time I have found a suitable helper like myself,' since she was taken from him."

Adam says that the woman is bone of his bones and flesh of his flesh, but how does he know this? He was in a deep sleep when God carried out his surgery and closed up the hole with flesh, as is emphasized in Gen 2:21.[57] Perhaps he sees that she is similar to him, more similar than any of the other animals that God brought to him for naming, but he cannot know that she was taken from him. Westermann writes that one should not understand the creation of the woman from the rib of man "as a description of an actual event accessible to us"; he likewise perceives the creation of Adam from earth as a transmission of ancient mythologies in which humans were created from different materials.[58] Behind man's creation from earth lies the ancient technique of producing human figures out of clay; woman's creation from man's body, he argues, is meant to explain how man and woman belong together. I would suggest, by contrast, that the purpose of this narrative is aetiological: it is intended to justify woman's lack of individual legal status by explaining that she is part of

56 Westermann, *Genesis 1–11*, 232; Cassuto, *Commentary on Genesis*, 135–6.

57 The NIV, traditional commentators, and the LXX translate תחתנה as "instead of it," as in Gen 4:25, 22:13, 30:15, and 44:4; Exod 21:23–27, 21:36–37; Lev 16:32, 24:118, and 24:10; Num 3:12, 3:41, 3:45, 8:16, and 8:18; and many other instances. See discussion of Gen 2:21 above.

58 Westermann, *Genesis 1–11*, 230.

man.[59] We observe in a collection of English laws published in 1632, *The Lawes Resolutions of Womens Rights*, a vivid concrete portrayal of how a woman loses her own personality when she marries, an idea deduced from Gen 2:23. We read there:

> In this consolidation which we call wedlock is a locking together. It is true, that man and wife are one person (bone of my bones, and flesh of my flesh) but understand in what manner. When a small brooke or a little river incorporateth with Rhodanus, Humber, or the Thames, the poor rivulet looseth her name . . . A woman as soon as she is married, is called *covert* . . . that is, veiled, as it were, clouded and overshadowed; she hath lost her streame. I may more truly, farre away, say to a married woman, Her new self is her superior; her companion, her master . . .[60]

The last element of the verse, Adam's naming of the woman, is tightly linked to her creation from man; translators, commentators, and scholars therefore interpret it differently according to their attitudes regarding the resulting relationship between man and woman. Nahum Sarna, in the *JPS* commentary on Genesis, asserts that the text voices the social reality of the Ancient Near East that "naming implies authority," and hence a subordinate status for the woman; on the other hand, he asserts that "in naming her '*ishah*, he simultaneously names himself . . . *ish* . . . thus he discovers his own manhood and fulfillment only when he faces the woman, the human being who is his partner in life."

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59 Frymer-Kensky, *In the Wake of the Goddesses*, 120, writes, "The social system reflected in the Bible did not originate in Israel, nor is it substantially different in the Bible than elsewhere in the Ancient Near East." This is true to a certain extent, but the Israelites also made crucial changes to many laws in general, and to laws relating to women in particular that demonstrate a fundamentally different ethical approach to human relations. For example, men and women were equal with respect to Scripture's prohibition on spilling blood, a principle of utmost significance that differed from parallel rules in the surrounding cultures.

60 *The Lawes Resolutions of Womens Rights. A Methodical Collection of Such Statutes and Customes, with the Cases, Opinions, Arguments and Points of Learning in the Law, as do Properly Concerne Women*, quoted in Howard Zinn, *A People's History of the United States* (New York: Harper Perennial, 1980; reprint, 2009) 106. Martha T. Roth, "Gender and Law: A Case Study from Ancient Mesopotamia," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Bernard M. Levinson et al.; Sheffield: Sheffield Academic Press, 1998) 173–84, at 181 quotes William Blackstone, *Commentaries on the Laws of England. I. Of the Rights of Persons* (*1765*) (Chicago: University of Chicago Press, 1979) at 430: "By marriage, the husband and wife are one person in law."

The assumption that *ish* and *ishah* are personal nouns is the basis of Sarna's argument, but these nouns seem to me to be generic. Furthermore, there appears to be an inconsistency between the degrading consequences of man's authority to name the woman and his assertion of equality in naming her *ishah*.[61] Westermann, in contrast, perceives that "the narrative in Gen 2 reflects a stage in civilization which was aware of the great importance of the role of woman in the existence of humankind."[62] However, he attempts to resolve the contradiction with Adam's naming of the woman, which implies his authority over her, by arguing that "the name aetiology of v. 23b, though certainly belonging to the narrative and firmly fixed in it, is a secondary trait, not a goal" of the narrative.[63] Cassuto, citing a traditional commentator, perceives the similarity of the names of man and woman (איש and אשה) to mean "she is worthy of being called by the same name as myself."[64] The repetition of זאת in the last phrase of the verse כי מאיש לקחה זאת is redundant; the LXX omits it; *Tg. Ps. J.* and *Tg. Neof.* emphasize the aetiology or justification of the woman's name, אשה, and at the same time validate the repetition of the pronoun זאת. They add in their interpretations that "it is appropriate" for her to be called "woman" because she was created from man.

Adam's declaration indicates that the woman is part of him, being "flesh of my flesh." The translation of *Tg. Onq* "since she was taken מבעלה from her husband," emphasizes her nature as part of her husband and thus establishes it as the foundation of biblical and rabbinic legislation regarding women's legal status. A *midrash* in *b. Nid.* 31b acknowledges this as representing the reality of life, stating that a man courts a woman, rather than the other way around, because he is looking for what he has lost, namely his lost rib from which the woman was created. In fact, Gen 2:23 emphasizes this through Adam's pronouncement, which changes the appellation of the same subject within the one verse. At the beginning, the speaker is called האדם Adam—still a generic name, denoting humankind—whereas at the end of the verse he calls himself איש "man," emphasizing the reality that woman was created from man, and is part of him.[65] Gen 2:24, which explicitly refers to the preceding verse through the use of the adverb על כן "therefore" by the narrator (God), seems to conflict logically with Adam's utterance in v. 23. If the woman was taken from him, the man, and is bone of his bones and flesh of his flesh, one would expect that

61 Sarna, *Genesis*/בראשית, 23.

62 Westermann, *Genesis 1–11*, 232.

63 Ibid.

64 Cassuto, *Commentary on Genesis*, 134.

65 On this issue see Swidler, *Biblical Affirmations*, 77.

through their reunification (i.e., marriage) and redress of the encroachment upon his body, the woman should cling to him to become again "one flesh," not the opposite, as is written: ודבק באשתו "he will cling to his wife."[66] It seems that the *Targumim* were aware of this issue and attempted to resolve it as follows: *Tg. Onq*. interprets it thus: "therefore a man will leave the dwelling of his father and mother and adhere to his wife, and they will become one flesh," suggesting that the core and main emphasis of this circumstance is the man's leaving his parents' dwelling in order to join his wife in creating a new family.[67] *Tg. Ps.-J*. has a similar interpretation: "Therefore, a man will separate from his father's and mother's dwelling and will associate/unite with his wife, and both will be one flesh." *Tg. Neof*. uses two different terms in its interpretation, but in essence corresponds with the interpretation of *Tg. Ps.-J*. All three *Targumim*, that is, interpret the first part of Gen 2:24 as relating to the man's leaving the parental home in which he lived, as was the custom,[68] and creating a new home.[69] In fact, it is plausible that the narrator intended to emphasize the man's leaving his family—considered to be עצמי ובשרי his "bone and flesh," the common expression for relatives (as in Gen 29:14, 2 Sam 19:13–14)—to join his wife והיו לבשר אחד "and become one flesh with her instead."

The addition of "and *both* will be one flesh" in *Tg. Ps.-J*, *Tg. Neof*. and the Samaritan Bible seems superfluous, since in the MT, "both" is implicit from the context. The NIV translates "and they become one flesh." English grammar requires "they," but Hebrew grammar does not; the authors/redactors of these texts must therefore have intended readers to infer some specific connotation, but I can envisage more than one possibility. It is plausible that the additional emphasis on the union of male and female refers to their concrete sexual union, implicit in God's first blessing of the primary couple and his command to them to multiply (Gen 1:28). This interpretation is supported by *Sam. Tg*.'s translation of the biblical term דבק as ויתעלץ באתתה "he will enjoy with his wife," as in 1 Sam 2:1: עלץ לבי "My heart rejoices." It seems to me that both the Samaritan

66 The feminist scholar Mieke Bal, "Sexuality," 29 states indeed that "it is man who will search for the unity rather than the woman."

67 *Tg. Onq*. uses the original Hebrew דבק "stick/cling/adhere/hold fast," which appears just once more in Scripture in relation to married women (in 1 Kgs 11:2, describing Solomon's adherence to foreign women), translated as "hold fast."

68 When Terah left Ur to go to Canaan, he took with him his son Abram and his grandson Lot (Gen 11:31). Reading Gen 37, one has the impression that Jacob's sons lived together in his household, and Scripture indicates that when Judah intended to marry, he left his brothers (Gen 38:1).

69 Cassuto, *Commentary on Genesis*, 137, similarly writes that "whilst a man is single, he forms part of his father's family, but when he takes a wife he founds a new family."

text and *Sam. Tg*. unequivocally and explicitly accentuate sexual desire and joy as crucial elements of the union of man and woman; the Samaritan uses והיה משניהם לבשר אחד to express this reality, and *Sam. Tg.* translates accordingly. The LXX translates οἱ δύο "the two," as also appears in the *Peshitta* and *Vg*. *Rashi*, for example, also associates the phrase with sexual intercourse, explaining that "the child is created by both, and there their flesh becomes one." Thus *Rashi*, too, links becoming one flesh to the divine command to multiply in Gen 1:28, which is accomplished by means of concrete sexual activity; it is the child who becomes the one body of his two parents—not, as is commonly understood, the couple themselves. On the other hand, one cannot exclude the possibility that the authors of *Tg. Ps. J* and *Tg. Neof*. intended, by adding "both," to emphasize the equality of husband and wife as two entities, male and female, that become one, without establishing the precise aspect and extent of this equality; I discuss this subtle issue later in the chapter.

1.2.7 *Scholarly Opinions and Interpretations*

Thomas Brodie offers a most positive portrayal of woman in terms of her creation from man's rib, stating that "the creation of woman from man does not imply subordination"; rather, she is "equal to man."[70] He supports this assertion by stating, for example, that they are "appropriate co-workers" (Gen 1:28); that "God describes both man and woman as very good" (Gen 1:31); and that marriage "is essentially positive and joyful" (Gen 2:23–24).[71] To reconcile his assertion with its logical opposite, that man will rule over woman (Gen 3:16), he states that "inequality will come only with sin."[72] However, he does not explain why woman was punished with subordination to man as a result of the sin of transgressing God's prohibition, which God attributes to Adam, not to her (Gen 3:17), as I shall argue in the next chapter. Does he follow the conventional interpretation that the woman is the main guilty party in the Fall narrative, and thus loses her original equality with man because of her sin? In his further consideration of the Fall narrative as the first sin, however, Brodie quotes Paul's statement that "sin came into the world through one man, and death came through sin" (Rom 5:12).[73] Though this mention of "man" could be perceived as relating to a human, male or female, as in the original Greek ἀνθρώπος, Rom 5:14 goes on to specifically single out τῆς παραβάσεως Ἀδάμ, "Adam's

70 Brodie, *Genesis as Dialogue*, 141.

71 Ibid.

72 Ibid.

73 Ibid., 145.

transgressions" (KJV). Here, then, Paul perceives man, not woman, as the main sinner; the woman is, at the very most, equally responsible.

Cassuto perceives the creation of woman from man as underlining "the affinity between the man and his spouse." Further, comparing man's creation from dust (Gen 2:7) and his return to dust (Gen 3:19) with woman's return to man in marriage, since she was taken from him, leads Cassuto to conclude that the woman must associate constantly with the man.[74] This opinion does not relate to the legal and practical relationship between woman and man as a result of her being taken from him, however, but only to a doctrinal issue.

Sarna sees in the symbolic creation of woman from man's rib an explanation of "the mystery of the intimacy between husband and wife"; it "connotes physical union and signifies that she is a companion and partner, ever at his side."[75] He does not perceive any disadvantage to the woman due to being part of the man's body. He writes of Gen 3:16, which states that man shall rule over woman, that "It is quite clear from the description of woman in 2:18, 23 that the ideal situation, which hitherto existed, was the absolute equality of sexes. The new state of male dominance is regarded as an aspect of the deterioration in the human condition that resulted from defiance of the divine will."[76] This interpretation, which disregards the significance of woman's being part of man, has many drawbacks. The term "helper," used to describe the woman in Gen 2:18, has been perceived, rightly or wrongly, as indicating her subservient status, and her later creation as an additional sign that she takes second place to man;[77] Sarna's notion of equality at the time of Creation, therefore, seems not to be unequivocally based on the biblical description, as he asserts. His perception of man's dominance over woman as a "deterioration," in contrast to a prior absolute equality of the sexes, raises similarly serious questions. He perceives this as a "deterioration in the human condition," one that apparently affects both sexes; I understand it as creating tension between them, in contrast to the previous peaceful equilibrium. The "deterioration" must have a motive, plausibly as a punishment for a sin, as he states that it "resulted from defiance of the divine will"—but whose sin? In any case, this "deterioration" affects man and woman equally, so why is it included in God's communication to or punishment of the woman? Further, as I discuss in the next chapter, why should the man, the primary sinner (as Sarna contends), be rewarded by becoming superior to the woman by ruling over her (Gen 3:16)? We have seen

74 Cassuto, *Commentary on Genesis*, 136.

75 Sarna, *Genesis*/בראשית, 22.

76 Ibid., 28.

77 See also 1 Tim 2:13–14: "For Adam was formed first, then Eve."

that English legislators of the early modern era, for example, understood the consequences of woman's creation from man's body quite differently.

Modern commentators have attempted to diminish the sexual element of the reunification of man and woman and bolster the spiritual values of love and fidelity. With respect to the statement in Gen 2:24 that "the man leaves father and mother, loosing the strongest bodily and spiritual bonds" for the sake of the wife he has chosen, Westermann writes, "The love of man and woman receives here a unique evaluation."[78] Sarna conjectures that, in Gen 2:24, the narrator traces the existing custom of the man leaving his parents for the sake of his wife to God's original creative act; it is perceived "as part of the divinely ordained natural order."[79]

Sarna writes that דבק is used "to describe human yearning for God," and, by analogy, that "sexual relations between husband and wife do not rise above the level of animalism, unless they be informed by and imbued with spiritual, emotional and mental affinity."[80] Cassuto, too, attempts to promote the idea that Scripture minimizes the significance of the physical sexual relation and exalts the spiritual union, writing that "the reference [of the phrase 'he cleaves to his wife'] is not solely to sexual relations . . . , but also—and more especially—to the spiritual relationship."[81] It is certainly legitimate for Cassuto to interpret Scripture according to his modern views, and to adduce scriptural support for them, but it should not be assumed that the ancient authors and their contemporary audiences interpreted Scripture, and specifically the Creation and Fall narratives, in ways that Cassuto and other scholarly commentators would prefer. In fact, Wevers presumes that the final clause of the Creation narrative in the LXX—"the two shall become one flesh"[82]—refers to "the sexual union of man and wife."[83] On the other hand, David Brewer writes that the addition of the phrase "the two" in the LXX's translation of Gen 2:24, "so that it read 'they two shall become one flesh' . . . became the basis for the New Testament teaching of monogamy by Jesus and Paul."[84] While it is true

78 Westermann, *Genesis 1–11*, 234.

79 Sarna, *Genesis*/בראשית, 23.

80 Ibid.

81 Cassuto, *Commentary on Genesis*, 137.

82 The LXX translates here, as on many other occasions, the Samaritan text, which adds משניהם, as we have seen above.

83 Wevers, *Notes on Genesis*, 35.

84 David Instone Brewer, "Jewish Women Divorcing Their Husbands in Early Judaism: The Background to Papyrus Se'elim 13," *HTR* 92:3 (1999), 349–57 at 355.

that Mark 10:8 cites *verbatim* the LXX text of Gen 2:24 with the addition "the two," it does not absolutely convey a divine prohibition of polygamy. The phrase could be understood as stating that at every union of a man with a woman, they become one flesh. In fact, Qumran scholars, who habitually adhere to a straightforward interpretation of the biblical texts, did not deduce their prohibition of polygamy from this verse but from Gen 1:27 (CD IV:21). In fact, Mark does not justify the prohibition of polygamy on the basis of the phrase "the two," but on his interpretation of Gen 2:24, as a divine command: "what God has joined, let no man put asunder" rather than as an aetiological explanation of the facts of life. Hence, the same interpretation could be made of the MT text, without the addition of the phrase "the two."

Before concluding this scrutiny of the biblical Creation narrative and its interpreters, I would like to discuss an interpretation of the phrase "and they will become one flesh" by *Ramban*, a traditional Jewish commentator of the Middle Ages, that can be perceived as having an affinity with modern scholarly interpretations emphasizing the spiritual bond of man and woman. He focuses his interpretation on the phrase ודבק באשתו "and he clings/sticks to his wife" as the key to understanding the verse. The human male leaves his family, sticks to his chosen wife, and creates a new family—a lasting partnership—whereas animals do not create lasting partnerships, but have sexual intercourse for procreative purposes with occasional females. Irrespective of the scientific correctness of *Ramban*'s assumptions about animals' social life, his interpretation is remarkable for demonstrating a modern attitude on the part of a traditional medieval commentator.

1.2.8 *Male-Female Equality or Inequality as a Consequence of the Creation Narrative*

We have observed how the wide variety of interpretations of the narrative of the woman's creation represents the differing conceptions of their authors, rather than what the primary author of the narrative intended and its original audience understood. It seems plausible to assume that the various translators, who lived closer than modern scholars to the period of the primordial Torah's redaction, may have understood the intent of the apparently superfluous phrase "and the two will become one flesh" as pointing to the concrete sexual union of man and woman, rather than to their spiritual union. The woman's name denoting her creation from man, given her by Adam, demonstrates his dominant legal status, just as his naming of the animals (Gen 2:20) is a function of his God-granted dominion over them (Gen 1:28). This narrative is, in my opinion, the theological foundation of women's dependent legal

status;[85] she is not inferior to man, but she has no individual legal status.[86] The narrative in Gen 2 thus overthrows the legal equality of man and woman as recorded in God's blessing and in their function and prerogatives in the world (Gen 1:28–31).[87] The biblical texts, like classical writings, can be interpreted in different ways, as the rabbis acknowledged.[88] Hence, in order to grasp the philosophy and intent of a biblical text—in our case, a narrative—we must analyse the *biblical* rules related to it, which may offer us the key to unlock the underlying conceptions. Indeed, the biblical narratives involving women in various circumstances and the relevant legal rules in Scripture demonstrate the subordinate legal status of women, and thus reveal the original intent of the author of the Creation narrative.[89] In Jewish doctrine, everything is created by God. The life cycle and behaviour of every living being, like the constant operation of the whole of nature, is regulated by the divine rules of creation. According to a rabbinic *midrash*, the Torah was the divine master plan for Creation.[90] An analysis of the biblical rules and narratives concerning women demonstrates women's legal dependence on their husbands in many instances, as I shall elaborate in this book. The wife obeys her husband, like one of his

85 Ronald A. Simkins, "Gender Construction in the Yahwist Creation Myth," in *The Feminist Companion to the Bible* (2nd ser.; ed. Athalya Brenner; Sheffield: Sheffield Academic Press, 1998) 32–51 at 45, writes that "the woman is taken *me'iš* 'from the man,' just as the rib is taken *min ha adam* 'from the man,' suggesting that the woman has her origin from the man and is thus dependent on the man. Yet the word play between '*iš* and '*išša* also suggests a complementary relationship between the man and the woman."

86 This conclusion is not the only possible one that may be deduced from this narrative, and many others have been offered.

87 Man and woman are equally commanded to fulfill the precept of procreation and have equal dominion over all other creatures and the privilege, denied to the other creatures, of enjoying the entire world's bounty. The rabbis contend that the procreation decree obligates only men (*b. Yeb.* 65b).

88 We read in *b. Qidd.* 20a: "Since these [biblical] verses can be interpreted both in a lenient and a strict way, why have you chosen to interpret them in a lenient way? Let us interpret them in a strict way."

89 Frymer-Kensky, *In the Wake of the Goddesses*, 128, writes that "Male dominance was assumed: it was part of the social order of the world that the Bible did not question." We agree that this was the real situation; however, I argue that the Bible's Creation narrative offers an explanation or justification for the existing male dominance, and confirms it as the God-given world order communicated to the woman in Gen 3:16: "and he will rule over you." Frymer-Kensky subsequently asserts, at 129, that God's communication to the woman is "part of the divine legitimation of the difficult but unquestioned condition of human existence," a statement somewhat similar to my own proposition.

90 We read in *Gen. Rab. parsha* 1 that God consulted the Torah and created the world.

members, but this does not stigmatize her as inferior; in fact, a divorced or widowed woman becomes an individual legal personality—in the terminology of Roman law, *sui juris* "legally independent"—and her vows and obligations cannot be voided in her new circumstances (Num 30:10).[91]

The differentiation of the commutation payments for vows in Lev 27:2–7, which establishes higher amounts for men than for women, does not imply that a man is worth more than a woman;[92] according to both traditional commentators and modern scholars, the different amounts are not based on an assessment of people's intrinsic value. Rabbinic *halakhah* discerns between the similar terms ערך and דמים.[93] The first is a fixed rate established by Scripture, regardless of any valuation, whereas the second, meaning money, relates to assessments of values. The use of one term or the other in a vow has legal consequences: if ערך is used, the one who makes the vow is assumed to refer to the scriptural fixed amounts, whereas the use of דמים is assumed to refer to the payment of the amount established by assessment. Therefore, if a man died before having fulfilled his vow, his heirs must pay it, like any other debts owed by their father, since his obligation was valid immediately after his pronouncement of a vow using ערך. If he had used דמים in his vow, his heirs would not have to pay: at the time of their father's death he had not yet incurred the obligation, since the assessment was not yet made (*m. Arak.* 5:2). According to the rabbis, Scripture decrees fines based on assessments in some circumstances, but in others sets fixed amounts unrelated to the different monetary values. For example, if an ox kills a slave, whether male or female, its owner pays a fine of thirty shekels, although a male slave was probably worth more than a female slave.[94]

The orthodox scholar David Hoffmann follows the rabbinic interpretation and asserts that the worth of something dedicated to God is different from

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91 *M. B. Qam.* 8:4, for example, discerns between the responsibility to redress damage done by a minor and that done by a married woman. Whereas the minor has no responsibility for what he has done, and does not pay for it when he grows up, the married woman, who does not pay for damages she inflicted as long as she is married, must redress them as a divorcée or widow.

92 See Noort, "The Creation," 6–7, for scholarly opinions on this topic.

93 The use of דמים to mean "money" is not biblical; the word is used as such in the rabbinic literature and in modern Hebrew. Its root is דמי "similar/equivalent"; by association, דמים became "money," the equivalent paid for goods.

94 It is remarkable that the Code of Hammurabi also distinguishes a person who causes the death of another man's slave, and must compensate him with a slave of comparable value (§231), from the one whose ox gores and kills another man's slave, and who must pay a fixed fine of twenty shekels of silver (§252).

the economic value of a person according to his physical strength and age. He notes that in a regular assessment one discerns between the value of a man in his early twenties and that of a man in his late fifties, as well as evaluating them on the basis of other criteria, whereas Scripture does not differentiate the amounts to be paid for commutation of a man's dedication to God or the Temple on that basis.[95] Martin Noth understands the payments as a late provision enacted to release the person from the previous custom whereby someone dedicated to the sanctuary was set apart for perpetual auxiliary service, as in 1 Sam 1:11.[96] The different assessments represent the value of the person's work, and a woman's work was worth less than a man's. He notes, however, that on this theory the assessed value of a child should be higher than that of an adult, since the child will ultimately work longer than a mature person—unless one assumes, as Noth suggests, that the amounts indicated in Scripture are yearly payments and represent the value of the person's current work capacity. Karl Elliger offers a similar explanation of the various assessments and also assumes that the amounts represent yearly payments, which introduces a logical motive into the biblical rule.[97] Therefore, a boy's work from the ages of five to twenty is worth more than that of a man over sixty, and that of an infant is the lowest. Thus, we observe that according to a broad range of commentators from a variety of periods and cultures, Lev 27's establishment of lower payments for the commutation of women's vows than for men's does not indicate man's superiority or woman's inferiority but, rather, relates to the values of their respective capacities for work.[98]

The real value of a person, which has no association with money, is his or her life, and in this case Scripture equalizes man and woman, old and young: a murderer is executed regardless of whether the victim is man, woman, boy, or girl (Lev 24:17). This seems normal and logical to us, but it was not so in the surrounding cultures in ancient times. For example, the relevant rules from the Code of Hammurabi, from which Scripture has definitely appropriated to some extent, go in an opposite direction in this respect. According to the Code of Hammurabi §210, if a pregnant woman dies as a result of being struck by a

95 David Z. Hoffmann, *Das Buch Leviticus* (Hebrew trans. Zvi HarShefer and Ahron Lieberman; Jerusalem: Mossad Harav Kook, 1953 [Hebrew]).

96 Martin Noth, *Leviticus: A Commentary* (trans. J.E. Anderson; London: SCM Press, 1965).

97 Karl Elliger, *Leviticus* (Tübingen: J.C.B. Mohr (Paul Siebeck), 1966 [German]).

98 Phyllis Bird, "Images of Women in the Old Testament," in *Religion and Sexism* (ed. Rosemary Redford Ruether; New York: Simon and Schuster, 1974) 41–88, at 55 states that the differential payments for the commutation of vows in Lev 27 "must have been in large part economic, though a psychological factor is also evident."

man, the man's daughter is killed. This rule and the antecedent §209, which imposes a fine if the woman miscarries, have their parallel in Exod 21:22–23; whereas v. 22 also imposes a fine for the death of the fetus, v. 23 commands "a soul for a soul": the death of the perpetrator, not of his wife or daughter. In the Code of Hammurabi, then, a woman is worth less than a man, but not so in Scripture. Similarly, according to §228–29, if a builder constructs a house in an unsatisfactory way, and in collapsing it kills the owner, the builder is executed; but if the owner's son is killed, the builder's son is executed, since he is worth less than the father. The Creation narrative makes no discrimination; all humanity was created in "the image of God" (Gen 1:27), and as their creation is equal, their inherent value is equal. Lev 24:17 explicitly states that anyone who takes a human life is to be put to death, with no exceptions; all are equal when it comes to the appreciation of life.

1.3 Qumran's Possible Understanding of the Creation Narrative and Its Legal Ramifications

The Qumran literature does not interpret biblical texts continuously, as the rabbis do; we can only attempt to deduce Qumranic interpretations of these texts from their relevant writings, sometimes from explicit dicta but mostly by conjecture from implicit texts. I attempt in this section to discern which rules and decrees pertaining to the status of women are drawn from the Creation narrative.

The text of 4Q416 (4QInstr^{b}) 2iii:21–2iv:10 offers an explicit interpretation of the relevant biblical verses, leading to the *halakhah* of woman's submissiveness to man. As we observe, particularly from the phrase עזר בשרכה "the helper of your flesh," a logical variant on the biblical עזר כנגדו that emphasizes the carnal aspect of woman's creation from man, Qumran scholars considered that Gen 2:23–24, which asserts that woman was created from man, acknowledges that she becomes one flesh with the man at their marriage; thus, in becoming part of man's flesh, she loses her identity. The mandatory character of 4Q416 4QInstr^{b} indicates the legal relationship between man and woman and the man's dominion over his wife after their union. It is notable that Qumran scholars seem to have understood the divine guideline of woman's submission to her husband and her desire for him, not as punishment for her eating the prohibited fruit or for taking the initiative to make Adam eat it, as is commonly alleged, but simply as the consequence of her creation from man's rib, even though this utterance appears in Scripture as part of the Fall narrative (Gen 3:16b); I shall devote further attention to this issue in the next chapter. Marriage fulfills

woman's inborn urge for reunion with man, from whom she was separated at her creation; she becomes bone of his bone and flesh of his flesh, as Adam declares on first seeing her.[99] This is the mirror image of a rabbinic *midrash* explaining that man searches for what he lost at the creation of woman, the text of which is cited earlier in the chapter (p. 30).

Consequently, when a woman marries, she becomes part of her husband: she has no power of decision, not even over herself, and no responsibility. A person who lacks the right to carry out her own will has no responsibility, since she cannot carry out her wishes and obligations; her legal status, lacking the freedom to act, is like that of a slave, whose deeds are the responsibility of his owner.[100] Hanna Cotton draws our attention to the fact that the Qumran rules give no indication of an age requirement for a woman to marry,[101] whereas a minimum age of twenty is required for a man (1Q28^{a} (1QS^{a})I:9–11). This rule is the natural consequence of man's exclusive decision-making authority. The woman has no personal individual will and cannot determine anything, and her knowledge and wisdom as to what is right and wrong are therefore unnecessary for marriage and married life; since the man decides everything, he is responsible for his family and its behaviour in all respects. The complete integration of the woman's personality into her husband's is evident from various biblical texts, some of which are discussed in this chapter, and others which I shall quote and deliberate upon in diversified circumstances in the book.

The daughter of a priest, if she marries an Israelite, loses her hereditary right to eat the holy priestly tithes (*terumah*), because she becomes part of her Israelite husband (Lev 22:12). If she is divorced or widowed and has no children by her Israelite husband, and returns to her father's house, her right to eat the tithes is revalidated, since she is permanently detached from her husband's family (Lev 22:13). If, however, she has a son by her Israelite husband, she is apparently deemed to remain part of his family and is not permitted

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99 In contrast to my understanding of the biblical expression "and they will become one flesh" as an abstract legal principle, Aharon Shemesh, "Women and Their Status in Society and Halakhah According to Qumran Literature," *Yearbook of Bar Ilan University* 30/31 (2006): 533–46 at 538–39 [Hebrew], seems to perceive it as a type of physiological fact—that is, there is no way to divide between man and woman, due to the creation principle, as long as both live. For a more detailed analysis of this theory, see Chapter 6 pp. 244–247.

100 See note 91 on a married wife's responsibility for damage inflicted on others.

101 *Encyclopedia of the Dead Sea Scrolls* (ed. Lawrence H. Schiffman; New York: Oxford University Press, 2000) 981.

to eat the holy tithe. The complete integration of a woman into her husband and his family is thus evident. The biblical rule of Num 30:8 (appearing in its various ramifications in 11Q19 (11QTemple[a]) LIII:16–LIV:5 and parallels 4Q524 (4QTemple[b]) and 11Q20 (11QTemple[b]) XVI) establishes that a woman's father or husband can invalidate a vow or pledge made by her, even when it relates to her own person.[102] She becomes an independent legal entity only when divorced or widowed (Num 30:10, referenced in 11Q19 (11QTemple[a]) LIV:4–5).[103] Likewise, other legal limitations on women are ramifications of their lack of an independent legal identity. J.E. Lapsley draws our attention to the fact that Rachel and Leah do not, and cannot, address their complaints directly to the offending party—their father, Laban—and consequently empower Jacob to defend their legal interests (Gen 31:14–16).[104] On the other hand, Zelophehad's daughters bring their case before Moses (Num 27), and the two prostitutes dispute their conflict before Solomon (1 Kgs 3). The distinction here is that these latter women are not married—that is, not legally attached to men—whereas Rachel's and Leah's interests are understood to be equated with those of Jacob, their husband, who represents them in his quarrel with Laban.

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102 It is not within the scope of my discussion here to elaborate on what type of vows these rules refer to, since some seem to limit man's authority to specific types of vows while others seem not to envisage any limitations on man's authority to annul all vows. For our present purposes, it suffices to demonstrate woman's lack of power to accomplish her vows against her husband's will.

103 The biblical text of Num 30:4 (v. 3 in KJV) repeats the condition on the father's right to annul his daughter's vows: "a young woman still living in her father's house," that is, while she is a minor. Scripture does not clarify whether the father's prerogative is restored if she returns to his house still as a minor but a divorcée or widowed; *b. Yeb*. 87a states, however, that his authority, once lost to her husband, is not restored, even if she is still a minor. This rule is logical since v. 10 (v. 9 in KJV), which sets the rule for a widow and a divorcée, does not indicate any limitation of its validity. Her right to eat *terumah*, however, is reinstated regardless of her age if she returns to her father's house as a divorcée or widow without children, as we read in Lev 22:13. The criteria for granting permission to a priest's daughter to eat holy food are distinct from those applicable to the father's authority to annul his daughter's vows.

104 J.E. Lapsley, "The Voice of Rachel: Resistance and Polyphony in Genesis 31:14–35," in *The Feminist Companion to the Bible* (2nd ser.; ed. Athalya Brenner; Sheffield: Sheffield Academic Press, 1998) 233–48 at 236–7.

1.4 Rabbinic Interpretation of the Creation Narrative: Positive and Negative Attitudes towards Women in *Midrashim*

Since I have already cited rabbinic interpretations and legal repercussions, and shall discuss rabbinic viewpoints on and legal ramifications of the Fall narrative more extensively in Chapter 2 (and particularly on deductions from rabbinic texts and narratives in section 2.6), at this stage I shall simply quote a number of rabbinic *midrashim* on the Creation narrative, as a background for their later evaluation from a number of perspectives.

My first example demonstrates contrasting attitudes regarding the presumed intention and implementation of God's creation of woman, as an indication of her character. I refer to two consecutive *midrashim* in *Gen. Rab. parsha* 18:1 and 2. *Parsha* 18:1 states (paraphrased): ויבן "And God built from the rib (Gen 2:22)," meaning that more wisdom was implanted into her than into the man.[105] The *midrash* is inspired by the likeness of the verb בנה "to build," used in Gen 2:22, and the verb בון, the root of בינה "understanding, wisdom, intelligence," used in this homily. This extremely flattering portrayal of woman is immediately mitigated somewhat by Rabbi Jeremiah, who, while not contradicting the facts of the case, explains away the woman's apparent advantage: "Habitually the woman sits at home and the man goes to the marketplace and gains wisdom from social intercourse with people." As I understand Rabbi Jeremiah's pronouncement, God considered it necessary to give more wisdom to the woman initially because she will have no chance to develop it further, whereas the man will gain more wisdom later in life; hence, in reality, both will be equivalent in wisdom. Rabbi Jeremiah avoids directly contradicting Rabbi Jose's dictum that woman has more wisdom than man, but in essence grants an equal degree of wisdom to both sexes.

On the other hand, *Gen. Rab*. *parsha* 18:2 offers us a contrasting view of woman's character, based on the same biblical verse and the same use of ויבן, from the root בון "understanding" (in this case, "contemplating"). *Parsha* 18:2 states (paraphrased): Rabbi Joshua of Sakhnin said: ויבן "And God contemplated from which part of Adam he should create the woman: not from the head, so she should not be frivolous, nor from the eye, so she should not be flirting, nor from the ear, so she should not eavesdrop, nor from the mouth, so she should not be a gossip; not from the heart, so she should not be jealous,

105 A renowned late traditional commentator, known as *Hatam Sofer* from the title of his most revered work, comments on this dictum that it is amazing, since it is an obvious distortion of reality. He attempts to reconcile it with his views by means of psychological discourse and a classification of the different types of human wisdom.

nor from the hand, so she should not be touching everything, nor from the leg, so she should not lightly open her legs, but from a place that is covered on a man, even when standing naked"; and at the creation of every part of her, God was saying: "be אשה צנועה a chaste woman."[106] Rabbi Joshua proceeds to explain that notwithstanding God's intent, woman has all of the above defects. This extremely negative view of woman's character seems so ingrained in the author's mind that he overlooks his implicit affirmation that omnipotent God did not succeed in accomplishing his creation as intended—a statement bordering on heresy.

As another example of a contrasting view, we read in *b. Ber.* 61a: "[It is written] 'And God built [from] the rib' [the common interpretation of צלע[107]]; Rav and Samuel [dispute from which part of Adam the woman was built:] one said from the face and the other said from the tail [hinting that Adam was created with a tail, like the animals]." The subsequent deliberations do not debate the deeper meaning of these opinions; they simply attempt to reconcile the dicta with the relevant biblical verses, with which they do not accord. I believe nevertheless that a different philosophical background underlay these pronouncements; I cannot see any other motive for the authors' interpretation, which disagrees with the common meanings of צלע, except to express their opinions about woman's characteristics as a result of her primeval source: one

106 I have translated the Hebrew צנע as "chaste," the common translation; not in the sense of abstaining from all sexual intercourse, however, but as morally pure in thought or conduct—decent, modest, and abstaining from unlawful sexual intercourse. The term צנע appears only twice in Scripture (Prov 11:2; Mic 6:8), and in both cases it means humility or restraint, having no association with abstention from sex. The NIV translates one as "humbly" and the other as "humility," appropriate to the context. The LXX uses ταπεινός "humble" in Prov, corresponding to the Hebrew צנועים, but not interpreted literally; and in Mic, καὶ ἕτοιμον εἶναι τοῦ πορεύεσθαι μετὰ Κυρίου Θεοῦ σου "be ready to walk with the LORD thy God," corresponding to the Hebrew והצנע לכת עם אלהיך. Both, however, are correct in their contexts. In rabbinic language, the subject of our study, צנע has acquired by extension many more meanings, including "putting aside/hiding" and "retire or withdraw," used metaphorically to portray modest behaviour in its various aspects. In consequence, it is used in some indirect associations with sex, as in our case צנועה, meaning the behaviour of a woman who is modest, hiding her body parts under her garments, and who lives a retired life in her house, avoiding mingling with other men. צנועה is used in a similar way in the *midrash* stating that God created her ממקום צנוע באדם "from the man's hidden side," withdrawn from view—a concept associated with modesty, humility, and decency. However, it is never associated with total abstention from sexual intercourse, which the rabbis opposed, as I argue elsewhere (see Chapter 7, pp. 270–272).

107 In Scripture, צלע means "side"; in the rabbinic literature, it primarily means "rib." See p. 20 for an analysis of this issue.

positive, the other negative. As I have noted above, it is legitimate in the rabbis' midrashic system to have many interpretations of the same verse, including the two rabbinic assertions of *Gen. Rab*. *parsha* 18:1 and 2, one of which praises women for their inherent superior qualities while the other stigmatizes them.

On the other hand, many rabbinic texts express more positive views of women. For example, in *b. Yeb*. 62b we read that every man without a wife lives without joy, blessing, or goodness. The author of this maxim cites the biblical verses that are the source of his assertion.[108] Another rabbi says that in the west (that is, in Israel, which is west of Babylon) they say that a man who has no wife is "without Torah, without a wall (a barrier that defends him from fornicating)"; he too supports his assertion with biblical citations.[109] The rabbis do not claim that their assertions, even with respect to physical facts and occurrences, have been reached by empirical observation as in the modern physical sciences; rather, such assertions derive from study of the Bible, the fountain of all knowledge, in keeping with the rabbinic aphorism about diligently searching the Torah for guidance: "turn it and turn it, since everything is in it" (*m. Abot* 5:22).

B. Yeb. 63a likewise stresses woman's significance for man: "Every man who has no wife is not a perfect Adam (human), as is written: 'He created them male and female . . . [and when they were created] he called them "Adam/humans" ' " (Gen 5:2). This dictum raises some interpretational problems: it is not evident what this instance of "Adam" represents; I assume that it means "human." The emphasis on the fact that God called them both "Adam," ignoring the name, Eve, given to the woman by Adam, seems to support my supposition.[110] *B. Yeb*. 63a offers us a different angle on woman's purpose and significant functions (paraphrased):

> "I will make a helper [for him]" (Gen 2:18); in what consists her help? She turns raw substances brought home by him, such as grain and flax, into useful items. By this, she enlightens his life and keeps him going.

Another Rabbi declares: What is meant by "this is now" in Adam's pronouncement "bone of my bones and flesh of my flesh (Gen 2:23)?" It teaches that Adam had intercourse with every animal (wild and tame), but did not achieve satisfaction until he copulated with Eve.

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108 Deut 14:26; Ezek 44:30; Gen 2:18.

109 In this case, Job 6:13; Jer 31:21.

110 It is commonly accepted that "Adam" in many instances means mankind, as also translated by the NIV here.

Another imaginative story with two different versions attests to woman's valuable function; one version (*Abot. R. Nat.* Recension b, 8) emphasizes her eminent intrinsic value, the other (*b. Sanh.* 39a) the utility of her subservient status. (See translation of the *midrashim* on p. 23.) However, though both versions deem woman important for the benefit of man, the first compares her to a mere housemaid/servant, whereas the second likens her to a precious brick of gold.

A notably favourable portrayal of woman's significance emerges from the passages quoted above, but we should not ignore what they all have in common: in each case, woman's importance is defined by her relationship to man; her dedication for the benefit of man is her function in life and the purpose of her creation as man's helper (Gen 2:18).[111] According to *Abot R. Nat.* Recension b, Chapter 8 (quoted in n. 7), woman was created by God at Adam's request; thus, satisfying his needs was the purpose of her creation. Like the Qumran authors, as noted above, the rabbis deduced from the Creation narrative both woman's dependence on man and, moreover, her purpose as being to please him. On the other hand, they do not deduce negative attributes of woman from the Creation narrative, with the exception of the *midrash* in *Gen. Rab*. *parsha* 18:2 (quoted above), which is influenced, I believe, by vilifying deductions from the rabbinic interpretation of the Fall narrative.

1.5 Conclusion

Our analysis of the three corpora—Scripture, rabbinic writings, and Qumran—reveals the identical opinion in each on the legal status of a married woman: her utter dependence on her husband, and the loss of her individual legal status at her marriage. It does not, however, establish her inferiority to man or her permanent loss of status as a person, which she regains at her divorce or widowhood. Although the rabbis amalgamate in some of their *midrashim* elements of the Creation and Fall narratives, the woman's loss of the status of an individual legal entity derives entirely from the Creation narrative. The Fall narrative and its interpretations have other implications, primarily in terms of the social standing of women.

111 1 Cor 11:9: "Neither was the man created for the woman; but the woman for the man."

CHAPTER 2

Interpretations of the Fall Narrative

2.1 Introduction

The Fall narrative is presumed to be the foundation of woman's inferior status and tainted character in Jewish and Christian societies, because of her supposed instigation of the primeval source of sin and death. In this chapter I propose to dispute this mindset and to demonstrate, through a critical and meticulous line-by-line scrutiny of the relevant biblical text, that an interpretation unbiased by preconceptions of gender characteristics does not even hint at such a conclusion. Instead, the account clearly places the primary human responsibility upon the man, as can be seen from the quite neutral portrayal of the woman's actions, and the much more judicial and punitive approach taken by God with Adam and the serpent in the incident's aftermath. The majority of scholarly studies on the status of women concentrate on Christian, rabbinic, and Qumran literature, and critical analysis of the primary biblical source has often been lacking or absent altogether. For instance, John Collins[1] analyses the relevant verses of Gen 3:1–24 from a primarily theological viewpoint, ignoring textual critical analysis. For example, he writes that God gave *them* [my italics] "strict instructions regarding one tree"[2] (at Gen 2:16–17), an incorrect statement that may not be significant theologically but is obviously critical in judging the woman's guilt to be minor, since Eve was not yet created when God gave His instructions to Adam, and to him alone. This fact is crucial in establishing the primary guilt. In fact, the author of *Jubilees*, having a preconceived notion of the woman's guilt and being aware of the significance of this and many other biblical passages that contradict his theory, simply changed them, adapting them to his prejudiced opinion. These sometimes blatant changes indicate that a more impartial reading of the biblical text affirms the contrary, and thus supports my proposed interpretation.

This chapter will consider other aspects of the presumed biblical attitude toward women and discuss relevant scholarly studies on these topics. For instance, one does not encounter derogatory comments about women in Scripture, undermining the assumption that such prejudice is scriptural in origin. As far as can be determined from the scarce Qumran writings on

1 John J. Collins, *Genesis 1–4*, 166–178.

2 Ibid., 169.

these issues, it would seem that Qumran scholars took a more straightforward approach to scriptural interpretation than the later rabbis, and also had a more neutral view of women. Finally, given the ample rabbinic writings from a variety of genres on the interpretation of the Fall and its ethical and halakhic ramifications, it will be possible to develop a more elaborate perspective on rabbinic attitudes toward men and women and their underlying philosophy and theology. The midrashic technique certainly brought more layers to interpretation but also, as I will argue, reflects an underlying pragmatism: insisting, for instance, that women "cover up" in public might implicitly stigmatize them as temptresses, but may also have seemed more effective in preserving family stability in the social conditions of the time than attempting to police the unruly male libido.

2.2 The Biblical Text: Problems and Interpretations

2.2.1 *Close Textual Analysis of Gen 3:1–14*

The story of the Fall begins: "Now the serpent was more crafty עָרוּם[3] than any of the wild animals the LORD God had made" (Gen 3:1). Scripture's emphasis on the fact that the serpent is the shrewdest of all animals, an apparently superfluous detail, proves to be a decisive factor in determining which of the characters involved is mostly to blame for the sin and the consequent calamity. Indeed, beginning the narrative with this detail indicates the author's sympathetic attitude towards the woman, displaying an understanding for her falling into the trap of this wily character, who skillfully frames the discussion to attain his goal.[4] Indeed, since the serpent is probably aware[5] that God's

3 *Genesis* = [*Be-reshit*]; LXX translates this word as "cunning," KJV "subtil" and JPS "the shrewdest."

4 Hartley, *Genesis*, 65 writes that "its [the serpent's] skeptical approach drew the woman into discussion and opened her to considering that God might have acted out of self-serving motives." But nevertheless, "the woman wisely sought to correct the serpent," stating that God permitted them to eat from any tree, except one. Hamilton, *The Book of Genesis*, 189 proffers another perspective of the serpent's astute approach in achieving his goal of making man fail. By exaggerating God's prohibition, the serpent attempted "to create in the woman's mind the impression that God is spiteful, mean, obsessively jealous, and self-protecting," as he indeed implies in Gen 3:5. Blenkinsopp, *Creation*, 73 writes: "We can readily understand that, confronted by such a formidable interlocutor, the woman had little chance of winning the verbal duel."

5 Hamilton, ibid., writes: "The serpent would have learned about God's commands from the humans."

command not to eat from the tree has been given to Adam, not to the woman,[6] he chooses to speak to her, framing his approach as a question and raising doubt in her mind about the authenticity of Adam's admonition to her about the tree.[7] The serpent plausibly knows that his question is deceptive,[8] since he must have seen that they ate from all the other trees of the Garden, yet he asks Eve: "Did God really say, 'You must not eat from any tree in the garden?' " (Gen 3:1)[9] The woman begins her reply by negating his assumption, but in her naiveté she volunteers information on an issue he has not asked about, saying: "We may eat fruit from the trees in the garden, but God said: 'You must not eat fruit from the tree that is in the middle of the garden, and you must not touch it, or you will die.' "[10] We know that God did not prohibit *touching* the tree,

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6 Sarna, *Genesis*/בראשית, JPS, writes: "She is therefore the more vulnerable of the two, the more susceptible to the serpent's insidious verbal manipulation."

7 *Abot R. Nat*. Recension a, Chapter 1 unveils the serpent's well-devised plan to entangle Adam and bring him to failure. Its interpretation is formulated according to a biased conception of the woman's inferiority, arguing that the serpent attempted to use the weak, ignorant woman to achieve his objective; see Tertullian, *De Cultu Feminarum, The Fathers of the Church* (Dokkum: J. Kaminga, 1934). Adam's weakness is evident, since Adam ate the forbidden fruit without any effort at temptation from Eve. Hence, the man seems inferior to the woman; he exercises no personal consideration or judgement and is easily led astray.

8 Bernard M. Levinson, *The Right Chorale: Studies in Biblical Law and Interpretation* (Tűbingen: Mohr Siebeck, 2008) 43 describes the serpent's cunning reversal of the syntax of the original divine dictum.

9 The Hebrew expression **אף כי** is unusual, and its translation and interpretation are vague. It appears only once in the entire Pentateuch and must be interpreted differently in the context of the other occurrences in Scripture. The KJV interprets it: "Yea, hath God said" (in interrogative mode), suggesting Eve's suspicion regarding the truth of what Adam told her. *Tg. Onq*. adds the term **בקושטא ארי** "but is it true" that God said, confirming the suspicion that the serpent took advantage of Eve's not having heard God's command to arouse her suspicion. The traditional commentator *Rashi* interpret it as: "perhaps" God has told you. The LXX here translated the expression in an uncommon copula τί ὅτι interpreted by Albert Pietersma and Benjamin G. Wright, in *A New English Translation of the Septuagint* (New York: Oxford University Press, 2007) as "why is it," whereas it should have rather been translated from the philological standpoint as "what is it." In fact, the same expression in 1 Sam 14:30 is translated by the LXX ἀλλ᾽ ὅτι and by the NIV and KJV as "how much more," demonstrating the oddity of this expression in our verse.

10 This is the NIV interpretation, which does not consider correctly the meaning of the biblical term **פן**, expressing a possibility. The KJV interprets it "lest you die," following the LXX, which expresses a more potential possibility, but not as definite as when God said to Adam "you will surely die" (Gen 2:17). The term **פן** in Scripture definitely expresses possibility or contingency (see Gen 26:7). *Onkelos* and *Pseudo Jonathan* indeed translate the term **פן** in Gen 3:3 as **דלמא** "perhaps."

and although God said to Adam that he will surely die on the day he *eats* the fruit (Gen 2:17), the woman says פן תמתון "you may die," without any indication when that may occur. The author of the narrative conceals from us, however, what Adam said to the woman. It is plausible to assume that Adam indeed told her that God prohibited even touching the forbidden tree, an incorrect statement that modified the divine command, as *Abot R. Nat*. Recension a, Chapter 1 alleges.[11] Such a possibility is more reasonable than supposing the woman invented this detail, changing God's command in such a radical manner.[12]

As Gen 3:4–6 recounts, the serpent next convinces the woman that she and Adam will not die; eating the fruit will open their eyes, giving them the faculty to discern good and evil. In consequence of these reasonably convincing claims and facts (as the *midrash* argues; see note 11), we read in v. 6: "When the woman saw that the fruit of the tree was good for food and pleasing to the eye, and also desirable for gaining wisdom, she took some and ate it.[13] She also gave some to her husband, who was with her, and he ate it." The author emphasizes again that the woman's action is logical, given the superlative praise of the tree and its fruit and her wonderful experience after having eaten the fruit without

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11 See the contents of this *midrash* on p. 87, arguing that because of Adam's inexact transmission of God's command, the serpent could convince the woman that Adam lied to her. In another version of this *midrash*, Adam's allegedly increasing the severity of God's prohibitions is criticized, since the serpent could more easily convince Eve of the falsity of Adam's transmission to her of God's command. We read in *Gen. R. parsha* 19: "When he [the serpent] saw her passing at the tree, he pushed her to touch the tree; he said to her: behold you did not die by touching it, equally you will not die by eating it."

12 Gerhard von Rad, *Genesis: A Commentary* (Revised Edition, translated from the German by John H. Marks, Philadelphia: Westminster Press 1972) alleges that the woman changed the command, "going a bit too far in her zeal;" hence, without evil intentions. In *Eve and Adam: Jewish, Christian, and Muslim Readings on Genesis and Gender* (ed. Kristen E. Kvam, Linda S. Schearing, and Valarie H. Ziegler; Bloomington, IN: Indiana University Press, 1999), 33, it is postulated that presuming the woman changed the divine command received from Adam, she did so because of a confusion between the tree of knowledge and the tree of life. God prohibits Adam to eat from "the tree of knowledge" (Gen 2:17), but Eve mentions "the tree that is in the middle of the garden" (Gen 3:3).

13 Hamilton, *The Book of Genesis*, 190 writes that the virtue of the tree to make one wise was the most attractive feature for Eve, since it would give her something she did not "presently possess." Humans frequently crave what they do not have. Elyse Goldstein, *The Women's Torah Commentary: New Insights from Women Rabbis on the 54 Weekly Torah Portions* (Woodstock, VT: Jewish Lights Publishing, 2000), at 50 writes: "The Torah, surprisingly, explains Eve's inner motives, quite out of character for the Torah, which rarely divulges such personal reflections. Only after such contemplation does Eve actively reach for the fruit, it is not an impulsive act."

any adverse effects.[14] Only after that, as a thoughtful and dedicated wife, does she offer her husband the fruit.[15] In contrast to the elaborate presentation of the serpent's scheming, the author portrays the woman's action as straightforward, without the slightest hint that she is tempting Adam into eating the fruit.

Cassuto notes that Adam does not ask any questions: it suffices for him that the woman gave him the fruit to eat, since "it is the way of the world for the man to be easily swayed by the woman."[16] One discerns here a rabbinic influence in the presumed power of a woman to seduce a man; the biblical text, however, does not suggest this. On the other hand, Sarna, in his *JPS* commentary to Gen 3:6, observes that "the woman is not a temptress." He argues further that the serpent's conversation with the woman is in the presence of Adam as well, since the serpent uses the plural mode in his speech. This is supported by the biblical phrase (Gen 3:6b) ותתן גם לאישה עמה "and she gave also to her man [who was] with her)"—the man is with her when she gives him the fruit to eat;[17] hence he must be well aware of the serpent's cunning arguments and nevertheless decides of his own will to transgress the divine command.[18] The author underscores the woman's abstention from any attempt at inducing Adam to eat, by emphasizing through the narrative's portrayal the different

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14 In effect, the text indicates that the woman saw the fruit's property of bestowing wisdom before having eaten it, which is highly questionable. Hence, it demonstrates the biblical author's consistent aim to minimize the woman's guilt. The traditional commentators *Rashi* and Ibn Ezra, aware of the dilemma, interpreted the term ותרא "she saw" not in a concrete manner, but rather to mean that she realized the serpent's discourse made sense, and she believed him.

15 Here too, the rabbis, in *Abot R. Nat.* Recension b, Chapter 1, eager to defend their affirmations of the woman's guilt and corrupt character, indicate her depraved and egoistic character, alleging, among other things, that immediately after having eaten the fruit she saw the angel of death approaching her. She surmised that she was going to die and that God would create another woman for Adam. To avoid this, she decided to feed Adam the forbidden fruit (Gen 3:6b), so that either both would die or both would survive. In contrast, another *midrash* says: "Having eaten the fruit of the tree and perceiving that nothing harmful occurred to her, she contemplated that all Adam had commanded her was false."

16 Cassuto, *Commentary on Genesis*, 148.

17 Hebrew does not require a verb for the formation of a sentence; the context implies the auxiliary verb "to be." Sydney Greidanus, *Preaching Christ from Genesis* (Grand Rapids, Mich.: Eerdmans, 2007) writes that Adam, "who had received the commandment directly from God, should have stopped her."

18 See n. 55 in Chapter 1, p. 27, regarding Milton's *Paradise Lost* on this topic. It is amazing to observe the broad range of exegesis, comparing this interpretation to that of *Abot. R. Nat.* cited above in n. 15.

circumstances that shape her decision compared to his, and through the presentation of their defence. In fact, the woman says in her defence that the serpent deceived her, whereas Adam just says, "The woman gave me the fruit," corroborating that the woman did not make any special effort to convince him. Note also the biblical author's portrayal of the woman's prudent thinking, even though she has not heard the divine prohibition. In contrast, Adam does not reflect on God's explicit prohibition, but makes a hasty decision to eat the fruit.

In summary, the biblical text demonstrates a recurrent emphasis on the mitigating circumstances of the woman's actions, which continues *a fortiori* as the narrative progresses, shifting the blame on to Adam. We read in vv. 8–9 that both Adam and Eve heard וישמעו the Lord's coming into the Garden, and both hid (although the MT states that both ויתחבא האדם ואשתו "Adam and his wife hid," it uses the masculine ויתחבא "he hid");[19] Adam too in his reply to God states in the singular ואחבא "so I hid." But the Lord called only upon the man "Where are you," emphasizing again Adam's primary role, being the only one summoned by God.[20] The language thus demonstrates Adam's primary responsibility in the sinful episode, as is also evident from the subsequent divine dialogue and accusation, explicitly directed to him alone (3:10–11). (In contrast, in God's blessing [Gen 1:28–30], the granting of authority to humans over all other creatures and the allotment of food is addressed equally, in the plural, to man and woman.) God addresses only Adam, and after listening to his explanation for his hiding (vv. 9–10), asks him alone, in a judicial manner, who told him to be naked and whether he transgressed the divine command given to him not to eat the fruit from the particular tree (v. 11). The woman is neither accused of disobedience, nor interrogated in the same manner as Adam. As an impartial judge, God would have asked her whether she indeed performed a criminal act by transgressing his command, but he posed instead a somewhat odd question, "What is this you have done?" (v. 13), instead of the expected "Why have you done this?" Such a question would have followed logically from Adam's reply in v. 12 that the woman gave him the fruit.[21] Further, the question

19 The LXX cites the term κρύπτω "hide/cover" in the plural, since Greek grammar, like Modern Hebrew, does not permit the use of a verb in the singular for a deed performed by more than one subject. Biblical Hebrew, however, permits the use of the singular in cases when one subject is the primary actor or agent and the other is secondary, as in our case, since from now on God converses solely with the man in vv. 9–12.

20 The LXX text reads: "Adam, where are you?" It seems entirely plausible that the translator added Adam's name at the beginning of the question to emphasize his personal guilt and responsibility for the misdeed.

21 Indeed, the LXX interpreted this question using the conjunction τί "why," as did the Vulgate, using the conjunction *quare* "why."

does not contain any description of her supposed deed, as one would expect in a judicial interrogation.

Although God knows that the woman ate the fruit before Adam and then gave it to him, God interrogates Adam first because he is the one whom God prohibited from eating the fruit, indicating that God considers him the principal guilty party. From the different style and content of the interrogations of Adam and the woman, we observe God's dissimilar attitudes towards their responsibilities for the mischief: God's question to the woman does not have the character of an accusation. This conclusion is corroborated by the peculiar way the author of *Jubilees* changed significant details of the biblical narrative of the Fall in order to adapt it to his preconception of the woman's primary guilt. *Jubilees* ignores, for example, the entire episode of God's conversation with Adam and the woman and their responses, and similarly omits key passages in other places in the Fall narrative, as I shall demonstrate in section 2.2.3.

2.2.2 *Gen 3:14–24: Distinct Retributions for Adam and Eve*

After the pleas of Adam and the woman, each attempting to pass the blame to somebody else, the narrative reaches its climax: God's judgement, the delivery of the verdict, and the pronouncement of the punishment. From the structure and literary style of vv. 14–19, which comprise the last phase of the narrative, we observe that God does not accept Adam's plea of innocence on the basis of blaming the woman, as implied by his words in v. 12: "The man said, 'The woman you put here with me she gave me [some fruit] from the tree, and I ate it.' " God perceives Adam and the serpent as the principal offenders; he convicts them and imposes on them the most severe retributions, as we observe from the succeeding text.[22] He does not interrogate the serpent, conjecturally because he knows that the serpent has no excuse.[23] In fact, none of the involved parties has an explanation for their deeds; Adam and the woman merely attempt to pass the blame onto a third party, who, as they contend,

22 Compare Lacks, *Women and Judaism*, who writes at 15: "Lord God, however, in his eternal and supernal wisdom, doesn't accept Adam's story and sends both of them out." She seems to feel that God perceived both Adam and Eve as equally guilty and respectively punished, overlooking that vv. 23–24 records the expulsion from the Garden in the masculine singular. Emphasizing Adam's origin from the ground cannot refer to Eve, created from his rib. Eve's accompanying Adam out of the Garden does not demonstrate her guilt or conviction; she must follow her husband, being one flesh and bone.

23 Westermann, Genesis 1–11, 255 writes that J discerns between the people and the serpent "pointing out the basic meaning of human responsibility, namely, the people have to answer for what they do."

incited them, and the serpent cannot even make that plea, being the "primary mover" of the incident.

In every judgement, the judge, after listening to the evidence and pleadings of the defendants, first delivers his verdict, declaring them innocent or guilty, before proceeding to pass sentence. Likewise, God proclaims both the serpent and Adam guilty, using the identical formula in each case: כי עשית זאת "Because you have done this," to the serpent (Gen 3:14) and כי שמעת לקול אשתך ותאכל "Because you listened to your wife and ate," to Adam (Gen 3:17). In contrast, there is no such conviction of guilt in God's words to the woman, which are transmitted indirectly by the narrator: "To the woman he said, 'I will greatly increase your pains in childbearing; with pain you will give birth to children. Your desire will be for your husband, and he will rule over you' " (v. 16).[24] Like God's question to the woman, which does not have the character of an accusation or interrogation, his indirect pronouncement to her does

24 The LXX uses ἡ ἀποστρφή σου for the Hebrew MT term תשוקתך in v. 16, meaning "your turning back," according to Wevers' *Notes on Genesis* translation. This translation would be appropriate for the Hebrew term תשובתך, but Wevers thinks that "it is unnecessary to presuppose" such a reading. However, Charles, *Apocrypha and Pseudepigrapha* also translates in *Jub*. 3:25 the biblical parallel of Gen 3:16 as: "thy return shall be unto thy husband," a fact which hints that there may have been some biblical MSS with the term תשובתך. Avraham Kahane, *The Apocryphal Books* (Tel Aviv: Massada, 1959 [Hebrew]) conjectures that the LXX had a Hebrew *Vorlage* with the term תשובתך, and comments that this term appears in the Ethiopian version, which served as Charles' *Vorlage*. *Tg. Neof.* interprets it similarly: ולוות בעליך יהוי מתביך: "and to your husband you will return." This term, which does not allude to the woman's sexual desire as an aspect of her character as Wevers assumes, would thus delineate a more favourable portrayal of the woman. Her turning back to her husband would be associated with her virtuous character to turn back to her husband for having more children, despite her pain in giving birth. However, Stephen Andrews, "What's the Matter with Eve? The Woman and her Sentence in Ancient Judaism," in *Divine Creation in Ancient, Medieval, and Early Modern Thought; Essays Presented to the Rev'd Dr Robert D. Crouse* (ed. Michael Treschow et al.; Leiden: Brill, 2007), 1–22, at 7 states: "it is hard to see how αποστροφή could mean 'desire,' " suggesting that the LXX translator "had a text with תשובתך or, in a kind of ancient malapropism, he was of the opinion that תשוקה equaled תשובה." By extension, one who comes back from his/her own will demonstrates that he/she wishes or desires it, which explains the translator's pattern of thought. See n. 100 on p. 82 on that topic. It seems that Andrews cannot accept the simple meaning of the text, indicating that God implanted the sexual desire in humans, and therefore it cannot be wicked and in need of suppression, since what God has done is always good.

not bear the character of a guilty verdict, nor of a consequential punishment.[25] There is no accusation, nor even mention of the fact that the woman ate the forbidden fruit, presumably because she did not hear God's command transmitted to Adam. The inescapable conclusion is that God's approach to the woman is entirely different from those pursued with the other two parties to the incident. The content and style of the narrative also portray the woman's participation in the event as minimal in comparison to that of the other two participants. The divine punishment of the serpent, involving perpetual hostility and deadly conflict between humans and serpents, mentions the woman's descendants, not the man's, since the serpent tried to corrupt the woman but had no contact with the man. It does not, however, indicate a punishment of the woman for her guilt, nor for that matter a punishment of her offspring.

The style of the biblical text of God's communication with the woman at Gen 3:16 is different enough to raise the plausibility it is a later interjection, not organically related to the antecedent and succeeding verses.[26] Its literary style in the MT, starting with אל האשה אמר "to the woman he said," in contrast to the use of the conjunction ולאדם "and to Adam" in v. 17, hints likewise at this possibility.[27] The aetiological purpose of such an interjection would be the justification of the actual circumstances in Israel at the time of the narrative's final redaction.[28] It is obvious that both the creation model in Gen 2 and the Fall narratives in Gen 3 are of partially aetiological character, justifying the woman's lesser status and lack of independence in society and in her relationship with her husband.

As already hinted above, I postulate that the divine communication to the woman in v. 16 should be perceived as neither a punishment[29] nor an

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25 Blenkinsopp, *Creation*, at 56 writes: "The verdict on the man and the woman is not a punishment distinct from the expulsion into a harsher world, but simply a description of what life outside the garden will entail."

26 Schmidt, *Die Schöpfungsgeschichte*, 215 states: "Already the formal differences . . . make it clear that this passage has another source than the surrounding castigations."

27 Both the Samaritan and the LXX versions added the stylistically appropriate conjunction ואל האשה "and to the woman," and the LXX added καὶ to connect it to the foregoing curse of the serpent, but this conjunction is absent in the MT.

28 Frymer-Kensky, *In the Wake of the Goddesses*, 128 writes: "The superior position of husbands was never justified or explained in the Bible by claims to innate male superiority," and "the hierarchical division between men and women was yet another social institution that the biblical Israel shared with her neighbours and did not think to question."

29 Bal, "Sexuality," 36 states: "The content of Jahweh's words to her is not even presented as the consequence of what she has done, let alone a punishment."

indication of her inferior status because of her involvement in the Fall episode. According to the Creation narrative of Gen 1, to assign inferior status to the woman would have been against God's intention of complete equality between the two genders. On the other hand, the Creation narrative of Gen 2, proclaiming the creation of the woman from the man's rib and his declaration before God that "This is now bone of my bones and flesh of my flesh; she shall be called 'woman,' for she was taken out of man," creates the woman's inequality. It establishes the woman's dependence on the man, her craving for reunion with her primeval source and her lack of an independent individual legal status. The consequences of this narrative, not of the Fall, show up in God's communication to the woman in the peculiar verse 3:16: man's dominion over woman is not a punishment for her part in the Fall narrative, but the consequence of her creation from man. It would have been highly unjust for the man, the primary sinner in God's eyes, to be rewarded by dominion over the woman, the minor transgressor. Cassuto, who comprehends Adam as the main sinner,[30] nevertheless perceives the woman's "punishment" of subservience to the man as conforming with the rabbinic maxim of מדה כנגד מדה "measure for measure," presumed to be the divine standard; she made Adam do her will and her punishment is to do his will henceforth. However, the application of this rule seems neither just nor appropriate in this case. To grant the main sinner in the mutual transgression domination over his wife as a reward would be tantamount to a reversal of justice. Furthermore, the "punishment" of the woman to desire her husband and be subservient to him has no textual association at all with her assumed sin, unlike the evident linkage of the crime and the punishment of the serpent, and a life of sorrow for Adam as a punishment for the transgression of the divine command. The exclusive use of the term אישך in the Pentateuch only in the Fall narrative and at the test of the Unfaithful Wife (Num 5) instead of the term בעל may also indicate the equality between man and woman. Whereas the term אשה, generated, as explained: כי מאיש לקחה "as a part of the man," indicates equivalence in their essence, the term בעל indicates possession, as in בעל הבית in Exod 22:7 and in Exod 21:3 and 22, in which the woman's destiny is determined by her husband: the wife of the Israelite slave is freed when her husband is, and the husband decides the amount of the fine to be paid for the punch suffered by his wife.[31]

30 Cassuto, *Commentary on Genesis*, 138 calls this narrative "Adam's sin."

31 I am indebted to Professor Herb Basser for drawing my attention to the oddity of the term אישך.

Barry Bandstra, who has made a meticulous analysis of every phrase of Gen 1–11 from grammatical and syntactical perspectives,[32] states that the clause "Your desire will be for your husband, and he will rule over you" in the second part of v. 16 does not appear to be a curse so much as a statement of fact. I tend to have the same perception regarding the first part of v. 16. Carol Meyers interprets it as related to sexual intercourse; despite the woman's reluctance to enter into the risks of pregnancy and birth, "the male's will within the realm of sexuality is to be imposed on the will of the female . . . yet because she experiences desire and yearning for man, such male control would not be experienced as oppressive;" hence the indirect type of penalty.[33] Further, the relationship of עצמי ובשרי "Bone of my bone and flesh of my flesh" between man and woman (Gen 2:23) portrays a particular form of ameliorated domination that cannot be perceived as a punishment. When the tribes of Israel asked David to be their ruler, they expressed their motive in choosing him and the relationship they expected between them thus: הננו עצמך ובשרך אנחנו "We are your flesh and blood" (2 Sam 5:2). Such an affiliation cannot be perceived as a punishment; likewise the relationship between man and woman.[34]

The first part of God's communication to the woman, even if perceived as a punishment, does not compare in severity to the punishments inflicted on Adam and the serpent, and would, even in this case, serve as evidence for the minor nature of the woman's sin. The pain of giving birth is in practice a natural event experienced by many kinds of living beings, and occurs intermittently a limited number of times in a woman's life. Further, the pain's intensity is not

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32 Barry Bandstra, *Genesis 1–11: A Handbook on the Hebrew Text* (Waco, TX: Baylor University Press, 2008), 206.

33 Carol Meyers, *Rediscovering Eve: Ancient Israelite Women in Context* (Oxford: Oxford University Press, 1988), 116–117. Remarkably, the traditional commentator *Ramban* similarly associates the woman's desire for the man with the procreation process: "I find it appropriate that God punished her [Eve] to crave excessively for her husband, and thus she will not be intimidated by the pain of pregnancy and birth." Though he does not mention it, a *midrash* in *Gen. Rab. parsha* 20 interprets Gen 3:16b as follows: "When the woman sits on her travailing chair, she proclaims: 'I will never have sexual relations with my husband,' and The Holy be He blessed says to her: 'You will hark back to your desire, you will again desire for your husband.' " *Rashi* similarly relates the first part of the verse ואל אישך תשוקתך to sexual intercourse, but in a different way than Meyers or *Ramban*, stating: "[you will desire] sexual intercourse, but despite it you are not daring to ask for it boldly, but he will rule over you [intending] everything (the initiative) will come from him, and not from you." There is no hint of a punishment or dominance in *Rashi*'s view.

34 I am indebted to Professor Harry Fox *leBeit Yoreh* for drawing my attention to the relevance of 2 Sam to our topic.

universally equal; in natural or primitive societies it seems to be negligible, but even in our modern societies, we observe that the compensating great joy of giving birth to children, which is exclusive to women, generally far exceeds the pain associated with it. Women often face enormous hardships and hurdles in order to become pregnant. Stephen Andrews interprets the term עצב not as "pain" but as a "psychological or emotional discomfort;" thus he translates the verse: "I will greatly increase your distress and [or 'in'] your pregnancies."[35] By comparison, man's punishment, consisting of a continuous and lifelong uphill battle for sustenance, entails more overall hardship. Scripture emphasizes explicitly the ceaseless calamity of the man's punishment: "through painful toil you will eat of it all the days of your life" (Gen 3:17), and reiterates the point in Gen 3:19: "By the sweat of your brow you will eat your food until you return to the ground."[36] It is remarkable that the rabbis, who, as we shall see, shift the blame of the Fall onto the woman, are nonetheless aware that Adam's punishment is more severe than hers. For instance, we read in *Gen. Rab*. 97:3:[37] "Said Rabbi Jose son of Halafta, 'Earning one's sustenance is twice as burdensome than [the pain of] giving birth; at the birth is written בעצב [and] at earning one's sustenance is written בעצבון (the longer term is presumed to demonstrate its greater severity).' "[38]

A traditional commentator, *Torah Temimah*, conjectures that Rabbi Jose was baffled by the assumption that the woman, the lesser offender, would be punished more severely than the man. Therefore, he attempted to demonstrate that the man's punishment was indeed more severe. We observe that even a

35 Andrews, "What's the Matter with Eve?" 3.

36 See Hamilton, *The Book of Genesis*, 203.

37 The same dictum appears in *b. Pesah*. 118a in the name of Rabbi Johanan, one of the first Amoraim.

38 It is odd that the Tanna deduced this from a longer term used at the man's punishment, a flimsy piece of evidence, instead of the difference between man's continuous plight versus the woman's temporary pain, softened by love. Perhaps he preferred to deduce his conclusion from the two different biblical terms, since according to tradition, acknowledged by the rabbis, one gains knowledge even of natural physiological rules from the interpretation of the Torah, not from observation. Carol L. Meyers, "Gender Roles and Genesis 3:16 Revisited," *A Feminist Companion to Genesis* (ed. Athalya Brenner; Sheffield: Sheffield Academic Press, 1993) 118–141, at 130–131 argues that the עצבון in Gen 3 "clearly refers to the physical labor . . . but is nowhere associated with the description of childbirth." She argues that in Ps 127:2 the same term "links long hours of work with the procurement of the 'bread of labors.' " As regards the woman, however, the use of the term intensifies the female contribution to society, "as both the woman's contributive labor and her pregnancies are quantitatively increased."

traditional commentator, and plausibly also the Tanna Rabbi Jose, educated in light of the ingrained rabbinic opinion about the primary guilt of the woman in the Fall, had some doubt as to the integrity of this viewpoint; indeed, one may observe such doubt also in some dicta of the ancient rabbis. The punitive and humiliating style of God's verdict to Adam is remarkable, and emphasizes Adam's great sin and corresponding punishment. From his elevated position in domination of all creatures in Gen 1:28–30, he is degraded to the status of animals to eat the plants of the field,[39] and his quintessentially inferior origin from dust is stressed.

A further critical analysis of God's verdict and punishment of Adam in vv. 17–19 supports my overall thesis about the biblical attitude to the relationship between man and woman and the assignment of guilt resulting from the Fall narrative. To begin with, the opening phrase of God's verdict on Adam, "Because you listened to your wife," seems extremely odd. It gives the impression that Adam's main misdeed was to listen to his wife, rather than to eat the prohibited fruit, an accusation that is mentioned only subsequently as if it were a secondary infraction. This reading is supported by the use of the conjunction ו in ותאכל "and," seemingly pointing to a wrongdoing additional to the first, his listening to his wife. At any rate, it raises the question of what is wrong with listening to one's wife; if it is not wrong, its citation is superfluous.

According to my postulate, this pronouncement relates to the woman's dependence on man as a result of her creation from his rib. Adam has reversed the logic of God's creation of the woman from man's rib and her consequential dependence on him as one of his parts, who ought to obey him as one of his limbs would. Having done the opposite in listening to his wife, he cannot excuse his guilt on account of listening to her when, in her capacity as a companion created for him by God, she should rather be listening to him.[40] Thus,

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39 Whereas in Gen 1:29 Adam is also given "every tree that has fruit with seed in it," now, in Gen 3:18, he will eat only "the plants of the field," like the beasts and the birds in Gen 1:30. A *midrash* in *Abot R. Nat.* Recension a, Chapter 1 records: "[When Adam heard that] he said 'Master of the World, I and my animal will eat from the same manger?' "

40 Hartley, *Genesis*, 70 writes: "The man's responsibilities were to obey God and to encourage the woman in obeying God." He continues: "This he failed on two accounts." Andrews, "What's the Matter with Eve?" 10 reflects similarly to my thesis: "Perhaps the wife was regarded as an extension of the husband's person and therefore subject to his control in the same way he would exercise *self*-control in the avoidance of sin," but reaches the opposite conclusion regarding Adam's or Eve's main culpability. He argues that "Eve's offering of the forbidden fruit to Adam, would indicate that the woman's desire was in some fashion an unhealthy one." The woman "has certainly the power of intimate suggestion, and she places before her husband an enticement to sin," although the biblical text

this apparent oddity supports my thesis that the woman's subordination to her husband is the consequence of her creation from his bone and flesh, and the purpose of her creation to function as man's helper, rather than a punishment for her involvement in the Fall.

Two additional elements indicate the crucial difference between God's punishment of Adam and His communication to the woman.[41] The term ארור "curse" appears at the serpent's and Adam's verdicts,[42] whereas no expression of malediction is mentioned in the divine dialogue with the woman. And last but not least is the fact that God communicates for the first time to man about his limited temporal existence in the world; that is, his imminent death. Hence, according to an unbiased reading of the narrative, the man's sin is the cause of death coming to humanity within the framework of his punishment. It is remarkable how this obvious fact has been overturned and the coming of death to humans has been attributed to the sin of the woman. Further, according to rabbinic law an accomplice to a criminal act is not liable to punishment, as they would be in modern law; only the perpetrator of the act is liable. We read in *b. Qidd*. 42b the maxim: "There is no agent for a forbidden deed, because we say: Do you obey the command of the teacher [God] or of the student [a human]?" From this legal viewpoint, Eve should not be punished for giving the prohibited fruit to Adam, and she is not charged with having eaten it, probably since God did not explicitly prohibit her eating the fruit. Only Adam disobeyed God's command; his excuse that his action was instigated by the woman is not valid, and therefore he alone is guilty of the transgression. In fact, at the end of the episode, with the application of the ultimate punishment, his ephemeral life and his expulsion from the Garden and degradation, we read in Gen 3:23: "So the LORD God sent (NIV banished) him from the Garden of Eden to work the ground from which he had been taken." Only Adam, the primary

portrays the woman's action as straightforward, without any hint of an effort to tempt or convince Adam to eat the fruit. Ignoring his own admission that Adam "was at liberty not to heed [her enticement]," Andrews concludes that "the exhortation for the husband to rule his wife occurs in the ethical context of whether or not he will follow her into sin." Andrews seems to me to approach the interpretation of the narrative with many preconceptions regarding the woman's intrinsically evil disposition. Thomas W. Franxman. *Genesis and the "Jewish antiquities" of Flavius Josephus* (Rome: Biblical Institute Press, 1979), at 61 likewise states that God accused Adam of having subdued himself to his wife, a woman.

41 Westermann, *Genesis 1–11*, 263 writes: "[Adam's] sentence clearly carries the most weight; it is the most detailed and the crime is mentioned yet again."

42 Although Adam is not cursed, the earth is cursed on his account, specifically to make his life miserable.

sinner, is mentioned, and his expulsion is reiterated in v. 24 in a derogatory manner: ויגרש את האדם "he drove Adam out." These and the previously identified differences between God's approaches to Adam and to the woman point to the peculiarity of God's words to the woman from a great range of viewpoints, and lend support to the hypothesis that v. 16 is an extraneous text.

2.2.3 Jubilees' *Intentional Changes to the Biblical Text*

The author of *Jubilees*, however, had a different preconceived notion of the woman's guilt, and being aware that the existing biblical text contradicted his theory, changed the relevant biblical text at critical instances to adapt it to his own viewpoint. For example, he totally ignored God's command to Adam not to eat the fruit of knowledge of good and evil in Gen 2:17: it does not appear at all in his parallel narrative of the biblical account of the Creation and Fall. The first mention of such a command appears in *Jub*. 3:17, in the serpent's speech to the woman, in the *plural* mode, and is acknowledged *by the woman* in v. 18. We observe here a premeditated contrivance to alter the biblical text's characterization of the woman's involvement as minor. Clearly, as we have seen, God's command to Adam, in Eve's absence, not to eat the prohibited fruit imputes to him the main responsibility for obeying it, and the accusation of transgressing it; it attenuates the woman's guilt in the violation and its consequences. Thus, *Jubilees*' omission and adjustments of important biblically recorded events confirms the author's awareness that the original biblical text conflicted with his viewpoint about the woman's guilt.[43]

The literary style and structure of God's interrogation of Adam and Eve, their pleading, God's pronouncement of the verdict and punishment of the involved parties, and the banishment from the Garden (as related in Gen 3:11–24) all indicate, as I have shown, the woman's lesser involvement in the accusation and guilt in the biblical narrative. These factors are at variance with the conventional interpretation, which perceives the woman as principally culpable for the calamities befalling humanity and her gender's character as consequently tainted. Therefore, the author of *Jubilees* skipped the entire

43 We encounter an identical misrepresentation of the woman's guilt in the LXX. In contrast to the MT, which emphasizes in Gen 2:17 that God's prohibition to eat from the tree of the knowledge of good and evil was uttered to Adam, before Eve's creation, the LXX translates all the verbs in that verse in the plural, thus implicitly accusing her of willfully transgressing the divine prohibition, plausibly as a result of the Hellenistic influence that portrays women in a bad light from many aspects. See Judith Romney Wegner, "Philo's Portrayal of Women," in *"Women Like This": New Perspectives on Jewish Women in the Greco-Roman World* (ed. Amy-Jill Levine, Atlanta, GA: Scholars Press, 1991) 41–66.

episode of God's interrogation of and conversation with Adam and Eve recorded in Gen 3:8–13, and moved straight from the making of the fig leaves by Adam and his wife, as recorded in Gen 3:7, to God's cursing the serpent, recorded in Gen 3:14. God's exclusive dialogue with Adam with respect to his transgression of the divine command addressed to him, and the distinctive style of Adam's interrogation versus God's neutral questioning of Eve, were omitted by *Jubilees*' author for the same motive, namely to minimize Adam's guilt as implied by the biblical text. Van Ruiten searches for other reasons besides this motive, which seems obvious, especially if we consider all the changes in *Jubilees* together and search for a common denominator.[44]

Likewise, the author of *Jubilees* made subtle changes to the biblical text of God's communication to the woman in Gen 3:16. He avoided putting in God's mouth an accusation or conviction of the woman, something which He did not utter, as recorded in Scripture,[45] and therefore he expressed his preconceived opinion of the woman's guilt in an indirect style, asserting: "And He was wroth with the woman, because she hearkened to the voice of the serpent, and did eat; and He said unto her: 'I will greatly multiply thy sorrow . . .' " (*Jub*. 3:24). There is nowhere any mention in the biblical text of God being angry with the woman, or any accusation based on her listening to the serpent's inducement. The author of *Jubilees* justifies the woman's punishment on the basis that she ate the prohibited fruit, a connection that does not appear in Scripture. Furthermore, the conjunction כי "because," pointing to a motive for the alleged "punishment" as the consequence of wrongdoing, appears in Scripture only at the delivery of the divine verdicts on the serpent and on Adam, but not at His statement to the woman.[46] One is also led to ask the following questions: how did the biblical narrator know that God was angry, and what was the reason for his anger?

The author of *Jubilees* even went a step farther in his attempt to minimize the serpent's and Adam's guilt while maximizing that of the woman. He started, as in Scripture, with God's curse of the serpent in vv. Gen 14–15, but drastically

44 J.T.A.G.M. van Ruiten, *Primeval History Interpreted: The Rewriting of Genesis 1–11 in the Book of Jubilees* (Brill: Leiden, 2000), 97 speculates that one reason, among others, for *Jubilees*' omission of the interrogation is that the biblical account of God's questioning of Adam and the woman shows Him as "innocent and uninformed," since an omniscient God would have known what had happened; thus, the omission avoided the presentation of God's diminished portrayal.

45 He may have been concerned about the specific admonishment of Deut 18:20: "But a prophet who presumes to speak in my name anything I have not commanded . . . [is to be put to death]."

46 See Trible, *God and the Rhetoric of Sexuality*, 126.

shortened it, omitting even the content of the curse and simply recording: "And God cursed the serpent, and was wroth with it forever." Thus, he minimized the cursing of the serpent, whereas he recorded exactly and in its entirety the biblical text of Gen 3:16 relating to God's pronouncement regarding the woman. He also added the conjunction "and" in the serpent's curse and in the statement to the woman, absent in the MT, thus unifying the text relating to all three involved personages to underline their common guilt. As we have seen, the communication to the woman in Scripture stands apart in all its aspects, in its essence and its literary style, from those relating to the serpent and the man, revealing a marked distinction between them. However, at God's verdict on Adam the *Jubilees* author writes in 3:25: "And to Adam also he said, 'Because thou hast hearkened unto the voice of thy wife.' " By the addition of the adverb "also" (translation R.H. Charles), absent in Scripture, he made Adam's guilt and punishment secondary to that of the woman, an ancillary to her primary guilt. As with his distorted redaction of the serpent's curse, he also shortened the biblical text of Adam's verdict and punishment, amalgamating the three relevant biblical verses Gen 3:17–19 into a single verse, *Jub*. 3:25.[47]

As we have seen,[48] in the Creation narrative (Gen 1:27–28) God created both man and woman in His image and equalized their rank and task in the universe and their right to sustenance. The creation of both man and woman accomplishes the completion of the divine creation of the universe, and God's satisfaction is superlative, "very good" (Gen 1:31) rather than just "good," as He judges all other accomplishments of the Creation.[49] Thus, the text of vv. 27–28 points clearly to the woman's equality in all the above aspects.

The author of *Jubilees*, however, apparently determined to deny the woman's equality and her significance in the world, omitted in its entirety the blessing of multiple offspring at the Creation narrative, bestowed by God upon man and woman alike (despite leaving this same blessing at God's covenant with Noah in *Jub*. 6:5). He also changed the biblical text explicitly granting dominion

47 We read there: "And to Adam also he said, 'Because thou hast hearkened unto the voice of thy wife, and hast eaten of the tree of which I commanded thee that thou shouldst not eat thereof, cursed be the ground for thy sake: thorns and thistles shall it bring forth to thee, and thou shalt eat thy bread in the sweat of thy face, till thou returnest to the earth from whence thou wast taken; for earth thou art, and unto earth shalt thou return."

48 See Chapter 1, p. 36, n. 87.

49 The NIV and the KJV both translate this as "it was good," interpreting it in the past. There is no verb in the original Hebrew, and the LXX does not use a verb either in its Greek translation, but one is required in English. I believe the phrase should logically be perceived as being in the continuing present.

over all other creations to both man and woman into: "He gave *him* dominion" (*Jub*. 2:14; my italics).

Similarly, the *Jubilees* author ignored the text of Gen 1:29, in which food is granted equally to man and woman, writing instead at *Jub*. 3:16: "And he tilled (the garden), and was naked and knew it not, and was not ashamed, and he protected the garden from the birds and beasts and cattle, and gathered its fruit and ate, and put aside the residue for himself and for his wife." He thus revoked the woman's divinely endowed share of the fruit of the garden, granting it entirely to Adam; therefore, Adam ate first, and then put aside the remainder for his wife.

However, the most significant deviation the *Jubilees* author made from the biblical text to deny woman's equality is the total omission of Gen 1:27 describing God's creation of man and woman in his image.[50] It is as though he would rather omit explicitly declaring the creation of man in God's image than acknowledge the equality of man and woman. In this case again, van Ruiten overlooks *Jubilees*' deliberate changes in order to create a particular interpretation.

At the end of the Garden/Fall episode, Gen 3:21 records that God made garments of skin for Adam and his wife and clothed them, in plural mode. However, at the expulsion of man from the Garden, the consequence of man's transgression of the divine command, Scripture records solely Adam's expulsion, and the start of his punishment "to till the ground from which he was taken," as appears in Gen 3:19 in Adam's verdict. The description of these events that again seem to attribute the sin of transgressing God's command and its punishment to Adam, not to Eve, did not fit the *Jubilees* author's perception of the Garden/Fall episode. He therefore changed the biblical text, omitting the restatement in v. 23 of Adam's punishment in v. 19 to return to the ground from which he was taken, the motive for the expulsion, and jumped from the phrase "and God clothed them" to continue "and sent them forth from the Garden," in plural. Thus, he equalized Adam and Eve with regard to the transgression and expulsion. These constant changes of the biblical text by the *Jubilees* author, using as one might say "every trick of the trade" and skipping over elements that did not fit or contradicted his preconceived view of the woman's guilt, indicate the significance he attached to systematically adapting the biblical narrative to the predominant conception in his period of the woman's guilt for the Fall and its harsh consequences. It demonstrates, on the other hand, that an unbiased reading of the original biblical text does not indicate this conclusion, but rather the opposite.

50 See Chapter 1, p. 12.

2.2.4 *Scriptural Attitudes towards Women*

The interpretation of the biblical Fall narrative discussed above is supported by the fact that there are no derogatory imputations about women in the Bible[51] and no direct hints of seductive tendencies on their part.[52] The Bible cares for women's rights and interests within the framework of their legally dependent status, a consequence of their mode of creation from man.[53] We encounter in

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51 Frymer-Kensky, *In the Wake of the Goddesses*, 118 states: "The pre-exilic biblical texts present a coherent and consistent picture of the nature of women." At 127 she draws attention to the contrast between the Bible's description of women and Greek mythology, replete with tales of women who kill their husbands, fathers, or sons.

52 Ibid., 141 states: "The Bible never considers *eros* a tool of women, as something against which men should guard." I have some doubts about this sweeping statement, in particular regarding the narrative of the relationship between Abigail and David. At 130 and (primarily) 132–134, Frymer-Kensky portrays Abigail in superlative terms, praising her wisdom and rhetorical astuteness, but the narrator emphasizes Abigail's beauty and her intelligence as early as his introduction of the principal characters, plausibly for the sake of justifying or even glorifying David, who married her. Her plea with David does not demonstrate any consideration of loyalty to her husband, such as asking for his safety, and her marriage with David, immediately after Nabal's strange death, cannot be overlooked in judging her character; it rather demonstrates her selfishness and seductive ability. We may also consider Esther's seductive capability to drastically and instantaneously change Xerxes' entrenched esteem of Haman, whom he had elevated to a position higher than all other nobles (in modern parlance, his prime minister), so that he delivered him to the gallows.

53 Eckart Otto, "False Weights in the Scale of Biblical Justice? Different Views of Women from Patriarchal Hierarchy to Religious Equality in the Book of Deuteronomy," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Bernard M. Levinson et al.; Sheffield: Sheffield Academic Press, 1998), 128–46, at 140 asserts that the deuteronomic family laws were concerned with brotherly and sisterly solidarity and the protection of the status and rights of women, alleging different attitudes towards women in Exodus than in Deuteronomy. I agree with Otto that some of these rules express care for the well-being of women, but argue that they do not change their dependent legal status; according to Deut 22:29 the father, not the daughter, receives the compensation money for her virginity lost by the act of a rapist, according to the rabbis, and by the act of a seducer, according to Qumran's understanding. The rules regarding the Slandered Woman (Deut 22:13–21) likewise do not represent the character of a totally indiscriminate approach to the man and the woman. In fact this rule is discriminatory; if the man lies, he does not suffer the same harsh consequences as the female liar. He is merely punished by the Elders, at their discretion (*b. Ket.* 46a specifies that it refers to lashes) and a fine, whereas the woman is executed by stoning, the most brutal capital punishment; he should have been executed by the same procedure as the malicious witness, which he indeed is (Deut 19:19). Moreover, the biblical text of Deut 22:21, convicting the woman to death by stoning, does not specify whether it refers to an accusation of adultery after her betrothal to the man or

Scripture numerous admonitions for the defence and assistance of women in general and against discrimination towards widows in particular. Deut 24:17 forbids taking a pledge for ensuring a loan from a widow. Deut 14:29 compares widows to Levites regarding the obligation of ensuring their subsistence. It is remarkable that Deut 27:19 includes among the eleven curses to be proclaimed at Mount Ebal a curse upon "the man who withholds justice from the alien, the fatherless or the widow." Exod 21:7–10 establishes preferred rules for the release or marriage of a maidservant at coming of age,[54] and is concerned with her well-being and legal rights if her owner/husband marries another wife in addition to her. Num 27 records the divine decision ensuring the right of inheritance by Zelophehad's daughters of his property. Exod 22:15 compels a man to marry the girl he seduced. Deut 21:14 protects even the rights of the Captive Woman; if her captor does not like her, he cannot sell her but must let her go free. Isaiah and Jeremiah call passionately for the rights of widows. Although Scripture indicates the motive of the levirate law "to carry on the name of the dead brother (Deut 25:6)," we cannot exclude the likelihood that the care for the widow's subsistence, left without children to support her, was also a factor considered in the institution of this rule.[55]

We also encounter many positive pronouncements regarding women. Genesis records Isaac's great love of Rebekah (Gen 24:67) and Jacob's love of Rachel (Gen 29:18, 20). Gen 16:2 records that Abraham agreed to Sarai's suggestion, and Gen 21:12 narrates God's mandate to Abraham: "Listen to whatever Sarah tells you." The Patriarchs and their lives are the model of Israelite virtuous conduct. We read a remarkable rule in Deut 24:5: "If a man has recently married, he must not be sent to war or have any other duty laid on him. For one year he is to be free to stay at home and bring happiness to the wife he has married." We observe the explicit justification that the bridegroom is absolved from the military duty to "bring happiness to the wife," not to himself as in the cognate decree in Deut 20. The significance of this assertion is further

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beforehand: how can one be sure that her betrayal occurred after her betrothal? The rabbis interpreted this rule as relating to a proven accusation of adultery after her betrothal. On the other hand, Alexander Rofé, *Deuteronomy: Issues and Interpretation* (London: T & T Clark, 2002), 173–74 referring to this issue, as it appears in Scripture, asserts that "we must conclude that whoever formulated the opening verses and the rest of the first section (Deut 22:15–19) did not write the second (vv. 20–21)."

54 Some scholars are at variance with my interpretation of this biblical rule. See the discussion in Chapter 3, pp. 114–118.

55 Rofé, *Deuteronomy*, 140 dismisses the biblically indicated motive for the levirate law, stating: "Deut 25:5–10 was a provision that was concerned with the legal and economic protection of a woman living in an especially vulnerable position."

enhanced by the comparison with the other motives for absolving men from the military service at war in Deut 20:5–7. There, the justification for the man who has become "pledged to a woman and not married her" is identical to the man who has built a new house or planted a new vineyard. They may die in battle, and someone else would enjoy the new house or vineyard or marry the girl. Since the man has not yet married the girl, she will not suffer if he dies; however, if he has already married her, Scripture relieves him from military duty for her exclusive benefit.

There is no hint in Scripture of the danger of woman's sexuality, as alleged by some scholars.[56] The test of the Unfaithful Wife in Num 5 does not hint at woman's seducing faculty or other immoral traits. This test, embarrassing though it may be in modern eyes, applies only when a feeling of jealousy overcomes the husband, probably because he has observed something that led him to such a supposition or because there is a conspicuous suspicion of her infidelity, as we read in Num 5:12–13.[57] In either case a solution must be devised in order to safeguard the stability of the marriage and of the family, and Scripture establishes an innocuous albeit perhaps humiliating procedure.[58] We have to

56 See for example, Wassen's statement in *Women*, 207: "Following the biblical tradition in general, this law code (CD) sees female sexuality as a dangerous force." Women's seductive ability portrayed in the cases of a few specific women (see above n. 52) are a long way from Wassen's comprehensive and radical allegation. I do not perceive such an assumption or conception either in Scripture or in Qumran writings.

57 Verse 14 may be construed as hinting that the test may be carried out without explicit evidence, solely as a result of the husband's jealousy. Scholars have debated the peculiarity of the text, which may suggest an amalgamation of two or three texts. Michael A. Fishbane, "Accusation of Adultery: A Study of Law and Scribal Practice in Numbers 5:11–31," *HUCA 45* (1974), 25–45 and Tikva Frymer-Kensky, "The Strange Case of the Suspected Sotah (Numbers V 11–31)," *VT 34* (1984), 11–26 reject this possibility and posit understanding the repetitions as a typological biblical style, used in many instances. Timothy R. Ashley, *The Book of Numbers* (Grand Rapids, MI: Eerdmans, 1993) states: "A single reading of the passage from most modern translations suffices to show the literary difficulties," and Frymer-Kensky admits at 18 that the differences may indicate a later expansion of the original text. At any rate, the primary text relates explicitly to a well-founded suspicion.

58 The rabbis discern between the circumstances of solely the man's jealousy, and a more serious suspicion. According to *m. Sotah* 1:1 and 2 the husband must warn his wife before two witnesses not to speak to or meet with the man he suspects of having some relationship with her. If she nevertheless speaks with the man, she is still permitted to live with her husband, and does not need to pass the ordeal. (This rule may be compared to the Code of Hammurabi §131: "If her husband accuses his own wife [of adultery], although she has not been seized lying with another male, she shall swear [to her innocence by] an oath by the god, and return to her house.") Only if after his admonition before witnesses

compare the apparently disagreeable procedure of the biblical text with the Code of Hammurabi §132: "If a man's wife should have a finger pointed against her in accusation involving another male, although she has not been seized lying with another male," a suspicion of lesser degree than that portrayed in Num 5, "she shall submit to the divine River Ordeal."[59] The suspected transgressor was thrown into the deep river with the belief that the innocent would float and the guilty would drown, constituting a real danger of death to the innocent and guilty alike, whereas the biblical rule uses solely a psychological device inducing the woman to confess, if she had indeed committed adultery. Further, if the woman was guilty of adultery, but without legally valid evidence, she could admit it and be divorced without the right of any financial compensation, but also without corporal punishment, since Scripture requires two witnesses for any conviction. We read in *m. Sotah* 1:5: "If she said that she is polluted [she slept with another man] she loses her *ketubah* [financial compensation at a divorce] and is divorced."[60] I doubt that the same approach would have been applied according to the Code of Hammurabi.[61] I would also question whether in the ancient period the test of the suspected adulteress would have been perceived as humiliating, whereas, as Cecilia Wassen suggests, a modern reader would so perceive it.[62]

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not to meet this man, she hid with him, is she forbidden to live with her husband until she undertakes the ordeal.

59 Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta, GA: Scholars Press, Second Edition, 1997), 106.

60 This is a rabbinic rule, but I have no doubt that the same would apply according to scriptural rules (except the issue of the *ketubah*, which was established only by the rabbis; Scripture does not mention any financial compensation at a divorce).

61 The rabbis established many preliminary conditions before a woman could be brought to the priest for the test (see n. 58 above). Further, if she claimed to have been raped, she would not be brought to the priest and could go on living with her husband (*b. Ket*. 51b and *b. Yeb*. 56b), and it is evident that her claim is to be believed if the rape occurred in a place where her screaming could not have been heard (Deut 22:27). We have no way to establish whether such restricting conditions were applied in the pre-rabbinic period, although the rabbis claimed its biblical origin through a *midrash*. 4Q270 (4QD^{e}) 4:2–4 similarly confirms that the woman's claim to have been raped is to be believed.

62 Cecilia Wassen, *Women in the Damascus Document* (Atlanta, GA: SBL, 2005), 61. Num 5:28b: ונזרעה זרע, translated by the NIV "will be able to have children" is interpreted in *b. Sotah* 26a in two modes. Rabbi Akiba says that if she was barren until now, she will become pregnant, but Rabbi Ishmael contests this, arguing that if it were so, all barren women would simulate a betrayal of their husbands, to compel them to bring their women to the priest and be granted children by God, who promised in Scripture that suspected but innocent women would be rewarded by giving birth to children; this would

In the list of illicit sexual acts in Lev 18 and 21 and Deut 22, directed mostly towards men, there are no indications of the woman's guilt for her temptation. In Lev 18:23 and 21:15–16, the sentence of capital punishment for sodomite acts applies explicitly to man and woman alike. In Deut 22, we encounter forbidden sexual acts performed by consent of both parties, by rape, and by seduction by a man, but no rule for the case of a woman's seduction. A sole exception to the benevolent attitude of Scripture towards women is constituted by two verses in the Wisdom literature, in Eccl 7:26 and 28b; these, however, appear in the course of the author's search for wisdom and are therefore out of place for rules of conduct. Therefore, allegorical meanings of these verses have been proffered in rabbinic literature, by both traditional commentators and modern interpreters. Further, these verses do not relate to all women, but to a wicked one, as per the use of the singular in v. 26. It has its counterpoint in another maxim in Prov 18:22: "He who finds a wife finds a good thing and obtains favour from God." The rabbis reconciled these contradicting declarations, explaining that the one relates to a good wife and the other to a bad one.[63] Hence, the reference in Eccl 7 does not slander the female gender as a whole, and besides has no connection to the biblical narratives of the Creation and the Fall; the possibility of detecting a negative attitude towards women in general in these verses would rather be the result of Greek influence.[64]

I dispute Léonie Archer's theories alleging that Scripture discriminates between the "great joy which surrounded [in scriptural narratives] the birth of a boy," and the birth of a daughter which "by no means created such a sensation."[65] She quotes God's blessing of Abraham to give a son to Sarah (Gen 17:15) and Rachel's joy in giving birth to a son (Gen 30:21–24). I do not

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create outrageous circumstances. Therefore Rabbi Ishmael interprets it in a more limited way: if she has had great pain at giving birth, she will henceforth have easy births, while if she has given birth only to females, she will have males in the future, and if she has had defective children, she will now have perfect children. This indicates that the rabbis were of the opinion that women would have willingly undergone the test procedure in order to become pregnant. *B. Ber*. 31b cites a *midrash* to the effect that Hanna (1 Sam 1:11) argued with God, saying that she would simulate adultery to compel God to grant her children.

63 Bird, "Images," 57–9 quotes at length all the woman's positive images in Prov and, like the rabbis, reconciles these with the denigrating quotation from Ecclesiastes.

64 Tikva Frymer-Kensky, "The Bible and Women's Studies," in *Feminist Perspectives on Jewish Studies* (ed. Lynn Davidman and Shelly Tenenbaum, Ann Arbor, MI: Yale University Press, 1994), 16–39 at 24 writes: "the biblical text, read with non-patriarchal eyes, is much less injurious to women than the traditional reading of Western civilization."

65 Léonie J. Archer, *Her Price Is Beyond Rubies: The Jewish Woman in Graeco-Roman Palestine* (Sheffield: JSOT, Supplement Series 60, 1990), 17–18.

think that Archer's biblical citations should be perceived as discriminatory of women; they represent a customary natural fact and human aspiration. Anthropological attributes shaped the desire of humans to leave offspring. According to the creation narrative and biological reality, as understood in ancient times, it is the man who inseminates the woman. Scripture uses the term זרע "seed" in its portrayal of procreation; God tells Abraham that his offspring will be counted through Isaac, and that he will also make Ishmael into a nation, because he is Abraham's offspring, although born of a maidservant (Gen 21:12–13). His seed procreates his offspring in the womb of the woman; hence, in this cultural view, only a son ensures humanity's craved "immortality" or eternal life as the ongoing initiator of the eternal procreation process.[66] The lesser enthusiasm at the birth of a daughter is not the result of women's inferiority, evil character, or lack of wisdom, but the result of the biological fact as perceived by the biblical authors that man's seed is the core of the offspring. Zelophehad's daughters approached Moses because they were concerned that their father's name would disappear because he had no sons (Num 27:4). A similar instance is found in the levirate rule that commands the brother to marry the widow of his deceased brother who had no son "so that his name will not be blotted out from Israel."[67] These circumstances reveal the true motive behind these and similar biblical citations that indicate the craving for a son;[68] it does not signify female inferiority, but is rather the consequence

66 Ibid. at 22 quotes Ben Sira among slanderers of women such as Josephus and Philo; however, she cites also his quotation: "When his father dies, he dies not altogether, for he has left one behind him like himself."

67 The levirate law is activated when one of the brothers living together dies ובן אין לו "without having a son." *Sifre piska* 288 interpreted here the term בן as a child, regardless of whether the child is a son or daughter, and the LXX likewise translates the term with the neutral σπέρμα "seed or 'offspring.' " The term הבכור in v. 6 is a definite masculine denominator, since there is no concept of a first-born female in Scripture, but nevertheless the LXX equally translates it as the undefined παιδίον "a young child." A daughter could not fulfil the task of carrying on the name of her father, the motive of the levirate indicated in Num 25:6. In marrying another man, she would cause him to inherit the land of her deceased husband, whose name would be blotted out. In their period, the rabbis were already against the performance of the levirate marriage, because of practical problems (*m. Bek.* 1:7). Therefore, it is no wonder that they accordingly adjusted the interpretation of the scriptural text in order to reduce the consummation of such marriages, without explicitly changing the biblical rule.

68 Carol Delaney, "Abraham and the Seeds of Patriarchy" in *The Feminist Companion to the Bible* (Second Series; ed. Athalya Brenner, Sheffield: Sheffield Academic Press, 1998), 129–149, at 139–140 states: "The male was imagined as the generator and transmitter of seed, the vehicle for the transmission of life itself. His was the *engendering, creative* role.

of the fact that a woman cannot ensure the transfer of the family's inheritance to the offspring or ensure the propagation of the familial lineage, because at her marriage she loses her separate legal identity.[69] The narrative of Ruth the Moabite, recording that King David, founder of the revered and perpetual Davidic dynasty, was her offspring, demonstrates that in marrying Boaz, an Israelite, she lost her ethnic identity and became Israelite. Boaz did not transgress in marrying Ruth, even though male Moabites, who retain their ethnicity, are precluded from joining the Israelite people (Deut 23:4).[70] In other favourable biblical citations we encounter equality between males and females, such as for example in Gen 5:1–2. In Gen 5:4–30, 46:7; Exod 10:9; Deut 7:13 and 16:14, sons and daughters are equalized. In unfavourable circumstances, Deut 28:41 similarly equalizes the pain of the loss of sons and daughters. The woman is "Equal in Being, but Different in Function," as Rebekah Groothuis describes the traditionalists' view.[71]

I would speculate that the predisposition to attribute gender discrimination to Scripture has induced exegetes to ignore favourable biblical citations and to interpret neutral ones tendentiously to be appropriate to such a thesis.[72] I was led to this idea by Archer's statement that "In the early strands of the Old

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Paternity, then, is a particular construction of the male role, not just recognition of a biological connection," and "In this theory, it is only sons who have the power to generate seed and transmit it; hence the central importance of sons."

69 Bird, "Images," at 56 characterizes the woman's status in terms of "a legal non-person." I do not agree with her statement that the woman's dependent status is usually inferior; this does not logically follow from her dependent legal status.

70 We read in *b. Yeb*. 76b that the prohibition in Deut 23:4 to absorb Ammonites and Moabites refers to males, not to females: עמוני ולא עמונית מואבי ולא מואבית. Modern scholars do not acknowledge this rabbinic solution to the dilemma, and postulate different solutions to the apparent conflict between Deut 23:4 and Ruth 4:18–22, as they perceive it. I believe, however, that the rabbinic opinion is correct, since at her reunification through marriage with her primeval source Ruth becomes part of her husband. In this connection one could cite Solomon's marriage with Pharaoh's daughter, perceived as an indication of his high rank in 1 Kgs 3:1, where there is no suggestion of criticism of it. The negative attitude towards his foreign women, including Ammonite and Moabite women, in 1 Kgs 11:1–11 is due, not to their ethnicity, but to their evil influence on him, resulting in his idolatrous worship.

71 Rebekah Merrill Groothuis, *Good News for Women: A Biblical Picture of Gender Equality* (Grand Rapids, MI: Baker Books, 1997), 41.

72 Wegner, "Philo's Portrayal of Women," at 43 makes the same observation regarding selective quotation of rabbinic statements; scholars cite those unfavourable to women and ignore those who show women in a positive light.

Testament even incest was condoned if it were to produce male offspring."[73] She refers to the narrative in Gen 19:31–38, recording how "the daughters of Lot, in the absence of other men, contrived to lay with their father in order to preserve his seed, and by their union succeeded in having two sons, Moab and Ben-ammi [Ammon]." I do not perceive scriptural compliance with their act; while the text here is neutral towards it, we can deduce Scripture's attitude towards these two peoples, the outcome of Lot's daughters' act, from Deut 23:4: "An Ammonite or a Moabite shall not enter into the assembly of the LORD even to the tenth generation shall none of them enter into the assembly of the LORD,[74] even to the tenth generation," with an additional exhortation "forever" (translation KJV, v. 3).[75] At any rate, there is nowhere in Scripture the slightest hint of acquiescence to Lot's daughters' action. According to my opinion, Scripture perceives their act as extremely wicked. I do not contest Archer's thoughts about Jewish conceptions in Graeco-Roman Palestine regarding women; this is not in the ambit of my research. I do however dispute her interpretation of the scriptural citations she quotes.

The key question is: does discrimination denote a lower evaluation and subsequently a different management of women's rights and interests, such as we have seen in the Hammurabi Code, or does it rather represent a distinction in their functions without any deliberate discrimination for the worse?[76] The narrative of the three visitors to Abraham in Gen 18:2–9 offers us an instance of the scriptural distinction between the functions of man and woman; Sarah

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73 Archer, *Her Price*, 18.

74 The repetition may indicate Scripture's abhorrence in this matter.

75 Scripture justifies this extraordinarily harsh rule against these two nations: "For they did not come to meet you with bread and water on your way when you came out of Egypt, and he hired Balaam son of Beor from Pethor Aram Naharaim to pronounce a curse on you. (Deut 23: 5)." However, in contrast to other alien nations that have no limitations on entering the assembly of the Lord, or the Edomites and Egyptians who are allowed to join Israel after three generations, the Ammonites and Moabites are eternally excluded. The justification indicated in Scripture for their perpetual rejection shows literary and logical irregularities, and altogether throws a great doubt on its reliability. This is not the place to delve further into speculations about the real motive of this severe discrimination, but the contingency that it was the result of their incest genealogy seems plausible. See an extensive study about this issue and another hypothesis of its motive by Paul Heger, "Unabashedly Reading Desired Outcomes into Scripture," in *Vixens Disturbing Vineyards: Embarrassment and Embracement of Scriptures; Festschrift in Honour of Harry Fox* (*leBeit Yoreh*), (eds. Tzemah Yoreh et al., Boston: Academic Studies Press, 2010) 96–139, at 108–118.

76 See, however, the discussion of discrimination in n. 53.

carries out her duties in the house, while Abraham greets and hosts the visitors, fulfilling his traditional Bedouin duty of hospitality, and asks Sarah, who is in the tent, to prepare the meal for them from the calf he has provided. Sarah remains in her tent even when the angel promises that she, not he, will have a son. The different functions do not suggest that Sarah suffers disadvantageous discrimination. The women were not obligated to fulfill all the precepts which the men must accomplish; this distinction, however, should not be perceived as a negative discrimination. In Chapter 1 I discussed at length the motivation for and legal consequences of the woman's loss of her individual identity at marriage, and demonstrated that it is not the result of her inferiority or of negative discrimination. The same applies to the fact that a man may have many wives, but a wife can have only one husband. It reveals the social realities of the time, without any implication of different evaluations of man and woman. The biblical rule about witnesses appears in the masculine plural: על פי שנים עדים "on [the testimony of] two witnesses" (Deut 17:6), but this does not absolutely indicate that according to Scripture women cannot act as witnesses. At any rate, such a restriction, if indeed the intent of Scripture, should not be perceived as a result of women's intrinsic inferiority.

2.2.5 *Excursus: Is* Jubilees' *Attitude towards Women Negative or Positive?*

In contrast to my argument that the author of *Jubilees* had a preconceived negative attitude toward women, indicated by his changes deviating from the scriptural text in significant details, Betsy Halpern Amaru[77] has concluded that other changes demonstrate a more positive attitude towards women in *Jubilees* than that shown by the Priestly biblical author. While I shall not critically analyse all the problematic aspects of her thesis contradicting my comprehension of *Jubilees*' intent in its changes of the biblical text, a few examples may be demonstrated. Her first significant error, as I see it, is the attribution of the second Creation and the Fall text to the Priestly writer, whereas it is commonly assumed to be the writing of Y and J. Only the creation story in Gen 1, which as I have argued is the most egalitarian Creation narrative, is assumed to be the work of the Priestly writer. To substantiate her thesis, Halpern Amaru states that *Jub.* 2:14: "He created man, a man and a woman He created them" repeats verbatim Gen 1:27, but she ignores the omission of the crucial phrase

77 Betsy Halpern Amaru, "The First Woman, Wives, and Mothers in *Jubilees*," *JBL* 113/4 (1994) 609–626, at 609 writes: "The author of *Jubilees* demonstrates an interest in women in sharp contrast to that shown by the Priestly biblical writer . . . certain facets of the reworking of the Genesis narrative in *Jubilees* might even be understood as in sympathy with some contemporary feminist reading of the biblical text."

that both were created in the likeness of God. Further, she overlooks the deviations in *Jub*. 3:15–16 from the biblical text in the subsequent vv. Gen 1:28–29, detrimental to the woman's rights and equality, as amply demonstrated above. Moreover, we cannot deduce the general attitude to women in Scripture from the exalted portrayal of the Matriarchs; just as the Patriarchs are *sui generis*, and do not reflect on the status of their descendants, so are their first wives.[78] We see, for example, that *Jubilees* confers on Rebekah a certain type of prophecy, a particular faculty typical of the Matriarchs. Whereas Gen 27:42 records that "the words of Esau her elder son [intending to kill Jacob] were told to Rebekah," without any indication of how she became aware of his intentions, "said to himself (in secrecy)," *Jub*. 27:1 adds that they were told "in a dream" to Rebekah. Halpern Amaru draws our attention to the statement in *Jub*. 3:21 that Eve first covered herself and only then gave the fruit to Adam; she perceives this statement as a "highly complimentary one which emphasizes her modesty . . . [showing] a greater awareness of the woman as a character and a more sympathetic view of her [than in Scripture]."[79] She does not consider the notion that this is just a required correction of an inconsistency in the biblical text; since she ate the fruit first, her eyes opened immediately, and it is only logical that she was ashamed of her nakedness and covered herself before going to meet Adam and giving him the fruit. The biblical expression: "then the eyes of both of them were opened, and they realized they were naked" (Gen 3:7) does not convey the circumstances correctly, and the author of *Jubilees* corrected it, as has been done in similar circumstances elsewhere. He explains, for example, why Reuben was not executed for lying with Bilhah, his father's concubine (*Jub*. 33:16). I do not think that one can build on a technical correction by the *Jubilees* author a speculative theory of his intent to exalt Eve's behaviour,

78 Compare the significance of Sarah and her child to that of Hagar and Keturah and their children, and more so the distinction between the Matriarchs. There is an apparent difference between the status of Jacob's children born to the Matriarchs Leah and Rachel and those born to their maidservants Bilhah and Zilpah. Although the latter are certainly the mothers of four Israelite tribes, they are not counted in the traditional writings and in the liturgy among the mothers of the Israelite people. We read in *b. Ber*. 16b: "We learned in a *baraita*: One does not call [our] fathers except [the] three [Abraham, Isaac and Jacob], and one does not call [our] mothers except [the] four [Sarah, Rebekah, Rachel and Leah]." In Gen 33, at their presentation to Esau, the mothers Leah and Rachel are mentioned by their names, whereas Zilpah and Bilhah are merely called the "maidservants." It also seems that the tribes descended from the maidservants are likewise perceived as being of a lower rank. They stand on Mount Ebal for the curses (Deut 27:13), in contrast to the great majority of the Matriarchs' sons standing on Mount Gerizim for the blessings.

79 Halpern Amaru, "The First Woman," 612.

particularly when the same author, as we have seen, used all available means to emphasize her guilt in the Fall.

Adding to the narrative details such as God being angry with Eve because she listened to the voice of the serpent, an accusation absent in Scripture, indicates clearly *Jubilees*' intended portrayal of the woman's principal involvement in the Fall narrative, whereas Halpern Amaru's conjectures regarding the name-giving are founded exclusively on her speculation and have no tangible basis in *Jubilees*' text. Giving names to females does not indicate their significance, as she claims;[80] *Jubilees* adds in its narratives a great array of details absent in Scripture, like the date at which Adam had intercourse with his wife, without mentioning her name (*Jub*. 4:7), whilst at the birth of his additional nine sons, *Jubilees* does not indicate the dates, but does mention Eve as his wife. Similarly, *Jubilees* mentions Enosh's date of birth (4:11), but omits the more important event of his father Seth's birth (4:7). The recording of the mothers' names does not imply the author's deliberate intent to indicate their equality with men, being similar to his haphazard recording or omitting of the dates of birth of sons and daughters. Although Halpern Amaru is aware of the wicked meaning of the name Aven (Sin) given to Adam's daughter and Cain's wife in *Jub*. 4:1, she considers it as "an indication of the significant role of women in the genealogical records of Jubilees,"[81] ignoring the contrary deduction that naming her "wicked" implies that she, the woman, is jointly responsible in Cain's sin; contrast this with the scriptural account, which does not divulge her name. Moreover, the first three doomed children, whose genealogy ends in the fifth generation, are attributed in *Jub*. 4:1 only to Eve; Adam is not mentioned as their father, and the wicked daughter Aven, as her name implies, is singled out as Eve's daughter. In contrast, at the birth of Seth, in Jub. 4:7 and 9, the father of future humanity, Eve's name is not mentioned, and both Seth and his sister Azura are denominated as Adam's children. In comparison, Gen 4:25 emphasizes Eve's involvement in Seth's birth and naming and the divine favour shown to her in granting her "another child in place of Abel" (Gen 4:25). Halpern Amaru makes the argument that in *Jub*. 4:8 Adam uses Eve's words at her naming of Cain, demonstrating her significance, but this cannot compensate for the array of texts that indicate the opposite.[82] In Gen 4:25, Eve thanks God, saying: "God has granted me another child," whereas in *Jub*. 4:7 Adam thanks God, saying: " 'God has raised up a second seed unto us on the earth instead of Abel." Adam is portrayed as the essential player of this

80 Ibid., 614–615.

81 Ibid., 614.

82 Ibid., 614–615.

significant event, the birth of the father of humanity: the undefined she, without name, bore him a son, whom he named and thanked God for.

Halpern Amaru attempts to reverse the simple meaning of the text on this occasion while ignoring the many changes the author of *Jubilees* effected in order to indict the woman for the world's calamities, as already discussed. I believe that the slander of Eve in *Jubilees* is a better indication of the author's attitude towards women than giving names to women. In effect, we do not know the author's intent and motive for giving names to the women, and Halpern Amaru's assumption that his objective was the emphasis of the woman's significance is pure speculation on her part. In contrast, *Jubilees*' many deliberate changes to Gen 2 and 3, as detailed in section 2.2.3 above, clearly demonstrate the author's bias against women.

It seems to me that Halpern Amaru perceives the recording of the women's names in *Jubilees* as overriding evidence of *Jubilees*' "co-equal" participation of the woman in the narrative,[83] and this leads her to interpret inversely to their straightforward meaning all the many changes effected to the detriment of the woman. The "co-equality" of the woman in the Fall narrative, perceived by Halpern Amaru as favourable to the woman, has the opposite effect; in contrast to the biblical text, which blames mainly Adam, shifting the blame towards the woman resulted in attributing the primary guilt to her. Last but not least, the author of *Jubilees* adds a great array of details to many other personages, as for example to Ishmael, in whose case I can only speculate that as Abraham's son, he intends to grant him greater significance. This preference is associated with his personal status, not unlike the naming of the Patriarchs' wives, and thus does not indicate appreciation of women in general. I therefore reject Halpern Amaru's speculation regarding *Jubilees*' preferential attitude towards women.

I would likewise dispute Kelly Bautch's endorsement of Halpern Amaru's assertions about *Jubilees*' magnification of women.[84] She adds for example the fact that *Jubilees* supplies the names of Cain's and Seth's wives, which Genesis does not supply. She does not consider the consequences of the meaning of the names devised by *Jubilees*, as with those devised by other ancient authors. She correctly recognizes that the name of Cain's wife Avan, really Aven, like the Hebrew אוֹן "sin" in *Jub*. 4:9, indicates the author's aim to imply wickedness, but does not connect it with the reason for Cain's line not extending beyond his death. I cannot speculate on the meaning of the name Azura, Seth's wife,

83 Ibid., 612.

84 Kelly Coblenz Bautch, "Amplified Roles, Idealized Depiction: Women in the Book of *Jubilees*," in *Enoch and the Mosaic Torah: The Evidence of Jubilees* (ed. Gabriele Boccaccini and Giovanni Ibba; Grand Rapids, MI: Eerdmans, 2009) 338–52, at 340–44.

since it is not known how the original Hebrew name was written. We have theophoric names among those devised by *Jubilees*, and names with other meanings that plausibly indicate the reason for which they were chosen, as Bautch also notes. Hence, it is evident that the author of *Jubilees* did not decide haphazardly which women and wives to name and which to ignore, and the meaning of the devised name, wherever we are able to reveal it, is the key for comprehending his choice. I hypothesize, for example, that he indicates the name of Seth's wife because she bore Enosh at the time when men began to call on the name of God (Gen 4:26), and the Patriarchs were his descendants. We see, for example, that he did not name Ishmael's wife, although he grants much more detail and importance to Ishmael than Scripture. He minimizes the significance of Esau's wives: whereas Scripture indicates the names of Esau's Hittite wives (Gen 26:34), *Jub*. 27:8 ignores their names, and records only that they were daughters of Heth. Even when *Jub*. 29:18 indicates the name of Esau's third wife, Ishmael's daughter, he does not amplify her exalted genealogy, as Gen 28:9 does, recording her ancestry from Abraham. We may observe here also Scripture's choice of her name Mahalat, from the root חלה, implying sickness, similar to the names of Elimelech's two sons Mahlon and Kilion (Ruth 1:2), which imply sickness and extinction. We observe that *Jubilees*' naming of women does not relate to their significance as wives as such, but has specific and defined purposes.

Bautch interprets the severe criticism of exogamy in *Jubilees* as implying the significance of the woman or wife, but this does not seem to me to be justified. The *Jubilees* author lived in the period after Ezra and Nehemiah, who extended the biblical prohibition against intermarriage with Canaanites to all Gentiles and imposed drastic measures, such as the expulsion of these women and their children. This ruthless act was undertaken to avoid the evil influence of intermixing with Gentile society through intermarriage, as we observe in Ezra 9:1 and in Neh 13:26, which compares their intermarriage to King Solomon, whose foreign women caused him to sin. The intermarriage prohibition does not imply a greater significance for women than in other prior books of Scripture.

I agree, however, with Bautch's assertion that *Jubilees* reconciles biblical contradictions, as for example the two different creation narratives in Gen 1 and 2, but she overlooks that in unifying the two narratives, the author of *Jubilees* alters the woman's involvement in the Fall narrative; from an innocent party he turns her into a guilty one. I contend that the author's resolution of the two narratives was not driven by his quest for reconciliation of the biblical inconsistency, but by his intent to convict the woman rather than the man as the primary perpetrator of the transgression of the divine command,

as demonstrated above. Van Ruiten, who, as we have seen (pp. 61–63), does not perceive many of *Jubilees*' alterations of the biblical text as an attempt to modify the positive biblical view of the woman by overturning it to Adam's better advantage, argues that *Jubilees*' claim at 3:21–22 that Eve covered her nakedness before approaching Adam, in contrast to Gen 3:7, demonstrates that she watched Adam's nakedness. Van Ruiten ignores the idea that *Jubilees*' emendation could be perceived here as merely a logical correction of the existing text, since Eve ate the fruit first and her eyes opened first.[85] Although he admits that "the author of *Jubilees* . . . has a very positive view of Adam,"[86] he overlooks this bias, and searches for other dubious and unconvincing harmonizing or explanatory solutions to reconcile between the scriptural and *Jubilees* texts. Even his admission that *Jubilees* "gives a rationale for the curse of the woman, which is not present in the text of Genesis" does not induce him to conclude that many of *Jubilees*' changes of and omissions from the biblical text result from the author's evident bias towards Adam. He downplays the crucial difference between the texts of *Jub.* 3:26c asserting that God "sent them [both Adam and Eve] forth from the Garden," and of Gen 3:23a that God "banished him [only Adam]," claiming that "the text of *Jub*. 3:26c is a *verbatim* quotation from Gen 3:23a with some modifications."[87] Finally, I strongly dispute van Ruiten's speculation that the omission of Gen 3:22–24 is due to the author of *Jubilees* having a different *Vorlage* before him.[88] There is no valid reason for such a drastic statement, given that logical considerations explain the differences.

2.2.6 *Intermediate Summary*

I have offered what I believe to be a logical explanation of the adjustments and omissions of these verses, like those of other similar ones, in terms of deliberate changes made by *Jubilees*' author to ameliorate the stain on Adam's character in the Fall narrative and its moral and functional ramifications, specifically to the detriment of Eve.

85 Van Ruiten, *Primeval History*, 95–96.

86 Ibid., 98.

87 Ibid., 104.

88 Ibid., at 104 writes that the omission of Gen 3:22–23b, 24 could be seen as an attempt to harmonize "contradictions between the biblical story and traditions not documented in the Bible—traditions that were authoritative for the author of *Jubilees*."

2.3 Qumran Interpretation of the Woman's Role in the Fall Narrative

2.3.1 *Hypotheses of Woman's Role in the Fall Event*

Since there are no interpretations of the relevant biblical text in Qumran writings, we can only deduce implicitly from their writings, and from the premise of their generally straightforward interpretation of Scripture, that they followed the biblical texts in not perceiving the woman as the main culprit of the Fall, being possessed of a wicked character.

4Q416 (4QInstr^{b}) 2 iv:1–4 seems to confirm this proposition. We read there:

> And should cl[eave to his wife, So that they (. . . ?) should become one flesh].Thee has He set in authority over her, *And she shall o*[*bey thy voice and* Her father (?)] He has not set in authority over her; From her mother He has separated her, But towards thee [shall be her *desire*, And she shall become] for thee one flesh.

We observe that the author uses in his introductory argument the biblical citations from the woman's creation (Gen 2:24) to support the core of his thesis about the relationship between man and woman in its various aspects. Thus, as it seems, he does not perceive man's domination over his wife and her desire for him as a punishment for a major role on her part in the transgression of the divine command not to eat the fruit from the forbidden tree,[89] but as a result of her creation from man, similarly to my own interpretation of Gen 3:16, a verse that, as has been remarked, seems out of place in the midst of the punishment verdicts of Adam and the serpent. Consequently, following this line of thought, one may hypothesize that the author of 4Q416 disagreed with *Jubilees*' scheme of attributing to the woman an important role in the transgression of the divine command. In light of this presumed interpretation of 4Q416, I tend to conjecture that its author relieved the woman from the responsibility of the Fall and its aftermath. Such a difference in the interpretation of a narrative should not be a surprise; although *Jubilees* was revered in Qumran, it does not follow that Qumran must agree without exception on every point of *Jubilees*' interpretation of biblical narratives, particularly regarding the creation narratives that have no role in Old Testament and Jewish lore, in contrast to their importance

89 Tal Ilan, "Women in Qumran and the Dead Sea Scrolls," in *The Oxford Handbook of the Dead Sea Scrolls* (eds. Timothy H. Lim and John J. Collins, Oxford: Oxford University Press, 2010) 123–147, at 129 writes: "the biblical intertext [in 4Q416 2 iv:1–4] however, is not treated as evidence that women are intrinsically evil, as we find in Ben Sira (25:24) and in early Christian renderings of this story."

in Christian doctrine.[90] As I have written elsewhere,[91] Qumran writings never quote support from *Jubilees*' *halakhot*, even in their polemic *halakhot* agreeing with *Jubilees*' rulings;[92] their quotations from *Jubilees* concern exclusively doctrinal and prophetical topics.[93] Hence, there are significant grounds for considering the possibility that Qumran interpreted the Creation and Fall narratives differently than *Jubilees*, since its interpretive method was founded on the premise that "everything in the Torah is laid out in detail," that is, to be understood in a direct manner.

Notwithstanding this, however, we cannot exclude the contingency that Qumran agreed with a possibly dominant opinion in that period that Eve, in her compliance with the serpent's advice, was the primary agent of the calamity. The acknowledgment of this viewpoint does not imply that Eve seduced Adam to eat the forbidden fruit as transpires from the rabbinic literature (since this is not asserted in Scripture), and even less so that women of future generations are wicked or dangerous seductresses. Hence, in any event, there would be no incongruity between Qumran's possible perception of Eve as the primary initiator of the Fall event and therefore responsible for it, and the

90 Westermann, *Genesis* at 42 writes that in contrast to the teaching of Gen 2–3 about the Fall that played an important role in Christian tradition, "they have no corresponding role in the Old Testament where they scarcely appear," because in Jewish tradition "creation is a primeval event and not the beginning of history." Israelite theology does not acknowledge the concept of "a primary sin," and Eve's sin or wicked behaviour as alleged by the rabbis has no lasting influence on women's character. The slanderous rabbinic portrayal of contemporary women is not associated with Eve's sin and character; they are perceived as two distinct issues. Lyn M. Bechtel, "Rethinking the Interpretation of Genesis 2.4b–3.25," in *A Feminist Companion* (ed. Brenner) 77–117, at 78–79 disputes the traditional interpretation of the relevant narrative as a "sin and fall" event, demonstrating the many problems associated with this style of interpretation, since the "most compelling reason" for this interpretation "is the fact that Adam and Eve and the Gen 2.4b–3.24 myth in general are not used elsewhere in the Hebrew Bible as an example of sin." Thus, she does not take account of Westermann's observations on the character of "primary sin" in Jewish tradition.

91 Heger, *Challenges*, 219.

92 Whether the narrative of *Jub*. 3:8–13 was the source of 4Q265 (4Q Misc Rules) VII:11–17, as Florentíno García Martínez, *Qumranica Minora II, Thematic Studies on the Dead Sea Scrolls* (ed. Eibert J.C. Tigchelaar, Leiden: Brill, 2007) at 73 argues, or whether alternatively 4Q265 used the same source that *Jubilees* used, as Martha Himmelfarb, "Sexual Relations and Purity in the Temple Scroll and the Book of Jubilees," *DSD* 6, 1 (1999) 11–36 at 25 argues, neither possibility contradicts our assertion, since neither *Jubilees* nor 4Q265 pronounce a *halakhah*; they merely explain the motive of the scriptural *halakhah* in Lev 12:2–5.

93 Heger, *Challenges*, 219, 221 and 224–25.

notion that this circumstance was not the result of Eve's wicked character. One could rather conjecture that according to *Jubilees* and Qumran the serpent succeeded in convincing the woman to taste the fruit, because of her weak and docile character. The scriptural text does not allude in any way to enticement on Eve's part in giving the fruit to Adam, while there is no reason from the text to perceive Eve, and women in general, as predisposed to seductive behaviour leading to wickedness or moral corruption, as the rabbis suggest. In fact, we do not encounter derogatory opinions about women in Scripture, in Qumran, nor even in *Jubilees*, despite its unfavourable attitude towards Eve, attempting as we have seen to attribute to her a greater element of guilt than appears in Scripture. Based on the close textual analysis in sections 2.2.1 and 2.2.2, Scripture indeed indicates neither Eve's central involvement in the Fall, nor a punitive character in God's communication to her.

2.3.2 *No Allegation of Sexual Misbehaviour of Women in Qumran Writings*

The apparently overwhelming criticism of sexual misdeeds in Qumran writings does not accuse women of a seductive character that corrupts men, instigating them to immoral behaviour, such as we encounter in rabbinic literature and instructions.[94] The woman is not perceived as a danger to virtuous life of society. Qumran rather accuses men of walking in the stubbornness of their heart שרירות לב (CD III:11) and of practising fornication, falling into the trap of Belial (CD IV:15–17). Indeed, at the severe criticism of the Watchers in CD II:16–21, there is no accusation against women for seducing them or similar denigrating expression of the women; the entire blame is on the men who went about in their willful hearts and did not observe God's commandments. The three traps in CD IV are directed to man and his deficiencies in withstanding his evil inclinations; again, women are not accused in this lemma. Qumran criticized man's lack of ability or willpower to behave properly, and to avoid walking in the stubbornness of their hearts.

CD XIII:15–17 compares man's lust and greed and has therefore enacted the provision that the members of the Community must act on these matters solely under the supervision of the Controller. We read there: "No one should do any buying or selling unless he has informed the overseer who is in the camp, and he shall do [ ] marries a woman and [ ] counsel and so to a

94 Ilan, "Women in Qumran," 129–130 suggests that although Qumran knew and preserved Ben Sira's writings, "the Qumranites were not interested in . . . his approach to women (of which they preserved no fragment)."

divorced man [or better 'anyone who divorces']."[95] Qumran's severe criticism regarding sexual mischief is directed exclusively against man's מחשבת [זמ]ה, translated as "lustful thoughts" (4Q266 (4QD[a]) 6i:15 and 4Q272 (4QD[g]) 1ii:4), but does not seem to accuse women of similar misbehaviour.[96] This preconceived opinion stems from the biased interpretations of the Fall narrative and of successive narratives, as for example the rabbinic *midrashim* about Dinah's indecent behaviour, cited later in the chapter (see pp. 93–94), but it has no real basis in scriptural or Qumran evidence.[97] The physical examination of the bride in 4Q271 (4QD[f]) 3:12–15 refers solely to a woman with a bad reputation, and should be perceived as advantageous for such a woman, permitting her to restore her good name.[98] This is not the place to enter into an extended discussion about Qumran's interpretive system and whether their *halakhah* is more stringent than that of Scripture, but suffice it to say this is a general problem, without any specific emphasis regarding women or sexual issues.

I assume that Qumran, abiding systematically by a simple exegesis of Scripture,[99] deduced woman's natural right to a regular sexual life from the dictum of Exod 21:10: "If he marries another woman, he must not deprive the first one of her food, clothing and marital rights." I would even go a step further and hypothesize that Qumran complies with the divine proclamation to Eve: "Your desire will be for your husband." The Hebrew term תשוקה in

95 The first version of this phrase is E. Cook's translation in the *DSSEL*, but I prefer in this case the translation of Florentino García Martínez and Eibert Tigchelaar in *The Dead Sea Scrolls Study Edition* (Grand Rapids, MI: Eerdmans, 1997), reading "anyone who divorces."

96 The text of both lemmas is corrupt. Although it seems that the dictum intends to declare a man impure for having lustful thoughts, it suffices to perceive Qumran's condemnation of the man, in contrast to a more lenient approach towards the woman.

97 Qumran's recommendation not to marry a woman who was sexually active before her marriage and had a bad name, appearing in 4Q271 (4QD[f]) 3:10–13, does not make "female sexuality a dangerous force" (Wassen, *Women*, 207). Such behaviour was considered immoral at that time and the close-knit community of Qumran wanted to avoid the absorption of such unchaste elements, incompatible with the general spirit of the community. In fact, the Controller regulated everything in the life of the group; his permission had to be sought "to bring anyone into the group (CD XIII:13)."

98 Wassen, *Women*, at 208 also perceives this as a positive ordinance intended "to avoid a situation described in Deut 22 in which a woman can face the death penalty after the wedding."

99 Crawford, "Not According to Rule," 127–50 at 131 asserts that since the Qumran legal texts are largely compatible with each other, "it is methodologically appropriate to treat them systematically."

connection with a woman must be interpreted here with a sexual undertone of lust,[100] similarly to the term in Cant 7:11 (10 in KJV) in the context: "I belong to my lover and his desire [תשוקתו] is for me," where it relates to man's desire for the woman. Hence, God has instilled in the woman the sexual lust for a man, and therefore such a trait is legitimate and should not be perceived as wicked.[101] Scripture does not indicate whether man's lust or sexual desire is also inherent as an element of his creation, but one should expect this to be the case in order that man may fulfill his obligation to satisfy woman's legitimate desire, and it is implicit in the above verse of Canticles. Indeed, it seems that there is no criticism of man's love of his wife, which definitely does not exclude its sexual aspect, and which we encounter in Isaac, whose love for Rebekah consoled his grief over his mother's death (Gen 24:67), and in Jacob, who fell in love with Rachel because she was "lovely in form and beautiful," the seven years he worked at Laban for Rachel "[seeming] to him only a few days because of his love for her" (Gen 29:17–18).

The fact that the Qumran scholars respected women can be indirectly deduced from their writings. However, if the phrase אל תקל כלי [ח]ֵקבה (4Q416 (4QInstr^{b}) 2ii:21) is correctly translated and interpreted by J. Strugnell and D. Harrington, SJ[102] as "do not treat with dishonour the 'vessel' (or 'wife') of thy bosom,"[103] then we have clear and direct evidence of Qumran's positive attitude towards women.[104] This assertion is further enhanced by Qumran's instructing the women on the rules of the Covenant, as we read in 1Q28a (1QSa) I:4–5.

Though heavily damaged, 4Q502 (4Qpap Ritual of Marriage) Frags. 1–2, assumed to be related to a marriage celebration,[105] offers us an indication

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100 See n. 24 p. 53 regarding a possibility that some MSS had the term תשובתך "your return" in place of תשוקתך "your desire."

101 According to *Mek. Yethro, Mass. D'beHodesh*, *parsha* 8 the tenth commandment not to covet one's wife, house, etc. applies only if one takes action as a result of it, but the desire alone is instilled by God in humans, and does not represent a sin.

102 *DSSEL*.

103 García Martínez and Tigchelaar, *Dead Sea Scrolls Study Edition*, do not include the phrase "(or 'wife')" in their translation.

104 Eileen Schuller, "Women in the Dead Sea Scrolls," in *The Dead Sea Scrolls after 50 Years: A Comprehensive Assessment* (ed. Peter W. Flint and James C. VanderKam; Leiden: Brill, 1998) Vol. 2, 117–144 at 138 writes that "the obligation not to disdain one's parents (Deut 27:16) is extended to one's wife." I do not find such a comparison in this text.

105 Maurice Baillet, *4.III (4Q482–4Q520)* *DJD* VII (Oxford: Clarendon, 1982) 81–105 names it "ritual de marriage." Joseph M. Baumgarten, "4Q502: Marriage or Golden Age Ritual," *JJS* 34 (1983) 125–35 favoured its comprehension as a "Golden Age separation ritual." Michael L.

of the realities practised within the group. It depicts an idyllic harmonious communal life, in which all of its members, men and women, young and old, participate without any discrimination and without any fear of female temptation. We encounter there expressions about the holiness of sexual intercourse for the engendering of children and praise for the value of women, who make this possible, for which man has to thank God for his righteous and wise wife.[106] We observe the equality of men and women at the participation of such joyous events.[107]

2.4 The Rabbinic Interpretation of the Fall Narrative

2.4.1 Midrashim *with Negative Views towards Women*

The rabbis did not interpret scriptural texts continuously, verse by verse, as did the later traditional commentators who used the rabbinic *midrashim* in their interpretations.[108] Therefore we can only deduce a plausible rabbinic interpretation of the relevant biblical narrative of the Fall by examining occasional rabbinic interpretations, *midrashim, halakhot*, and instructions for conduct with women. In doing so, I shall quote numerous *midrashim*, some of which combine the Creation and Fall narratives. The overwhelming majority of the *midrashim* and rules of conduct portray a negative image of woman's character, albeit with nuances in their severity, and accuse the woman of instigating

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Satlow, "4Q502 A New Year Festival?" in *DSD* 5 (1998) 57–68 suggested it relates to a New Year Festival. Aharon Shemesh, "Marriage and Marital Life in the Dead Sea Scrolls," in *The Dead Sea Scrolls and Contemporary Culture: Proceedings of the International Conference Held at the Israel Museum, Jerusalem* (*July 6–8, 2008*) (ed. Adolfo D. Roitman et al.; Leiden: Brill, 2011), 589–600 at 592 convincingly defends Baillet's classification, which I have adopted.

106 We read there: "a m]an who acknowledges[; law of God; a man] and his wife for;]to produce descendants[;] [ ]which; from being hol[y;] his spouse wh[o; intercourse of; for righte[ous] children; the] holy, give thanks to God; to him a reliable woman who wa[lks; wisdom and insight among; to]gether to be; of God, and atoning."

107 We read in 4Q502 (4Qpap, Ritual of Marriage) 19:1–4: "So let him dwell with him in the council of [the]h[oly ones] descendants of blessing, elder men and [women young men] and virgins, boys and gi[rls with all of us together."

108 For example, the medieval commentator Rabbeinu Behaye, commenting on the phrase "the serpent was the most shrewd" in Gen 3:1 at the end of the fourteenth century, explains that Satan was born with the woman, a body of bad impulses and easily seducible. See in n. 105 p. 42 of Chapter 1 the opinion of a late traditional commentator *Hatam Sofer* about women's inferior wisdom.

the tragedy of the Fall, in such a way as almost to absolve Adam of any guilt. Some *midrashim* attribute guilt to Adam for the Fall, mitigating somewhat indirectly Eve's guilt, but they do not exonerate Eve of seduction. On the other hand, we encounter highly laudatory *midrashim* on women's exceptional significance for husbands and families. Summing up the diversity of the rabbinic writings on this topic, one obtains a composite picture of merit and flaws of the characters in the Creation and Fall narratives.

I shall cite in paraphrased form some excerpts from *Gen. Rab*. 17:8 that brazenly accuse the woman of having brought death to the world, without indicating the source of this allegation: The woman's head is covered because she, who transgressed God's command, is ashamed to show herself in public. The women go before the bier of the deceased at a funeral because they caused death to come to the world. The precept of menstruation was given to the woman because she spilled Adam's blood. The precept of lighting the Sabbath candle was given to her because she extinguished Adam the First's soul.

While it is obvious that the *midrash* refers to the biblical narrative in Gen 3, we do not encounter any interpretation of the narrative to support such a conclusion; it probably relies on Adam's excuse to God that the woman gave him the fruit and he ate. This conclusion is reached, however, without analyzing the entire unfolding of the event as was done in sections 2.2.1 and 2.2.2, an endeavour which would have indicated Adam's main guilt. I hypothesize that the rabbis were probably aware that Adam's accusation of Eve, in reality his excuse, is not sufficient to attribute to her the entire guilt. Even at first sight it is obvious that God does not accept Adam's excuse, since he punishes him more severely than Eve,[109] and in particular the rabbis could not have overlooked the fact that the first announcement of human death in Gen 3:19, a significant element in God's verdict and punishment, is addressed to Adam, in masculine, singular mode, not to Eve, since she was not created of earth.

Hence, the rabbinic accusation that the woman, and she alone, caused humanity's calamities and the advent of death—at variance with Scripture's unbiased reading of the biblical narrative—must be due to deeply ingrained preconceived ideas, plausibly as a result of Hellenistic influence.[110] Moreover,

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109 See the *midrash* of *Gen. Rab*. *parsha* 97:3 on this issue on p. 57. Bal, "Sexuality," 37 states: "Jahweh is clearly more severe on the man than on the woman. He explicitly blames him, and indirectly curses him by cursing the earth from which he was taken and to which he shall return."

110 Westermann, *Genesis 1–11*, at 235 expresses a similar conclusion regarding "a very traditional Christian conception of the story of the 'fall.' It is a telling example of how fixed and firm ideas can influence the understanding of the text."

this accusation served as an aetiological justification of the existing social circumstances.[111] *Gen. Rab*. *parsha* 18:2, cited in Chapter 1, declares that the divine effort to create a chaste woman remained unsuccessful, and that the woman bears all the defects God attempted to avoid. In this instance too, the *midrash* does not divulge its source and how this stipulation of the woman's immoral character was attained. However, on the basis of this allegation, the woman's guilt for the events at the Fall and its severe aftermath seems logical, without any further justification or textual support. Thus, one conjecture supports the other in a circular argument.

The woman, blamed for immoral character and for being guilty for humanity's calamities, can now be defamed for other alleged deficiencies. In the same *midrash* we read (paraphrased): The woman needs to perfume herself because the man was created from earth, which never stinks, and Eve was created from a bone; leaving meat without salt for three days, it will immediately smell bad. The woman's voice is high-pitched because, if you fill a pot with meat, there will be no noise moving it, but putting a bone in a pot, it will create a noise. The woman is not easily reconciled because the man was created from earth, and putting a drop of water upon it softens, but Eve was created from bone, and that will not soften even when soaked for some days.

A segment of a *midrash* in *Abot R. Nat*. Recension b, Chapter 1 accuses Eve of a brazen act of cheating. It says: as soon as Adam ate the forbidden fruit, given him by Eve without making him aware of its origin, his eyes spread apart (something most unpleasant) and his teeth in his mouth became numb; he asked her whether she fed him the fruit God commanded her not to eat. He said to her: just as my teeth became numb as a result of eating the prohibited fruit, so the teeth of all creatures should become numb. On the other hand, though this relieves Adam from any guilt in the Fall event, it does not put him in a good light either; cursing all humanity, his own offspring, for an evil deed performed by Eve against him.

111 Judith Hauptman, "Women and Jewish Law," in *Women and Judaism, New Insights and Scholarship* (ed. Frederick E. Greenspahn; New York: New York University Press, 2009) 64–87 at 67 writes: "Perhaps the Bible did not produce the patriarchal system but rather reflected gender relations in ancient society, such as those we find in the Code of Hammurabi." Lori Lefkovitz, *In Scripture: The First Stories of Jewish Sexual Identities* (Lanham, MD: Rowman & Littlefield Publishers, 2010), at 14 writes that the first stories of the Hebrew Bible aim to "tell us not only how things came to be as they are, but why they must be as they are; they at once account for and regulate the present."

2.4.2 Midrashim *Attributing Guilt to Adam, Mitigating Eve's Guilt*

As already stated, I have not come across a *midrash* explicitly accusing Adam of causing the events of the Fall; I shall now explain the motivation behind the use of the restrictive term "explicit." A remarkable *midrash* in *Num. R.* 12:3 states that a man's pride humiliates him (Prov 29:23), which refers to Adam; when he ate from the prohibited tree, God asked him to repent and return to the Garden, but Adam declined, and the Lord God said, The man has now become like one of us (Gen 3:22). The term "now," the *midrash* argues, means that God told Adam: even now repent and I will receive you.

To accuse Adam of such dreadful behaviour, acting defiantly against the Deity, seems unexpected, to say the least. I have not encountered any other *midrash* portraying Adam the First as so profoundly wicked; this seems to be the only one. I would hypothesize that emphasizing Adam's wickedness was not the author's intent; I would rather conjecture that he intended to demonstrate God's surpassing mercy in opposition to man's stubbornness. The inclusion of this detail may also point to the possibility that the author wished to indicate that man deliberately preferred living a civilized life with all its toils, tribulations, woes, challenges, and adversities, rather than a carefree natural life, like animals in the Garden of Eden.[112] Whereas God's mercy is a recurring implicit motif in Scripture, we do not encounter any such hint regarding humanity's preference for civilization; its appearance in this *midrash* may indicate a familiarity of the author with Mesopotamian mythologies or the development of a more modern style of thinking in Jewish intellectual society. On the other hand, we encounter a somewhat similar narrative in the Quran Al-A'raf, Chapter 7:23 recording that Adam and Eve recognized their sin and asked God for forgiveness. In contrast to the *midrash*, which associates forgiveness with the returning of Adam and Eve to the Garden, the Quran narrative records their plea for forgiveness of their sin, without asking to return to the Garden. They said: "Our Lord we have wronged our own souls and if You forgive us not and bestow not upon us Your Mercy, we shall certainly be lost." We are unaware whether Muhammad intentionally reworked some details of the biblical story familiar to him, to distinguish his version from the Jewish narrative, or whether the Fall narrative, as we may plausibly assume, circulated in the Near East area in various versions and he chose the one that circulated in his environment. According to the Quran narrative, Adam and Eve were equally guilty for transgressing the divine command not to eat of the forbidden fruit, and consequently were punished equally by their expulsion from the Garden. In the above *midrash* Adam's guilt is explicitly emphasized to its utmost, but

112 See, by analogy, the Mesopotamian narrative of Gilgamesh and Enkidu.

we encounter also in other *midrashim* Adam's implied guilt in the Fall event in different forms.

As mentioned earlier, the above *midrash* would greatly attenuate Eve's responsibility, at least for the expulsion from the Garden and its consequences for humanity's calamities; her alleged crime in "seducing" Adam to eat the forbidden fruit would have remained without any practical repercussion if Adam had agreed to repent. Another *midrash* attributes some responsibility for the Fall event to Adam, thus reducing Eve's liability: *Abot R. Nat*. Recension a, Chapter 1 accuses Adam of having overstated the divine command in his admonition to Eve, prohibiting what is permitted, lest she transgress what was prohibited. God commanded him not to eat from the tree of the knowledge of good and evil (Gen 2:17), but he added the prohibition against even touching it, as she said to the serpent (Gen 3:3). This offered the serpent an opportunity to lead Eve astray; he stood up, touched the tree with his hands and legs, and shook it until its fruits fell, demonstrating to her that nothing happened to him. *Midrash Ps*. 1, in a similar narrative, asserts that the serpent pushed Eve onto the tree, and yet she did not die. Thus, by his overzealous conduct Adam indirectly precipitated Eve's transgression.

Midrash Tehilim (Buber), Song 1 goes a step further in attesting to the shrewd stratagems employed by the serpent in convincing the woman to eat the fruit. We read there that the serpent said to her: "From this tree ate our Creator and created the world and all that it comprises, and if you eat from it, you could create a world like he did, as is written: you will be like God (Gen 3:5)." Such *midrashim* mitigate the woman's guilt, and indirectly attribute some guilt to Adam, who did not transmit to Eve God's exact command, thereby facilitating the serpent's strategy of arousing suspicion in Eve's mind about the truth of Adam's words to her. Scripture does not divulge whether Adam indeed did not accurately transmit God's command to Eve, as asserted in the above *midrash*, or whether Eve distorted Adam's words in repeating them to the serpent. The rabbis evidently chose the first contingency, which will permit conjecture, later in this chapter, about the philosophy underlying their overall approach to women.

Adam's guilt is also noticeable in some *midrashim* that use the derogatory term סרח in their description of Adam's conduct. The root of this term indicates "decay/bad smell," and in context it implies "having acted offensively/having done mischief." For example, *b. Hag*. 12a claims that when God created Adam, his height reached from the earth to the sky, but when he acted offensively, God put his hand upon him and reduced his height to the current size. Amongst other *midrashim*, we encounter some that denigrate Adam more severely and others that portray him in a better light. For example, in

b. Sanh. 38b he is accused of being a heretic, while *Gen. Rab*. 19 implies that by defending his wicked deed, he accuses the woman that God gave him (Gen 3:12), showing contempt for God and committing blasphemy. In another *midrash* on Gen 2:20 (cited in Chapter 1 p. 27), he is perceived as grumbling or being ungrateful; first he complained of not having a mate, and now blames God for procuring him a mate.

On the other hand, we read in *b. Erub*. 18b: "Adam the First was a great righteous person, when he realized that the punishment of death came [to the world] [as a result] of him [his sin], he fasted one hundred and thirty years and avoided sexual intercourse with his wife one hundred and thirty years and covered himself with fig foliage for one hundred and thirty years."

There is, however, one common denominator to all these *midrashim*, namely Adam's sin. God did not accept his excuse that the woman gave him the fruit; he ate the fruit, and is guilty of transgressing the divine command not to eat it. As we have seen, Scripture does not accuse the woman of anything,[113] but the rabbis seem to accuse her of seducing Adam to eat the forbidden fruit. Hence, the two individuals involved are each accused of a different misdemeanour: Adam is accused of the transgression of God's command, and Eve for her seduction that led to it.[114] However, the accusation against Eve of having instigated Adam's sin did not attenuate his guilt, since according to rabbinic law only the active perpetrator is liable for punishment, not the instigator (see the relevant citation of *b. Qidd*. 42b on p. 59). This may be the motive prompting the rabbinic *midrashim* to denigrate women for their wicked character, deduced indirectly from the biblical narrative, without accusing the first woman of transgressions of divine commands.

Such a division of guilt by the rabbis allows us to draw the conclusion that the different degrees of Adam's guilt in the apparently contrasting *midrashim* should be perceived as still being within a wide boundary of rabbinic opinions and utterances, and thus not affecting the prevailing overall conception of Adam's guilt. Conversely, the many favourable *midrashim* about women refer to their vital purpose and function in society, but do not lessen their guilt for the instigation of the Fall and its consequences; likewise, they do not change the ingrained conviction of women's seductive character, although there is no support in biblical texts for such an insinuation. As we have seen, there is not

113 See my interpretation of Gen 3:13 on pp. 51–52.

114 *Jubilees* accuses both Adam and Eve of having eaten the forbidden fruit. We read in *Jub*. 3:24: "because she hearkened to the voice of the serpent, and did eat," and 3:25: "Because thou hast hearkened unto the voice of thy wife, and hast eaten of the tree of which I commanded thee that thou shouldst not eat thereof."

the slightest hint in the Fall narrative about any calculated effort on Eve's part to convince Adam to eat the forbidden fruit.

2.4.3 *Rabbinic Attitudes towards Women: A Brief Overview*

The limited but representative collection of rabbinic *midrashim* expounded above exhibits a wide range of nuances regarding the respective responsibilities of Adam and Eve in the episode of the Fall. They vary from attributing the utmost guilt to Eve to a drastic mitigation of her liability, and likewise with respect to Adam's guilt. Summing up, however, Adam remains guilty for having transgressed God's command by consummating the forbidden fruit, and Eve is seen as guilty on account of her seductive influence on Adam, which prompted him to perform the sinful act; thus she is the initiating agent of the Fall calamity. On the other hand, superlative rabbinic aphorisms have been cited lauding women's indispensable function in the bosom of the family and society. Hence, we observe a composite picture of goodness and wickedness of the first man and woman in the Creation and Fall narratives,[115] having a lasting impact on men and women according to the rabbinic belief that everything is written in the Torah,[116] the divine blueprint for the creation of the world.[117] Evidently, the *midrashim* associated with the Creation and Fall narratives and their protagonists Adam and Eve were built on a well-defined underlying philosophy/theology, regardless of whether it was the result of the contemporaneous circumstances and served as aetiological justification for ingrained attitudes and customs, or on the other hand for pragmatic motives, portraying women as dangerous temptresses as a way of avoiding sexual misdoings in Jewish society as a result of the male inclination towards promiscuity. The citation in the next section of their *halakhot* and quasi-halakhic instructions about the relationship between men and women, in addition to the *midrashim* already

115 For further citations of *midrashim* about women, see Ilan, *Jewish Women*; Judith R. Baskin, *Midrashic Women: Formations of the Feminine in Rabbinic Literature* (Hanover: Brandeis University Press, 2002); idem "Rabbinic Judaism and the Creation of Woman," in *Judaism Since Gender* (ed. Miriam Peskowitz and Laura Levitt; New York: Routledge, 1997) 125–130; Leila Leah Bronner, *From Eve to Esther: Rabbinic Reconstructions of Biblical Women* (Louisville, KY: Westminster John Knox Press, 1994); Lacks, *Women and Judaism*; Shulamit Waller, *Women and Womanhood in the Talmudic Narratives* (Tel Aviv: *Hakibbutz Hameuchad*, 1993, Hebrew). They are mostly written by Jewish feminist scholars, usually critical of rabbinic attitudes towards women.

116 We read in *m. Abot* 5:22: (paraphrased): Delve deeply into the Torah's contents, because it contains everything.

117 We read in *m. Abot* 3:14 that God has shown much affection to the Israelites by giving them the Torah, on the basis of which the world was created.

discussed, will offer us a better perspective for revealing the general philosophy underlying the rabbinic literature on gender issues. I shall cite at this stage mainly the quasi-halakhic rabbinic instructions for behaviour between men and women; the legal ramifications of women's status, and the consequent *halakhot*, will be discussed in Part 2 of the book. At this juncture I would like only to mention that the rabbis established many rules for the enhancement of women's rights within the constraint of their being under the authority of their fathers and husbands.

2.4.4 *Rabbinic Rules of Behaviour for Contact with Women and Their Interpretation*

We read in *m. Qidd.* 2:12: "A man must not be alone [in a secluded place] with two women, but one woman may be alone with two men; Rabbi Simeon says: 'Even one man may stay in a secluded place with two women if his wife is with him, and he may sleep with them in one lodging house, because his wife keeps him under her surveillance.' " *B. Qidd.* 80b explains the motive for the discrimination: "because women are frivolous [therefore even two women would not be ashamed to have sexual intercourse with one man]." It is obvious that these and similar rules of behaviour—I doubt whether one can call them *halakhot*—are instituted in order to avoid sexual misbehaviour in the frame of the general rabbinic system of establishing preventive rules prohibiting legally permitted acts that may lead to legally prohibited acts. The *mishnah* and the deliberations about it in the *Gemara* are not precisely defined and are open to many interpretations. The *mishnah* does not indicate whether the rule applies to unwed women, with whom even sexual intercourse would not be prohibited according to Scripture (Exod 22:15 indicates the legal consequences of a seducing act), or whether it applies only to married women or to those with whom sexual intercourse is forbidden, with whom indeed intercourse would be a capital offence. The *Gemara* does not elucidate this issue; only the commentators declare that the rabbinic rule applies also to unwed women.[118]

What interests us at this juncture is mainly the motive of the prohibition, that is, who is assumed to be the initiator of the mischief, the man or the woman, and the reason behind the difference between the seclusion of one man with two women or one woman with two men. Pursuing Rabbi Simeon's assertion in the second part of the *mishnah* that his wife will keep an eye on him and will prevent debauchery, it becomes evident that it is the man who is

118 Later commentators (*Rashi* does not relate to this issue) follow Maimonides, who maintains that it is a tradition, that is, he does not attempt to reveal midrashic support for it; he conjectures that it was instituted after Amnon's rape of Tamar (2 Sam 13).

distrusted and suspected of attempting to seduce the women. The reason for the difference in the surmised behaviour of one man and two women and its opposite, explained in the *Gemara* as being "because women are frivolous," as I translated above, is the common interpretation of this vague phrase, seeming to suspect the women of immorality, yet it may be interpreted differently.[119] In fact, in *b. Pesah*. 88b we encounter an aphorism: מלכה ומלך דדעתן קלה עליהן, which we should interpret in the context as "A queen and a king who don't care." As would also seem to follow from scrutiny of such expressions in other later writings, the expression should be interpreted as characterising people without the faculty of deep or profound thinking and consequently more susceptible to seduction, or "lightheaded" as Ilan translates it.[120] In the case of the two women, *Rashi* confuses us, offering, in my opinion, two different explanations. He asserts: "and both are easily seduced," reflecting a tender and docile nature, but then adds, "one will not be afraid of her female companion, who will do the same [letting herself to be seduced]." In the case of two men, in contrast, *Rashi* explains that a man would be ashamed to lie with a woman in another man's presence, and therefore one woman is permitted to be secluded with two men.[121] The second motive does not seem favourable to women. At any rate, it is evident that however we interpret the rabbinic assumption about women's character, it is the men, not the women, who are suspected to initiate and be the active element of the sexual mischief.[122] One cannot compare this

119 The different versions of the phrase in *b. Qidd*. hint at the distinct presumed meanings of the ancient copyists.

120 Ilan, *Jewish Women*, 199.

121 Later in the discussion in *b. Qidd*. 80b, Rav Judah limits the permission for a woman to be secluded with two men to the case when they are known to be moral, but if they are immoral a woman is prohibited to remain secluded even with ten such men.

122 I disagree with Judith Romney Wegner, *The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), who at 159 interprets the *mishnah*'s motive as being because "women are prone to moral laxity and cannot be trusted to behave themselves," and at 160 states, "The sages pin most of the blame for sexual lapses on women." Wegner perceives the *mishnah* as strongly prejudiced against women from all aspects. I believe that an unbiased perception of the *mishnah* leads to a more objective apprehension of the rabbinic approach towards women. On the other hand, Judith Hauptman, *Rereading the Rabbis, A Woman's Voice* (Boulder, CO: Westview Press, 1998) seems to agree with my understanding of the rabbinic attitude. On the same topic, but on the text of another *mishnah*, at 48 she states: "this material does not imply that men fall prey to their sexual urges because women deliberately excite them."

situation to the events of the Fall narrative, in which the woman is accused by the rabbis of being the seductress.[123]

A number of similar admonitions and aphorisms, such as in *b. Erub.* 18b, *m. Abot* 1:5, and *b. Ned.* 20a, counsel men to avoid unnecessary contact with women and avoid gazing at them, and thus demonstrate the danger inherent in approaching a woman, but there is no hint of accusation against the woman for seducing the man; rather, the opposite. The man is suspected of seducing the woman, and she may yield to the man's aggressive approach, being of a tender personality and not strong enough to prevail against it; for this reason, a woman is a dangerous person, and a man should keep his distance from her.[124]

2.5 Underlying Philosophy and Theology of Rabbinic *Midrashim* and Quasi-*Halakhot*

2.5.1 *Women's Character: The Dinah Affair*

It is my hypothesis that the rabbis, being pragmatic, were induced to reach such a conclusion about woman's character by practical considerations: portraying woman as a dangerous person, either as easily seduced as in the instructions just discussed or as a temptress like Eve her ancestor, was a key tactic in rabbinic attempts to avert sexual misdoings resulting from men's inclination towards promiscuity, spurred on by the unruly male libido.[125] The burden of man's continence was shifted to woman by means of her portrayal as a source of danger.[126] In order to substantiate this postulate, I shall quote rabbinic

123 Roth, "Gender and Law," 179, commenting on a court case from ancient Mesopotamia against a woman accused of collusion with the murderers of her husband, assumes that her conviction for murder, although she did not participate in the slaying, was motivated by the dominant perception that "women are more easily intimidated," and because a woman is "presumed a seductress," at 180. These two apparently opposed traits were fused together, thus creating a stereotype of woman's wickedness.

124 *Y. Sotah* 7:1, 21b insinuates that God did not speak to any woman except Sarah, thus justifying the rabbinic maxim not to talk too much with women.

125 Judith Hauptman, "Feminist Perspectives on Rabbinic Texts," in *Feminist Perspectives on Jewish Studies* (ed. Lynn Davidman and Shelly Tenenbaum; New Haven, CT: Yale University Press, 1994) 40–61, at 45 writes: "a careful reading of the *Mishnah* [*m. Qidd.* 2:12] suggests that it is the men's sexuality—that is, men's easily aroused and then hard to control sexual lust—that lies, not below, but on the surface of some of the *mishnah's* statements, such as those concerning the segregation of the sexes in semi-private settings."

126 The rabbis were well aware that the restrictions they imposed on women's outdoor appearance and behaviour in public have no root in Scripture. *M. Ket.* 7:6 enumerates

midrashim about Dinah, claiming that her unchaste behaviour was the cause of her calamity; hence, woman is blamed as the cause of man's sexual misdeeds. We read in *Gen. Rab*. *parsha* 8: "[A woman should not go out to public places because she will ultimately stumble into fornication, as happened to Dinah; she went out (ותצא) and in the end she failed."[127]

Abot R. Nat. Recension b, Chapter 3 offers a different aspect of her guilt, suggesting that Eccl 10:8, "Whoever digs a pit may fall into it; whoever breaks through a wall may be bitten by a snake," refers to Dinah. Whilst her brothers were studying Scripture, she went out to meet the local girls (a frivolous act in comparison) and was bitten by Shechem, the snake.[128] *Gen. Rab*. 80 goes a step further, implying that Dinah showed a tempting posture, exhibiting her bare arm.[129] The rabbis allege Dinah's improper behaviour as the cause of her calamity, rather than attributing it to Shechem's sexual drive, incited by a girl from a different race and complexion and probably extremely beautiful, being a sister of Joseph, who was "well built and handsome" (Gen 39:6). Just as Joseph attracted Potiphar's wife through his beauty, we may assume Shechem was attracted to Dinah, his sister.[130] Hence Shechem's attraction to Dinah, Joseph's sister, would be a plausible explanation for the incident, "particularly in view

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"immoral" acts, such as going out in public with an uncovered head, spinning in the market, and speaking with any man, as transgressions of Jewish customs, in contrast to other transgressions quoted as contraventions of biblical decrees.

127 The deduction made from the narrative indicates the real motive of the *midrash*, to promote chastity by preventing women from intermingling with men.

128 It is remarkable that a nineteenth-century German scholar, Friedrich W. Schröder, in *Erste Buch Moses* at 530 makes a similar accusation against Dinah, referring to the text of Tit 2:5. Text copied from Suzanne Scholz, "Through Whose Eyes? A 'Right' Reading of Genesis 34," in *The Feminist Companion to the Bible* (2nd ser.; ed. Athalya Brenner; Sheffield: Sheffield Academic Press, 1998) 150–71 at 156. We read there: "Dinah is dishonoured violently because she roams about more freely than she should, leaving her father's house. She should have stayed at home, as the apostle orders (Tit 2:5) and nature recommends, because virgins, like wives, should be keeper of the house." Although I doubt that Schröder had any notion of these *midrashim*, he pronounces the same accusation as the rabbis, almost verbatim, based on Titus.

129 We read in *Gen. Rab. parsha* 80:5: "he [Shechem son of Hamor] saw her bare arm [and that caused his excitement and the rape]."

130 Various *midrashim* exalt Joseph's beauty. *B. Sotah* 13b claims that Potiphar bought Joseph for his paedophile use, but was castrated by an angel. *Midrash Tanhuma, parsha Wayeshev* records that Potiphar's wife presented Joseph to her women friends to demonstrate to them the tension she experienced continuously because of his beauty and her desire to lie with him.

of Gen 34:3, 'His heart was drawn to Dinah daughter of Jacob,' " but the rabbis asserted that her immoral attire was the cause.

Gen Rab. 80:1 even attributes Dinah's rape in part to unchaste behaviour prompted by an evil genealogical trait inherited from her mother, Leah, who allegedly adorned herself like a prostitute to lure Jacob to sleep with her (Gen 30:16).

2.5.2 *Frymer-Kensky's Theory*

Frymer-Kensky,[131] referring to *Rashi*'s calumniation of Dinah and the Christian tradition of vilifying women who "go out," seems to presume that Scripture indeed intended this interpretation of its phrase ותצא דינה. In my opinion, I do not think that the redactor of the narrative in Gen 34 intended to blame Dinah's (or Jacob's) failure "to control her sexuality" for her calamity, as Frymer-Kensky argues;[132] the fact that Dinah had gone out is simply an essential and inevitable element of the story, portraying the circumstances of the event. There is no evil denotation in Scripture of a woman who went out alone without the guardianship of her father, brothers, or husband. Rebekah went to inquire to the Lord, probably to a sanctuary (Gen 25:22), and Moses' sister watched his basket in the Nile and went to call his mother (Exod 2:4 and 8), without any guardian; the term ותלך "and she went" is used in both verses. Whatever is meant by the redactor's assertion that her brothers were furious, "because Shechem has done a disgraceful thing in Israel by lying with Jacob's daughter—a thing that should not be done" (Gen 34:7)—plausibly breaking the conventional custom to ask the father for the hand of his daughter, before approaching her—what is crucial for understanding the motive for their indignation is their defence against Jacob's accusation (Gen 34: 31).[133] They defended Dinah's honour, but did not accuse her of unchaste behaviour, nor did they plead to have defended the honour of the family for failing "Israel's attitude towards the chastity and virginity of daughters."[134] Frymer-Kensky, relying on cross-cultural influences, perceives the core of the Dinah narrative and its outgrowth, as well as the

131 Tikva Frymer-Kensky, "Virginity in the Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Bernard M. Levinson et al.; Sheffield: Sheffield Academic Press, 1998) 79–96, at 86.

132 Ibid., 90.

133 Tzemah Yoreh, "Shekhem and the So-called Rape of Dinah," in *Vixens Disturbing Vineyards* (ed. Tzemah Yoreh et al.) 67–78, analyses the narrative in terms of a number of different sources, and asserts at 77 that the final redactor "felt the need to edit the story and preserve the moral fabric of Israel's progenitors," and therefore painted Shechem in a negative light by adding details absent in the original story.

134 Ibid., 78.

relevant biblical rules for the seducer, rapist, and slanderer, as the consequence of the transgressor's act "for the dishonor of the family for failing to control and protect their women."[135] The stoning of the fornicating girl at the door of her father's house (Deut 22:21) does not point to his failure; Scripture emphasizes that something evil was done in Israel, not by her family. Therefore, the townspeople, representing Israel, stone her; it is done at her father's house, because that was where she had performed her disgraceful acts, as the text emphasizes.[136] We encounter a similar reaction to the rape of the concubine in Judges; the phrase נבלה בישראל "disgraceful act in Israel" appears in Judg 20:6 and 10, as in our case. There, too, it provoked the military intervention of all Israel. Only the priest's daughter is said to have disgraced her father, but this has no association with his failing to control his daughter's sexuality; priests lie under different codices and requirements, and moreover the priest's daughter is burned, not stoned, a fact indicating a clear distinction between the two occurrences.[137] This incident therefore cannot serve as evidence for Frymer-Kensky's claim.

It cannot be denied that in the prehistoric period of the Israelite tribes, the family defended their honour by hostile acts when disgraced by a daughter's actions, but Scripture has changed, in a precise manner, the intrinsic theology of the prevailing customs and laws and often their exterior pattern as well, before absorbing and assimilating them into Israelite mythology and law. Some of the motives and mythologies of these prehistoric customs, shared with neighbouring cultures, fell into oblivion or were discarded altogether; we still find traces of others in Scripture, as for example the ancient agricultural aspect of the Passover and Feast of the Booths, which later acquired new motivations and customs.

The same process occurred regarding many scriptural laws. Scripture created two great classes of transgressions: those that affected damage to persons, in modern legal jargon civil issues, and those that were deemed an affront to the divine established order in defiance of God's authority, which we would now call criminal law; seducing or raping an unbetrothed girl is not an offence against the divine order, according to Israelite law. Frymer-Kensky writes: "an unmarried girl's consent [in a seduction] does not make the sex a permissible

135 Frymer-Kensky, 90–91.

136 Deut 22:21: "She shall be brought to the door of her father's house and there the men of her town shall stone her to death. She has done an outrageous thing in Israel by being promiscuous while still in her father's house" (NIV).

137 Lev 21:9: "If a priest's daughter defiles herself by becoming a prostitute, she disgraces her father; she must be burned in the fire."

act,"[138] but neither does it make it a prohibited criminal act. In fact, at the cases of adultery in Deut 22, we find the formulas ובערת הרע מקרבך "You must purge the evil from among you" or מישראל from Israel. At Deut 22:28–29, however, whether it is understood to refer to an act of seduction or a rape, this phrase is not mentioned; the wrongful act is settled by pecuniary compensation, like a theft or the infliction of bodily damages, as recorded in Exod 21. While it may not be considered a moral act,[139] there is no other sanction provided in Scripture beyond the redressing of the damage, by marrying her, with or without the possibility of ever divorcing her, paying the bride price (Exod 22:16), or both (Deut 22:29); or in some cases, a fine for a theft or robbery (Exod 21:37 and 22:3; Lev 5:21–23) is imposed.[140] Only when the loss of life or sexual misdeeds prohibited by the divine law are involved does the act become a transgression against the Deity's law, a criminal offence that goes beyond a settlement between the injured and the injuring party, as was the rule in Mesopotamian ancient law,[141] and becomes an issue between God and the criminal. Humans convict him and perform the execution, but they have no authority to change the verdict established by God, to substitute the capital punishment by

138 Frymer-Kensky, "Virginity," 87.

139 The traditional commentator *Ramban* explains the intent of the phrase קדשים תהיו "Be holy": Scripture prohibited illicit sexual intercourse and the consumption of forbidden food, but permitted sexual intercourse with one's wife and the consumption of meat and wine; hence the lustful man could be engaged in lascivious sexual activity with his wife or many wives, the glutton in guzzling meat and wine, and the intemperate man in uttering obscenities, because all these deeds are not prohibited in the Torah. He would be a villain, but his actions would not be forbidden in Scripture, and therefore the mandate "Be holy" is given, meaning to abstain from such behaviour. *Ramban* is the only commentator of whom I know who alleges that gluttony and excessive sexual activity are implicitly prohibited by Scripture. We do not encounter any limitations on legitimate sex in Scripture, and the Torah explicitly permits eating as much meat as one desires (Deut 12:20b and 21b).

140 It is not within the scope of this book to consider the rabbinic justifications for the differences of these fines, indicated in Scripture for the different acts and circumstances. I would hypothesize that these differences flow from the economic conditions and the loss of the injured party for the period during which the use of the stolen animal or object could not be enjoyed.

141 In Middle Assyrian Law, MAL A¶10 condemns a murderer to capital punishment, identical to the scriptural law, but allows the injured party to agree to an accommodation, thus averting execution. MAL A¶15 and the Code of Hammurabi §127 likewise condemn the adulterer and the adulteress to capital punishment, exactly as in Scripture, but the injured party, her husband, can agree to a lesser punishment or can altogether forgive his wife, although in this case he must do the same for the male adulterer. The above data are sourced from Roth, *Law Collections*.

payment of a ransom (Num 35:31) or to forgive the transgressor altogether (Num 22:22), as in Mesopotamian law.[142] The Mesopotamian codices may have been the source of the biblical law convicting the transgressors of these rules to capital punishment, but Scripture abolished the potential to substitute them with pecuniary compensation, to change their severe character or to annul them altogether by forgiveness. There is no "crime of honour" in Israel, as Frymer-Kensky claims;[143] there are only the two cited categories, and their boundaries are well defined, unalterable, and eternally valid.

We should be careful not to impose on Scripture later interpretations of biblical laws and lore by the rabbis and by Christian theologians, presuming in doing so that such interpretations constituted the intent of the original author/redactor.[144] We must disregard our cultural background, acquired from different sources, and discern between what we think today and the plain meaning of the scriptural text. The arguments and evidence of this section indicate the flaws inherent in reading our contemporary thoughts and knowledge into biblical texts.

2.5.3 *Rabbinic Conceptions of Men's Character*

Until now, I have discussed rabbinic opinions about women; now, suggesting that these were strongly influenced by their conception about the character of men, we shall cite some of their pronouncements on this topic. The rabbinic instructions to men to avoid contact with women, cited above, indicate that their motive was the apprehension that men would not be able to control their libidos at encounters with women.[145] *B. Qidd*. 29b states that an unmarried man over twenty lives all his days with sinful thoughts. Until a man reaches the age of twenty God waits patiently to see him married, but if he does not marry at that stage, God curses him. Therefore, *b. Yeb*. 61b asserts that a man should have a wife even if he has accomplished his duty of procreation, as God said: " 'It is not good for the man to be alone' " (Gen 2:18). Their lack of confidence

142 See Paul Heger, "Source of Law in the Biblical and Mesopotamian Law Collection," in *Biblica* Vol. 86, Fasc. 3, (2006) 324–342.

143 Roth, *Law Collections*, 83.

144 In a recent article, Susannah Heschel, "The Religious Issue, Religion and Its Discontents," *AJS Perspectives: The Magazine of the Association for Jewish Studies* (Fall 2011) 6–7, at 6 discusses a related issue: "Pervasive in the field of religion is a confusion of religion and Christianity, and far too close an alliance between Protestant interests and the scholarly study of religion."

145 Hauptman, "Women and Jewish Law," at 69 writes: "a close reading of the mishnaic texts suggests that it was men's unruly sexual potential, not women's that led to the segregation of the sexes."

in man's ability to contain his libido also affects the priests, and even requires deviations from biblical regulations.

M. Sotah 1:5 decrees that if the Unfaithful Wife is attractive or has nice hair, the priest does not tear her garments by grasping her forcefully and does not loosen her hair,[146] actions stipulated in Scripture to disgrace her. The suspicion that the onlookers (the young priests) would be sexually aroused, and try all her life to find her and lie with her, is indicated as the motive of this rule. An alternative motive is the possibility that being sexually aroused, they might masturbate, a severe sin. *M. Sotah* 1:3b distrusts even the suspicious husband, conjecturing that he might lie with his wife on the way to the priest for the procedure of the ordeal; therefore, the Court nominates two scholars to accompany them to avoid such a possibility.

The rabbis, aware of the strength of the male libido, attempted by all means to avoid its generating sinful deeds. They even suspected that men would attempt stratagems in order to look at women, such as giving coins to a woman in order to look at her or following a woman crossing a river in order to see her bare flesh (*b. Erub*. 18b). They were not afraid that the women would seduce the men, but that the men in their excitement would seduce the women, as we see from the following *midrash* in *Gen. Rab*. 17:8 (paraphrased): The man courts the woman [not the other way around] because he searches to recover the rib he lost, but the lost item [the woman] does not search for its owner. Some rabbis had an even worse opinion about men's sexual "perverseness," and were aware of their inability to dissuade them from following their excessive and obscene lust except by frightening them with the severe punishment of their offspring, as cited below.

B. Ned. 20a quotes Rabbi Johanan ben Dahbai (paraphrased): Angels told me four things: children are born lame because their fathers turned their table upwards (metaphoric) at intercourse; are born dumb because their fathers kissed the woman's sexual member; are born deaf because their fathers spoke erotically during intercourse; and born blind because their fathers gazed at their wife's sexual member. These presumed perverted manners do not constitute a theoretical pronouncement, but refer to real occurrences, as we learn from a narrative in *b. Ned*. 20b, recounting that when a woman complained to Rabbi that her husband overturned the regular method in their sexual intercourse, he said to her that he was sorry, but was unable to do anything, because

146 Num 5:18 uses the term פרע, meaning to uncover her hair, and *b. Sotah* 8a deduces by midrashic method that this term also includes the uncovering of her body (breast); from the same phrase it is also deduced that the priest uncovers her hair, which was habitually braided, and then loosens it. This action would reveal the full beauty of her hair.

Scripture allows the man to have intercourse as he wishes. Rav, responding to a similar complaint, compared the man's prerogative to have intercourse in the way he pleases to his right to eat his fish cooked in the manner he desires. We observe that the rabbis may not have been pleased with such behaviour,[147] and showed compassion to the women, but as it seems to me did not venture to change the prevailing custom for the pragmatic reason that such a change would not be enforceable,[148] particularly since such behaviour is not prohibited in Scripture. And indeed, *b. Ned*. 20b discards Rabbi Johanan ben Dahbai's dictum,[149] and compares the man's privilege to perform sexual intercourse to his right to eat his food as he wishes. On the other hand, the rabbis granted the women the unrestrained right of pleasure from permitted forms of sexual intercourse on the basis of their desire for men,[150] implanted in them by God (Gen 3: 16) and reconfirmed in Exod 21:10 as a legal right that husbands must grant them.[151] We read in *b. Ket*. 48a that the woman has the right to demand that both partners should be naked during sexual intercourse.[152]

However, the rabbis not only suspected the common people of possible sexual misbehaviour, but also believed learned sages were susceptible to immoral behaviour. *B. Yeb*. 63a tells a stimulating story: Although Rabbi Hiia's wife angered him, he bought her gifts when he found something suitable. To a rabbi, amazed by his conduct, he said: We should be satisfied with women's functions in raising our children and rescuing us from the sin of fornication. *B. Yeb*. 37b records that two rabbis (each separately in different locations) invited women to marry them for the period of their sojourn in town. In reply to the argument that such behaviour conflicts with some *halakhah*, it is explained that the rabbis did not actually have intercourse with these temporary

147 See *Ramban*'s opinion about the perception of holiness in n. 139, p. 96.

148 *B. B. Bat.* 60b counsels against making decrees that the people are unlikely to follow.

149 In fact, Rabbi Johanan ben Dahbai did not pronounce his dictum as a *halakhah*, which would mean that such sexual practices were prohibited by Scripture or by a rabbinic rule; he used a metaphoric stratagem to influence his audience and to induce them to avoid such excessively lecherous sexual manners, lest they lead to a loss of restraint and thus to performing sinful acts.

150 We read further in *b. Ned*. 20b: "Every man [who has sexual intercourse] requested by his wife [not by his initiative] has outstanding sons, of such excellence that were not even in Moses' generation."

151 We read there: "he must not deprive her food clothing and marital rights."

152 It is stressed there that if the husband insists on having sexual intercourse while dressed, his wife has the right to ask for a divorce, and he must pay her the *ketubah*, since he infringed on her right to full-fledged pleasure from sexual intercourse.

wives; they just cohabitated with them. Having a woman at their disposition helped them to master their libido, as the renowned maxim declares: "There is no comparison between the emotion and behaviour of somebody who has a loaf of bread in his basket, and of the one who has not." This broad-minded metaphor supports the intensity of the rabbinic counsel to be married; a man who has a wife at his disposition is not so easily excited at seeing a woman as a man without one.

2.6 Deducing the Theology and Philosophy Underlying Rabbinic Literature

2.6.1 *General Principles, Criteria, and Premises*

Before considering the theology and philosophy behind the rabbis' varied and apparently contradictory *midrashim* and pronouncements revealing their attitude towards women, I would like to draw the attention of the reader to two principles important to keep in mind when attempting to derive philosophical reflections from their literature. It is absolutely imperative not to deduce general opinions and ideologies from a single *midrash* or assertion. Ancient authors such as the rabbis were not overly concerned with ideas that might transpire from their dicta, and as we have seen, some rabbinic assertions seem utterly to contradict others,[153] and at times to conflict with undisputed and deeply

153 Gwynn Kessler, *Conceiving Israel: The Fetus in Rabbinic Narrative* (Philadelphia: University of Pennsylvania Press, 2009) offers a representative example of the extent of erroneous conclusions that may be reached, perhaps through imprudence or a conscious attempt to support a prejudiced opinion by an unwarranted deduction from a rabbinic *midrash*. Kessler argues that a *midrash* in *Mek. Beshalah*, *Mass. D'shira* 1, asserting that the fetuses in the womb of their mothers also participated in the songs and praise to God at the Crossing of the Sea, marginalized women; the fetuses, males in midrashic narratives, were active, but the women were only passive vessels in the procreative process. This, she claims, demonstrates the rabbinic negative attitude towards women. The *midrash* of the *Mek.*, the basis of her theory, is one among several whose scope is to amplify the magnificence of the Israelites' song at the Crossing of the Sea, without any thoughts of an underlying philosophy regarding the significance of the fetuses or women. It is similar to a homily in *Midrash Thehilim* (Buber) 78, which inflates by midrashic methods the number of plagues the Egyptians suffered in Egypt (fifty) and at the Crossing of the Sea (two hundred and fifty). Both have no theological purpose, and cannot support theological deductions. Furthermore, Kessler ignores the *midrash* in the same *Mek., parsha* 3, exalting the participation of women at the miracle at the Sea. It asserts that even a maidservant saw at this event what the prophets Isaiah and Ezekiel did not see (Isa 6 and Ezek 1). Moreover, *b.Yeb.* 78a asserts (in contrast to qumranic *halakhah*) that the fetus is deemed

ingrained theological principles.[154] Therefore, one may attempt to draw comprehensive deductions only from a variety of rabbinic narratives, *midrashim* and utterances that allow a reflection from a broad view of contrasting assertions and that may lead to a plausible solution that reconciles among them. I believe that the varied selection of rabbinic *midrashim* quoted above offers us auspicious prospects for investigating the rabbis' underlying general philosophy with respect to their attitude towards women and the presumptive goal of their pronouncements and instructions. The second principle to keep in mind is my postulate that the rabbis were pragmatic lawgivers, who made their decisions on the basis of their conception of what would be necessary in order to attain the desired objectives, and at the same time what would be feasible: that is, appropriate for the prevailing circumstances and likely to be acknowledged and fulfilled by the people. The facts of life in their period stimulated the creation of suitable aetiological *midrashim* that served to ensure the stability of the social system, and probably also to demonstrate that all instructions necessary for life are written in the Torah in all its forms, written and oral. In what follows, I might also remark that reflections on the aim of the *midrashim*, intertextual sources, and rabbinic suggestions for correct behaviour in relationships with women assisted me in reaching my conclusions.

2.6.2 *Assessing Contrasting* Midrashim *and Pronouncements*

We read in *Eccl. Rab. parsha* 9: "Everyone who has no wife, lives without goodness, without helper, without joy, without blessing, without forgiveness [of sin]." *B. B. Mez.* 59a asserts that a woman brings wealth, as is written: "and he entreated Abram well for her sake of his wife" (Gen 12:16).[155] *B. Ber.* 57b emphasizes the happiness that a woman brings to a man, declaring that three

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to be like the thigh of its mother from a legal perspective; hence, the fetus has no individual personality before being born, but is a member of the mother, contradicting Kessler's thesis that according to rabbinic theology the fetus is significant, not the mother. See Paul Heger, "Stringency in Qumran?" in *JSJ* 42 (2011) 1–30, particularly 6–10, for an extended discussion of this topic.

154 See, for example, the *midrash* in *Gen R.* 18 *parsha* 2 about the creation of the woman (pp. 42–43), which overlooks the fact that its contents implicitly contradict divine omnipotence and omniscience, by alleging that God did not succeed in accomplishing his creation of the woman as intended—a statement bordering on heresy.

155 The quotation of this verse to support the rabbinic maxim demonstrates the validity of the principle of not deducing philosophical reflections from one *midrash*, since the authors of the *midrashim* were not overly concerned with ideas that might transpire from their pronouncements. Evidently, the rabbis would have been embarrassed to reflect that in supporting their maxim by quoting Gen 12:16, they might be seen as recommending

things gratify man, namely a refined dwelling, a beautiful woman, and neat objects. *B. Sanh*. 100b declares that the husband of a beautiful wife is blessed and his lifespan is doubled.[156] The highly slanderous *midrash* in *Gen. Rab*. *parsha* 18:2 quoted on pages 42–43 of Chapter 1, is amply reversed by the great array of contrasting assertions, and should be discounted as an exaggerated assertion by one rabbi, plausibly without any afterthoughts concerning theological or halakhic deductions that might be derived from his *midrash*. An excellent example of an inversion of a deduction from the same subject offer us two *midrashim* explaining the reason for women's menstruation. We read above in *Gen. Rab*. 17:8 that menstruation was inflicted on women as penitence for Eve's spilling of Adam's blood. In *b. Nid.* 31b, however, menstruation and the seven days abstention from sex is presented as instituted for the benefit of the woman, to have her husband longing for his wife after a short separation.[157]

The significance of harmonious family life and its dependence on the husband's attitude towards his wife is manifest in *b. Yeb*. 62b, which says that if one loves one's wife like oneself, honours her more than oneself, and instructs one's sons and daughters to be righteous, getting them married close to puberty, Scripture says about him: "And thou shalt know that thy tent is in peace" (Job 5:24). *B. Yeb*. 63b states that a man does not attain comfort from other than his first wife, and when a man marries his sins are forgiven. *B. Sanh*. 22a declares that even the altar bursts into tears for one who divorces his first wife, and that every man whose first wife died hurts as though the Temple had been destroyed in his lifetime.

We have also observed from previous citations (Chapter 1, p. 23) the rabbinic opinions placing a high valuation of the woman's function and usefulness, as a helper and as a maidservant, and comparing her to gold. In their quest to ensure the stability of the institution of marriage, the rabbis did not retract their slanderous pronouncements on women's defects, but as we have seen, they stressed their indispensable function and benefit for man and family.

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gaining wealth thanks to one's wife by emulating Abraham, who was recompensed by Pharaoh for the enjoyment Pharaoh had of Sarai.

156 Siracides' assertion at 26:1, "Blessed is the man that hath a virtuous wife, for the number of his days shall be double," is noteworthy in this connection.

157 I disagree with Baskin, *Midrashic Women*, 23, who perceives the other side of the coin, arguing that this assertion is " 'backhanded,' since it implies that a man in unremitting contact with his wife and her natural processes will soon find his spouse repugnant." I think that the term קוץ used in the dictum in this context should be interpreted as "boring" rather than "repugnant," as Baskin alleges. The implied reason for the husband's lack of sexual desire seems to me to be hinting at boredom.

They even emphasized the significance of arousing man's sexual desire by means of female beauty treatments. We read in *b. Shab*. 95a: God braided Eve's hair before bringing her to Adam. *Abot R. Nat*., Recension a, Chapter 4 claims that God adorned her like a bride. *Cant. Rab. parsha* 4 implicitly encourages the adornment of women for the enjoyment of their husbands, asking: "Whence did the daughters of Israel get adornments for their husbands' enjoyment during their dwelling in the desert?" There is no concern about seduction by beautifully adorned women. In *b. Sabb*. 64b, Rabbi Akiba permits menstruating women to adorn themselves, despite the possibility of arousing their husbands, leading to illegal intercourse, since prohibiting such adornment may make a wife repugnant to her husband and incite him to divorce her.[158] And indeed the rabbinic *halakha* acknowledges Rabbi Akiba's opinion, granting priority to the preservation of the harmonious family life over the concern of a potential transgression of the law. Rabbi Akiba here puts the burden on the man, in contrast to more typical rabbinic rules criticizing immodest or shameless clothing and appearance in women and thus shifting the burden on the woman to be modestly dressed in order not to provoke the man's libido.

By midrashic methods, *Abot R. Nat.* Recension b, Chapter 45 deduces from biblical verses that men and women have the same typical faults, while Chapter 42 similarly claims that ten evil decrees were enacted on each of Adam, Eve, the serpent, and the earth. This *midrash* emphasizes the equal responsibility of Adam and Eve regarding the primeval sin and expulsion from the Garden, and seems to me significant for a deduction of the overall rabbinic attitude towards women. I should reiterate here, in closing these assessments, that they relate to the rabbinic stance regarding the character of woman, slandered by preconceived interpretation of the Fall narrative, but not to their legal status.

2.6.3 *Summarizing Rabbinic Opinion*

Founded on the consideration of the variety of rabbinic *midrashim*, pronouncements, and some *halakhot* instituted to enhance women's lot relative to the standards of the period, I came to the conclusion that the rabbis did not demonize women, as may seem to be the case based on some *midrashim.* Against those that portray women in a bad light there are others that praise women, extolling their outstanding importance for married life and their function in

158 See in *m. Git*. 9:10 Rabbi Akiba's opinion that a man may divorce his wife if he finds a prettier one.

family and society.[159] Both were the result of the rabbis' pragmatism.[160] The vilification of women was an appropriate device to minimize the occurrence of sexual transgression by men in whom *eros* is powerful, and the laudatory assertions regarding women counterbalanced these in order to ensure the stability of family life.

Pronouncements such as those quoted above praising women cannot be reconciled with their demonization. The same applies to rabbinic *halakhot*, which may seem trivial, but in some instances constitute very important rules, absent in Scripture, as for example the rabbinic decree that at maturity a minor maidservant sold by her family (mother and brother) can abandon the man in question, without even a divorce. But even when sold by her father, she must agree finally to be married to her master or his son; in this case, however, she needs a formal divorce if she refuses to marry the master or his son, since her sale with the intent to be married is deemed equivalent to having been betrothed.[161] There is no hint in Scripture that a girl can avert marriage to her master; Exod 21:8–11 grants this right only to the master. The rabbis advised fathers not to marry a minor daughter, because she might not want to live with the man when she reached maturity.[162] They exempted a woman who sold herself in perpetual slavery (Deut 15:17) from having her ear pierced, because it would blemish her beauty, an essential attribute for a woman.[163] The rabbis established cases in which the woman has the right to ask for a divorce which the Court must enforce,[164] and counselled old levirs not to marry young widows.[165] If the rabbis had had such an ingrained evil opinion of women, they would not have made rules for the women's benefit, at times even against

159 Avraham Grossman, *He Should Rule over You? Medieval Jewish Sages on Women* (Hebrew; Jerusalem: Zalman Shazar Center for Jewish History, 2011), at 52–53 draws our attention to *Rashi*, who in one example ignored in his commentary on Gen 2:22 the slanderous *midrash* from *Gen. Rab. parsha* 18:2, and quoted instead the *midrash* of *b. Erub.* 18b on the same verse that God built the woman like a granary, slim in her upper body and stocky in her lower part to be suited to bearing a child (both *midrashim* cited in Chapter 1, pp. 25 and 42–43).

160 I therefore disagree with Jacob Neusner's statement in *Method and Meaning in Ancient Judaism* (Missoula, MT: Scholars Press, 1979) 79–100 at 97: "they [the framers of the *mishnah*] viewed them [the women] as abnormal, anomalous, dangerous, dirty, and polluting."

161 See supporting citations in Chapter 3, p. 125.

162 See *m. Qidd.* 2:1 and *b. Qidd.* 41a.

163 See *b. Qidd.* 17b.

164 *M. Ket.* 7:10 indicates a list of the husband's defects for which he is compelled [by the Court] to divorce his wife.

165 See *Sifre* Deut 158.

biblical ordinances.[166] This endeavour demonstrates their intent to improve the legal status of women within the boundary of a woman's lacking the status of an independent legal entity. It makes much more sense to assume that their defamatory *midrashim* and some of their rules of separation between men and women had a practical purpose, and were not the result of a belief that women are wicked by nature. They did not, however, change women's dependent status, because it seemed to them, as I hypothesize, the natural consequence of the divine order of creation of woman from man to be his helper and part of him according to the Creation narrative, or else because they considered it unfeasible to enforce legal independence for women in the social environment of their period; as pragmatists they attempted to minimize some of dependency's hurtful consequences. The second possibility seems to me the more plausible, being in line with a pivotal element of their halakhic philosophy: "One does not promulgate a decree that the majority of the public cannot sustain" (*b. B. Bat*. 60b).

2.7 Conclusion, Part 1: Interpretations of the Creation and Fall Narratives

The first part of this book has been dedicated to the biblical narratives of Creation and of the Fall and to the various interpretations, deductions, and consequences associated with them. We began with an unbiased interpretation of the relevant biblical texts. To better comprehend the many aspects and nuances of the narratives, the story was broken into its component segments and each verse, or at times each of its sections, was separately analysed. In the course of this process of interpretation and deduction, I cited scholarly opinions which agreed in part or entirely with my perceptions, and others which I disputed by means of contrary arguments. Due to the complexity of the narratives and their ramifications, a number of rabbinic and qumranic assertions were quoted in the frame of this interpretation in order to clarify the different viewpoints. I then cited qumranic and rabbinic texts relating directly to the biblical narratives, and others which seemed relevant for the apprehension of Qumran scholars' and rabbis' conceptions about women. I believe that both Qumran and the rabbis, and presumably their forerunners

166 For example, the woman's right to demand a divorce or the girl's prerogative not to marry the master to whom her father sold her. Hauptman, "Feminist Perspectives," at 49 writes about the innovative rabbinic rules for the benefit of women: "within the patriarchy, there seems to be a growing sympathy for women who are treated unfairly."

the Pharisees, derived the attitudes towards women apparent in their writings from their distinct interpretations of the identical biblical texts, the basis of their general philosophy and theology. Each group, however, approached their analysis with different preconceptions, and thus arrived at different interpretive systems, which became evident in their distinct orientations, perspectives, and *halakhot*.

My interpretation of the biblical narratives led me to conclude that the scriptural attitude towards women, as transpires from the Creation and Fall narratives and subsequent scriptural assertions and rules, should be perceived as a two-pronged issue: on the one hand the legal status of women, and on the other their social standing in the family and community. Women's legal status, or rather their lack of it as individual legal entities, is the logical consequent of woman's creation from man, thus becoming once more a part of him at marriage, and of the purpose of her creation as man's helper, which forms the basis for her functional subordination to him. This lack of independent legal status is the foundation of the biblical laws regulating the woman's rights and obligations.[167]

Although women's lot according to scriptural regulations seems to us today pitifully underprivileged, it is representative of the dominant social customs and ordinances in the surrounding nations. While it is not my intention to justify such rules, I believe that in a research study of this nature, one bears the prevailing circumstances in mind. However, as I understand and have interpreted the biblical narratives, the first woman is not accused in Scripture of having initiated the expulsion from the Garden or of having provoked it by her seductive nature, enticing Adam to transgress the divine prohibition, this being conventionally seen in early Christian and rabbinic writings as the cause of death's advent and the other calamities befalling humanity. A close critical scrutiny of the biblical Fall narrative dispels this conventional interpretation, which blames the woman as primarily responsible for humanity's misfortunes.[168]

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167 Sara Japhet, "The Expulsion of the Foreign Women (Ezra 9–10): The legal basis, and consequences for the definition of Jewish identity," in *Sieben Augen auf einem Stein* (*Sach 3,9*)—*Studien zur Literatur des Zweiten Tempels; Festschrift für Ina Willi-Plein zum 65. Geburtstag*. (eds. Friedhelm Hartenstein and Michael Pietsch; Neukirchen-Vluyn: Neukirchener Verlag, 2007) 141–161, at 145 points out that "although Hagar is Sarah's maid, Sarah does not have the authority to act; this power resides exclusively with Abraham, the head of the family."

168 Levinson in *The Right Chorale* at 40 writes: "The story of the fall, like a poem by Wallace Stevens, is about how to read. Read correctly, the narrative challenges seduction." He further writes at 42 that biblical hermeneutics "demands an active interpreter to enter into thoughtful engagement with the text."

Consistently with this finding, Scripture as a whole, when interpreted straightforwardly, does not yield any slanderous portrayals of women or allegations of their wicked character; on the contrary, we notice a host of commands to defend widows in various circumstances, to ensure their economic sustenance, and to share the joyful holiday meals with them (Deut 16:14). Exod 21:10 decrees the husband's obligations towards his wife.

Derogatory allegations against women are absent from Qumran literature, just as they are from Scripture. We may infer that the Qumran scholars' method of plain interpretation of the biblical texts led them to a conclusion about the principal responsibility for the Fall in broad concord with my suggested interpretation that Scripture does not implicate Eve as the primary mover of the sinful event. Thus, there is no reason from this perspective to denounce woman as having an inherently wicked, immoral character or to stigmatize her as dangerous and therefore to prevent men from sinning by avoiding any contact with women. Qumran held men responsible for their moral behaviour, accusing only men of sexual misdemeanour; women are not mentioned in their harsh criticism of sexual mischief and are not suspected of provoking it. Therefore, we observe in Qumran writings that women are taught the laws relevant for them (1Q28^{a} (1QS^{a}) I:4-4–5) and partake in social events together with men (4Q502 (4Qpap Ritual of Marriage)).

These two corpora attend to the legal status of women both explicitly in their statutory writings and implicitly in their narrative writings. A woman did not hold an individual legal entity, except under the circumstance of widowhood or divorce;[169] she was dependent in her youth on her father and after marriage on her husband, and that status constitutes the benchmark for the establishment of the legal rules regarding civil and ritual matters. Though we do not possess explicit regulations about all particular aspects of such matters, either in Scripture or in Qumran literature, we can assume that the basic criterion of woman's dependent legal status guided their various ramifications. Thus, for example, women were not obligated to perform all the biblical precepts, and according to Qumran rule were not permitted to participate in the Passover meal since they were not commanded to do so; nor were they members of the *Eda*, the holy group of mature males, but they were nevertheless respected members of the Jewish people and of the Qumran community, like youngsters of less than twenty years of age. Women's exclusion from the *Eda* is not on account of their defects or inferiority, but because Scripture commands it.

169 The father's authority over his minor daughter is permanently invalidated at her wedding, even if she is still a minor after her divorce or widowhood (*m. Ket*. 4:2 and *b. Qidd*. 18b).

Qumran, like the rabbis, did not leave behind systematic interpretive comments on the biblical texts of the Creation and Fall narratives as the later traditional commentators did, and we can only infer their probable interpretation of the biblical texts and their underlying philosophy/theology from their writings. Whilst Qumran writings contain sparse treatises on the topic of women, the rabbinic literature by contrast is brimful with regulations about women and *midrashim* about their character and social functions; comprehension of rabbinic ideology and objectives is, therefore, much facilitated, as well as more secure in its conclusions.

The rabbis, in contrast to Qumran, demonstrate a composite image in their attitude towards women. They demonstrate in their halakhic literature a similar attitude to Qumran regarding the woman's lack of individual independent legal status and her dependence on the dominant male in her family, whether her father (while a minor)[170] or her husband.[171] However, the rabbis created a great array of detailed regulations through their midrashic system, complementing and expanding on the concise rules of Scripture. Some are precisely concordant with women's legal status as derived from a simple interpretation of scriptural commands and narratives, while others consist of halakhic innovations deduced by their midrashic system. The rabbis did not attempt to change women's dependent legal status, but attempted to set some rules for the practical improvement of women's adverse conditions resulting from this state of affairs.

Similar circumstances are manifest in rabbinic writings about women's character and social standing. Rabbinic *midrashim* and pronouncements about women range from outright slander concerning the first woman's actions and responsibility for the Fall, and consequently women's inherently wicked character, to exaltation for their indispensable social function in the family. The midrashic system allowed the rabbis to interpret the biblical Fall narrative, among others, in such a way as to indict the woman as the primary guilty party in Adam's defiance of the divine command, through her seductive influence on him.

The rabbis' negative opinion of women's character may have been influenced by the Hellenistic viewpoint, but I believe that as pragmatists they concluded that attributing to the woman a seductive trait (an attribute missing in

170 According to explicit rabbinic *halakhah*, and plausibly also by Qumran. See extended study about it in Chapter 3.

171 Theodore Friedman, "The Shifting Role of Women, From the Bible to Talmud," *Judaism*, 36/4 (1987) 479–87, at 479 states that regarding the legal status of women "there is an obvious continuity between the Biblical and the Talmudic era."

Scripture), thus portraying her as a dangerous entity, was justified as a powerful tactic in their attempts to avoid sexual misdemeanour in Jewish society—particularly in view of her being easy prey for the libidinous menfolk due to her docile character. This thinking served as the foundation for the many regulations and exhortations prompting men to be vigilant in the face of female temptation, such as, for example, the maxim that it is safer to walk behind a lion than behind a woman. Stressing the danger of relationships with women, the rabbis enacted ordinances to avoid their company in various circumstances. In contrast to Qumran, the rabbis shifted the entire onus of ensuring a moral society onto the woman, establishing obligations upon women to wear decent and modest garments and to cover their hair, as well as a strict physical division between men and women in public locations. The purpose of these rules was the attempt to avoid sexual arousal in men through visual or physical contact with natural female beauty. Paradoxically, their apprehensions and rules do not indicate an attempt to forestall the "tempting women" from trying to seduce men for their pleasure, as one would expect for women with seductive tendencies. It seems that the rabbis did not perceive such a contingency as in any way likely, since they saw women as modest, as they acknowledged: "the woman does not make overture to the man" (cited in *Gen. Rab*. 17:8; see p. 98). Rather, they perceived a lack of male self-restraint, and therefore pragmatically devised ways of hiding women's physical attractiveness from them.

On the other hand, the rabbis placed great emphasis on harmonious family life, and guided again by their pragmatism understood that vilifying women would seriously impede the promotion of this goal. Consequently, to balance their "unflattering" attitude towards women's character, they created *midrashim* lauding women's positive qualities and emphasizing their crucial function within the family of ensuring a good life in all its aspects. This brings to mind a Yiddish folk aphorism: "it is not so good with them [the women] as it is bad without them." The midrashic system thus enabled the rabbis to interpret Scripture in line with their broad objective of ensuring the fulfillment of its rules, in ways they understood as being appropriate and effective in their contemporary circumstances.

PART 2

CHAPTER 3

The Father's Authority and Responsibility, and Their Limitations: A Debate with Scholarly Theories

3.1 Introduction

The father's authority to sell his daughter as a maidservant for future marriage (Exod 21:7–11), to give her in marriage to whom he wishes (Deut 22:16), and to annul her vows (Num 30), establishes the legal status of a young unmarried woman. As is generally common, however, it does not indicate all relevant ordinances and extent of these basic rules. Hence, like the rabbis, modern scholars attempt to interpret them, and similarly reach conflicting results. This chapter deliberates upon rabbinic interpretations, hypothesizes on plausible qumranic interpretations, and disputes some of the scholarly theories on these subjects. I will start with a short deliberation about the general status of women with respect to the father's authority.

3.2 Slavery and Manumission for Israelite Women: Scriptural Rules

Cecilia Wassen, reflecting on the underlying philosophy of the text of 4Q271 (4QD^{f}), compares the father's giving his daughter in marriage to a business transaction. I understand her frustration with the Qumran rule, which obligates a father to disclose to a potential bridegroom all of his daughter's blemishes. However, I feel that the expression "a woman is seen as a property" is somewhat exaggerated, and does not adequately consider the circumstances of the period. A woman is not an independent legal entity, but she is not "a property" that can be sold, like a slave.[1] Even a Jewish girl sold as a slave by her father as a

1 I believe the same applies to Judith Romney Wegner's statement in "Women in Classical Rabbinic Judaism," in *Jewish Women in Historical Perspective* (2nd ed.; ed. Judith R. Baskin; Detroit: Wayne State University Press, 1998) 73–100 at 77, that "woman's biological function is an economic asset"—specifically, that "an item of property (namely, the bride's virginity) is being transferred from father to husband." The assertion that the rabbinic viewpoint minimized woman's function to a single aspect, her sexuality, cannot be reconciled with the numerous rabbinic citations in Wegner's own study that, as she acknowledges, emphasize the many and varied functions of a wife. Judith Hauptman, "Feminist Perspectives on

minor is freed, either when she reaches maturity,[2] if her owner does not marry her and thus provide her with all her rights as a regular wife (Exod 21:7–11), or after six years of bondage. Since the restriction of a father's authority over his daughter to her minority is evident from Scripture without any midrashic interpretation,[3] as I argue later in this study, we may assume that the rule in 4Q271 (4QD^{f}) regarding the father's obligation to disclose his daughter's defects, which equally does not specify her age, is similarly intended to refer to a minor daughter. Once she has reached maturity, her father loses his authority over her and cannot give her in marriage; she herself chooses whom to marry, and she is responsible for disclosing her defects in order to avoid legal proceedings. I disagree with some scholarly opinions, cited by Eckart Otto,[4] that "Exod 21:7–11 only deals with women purchased for concubinage" and that in Exod 21:7 "a release of the maidservant is excluded." I believe that Exod 21:7–11 applies to

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Rabbinic Texts," in *Feminist Perspectives on Jewish Studies* (ed. Lynn Davidman and Shelly Tenenbaum; New Haven: Yale University Press, 1994) 40–61, at 52–54 disputes Wegner's assertion, in *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988) 42–45, that "the first chapter of *Qiddushin* presents espousal as the acquisition of chattel." Bird, "Images," 51, similarly argues that women's sexuality was their primary contribution to the family and that "adultery was a violation of a man's fundamental and exclusive right to the sexuality of his wife." As I have discussed at length in Chapter 2, pp. 94–97 in relation to a similar issue, Jewish religion drastically changed this viewpoint. Adultery is perceived as a violation not of a man's right, as in ancient Mesopotamian law, but of a divine decree. In biblical law, therefore, a husband can no longer forgive his wife her adultery; adultery is removed from the husband's and indeed the human domain altogether, and becomes a divine issue. Bird's argument is thus not applicable to Jewish law.

2 Scripture does not explain when a girl becomes a נערה "young girl" rather than a child, or when she becomes a mature person (in the rabbinic terminology, בוגרת). The rabbis created an exact classification, which has legal implications. A קטנה "child" becomes a נערה "young girl" when she has pubic hair, according to some traditional interpreters, including Maimonides; and according to others, as is common today, at the age of twelve. (Some contend that the transition occurs at the start of the twelfth year, that is, at eleven years and one day.) Six months later, she becomes בוגרת "mature." For example, all the rules for the annulment of vows refer, according to the rabbinic law, to the six months of her status as נערה: before that age she is considered a minor, and a minor's pledges are not valid; after her maturity, her father no longer has any authority over her at all. Because these fine details do not affect our discussion of the rights of women in general, I prefer not to overload the reader with these minutiae; in what follows, I use the terms *minor* and *mature* or *adult*.

3 *B. Ketub*. 40b understands the father's authority to annul his daughter's vows from the term בנעוריה, literally "in her youth" with no midrashic arguments.

4 Otto, "False Weights," 128–46 at 142.

every minor girl sold into slavery by her father: it was assumed that she would be married by her owner or his son or would be released on attaining maturity or after six years, whichever came first.[5] Scripture does not declare that she is never released, but emphasizes that she is not released in the same manner as a male slave; other conditions of release apply to her;[6] I understand it, as the rabbis did, that her conditions are more favourable than those applying to a Jewish male servant, whereas Otto comprehends them as less favourable, intending that she is never freed. It is obvious from the text that the first and plausibly the most common choice was marriage to her master; at this juncture she ceased to be a slave, and had equal rights with his other wives. It is not reasonable to presume that the conditions of this girl would fluctuate between becoming a full-fledged wife, with all the usual rights and privileges, and remaining a perpetual slave/concubine. Further, if indeed she was sold as a concubine, we must wonder why Scripture does not identify her status by the term פילגש, used in Scripture for such cohabitation, rather than אמה, used for a maidservant. Hagar, Sarah's maidservant, is usually called שפחה, and retains this status even after having borne a son to Abraham (Gen 21:10–13);[7] she does not become a פילגש, like Reumah (Gen 22:24) or Keturah (1 Chr 1:33), called "wife" in Gen 25:1. The context suggests that Hagar's sexual intercourse with Abraham is a one-time affair, whereas Jacob has ongoing sexual relations with Bilhah; this probably becomes her primary function, and therefore she

5 Judith Evans Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (London: Routledge, 2002) 11, writes: "It was not illegal or unusual for a man to free his slave woman in order to marry her."

6 The LXX translates the terms אמה and עבדים in Exod 21:7 differently—the first as οἰκέτις "the mistress of the house," the second as δοῦλος "a slave." Cornelis Houtman, *Das Bundesbuch, Ein Kommentar* (Leiden: Brill, 1997) 98–99, understands the first to refer to a Jewish girl, the second to a Canaanite slave. Thus, the rule states that the Jewish girl does not become free in the same manner as the Canaanite slave. It is inconceivable that she should be treated worse than a Canaanite slave. *Mek. Mishpatim, Mass. D'Nezikin parsha* 3 similarly interprets this verse as referring to the Canaanite slave: specifically, she is not freed by being physically damaged (Exod 21:26–27), but rather when she becomes mature, in the seventh year, or in the Jubilee year.

7 Hagar is called אמה only twice: in Sarah's angry debate with Abraham about the status of Hagar's son, Ishmael, and in God's promise to Abraham to care for Ishmael; both cases relate to Hagar's increased status, in Abraham's eyes, after having given him a most-craved son. For an extensive study of the relationship between אמה and שפחה see Diane Kriger, *Sex Rewarded, Sex Punished: A Study of the Status "Female Slave" in Early Jewish Law* (Boston: Academic Studies Press, 2011) 36–48.

becomes a פילגש "concubine" (Gen 35:22),[8] a fact corroborated by Jacob's anger with Reuben for defiling his bed. We read in Gen 49:4: "for you went up onto your father's bed, onto my couch and defiled it"; she became Jacob's "bed" partner (Gen 49:4), similar to his wives Leah and Rachel.[9] In contrast, Zilpah is initially called שפחה, indicating a lower-status female slave,[10] and retains this name because, it appears, her sexual relations with Jacob are not so constant that she becomes a concubine. In fact, there are no rules in Scripture about the rights and obligations of a concubine, as there are for wives and slaves, nor about the status of their children. Timna, the concubine of Eliphaz, is the last one mentioned in the Pentateuch; concubines appear in Judges and sparsely in other scriptural books, but no further particulars of their legal or practical character are given, whereas both the Code of Hammurabi[11] and Roman law[12] include an array of rules on this topic. I hypothesize that even at the early period of the Book of the Covenant, concubinage was not practised in Israel at all; if so, it could not be the subject of the practical legal rules of Exod 21:7–11. We read in Deut 15:17: "then take an awl and push it through his earlobe into the door, and he will become your servant for life. Do the same לאמתך for your female servant." If אמה denotes a concubine, whose release is excluded, as Otto asserts, there would be no necessity to pierce her ear, for whatever reason this act was instituted, and she would not need to ask her master to make her a permanent slave, as Deut 15:16 states also with regard to an אמה.[13] Only a mature woman who sells herself into slavery can become a servant for life. A minor sold by her father must be married by her master or his son; she cannot

8 Grubbs, *Women and the Law*, xvii, in her "Glossary of Latin Legal Terms," defines *concubinatus* as "a non-legal but long-term sexual relationship, usually between an unmarried man and a woman of lower status with whom *iustum matrimonium* was either legally or socially inappropriate." However, social conditions were different in the Middle East, where polygamy was practised and married men had also concubines. *B. Sanh*. 21a discerns between a wife, who has a *ketubah*, and a concubine, who has not.

9 *Jub.* 33:9 states that "Jacob did not approach her again because Reuben had defiled her."

10 Scripture never uses שפחה for an Israelite female slave. On the other hand, שפחה is also used in Scripture as a style of speech to a superior interlocutor, and in such cases does not indicate real servitude. The same applies to the male term עבד.

11 See Raymond Westbrook, "The Female Slave," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Bernard M. Levinson et al.; Sheffield: Sheffield Academic Press, 1998) 214–38 at 215–20.

12 See Grubbs, *Women and the Law*, 150–54.

13 I do not think that a debatable scholarly interpretation justifies assuming a legal conflict between the similar rules in Exodus and in Deuteronomy.

be married to a slave and have children with him, the conditions leading to the circumstance portrayed in Scripture, but must be either married to a free man or released.

Carolyn Pressler attempts to reveal the identity of the bondswoman given to an Israelite slave by his master to produce offspring who remain the property of the master, as decreed in Exod 21:4.[14] Scripture does not provide this apparently important detail, but I think the rabbis were correct in asserting that the female slave in Exod 21:4 is a Canaanite woman, a perpetual slave (*b. Qidd.* 15a). Pressler writes that we do not know whether the slave woman is "freeborn or slave-born, Israelite or foreign, or whether she could be an enslaved daughter [the subject of vv. 7–11]"; she is, Pressler states, "simply her master's possession whom he may give to the bondsman" and the law treats the bondman's slave wife as an object, leaving open the possibility that this rule may refer to an Israelite woman. I consider this element of her conjecture unwarranted, for a number of reasons.[15] The enslaved daughter of v. 4 must *a priori* be excluded from the list. The reader of v. 4 does not yet know of the existence of a perpetually enslaved Israelite daughter, as Pressler interprets the succeeding vv. 7–11 (an assumption I dispute below). Moreover, v. 4, which asserts that the woman given to the slave does not become free together with him, cannot refer to the אמה of vv. 7–11. Her master cannot give her as a wife to his slave; only he or his son can marry her, as is explicitly stated. The difference between the slave's wife of Exod 21:3, who is liberated together with him, and that of v. 4, who remains a perpetual slave, indicates that the women in these two verses are not identical. The biblical text אם בעל אשה הוא (Exod 21:3b), which the NIV and the traditional commentators correctly translate as "if he has a wife," does not tell us whether the slave arrived with an Israelite wife, as v. 3a explicitly states, or whether he married an Israelite woman during his period of slavery; in either case, she leaves a free woman together with him. It is not reasonable

14 Carolyn Pressler, "Wives and Daughters, Bond and Free: Views of Women in the Slave Laws of Exodus 21.2–11," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Bernard M. Levinson et al.; Sheffield: Sheffield Academic Press, 1998) 147–72 at 164–5.

15 Sara Japhet, "The Expulsion of the Foreign Women," 141–61, at 148 similarly contends that the rule of Exod 21:4 applies equally to Israelite and Canaanite slave women and that their children remain the perpetual property of the master, even when born to a Jewish slave. Japhet supports her theory by Sarah's calling Ishmael בן האמה "the son of the slave woman." She ignores, however, the fact that God calls Ishmael "Abraham's seed" in Gen 21:13; this is the crucial passage, not Sarah's angry discrimination against Ishmael, born of Hagar the slave.

to suppose that if the master gave his slave an Israelite woman, of the same category as in v. 3, for a wife—the text does not state that the wife is a slave woman—she and her children would remain perpetual slaves, as v. 4 indicates.

Further, one cannot envisage that an Israelite slave, male or female, is manumitted after six years but that Israelite children, born by an Israelite woman to an Israelite man, would remain the property of the master, as Pressler's assumption would require. The rules governing Israelite slaves do not permit perpetual slavery, for well-defined and significant doctrinal reasons. Lev 25:42 states, and v. 55 re-emphasizes, that the Israelites are God's servants, and must not be sold as perpetual slaves. Therefore, neither an Israelite woman nor her children with an Israelite man can remain perpetual slaves. We observe this circumstance in the case of the Israelite slave who wishes to remain with his or her master, before being legally manumitted;[16] it indicates that a free Israelite cannot sell himself as a perpetual (until the Jubilee year) slave. He can only extend his slave status, as long as he is a slave. The rule in Exod 21:4 that grants the slave's children to the master applies exclusively to an Israelite slave who wishes to remain a slave, because he loves his master; the Canaanite wife given to him by the master; and his children with that slave woman. But the parallel rule in Deut 15:16–17 applies equally to male and female Israelite slaves who wish to remain with their master because they love him; there is no mention of love for one's mate, male or female, or of one's children, because Israelite children cannot remain perpetual slaves, not even until the Year of the Jubilee. Deut 15 apparently relates to unmarried men or women, but even if they are married and have children, they cannot legally be enslaved longer than six years. All Israelites are born free, according to scriptural law, and cannot in any circumstances be sold into perpetual slavery.

There are many textual difficulties in Exod 21:7–11, which discusses the particular status of a girl sold as a servant by her father, in contrast to the rule for male servants, which does not discern between a man sold by his father and one who has sold himself, as written in Exod 21:2, "If you buy a Hebrew servant." Even the early scribes/redactors of this lemma had differing views of its intent and interpretation: the contrasting *keri* and *ketiv*, either לא יעדה "not" or לו "to him" (v. 8), demonstrate the problem that confronted them, and the different interpretations they envisaged relative to their particular readings.

16 *B. Qidd.* 22a declares that since לא אצא חפשי (Exod 21:5) is written in the future tense, he must declare his desire to remain with his master before his manumission, since after being freed this rule does not apply; his ear cannot be pierced, and he cannot become a perpetual slave. Whether this was the intent of the biblical author is beyond the scope of our study.

Verse 9 decrees that if the servant's master betroths her to his son, he must grant her (NIV) / deal with her (KJV after LXX) כמשפט הבנות "in the manner/rights of daughters," an enigmatic ordinance.[17] The LXX translates θυγάτηρ "daughter," but in Scripture בנות can mean "daughters" but also the generic "young women/girls" (see, e.g., Num 25:1; Josh 17:6; Judg 21:21). Further, the content of this verse should have been included in the previous verse—that is, if he has not betrothed her to himself,[18] as the first choice, he can betroth her to his son[19]—before decreeing her redemption and the prohibition on selling her. The succeeding v. 10, which decrees her rights if he takes another wife, is written in the singular and seems to relate to the girl's betrothal with his son, without indicating whether she has the same rights if the owner marries her, which would be reasonable.

One of the most challenging issues of interpretation is the use of והפדה "he should redeem" (Exod 21:8), with no indication as to who is the subject of this verb—the girl's father, or her owner? *Tg. Onq*. translates והפדה in the third person neutral, as in the original, which syntactically and grammatically would mean that it refers to the owner;[20] *Tg. Ps. J.*, on the other hand, specifies that her father must redeem her. The NIV translates "he must let her be redeemed," in passive voice, meaning by her father or relatives; the KJV's interpretation is similar. The LXX, however, renders it as ἀπολυτρώσει αὐτήν "he shall release her on payment of ransom," from the root ἀπολυτρόω "to release on payment of

17 Shalom Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden: Brill, 1970) 55, understands this phrase as "to treat her as a freeborn woman," whereas Pressler, "Wives and Daughters," 159, postulates that he is to treat her literally as his own daughter, that is, "as a member of the family." This interpretation obviously raises the question of why she should be treated differently when purchased for his son than when purchased for himself, since Scripture decrees such comportment only in the case of her marriage with the owner's son.

18 The LXX, the NIV, and the KJV interpret the phrase as the *keri* אשר לו יעדה in that order: "after she has betrothed herself to him," "who has selected her for himself," and "who hath betrothed her for himself."

19 I use "betroth" here because the text has יעד, meaning "designate/appoint" and its participle "designated," and by extension "betrothed." The NIV translates "selected," the KJV "betrothed"; the LXX uses καθομολογέω "promise/betroth." In *b. Qidd*. 19a and b, we find a discussion of whether the money received by the father at the sale of his minor daughter serves as the bride money, so that the owner has only to declare his betrothal to her, without any additional payment to her father or to the girl herself. This opinion is the acknowledged *halakhah*, and the disputing opinion is rejected. We observe the intrinsic association of the intent to marry the girl with her sale as a servant.

20 The entire lemma (Exod 21:8–11) relates to the master, and any intrusion of another person/actor is unwarranted.

ransom."[21] *Rashi*, understanding the term והפדה to refer to the owner, attempts to reconcile this with his opinion that the girl's father or other family members should redeem her. His solution is to interpret it as a joint enterprise: the owner should enable her to redeem herself, or to be redeemed by her family, by reducing the redemption money in relation to the time she has served him. Otto, as I understand his statement about the woman's release, interprets it as her right to redemption against payment if her master does not like her.[22] In any case, whoever has not fulfilled the obligation to redeem her, as the use of והפדה decrees, she is manumitted without any payment, as is explicitly stated in v. 11. This interpretation, however, does not make sense either; why should anyone redeem her—an act that, furthermore, is possible only if her master does not want to marry her—if she will in any case be manumitted without payment if neither her owner nor his sons wants to marry her? Cassuto also understands the biblical emphasis on the fact that she will not be freed in the same manner as a male slave as a privilege for her.[23] To reach this conclusion, however, he explains that since she is not simply a servant, but also becomes a concubine to her master or to one of his sons, her status is like that of a married woman, and as such she is permitted to live in her husband's house all her life, like the master's primary wife. He interprets v. 8 as meaning that if her master does not like her, he cannot divorce her, since he has not married her; therefore, he must grant her the right of redemption against payment. Cassuto interprets the obligation to grant her the rights of daughters as meaning that she should stay in her master's home like one of the daughters of the family, if he selects her for his son. Finally, v. 9 reverts back to the contingency that if the owner marries another woman after having taken the girl, he must grant her all the rights of subsistence, but if he does not fulfill this obligation, he must release her without any payment. One need not criticize individually each of these complex interpretations, which are not congruent with the simple meaning of the text and fail to offer a reasonable solution to its difficulties.

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21 Pietersma and Wright, *A New English Translation of the Septuagint* interpret it: "he shall cause her to be redeemed." Online translations of the LXX text, however, such as *Elpenor, The Greek Word*, translates "he shall let her go free;" this seems to contradict the meaning of ἀπολυτρόω "to release on payment of ransom," which cannot refer to the master paying, and the term והפדה cannot relate to him. Another online translation of the LXX similarly adds: "he may only set her free."

22 Otto, "False Weights," 142, referring to Exod 21:7–11, states: "That women were explicitly included in the protection by release regulations was traditional in ancient Near Eastern release law."

23 Umberto Cassuto, *A Commentary on the Book of Exodus* (8th ed.; Jerusalem: Magness Press, 1987 [Hebrew]) 186.

I would therefore interpret this rule about the minor girl sold by her father differently. It was common for a man to buy a minor girl as a servant, intending her to become his wife when she reached maturity. The rabbis state that the money paid to purchase her served as the bride-price; this demonstrates that at the time of the initial sale, this type of relationship—slave and later wife—was assumed.[24] However, if the owner does not like her when she reaches maturity, he must release her, and cannot sell her outside his family,[25] because he has dealt deceitfully with her: he was supposed to marry her and has not kept his promise. The term פדה "redeem" is usually assumed to mean "redeem for a payment," but it is also used in Scripture to mean "releasing without payment."[26] However, though he does not marry her as originally envisaged, he now has the choice to select her for his son; in that case, he must treat her like any other girl, that is, without any discrimination, as stated in Exod 21:10. If he

24 Pressler, "Wives and Daughters," 158, states: "it seems overly narrow . . . to assume that a master could purchase a daughter only if he were going to marry her himself or were going to give her to his son." I agree with this assertion; a master could purchase a young girl for her labour alone, as he could purchase a young male slave, but purchasing her for later marriage was the most common custom, and Exod 21:7 refers to what is common. As it seems to me, Exod 21:7b shows particular concern for her future; thus, we should perceive the spirit of this particular rule. Deut 15:12–18 decrees other rules for the benefit of Israelite mature males or females who sold themselves into slavery, and Exod does the same for a minor girl sold without her consent. In contrast to the identical rules in Deuteronomy for mature males and females, Exodus discerns between minor females and males. The sale of a minor girl has intrinsic limitations regarding the father's and the master's rights and obligations, as we see also in Lev 19:29. On the other hand, I see no hint in Scripture of a special status of "slave wife," as has been devised by scholars (see Pressler, "Wives and Daughters," 160) to justify their interpretation of the rules of Exod 21:7–11. The rule in Lev 19:20 about "a slave girl promised to another man" is enigmatic and has provoked a host of disputes from the *mishna* through traditional as well as modern commentators; whether it relates to an Israelite or alien woman is also a matter of debate. The status indicated is that of a maidservant in limbo—that is, in a transitory period between the promise of freedom and actual betrothal—not a permanent hybrid status as a "slave wife."

25 This interpretation of the phrase לעם נכרי is endorsed by both traditional and modern commentators and scholars. See Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon Press, 1972), 290 n. 1, on the meaning of עם in Exod 21:8. Pressler, "Wives and Daughters," 158 alleges that 21:8b prohibits her sale to another master, but does not forbid the master to "give the girl to a slave or marry her to another man." I utterly dispute her "midrashic"-type conjecture, which patently dissents from the spirit of the biblical text. See extended argumentation against her assumption on p. 117.

26 For example, in Deut 7:8, 9:26, 13:6, 15:15, 21:8, and 24:8, all referring to Israel's redemption by God. The same applies to the use of the term פדה in 2 Sam 4, Jer 31:10 (11 in KJV), and Ps 25:22. None of these redemptions by God involves monetary recompense.

does not comply with any of these contingencies, he must release her without any payment.[27]

Since Exod 21 and Deut 15 relate to different topics, there is no contradiction between the two laws, as some scholars assert.[28] Although there are some inconsistencies among the Pentateuchal books, I do not believe that the final redactors, who attempted to eliminate or minimize such inconsistencies, would have left unresolved such a blatant contradiction on a practical, non-ideological issue, particularly one involving a rule that most plausibly represented the real conditions of their period. The manumission of male and female slaves is different in the two sources, as is the possibility of choosing bondage; in Exodus it is restricted to the male, but in Deuteronomy both male and female servants can choose bondage. The circumstances are different, and so are the rules.

Although Scripture does not indicate exactly when the enslaved daughter must be espoused or manumitted, we can deduce from the context that it must be not later than at the end of the regular period of slavery for a male slave or a mature woman (i.e., six years). Scripture emphasizes that if neither her owner nor his son wants to marry her, she cannot be sold to somebody else, nor can her owner demand money for granting her liberty (Exod 21:8, 21:11). Thus, these rules cannot refer to the end of the regular six-year period of servitude, since at that point, obviously, her master, if he does not marry her, must release her without any payment and cannot sell her to somebody else.[29] That the rule of

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27 For example, the Code of Hammurabi §117 decrees that a family member sold into slavery by a debtor shall be freed after three years. We must consider, however, that the Israelite lawgiver often changed crucial details of the Mesopotamian rules and habits that they absorbed, adapting them to Israelite beliefs and doctrines, particularly about the dignity and value of life. An example is the scriptural admonition "Do not accept a ransom for the life of a murderer" (Num 35:31), which prohibits a practice common in the surrounding cultures and legal codes. Therefore, comparisons with and deductions from such laws must be considered with the utmost caution. On this specific topic see Paul Heger, "Source of Law in the Biblical and Mesopotamian Law Collections," *Biblica* 86:3 (2005) 324–42.

28 See Pressler, "Wives and Daughters," 148–9.

29 Although women were betrothed by their fathers as minors, a woman's marriage—that is, leaving the paternal home to live with her husband—occurred around the period of her maturity. Jewish marriage consists of two stages: betrothal (biblical ארושה) and marriage (usually אשה or בעלת בעל; Deut 22:22–29). The first is legally binding; that is, the woman is designated for the man, and sexual contact with any other man is perceived as adultery. The second stage is the marriage proper, consummated by sexual intercourse, as the sobriquet בעלת בעל indicates. Today, the two stages are performed on the same occasion, in that order.

Exod 21:7–11 relates exclusively to a minor daughter is also evident from the parallel law in Deut 15:12–18, which concerns the conditions of adult slaves, male and female alike, who must complete a full six years before being freed. The minor girl enjoys special privileges relative to the minor boy, whereas adult men and women are equal.[30] The minor girl receives special remuneration upon attaining her freedom (through marriage to her master or, if he does not marry her, through manumission); the adult slaves receive financial remuneration (Deut 15:13–18). Thus, it is obvious that the biblical rule relates to the sale of a minor daughter. The rabbis understood the biblical decree of Exod 21:7b as a privilege, as we read in *m. Qidd*. 1:2 that the maidservant is privileged over the male servants because she is manumitted by signs of puberty.[31] The rabbis understood this to be the simple meaning of the biblical text, and the Gemara does not even ask, as usual, "Wherefrom do we know it?"—nor do we find a *midrash* justifying this interpretation. *B. Qidd*. 16a deduces another *halakhah* from this biblical decree, via the midrashic *a fortiori* method, that if a father dies before his daughter's manumission she is automatically freed from her master.[32] A *midrash* is required for this rule, which does not appear in Scripture, but not for her manumission at puberty.

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30 I disagree with those scholars (Otto, "False Weights," 142; Pressler, "Wives and Daughters," 147, 151, and citations at 149–50) who claim that the rules of Deut 15, which equalize conditions for male and female slaves, are a later development, conflicting with the rule in Exod 21 that distinguishes between a male slave, freed after six years, and a female slave, who does not enjoy this privilege. In my opinion, the freedom of a Jewish slave in Exod 21 refers to men and women alike; the text divides men and women only because of the special rule applicable exclusively to female minors. Otto's affirmation that the decree forbidding the sale of the captive woman in Deut 21:10–14 consists of a "moral revolution" in comparison "with the average and usual treatment of captive women in antiquity" (p. 145) seems to be the basis of his conception that similarly the rule of Deut 15:12, equalizing the manumission of male and female, must be conflicting with the previous rule of Exodus, which discerns between them. He ignores the fact that already in the earliest Book of Covenant many significant rules regarding human value diverge from those of the surrounding cultures; the rules of Exod 21:15, 17, 20 (slave), 23, 25, 26 (slave), 29, 31, and 32 equalize men and women, in contrast to Mesopotamian laws. Moreover, regarding our specific topic, we have seen (note 27) that the Code of Hammurabi §117 decrees that a family member sold for the payment of debt is freed after three years. Hence, Otto's philosophical basis has no foundation. Weinfeld, *Deuteronomy*, 290, takes this as understood: "... since the law of six-year service applies to both male and female slaves."

31 See n. 2.

32 *B. Yeb*. 87a deduces from Num 30:10 that if a woman was freed from her father's authority by her marriage, she cannot come under his authority again if she is divorced or widowed;

Last but not least, Scripture explicitly states that the father's authority ceases with his daughter's maturity. In Num 30, which sets out the rules governing a father's authority to annul a daughter's vows, Scripture emphasizes twice that his authority depends on two conditions: "her being a young girl and living in her father's house," that is, a member of his household; this statement appears in v. 4 and again in the concluding v. 17.[33] In contrast, the rule placing a wife under the authority of her husband includes no limitations whatsoever. Similarly, the rule on independent (divorced or widowed) women mentions no limitations; they become independent even if they are still minors. It seems logical to assume, therefore, that the father's authority over his daughter would also cease upon her maturity with respect to other issues, such as giving her in marriage to whom he pleases or selling her as a maidservant. Zelophehad's daughters, for example, could freely choose their husbands in the absence of a father, although we have no indication of their age. We read in Num 36:6: "They may marry anyone they please as long as they marry within their father's tribal clan."

3.3 Rabbinic Rules Relating to Male and Female Minors

As I have argued above, Exod 21:7 emphasizes that a young woman has some privileges relative to a young male sold into slavery by his father, whereas the rabbis assert that a boy cannot be sold by his father.[34] Given the context and the emphasis on the fact that a girl is not manumitted in the same manner as male slaves, as well as the authority that fathers exercised over their minor children at this period, it seems to me most plausible that biblical law permits a father to sell his minor son as a slave. We see in Neh 5:5 that both sons and daughters were taken in bondage for payment of their fathers' debts. It does not seem that the bondage was illegal; Nehemiah's pleading indicates an exhortation to behave with brotherly ethics. It is also plausible that they took interest

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she becomes independent, and he cannot annul her vows anymore, even if she returns to his household as a minor.

33 Compare Lawrence H. Schiffman, "The Law of Vows and Oaths (Num 30, 3–16) in the *Zadokite Fragments* and the *Temple Scroll*," in 57/8, 15 (1991), 199–214, who at 209 doubts whether Scripture "or for that matter the Temple Scroll envisaged such a limited applicability for this law." I believe we should understand literally the biblical condition בנעוריה בית אביה "her being a young girl and living in her father's house."

34 We read in *Mek. Mishpatim, Mass. D'Nezikin parsha* 3 that the man sells his daughter, but not his son.

on their loans, which is prohibited from an Israelite. In Exod 22:24 the term נשה appears identical to Nehemiah's accusation in 5:7b. For reasons that we are unable to uncover today, the rabbis decided differently, basing their deduction on the use of בתו "his daughter," in Exod 21:7, excluding his son. Selective *midrash* is a common rabbinic procedure; for example, while Deut 25:5 specifies that a levirate marriage need not be performed if the deceased left a son, the rabbis decided that there is also no levirate marriage if the deceased had only a daughter (*Sifre Deut. piska* 288). Although reason would require the existence of a son, since only a man can carry on the name of his late father (the *raison d'être* of the levirate rule), the rabbis applied the limiting *midrash* so as not to relieve the brother from the levirate obligation if the deceased had a son from a slave girl or an alien woman, since he is not deemed to be his son.[35]

Hence, according to biblical law, as it seems to me, the rule that the father could give his minor daughter in marriage to whom he pleased and receive the bride-price was not exclusive and discriminatory to females; he could also sell his minor sons as slaves, its relative parallel.

The rabbis promulgated the law, absent in Scripture, that a minor girl married off by her family can seek the annulment of her marriage and leave her husband upon reaching maturity. She does not even need a divorce procedure; it suffices for her to declare: "I do not want this man as my husband or my betrothed" (*t. Yeb*. [Lieberman] 13:1). This rabbinic rule concerns a sale for subsequent marriage made by the girl's mother or brother, since a marriage made by either of them for a minor does not constitute a full formal and legal betrothal; a simple pronouncement by the girl suffices to annul the betrothal contract. If the betrothal was made by her father, however, it is a legal act and she needs an official writ of divorce to be free to leave her husband and marry someone else. On the other hand, *b. Qidd.* 19a grants the minor girl sold as a servant the privilege of declining marriage with her master or his son; we read there: "Only a mature person can designate her as his wife (the master's son too must be mature [Maimonides, in *Mishne Torah, Hil. Avadim*], and there is no designation without her consent." (ibid. 4:7)[36]

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35 Strangely as it may seem, the LXX interprets בן here as σπέρμα, the undefined "seed," instead of the usual υἱός "son," which may be interpreted as supporting the rabbinic interpretation.

36 What I have not found in the rabbinic literature is whether the Court can compel her husband to issue her a writ of divorce, against his will, if she declines to marry him at her maturity, as she could if she had been sold off by her mother or brother. Reason would dictate that from the point of view of the girl's power to free herself from an unwanted

3.4 Plausible Attitude of Qumran towards the Father's Authority

Wassen, relying on the texts of 4Q418 (4Q Instr^{d}) 167a a+b:6 and 4Q271 (4QD^{f}) 3:8, claims that a woman "moved from being under the authority of the father to being under the authority of the husband,"[37] and that marital arrangements were perceived as a "business transaction."[38] At the same time, she expresses uncertainty as to whether these rules, based on the biblical decrees, indeed relate only to minors,[39] as the rabbis explicitly affirm. I think this point should be acknowledged *a priori* for a number of reasons, as argued above (pp. 121–124) and complemented below. Hence, the father's authority relates exclusively to her period of minority, and she becomes independent in all respects upon attaining maturity. She loses her independent status when she marries, but regains it when divorced or widowed. Marital arrangements were indeed perceived as a "business transaction," as Wassen claims, but this denoted the legal aspect of the agreement, and does not convey that the woman is bought and sold as property. Moreover, executing the legal aspect of marriage in this manner was the common procedure in the surrounding cultures, and in a purely formal sense still occurs even today. And the fact that the father received the bride-price explains why it was he, not the minor bride, who was responsible for disclosing her hidden defects to the prospective bridegroom.

As said above, the rabbis deduced their rule limiting the father's authority over his minor daughter from Num 30:4 and 17. Consequently, the rabbis declare in *m. Qidd*. 2:1 that a man betroths his daughter up to the age of twelve years and six months; after that, she is perceived as adult, and he cannot betroth her; she may betroth herself to whomever she pleases. There is no valid reason to assume that the Qumran scholars, who applied a simple interpretation of the scriptural rules, would interpret this rule against its simple meaning. The rabbis, following their usual pragmatic method, adapted their *halakhot* in order to systematize Scripture's decrees with the socially acknowledged customs of their period. As we know from other sources,[40] it was common for girls

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marriage arranged during her minority, the two situations should be equal, but as said, I have no evidence for it.

37 Wassen, *Women*, 76.

38 Ibid., 74.

39 Ibid., 76.

40 Roth, "Gender and Law," 182, discussing the rules of the Neo-Babylonian period and the fact that a woman was generally represented by an agent in contracting her marriage, ponders the possibility that this may have been a result not of male autonomy and women's legal dependency but of the prospective bride's young age. "For," she writes, "we know that Neo-Babylonian wives tended to be younger than their spouses by about a decade, and

to be betrothed by their fathers at a young age; therefore, all the biblical rules relate to such circumstances and should not be taken to indicate that the same rules applied to adult daughters.[41] We do not possess any Qumran writings on this issue, but we may assume that for the same reason, Qumran rules on this *halakhah* were identical to those of the rabbis.

We observe from 4Q502 (4Qpap Ritual of Marriage) 19:2–3 that Qumran, like the rabbis, distinguishes between בתולות "virgins," ready to be married, and נע[רות "young girls," and between בחורים "young men," (plausibly close to the age of twenty) and נערים "boys," between the age of ten and twenty (1Q28[a] (1QS[a]) I: 6–8).[42] We also see in the enigmatic text of 4Q251 (4QHalakha A) 17:7): אל יקח איש בְּתוֹ נ[ערה לאיש זר "A man may not marry his un[married] daughter [to a non-priest (?),"[43] relating to an action (whatever it means) carried out by a father relevant to his daughter, that it refers to the period of her status as נערה, not as בתולה.

Scripture, the basis of all *halakhot*, and particularly in its simple understanding as practised in Qumran, also distinguishes in other instances between אשה and נערה, the first applying to a woman and the second to a young girl, whether betrothed or not. In Deut 22:22 we read אשה בעלת בעל "another man's wife,"[44] whereas in 22:23 we read נער בתולה מארשה "a betrothed virgin," and in 22:28, נער בתולה אשר לא ארשה "a non-betrothed virgin." In Deut 22:13–19,

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thus the bride was more likely than the groom to have a living parent." The same conditions plausibly prevailed in Israel.

41 The numerous rabbinic discussions and rules regarding a daughter's rights and the extent of her power at the two stages of her maturity—at twelve years and one day and on reaching puberty—demonstrate that girls were betrothed or married as minors. We may assume that the same applies to Qumran, whose rules insist that men marry at a mature age but include no such instruction for women.

42 4Q502 (4Qpap Ritual of Marriage) distinguishes between the two classifications of young women; Deut 22:23 uses the two terms together נער בתולה, but it is possible that the author intended here to assert that the rule relates to both categories. Moreover, something seems to be missing here, since נער is written without a ה at the end (as it should be for a young woman). On the other hand, I presume that the perceived meaning of נער differs between Qumran and the rabbis: in the Qumran writings, it relates to boys under age twenty, whereas for the rabbis it refers to a young boy before puberty (that is, sexual maturity, proven by having pubic hair). 1Q33 (1QMilḥamah) VII:3 shows that until the age of twenty a boy or young man is called נער זעטוט, and the same should be understood in 4Q465 (4Q Misc Rules).

43 As translated by E. Larson, M.R. Lehmann, and L. Schiffman, *The Dead Sea Scrolls Electronic Library* (Leiden: Brill, 2006).

44 This is the NIV translation; the KJV translation is similar. The LXX translates as "settled together with another man," and *Tg. Onq.* and *Tg. Ps.-J.* use technical terminology: אשת איש literally "the wife of a man."

which describes a father's intervention to defend his daughter when her husband questions her virginity, the girl's minor age and her living with her father are emphasized. Although the lemma starts with the term אשה, and describes the circumstances of a man's taking a wife, the intervention of the girl's father starts immediately with אבי הנערה, and the subsequent narrative refers exclusively to a minor girl given away by her father. Verses 20–21 deal with the scenario in which the girl is found not to have been a virgin at the time of her marriage, and thus has committed adultery during her betrothal.[45] Since her wrongdoing took place in her father's house, under his supervision and authority, she is executed there. As she was still a minor living in her father's house, he is responsible for her behaviour and is disgraced by his failure to ensure it;[46] thus it is evident that the entire lemma relates to a minor daughter. We may therefore confidently assume that the Qumran texts, interpreting Scripture straightforwardly, affirm that the father's authority over his daughter terminates when she reaches maturity. The identical rabbinic *halakhah*, based in this case on a simple understanding of the scriptural rules, reinforces the validity of this supposition.

3.5 A General Reflection on the Status of Women in Jewish Writings

Returning to Wassen's dismay about the character of the traditional betrothal as a "business transaction," I would like to clarify the intent of the rabbinic rule, still practised today, that the bridegroom must give his bride an object worth the petty amount of one *perutha* at her betrothal. This rule does not indicate that her value is low; giving something to the woman is not a payment for her consent to marry but, rather, a symbolic act that legally validates the betrothal agreement.[47] The sacral sobriquet קידושין given to this proceeding

45 This is the rabbinic interpretation of this difficult, unclear biblical text. However, scholars such as Tikva Frymer-Kensky, "Virginity in the Bible," in *Gender and Law*, 79–96 at 94, and Victor H. Mathews, "Honor and Shame in Gender-Related Legal Situations in the Hebrew Bible," also in *Gender and Law*, 97–112 at 104, perceive it as a punishment not for adultery but for the loss of virginity and the shame this brings on the family and the community. Otto, "False Weights," 134–7, offers an entirely different explanation of this difficult text. See my interpretation of Deut 22:20–21 and 4Q159 (4QOrdin^{a}) in Paul Heger, "Qumranic Marriage Prohibitions and Rabbinic Equivalents," *RevQ*, 95, 24/3 (May 2010), 441–451, at 448–9).

46 *Rashi* comments, "Who raised evil offshoots [children] will be disgraced for it."

47 The concrete act validates agreements and sales in which the purchased item cannot be taken over right away at the moment of sale. Such a ceremony is employed in Ruth 4:7–8

demonstrates the rabbis' intention of bestowing an exalted ambience upon what remains legally a business transaction.

Regarding the consternation expressed by feminist scholars about the status of women in biblical, Qumran, and rabbinic writings, I believe one should consider a comparison with the rules and customs prevailing in the surrounding societies at the period of the rabbis and the Qumran writings. According to Roman law, for instance, the foundation of our modern legal concepts, even an adult woman, unlike an adult man, remained under the authority of her father until marriage transferred her to the authority of her husband.[48]

One should also consider that at that period, Roman law gave fathers unlimited power of life and death over their children, irrespective of age; this power ceased only with the death of the father, but the father could free his children during his lifetime, if he wished, by performing an emancipation procedure like that for freeing a slave.[49] Criticizing ancient laws by judging them against modern criteria and language, without considering the prevailing circumstances of the period, may constitute a biased approach. There is no doubt that in the Middle East at the relevant period women were discriminated against, and scholarly evidence for this is unnecessary; what we can and, I would argue, should do is to examine the differences between attitudes towards women in various cultures, or in different segments of the same

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(the act of pulling off the shoe is perceived to validate the transaction, as is written: "This was the method of legalizing transactions in Israel." In Deut 25:9, the brother releases the widow from her marital obligation to the family by removing his sandal, and she thus becomes free to marry whomever she wishes. In Roman legal custom, a sale was validated by one person holding bronze scales, a symbol of earlier times when men used only bronze monies, and a declaration that the item is "bought to me with this bronze and bronze scales": see *The Institutes of Gaius* (trans. and ed. W.M. Gordon and O.F. Robinson; Ithaca, N.Y.: Cornell University Press, 1988) I:119 at 81. On the other hand, to validate a sale of land, the buyer inserts his stick into the ground, an act similar in its symbolism to the buyer's placing a foot on the property in the city of Nuzi, as suggested by Ernest R. Lacheman, "Note on Ruth iv 7–8," *JBL* 56 (1937): 53–6. See also Åke Viberg, *Symbols of Law: A Contextual Analysis of Legal Symbolic Acts in the Old Testament* (Stockholm: Almquist & Wiksell, 1992) 145–65, on the topic "Removing the Sandal."

48 *The Institutes of Gaius*, 97, rule 144, states that a father can appoint guardians for his children and that this authority expires at puberty for a male child, but not for a female child.

49 Ibid., 47, rule 55: "This right [*Patria Potestas*] is one which only Roman citizens have; there are virtually no other peoples who have such power over their sons as we have over ours." The translators (at 549) explain that it included *ius vitae necisque* "the right to put [his children] to death."

society, in the relevant period and attempt to understand their foundations, that is, the different underlying philosophies or mythologies. Criticizing attitudes towards women that today seem discriminatory and immoral, using language that depicts the rules and customs of ancient peoples as darker than they were and without considering the prevailing circumstances, seems to me to constitute overkill.

CHAPTER 4

Women's Obligations to Fulfill Biblical Precepts

4.1 Introduction

The issue of women's obligations to fulfill scriptural precepts has attracted wide scholarly interest within the general frame of gender discrimination in Jewish law, both ancient and contemporary, because it had and still has an impact on women's status in society.[1] This chapter attempts to clarify the legal aspect of this question as far as can be deduced from scriptural, Qumranic, and rabbinic texts. I do not take a position on the real circumstances in the periods under discussion, which may differ from the intentions of the writings' authors or redactors.[2] I begin by scrutinizing the biblical texts and considering what we can deduce from them, insofar as we are able to detach ourselves from ideas about this topic gleaned from other interpretive sources. I then deviate from chronological sequence by discussing the rabbinic viewpoint, since we possess ample material on this topic in their writings, whereas the extant Qumran texts contain few explicit halakhic rules on the subject and, in particular, lack explanations or motivations for their decisions. Insights into the stance of scriptural and Talmudic writings on this topic should facilitate our comprehension of the Qumran authors' perspectives.

1 Leonard D. Gordon "Toward a Gender-Inclusive Account of Halakhah," *in Gender and Judaism: The Transformation of Tradition* (ed. T.M. Rudavsky; New York: New York University Press, 1995), 3–12 at 3, states "Women have been the objects rather than the subjects of laws, and hence women have been unequal to men under the law."

2 Susan Niditch, "Portrayals of Women in the Hebrew Bible," in *Jewish Women in Historical Perspective* (ed. Judith R. Baskin; 2d ed. Detroit: Wayne State University Press, 1998), 25–45 at 41, states that she "faced the challenge that even the so-called historical books of the Bible and the legal texts are not simply reflections of historical fact or verifiable data." Conversely, Ross Shepard Kraemer, in *Her Share of the Blessings: Women's Religions among Pagans, Jews, and Christians in the Greco-Roman World* (New York: Oxford University Press, 1992), 93, specifies that the study "explores the portrait of Jewish women's religious lives that emerges from these sources."

4.2 Scriptural Attitudes towards Women's Obligations

4.2.1 *Scriptural Commands That Lack Precision about Gender*

Scripture leaves open the issue of which precepts women are obligated to fulfill and from which precepts they are exempted. Most scriptural commands are androcentric—that is, directed to men, in singular and sometimes plural masculine mode. This grammatical feature, however, does not in itself exclude women, as some scholars have argued, since in Hebrew, the masculine mode can also include women.[3] On the other hand, Scripture has implicitly taught us that there are differences between the sexes with respect to the fulfillment of its precepts. The equalizing phrase לך ולבניך ולבנותיך "to you and your sons and daughters," permitting the daughters of a priest to eat the priestly allotment of the fellowship offering (Lev 10:14 and Num 18:19) and the priestly vegetal tithes *Terumah* (Num 18:31, in which the term ביתכם appears), does not habitually appear in commandments; it appears in other grammatical forms in Exod 20:10 and Deut 5:13 regarding their common obligation to keep the Sabbath rest and in Deut 16:14 regarding the holiday rest and enjoyment. With respect to women's permission to eat sacral food, the difference between sons and daughters is striking; the priestly allotment of the lower type of sacrifices (fellowship offering) is granted by God exclusively to the males (Lev 7:34 and 10:15), but the unwed daughters may profit from their father's genealogical rank and eat them, as displayed above.[4] On the other hand, they are not permitted to eat the קדש הקדשים "most holy" sacrifices; Scripture decrees כל זכר יאכל אתו "every male shall eat it" (Num 18:10). A woman may not enter the Temple precinct, where these most holy foods may be eaten; only male priests are permitted to enter: כי חקך וחק בניך הוא "because it is your share and your sons' share" (Lev 10:14; 13 in NIV. See also Exod 28:43 and 29:44, Num 3:10). General commands, such as teaching the Torah, are directed to sons only (Deut 6:7); admonitions to fulfill these commandments are also explicitly directed to men (Deut 4:9), as is the promise to reward them with a long and good life (Deut 4:40). Yet women, who do not seem to be included in the commandments or in the promise of a good and long life, are punished for the transgressions of men

3 See, for example, Maxine Grossman, "Reading for Gender in the Damascus Document," *DSD* 11 (2004): 212–39 at 218 and Eileen Schuller, "Women in the Dead Sea Scrolls: Some Observations from a Dictionary," *RevQ* 93 (2009): 49–59 at 58.

4 Wives, unquestionably, may eat them, like their obligation to rest on Sabbath, although they are not explicitly mentioned. See deliberation about this topic in Chapter 5 pp. 182–184.

(Deut 28:15–68).[5] On the other hand, we find in Scripture both specific commands that explicitly apply only to men, such as the obligation to convey "to your sons and grandsons" the story of the exodus from Egypt for recollection and perpetual transmission (Exod 10:2) and the obligation to participate in the Passover meal (Exod 12:24), and others that apply to both men and women, such as the command to rest and do no work on Sabbath (Exod 20:9). A number of texts use the neutral נפש "soul" (e.g., the prohibition on consuming blood in Lev 7:27) or אדם "human" (e.g., referring to the bringing of offerings in Lev 1:2), or specify both איש "man" and אשה "woman" (Num 5:6, Deut 17:2, and elsewhere), indicating that the commandment applies to men and women alike. Thus, we can deduce which specific commands apply to both men and women, and from which commands women are specifically exempted, but we are left in limbo with respect to the many commands that lack such precise indications, although a distinction is evident.

4.2.2 *Did Women Participate in the Revelation at Sinai? An Analysis of the Scriptural Text*

The issue is even more complex and ambiguous because, as it seems, women were not present at the Sinai revelation, which is the theological basis of the divine source of the Israelite Law and of the Israelites' assent and commitment to obey it, both in advance (Exod 19:8) and after listening (Exod 24:3, 24:7). Although the all-inclusive term העם "the people" is used in the narrative of this event (Exod 19), it must be interpreted here as excluding women, given the context of the succeeding verses.[6] All the ordinances communicated by Moses to the people refer to men; in Exod 19:15 he tells them: "Prepare yourselves for the third day. Abstain from sexual relations." This is the NIV's interpretation, but the literal translation would be: "Prepare for the third day; do not approach a woman." The LXX uses πρόσειμι "to go to or towards / approach," which has no sexual associations and, moreover, is sometimes used in a hostile sense, "to come against / attack" (Liddell & Scott). The KJV translates, "come not at your wives," a somewhat ambiguous and equally inexact translation that

5 Women and men will obviously suffer equally from the severe afflictions enumerated in this text.

6 Phyllis Bird, "Images of Women in the Old Testament," in *Religion and Sexism* (ed. Rosemary Redford Ruether; New York: Simon and Schuster, 1974), 41–88 at 50, writes that Israelite society was modified as a concept of a "religious community composed in the first instance exclusively of males, or perhaps originally all adult males." Bird further writes that this attitude "coincided with the understanding of the 'people' (עם) as the warriors of the community."

may or may not hint at sexual contact. The translators attempted to introduce some sense into this decree, since one would expect the prohibition to refer to contact—of whatever character—with one's wife, yet the text explicitly states תגשו "do not come near / approach *a woman*." This oddity, and the fact that the decree is addressed in the plural yet specifies a singular, unarticulated (*zero article*) woman, should not be overlooked in our hypotheses about the rationale for using this particular expression. The term נגש appears 125 times in Scripture, in various grammatical forms, but never refers to sexual intercourse. In fact, it is used elsewhere in the same lemma, in Exod 19:23: וגם הכהנים הנגׁשים אל ה' יתקדשו "Even the priests, who approach the LORD, must consecrate themselves"—a context in which it cannot be interpreted to mean sexual intercourse, but rather to approach. The usual biblical euphemisms for sexual intercourse are שכב, בוא, and ידע,[7] but the term נגש cannot be interpreted as meaning sexual intercourse.

These apparent oddities, which plausibly led the KJV translator to change the biblical text, suggest that the biblical text alludes to something other than sexual intercourse. There is no compelling justification for changing the translation of the biblical text because it does not fit our preconceptions. I believe that Scripture's use of the undefined term אשה, rather than the frequently used נשיכם (denoting a specific type of separation between men and women, regardless of their particular relationship), is deliberate.[8] It is extremely risky to speculate on the specific motive for this decree. Ancient Jewish mythology

7 The term בוא, commonly translated as "to come/bring," indicates sexual intercourse in Gen 16:4, 29:23, 30, 30:4, 38:2; Judg 16:1; 2 Sam 12:24, 16:22; Ezek 23:44; Ruth 4:13; and 1 Chr 7:23. The LXX interprets it in such instances as εἰσέρχομαι "to go in or into." Gen 29:23b: ויבא אתה אליו ויבא אליה "he [Laban] brought her [Leah] to him [Jacob], and he [Jacob] lay with her" offers us an excellent example of the contextual interpretations of the term. The first ויבא ("he brought her") is rendered as εἰσάγω "to lead in" and the second ("he had sexual intercourse with her") as εἰσέρχομαι "to go into her." The term שכב meaning habitually "to lay down to sleep," as in Gen 28:11, refers to sexual intercourse, as in Gen 30:16, and to die in Gen 47:30. In Gen 19:33, we encounter two meanings of שכב in the same verse. The term ידע, usually used as "to know/recognize/inform," is also used in Scripture as a euphemism for sexual intercourse, for example, in Gen 4:1, 25, 19:8, 24:16; Num 31:17, 18, 35; Judg 9:25, 11:39, 19:22, 21:11, 12; 1 Kgs 1:4; and 1 Sam 1:19.

8 We encounter the term נשיכם with the pronominal suffix in Exod 22:23, Deut 3:19 and 29:10, Josh 1:14, Jer 44:9, and Neh 4:8. Similarly, we encounter the term אשה, with its various pronominal suffixes such as אשתו, אשתך אשתי, נשיו, in many places in Scripture. The unarticulated form, אשה, is used only when it is not associated with a specific subject. Hence, אשה would be irregular if the intended meaning was "their wives," to whom the decree is addressed.

associated a vague recollection of a volcanic eruption with the Sinai revelation; the command not to approach a woman may also be associated with some ancient magical issue. The only possibility I can think of is that it relates to an old taboo regarding the custom of a radical separation of the women during menstruation. Such customs, banning menstruating women from their homes, from temples, and even from their villages,[9] are known from the past[10] and from the customs of traditional peoples,[11] and some restrictions are still

9 *Tg. Onq*. interprets the term בנדתה in Lev 15:19, relating to the impurity of the menstruating woman as בריחוקה "in her isolation/dislocation," and וכל דיקרב בה "who comes near to her (approaches/touches her) will be impure [until sunset]." Using the two opposite poles of "isolation" and "coming near" indicates a concept that may support our theory for the separation from the women before the Sinai revelation. *Tg. Onq*. uses רחק to portray the concrete concept of "far" in its various grammatical forms (e.g., Gen 21:16, 22:4; Deut 12:21), but also to describe the abstract concept of detachment/separation from something, motivated by abhorrence (e.g., Exod 23:7; Lev 20:23; Deut 16:22). We encounter a notable use of רחק for divorcing a woman in Num 12:1; because of the rabbinic interpretation of this enigmatic verse as alluding to Moses' divorcing his wife, *Tg. Onq*., acknowledging this, interprets the biblical לקח, in its simple meaning "married," by adding רחיק "divorced" to the second instance of לקח, identical to *Rashi*'s interpretation. The LXX, too, interprets בנדתה as ἀφέδρῳ αὐτῆς "her separation from [her regular place]," from the root ἀφεδρός "privy/separation," which may serve as an additional support for our theory.

10 Moses Maimonides, *The Guide of the Perplexed* (trans. Shlomo Pines; Chicago: University of Chicago Press, 1963), vol. 2, part III:47, 595, writes that the Sabeans, even at present, keep a menstruating woman in a house by herself, and burn that upon which she treads; they also consider as unclean anyone who speaks with a menstruating woman. He adds: "if a wind that blows passes over a menstruating woman and a clean individual, the latter becomes unclean." In fact, the simple reading of the text of 11Q19 (11QTemple[a]) XLVIII:14–17 would require the banishment of ולנשים בהיותמה בנדת טמאתמה menstruating women from cities. Vered Noam, "Stringency in Qumran: A Reassessment," *JSJ* 40 (2009): 342–55 at 353, understands this *halakhah* as the banishment of "menstruants from the domain of everyday life." In my article, "Stringency at Qumran," JSJ 42 (2011): 188–217 at 215–17, I attempted to interpret this rule to mean a woman experiencing an unhealthy discharge, but I cannot exclude Noam's analysis of the text.

11 Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London: Ark Paperbacks, 1988; 1st ed., 1966), 121, states that "In some [cultures] menstrual pollution is feared as a lethal danger." She quotes the names of the tribes and their various superstitious fears of the consequences for men, the entire community, and also for cattle from coming into contact with menstruating women (pp. 144, 147, 151 and 176).

practised today,[12] even in some Western cultures.[13] The widespread belief in the harmful effect of menstrual blood in disparate cultures that had no contact with one another,[14] and the persistence of this belief, make it plausible to suppose that it may have been considered sacrilegious for men who had had some contact with a menstruating woman to approach the Deity.[15]

We have no indication of the concrete meaning and application of the verb קדש and its derivatives, used extensively in Exod 19. In v. 10, וקדשתם relates to God's command to Moses to "consecrate" the Israelites, and in v. 14 ויקדשׁ announces that Moses has fulfilled this decree, but we do not know the

12 We read in Joanna L. Michel et al., "Symptoms, Attitudes and Treatment Choices Surrounding Menopause among the Q'eqchi Maya of Livingston, Guatemala," *Social Science and Medicine* 63 (2006): 732–42 at 736, that "there are a number of cultural taboos and restrictions surrounding women's health in Q'eqchi Maya communities . . . prohibiting bathing and serving food during menstruation and avoiding looking at newborn children during menstruation and pregnancy." Cecilia Sardenberg, "Of Bloodletting, Taboos and Powers: Menstruation from a Socioanthropological Perspective," *Estudos Feministas* 2 (Portuguese, 1994): 314–44, writes that "Menstrual flow is almost universally viewed as a different category of blood from that which flows in the veins, leading to a sense of aversion & shame . . . often thought to possess magical qualities, which are usually harmful. In many societies, women are isolated during menstrual periods." The following information appeared 25 June 2013 in the New York International Herald Tribune: "Chaupadi is the ritual isolation of menstruating women. It is a tradition practised in Achham, a district in the remote Far Western region of Nepal. Each month, women sleep outside their homes in sheds called 'goths,' in stables or in caves. They are deemed impure and treated as untouchable. They eat separately from their families, cannot enter their homes and often have to wash at a separate tap. The practice has roots in Hinduism."

13 Emily Martin, *The Woman in the Body, A Cultural Analysis of Reproduction* (Boston: Beacon Press, 2001), 97–98 writes: "In Anglo or European history, the taboos were based on beliefs that menstruating women cause meat to go bad, wine to turn, and bread dough to fall. In Cambridgeshire, well into this century, menstruating women could not touch milk, fresh meat, or pork being salted, lest it go bad."

14 Ilana Be'er, "Blood Discharge: On Female Im/Purity in the Priestly Code and in Biblical Literature," in *A Feminist Companion to Exodus and Deuteronomy* (ed. Athalya Brenner; Sheffield: Sheffield Academic Press, 1994) 152–64 at 161, writes that menstrual blood is considered a "major source of defilement. Sexual intercourse with menstruating women is included in the list of heinous sexual offences. The euphemism *niddâ*, used to describe a menstruating woman, reflects her social isolation and deprivation." She is also described as *dāwâ* "ill/unwell," as for example in Deut 28:60.

15 Kraemer, *Her Share*, 101, quotes from the *Epistle to the Bishop Basileides* that in the third century "some Christians shared the perception that sexual impurity (encompassing both menstrual blood and sexual discharge) could interfere with one's ability to receive the Eucharist."

concrete attributes of this act; only the washing of the clothes is recorded; it is the only occurrence in Scripture of the term קדש in association with כבס "washing" the clothes. Even more enigmatically, a form of קדש is used again in v. 23, referring to the mountain, to which the act of washing is obviously not applicable. A further question is raised by v. 22, indicating that the priests too must undergo the "consecration." The text gives no indication as to what action(s) the priests should perform, since the washing of clothes decreed by Moses for all the people is not mentioned. Furthermore, we do not know the reason for the special command directed to the priests, who, we may assume, were included in the previous command to העם "the people" and in its fulfillment (Exod 19:10, 19:14). The phrase מתקדשת מטמאתה (a derivative of קדש) in 2 Sam 11:2–4 may support my hypothesis that it refers to some magical act used, *inter alia*, in connection with purifying a menstruating woman. In 2 Sam, the phrase is commonly assumed to be associated with some act of purification after menstruation, although we have no indication of what it really meant.[16] 2 Sam 11:2 records that Bathsheba is bathing on the roof, presumably naked; but her purification from her uncleanness appears only later, in David's dwelling (11:14), and it is unclear whether this purification was performed after her sexual intercourse with David, as the text seems to indicate, or before it. The text of Exod 19 is problematic in other respects,[17] and seems to have been composed by the final redactor from many sources,[18] but its use of קדש, similar to that of 2 Sam 11, must be perceived as originating from an ancient source.[19] Assuming, as I hypothesize, that Moses' instructions to the men to separate themselves completely from menstruating women refer to *all* women, because

16 The term קדש is nowhere associated with the cleansing procedure from impurities of any kind.

17 See Heger, *Challenges*, 73–75, for a discussion of some problematic aspects of this chapter, rabbinic attempts to solve them, and possible ramifications for a Qumranic *halakhah*.

18 For an analysis of the different ancient sources from which this chapter was composed, see Tzemah Yoreh, www.biblecriticism.com.

19 In fact, the first rules about the pollution of menstruating women appear in the P and H segments of the Pentateuch, chronologically later than the Sinai revelation, according to the traditional viewpoint. But even those do not demonstrate a consistent logical foundation for the various rules. For example, the menstruating woman is unclean for seven days, as is the one who sleeps with her, and anyone touching her will be unclean until evening (Lev 15:19 and 24); no cleansing procedure is required. The one who touches her bed or her seat, however, is unclean until evening, but must wash himself and his clothes to regain purity (Lev 15:21–22); verse 23, in contrast, seems not to require washing for these acts. These oddities point to an amalgamation of different ancient traditions in the rules concerning the pollution and cleansing of menstruating women.

one cannot know which women have begun to menstruate and when, may resolve the apparent contradiction that Moses' instructions to the people do not concur with the divine instructions conveyed to him. If we eliminate the common interpretation, based on rabbinic exegesis, that Moses forbids sexual intercourse, and instead posit that he commands a total separation from women in general because some women will be menstruating, then Moses repeats the divine instruction, but in a simpler, more understandable style: "Do not approach a woman." This would also offer a reasonable explanation for the use of the undetermined term אשה "a woman" in place of נשיכם "your wives," as we would expect if the command prohibits sexual intercourse. Further, if men who have had any contact with a menstruating woman must not be present at the Deity's revelation at Sinai, then women would be definitely excluded. I am aware that I have no hard evidence for my hypothesis, but the arguments cited above make it plausible, as well as resolving some difficult textual problems. In fact, my thesis and argumentation do not relate to the question of what is or was the truth but, rather, address what we can deduce by logical consideration from the text before us.

It is evident that the entire pericope in Exod 19 relates to communication with and behaviour of men, as rabbinic speculations assert, rather than women.[20] Furthermore, if the men were instructed not to have sexual intercourse with their wives (against the simple interpretation of the biblical text), yet the women were present, albeit separated from the men—as one late traditional commentator asserts[21]—one would expect an explicit rabbinic dictum to this effect. Yet the rabbis do not mention anywhere that women participated in the miraculous event of the Sinai revelation to justify women's obligation to fulfill the divine decrees given at Sinai, as they do in other similar cases. For example, the argument "because they too were present at that miracle" is used to justify women's obligation to drink four cups of wine at the Passover meal (*b. Pesah. 108a*), to recite or listen to the *Megillah* on Purim (*b. Meg*. 4a), and to kindle the Hanukkah candles (*b. Šabb.* 23a). Women's participation in the Exodus miracle is endorsed by this superlative pronouncement in *Mek. Mass. D'Shira, parsha* 3: "Rabbi Eliezer says that a maid servant saw at [the miracle of the sea] what Isaiah and Ezekiel [the prophets] did not see?" (Isa 6, Ezek 1). But the participation of women in the miracle of Sinai and their seeing and listening to God's words (Exod 20:15, 19, expressed in masculine plural) is not mentioned anywhere in the authentic traditional rabbinic literature, lending

20 See *Abot R. Nat*. Recension a and b, Chapter 2 and *b. Yeb*. 62a.

21 See p. 149.

further support for the thesis that woman did not participate in the Torah revelation at Sinai.

4.2.3 *The Range of* העם *and* עדה

The presumed neutral term העם is used often in Scripture—not only in the above narrative—to identify the men of the people. In the introductory verse of the Golden Calf narrative, the phrase "העם the people gathered around Aaron" must be understood as referring to the men. In v. 2, Aaron replies to the people's demand by saying: Take off the gold earrings from your wives, sons, and daughters, and bring them to me, indicating that his interlocutors are male. כל העם in Exod 32:3a may refer to men and women alike[22] since we observe in Exod 35:22 that both men and women bore ornaments and brought them to Moses, but 32:3b, ויביאו אל אהרן "and brought them to Aaron," relates to men only. The men were the instigators of the wicked affair; they were ordered by Aaron to take off their women's jewels; and they orchestrated the entire event. The many uses of העם in the narrative refer exclusively to men; women were not involved. Therefore, only men were executed by the Levites on Moses' order (32:27), and only men are named in the identification of the dead (32:28). Similarly, העם in Num 25:1 perforce refers exclusively to men. Moses' instruction to the judges[23] to kill all the men who worshipped the idol (Num 25:5) acknowledges the men's misdeeds. Considering the righteousness

22 I do not think that the addition of כל to העם in Exod 19:8 includes women, in contrast to העם that does not, although that possibility cannot be excluded. I conjecture that the use of the כל העם there is not intended to include women, since the husband's commitment legally obligates his wives. Its aim is to emphasize that all the people, without exception, committed themselves to do everything that God has said. In fact, *Tg. Onq*. interprets the phrase as כל עמא כחדא, adding כחדא "like one/unanimously," and the LXX does the same, rendering πᾶς ὁ λαὸς ὁμοθυμαδὸν "all the people with one accord." The NIV follows them, translating "the people all responded together." The scrutiny of the expression כל העם in the Pentateuch does not imply a distinction between העם and כל העם. The understanding of the term as inclusive or exclusive of women depends rather on the context, as Schuller, "Women in the Dead Sea Scrolls," 58–59, states regarding a similar issue, namely, when the masculine form of a biblical text also, at times, includes women.

23 The term שפטים in Deut 16:18, associated with שטרים, is translated by the NIV as "judges and officials," and this seems to be the habitual translation: the judges who deliver the legal decisions and the officials appointed to enforce them. In our verse, however, the translation of שפטים as "judges" by the NIV and KJV is inappropriate, since the judges do not enforce their own judgements. The LXX interprets שפטים in Numbers as φυλαῖς, from the root φυλή "a tribe," but also "a contingent of soldiers furnished by a tribe," and in Deuteronomy as κριτὰς "judges." The traditional commentator *Rashi* relates them to the officials "over thousands, hundreds, fifties and tens" appointed by Moses, whose

of divine justice, one may assume that here, too, the women were spared from the plague; Scripture records that the plague affected the בני ישראל and gives the number of the dead המתים (Num 25:8–9) in masculine plural, which may indicate that women were not affected.

The exclusion of women from active participation in the people's affairs and in their evil behaviour is similarly evident from two significant narratives about the wickedness of the people. Korah, in launching his rebellion, gathers עדה "the assembly" (Num 16:19), in which only men over twenty were included (Num 1:2–3); women are not involved either in the gathering or in subsequent grumbling against Moses (Num 17:6, 16:41 in KJV, in which עדה is used interchangeably with העם), and they are not punished by the plague that afflicts the men (Num 17:12, 16:47 in KJV; again, the number of the dead המתים is given in masculine plural).[24] In the narrative of the scouts sent by Moses to explore the land of Canaan (Num 13), again עדה is interchanged with העם; both terms refer to men only, as we see later in the text. In Num 13:26, עדה is used to describe those to whom the spies reported their observation, but in v. 30 Caleb silences העם "the people," who seem to have been worried and disappointed by the report, as we see as the narrative develops. Only counted men over twenty grumbled (Num 14:2–3) and deserved punishment (v. 29), and that is further confirmed at the fulfillment of the announced retribution (Num 26:64–6). *Num. R.* 21:10 emphasizes that the masculine mode of these verses indicates that only the men were convicted and died in the desert, whereas the women entered the land. The succeeding narrative of Zelophehod's daughters demonstrates it. The *midrash* equally asserts that the women were not involved in the sin of the Golden Calf, and were not punished.

There are occurrences of העם that according to the context include both men and women; for example, in Num 33:14b, Deut 16:18b, and Deut 7:6.[25] On the other hand, I do not believe that the author of "and then the hands of all the people," in the description of the idolater's execution by stoning (Deut 13:10 and 17:7), intended that women should participate in the execution. It is

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task was to "serve as judges for the people at all times" (Exod 18:21–22); hence, שפטים is appropriate.

24 Although the term מתים could grammatically intend both men and women, the term עדה used in these verses indicates that they refer to men only.

25 The numerous passages about the holiness of Israel in Lev 11:44–45, 19:2, and 20:7, 26 refer to men and women alike. I did not cite Deut 4:10 because it relates to the Sinai revelation, which I argue women were not present at. On the other hand, the term העם in Deut 31:12 includes women, but this is explicitly emphasized in the verse, and cannot serve as evidence for the interpretation of the term without further context that indicates who is included.

evident that context determines the correct interpretation of עם, with or without the adverb כל, whether it relates to men only or to men and women alike.

4.2.4 *Ramifications of Women's Absence from the Revelation at Sinai*

Women's absence from the most momentous event of lawgiving in Israel's history and culture[26] and their exclusion from participation in public affairs cast serious doubt on Scripture's attitude towards the relevance of the Law for women, the pertinence of its commands, and the manner in which their obligations should be accomplished in particular circumstances. This significant question about women's status and equivalence to men with respect to fulfilling the Torah's precepts relevant to them[27] is further complicated by the reality that the man is the exclusive conduit of God's commands relevant to the woman. It remains his prerogative, we may assume, to choose how to transmit the divine commands, and possibly also what to transmit and what to omit. We observe that God gives to Adam the first negative command—from which trees to eat and from which not to eat.[28] God relies on him to transmit this

26 Shaye J.D. Cohen, "Are Women in the Covenant?" in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies* (ed. Tal Ilan et al.; Tübingen: Mohr Siebeck, 2007), 25–42 at 26–7, is not resolute on the issue of whether women participated at the Sinai revelation, by raising conjectures in both sides. Relying on the fact that "women were part of the people, the children of Israel, who departed from Egypt," Cohen states, "women stood at the foot of Mount Sinai," without specifying whether he is indicating that women participated in the event of revelation or that they were there but did not participate. Cohen hints to a contrasting indication, citing Exod 19:14–15, which commands men not to approach their women. He also draws attention to the tenth commandment (not to covet one's neighbour's wife), which cannot be addressed to women. Cohen thus leaves in limbo the question of whether women participated in the revelation and are "parties to the covenant" or not.

27 Judith Romney Wegner, "Women in Classical Rabbinic Judaism," in *Jewish Women in Historical Perspective* (ed. Judith R. Baskin; 2d ed.; Detroit: Wayne State University Press, 1998), 73–100 at 80, states that according to the Mishnah, "even the dependent woman remains a person. As a member of the Israelite community, she is bound by the responsibilities of Jewish personhood and must in principle observe the rules of Jewish law and custom." I agree with Wegner's first premise that a woman is a person in the ambit of Jewish law according to Scripture and rabbinic literature, but disagree with her second premise that, as such, a woman is expected to "observe [all] the rules of Jewish law and customs." Hence, women's responsibilities, as members of the Jewish people, are of lesser rank than those of men.

28 The first divine command to procreate, in Gen 1:28, is given to both Adam and Eve, because it is a task which must be accomplished by a man and a woman. Although the rabbis decided that the woman is not obligated to fulfill this command (*m. Yeb*. 6:6),

command to Eve, and indeed, Adam does so; but he changes dramatically the divine rule conveyed to Eve, as we learn from her dialogue with the serpent.[29]

We observe from another biblical rule that, indeed, the man's will and authority over his wife override even the divine rule. Num 30 describes a great variety of circumstances related to a father's or husband's authority to annul the vows of his daughter or his wife, because his will and decision override both her will and her obligation to fulfill her vow.[30] Num 30:7–9 and 30:11–14 grant the husband the authority to annul his wife's vows, and therefore God will forgive the woman her sin וה' יסלח לה for failing to accomplish her obligation; the man commits no sin by preventing his wife from fulfilling her obligation towards God, because God has given him this authority. However, when he exceeds his God-given authority by annulling his wife's vow long after he hears about it, he performs an unlawful act; her guilt is transferred to him, and he is not forgiven for his transgression, as we read in 30:16.[31] One might expect that in such a case, when the man oversteps the authority granted to him by God, Scripture would decree that the woman must obey the divine obligation and fulfill her vow, but instead Scripture seems to require that she obey her husband's request, rather than the divine command, even in these circumstances. Although the husband's behaviour is sinful, and he will bear the consequences, God "surrenders" his right in favour of the husband.[32] I hypothesize that the philosophical root of this rule was the critical significance given to ensuring harmonious married life and family stability.[33]

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a disputing Tanna deduces from Gen 1:28 that the woman is equally obligated to fulfill the precept. Hence, we may assume that its author or redactor thought likewise. The issue of the different sources for Gen 1 and Gen 2–3 should not affect my proposition.

29 Eve's dialogue with the serpent portrays her as a naïve, unsophisticated person telling only the truth, and there is no reason to suspect her of altering Adam's instructions to her. Hermann Gunkel, *Genesis* (trans. Mark E. Biddle; Macon, GA: Mercer University Press, 1997), 17, hypothesizes that the addition of the prohibition to touch the tree may have been the narrator's supplementation, "meant to portray the zealous nature of the young woman." According to Bal, "Sexuality," 33, that "alleged error" simply indicates Eve's confusion of the tree of knowledge with the tree of life—an understandable mistake. See further data on this issue in Chapter 2, pp. 47–77 and nn. 11 and 12.

30 The father's authority to annul her vows expires at her maturity (*m. Ned.* 10: 2).

31 Timothy R. Ashley, *The Book of Numbers* (Grand Rapids, MI: Eerdmans, 1993), 581, states: "in the cases here considered [i.e., in vv. 14–16] guilt is incurred, but it belongs to the husband, not the wife."

32 Some traditional commentators have indeed some difficulties with such a bold assumption, and devise solutions to minimize its impact. *Sifre piska* 156, however, interprets the rule according to its simple meaning, as I did.

33 As it seems, the rule of v. 16 applies only to the husband, not to her father.

4.2.5 *The Husband's Authority to Decide Which Precepts His Wife Must Fulfill: The Evidence*

As we have seen, Scripture upholds the husband's decision about his wife's behaviour even against the law,[34] against the expectation that in such a case the woman should fulfill her vow.[35] This apparent peculiarity may have been the basis of the perception that Scripture grants the husband authority to decide which precepts, and what information about how to accomplish them, he will convey to his wife,[36] except, plausibly, those precepts that are explicitly indicated in the Torah as obligatory for women and men alike, such as the commands to rest on Sabbath and not to consume blood, the prohibition of all forms of idolatry, and similar forbidden acts. Certain precepts, practised by some people and orally transmitted from generation to generation, may have been recommended to be imposed on women by a spiritual leader or elders of a community or area and, having gained a foothold there, spread with time to other areas.[37] Through a "collaborative" process, some of these customs were then finally acknowledged by the rabbis as emanating from the Torah, and thus were established as definite rules for all Jewish women, and slowly became the normative rules of all Jews. I emphasize the qualification "normative" because, as we know, the Qumranites did not accept all of the rules previously decided, plausibly by the Pharisees, and acknowledged by the rabbis. The prohibition on polygamous marriage and marriage between uncle and niece are just two examples of such crucial *halakhot*, whose sources, as I understand, were different customs circulating among the Jewish public. The Qumranites preferred the customs of those groups that prohibited polygamy and marriage with a

34 We encounter a similar rabbinic rule granting preference to the woman's obligation to satisfy her husband's requirements over her scriptural obligation to honour her father in *t. Qidd.* (ed. Lieberman) 1:11, because she cannot decide by herself to accomplish her duties towards her father.

35 This reality refutes the assumption of Isaac Sassoon, *The Status of Women in Jewish Tradition* (New York: Cambridge University Press, 2011), 66, that Num 30 permits the husband to annul his wife's vows on "supererogatory miṣvot," but he "has no jurisdiction" over "his wife's observance of miṣvot in general."

36 Berman, "The Status of Women," 16. Berman, a traditional scholar, declares that the rabbinic decisions regarding which precepts women should be exempted from were guided by the principle that "no law would stand in the way of her [the woman's] performance" of her duties towards her husband and children, and in the shaping of a home.

37 Joseph Blenkinsopp, *Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism* (Oxford: Oxford University Press, 1995), 92, states that early Israel "was a traditional society, which implies that norms for conduct were determined by appeal to the wisdom of the group accumulated over centuries."

niece. Since there are no explicit biblical texts outlining these prohibitions, the Qumran texts justify them by proffering logical deductions from scriptural texts (CD IV:20–V:1 and V:10), as the rabbis did by similar, but not identical, midrashic interpretive methods.[38] I have published elsewhere a similar explanation for the "non-normative" *halakhot* of *Jubilees*.[39]

Such a conjecture is similar to Qumranic or rabbinic decrees that have no explicit origin in Scripture. The structure and content of the phylacteries, for example, are based on Deut 11:18b: "Therefore shall ye lay up these my words in your heart and in your soul, and bind them for a sign upon your hand, that they may be as frontlets between your eyes" (KJV translation) and on similar but not identical biblical verses about this decree. In fact, the Samaritans and the Karaites, not accepting the rabbis' decree and denying their interpretation, interpret this verse as a symbolic rather than concrete decree, claiming that in one of the four similar biblical passages, Exod 13:9, the cryptic לטוטפת (*totafot*) is replaced with the abstract, symbolic לזכרון "remembrance." The text of Deut 11:18 seems to support the Karaite theory of its symbolic character; as the first part of the verse to fix God's words in the hearts and minds relates to a symbolic rule, so does the second part: tie the symbols on your hands and they should be as טוטפת as frontlets between your eyes. Nevertheless, the rabbis claim that their interpretation is the correct one, received orally from God by Moses at Sinai; phylacteries have been found in the Qumran region, and Matt 23:5 records that the Pharisees wore phylacteries.[40] The phylacteries found in the Qumran region were similar in their construction (four cells in one case) to the current rabbinical-formulated phylacteries; their content was not exactly the same, adding two further biblical lemmas to the rabbinic four.[41] There is no way to deduce from the relevant biblical verse the obligation to concretely bind scriptural lemmas on one's body, much less the structure, colour, and content of the case; therefore, *b. Šabb*. 28b declares that all this description is a "halakhah received by Moses at Sinai."[42] Despite the utter absence of a

38 Heger, *Challenges*, 35–41.

39 Ibid., 223–4. I wrote there, in reply to a different conjecture, that "I would rather assume that at this time [of the appearance of *Jubilees*], as in the later period, different customs and *halakhot* circulated among the Jewish public, since there was no supreme authority in Israel whose decisions were universally acknowledged." See ibid. for a more extended discussion of this issue.

40 We read there: "They make their phylacteries wide and the tassels on their garments long."

41 Yigael Yadin, *Tefilin-shel-rosh* (Jerusalem: Ha-ḥevrah le-ḥakirat Erets-yisrael ve-'atikoteha), 1969.

42 Maimonides, Introduction to *Interpretation of the Mishna* (trans. from Arabic to Hebrew by Joseph Kapach; Jerusalem: Mossad HaRav Kook, 1961; 8th reprint, 1993) 10, explains

biblical source for these *halakhot*, both Qumran and the rabbis practised them, which is evidence that some revered Jewish personality established them and that they were acknowledged by the Pharisees and at Qumran as fundamental Torah.[43] Hence, we observe that some of these orally transmitted customs were accepted by all the Jewish people (if we assume that the Sadducees also accepted the wearing of the phylacteries), while others were rejected by some or by most of the people. The prohibition of polygamy, for example, practised by some groups (as discussed on p. 143), was rejected by the great majority of the Jewish people.[44]

Although the following passages relating to the subject of our inquiry are from later rabbinic times, we may reasonably assume that the stages of the institution of new or reformed *halakhot* were similar to the circumstances in the pre-rabbinic period. *Halakhot* and opinions may differ in relation to their period, but public agreement to changes of custom were definitely slow processes in the period of our investigation.[45] A narrative in *b. Hullin* 110a attests to the developmental stages of new *halakhot* and their slow diffusion until acknowledged as a prevailing *halakhah*, mandatory for all Israel. We read there that Rab (Amora, about 200 CE) visited a town in Babylon. Surprised that the

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that what God conveyed to Moses at Sinai is the source of a *halakhah* and relates to such *halakhot* that have no support at all in the biblical text. Among these particular *halakhot* are all the details of the phylacteries (*b. Menaḥ.* 35a and *Moed Qat.* 3b).

43 We read in *b. Ros. Has.* 12b: A head that does not lay/bind phylacteries is a willful transgressor/apostate. The overwhelming significance of this ritual is evident; failure to accomplish it is perceived to be the mark of an apostate.

44 The prohibition against polygamy was pronounced by R. Gershom b. Judah, "the Light of the Exile" (960–1028), of Mayence/Mainz—a decree that was soon accepted in all the communities of northern France and Germany for practical reasons related to living in a Christian environment that strongly resented polygamy. Jews living in predominantly Muslim regions continued to practise polygamy until recently.

45 Hannah M. Cotton, "The Rabbis and the Documents," in *Jews in a Graeco-Roman World* (ed. Martin Goodman; Oxford: Clarendon Press, 1998), 167–79 at 172, writes about the development of Jewish civil law in the period 70–135 CE: "Jewish civil law was in the process of being created in the rabbinic schools, but had yet to receive its final shape—let alone the authority it was to acquire after its formal redaction at the end of the second century CE [with the redaction of the *Mishnah*]." In fact, the process continued for at least an additional three centuries with the amoraic interpretations of the Mishnah and their innovations. It is plausible that the process of the diffusion and acceptance of the new *halakhot* and customs obligating all Israelites was even slower and of longer duration than the establishment of the civil laws, controlled by a limited number of sages and their courts.

Jews there did not yet practise the prohibition of eating meat with milk, he decreed a stricter version of the edict.

Rab's motivation to decree stricter rules when the basic ones were not obeyed may appear strange to our contemporary minds, but seems to concur with rabbinic logic.[46] *Rashi*, well aware of this pattern of thought, confirms it explicitly: "He saw that they were neglecting the prohibition of meat and milk and made it stricter."[47] This passage indicates that even at this late stage of rabbinic domination of the interpretation of the Torah laws,[48] this expanded rule was not yet fully integrated into Jewish society.[49]

B. Abod. Zar. 36a offers us another aspect of the introduction of new *halakhot*. Rabbi Judah (the Prince) and his Judicial Court voted and permitted the use of oil from Gentiles, prohibited earlier by the illustrious Schools of Shammai and Hillel. They have nevertheless permitted it, because the prohibition was not diffused among the majority of Israel. Consequently, they relied on the maxim that one does not promulgate a decree binding the public unless the majority of the public can comply with it.[50] The reality that the majority of the Israelite public did not comply with this prohibition justified repealing it. This narrative demonstrates that some new decrees by renowned rabbinic leaders were not accepted by the public, and thus fell into oblivion, whereas others were diligently practised. We read in *y. Pesaḥ*. 1:6 27d that Hillel and Shammai decreed the ritual washing of the hands before eating or praying, and we have confirmation that this decree was practised (Matt 25:2; Mark 7:3). I would suggest, although we have no evidence for this, that it was a custom practised voluntarily by some Jews—emulating the biblical rule for the priests to wash their hands and legs before starting their service (Exod 30:20), or the elders who washed their hands before the ceremony of the Unsolved Murder (Deut 21:6)—and was then promulgated as an obligatory decree by Hillel and Shammai. On the other hand, some rules decreed by renowned personalities

46 As with other issues, this principle was not upheld rigidly and universally, and there is a contrasting opinion.

47 *Rashi* acquired this explanation from a declaration in *b. Beṣah* 2b that laws perceived as severe were less disregarded than those deemed lenient.

48 The rabbinic interdiction of mixing all kinds of meat with milk was promulgated by the rabbis *terminus ad quem* a century before Rav, at the time of Rabi Jose Hagelili (*m. Hul.* 8:4); yet it was still not practised in the small towns of Babylon.

49 On this topic see Martin Goodman, *State and Society in Roman Galilee, A.D. 132–212* (Totowa, NJ: Rowman & Allanheld, 1983), 102; Günter Stemberger, *Das klassische Judentum: Kultur und Geschichte der rabbinischen Zeit* (rev. ed.; Munich: Beck, 2009), 99 n. 45.

50 *Abot R. Nat*., Recension a, Chapter 1, states: "If one extends [the confines] of a rule, one cannot comply with them."

but not by the majority of the rabbis, and accepted only in their town or area, were ultimately discarded even there. We read in *b. Šabb*. 130a that in the place of Rabbi Jose Hagelili, one would eat fowl meat with milk, not prohibited by Scripture, but forbidden by the majority of the rabbis, but rejected by Rabbi Jose. The circumstances of the dicta and narratives quoted above support my thesis about the developmental system of new or adjusted decrees that claim a basis in the interpretations of biblical texts.

Adjusting biblical laws with the claim that the adjustment is the correct interpretation of the relevant decree is an old and ingrained practice in rabbinic circles and among their later followers. A comprehensive discussion of this theme would surpass the frame of this study, but it may be useful to consider a brief comment by a traditional scholar, Benno Jacob, on the character of the variations between the text of Deuteronomy and those of the other books of the Pentateuch, and particularly of the alterations in the Ten Commandments between Exodus and Deuteronomy.[51] To explain, or rather to justify theologically the differences in the recording of God's words in Exodus and Deuteronomy, he writes that reading, interpreting, and explaining the Torah is "an imitation of the revelation on Sinai" and that "Deut itself provided the first example of such a Scriptural interpretation," made by "Moses himself, who was the most competent of all interpreters." Jacob further states that Moses "had added thoughtful interpretations" of the Exodus Decalogue and that "the freely but accurately reproduced text of Deuteronomy bore the relationship of written and oral law, the text to its interpretation." The new laws and variations in Deuteronomy are an interpretation of the previously revealed laws, "which reflected the divine intent."

In conclusion, I believe that I have substantiated my hypothesis about the husband's initial authority to decide which precepts to impose on the dependants of his household, including his wife.[52] Further, I have presented a plausible conjecture as to how customs voluntarily adopted by some segments of the people became institutionalized and officially validated as compelling biblical ordinances. This pattern prevailed with respect to the precepts women

51 Benno Jacob, *The Second Book of the Bible: Exodus* (trans. with an introduction by Walter Jacob in association with Yaakov Elman; Hoboken, NJ: Ktav Publishing House), 1992. I do not take a position on Jacob's assertions in this study.

52 Lena Cansdale, "Women Members of the Yahad according to the Qumran Scroll," in *Proceedings of the Eleventh World Congress of Jewish Studies, A* (1993) 215–222 at 217 states, without an extended discussion or substantiation: "Women had a place in this [Qumran] community but their importance as well as their behaviour was determined by its male leaders."

became obligated to fulfill as well as other rules that filled in essential technical details missing from many biblical decrees. Not all orally transmitted customs and rules were officially validated; some were not accepted by the majority of the people, and were ultimately discarded.

I am aware that my conjectures above do not have ironclad support from the quoted biblical and rabbinic texts, particularly since the authors of the latter attempted to exhibit a contrasting theory, but I believe that they are more than merely plausible; they are built on reason and valid argumentation. They may resolve a difficult problem with respect to a crucial general question about women's obligation to fulfill biblical precepts: Which biblical precepts are women obligated to fulfill, and how are they to do so? As we shall see below, the rabbis grappled with this significant practical issue but did not succeed in establishing a reasonable and consistent system.

4.3 Rabbinic Viewpoints on Women's Obligations to Fulfill Biblical Precepts

4.3.1 *Did Women Participate in the Sinai Revelation? Rabbinic Opinions*

From my scrutiny of the relevant rabbinic writings, I believe that the rabbis did not consider that women participated as men did in the revelation of the Torah at Mount Sinai. As a matter of principle, I presume that had the rabbis wished to affirm that women participated—disregarding the biblical text of Exod 19:15, which intimates the opposite—they could easily have used the most common midrashic method to do so: it is written אתם ראיתם "you have seen" in the case of the miracle of the parting of the sea (Exod 19:4), and it is written אתם ראיתם in the case of the revelation at Sinai (Exod 20:18); just as the first case includes women (this is obvious and does not require substantiation), the second case would also include women. But they do not.

We read in *Mek. Jethro. Mass. D'Behodesh, parsha* 2: Rabbi Eleazar said: from the command of Exod 19:15 we deduce that a woman who discharges semen the third day after sexual intercourse is pure. This dictum leads Shaye Cohen to conclude that the waiting time of three days was required to allow the women "to be in a state of purity for the acceptance of the Torah."[53] As I understand it, Cohen's assertion indicates that the women received the Torah at Sinai together with the men. I doubt, however, whether this can be deduced from the text, which subsequently quotes two rabbis disputing the above dictum about the three days. Further, this topic and its conflicting rabbinic assertions

53 Cohen, "Are Women in the Covenant?" 34.

appear in *m. Mikwa*. 8:3 and *m. Šabb*. 9:3. The discrepancies in many aspects between these texts and that of the *Mek*. point to the irregularities of the latter,[54] and raise justified doubts on the reliability of its composition and its interpretation by Shaye Cohen.

Moreover, as I have argued above, in none of the many passages on the purity or pollution of a woman discharging semen does any rabbi or commentator state or hint that the *halakhot* and deliberations on this topic demonstrate that the women participated in the Sinai revelation. This seems to me to indicate that their deliberations related only to the issue of when a discharging woman is pure or polluted, and bear no relation to the question of women's participation at Sinai. This was not even on Rabbi Eleazar's mind, if indeed he was the author of the dictum in question; at most, I would assume that he decided to quote the biblical verse because it supports his *halakhah* regarding the three-day period of discharge. Although I think the dispute about the length of this period relates to physical facts, the rabbis often used biblical verses to prove the validity of their opinions on such matters; physiological principles were not established according to human observations, as in modern science, but on the basis of hierarchical decisions—in our case, scriptural verses appropriately interpreted by the rabbis. Galileo was convicted by the Inquisition and sentenced to be burned at the stake (though this sentence was later commuted) because his observations contradicted the church's declared truths.

There is just one later midrash, *Pirkei d'Rabbi Eliezer* (Higer), "Horeb," which claims that, "On the eve of Sabbath, the Israelites stood ready [to receive the Torah], men separate and women separate." Apart from the fact that no such narrative appears anywhere else, it is notable that its author declares that men and women stood at Sinai not on Sabbath, the day on which the Torah was revealed (*b. Šabb*. 86b), but on Friday. The issue of whether women participated at the Sinai revelation was taken up in the medieval period, and we encounter a difference of opinion between *Rashi* and Maimonides. *Rashi*, in his comments on Exod 19:15, perceives Moses' command to have been promulgated for the benefit of the women, that is, so that they may be pure on the third day, and participate at the Sinai revelation, even if they discharge semen as a result of sexual intercourse.[55] Maimonides, in contrast, perceives it as being for the benefit of the men, to sanctify themselves, as God says to Moses (Exod 19:10):

54 It is beyond the interest of the readers of this study to justify the statement by a lengthy discussion of this intricate topic.

55 *Rashi* asserts that abstaining from intercourse for three days enabled the women to take a ritual bath on the third day and be pure for the acceptance of the Torah.

"sanctity consists in renouncing sexual intercourse."[56] At any rate, the dispute between these two most outstanding traditional scholars and commentators indicates that the rabbinic writings do not tell us explicitly whether or not women participated in the Sinai revelation. Implicitly, however, we can deduce from *b. Šabb.* 87a[57] that the abstention from sexual intercourse in Exod 19:15 was for the benefit of the men, to be pure for the divine revelation, which supports both Maimonides' interpretation and our thesis. *Mek. Jethro. Mass. D'Behodesh, parsha* 2, interprets Exod 19:3b: " 'This is what you are to say to the house of Jacob' refers to the women, and 'tell to the sons of Israel' refers to men." This *midrash*, however, acknowledges our thesis that God did not speak to the women at Sinai; God told Moses what to transmit to the women, and what to the men. In fact, *Mek*. continues with another *midrash* that refines the first; God said to Moses tell the women the basic *halakhot*, which they are apt to understand, and tell to the men the details of the laws, which they are apt to understand. Just as Moses gave different rules to men and to women, later Israelite men told women what they considered appropriate for them.

We may assume that the rabbis followed the example of Ezra and Nehemiah regarding the distinction between the intellectual character and manner of conveyance of the Law to different groups of listeners, as I have already argued. We read in Neh 8:2–3: "So on the first day of the seventh month Ezra the priest brought the Law before the assembly, which was made up of men and women and all who were able to understand. He read it aloud from daybreak till noon as he faced the square before the Water Gate in the presence of the men, women and others who could understand. And all the people listened attentively to the Book of the Law." In v. 13, however, we read: "On the second day of the month, ראשי האבות לכל העם the heads of all the families,[58] along with

56 Maimonides, *Guide of the Perplexed*, vol. 2, part III:33, 533, states that Moses interpreted God's instruction "sanctify them" as "Come not near a woman," to the Israelites. For a more extensive discussion on this topic see Avraham Grossman, *He Shall Rule over You? Medieval Jewish Sages on Women* (Hebrew; Jerusalem: The Zalman Shazar Center for Jewish History, 2011) 72–73 and 120–21.

57 From the rule to avoid sexual intercourse three days before listening to God's voice at Sinai, Moses deduced that he must permanently avoid it, since he does not know in advance when God will speak to him.

58 The LXX translates this phrase as οἱ ἄρχοντες τῶν πατριῶν τῷ παντὶ λαῷ "the heads of the families (lit. 'derived from one father') of all the people." The NIV omits the translation of the phrase לכל העם, which seems confusing—does it refers to all the people or to the heads of the families of all the people? The KJV translates "the chief of the fathers of all the people," which is equally not very clear. The NRSV translates "the heads of the ancestral houses of all the people," following Rahlf's edition of the LXX; another LXX version

the priests and the Levites, gathered around Ezra the teacher to give attention to the words of the Law." We observe the use of different terminologies: on the first day the author uses קרא "to read," and the purpose of the reading is expressed by שמע "to hear," that is, for the audience to hear, and בון "to understand" (Neh 8:2–3, 8:8) or "to make intelligible" (8:7, 8:9) in הפעיל (translated in the LXX with σύνείσομαι "to share knowledge"; the NIV has "understand") what the instructors tell them;[59] שמע is also used in Deut 31:12 for the mixed audience (men, women, children, slaves) at the meeting held once every seven years, in which only basic elements of the Torah are read. On the second day (Neh 8:13), however, to describe the teaching to the few elect aristocrats, שמע and בון are replaced by להשכיל "to give attention" (NIV), "to understand" (KJV), "to study" (NRSV); the LXX has ἐπίστομαι "to understand as a learned person (lit. 'versed with knowledge')." Thus, Ezra follows the decree of Deut, and the rabbis follow Ezra's example. However we understand the odd phrase לכל העם,[60] Neh 9:1–3 indicate the great difference between the manner of teaching and fulfillment of the decrees for men and for women. Only the men (and here the text seems to be referring to all Israelite men) confessed their sins, demonstrating their consequent agony and their repentance; accomplished the separation as decreed by the leadership; and studied the Law intensely for a quarter of the day. The men, and only the men, were deemed responsible for the sins of the people, not only because of their marriage with foreign women, but for all other misdeeds, as is evident in Neh 9.

In conclusion, I maintain that the literal "do not approach a woman" means a strict separation of the men from the women, and hence they could not participate together in the Sinai revelation. According to the biblical narrative, concerns about ritual purity evidently did not motivate the command to abstain from sexual relations; טמא and טהור, the terms typically used in discussions of ritual purity do not occur at all in Exod 19, which records the Israelites' preparations for the event. Furthermore, according to the biblical narrative, all the Israelites were ritually impure at that time, since they had had contact with a corpse and the cleansing solution (made from the ashes of a red heifer mixed

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adds σὺν τῷ παντὶ λαῷ "with all the people," which does not make sense, since it is evident from the text that not all the people participated in the meeting on the second day.

59 The text of this verse is also unclear, namely, who read and who understood, but the traditional commentators and the NIV and KJV translate that the instructors, mentioned in the preceding v. 7, read in such a way that the people understood their reading. *B. Meg*. 3a asserts that the instructors translated the Torah reading to them (since the term מפרש is used), plausibly intending a translation into Aramaic, as was later generally instituted.

60 See note 58.

with water) was not yet available. It is not appropriate for me to speculate as to the possible motive for the decree, beyond my hypothesis about the menstruation taboo, discussed above. The arguments elaborated above, the fact that the tenth commandment, "you shall not covet your neighbour's wife," cannot be addressed to women,[61] and the interpretation of the relevant biblical verses all point to the conclusion that the narrative does not envisage the participation of women in the Sinai revelation; they remained in their tents nearby.[62] The rabbinic passages quoted, discussed, and disputed above cannot serve as evidence contradicting the results of a simple interpretation of the relevant texts.

My discussion of women's absence from the revelation at Sinai addresses the rabbinic viewpoint on this topic; I have attempted to show that there is no support in rabbinic writings for the idea that women participated in this event. Unfortunately we have no texts from Qumran that address this question; we can only presume that since a straightforward reading of the biblical text seems to suggest their absence, the Qumran scholars, whose interpretations of Scripture habitually follow the simple or evident understanding of the text, would agree.

4.3.2 *Rabbinic Attitudes towards Women's Obligations: Introduction*

The rabbis attempted to rationalize women's obligations and exemptions, but ultimately concluded that the classification does not cover all instances. We read in *m. Qidd*. 1:7: "Men are obligated [to fulfill] all time-associated positive precepts, and women are exempted; both men and women are obligated [to fulfill] all the non-time-associated precepts." This seemingly clear statement is questioned, however, in *b. Qidd*. 34a, claiming that the precepts to eat *matzah*, to enjoy the holidays, and to participate in the once-in-seven-years assembly (Deut 31:10–13) are time-associated precepts, and women are obligated to fulfill them. Further, to study the Torah, to procreate,[63] and to redeem the

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61 Although it is assumed that J is the source of this element of the commandment, this assumption does not affect our consideration.

62 We read in Exod 19:2b: "and ישראל Israel camped there in the desert in front of the mountain"; the usual phrase בני ישראל, in masculine mode, is replaced by the neutral form, since all of Israel included the women who left Egypt and camped in front of the mountain. In fact, the term ישראל without any precise definition (such as עדת, נשיאי, or אלהי, זקני, בני and similar attributes) appears rarely in the Pentateuch, only in those few instances in which it refers to the entire people, including women and children, as for example in Exod 14:30 and 31, 15:22, and 18:1 and 8.

63 Although the command to procreate in Gen 1:28 is expressed in the plural and seems clearly directed to both Adam and Eve, *m. Yeb*. 6:6 declares that only the man is obligated to procreate, not the woman. Midrashic methods are devised to reconcile the rule which

first-born son are positive non-time-associated precepts and women are exempted. Hence, said Rabbi Johanan, we cannot establish a *halakhah* on the basis of the presumed principle.[64] But Rabbi Johanan did not abolish the principle, which has remained the logical justification and overall guideline for the general issue of women's obligations, albeit with exceptions,[65] as we observe from the various discussions about this principle in the rabbinic literature.[66] Below, therefore, I scrutinize the rabbinic decisions about these obligations and attempt to reveal their authors' ideological motivations for applying them selectively, as they in fact did in practice.[67] I believe that the rabbis made most of these decisions on the basis of their own pragmatic considerations, because there was no rigid, invariable principle, as I have suggested above; these

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contradicts Scripture, but it is not in the scope of the study at this juncture to deliberate further about it.

64 I dispute Isaac Sassoon's theory in *The Status of Women in Jewish Tradition* (New York: Cambridge University Press, 2011), 46, that Rabbi Johanan and the Amoraim, who challenge the *mishnah*'s principle, did not intend to "undermine the *mishna*," but "had inherited traditions that defied the *mishna*." I do not perceive it as a dispute between two traditions, as Sassoon asserts; *the mishna* did not announce any *halakhah*, and Rabbi Johanan did not dispute any *halakhah*. His challenge of the principle is founded on the assumption that the *mishna* agrees to the enumerated *halakhot*, but he argues that they contradict the principle. His conclusion does not discard the principle; he only limits its overall application. Hence, Rabbi Johanan's scrutiny is not based on conflicting traditions. Consequently, I do not perceive that Judith Hauptman's theory in *Rereading the Rabbis: A Woman's Voice* (Boulder, CO: Westview Press, 1998), 238, that "there were a wide variety of opinion on these matters [which precepts women are obligated to fulfill], but in most cases only one opinion was included in the Mishna," applies to our case.

65 Saul J. Berman, "The Status of Women in Halakhic Judaism," *Tradition* 14, no. 2 (1973): 5–28 at 11, states that the cited principle "is found to be descriptive of some of the laws regulating the status of women, but is inaccurate as a general description."

66 Maimonides, in his *Commentary to the Mishna* in *m. Qidd.* 1:7, however, perceives it differently, and writes: "But the [rules about] which of the affirmative precepts women are obligated [to perform] and from which they are exempted in all their extent have no principle at all, but are transmitted orally, and they are accepted by tradition." He does not declare, however, that it is a tradition from Sinai. Hence, his opinion supports my thesis, argued earlier in the study, about the initiation and developmental stages of which precepts women are obligated to or exempted from. They are not the outcome of interpretations of the scriptural texts.

67 Saul Berman, "The Status of Women in Halakhic Judaism," in *The Jewish Woman: New Perspectives* (ed. Elizabeth Koltun; New York: Schocken Books, 1976), 118–19, demonstrating the inconsistencies of the principle proffered in *m. Qidd.* 1:7, writes: "Some other principle or principles must have been operative in determining the specific set of obligations and exemptions which constitute the legal status of women."

utilitarian precepts[68] and haphazard customs were then ultimately institutionalized and declared to be obligatory.[69] The rabbis' search for a determining principle for the obligations of women is not an exception to their usual practice: they attempted to reveal principles in other laws and regulations as well.

4.3.3 *Rabbinic Theories and Their Textual and Practical Background*

Let us start with *m. Ber.* 3:3: "Women, slaves and minors are exempted of reciting *Shema* (Deut 6:7) and wearing phylacteries (6:8), and are obligated to perform prayer, writing on the doorposts, (6:9) and blessing God after meals. (Deut 8:10)." In reality, according to the simple interpretation of the relevant biblical texts, the precepts of reciting the *Shema* and wearing the phylacteries are not time-associated precepts, and women should be obligated to perform them according to the rabbinic principle. We read in Deut 6:7 the command to recite the *Shema*: "Impress them on your children. Talk about them when you sit at home and when you walk along the road, when you lie down and when you get up." The simple meaning of this command is "always" or "all the time"[70]—not that these commands apply only at the specific times enumerated.[71] Deut 6:8, which commands the wearing of phylacteries, does not hint of any time limitation. Whereas in the rule for reciting the *Shema* the rabbis reveal some phrases that could be interpreted, in a midrashic system, as alluding to an obligation of the *Shema* during the day only, we do not encounter such an interpretation

68 Gordon "Toward a Gender-Inclusive Account," 5, states: "The legal-centeredness of late pharisaic and early rabbinic Judaism" is affirmed by St Paul, Shmuel Safrai, and Martin Buber. The rabbis' goal, like Ezra's, was to create an impenetrable wall between the Jews and their neighbour nations, thus ensuring the cultural persistence of the Jewish minority by isolating them from any inappropriate influence.

69 Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984) 17, likewise postulates a developmental theory about the issue of which precepts women are obligated or exempted to fulfill. She contends, however, that initially women were obligated to fulfill all precepts, but "a gradual evolution of daily practice and communal customs . . . allowed women not to perform certain *mitzvoth*," in contrast to my reversed hypothesis, namely, that initially women were not obligated to accomplish positive precepts, and the gradual evolution established the precepts to which they were obligated. The logical and historical circumstances affirm a rabbinic developmental system of accretion of new precepts and of rules of application of existing ones, and thus, we should perceive their method regarding the particular subject of women's obligations in the same way.

70 We read in *b. Yoma* 19b: " 'Talk about them' [means] make it permanently, and do not make them occasionally"; we encounter a parallel dictum in Josh 1:8.

71 In *y. Ber.* 3:6b, *Hal.* 3 women's exemption from reciting the Shema is challenged, arguing that it should be compared to their obligation to pray.

attempted regarding the Phylacteries. In the absence of such scriptural time limitation, some rabbis indeed conjecture that binding phylacteries is a non-time-associated precept and that women are obligated to perform it.[72] The majority of the rabbis, however, ignore this distinction and interpret the two precepts (the *Shema* and phylacteries) as referring to day only and not to night; hence the *halakhah* that both are time-associated precepts and thus not obligatory for women.[73] Moreover, although the biblical text about writing on the doorposts (Deut 6:9) is identical to the antecedent decree relating to phylacteries, the rabbis classify phylacteries as a time-associated precept, not obligatory for women, and writing on the doorpost as a non-time-associated precept, obligatory for men and women alike. It would seem that some underlying ideology was behind this decision, as we shall also see below.

Among the precepts that are obligatory for women are prayer, writing on doorposts, and grace after meals. Reciting the grace after meals is evidently a non-time-associated precept (it is recited no matter what time the meal takes place), and its classification as such is reasonable.[74] The precepts of prayer and writing on doorposts, however, raise some questions. There is no command in Scripture obligating prayer.[75] In fact, we find extremely few instances of prayer by the Patriarchs and Moses at junctures where we would expect them. *Sifre Deut. piska* 26 lists ten different terms used in Scripture to describe prayer, but altogether they appear on few occasions. Abraham prays for Abimelech (Gen 20:17), but he does not pray to God upon arriving in Egypt, when he is in danger because of Sarai (Gen 12:12). Isaac prays to God for Rebekah's pregnancy (Gen 25:21), but he does not pray for his safety when he settles in Gerar (Gen 26:7). Jacob is frequently in danger—escaping from Canaan, running away from Laban, meeting Esau, fearing repercussion for the killing of the Shechemites—but we do not see him praying to God for help and rescue. Moses prays to God more often for the Israelites, and only once for himself to be permitted to cross

72 In a rhetorical debate, in *b. Sabb*. 62a it is assumed that Rabbi Meir conjectures that the obligation of phylacteries applies also at night, and consequently it is obligatory also for women as a non-time-associated precept.

73 *M. Ber*. 1:3 interprets ובשכבך ובקומך (Deut 6: 7b) in a restrictive way: "at the time when people go to bed and they get up."

74 The biblical command to thank God after a meal in Deut 8:10 refers to men and women alike, but does not establish a fixed text, as occurred later.

75 We encounter in *b. Ber*. 26b a discussion about whether the three daily prayers were established by the Patriarchs (based on midrashic exegesis of biblical verses) or the rabbis, as substitute for the sacrifices that ceased to be offered after the Temple's destruction. I would like only to draw the reader's attention to Daniel, who is said to have prayed three times a day (Dan 6:11, v. 10 in KJV).

the Jordan and see the promised land (Deut 3:23); one might perceive this narrative rather as discouraging prayer, since God does not grant this request. Moreover, we observe in Gen 25:21 that Isaac prays to God for Rebekah to have children; God answered his prayer, and his wife Rebekah became pregnant. Hence, it seems that the woman does not pray to God on her own behalf, but it is the man who must pray for his wife.

Writing on doorposts, which the rabbis classified as a non-time-associated precept, is similar in its essence to the precept of the tassels, which the rabbis classified as a time-associated precept, and therefore exempted women from wearing them; hence, women should equally be exempted from writing on doorposts, since neither can be seen at night. In fact, in *t. Qidd.* (Lieberman) 1:10, we encounter a dispute about the classification of time-associated and non-time-associated positive precepts; the *tosefta* states that the precepts of Sukka (Deut 23:42), Lulav (Deut 23:40), and Phylacteries are time-associated, whereas returning a lost object (Deut 22:1), freeing a bird (Deut 22:7), making a parapet (v. 8), and wearing tassels (Num 15:39) are non-time-associated precepts. Rabbi Simeon exempts women from wearing tassels, because it is a positive time-associated precept.

B. Menaḥ. 43a justifies this opinion on the grounds that the function of the tassels—namely, looking at them—is explicitly indicated in Scripture (Num 15:39), and one cannot see them at night; thus, they are time-associated and obligatory only during the day. Rabbi Simeon's dictum was established as the correct *halakhah* and acknowledged by the rabbinic community.

However, there is no dispute in the rabbinic literature that the precept of writing on the doorposts is obligatory for women, and although the relevant biblical decree is not explicitly associated with seeing the words, it is evident that their function is to be seen, just as the phylacteries and tassels are intended to be seen; the rabbis classify both of these as time-associated precepts and exempt women from fulfilling them. The purpose of the precepts of the *Shema*, phylacteries, and writing on the doorposts is indicated in Deut 6:6, which introduces them: "These commandments that I give you today are to be on your hearts." This purpose is accomplished by three methods: the *Shema* is recited by heart; one wears phylacteries and therefore sees them; and one sees the writing on the doorposts. The parallel introductory verse to the same three commands (Deut 11:18) equally indicates their joint purpose: "Fix these words of mine in your hearts and minds." In essence, there is no difference between the function of writing on the doorposts, wearing the tassels, and binding the phylacteries and the manner in which they are accomplished;[76] their common

76 Indeed in *b. Qidd.* 34a the exemption of the phylacteries by women is challenged on the ground that one should compare it to the doorposts, which obligates them; as is not

purpose and function is to be seen, which leads to remembering the divine commands, the reward for accomplishing these commands, and the severe punishment for transgressing them.

The rabbis, however, do not classify these three precepts in the same way; they perceive the wearing of tassels as a positive, time-associated precept, despite the fact that one can see them by night with the help of candle or any other source of artificial light; but although the same is true of the writing on the doorpost, they disregard the compelling logical consequence set out above and classify this as a positive non-time-associated precept, and thus obligatory for women, as we have seen. The rabbinic decision in *b. Menaḥ.* 43a that a nightgown is exempt from the obligation of tassels, because it is not seen by anybody, but that a blind person is obligated to wear them because they can be seen by other people during the day, could be perceived as logically justified.[77] While the precept of wearing the tassels is in essence an obligation of the individual, its motivation וראיתם אותו "to see it," is written both in plural and in singular;[78] the use of the plural may have induced the rabbis to assume that the tassels' function is the stimulation of both the bearer and the public to remember all of the Lord's commands. This decree and the precept of writing on the doorpost, unlike the reciting of the *Shema*, have a double purpose, namely, that the individual and the public should remember and obey the divine commands.

The distinction between the biblical styles in which these functions are expressed is just a matter of literary style. Although the function of both the phylacteries and the writing on the doorposts is to be seen, like that of the tassels in Num 15, the commands in Deut 6 and 11 do not contain their purpose, since they include also the command of *Shema* in the introductory verse, which does not have this function. The introductory verse had therefore to be

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uncommon an unconvincing answer is devised to justify an illogical decision. In fact, in *b. Ber. 20b* the scriptural association of phylacteries to the precept of the doorsteps is admitted, but nevertheless the *mishna* distinguishes between them with respect to the woman's obligation. On another occasion, however, *b. Ber. 20b* compares phylacteries to the writing on the doorposts; we observe, again, the selective use of midrashic interpretations employed by the rabbis.

77 The rabbis, however, as usual deduce by a midrashic method the tassels' exemption of a nightgown from the quotation of the tassels in singular mode וראיתם אתו (Num 15:39), pointing to a restrictive interpretation and the obligation of the blind to wear tassels by the seemingly superfluous phrase אשר תכסה בה "which you wear" in the text of Deut 22:12.

78 This phrase is irregular from a grammatical viewpoint, since one would expect the subject to be in plural mode, not singular, since it refers to four tassels, as it appears in its parallel decree in Deut 22:12 as גדילים; its singular is גדיל, like פתיל. Further, *y. Ber.* 3a, 1:2 asks why the pronoun אותו of the ציצית is written in masculine mode, since it is a feminine term.

written in a way appropriate for all three precepts. I believe that the rabbis, in making their halakhic decisions on women's obligation to fulfill or exemption from fulfilling these precepts, were guided by pragmatic motives, which they did not divulge; their decisions are simply presented as the appropriate interpretation of the scriptural texts. It is our task to attempt to reveal the motives for each of their decisions that seems to us not to concur with the logical interpretation of the relevant scriptural decrees.

I would hypothesize that the rabbis' exemption of women from the precepts of *Shema*, phylacteries, and tassels, which is inconsistent with their principle obligating women to fulfill positive non-time-associated precepts, was instituted with the goal of separating men and women to avoid promiscuity—an important rabbinic objective, as we know from other rabbinic sources. We do not know exactly when public prayers in the synagogues were instituted; previously, as we know from Josephus, these meeting houses were used for public meetings to discuss current issues and to teach the law (*Vita* 277; *C. Ap.* II:175). However, once the public prayers were instituted,[79] exempting women from the obligation to perform these three precepts furthered the rabbis' goal of separating men and women. *T. Sukkah* 4:1 attests to the reality of the problem even before the Temple's destruction; it records that structural changes were made in the Temple Court to avoid the meeting of men and women at the joyous procession of the Drawing from the Well at the Sukkot festival.[80]

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79 *B. Ber*. 53a deduces from Prov 14:28 that prayer in public is preferred.

80 On the other hand, Ross S. Kraemer, "Jewish Women in the Diaspora World of Late Antiquity," in *Jewish Women in Historical Perspective* (ed. Judith R. Baskin; 2d ed.; Detroit: Wayne State University Press, 1998), 46–72 at 49–51, quotes a remarkable number of sources documenting the reality that women participated in the "governance of the synagogues"; were "*archisynagogos*, the head of the synagogue"; attended synagogue services; and a woman had a "seat of honour" in the synagogue according to an inscription from Western Asia Minor. This practice complied with Roman custom, in which wealthy women were honoured and wielded influence as local benefactors. The latter, however, hold "religious offices" "serving as priestesses of public cults," in contrast to Jewish women, who were excluded from such activity. See Judith Evans Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (London and New York: Routledge, 2002) 9. Hannah Safrai, "Women and the Ancient Synagogue," in *Daughters of the King: Women and the Synagogue: A Survey of History, Halakhah, and Contemporary Realities* (ed. Susan Grossman and Rivka Haut; Philadelphia: Jewish Publication Society, 1992), 39–49 at 39, quotes other sources, among them Acts 17:1–4, concerning women's activities in the synagogues at the time of the Second Temple. It is evident that there was separation between men and women at "religious" public meetings. It demonstrates that the penetration of rabbinic rules and customs in diasporic communities, particularly in

Moreover, wearing phylacteries requires showing a bare arm and uncovered hair, which would categorically clash with the chastity rules and provoke the male libido.[81] Further, the prevailing social custom for women to stay at home, and not intermingle with men in public places, in the synagogue, or in the marketplace motivated the rabbis to exempt them from those obligations that would clash with this custom.[82]

We may perceive support for this presumption from a similar rabbinic pronouncement in *b. Meg*. 23a, which asserts that women are legally permitted to read the Torah to the public in the Synagogue, but the rabbis advised against it, out of respect for the public's dignity. I have not found any explanation for this enigmatic statement. Again, separating men and women in the public sphere may have motivated the rabbis' decision not to impose on women precepts and customs that would contravene this principle.[83] With respect to women's obligation to pray, I would hypothesize that the rabbis intended private supplications rather than public prayer, as we read in *b. Ber.* 20b: "women are obligated to pray, because prayers are supplications for compassion." This character of prayer recalls the ancient non-institutionalized individual prayers, in contrast

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Europe, was a very slow process, as we have seen in the narrative quoted in n. 48 on p. 146 regarding the prohibition of meat and milk.

81 These are rabbinic, not biblical, rules showing a strict separation between men and women. *M. Ketub*. 7:6: enumerates women's "unchaste" behaviour, including her chatting with men, which permits or compels (that is unclear from the text) the husband to divorce his wife without payment of her *ketubah.*

82 Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), 156, similarly states that the rabbis exempted women from cultic practices because they believed "that women should stay out of Israelite communal life," although, as she asserts, the rabbis never explicitly give this reasoning.

83 Ibid., 158, presumes, among other explanations for the vague concept of offending the dignity of the public, that some sages may have feared "that sexual distraction generated by the presence of women might disrupt the public devotion." I agree with Wegner's proposition, but I do dispute her assertion at 157 that the rabbinic rule relates to women's "eligibility to perform the rite that constitutes the central feature of synagogue worship," demonstrating, in Wegner's opinion, the rabbinic aim to deny women's participation in cultic celebrations. Reading the Torah is not a cultic celebration (a rite, as Wegner calls it), but an accomplishment of the decree to study the Torah. See Deut 6: 7, and Maimonides' explanation in *Mishne Torah Halakhot* of prayer and priestly blessings 12:1 of the rabbinic rule (*b. B. Qam*. 82a) to read the Torah in the Synagogue every Monday and Thursday. Women are not obligated to study the Torah, but they are not prohibited from doing so; therefore, they may read the Torah, and thus, in principle, they may study it. Wegner's statement that "the reading of the Torah constitutes the central feature of synagogue worship" seems to be a personal impression, as I cannot find a rabbinic source for this idea.

to the later institutionalized prayers, consisting mainly of blessings, devotion, and thanks, with only a minimum of supplications for the well-being of Israel and scarcely at all for oneself.[84] In fact, *b. Ber*. 20b discerns between the three daily prayers at defined times (evening, morning, and noon; see Ps 55:18), conceived as a time-associated positive precept from which women are exempted, and the individual non-institutionalized type of prayer, obligatory for women.

Marc Brettler offers us another perspective on the distinction between the poetic prayers recited at public cultic processions and prose prayers, a type that any individual, including women, may compose.[85] He argues that most of the poetic prayers (that is, the psalms) were not appropriate for women; they address males only.[86] He analyses, among others, Ps 128, which specifically relates to men.[87] "Thus," he continues, "one could imagine many situations in which a woman might have wanted to recite an 'official' ready-made psalm rather than composing her own prayer, and in certain circumstances, would have had to settle for a psalm that dealt with her situation in most minor or indirect fashion."[88] On the other hand, Brettler agrees that some psalms, for example Ps 65, are written in neutral and include men and women alike.[89] Both Ps 65:3 (v. 2 in KJV): "You who answer prayer, to you all people will come" and 65:5 (v. 4 in KJV): "Blessed are those you choose," are gender-neutral, in contrast to many other instances (e.g., Ps 34:9; 40:5; 49:12, and 127:5) in which appears the copula אשרי הגבר "Blessed is the man."

The prayers that any individual composes to ask for divine succour in time of affliction, supplications for special benevolence, and thanks for favours received are those the rabbis considered equally obligatory for women and men.[90] We observe that Elkanah and Hannah pray together (1 Sam 1:19), and Hannah is the promoter of the entire episode. She prays to God and vows to

84 Shmuel Safrai, "The Obligations of Women [to Perform] Precepts in the Teaching of Tannaim" (Hebrew), in *Bar-Ilan: Annual of Bar-Ilan University, Studies in Judaica and the Humanities* (1995): 227–36 at 233–34, similarly states that this decree relates to individual prayer, each for his own needs and requests, as practised before the institutionalization of public prayer in synagogues.

85 Marc Zvi Brettler, "Women and Psalms: Toward an Understanding of the Role of Women's Prayer in the Israelite Cult," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Bernard M. Levinson et al.; Sheffield: Sheffield Academic Press, 1998) 25–56.

86 Ibid., 27.

87 Ibid., 27–38.

88 Ibid., 47.

89 Ibid., 40.

90 On the other hand, it is difficult to acknowledge as appropriate the rabbinic assertion that women are obligated to pray for divine succour in times of distress and suffering; prayers

dedicate her child to God (1:10–11); she also decides when to bring him to the House of the Lord (1:22) and what offerings to bring on that occasion (1:24). Elkanah, her husband, is totally absent during her dialogue with God, in which she emphasizes her prayer and God's response to it (1:26–28). The show is entirely hers; only at the end of this narrative do both bow to God.[91]

We observe a similar state of affairs in the case of Manoah's wife. Although the author of Judg 13 does not tell us her name (which may reflect women's dependent status in society, in which the man represented his wife), she enjoys a higher status in the eyes of God. The divine angel reveals to her that she will conceive and bear a son (Judg 13:3). In the later-compiled narrative of Genesis, God tells Abraham that his wife Sarah will bear a son for him (Gen 17:16), and Abraham gives his son the name Isaac (Gen 21:3). The man's privilege of naming his offspring does not appear in the narrative of Manoah's wife, who bears a son and gives him his name (Judg 13:24). In a much later period, in the NT, we find similar circumstances; here, however, the angel similarly reveals to Zacharias that his wife, Elisabeth, will bear a son (Luke 1:11–20), but he tells Zacharias to name him John (Luke 1:63). Because of her social status, Manoah's wife does not ask the angel any questions; she believes him, whereas Zacharias does not (Luke 1:18), for which he is punished (Luke 1:20), but goes to her husband and tells him what has occurred, expecting him to approach the Deity for further instructions (Judg 13:6–7). Manoah indeed prays to God, who hears his supplication (Judg 13:8–9a), but the angel appears again not to him but to his wife (Judg 13:9b). Only then, when she calls Manoah, does the angel speak to him and confirm to him the instructions given to the woman (Judg 13:13). We observe the contrast between the woman's underestimation of herself in practical terms, probably because of her dependent rank in society, and her

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expressing the person's supplication to be relieved from an individual predicament cannot be perceived as a compelling decree.

91 We read in 1 Sam 1:28b: וישתחו שם לה' "And they worshipped there the LORD." Since וישתחו is written with one ו, instead of the usual וישתחוו, which indicates the plural, the traditional commentators, the KJV, and the NIV translate it in the masculine singular; some translate it as neutral, that is, without indicating who worshipped; and others directly name Elkanah or Samuel. It is not within the scope of this study to investigate this grammatical issue, but there are many other instances in Scripture of וישתחו that, based on context, must unquestionably be translated in the plural (see Gen 27:29, 43:28, 48:12; 1 Kgs 9:9; Neh 8:6). The context in this particular case likewise requires perceiving וישתחו as referring to both Hannah and Elkanah. In v. 24, however, the context requires translating it in the singular, as referring to Hannah, since Elkanah is not mentioned as having gone together with her, although from the grammatical aspect it should have been written ותשתחו or ותשתחוה.

pre-eminence in the eyes of heaven; she is also depicted as more sagacious than her husband.[92]

4.3.4 *How Women's Obligations Became Institutionalized*

Shmuel Safrai[93] likewise[94] perceives a historical development in women's exemption from an array of precepts. In contrast to my hypothesis of a gradual imposition on women of precepts from which they were hitherto exempted, however, he conceives the opposite: a gradual exemption from existing obligations;[95] therefore, I will limit my debate against this opinion to Safrai's study. Both of us hypothesize as to their motives. Safrai writes that initially it was assumed that women participated in the revelation of the Torah at Sinai, as they were taught at the time of Ezra, and thus, like men, were obligated to fulfill all precepts. I dispute this assumption, based on the *midrashim* quoted above.[96] The scriptural text scrutinized above clearly contradicts this claim, and Safrai himself acknowledges that there is no hint to this effect in the biblical text.[97] The assumption that Ezra imposed all precepts on women, based on the fact that he read the Torah "in the presence of the men, women and others who could understand" (Neh 8:3), does not seem to me to be evidence for Safrai's assertion. It is obvious that Ezra did not read the entire Torah to the assembled public in a single day (Neh 8:3); it is plausible that he read pericopes containing

92 When Manoah is scared to death having seen "God," his wife calms him with a logical rationale (Judg 13:22).

93 Safrai, "The Obligation," 233.

94 See n. 69 on p. 154, Biale's similar opinion.

95 Hauptman, *Rereading*, 237, affirms my hypothesis that the rabbis imposed obligations on women, but offers a different motive: "The rabbis began to increase women's obligation, imposing on them a variety of *mitzvot* relating to the holidays and the Sabbath. They recognized that women, like men, needed to express themselves religiously, open a direct line of communication with their Maker." I would like to share her vision, but regrettably I do not perceive such an ideology as underlying the rabbis' imposition of precepts on women. Such a *Weltanschauung* would also have required the obligations to bind phylacteries, wear tassels, or at least to participate in the obligatory daily public prayers, but the rabbis exempted women from these obligations, which are intrinsically associated with religious expression and direct communication with the Maker.

96 See n. 3 on p. 132.

97 Ibid. The *midrash* of the *Mek. Jethro. Mass. D'Behodesh, parsha* 2, quoted by Safrai at 229, does not, however, declare that women participated at the Sinai revelation. (See my analysis above, pp. 148–152.) Both *Mek.* and *Exod. Rab*. emphasize that Moses told the *halakhot* to women in a different manner than they were taught to men, as I discuss at length below, pp. 168–169. They point to separate teachings given to men and to women.

essential precepts that unquestionably obligate women, such as the command to rest on Sabbath and the prohibition on consuming blood (discussed above), as well as doctrinal topics such as the prohibition on idolatry—Ezra's main concern, as we see in Ezra 9:1. One should compare Ezra's reading the Torah to all the people to the biblical decree of the assembly to be held once every seven years (Deut 31:12). It is obvious that transmitting general doctrinal topics was the main purpose of this event, as well as, plausibly, some basic laws obligatory for all, as we see from the rationale cited in Deut 31:13: "Their children, who do not know this law, must hear it and learn to fear the LORD your God as long as you live in the land you are crossing the Jordan to possess." Moreover, the presence of children and foreigners indicates the scope and content of the recitation.

4.4 Debating Safrai's Theory on the Sequence of the Developmental Stages

4.4.1 *Consequences from the Rabbinic* Midrashim *about the Rules for Teaching Women*

In fact, since it is obvious that women are obligated to fulfill some decrees, they must be taught some elementary knowledge of the rules they are expected to keep. Therefore, we must understand in a nuanced manner the apparent dispute in *m. Sotah* 3:4: Ben Azzai says that a father must teach his daughter Torah to avoid engendering heretical thoughts regarding the validity of the Test of the Unfaithful Wife; that may occur if she would not be affected with cruel inflictions immediately after having drunk the ordeal water, as is supposed to happen to a guilty woman according to the *mishna*. Cognizant of the teaching, she would know that if a woman has gained merit for good deeds, the punishment may be postponed, but will ultimately occur. He does not declare that a man is obligated to teach his daughter the entire Torah, with its intricate rules and ordinances; he limits his dictum to the need to teach her the rules and circumstances of the Test of the Unfaithful Wife and its consequences. Rabbi Eliezer seems unconcerned by such contingency, and asserts that teaching one's daughter Torah is like teaching her frivolity/obscenity.[98] As suggested

98 Michael L. Satlow, "Rhetoric and Assumptions: Romans and Rabbis on Sex," in *Jews in a Graeco-Roman World* (ed. Martin Goodman; Oxford: Clarendon Press, 1998), 135–144 at 142, asserts that "All the rabbinic condemnations of female Torah study base themselves on the assumptions that because a woman does not have the requisite amount of self-discipline, she will use her Torah knowledge for ill." I would rather hypothesize that

above, it would have been logical and compelling to teach women some Torah laws that are pertinent to them, in a simple manner that they could understand. This refinement on the question of teaching the Torah to women is the foundation of Ben Azzai's dictum, and concurs with other similar rabbinic texts.

In *y. Ḥag*. 75d 1:1 and *b. Ḥag*. 3 it is asked: the men come ללמוד to learn, the women come לשמוע to listen to the Words of the Law at the Assembly (Deut 31: 12); but what is the motivation of the children's presence at the event? What interests us is the distinction between the women's listening and the men's learning, a dictum that cannot be interpreted literally; one learns by listening, and in listening, one learns. We must therefore interpret it as meaning that the women are taught the basic doctrines or decrees in a simple manner, whereas the men are taught in a more detailed and complex manner; each in the manner they are able to understand. This interpretation is acknowledged explicitly in a *midrash* on Exod 19:3b in *Mek. Jethro. Mass. D'Behodesh, parsha* 2, quoted on p. 150. This interpretation is a logical and practical solution to the distinction between men and women regarding the study of the Torah and the fulfillment of its precepts.[99] In my opinion, this is acknowledged by all the

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the rabbis assumed that the lower intelligence of women could cause an incorrect understanding of the teachings, and thus cause faulty fulfillment of the precepts.

99 Kraemer, *Her Share*, 96, claims that the rabbinic exemption of women from some precepts had the "unavoidable consequence" of women not being able to "serve God fully, and therefore could never stand in the same relationship to God as a free adult male." I disagree with Kraemer's conjecture, which has no support in rabbinic writings, or in Scripture, their source; the evaluation of a person's deed, and his or her relationship to God, as I understand scriptural and Judaic theology, is conditioned by the manner in which each fulfills the precepts commanded by God. The particular precepts performed by the priests or the Levites did not absolutely generate two classes of Israelites: one that "fully served God" and the other only partially. The same applies, as I understand it, to the merits of men and women; the criterion to be judged as a righteous person was not the number of the performed precepts, but the manner in which each fulfilled the precepts commanded to him or her. I similarly disagree with Kraemer's assertion at 102 that the rabbis were concerned with "horror" for a woman's act "almost of ritual pollution for men," and therefore could "denigrate" them. I do not encounter such a rabbinic affirmation in their writings; it is Kraemer's own interpretation, baseless, in my opinion. Whatever was the ancient origin of the separation from a menstruate, the rabbis did not consider any magical destructive power of the menstruation blood, as I presume was Kraemer's and other scholars' allegations of "horror" or excessive dread from contact with it. The rabbis and their loyal followers were equally concerned and extremely careful to not transgress, voluntarily or involuntarily, the purity laws of and separation from a menstruating woman, just like regarding the fulfillment of all other precepts with all their minutiae, as constituted by the rabbis.

rabbis in a general sense, though with possible insignificant differences. The *Mek*. plausibly deduced their opinion from the narrative in Neh 8, which discerns between the manner of conveyance and genre of knowledge imparted to the masses, as demonstrated above (pp. 150–151).

4.4.2 *Additional Evidence against Safrai's Theory*

Other considerations also contradict Safrai's thesis that women were progressively exempted from previous obligations. His argument that women were exempted from the obligation to participate in institutionalized daily public prayers[100] because of practical considerations demonstrates the sequence of the developmental process. This type of prayer was a new rabbinic obligation,[101] not imposed on women, and thus, contradicts his thesis to the contrary. Furthermore, as we know, the rabbis instituted a great array of new rules not set out in Scripture, such as the mass of "work" prohibitions on Sabbath[102] and the extension of the biblical prohibition on cooking an animal in its mother's milk to a general decree against consuming any meat and milk products together, which the rabbis made significant intellectual efforts to justify as a Torah rule.[103] It would be odd to assume that they reversed this general approach in the matter of the obligations of women, exempting women from presumed biblical decrees, if, as Safrai argues, the common belief (acknowledged by Ezra) was

100 See n. 84.

101 We observe from *m. Ber*. 4:3 and 4 that at the time of Rabbi Akiba (i.e., in the second part of the second century CE), there were still disputes between the Tannaim about the structure of the daily prayer, and Rabbi Eliezer sharply criticized the attitude that prayer is a fixed obligation that one must fulfill, as Rabbi Obadia of Bertinoro, the most prevalent commentator of the *mishna*, explains his dictum. Hence, institutionalized prayer was a late rabbinic institution. Bilhah Nitzan, *Qumran Prayer and Poetry* (Hebrew; Jerusalem: Mossad Bialik, 1996), 33, asserts that only at the period of the Tannaim did fixed prayers become obligatory for all. Ismar Elbogen, *Prayer in Israel in Its Historical Development* (trans. Joshua Amir; Tel Aviv: Dvir Co., 1972), 185, states that we do not have hard evidence for fixed public prayers before the period of the *Mishnah*. Qumran anticipated the rabbis in the institution of fixed daily prayers, see particularly 4Q 503 (4QpapPrQuot), but I do not think that we can deduce from such sources that women participated in daily or other prayers.

102 We read in *t. Ḥag*. (trans. Lieberman) 1:9: "The *halakhot* of Sabbath, holiday offerings and using sacred things are like hanging on a hair (a thin thread) [namely] scant text and many *halakhot* that have no support." The *tosefta* then indicates some *halakhot* that were based on much text and many *midrashim*.

103 See an extensive study about that topic in Paul Heger, *The Pluralistic Halakhah: Legal Innovations in the Late Second Commonwealth and Rabbinic Periods* (Berlin: De Gruyter, 2003), 157–74.

that women, like men, were obligated to fulfill all the biblical precepts, and if this was the practice in Israel.

There is also explicit textual evidence against Safrai's thesis. We read in *b. Pesaḥ*. 43b that the obligation of women to eat *matzah* is a Torah decree, since this decree is recorded together with the prohibition to eat leavened bread on the seven Passover days in Deut 16:3. Hence, we deduce from it that whoever is prohibited to eat leavened bread is obligated to eat *matzah*; consequently, since the women are included in the prohibition of eating leavened bread, they are equally obligated to eat *matzah.*[104] This reasoning can be perceived as logical only if women were not initially obligated to eat *matzah*, as it seems from the biblical decree, written in the masculine singular, and so understood by the rabbis, who require a midrashic exegesis to obligate them.

In *b. Pesaḥ*. 91b, three Tannaim dispute whether it is permissible to slaughter the Passover meal for women alone, because they are not obligated to participate in its performance. Qumran scholars 4Q265 (4QMisc. Rules) 3:3 and 11Q19 (11QTemple[a]) XVII:6–9 even prohibit women to participate in its consumption.[105] On the other hand, the rabbis obligated women to drink the four cups of wine during the later-instituted Passover Seder, a ceremony of which there is no hint in Scripture (*b. Pesaḥ*. 108ab).[106] This inconsistency contradicts Safrai's assumption that women were initially obligated, like men, to perform all precepts. The rabbis agree that such an important precept as the Passover meal was not obligatory for women, according to Scripture; it is highly implausible that they would have decided to exempt women from this obligation had it been a scriptural decree. Furthermore, if the rabbis were indeed exempting women from scripturally mandated participation in the Passover meal, then there would be no debate as to whether one may slaughter the Passover sheep for women alone, since they would be obligated by the Torah to eat it. On the other hand, they required women to perform a new obligation, clearly instituted by them, which indicates that in reality, the rabbis instituted new obligatory precepts for women.

Safrai's theory that the rabbis exempted women from previous obligations has another flaw. *T. Qidd*. (Liberman) 1:10, quoted above, asserts that there is a

104 The obligation of women to eat *matzah* conflicts with the "presumed" principle that women were not obligated to perform positive time-associated precepts, since eating *matzah* is unquestionably such a rule.

105 See p. 170 and pp. 176–180 in Chapter 5 for further deliberations about the rabbinic dispute and Qumran's motivation of its rule.

106 *B. Pesaḥ*. 108b motivates it, "because the women too were present at that miracle [of Parting of the Waters during the Exodus from Egypt]."

dispute as to whether women are obligated to wear tassels, and in *b. Šabb*. 62a, also quoted above, Rabbi Meir is assumed to argue that the binding of phylacteries is obligatory for women. If indeed these precepts were initially obligatory for women, and the rabbis later exempted them, there would be no reason to debate whether or not they are time-bound. The simple solution would be to observe how people behaved according to their tradition, demonstrating what they believed to be the Torah's command. We find a similar solution in *b. Pesaḥ*. 66a: It is recounted that people, having forgotten a specific *halakhah*, asked Hillel to enlighten them, but he too had forgotten. He said to them: "Let us see the Israelites' behaviour; if they are not prophets, they are descendants of prophets." Next day, seeing their behaviour, he remembered the *halakhah* and said: "That is what I received by tradition from Shemaiah and Abtalion." Thus, the people's behaviour is the most efficient evidence of the true tradition, and the disputing rabbis should have followed Hillel's advice if indeed they wanted to invalidate an old tradition. On the other hand, such a method could not be applied if the development of women's obligations progressed according to my thesis.

Although the rabbis applied their midrashic principles selectively,[107] both to create new obligations or add restrictive details to biblical rules and to annul such rules or make them more lenient, they always justified their decisions by a midrashic exegetical method, however far it might be from the simple understanding of the biblical text and even when it was devoid of any straightforward logical reflection, as we shall see in the next example. Rarely, the rabbis justified their halakhic decisions by means of a logical conjecture.[108] We saw in the above-cited dictum from *b. Pesaḥ*. 43b how the rabbis justified their *halakhah* obligating women to consume *matzah* on Passover despite the fact that the relevant scriptural decree (Deut 16:3) is written in the masculine. On the other hand, the same midrashic method is applied to justify the decision to exempt women from the obligation to circumcise their sons, since the command to circumcise every male is written in the masculine "as God commanded אתו him" [Abraham] (Gen 21:4), referring to the command in Gen 17:10. The justifying *midrash* of the above rule appears in *b. Qidd*. 29a:

107 For examples of such selective applications of the rabbis' midrashic principles, see Paul Heger, *Cult as the Catalyst for Division: Cult Disputes as the Motive for Schism in the Pre-70 Pluralistic Environment* (Leiden: Brill, 2007), 62, 66, and 235.

108 The rabbis always justified their narrative *midrashim* by citing biblical verses, regardless of the remoteness or utter lack of relationship between the two. See Heger, *Challenges*, 35–49, for an extended study of the different justification styles of rabbinic and Qumranic writings.

"[because it is written אותו 'him,' not אותה 'her,'] we deduce that the obligation relates to a man, not to a woman." With this *midrash* the rabbis overruled the neutral passive form of the original biblical command, המול, which does not distinguish which gender must perform the circumcision (Gen 17:10). The commands in the masculine, then, are applied selectively: the masculine in Deut 16:3 is overruled, and the obligation to eat *matzah* is applied to men and women alike, whereas the decree of circumcision, written in the masculine in Gen 21:4, is applied by the midrashic method to exempt women from its performance. We observe that the rabbis explicitly justify the application of both the extension and its opposite, the restriction, via midrashic methods. This demonstrates the extent to which the rabbis went to justify exempting women from specific Torah decrees; but, as noted above, we do not encounter such justifications for other precepts, except the generic claim that the biblical decree is written in masculine. The rabbinic deliberations on which positive precepts women are exempted from relate only to the question of whether or not a precept is time-bound. The principle that women are exempted from time-associated positive precepts is perceived as scriptural, deduced by the rabbis through their scrutiny of the biblical decrees. That is, their classification was not presumed to have been devised by them, but based on Scripture. This principle, however, did not live up to expectations, since their decisions are based on pragmatic considerations,[109] some of which I have attempted to reveal, that did not concur with the proposed classification.

My last example shows the circular evidence used to justify exempting women from the specific obligations to bind the phylacteries, to teach the Torah, and to study it, as well as to absolve men from the obligation to teach women the Torah. We read in *b. Qidd.* 34a (paraphrased): We compare the command of phylacteries to that of studying the Torah; just as women are exempted from studying the Torah, they are exempted from the obligation to bind the phylacteries. The text, however, does not tell us that women are exempted from studying the Torah or how this is justified. This rule, and the interpretive system used to deduce it, we learn from *b. Qidd.* 29a: The father

109 Tal Ilan, "Women in Jewish Life and Law," in *The Cambridge History of Judaism* (vol. IV; Cambridge: Cambridge University Press, 2006), 627–46 at 638–39, attempts to explain the motive of the rabbinic principle; namely, that the rabbis exempted women from performing "cultic time bound commandments," whereas they obligated the performance of non-cultic and non-time-bound precepts. I do not think that this classification concurs with the facts. The rabbis obligate women to perform the precepts of writing on the doorposts, eating *matzah*, and drinking four glasses of wine on the Passover eve, which are of cultic character.

is obligated to teach the Torah to his sons, because it is written: "Teach them to your sons" (Deut 11:19), and when the father does not teach his son, he must teach himself, because it is written twice ולימדתם ולמדתם "and teach them."[110] The mother is not obligated to teach her son, because the phrase "and teach them" is written twice, and that teaches us that whoever is obligated to study the Torah is obligated to teach it, but whoever is not obligated to study it is not obligated to teach others. She is not obligated to teach herself the Torah, because "and teach them" is written twice (in Deut 5:1 and 11:19), and that teaches us that whomever others are obligated to teach the Torah is obliged to teach it to himself, but whomever others are not obligated to teach is not obligated to teach to himself, and others are not obligated to teach her, because Scripture says: "and teach them to בניכם your sons, not to בנותיכם your daughters." Hence, this entire deliberation and the resulting decisions hinge on the masculine gender of the biblical decrees. Since most of the commands in Scripture are in the masculine, the application of this criterion would automatically exempt women from all obligations except where they are explicitly mentioned;[111] in practice, however, the rabbis applied it selectively, as we saw in the quoted excerpts from their deliberations and halakhic decisions.

Last but not least, if the rabbis had absolved women from biblically imposed obligations, they would have done so systematically, according to a principle, as is their habitual procedure. Their search for a logical principle governing the obligations of women, and their failure to substantiate it, demonstrates the opposite; that is, that they searched in vain for a principle to justify their *ad hoc* acknowledgement of customs performed at random.

In conclusion, when the rabbis instituted changes with respect to women's obligations, these were only to obligate women to perform precepts from which Scripture exempts them or to include them in later-instituted obligations. For example, the newly instituted obligation to drink four cups of wine on Passover

110 I assume that the *midrash* perceives the first quotation of the term in *Piel*, as indicated by its punctuation in the MT and the addition of a י in the rabbinic text, hence the term implies teaching others, and the second parallel quotation in Deut 5:1 without it is supposed to be understood as expressed in *Kal*, intimating that the sons must teach themselves the Torah.

111 Hauptman, *Rereading*, 238, writes: "The Torah rarely obligates women directly. It addresses itself to men who then relay it to the women who are in their charge." She goes on to say that "Like children they were not independently obligated"; rather, "it was their husbands who were in charge of seeing that they did so [i.e., fulfilled the obligations relayed to them by their husbands]." Hauptman's thesis agrees with mine regarding the developmental stages of women's obligations to fulfill precepts and the husband's responsibility for the correct conduct of his wife.

(cited above) includes women, but the rabbis do not obligate women to partake in the Passover meal, from which they are exempted in Scripture.

4.5 Qumranic Attitudes on Woman's Obligations to Fulfill Biblical Precepts

4.5.1 *Introduction*

Whereas we have access to ample rabbinic literature on their *halakhot* in this area, and the underlying considerations that generated them, we do not have comparable materials from the Qumran literature to enable us to reflect on either their halakhic decisions or their basic philosophy with respect to women's obligations and exemptions. Since, as we have seen, Scripture explicitly relates some commands to both men and women, but not others, we must assume that the Qumran scholars were aware that women were not obligated to perform all the biblical precepts, as men were. Indeed, we have definite evidence that, according to Qumran *halakhah*, women were not obligated to participate in the Passover meal, as we read in 11Q19 (11QTemple[a]) XVII:6–9 that men over twenty are commanded to perform the slaughtering of the Passover offering.

4Q265 (4QMisc. Rules) 3:3 explicitly prohibits the consumption of the Passover offering by נער זעטוט ואשה "youth and women." We have no similar explicit statements, however, in the Qumran texts concerning which *halakhot* women are obligated to fulfill and from which *halakhot* they are exempted. I will quote some implicit and indeterminate rules, from which we can deduce an imprecise idea of their practice in some respects, but no enlightenment about their overall theory and practice with regard to women's obligations.

4.5.2 *Implicit Deductions from Qumranic Texts*

4Q502 (4QpapRitual of Marriage) 19:5–6 indicates that women participated at joyous events of the community (vv. 2–3), but the blessings were recited by אנשי men.[112] Hence, we can deduce from this lemma that women did not participate in the ritual performance of the public blessings.[113] On the other hand, 1Q28a (1QSa) I:4–5 tells us that women were obligated to avoid transgressing some

112 Although the use of אנשי in the text seems to unequivocally indicate that only men say the blessing, Crawford, "Not According to Rule," 137, states that the lemma "describes women participating in the worshipping life of the community."

113 Although I believe that the prayers in 4Q503 (4QpapPrQuot) were performed only by men, the plural masculine mode and the phrases ברית בני (Frags 7–9: 3) and צדק בני (Frags 48–50: 8) do not serve as unquestionable evidence for it.

rules; this is to be expected, as an unquestionable result of the biblical texts, as I have argued. We read there: "As they arrive, all the newcomers shall be assembled—women and children[114]—and read [a]ll the statutes of the Covenant. They shall be indoctrinated in all of their laws, for fear that otherwise they may sin accidentally." However, the phrase "indoctrinated in all of their laws" is ambiguous; we do not know whether it relates to all of the laws of the Covenant or to all the laws of the Torah. Both possibilities seem inappropriate, since we know that the ordinances of the Community Rules relate to men only, and we have seen above, in the example of the Passover meal, that women and children are not obligated to perform all biblical precepts. We must therefore assume that the author means that they should be taught the rules relevant to them—that is, to women and children—regardless of whether we understand the phrase to refer to the Torah decrees or to the Covenant's ordinances. I would tend to assume that the author's intention was to teach them the relevant ordinances of the חוקי הברית New Covenant and to explain to them the relevant משפטיהמה rules of Scripture.[115] But we have no specific data about the type of decrees from which women are exempted or which they are obligated to fulfill.

The use of במשגותיהמה to describe the motivation for teaching the laws may offer us a hint as to the types of precepts obligatory for women and children. Derived from the root שגג "doing something inadvertently," this term is always associated with actively performing a wrong act—here it means transgressing a prohibition, not passively failing to perform an obligation. The main uses of שגג in Scripture occur in connection with making atonement for involuntary wrongdoing (transgressing prohibitions, eating sacral food, involuntarily killing a person); עשה, in the negative sense of "not to do" or "done involuntarily," appears often in these biblical decrees.[116] Moreover, in some cases נפש "soul" is the object of the rule, affirming that the rule refers to men and women alike. We could say almost with certainty, therefore, that according to Qumran scholars, men and women are equally obligated not to transgress the scriptural

114 I deleted here the translators' addition of "included" from the phrase "women and children included" because I understand it as being directed to the women and children of the newcomers; see extended justification for this deletion in Chapter 5, p. 189.

115 In the majority of quotations, such as in: CD II:2–3; CD VI:11–12; CD VI:19; CD VIII:12; CD IX:2–3; CD X:5–6; 1Qp Hab II:3–4; 1QS I:16–18; 1QS V:9–11; 1Q28b (1QSb) I:2–3; 1Q33 (1QMilḥamah) XVII:8–9; 1QH^{a} 4:8; 4Q256 (4QS^{b}) III (3a–b):3 the term הברית must be perceived as referring to the group's New Covenant, although in some instances (e.g., CD XV:8, XIX:1, XX:29, and 1Q22 (1QapocrMoses^{a}) I:8) it relates to the covenant of Moses.

116 Exod 20:10; Lev 4:27, 5:17–18, 22:14; Num 15:24, 29, 35:11; Deut 5:13.

prohibitions. This rule would concur with the rabbinic opinion that women are obligated not to transgress the prohibited decrees. We read in *m. Qidd.* 1:7b that both men and women are obligated to observe all the negative precepts, whether time-bound or not, except the rules not to cut the hair at the sides of the head and not to clip off the edges of the beard (Lev 19:27), which are not relevant to women, and not to become polluted by a corpse (Lev 21:1–4), which is relevant exclusively to male priests.

We know positively that women were not obligated to fulfill all the active precepts, as men were, from the fact that women and children were forbidden to partake in the Passover meal (definitely an active precept). I can only conjecture that it was incumbent upon the man, as husband and head of the family, to decide which active precepts his household would fulfill.[117] I conjectured above that one may assume that this was the custom in Israel, before the rabbis institutionalized these customs and implemented universally obligatory rules for all Israelite women. We may perceive implicit support for this hypothesis in two Qumran dicta: 1Q28[a] (1QS[a]) I:9–11 decrees that a man cannot marry before reaching the age of twenty, when he knows to discern between right and wrong. There is no such restriction for women, and as we know, in that period women were married at a young age. Hence, the wife is not required to discern right from wrong, presumably because, at her young age, she does not possess the knowledge and wisdom for the correct fulfillment of the divine rules;[118] the husband, however, endowed with this faculty as a result of his intense ten-year instruction and the study of the Hagy (1Q28a (1QSa) I:6–8), is responsible for the behaviour of his household. The only logical reason for instituting this rule, it seems to me, is to ensure the correct performance of the divine decrees; I do not think that the author was motivated by concern to ensure an orderly household directed by one mature person.

As we can deduce from the text of 1Q28a (1QSa) I:6–11, there are three prerequisites that a young man must accomplish to be ready for marriage: to be

117 Christiana van Houten, *The Alien in Israelite Law* (Sheffield: Sheffield Academic Press, 1991), 35, writes that the protection of the weak and dependent members of society, such as the widow, the orphan, and the foreigner, in Scripture, "is a law addressed to the head of the household, as are all the laws."

118 Wassen, *Women*, 201, conjectures that if the women took the oath of the covenant, an extremely doubtful presumption, the young women, like the men, were "responsible and accountable for fulfilling the commandments." Wassen seems to ignore the rationale for Qumran's condition that the man must be mature and adequately instructed to be allowed to marry, without requiring the same condition from women; hence, one cannot impose on her such a responsibility.

instructed in the Book of Hagy, to be enrolled in the community, and to have reached the age of twenty. This lemma supports our thesis that the ability to discern between right and wrong, a requirement for permission to marry, is tied to a man's completion of the mandatory instruction in the holy writ, which qualifies him to guide the comprehensive and correct fulfillment of the divine commands.

The husband has authority to impose his will on his wife, even when, as a consequence, she sins by failing to perform her vow, as is written וה' יסלח לה: "and God will forgive her" (Num 30: 9), indicating that she performed a sinful act. 4Q416 (4QInstr^{b}) 2iii:21–2iv:7 explains and justifies this rule by emphasizing "So that she should walk in/according to thy good pleasure," referring to God's communication to Eve, והוא ימשל בך "and he will rule over you," thus implying that this dictum is the foundation of the husband's authority to annul his wife's vows.[119] Therefore, difficult as it is to assume that Qumran scholars conceived that God granted priority to the husband's will over God's own[120] even when the husband oversteps his God-given authority, as I argued earlier, this seems to be the logical consequence of this biblical rule.[121] It is plausible, then, that Qumran, emulating Scripture, authorized the husband to decide which precepts his wife must perform and from which she is absolved.

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119 Wegner, *Chattel*, 147, indicates a similar motive for the rabbinic exclusions of women from participation in the cult. She writes: "a legal presumption that men, as heads of households, perform cultic precepts on behalf of wives, children, slaves and all within their jurisdiction."

120 In a similar instance, *b. Ros. Has*. 27b comments: it is an assertion that "the mouth cannot say and the ear cannot hear." Biale, *Women and the Jewish Law*, 13–14, quotes David ben Joseph Abudarham, a medieval commentator, who writes on this issue. Biale summarizes his theory in a condensed and colourful manner: "The reason for women's exemption is that a woman is a servant of two masters, and may be caught in a crossfire of jealousies between them [God and her husband]." It is God who "bows out" of the competition.

121 It may also indicate that a wife's obligations are of a different character than that of a man, being *a priori* less compelling, because she is a part of her husband, and only he can decide what she can do and what she cannot. Hence, from the legal aspect, when he becomes aware of his wife's commitment and does not annul it, he validates it, and her vow or pledge are legally deemed to be his commitment; annulling it afterwards, it is he, not the woman, who legally breaks the commitment and bears the sin. Such an explanation is, in my opinion, plausible from the legal aspect, and would be perfectly appropriate for the rabbinic mindset. I doubt, however, that one can assume in Scripture such legalistic basis for this rule. I dispute Wassen's interpretation of CD XVI: 10–12 in *Women*, 92–93, restricting the husband's authority to annul only pledges against the Law, a topic I will discuss on another occasion.

The style of another biblical command, the text of the Fourth Commandment (the Sabbath decree) in Exod 20:10 and Deut 5:14, may have also led the Qumranic author to assume that the husband bears responsibility for his wife's behaviour. We read there: "אתה You (masculine singular) shall not do any work, neither you, nor your son or daughter, nor your male or female servant." Women are explicitly included in the command, but wives are not mentioned. Thus, it may have served to justify the enactment of the Qumranic rule that the husband must be mature and must be adequately instructed in the rules and doctrines of the Book of Hagy for ten years, until the age of twenty; the husband is commanded to ensure his wife's obedience. Although it seems from the text that he is also responsible for the behaviour of his household (children and servants), since the command is conveyed to him, his offspring must be explicitly mentioned because they may also include mature children who are themselves responsible for their actions; the command does not discern between a Canaanite slave and an Israelite slave, who is also himself responsible for the fulfillment of the divine commands. The husband, however, is always responsible for his wife's fulfillment of the Torah precepts,[122] since she is not mentioned separately and is perceived to be a part of him. Although, as noted above, we have no explicit text to support our hypothesis, I believe that implicit deduction from the quoted texts offers a plausible conjecture on Qumran's attitude towards the obligations of women to fulfill biblical precepts, and the husbands' involvement in their practical application.

4.6 Conclusion

I believe that I have presented a reasonable and appropriately substantiated proposition about the interesting and challenging topic of women's obligation to obey the scriptural decrees, as one may deduce from the texts of Scripture, Qumran, and rabbinic literatures. On the basis of my research, I have attempted to substantiate my thesis that women, unlike men, were not obligated to fulfill all the precepts. This crucial issue, I believe, had a determining impact on the social status of women in ancient Jewish society, and continues to affect their status in religious Jewish communities today. In the course of the study, I was confronted by the question of how to translate into practice the rules quoted in the relevant texts, since it became clear to me that we stand before a

122 It is remarkable that *Tg. Ps. J.* and *Tg. Neof.* add at the end of Gen 3:16 והוא ימשל בך, a clarification of its meaning: יהי שליט ביך למזכי ולמחטי "he will rule over you regarding righteousness or guilt."

long-range development, particularly in the rabbinic world, before the institution of a final code of law. Some scholars argue that women were initially obligated to fulfill all scriptural rules and that the rabbis later exempted them from a number of specific precepts; I hypothesize the opposite developmental chronology, arguing that women were initially exempted from fulfilling many precepts, that husbands decided which biblical decrees should be accomplished by their wives, and that some of these decisions were later institutionalized by the rabbis. By legally and officially obligating women to fulfill an array of precepts, the rabbis enhanced women's social status; women, like men, have the duty and privilege to perform the divine will and commands. I hope to have succeeded in making this argument convincingly on the basis of scriptural and rabbinic writings, and also with respect to Qumranic custom, relying on logically plausible conjectures. I hope that my study on this topic will serve as a basis for further scholarly debates, including the question of women's participation in the revelation at Sinai. Last but not least, I consider that the comparison I have effected between rabbinic and Qumranic writings on this topic supports my thesis concerning the difference between their systems for interpreting Scripture: the Qumran texts adhere to the simple reading and interpretation of the scriptural decrees, whereas the rabbis interpret them using a midrashic method to concur with their ideological viewpoints and practical goals.

CHAPTER 5

Were Women Members of the *Eda–Yahad*?

5.1 Scriptural Commands That Lack Precision about Gender

Because the Qumran texts prohibit women and males below age twenty from participating in the Passover meal and describe an admission celebration relevant only for males over twenty, I hypothesize that Qumran adopted the features of the census and joining the congregation in the desert as a model for their organization. Since in that case only men over twenty were counted, paid a half-shekel, and made full members of the *Eda* with all the associated rights and obligations (Num 1:18 and elsewhere), Qumran proceeded likewise, and only men over twenty became members of the exclusive *Eda*, called the *Yahad*, by means of a covenant ceremony and payment of a half-shekel. Younger males and women were members of the Qumran community, but not of the *Eda/Yahad*; thus, they neither enjoyed all its privileges nor were required to fulfill all its obligations. Scripture does not specify which precepts women must fulfill and from which they are exempted, but it is evident that women, unlike men, are not obligated to perform all scriptural commands; Qumran followed this principle. This chapter disputes Eileen Schuller's conflicting statement that woman were members of the *Eda* and studied the Hagy, as well as her interpretation of 1QSa I, particularly v. 11 (on the topic of the woman witnessing against her husband). Biblical and rabbinic passages are quoted in support of the thesis proposed above.

5.2 Qumran's Principle of *Eda*, the *Yahad* Holy Community, and Its Legal Implications

We read in 11Q19 (11QTemple[a]) XVII:6–9 that men over twenty must sacrifice the Passover offering in the evening of the fourteenth of the first month and eat it at night in the court of the holy place. As we observe, these instructions restrict the biblical obligation to slaughter and eat the Passover meal to men aged twenty and up. It is not clear from this text whether women and males under twenty are forbidden to partake of this meal or whether they are merely not obliged to do so. However, 4Q265 (4QMisc. Rules) 3:3 explicitly prohibits the participation of both נער זעטוט ואשה youngsters and women.

In contrast, in *b. Pesaḥ.* 91a we find a dispute between three Tannaim as to whether one may slaughter the Passover sacrifice for the exclusive consumption of women—that is, whether the fact that women are not obligated to participate in the Passover meal forbids a slaughter for women only or whether one may slaughter for women even though they are not obligated to partake.[1] The dispute is extended to the question of whether there is a difference in the obligation of women between the First Passover and the Second (postponed) Passover. We observe that the rabbis, too, perceive a difference between men and women with respect to the obligation to participate at the Passover meal; however, none of the rabbis prohibit women or minors from participating in the Passover meal. Minors are definitely not obligated to participate in the meal, but neither are they forbidden to do so. The Qumran texts prohibiting women and minors from participating in the Passover meal aroused scholarly curiosity and stimulated investigation to reveal its motive.[2]

J.M. Baumgarten finds this rule odd, particularly, as he emphasizes, "in light of the description in Exod 12, where it is an offering shared by all the 'souls' of each household."[3] He seems to be referring to Exod 12:4: "במכסת נפשת according to the number of the souls; every איש man according to his eating shall make your count for the lamb" (KJV translation). In this context, as is evident

1 Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), 148, asserts that since "the paschal lamb must be slaughtered by the head of household (Exod 12:3) women cannot offer it in their own right," because women, even widows or divorcées, "cannot qualify as heads of households." I think that this is not the issue that rabbinic contemplations focus on, but rather, whether one may slaughter only for women even though they are not obligated to perform this precept; it could be perceived as offering something in vain, since the Passover offering is not a freewill offering. The core of the Passover decree is its consumption, not its slaughter by the head of the household; Exod 12:4 allows more than one household to partake in the meal slaughtered by the head of one household. The consumption is emphasized as the criterion for the number of people and households that may participate in one offering (Exod 12:4b). Exod 12:43–48 again asserts who may or may not participate in the consumption of the Passover meal, which is the core of the precept.

2 Michael Fishbane, "Interpretation of Mikra at Qumran," in *Mikra: Text, Translation, Reading, and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity* (ed. Martin Jan Mulder; Assen/Maastricht: Van Gorcum, 1988), 339–77 at 371, also attempts to find an explanation for this apparently odd rule. See the details of his thesis and my arguments against it in Heger, *Cult as the Catalyst*, 98–102.

3 Joseph M. Baumgarten, "Scripture and Law in 4Q265," in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls: Proceedings of the First International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 12–14 May 1996* (ed. Michael E. Stone and Esther G. Chazon; Leiden: Brill, 1998) 25–33 at 31–32.

from the original text and the translation, the use of נפשת simply indicates that the number of participating *people* should be proportional to the lamb so that there will be enough for everyone—not that every soul in the household must eat the Passover meal. The neutral נפש, like the English "people," refers to the category of participants previously established and subsequently reiterated, in masculine mode, as איש—generally meaning an adult man; it does not add children and women to the group. Baumgarten writes that prohibiting women and minors from partaking in the Passover meal "was apparently a sectarian stringency, later perpetuated in Karaite exegesis."[4] This suggestion is vague, to say the least, since he does not indicate a motive for this stringency. A further indirect suggestion that it may have been a preventive measure against possible impurities among the women does not seem plausible; such a rationale would also prevent priests' wives and families from eating the *Teruma* tithes[5] or the meat of the lower-grade sacrifices by Israelites and their families,[6] since the Passover sacrifice is considered of the lower sacral category (*b. Pesaḥ*. 120b).

Baumgarten's suggestion that this prohibition is comparable to the *mishnah*'s prohibition on slaughtering the Passover sacrifice for groups of women, slaves, and minors (*m. Pesaḥ*. 8:7), assumed in the *Gemara* to be motivated by fear of unchaste behaviour, does not render Qumran's prohibition less perplexing.[7] The *mishnah* is ambiguous; it does not indicate whether the prohibition refers to mixed groups of women, slaves, and minors or to separate groups, and the rhetorical deliberations in the *Gem*. are not relevant to Qumran's rules, since the Qumran scholars' halakhic interpretations do not use the rabbinic method of preventive prohibitions on the basis of שמא ("perhaps" a transgression may occur). Such preventive prohibitions are perceived as rabbinic rules of lower degree than scriptural laws. Qumran, on the other hand, has no two-tier *halakhot*; all their *halakhot* deduced from Scripture are of identical degree, since Qumran's theology holds that there is only one true interpretation. Fishbane does not search for the rationale behind this Qumran rule, but attempts to

4 Ibid., 31.

5 Lev 10:14 and 22:12 and Num 18:11, 19 permit the priests' daughters to eat from the holy tithes and offerings. Lev 22:13 permits even a priest's divorced daughter who has returned to her father's house to eat the sacred food.

6 See Lev 7:15–20, and particularly v. 19b.

7 *B. Pesah*. 97a suggests that the *mishnah* relates to mixed groups and that a concern about possible licentiousness is the motive for the preventive prohibition of making mixed groups of women and slaves. On the other hand, there is no rabbinic prohibition for women to participate in a mixed group of free Israelite men.

demonstrate that it is the result of a particular Qumran exegesis;[8] he does not assume that this limitation is associated with concerns about purity. Like Baumgarten, he is influenced by the rabbinic prohibition on making a Passover meal for a mixed group of slaves and women for fear of unchaste behaviour, as discussed above.

However, Baumgarten's suggestion that the Karaites[9] also restricted the Passover meal to mature men supports my thesis. As I have discussed extensively elsewhere,[10] the Qumran texts demonstrate a commitment to the literal meaning of Scripture. Here, as in other instances, Qumran applied the command to offer the paschal lamb according to the exact definition of the biblical term עדה "community." The commands to celebrate the Passover meal in Exod 12:3, 6, 19, and 47 are addressed to the עדה, but Scripture does not indicate in this case who is included in this designation—that is, whether children and women also, or only men of a certain age. In Exod 12:3 we read: "Tell כל עדת ישראל the whole community of Israel that on the tenth day of this month each man is to take a lamb לבית אבת for his family, one for each household." From the phrase "for his family," we see that the command is directed to the man, but the text does not mention a required age. However, Num 1:2–4, 1:18, and 26:2 indicate clearly that only men over age twenty are considered members of the כל העדה "the whole community" and כל עדת בני ישראל "the whole Israelite community," and this is confirmed from context in a number of relevant biblical verses.[11]

Hence, the Qumran authors deduce that only the members of the *Eda* are obligated to partake in the Passover meal, because the command is addressed to the עדה, whereas the command prohibiting all Israelites to eat anything leavened uses נפש "soul," a term which includes women (Exod 12:19). This deduction is further reinforced by several additional instructions that point in the same direction. Exod 12:24, for example, reiterates the commands for the Passover meal as relevant לך ולבניך "to you and your sons" (masculine). The KJV translation follows the LXX; the later NIV, perhaps in an effort to avoid

8 Fishbane, "Interpretation of Mikra at Qumran," 339–77 at 371, asserts that Qumran deduced this rule from the same verse by a rabbinic-type exegesis. See my contention against this in Heger, *Cult as the Catalyst*, 99–102.

9 Aderet Eliyahu, *The Book of the Precepts of the Jewish Karaites* (Hebrew; Jerusalem: The Association of the Jewish Karaites of Israel, 1966), Ch. 9.

10 See Heger, "Rabbinic and Qumran Interpretation Systems" in *Cult as the Catalyst*, particularly pp. 25–35.

11 See Chapter 4, pp. 139–141 for an extensive deliberation about who is included in the terms עדה and העם in Scripture.

gender bias, translates "your descendants"—an interpretation that conflicts with the scriptural texts, which refer to men only.[12]

In those cases where women are included in the obligations or privileges—for example, in relation to the priestly parts of the offered animals, which women as well as men are permitted to consume—Scripture states this explicitly, as in Lev 10:14: לך ולבניך ולבנותיך "to you and your sons and daughters." The same phrase appears in Num 18:19 in relation to the *terumah* portion of grain. General admonitions to observe the divine commands and the promise of reward, however, as in Deut 12:25, use the phrase לך ולבניך "to you and your sons." Although this verse follows the prohibition against consuming blood, which is forbidden to men and women alike, the entire lemma refers to rules forbidding slaughtering animals outside the Temple, a category of proscribed acts generally relevant to men only.

Thus, it appears that, according to Scripture, women and children are not part of עדת ה', "the LORD's community"; and as is clear in their writings,[13] Qumran has taken the Desert Community as the model for the character and structure of their Holy Community, the עדת קודש, that relates exclusively to men (Exod 18:21). We read in 4Q266 (4QD[a]) 8 i 8–9 and CD XV:16–17 that blemished persons and נער זעטוט "young boys" cannot come into the congregation. The age of maturity, mandatory for membership in the Holy Community and its various functions, was established according to the biblical model at the age of twenty. During the Rite of Passage, they were counted לעבור על הפקודים (the term used in Qumran writings for this event) by giving the half-shekel, exactly as the Israelites in the desert did (Num 1:3 and Exod 30:14).

Herewith are a few examples: 1Q28a (1QSa)I:8–11 decrees that at the age of twenty a young man יעבר על הפקודים shall be enrolled in the ranks. He must not approach a woman for sexual intercourse before reaching that age, when he knows to discern between right and wrong; he will take it upon himself to accept witness against him [for transgressions] of Torah laws, and stand before the hearing of the court case. At the age of twenty, then, a male reaches intellectual maturity.

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12 There is one exception in Deut 12:25, regarding the prohibition against eating blood, which uses the phrase לך ולבניך, whereas in the other numerous prohibitions, such as Lev 7:27 and 17:10, 12, and 14, the term נפש "soul" appears. However, the exception proves the rule, as the saying goes.

13 John J. Collins, *Beyond the Qumran Community: The Sectarian Movement of the Dead Sea Scrolls* (Grand Rapids, Mich.: Eerdmans, 2010), 54, states, "Both rules [1Qs and CD] portray the association on the model of Israel in the wilderness, organized in 'thousands, hundreds, fifties, and tens.'"

4Q159 (4QOrdin^{a}) 1ii+9:7 acknowledges the ritual at the rite of passage for young men: רק [פעם] אחת יתננו כול ימיו "only once in his lifetime he shall give" the half-shekel (Exod 30:13). The ordinance establishing when a man is deemed mature to serve as a witness uses again the scriptural term of counting, as we see in CD IX: 23–X:2 and 4Q270 (4QD^{e}) 6iv: 13–14: "A witness is not to be accepted by the judges to declare the death penalty on his word, if he has not fulfilled his days לעבור על הפקודים so as to join the recruits."

We read in CD XV:5–6: "Whoever enters the covenant for all Israel, this is a perpetual observance: any sons who reach the age לעֹבֵר על הפקודים to be included in the registrants." Although this passage does not indicate the age of twenty, it is obvious from the use of the biblical לעֹבֵר על הפקודים (Exod 30:13), and from the use of נער in CD XV:16–17 prohibiting those under twenty to enter the congregation, that it refers to sons who had reached the age of twenty.[14] Women are not counted, and thus did not become members of the holy *Eda*. Clearly they could not become members by joining it individually; even by marrying a member of the *Eda*, however, a woman became a member of the Qumran Community but not of the holy *Eda*, which was reserved for men over the age of twenty.[15] This apparent two-tier membership structure should not surprise us: in contemporary Orthodox Jewish communities, women are definitely members of the community but cannot actively participate in the rituals; for example, they are not counted for the purposes of liturgies that require ten men for public prayer or three men during the blessing after meals. These procedures are thus identical to those practised at Qumran, with no official classification of two distinct groups, as I assume was the custom at Qumran.

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14 We may plausibly assume that the term נער was the common term for a young male between the age of ten and twenty years, as is evident from 1QSa; in I:6, at the age of ten he is called ומן נעוריו and in I:8, when the young man joins the *Yahad*, he is ובן עשרים שנה.

15 Eileen Schuller, "Women in the Dead Sea Scrolls," in *The Dead Sea Scrolls After 50 Years: A Comprehensive Assessment* (ed. Peter W. Flint and James C. VanderKam; vol. 2; Leiden: Brill, 1998), 117–44 at 129–30, poses the question whether women could "choose independently to join the sect or did they become part only by birth or by marriage to a member." Schuller quotes Schiffman, *Sectarian Law*, 57, who states that the status of women "was determined only insofar as their husband took on membership." Hartmut Stegemann, *The Library of Qumran: On the Essenes, Qumran, John the Baptist, and Jesus* (Grand Rapids, Mich.: Eerdmans, 1998), 198, also writes that the wives of the Essenes "could never become full members." My own assumptions proffer the same logical explanation for this circumstance.

The idea that women are not counted as members of the holy community can be seen throughout Scripture.[16] For example, women/wives were not counted among the Israelites who left Egypt, as we see in Exod 12:37: "There were about six hundred thousand גברים men on foot, לבד מטף besides children."[17] Women/wives, unlike children, are not mentioned at all, because they are part of their men, and the unwed were minors, included in the term טף. The explicit use of גברים "men," the only one in Scripture without a qualifier such as יוצאי צבא "ready for military service," indicates that the exclusion of women from the counting process is deliberate; it demonstrates that their dependent legal status differs from that of children. The latter are under their father's dominion, but they are not part of their father, whereas the woman is an integral element of her husband, and thus is not counted as a separate entity. Therefore, wives are also not mentioned in Moses' demand that Pharaoh let the Israelites go. We read in Exod 10:9, in Moses' answer to Pharaoh: "We will go with our young and our old, with our sons and our daughters, and with our flocks and herds"; the wives are not mentioned, since they are part of their men. We see the same approach in Deut 5:13 (the command to rest on Sabbath) and Deut 16:14 (the command to enjoy the Holiday of Tabernacles). All are counted in these rules: the head of the family, his sons and daughters, male and female servants, the Levites, the foreigners, the fatherless, the widows, and the animals. The only one missing is the wife, although it is obvious that wives are included in both commands, as are daughters and widows.[18] This omission is not accidental,

16 The exceptions in the admonitions in Deut 28:69–30:20, in which women are specified, refer to the prohibition of the idolater that is also valid for women and sojourners (29:10) and refers to the historical events in which women participated and were witnesses (29:1). At any rate, the term *Eda* is not mentioned in these chapters, or in chapter 31, in which women are also mentioned. In Chapter 31, the introductory verse 1 refers to כל ישראל "all Israel," and the concluding verse 30 cites כל קהל ישראל "the whole assembly of Israel." See also Maxine Grossman, *Reading for History in the Damascus Document: A Methodological Study* (STDJ 45; Leiden: Brill, 2002), 50, on this issue.

17 The NIV, in contrast to the MT (Stuttgart), adds "women." The LXX has an entirely different text: it does not explicitly exclude women and children but uses ἄνδρες "men," thus automatically excluding women.

18 *T. Hag*. 1:4 confirms explicitly that the command to be joyous in the Holiday "applies to men and women alike, all seven days of the festival." Shaye J.D. Cohen, "Are Women in the Covenant?" in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies* (ed. Tal Ilan et al.; Tübingen: Mohr Siebeck, 2007), 25–42 at 27–29, deliberating on this issue, similarly states at 27 that women are not mentioned in the biblical commands, "because a wife is included with her husband." However, I dispute his explanation that

but reflects the married woman's complete legal dependence on her husband: she is part of him, and therefore mentioning her is superfluous.[19] We observe in Deut 7:3–4 a further omission of the wife because of her dependent status: whilst the prohibition of intermarriage applies equally to sons and

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"a wife is understood as belonging to her husband"; rather than using the attribute of belonging, which degrades her status as a person, I perceive the wife as being a part of the husband, solely dependent, from the legal aspect, on him. Cohen further asserts vaguely that women are both included in the covenant and are excluded from it, and that a woman "belonging to her husband [is] subsumed by him." In my opinion, as amply argued for, women are parties to the covenant in a legal sense, as they are part of their husbands. Women are, however, as distinct persons, not obligated to fulfill all precepts, like men, and hence not all biblical decrees are also addressed to women. Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon Press, 1972), 291, states that the "word 'you' which opens the list refers equally to the husband and the wife, who in Deuteronomy's view both enjoy the same prerogatives." As we have seen, however, the same absence of the wife occurs also in Exodus.

19 Otto, "False Weights," 143, similarly states that women are included in these rules, "because it is impossible for them not to take part in feasts and sacrifices, if their daughters and maidservants did so." However, he states, ibid., that since "for the Deuteronomic author men and women are equally *ahim*, they are equally addressed by you." He does not consider that this sobriquet only appears in Deut 15:12, regarding the rights of an Israelite slave. This occurrence does not automatically imply that in all other cultic circumstances men and women are equal; rather, they are not equal in all aspects of the biblical cultic rules. At one of the most important cultic celebrations, the pilgrimage, women are excluded. While the command to enjoy the holidays in Deut 16:11 and 14 relates to the head of the family, all his household, and even outsiders, for whose subsistence he is indebted, the command to appear before the Lord, which is the climax of the pilgrimage, is explicitly restricted to mature males (Deut 16:16 and *t. Hag*. 1: 4). The supporting biblical celebrations, which Otto cites at 144, cannot serve as evidence that "women received equal cultic rights." The Moab assembly was not a cultic celebration, but rather the making of a treaty not to worship idols, an obligation that concerned everybody, women, children, and aliens alike, of which the latter two definitely do not partake in a cultic celebration. The copulas כרת and ברית are used in Scripture when making treaties between Israelites and Gentiles that have no affinity with cultic celebrations. See, for example, Gen 21:26 and Josh 9:15. The assembly every seven years is equally an admonition to fear God, relevant to children and aliens, and is not a cultic celebration. Otto's deduction that the Deuteronomic rules are founded on human rights and are equally applicable to men and women does not demonstrate equal social and legal status; these are utterly different issues. Equal rights also appear in many rules in Exodus, in contrast to Mesopotamian codices, as argued in Chapter 3 (pp. 122–123 and nn. 27, 30), and demonstrate the crucial biblical revolution of ancient ethics, but they do not overturn the dependent legal status of women and its various ramifications.

daughters, its motivation כי יסיר את בנך "for they will turn your (children)[20] son away from following me" refers only to sons, since a woman would in any case become Canaanite by virtue of her marriage. The only two cases in which the Pentateuch mentions wives, together with children and strangers/aliens, are the admonitions against idolatry, which obligate all dwellers in the land (Deut 29:10), at the conclusion of a covenant for that purpose; and in Deut 31:12, which mandates the meeting to take place every seven years and which similarly concerns basic instructions valid for all, including foreigners and children. I believe this discussion has adequately supported the postulate that the *Yahad* community, also called *Eda*, had a special status in the Qumran group, like the *Eda* of men over twenty in the Desert Community.

5.3 References to *Yahad* in Qumran Writings: Differing Scholarly Proposals

In 1Q28[a] (1QS[a]) II:21 and in 4Q171 (4QD[f]) IV:19 we find the copula עדת היחד; in most other instances in 1QSa and 1QSb, we encounter עצת היחד, which seems to refer to the same group,[21] as do the other combinations used elsewhere (סרך היחד ברית יחד, אנשי היחד, משפטי היחד, סוד היחד, etc.).[22] There is some relationship between 1QS, 1QSa, and the Damascus text,[23] as is evident from the very similar phrases להיחד לעדת קודש in 1QS V:20 and ליחד בעדת קודש in 1Q28[a] (1QS[a]) I:9, used to describe the same event of joining the group, which rarely occur elsewhere. Elsewhere in the same documents we find interchangeable expressions such as עדת קודש, עדת ישראל, and אנשי השם, which demonstrates that the sobriquet *Yahad* applies to all holy (mature male) members of the Qumran community. The terms עדה and עצה are similarly interchangeable, and in most cases refer to the community of the *Yahad*; only the context could indicate whether עדה

20 I have replaced the NIV's term "children" with the term "son," as appears in the original Hebrew text, in the LXX, and in the KJV translation. "Children" reflects the sensitivity of the more modern NIV translator to the equality of the sexes, but is contrary to the Hebrew text.

21 We find this phrase in 1Q28[a] (1QS[a]) I:26, 27 and II:2, 11, and in 1Q28[b] (1QS[b]) IV:26 and V:21.

22 Collins, *Beyond the Qumran Community*, 54, enumerates all mentions of the term *Yahad* in 1QS, 1Q28[a] (1QS[a]), 1Q28[b] (1QS[b]), and in other texts of the Dead Sea Scrolls.

23 John J. Collins, "Forms of Community in the Dead Sea Scrolls," in *Emanuel: Studies in Hebrew Bible, Septuagint and Dead Sea Scrolls in Honor of Emanuel Tov* (ed. Shalom M. Paul et al.; Leiden: Brill, 2002), 97–111 at 109, writes: "That there is some relationship between 1QSa and the Damascus texts cannot be doubted, but there is also an important link between 1QSa and the Community Rule."

or עצה refers to the council of the community—that is, to a particular elected group of members entrusted with particular authority—or to the entire *Yahad* group. For example, García Martínez and Tigchelaar[24] translate עצה in 1QS VI:3 as "council," that is, a body of persons entrusted with some particular authority, while the translators of the *DSSEL*[25] translate it as "party," that is, the *Yahad* group. On the other hand, where עצה occurs in 1QS VI:14 and 16 and in 1QS^a II:9 and 11, the context requires that we interpret it as referring to the community, not to a special council, and the same applies to the phrase בעצת אל in 1QS I:8. While בני צדוק "the sons of Zadok" in CD IV:3–4 do not seem to be priests, being set in opposition to the priests in v. 2, the בני צדוק in 1QS V:2 and 9, and in 1QS^a I:2, I:24, and II:3 are quoted with their genealogical rank of כוהנים "priests." Likewise, in 1QS^a I:2, 8, and 11, the "title" אנושי השם קיראי מועד refers to Israelites, but in v. 13 the same title refers to priests.

I have broadened the scope of this investigation, with respect to the different meanings of similar or identical terms, to indicate the possible pitfalls of attempting to deduce consequences of crucial significance from the use of terms that have varying meanings in the same ancient writings. I would like to cast some doubt on the common scholarly assumption that there was a group calling themselves *Yahad*, because the term occurs many times, in various forms and applications, in 1QS—more often than in other Qumran writings.[26] יחד is an adverb meaning "together," and is also used as a verb in various grammatical forms with correspondingly different meanings. In these grammatical forms יחד appears in 1QS, 1QS^a, and many other Qumran texts,[27] describing the collective manner of the group's various activities. The many occurrences of יחד in 1QS V:3, 5, and 10, as well as in VI:2 and 3, are obviously adverbial and mean "together," whereas in V:14 יחד represents an action, a verb: "to associate/be together." Even the form להיחד, which may appear to be a noun, is translated according to its context as "to be joined/united" by three translators. One should therefore consider the possibility that the author of 1QS emphasized that the group's members acted together, a practice to be adopted by all male members of the group, and for that reason called it היחד to indicate their

24 García Martínez and Tigchelaar, *The Dead Sea Scrolls Study Edition*.

25 M. Wise, M. Abegg, and E. Cook with N. Gordon, *DSSEL* (ed. Donald W. Parry and Emanuel Tov; Leiden: Brill, 2006).

26 I will nevertheless continue to refer to the *Yahad*, according to the current scholarly opinion that it represents the official name of a movement.

27 The term appears quite often in 1Q33 (1QMilḥamah) and in 1QH^a, as well as in 4Q171, 216, 255, 256, 260, 403, 427, 428, 511, and 525, and in 11Q5.

distinctive way of life,[28] without intending that his message and regulations refer to a separate Qumran group and exclude others.[29] This conjecture seems to be supported by the text of 1QS V:1–3, which indicates the author's motive for attaching the sobriquet *Yahad* to the members of the Qumran group: "This is the rule for לאנשי היחד the men of the *Yahad* who volunteer to repent from all evil and to hold fast to all that He, by His good will, has commanded. They are to separate from the congregation of perverse men. They are להיות ליחד בתורה to come together as one with respect to Law and wealth. Their discussions shall be under the oversight of the Sons of Zadok—priests and preservers of the covenant—and according to the majority rule of אנשי היחד the men of the *Yahad*, who hold fast to the covenant."

There is no hint that the men of the *Yahad* constitute a special group. The requirements for newcomers in 1QS V:1 are identical to those described in other writings—as in CD VI:15 and VII:4 or, in a different style, in 4Q266 (4QD[a]) 3ii:20 or 1QSa I:2–3—and refer to newcomers joining the group, not to an elite group. The text of 1QS V:1–2, which mentions אנשי היחד, is not appropriate for requirements to join an elite group, since it refers to newcomers "who volunteer to repent from all evil and to hold fast to all that He, by His good will, has commanded. They are to separate from the congregation of perverse men." Further, the phrase עצת היחד appears in other writings than 1QS, such as in 1QpHab XII: 4, 4Q164 (4QpIsa[d])1:2, 4Q 177 (4Q Catena A) 14:5, 4Q265 (4Q Misc Rules) 4ii:3, 4Q265 (4QMisc Rules) 7:8, and 4Q286 (4Q Ber[a]) 7aii, b-d: 1, and seems to refer to all the members of the group that live and work together, separated from the Israelite sinners and from their amassed wealth.

The entire spirit of the Qumran writings does not seem to relate to a separate, specific group. All members of the *Yahad* gather at the communal table: כבודו [יש לפי]כו כול עדת היחד א[ואחר יבר] "Finally,] ea[ch] member of the כול עדת היחד whole congregation of the *Yahad* [shall give a bl]essing, [in descending order of] rank. This procedure shall govern every me[al], provided at least ten me[n are ga]thered together" (1Q28a (1QSa) II:21–22). The fact that this rule refers to different sizes of Qumran groups seems to indicate that its application is general, not particular to a specific group, and thus supports our theory. The members of the *Yahad* appointed for special functions in the

28 Cf. Richard J. Bauckham, "The Early Jerusalem Church, Qumran and the Essenes," in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity* (Leiden: Brill, 2003) 63–89 at 85 writes: "The Qumran community's favourite and highly distinctive term for itself was, of course היחד ('the community')."

29 Similarly, we frequently encounter the sobriquet הרבים, alluding to the Qumran group, and there is no proposition to name it so.

community, if one can definitively identify them in the Qumran writings, as scholars presume,[30] are not "more holy than others," as Collins suggests.[31] The denominations עדת הקודש and עדת ישראל are used interchangeably in 1QSa, and the appointed men of the עצת היחד or אנשי השם, assumed to represent such specific groups, are not classified with the attribute of קודש, but each according to his כבודו "rank/honour." This lemma does not indicate what attributes of theirs merit this honourable rank, but 4Q418 (4QInstr^{d}) 55:10 offers us the parameter for achieving it: "Ac]cording to their knowledge they (i.e., men) *will* receive honour, one man *more than* his neighbour, And according to each one's שכלו understanding/intelligence *will* his glory *be* increased," but holiness is not mentioned. The entire Qumran Community is holy, and all *Yahad* members revel in the company of the angels, as we see in 1Q33 (1QMilḥamah) VII:6. All *Yahad* members are enrolled in the army;[32] only women, polluted men, and youths under age twenty are excluded.

I therefore postulate that the *Yahad* and the Qumran Community are not "two social organizations bearing different names," as Davies and Taylor suggest,[33] nor do they fit Qimron's thesis that there were two Essene groups with different rules and regulations.[34] There is nowhere any hint that there were two sets of precepts and ordinances for two distinct types of members, except for women and young males before age twenty. Qimron's proposition is influenced by his acceptance of the authenticity of Josephus' statement that there were two types of Essenes, those who married and those who were celibate, which leads him to conjecture that similar distinctions also applied to other rules and customs. The *Yahad*, as I understand it, is also not a special group separated from the other mature male members of the *Eda*, as Collins

30 This conjecture is built on the assumption that עצת היחד is distinct from עדת היחד, and represents a special small group of members entrusted with some authority. I perceive the two phrases as interchangeable, and I therefore doubt the reality of the scholarly conjecture.

31 Ibid., 110.

32 Both quotations are from sectarian writings, and can therefore serve as evidence for our thesis.

33 Philip R. Davies and Joan E. Taylor, "On the Testimony of Women in 1QSa," *DSD* 3 (1996): 223–35 at 225.

34 Elisha Qimron, "Celibacy in the Dead Sea Scrolls and the Two Kinds of Sectarians," in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March 1991* (ed. Julio Trebolle Barrera and Luis Vegas Montaner; Leiden: Brill, 1992), 287–94 at 293.

asserts,[35] nor a Hellenistic-type religious association, as Klinghardt argues.[36] Collins understands 1QS VIII:11 as describing an "elite group set apart in the midst of the *Yahad*," whereas the superscript יבדלו in v. 11 refers to the new members of the *Yahad*, initially separated from its existing members, as Metso argues,[37] not from the members of the community, as Collins conjectures. In context, this passage refers to a new group aspiring to join the *Yahad*, who joined the Qumran community and completed the two years of instruction and blameless conduct, the regular preconditions for acceptance of new *Yahad* members. This interpretation fits the text of 1QS VIII:10–13, and is evident from the admonition: "No biblical doctrine concealed from Israel but discovered by the Interpreter is to be hidden from these men out of fear that they might backslide" (1QS VIII:11–12), which is specifically appropriate for new members. There are a number of empty spaces and superscripts in the foregoing vv. 7–10, and we must therefore rely on the context of the succeeding verses and the general spirit of the lemma. Whereas the first superscript יבדלו in v. 11 refers to the new members of the *Yahad*, as argued above, the second phrase—יבדלו "they shall separate from the session of the perverse men" in v. 13—portrays their final integration in the group after the successful accomplishment of their test period, when they utterly separate from the wicked, perverse men. Whether the concept of going to the wilderness is metaphorical or represents a concrete act is a debated issue, and cannot serve as evidence for the existence of two groups.

In conclusion, there were not, it seems to me, two Qumran groups—one *Yahad* group and all the others an amorphous mass of members. The Qumran community, as I perceive it, consisted of boys and young men under age twenty, women and girls of all ages, and newcomers before their final acceptance, while the able, unblemished men over twenty constituted the elite *Yahad* section of the group.

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35 Collins, "Forms of Community," 99.

36 Matthias Klinghardt, "The Manual of Discipline in the Light of Statutes of Hellenistic Associations," in *Methods of Investigation of the Dead Sea Scrolls and the Khirbet Qumran Site. Present Realities and Future Prospects* (ed. M.O. Wise et al.; Annals of the New York Academy of Sciences 722; New York: The New York Academy of Sciences, 1994), 251–70.

37 Sarianna Metso, "Whom Does the Term *Yahad* Identify?" in *Biblical Traditions in Transmission: Essays in Honour of Michael A. Knibb* (ed. Charlotte Hempel and Judith M. Lieu; Leiden: Brill, 2006) 213–35 at 230, states that 1QS VIII:10 is "more naturally understood as a reference to the period of two years of probation that is required of all new community members."

5.4 Sharing Wealth of Members in 1QS and in CD: Identical or Different?

Scholars have suggested that the select *Yahad* group portrayed in 1QS shared all their assets, while the members of other Qumran groups who followed the regulations of the CD did not. The idea of this crucial variation in their way of life is based on two dicta. 1QS VI:19–22 mandates that if a newcomer proceeds to full membership, he is to be enrolled for discussion of the Law, jurisprudence, participation in pure meals, ולערב את הונו, "and admixture of property" with the other members of the community (v. 22); the text of CD XIV:12–13, referring to the other Qumran communities, states that "a wage of two days every month at least shall be given to the Overseer" by every member of the community. It is therefore argued that the groups living according to the rules of the CD did not share their wealth, and so had to donate some of it to charity. This diversity seems to conflict with the axiom that the rules of the Qumran writings were equally valid for all Qumran communities.

A number of possibilities may resolve this apparent discrepancy:

(a) The sharing of wealth was practised by small groups, but for bigger groups, in which a total sharing of wealth was very difficult, if not completely unfeasible, overall supervision of wealth by the Overseer satisfied the same ideological objective, which guided all groups.
(b) The difference is explained by the development of a system of communal life, and the two texts relate to two different periods.
(c) The apparent difference is due to the use of different literary styles by the two authors, but, in essence, discipline, planning, supervision, and distribution of wealth by the Overseer were practised according to both writings.

Moreover, whereas the above verses seem to suggest a strong contrast between the underlying ideologies and possible practices they describe regarding the sharing of wealth, an analysis of the following texts may offer a different picture, demonstrating different functional circumstances.

CD XIII:11–12:

> "He shall observe everyone who is added to his group as to his actions, his intelligence, his ability, his strength, והונו and his wealth and write him down by his place according to his share in the allotment of Light."
>
> *If the wealth of the members is not shared according to the CD, then why is the newcomer's wealth examined, and possibly also registered?*

CD XX7

"no one { } is allowed to share either wealth or work with such a one [who relapsed from keeping the Law]."

We may deduce that before this person's relapse, his wealth was shared; hence, it seems that according to the CD *ordinances, wealth was shared among community members.*

5.4.1 *1QS Community Rules Texts*

1QS I:11–13:

"All who volunteer for His truth are to bring the full measure of their knowledge, strength, והונם and wealth into the *Yahad* of God. Thus will they **purify** their knowledge in the verity of God's laws, properly exercise their strength according to the perfection of His ways, and likewise הונם their wealth by the canon of His righteous counsel."[38]

They purify (?) their wealth, which seems to indicate that it remains their own property thereafter.

1QS V:16–17:

"nor yet to take anything from them unless לוא במחיר purchased."

Where would community members get the money to pay for their purchases?

1QS VII:6–8:

"[If money belonging to the *Yahad* is involved in a fraudulent scheme and lost], [the one who lost the money] ושלמו ברושו must repay the sum { } from his own funds. *Vacat* ואם לוא תשיג ידו לשלמו If he lacks sufficient resources to repay it, [then he is to suffer reduced rations]."

How can he have funds from which to repay the sum lost if all wealth is shared?

38 I wish to emphasize that the translation of this verse is by M. Wise, M. Abegg, and E. Cook with N. Gordon (*DSSEL*).

1QS VII:24–25:

> ואיש מאנשי היח[ד א]שׁר יתערב עמו בטהרתו או בהונו אש[ר]הרבים והיה משפטו כמוהו לשל[חו

> "Also, any man belonging to the Comm[unity who sh]ares with him [the relapsed member] his own pure food, בהונו his own wealth [or that] the general membership, is to suffer the same verdict: he is to be exp[elled.]"
>
> *Unless both the relapsed member and the other members have wealth, how can they share it?*

The term used for mixing ערב, means the mixing of two substances or peoples, as in Prov 24:21 and in Ps 106:35.

1QS VIII:23:

> "none of the holy men should share with his [the intentional transgressor's] בה֯ונו wealth."
>
> *Thus, both the member who is now excluded and the other members had wealth, but they are not permitted to share their wealth with him.*

1QS IX:8:

> והון אנשי הקודש ההולכים בתמים אל יתערב הֹונם עם הון אנשי הרמיה

> "and on money matters for the holy men who walk blamelessly. הֹונם Their wealth is not to be admixed עם הון with that of rebellious men."
>
> *It appears that the holy men have wealth and could share it with the sinner, but they are admonished not to do so.*

These passages from 1QS suggest that the members of the *Yahad* did have their own individual assets. On the other hand, CD XIII:15–16 indicates that a member of the community cannot do anything without the consent of the Overseer: "No one should do any buying or selling unless he has informed the overseer who is in the camp," suggesting that they could not dispose of their money according to their own will; both in practice and in legal terms, this signifies that their money is not under their control. The dissimilarities between the rules in 1QS and those in the CD thus seem to be minimized, if not to disappear.

5.4.2 *Harmonization of Apparent Inconsistencies*

Catherine Murphy's study of wealth in the Rule of the Community suggests, according to her extensive scrutiny of the relevant texts, that a synthesis of all three contingencies could be envisaged.[39] To begin with, as I understand her thesis, the decision to share or control the wealth was not based on an ideological agenda to "render members equal"; rather, its function was "a material symbol of individual commitment and communal identity,"[40] and consequently a "separation from outsiders or transgressors"[41] through the concurrent prohibition of sharing wealth and food with them. Thus, the sharing of wealth was only an expedient to attain a higher purpose; that the total sharing of wealth, without any allowance for individual possessions, seems to be the intent of some verses does not mean that it was indeed performed in practice.

The various forms of the Community's domination of members' wealth and the fruits of their work, as attested in the above quotations from 1QS and in Murphy's study, indicate that the concept of communal sharing of wealth was not a rigid decree but allowed a great array of variants, as long as the ideological purpose mentioned above was achieved. The Overseer, who exercised unlimited authority over all aspects of life,[42] as we see in CD XIII:15–17 and in 1QS VI:2 and 19–22, fulfilled the primary goal of ensuring the Community's absolute control over members' conduct through different practical methods. Murphy writes, "the groups and individuals named as authorities over wealth vary in the versions and therefore probably changed over the course of the history of the community";[43] she perceives "a diachronic development of the rationales and realities behind the textual tradition."[44] Murphy distinguishes between CD and the Rule of the Community, despite their common sharing of "an intense interest in wealth," stating that "whereas in the Damascus Document the emphasis is on socio-economic critique, in the Rule priority is given to the alternative ideal community where a different economy obtains."[45]

I do not perceive any compelling reason to deduce essential differences between the CD and 1QS with respect to their attitudes towards the

39 Catherine M. Murphy, *Wealth in the Dead Sea Scrolls and in the Qumran Community* (Leiden: Brill, 2002).

40 Ibid., 155.

41 Ibid., 157.

42 Ibid., 159.

43 Ibid.

44 Ibid., 161. She also describes her understanding of the realities, that is, "what the wealth was, how it was shared, and the authority structures governing its disposal demonstrated more variations in the versions and in the various sections of the document."

45 Ibid., 162.

management of shared and individual assets. Acknowledging Murphy's assumption that practices "changed in response to socio-historical circumstances"[46] in the rules of 1QS, one may plausibly assume that the slightly different variations in the CD likewise represent responses to changed circumstances. For example, the CD may reflect the situation in larger communities, where an indiscriminate sharing of all members' assets and incomes would cause insurmountable bureaucratic difficulties.

I would, however, postulate another method of reconciling the apparent differences between the two texts regarding the sharing of possessions, which is based on the significant difference between the concept of הון "accumulated wealth" and income earned from work, expressed by מלאכה and ממון. In Scripture[47] and in Qumran writings, הון represents an accumulation of abundant material possessions, usually with a denigrating connotation: for example, הון "wealth," without any vilifying attribute,[48] is one of the three components of מצודות בליעל "the catches of Belial," associated with זנות "fornication" and טמא המקדש "defilement of the sanctuary" in CD IV:17–18;[49] with הון הרשעה הטמא "filthy wicked lucre" in CD VI:15 and VIII:5; with בצע "ill-gotten gains" in CD X:18, XI:15, and XII:7 and 1Qp Hab IX:5; and with גזל "robbery" and רמיה "fraud" in many other instances in the Qumran texts. A similarly negative portrayal of the concept הון appears in 4Q169 (4QpNah) 3–4i:11: ההון "is the weal]th which [the prie]sts of Jerusalem am[assed]." On the other hand, ממון is neutral or even positive, and appears in association with מלאכה in 1QS VI:2: "Inferiors

46 Ibid., 161.

47 See, e.g., Ezek 27:12, 18, and 27; in Ps 44:13, 112:3, and 119:14; and Prov 1:13, 3:9, 6:31; 8:10; and in many other verses. Although הון in Scripture is associated only with great wealth, I would remark that ינה is the assumed root of the biblical command לא תונו "do not cheat him [in business transaction]" in Exod 22:20, as understood by *b. B. Qam*. 58b. Yairah Amit, *In Praise of Editing in the Hebrew Bible: Collected Essays in Retrospect* (Sheffield: Sheffield Phoenix Press, 2012) 25 argues that the goal of the laws of the seventh year and of the Jubilee Year in Lev 25 is "to prevent the concentration of capital in the hands of the few, since the land belongs to God" (v. 23).

48 It is remarkable that whilst the author expounds the character of the two other misdeeds, whose name indicates already their wickedness, he does not add any explanation for his assertion that wealth is one of the three abominable evils; the denomination הון by itself symbolizes it.

49 Annette Steudel, "The Damascus Document (D) as a Rewriting of the Community Rule (S)," *RevQ* 100, 25, 4 (2012) 605–620, at 612–3 suggests that the evil concept of הון in CD IV: 17 is "inspired from 1QS V, 1–7a." She further writes: "The combined occurrence is unique . . . and makes the connection to S probable. Thus, although the 'Nets of Belial' passage does not explicitly quote 1QS V: 1–7a, it seems to be indicated by it."

must obey their ranking superiors as regards למלאכה ולממון work and money.[50] They shall eat together." This dictum and the next one I will quote indicate clearly that members of the *Yahad* kept the money they earned from their work and that these funds, honestly earned, were not under the authority of the Overseer, but, rather, under the supervision of their superior co-members.

The text of 1QS VI:19–23, which decrees the rules governing the assets of newcomers, supports this hypothesis: During the first year, the newcomer is subject to strict observation, but not to any interference with his earnings and wealth. In the second year, he assigns the supervision of את הונו ואת מלאכתו his wealth and earnings from work to the Overseer, who registers them but neither uses nor integrates them into the assets of the community. In that year, the newcomer's earnings from work are supervised by the Overseer because he is not yet a member, and therefore has no rank in the community and no superior members to supervise his earnings and assets. Further, until he becomes a member of the community, its members may be prohibited to share even his earnings from work, as in the rule regarding a sinner in CD XX:7–8, quoted below. After the second year and his acceptance to full membership, he is enrolled at the appropriate rank for discussion of the Law, jurisprudence, participation in pure meals, and admixture of הונו his wealth, but not of his earnings from work; these remain his own, under the supervision of his superior, as is the general practice for all members. The Khirbet Qumran Ostracon, as interpreted by Frank Moore Cross and Esther Eshel,[51] also supports my thesis. On completing his two years' probation and becoming a fully integrated member of the Qumran community, Honi gave to the מבקר "bursar" of the *Yahad* his estate: house, orchard and presumably his slave, but not the money he plausibly had, as decreed in 1QS VI:22.

One may plausibly assume that the Overseer or members of superior rank decide when to request money for charity and other good deeds, and how much to request. This practice is not recorded here, since the CD dictum does not indicate a fixed amount, valid for every group and circumstance, but only

50 The translators of the *DSSEL* (M. Wise, M. Abegg, and E. Cook with N. Gordon) have translated ממון incorrectly, it seems to me, as "wealth." García Martínez and Tigchelaar translate it correctly as "money" in the *DSS Study Edition*, as does Géza Vermes in *The Dead Sea Scrolls in English* (London: Penguin, 1987). We observe a strict distinction between the meanings of wealth and of money earned from work in many instances, of which I will quote one from CD X: 18–19, regarding Sabbath laws: אל ישפוט על הון ובצע אל ידבר בדברי המלאכה והעבודה "One may not go to court about wealth and ill-gotten gain. One may not discuss task and work."

51 "Khirbet Qumran Ostracon," *DJD Qumran Cave 4 XXXVI* (Oxford: Clarendon Press, 2000), 497–507.

a minimal sum; the Overseer of each group has the authority to determine the amount according to the changing needs of the community. We see in the affiliated text 1Q28ᵃ (1QSᵃ) I:17–22 the practical nature of this contribution להתיצב בעבודות העדה or בעבודת המס "to perform the work of" or "to serve as a labourer for the community," although its extent is again not defined.

Hence, there is no contradiction between the CD and 1QS with respect to the system of contribution. A similar division between amassed wealth and earnings from work is found in CD XX:7–8: "no one { } is allowed to share בהון ובעבודה either wealth or work with such a one [a sinner], for all the holy ones of the Almighty have cursed him."

I believe that my hypothesis resolves the apparent contradiction between the common theory that members of the *Yahad* had no individual financial means at all and the passages in 1QS that suggest the opposite. It also avoids the assumed disparity between 1QS and CD on an issue of significance, and indirectly supports my thesis that all healthy mature male members of the Qumran communities were members of *Yahad*, contesting the core of the assertion that there were different rules in CD and 1QS on the crucial topic of wealth-sharing. In the absence of this apparent argument, there is no explicit indication that two separate Qumran groups existed. Moreover, it is commonly presumed that there were also larger Qumran communities; in such communities, managing the income of all members and allocating the necessities for their daily livelihood would require a complex accounting and distribution system, which, I believe, was beyond their competence. My thesis also resolves this problem. Only members' amassed wealth is managed by the leadership of the community, and is used for specific purposes, whereas each member retains the income from his work and uses it for his daily necessities. The Overseer decides, in advance or *ad hoc*—such variants do not change the overall financial system of the community—when and how much money to request from members for charity and other good deeds.

5.5 Interim Conclusion

In the case of the paschal sacrifice, both the Qumran community and the rabbis pursued their habitual methods of halakhic decision-making. Qumran strictly followed the Scripture's plain meaning, conjecturing that if women and children are not included in the command to participate in the Passover meal, they should not be permitted to do so; they may have reasoned that the situation is similar to that of other sacred foods, whose consumption is restricted to those authorized to partake of it. The rabbis too were aware that

Scripture does not include women and children in the obligation to participate in the Passover meal; the Tannaitic dispute discussed above as to whether the Passover offering can be slaughtered for women confirms their awareness that the obligation is not equally valid for women and for men. The rabbinic principle exempting women from performing time-associated precepts also suggests that women are not obligated to participate in the Passover meal, which is clearly a time-associated precept, like sitting in the booths and wearing phylacteries, from both of which they are exempted.[52] Nonetheless, the rabbis allowed and even encouraged the participation of children and women for practical reasons—presumably to foster the children's education. The importance given to educating male children, and particularly to retelling the formative events of the Exodus on the eve of Passover, is a plausible motive for encouraging both children and their mothers to participate in this event. On the other hand, the rabbis still maintain that only men must fulfill the obligation of pilgrimage to Jerusalem,[53] a precept associated with the Passover meal, since the sacrificial lamb must be eaten there (Deut 16:1–20).

Mek. Bo, Mas. D'Pisḥa 18, interprets the biblical command of Exod 13:8, "On this day tell your son," as referring to even a young son "who does not know [how] to ask questions [about the meaning of the Passover ritual]." We observe similar rabbinic decisions about a male child's obligation to live in booths and his father's obligation to educate him in the fulfillment of precepts from which he is still legally exempted. We read in *b. Sukkah* 28a: "Women and slaves and [male] minors are exempted from [the obligation to live in] the booths. [However,] a minor who is not dependent on his mother is obligated to live in the booths." In *b. Sukkah* 42a we read: "A minor who knows [when and how] to shake the *lulav* (palm fronds), is obligated to perform it—[one who knows when and how] to wrap himself is obligated to put on tassels—[one who knows how] to preserve [respectfully] the phylacteries, his father gives him phylacteries—[when] he knows to speak, his father teaches him Scripture and the recital of *Shema*." The text then explains that the minor is not obligated to

52 See *t. Qidd.* (Liberman) 1:10 and also Paul Heger, "Stringency in Qumran?" *JSJ* 42 (2011), 188–217 at 201, and Chapter 4, pp. 152–160 for a more extended study of this issue.

53 See Exod 23:17 and 34:23, addressed to כל זכורך, "all your males," except once in seven years, at the Festival of the Booths (Deut 31:10–13). Weinfeld, *Deuteronomy*, 291–92, distinguishes between the attitude of Exodus and Deuteronomy regarding the obligation of pilgrimage. He affirms that Deuteronomy, in contrast to Exodus, extended the application of this rule to "all members of the Israelite households, male and female alike" (Deut 16:11 and 12). The rabbis declared that women are exempted from the obligation of pilgrimage (*Mek. Mass. d'Kaspa, parsha* 20); they are only obligated to enjoy the holidays.

fulfill the precepts; the father is obligated to educate his son. The significance of education for male children is evident.

5.6 Debating Schuller's and Grossman's Theories

5.6.1 *The Status of Women and Children in the* Eda

Schuller attempts to deduce from the ambiguous and imprecise text of 1Q28[a] (1Qs[a]) (see p. 201) that women were part of the *Eda* and were included in the group studying the Hagy.[54] As it seems to me, 1Q28a (1QSa) I:4–8 clearly divides the newcomers to the Community into two groups: children and women, who are not members of the *Eda*, receive a lower grade of religious instruction for their lesser obligation to fulfill biblical precepts; and adult men, the members of the *Eda*, receive a higher grade of instruction.[55] The children are then further divided into male and female groups, and the boys are divided between נערים "youngsters" over age ten and טף "children" under age ten. The נערים study the Book of Hagy for ten years before being admitted to the *Eda* at age twenty. At that age, they will join the *Eda* following the rite of passage, as is written in 1Q28[a] (1QS[a]) I:8–9: "עשרים שנ[ה] [וב]ן, "at a[ge] twenty," he will join the congregation among the men of his clan." The introductory v. I:1 of the lemma "all the congregation of Israel באחרית הימים in the last days" is vague; Schiffman argues that it refers to the eschatological period,[56] Stegemann that it relates the beginning stages of the group's institution.[57] For our purposes this does not matter, since vv. 2–3 refer to the men of the covenant, who ceased to walk

54 Schuller, "Women in the Dead Sea Scrolls," 131–32. Schuller writes at 131, "Clearly, this document [1QS28a] is written for a 'congregation' עדה which includes women."

55 We observe the different language used for adult men and for women and children concerning the type of education: להבינם (in plural) from the root בון to make them, women and children, understand the basic instruction to avoid transgressions, and ישכילוהו in singular, from the root שכל, for the more sophisticated teaching of the young boy. Qumran scholars may have deduced the intensive study of the sons from the relevant command in Deut 6:7 ושננתם לבניך teach your sons diligently. Wassen, *Women*, 210, writes "In the area of education, for example, both young girls and boys appear to be equally educated." This is true for children below the age of ten, called טף, but does not relate to boys and girls over that age, when a great divide occurs between them as is unequivocally evident in 1Q28a (1QSa) I:4–8.

56 Lawrence Schiffman, *The Eschatological Community of the Dead Sea Scrolls: A Study of the Rule of the Congregation* (Atlanta, GA: Scholars Press, 1989) 12, perceives this text as referring to a future messianic era.

57 Stegemann, *The Library*, 113, perceives this text as recording the group's beginning stages.

in the wicked way of the people and kept the divine Covenant during the evil times. In v. 4, בבואם "as they arrive" indicates another subject, the newcomers, and there immediately follows יקהילו "they should assemble them."[58] The text does not, however, specify explicitly *who* should assemble them—the men among the newcomers or, as seems logical, "the men of His party who kept His Covenant during evil times, and so aton[ed for the lan]d" (v. 3).

In v. 4 we find the phrase "all the newcomers from children to women," which is most ambiguous, since we cannot tell whether it means children, men, and women (as Wise et al. seem to have understood: "all the newcomers shall be assembled—women and children included") or, as I understand it, as qualifying to whom (i.e., to the women and children) all the statutes of the Covenant should be read and who is to be indoctrinated in all of their laws, for fear that otherwise they may sin accidentally. The men among the newcomers, however, should be integrated into the ranks of the congregation, as האזרח "the native-born Israelite" should be instructed in the Hagy, the Book of Meditation.[59] Thus, the newcomers who become members of the *Eda* will be of the same rank as their peers who have absorbed them.[60] I do not disagree that the ambiguous phrase could be interpreted as the translators did, but, as I have hinted above, if the newly arriving men are instructed only in the same basic knowledge as the women and youngsters, this would create two tiers of community membership for adult men, which does not seem to fit the mind and spirit of the community. CD XIV:4 describes a special status for converts—a fourth category, "the proselyte"—but no category is reserved for uninstructed newcomers. I would conjecture that they must be instructed for two years (1QS VIII:10–11), unlike the women and children, who receive only summary instruction (1QSa I:4–5).

Further, the next crucial division that starts a new topic in v. 6, "and the following is the policy for all the troops of the congregation," undoubtedly refers

58 Wise, Abegg, and Cook with Gordon, translators of this text (see n. 47), were aware of its vagueness regarding the subjects of the phrases, and in attempting to rectify the problem they changed the grammatical function of the term יקהילו. Instead of the correct translation of this term in *hiphil* as "they should assemble them [the newcomers]," they interpreted the phrase in a passive voice, "shall be assembled," which similarly leaves the question open by whom. Wassen, *Women*, 140, translates the phrase in an active mode: "they shall assemble."

59 Crawford, "Not According to Rule," 139, interprets the phrase as intending an assembly of men, women, and children.

60 1QS VI:14–24 requires a test period of two years for new members; hence they have time to be instructed at the same level as the other members.

to the special education of youngsters to become members and to mature men, indicating that the preceding element of the division, in vv. 4–5, relates to children and women.[61]

5.6.2 *Schuller's Interpretation*

Although the literary style and content indicate a clear division between children/women and men at v. 6, Schuller suggests that this division occurs only at the end of v. 9b, starting with "He must not approach a woman." She ignores the explicit masculine terms האזרח ,נעוריו, בן עשרים,ללמדהו, יומיו, ישבילהו, מוסרו, משפחתו in vv. 6–8, claiming that "the sense is inclusive and collective." However, up to v. 6, where I perceive the division, the grammatical forms are plural (e.g., במשוגותיהמה, משפטיהמה, להבינם); from v. 6 until the end of 1QSa, which refers to the future course of action of a twenty-year-old man joining the *Eda*, all the verbs are in the singular. Schuller asserts that "the women and children are to be instructed in the book of Hagy."[62] She also overlooks the fact that the literary style of v. 6, וזה ה֯סרך לכול צבאות העדה, indicates the start of a new topic, and thus cannot be associated with the preceding verses, as she claims. Further, women and children can never be a part of צבאות העדה "the troops of the congregation," which in Schuller's opinion refers also to women and children; they are not allowed even to enter the war camp in time of war, as we read in 1Q33 (1QMilḥamah) VII:3–4 because the angels are an element of the *Eda* (v. 6).

From the context, we can also deduce the meaning of the conjunction ו in v. 9, connecting the phrase ולוא ׄיקרב to the preceding text, versus the same conjunction in the phrase וזה הסרך in v. 6, which divides it from the preceding

61 On this point I fully agree with Davies and Taylor, "On the Testimony of Women," 230.

62 Schuller, "Women in the DSS," 132, quotes Josephus' assertion that the Essenes "put their wives to the test for a three year period" (*J.W.* II, 161), referring to a period of testing and instruction before marriage; hence they are instructed like men, including in the Hagy. There is no hint of such test in Qumran writings; on the contrary, the Controller decided whom members would marry (CD XIII:16). Further, his record is confused and undefined; it seems the test is performed after marriage, referring to "wives," in contrast to the "three periods of purification" carried out before "they marry them." We can discard Josephus' data as unreliable, particularly on issues of sex and marriage, as in other instances. At any rate, "putting somebody to a test" has no association with study, unless one assumes that the husbands submitted their wives, like students, to an examination of their acquired knowledge.

text, as the translators have also understood.[63] Schuller joins vv. 4 and 5 relating to women and children to v. 7 because of "the same terminology," which I do not perceive, and ignores v. 6, addressed to צבאות העדה, unmistakably referring to men; thus, v. 6 would divide, according to Schuller, between vv. 4 and 5, referring to women, and vv. 7–9, referring to men and women alike. She claims that the masculine form of ללמדהו could be perceived as "inclusive and collective," ignoring the phrase ובן עשרים שנה and the participation in the census in vv. 8–9, which cannot refer to women. Schuller's claim that vv. 7–9 refer to men and women alike ignores that the יעבר על הפקודים counting in v. 9 and the payment of one half-shekel upon enrollment in the *Yahad* (4Q159 (4QOrdin^{a}) I+9:6) pertain exclusively to men, as adaptations of the biblical model for entering the membership of the *Eda* (Exod 30:13–14 and 38:26 and Num 1:3–47). Further support for our thesis comes from the corrupted text of 11Q19 (11QTemple^{a}) XXXIX:6–11, which nevertheless points in this direction.[64]

However, even if we interpret vv. 4–5 as referring to men, women, and children, as the translators did, it is evident from vv. 6ff that only males study the Hagy and become members of the *Eda* at twenty, as argued and demonstrated above. Since we do not know the content or function of the Hagy, it is plausible to assume that all newcomers—men, women, and children—are taught the basic rules of the congregation and the scriptural rules to avoid their accidentally sinning.[65] I would hypothesize that חוקי הברית relates to the particular Qumran rules, and משפטיהמה to the scriptural rules.[66] The young

63 Vermes, *The Dead Sea Scrolls in English*; García Martínez and Tigchelaar, *Dead Sea Scrolls Study Edition*; Wise et al., *DSSEL*.

64 Although the text is corrupt and many of the suffixes that indicate the gender are reconstructed, the original phrase יבואו מבן עשרים attests that the text refers to males only.

65 The content of vv. 4–5 regarding the instructions given to all of Israel is similar to the text of Deut 31:11–12, in which all the people—men, women, and children—come, once in seven years, to listen to the words of the law and follow them carefully, as Wassen, *Women*, 140, rightly comments. However, I do not agree with Wassen's conclusion from the parallel 1QSa I:4–11 that the Qumran community formally enrolled women and children into full membership. The text of Deut 31 relates to summarized instructions of basic rules to which "the foreigner residing in your towns" is also obligated, though he is unequivocally not a full member of the Israelite community. The biblical comparison of women and children with the foreigner serves as evidence of women's and children's non-member status and, therefore, of their reduced obligations for accomplishing Torah precepts.

66 I have no hard evidence for this assumption, except the logical consideration that the newcomers would be required to know the correct Torah laws, since Qumran accuses their contenders of wrongly interpreting the scriptural laws.

man, however, is to be instructed in the Book of Hagy, as demonstrated above (p. 198). We observe that the young men study the same subjects, but at a different and higher standard; in discussing the women and children, the text uses קרא "to read" to them, but the instructions for the young man use ישכילוהו "to enlighten him." This would explain the division in the lemma between the commitment of all the women and small children, and the additional obligation of males from age ten.

Finally, I would add that the lemma is not clearly formulated; for example, it is not evident whether the mature newcomers study the Hagy or, if so, what period is allotted for this study. We are told (vv. 6–7) that every native-born Israelite must study it for ten years, starting at age ten, in preparation for joining the *Eda*; but we do not know which study requirements applied to mature male newcomers, although this seems to have been an important element for those joining the community.[67] Moreover, the text's various deficiencies and ambiguities make it unreliable as the sole source of the kinds of deductions that Schuller is attempting to make on matters such as the status of women in Qumran society.[68] In consequence, we must draw our conclusions also from other Qumran texts, which I cite, that confirm that women were not members of Qumran's *Eda*.

Among other texts that support my thesis, we should give special consideration to the text of the cognate 1QS II, in which the yearly renewal of the covenant, with its blessings and curses, is written entirely in terms of men. אנשי, referring to men, and all pronouns, pronominal suffixes, and verb conjugations are in the masculine, demonstrating that only men participated in this yearly celebration. I agree with M. Grossman[69] and Schuller that the masculine plural form can refer to a group that includes both men and women, but many verbs are expressed in singular masculine in 1QS II. Furthermore, women are explicitly excluded from the Passover meal, and my proposition offers a reasonable explanation for this apparently odd rule.

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67 See above p. 198 my hypothesis that mature male newcomers should equally be required to complete a two-year instruction period.

68 Wassen, *Women*, 140, writes "1QSa I:4–11 is a very complex and difficult text," but nevertheless attempts to follow Schuller's footsteps, interpreting the lemma contrary to its simple sense, and deduces from it the interpretation of 4Q270 (4QD^{e}) 7i:5–15, which indicates the opposite, as is discussed below (p. 213).

69 Maxine Grossman, "Reading for Gender in the Damascus Document," *DSD* 11 (2004): 212–39 at 218.

Schuller further endeavours to support her thesis that women held equal membership in the *Eda* from other Qumran writings.[70] She suggests that we understand the odd phrase ובכן תקבל להעיד עליו משפטות התורא (1Q28a (1QSa) I:11) as referring to women, interpreting it as "she shall be received to testify," because it is clearly written in feminine form.[71] Wise et al. translate it as "From this time on he may bear witness to the statutes of the Law"; I prefer their (masculine) translation, for several reasons.[72] First, v. 11 is intrinsically

70 Schuller, "Women in the Dead Sea Scrolls," 131–32. Linda Elder, "The Woman Question and Female Ascetics among Essenes," *BA* 57, no. 4 (1994): 220–34 at 228–29, quoting different scholarly views on this topic, agrees with Dupont-Sommer, that "a married woman possessed the right to invoke the law against her husband." However, A. Dupont-Sommer, *The Essene Writings from Qumran* (Cleveland, OH: World Publishing, 1962) 80, is aware of the textual difficulty of this interpretation, and to alleviate it proposes to change the interpretation of the phrase בדעתו טוב ורע (vv. 10–11), unequivocally written in masculine mode, as "when she knows good and evil." Mayer I. Gruber, "Women in the Religious System of Qumran," in *Judaism in Late Antiquity* (ed. Alan J. Avery-Peck et al.; vol. 1; Leiden: Brill, 2001), 173–96 at 190–92, similarly attempts to deduce from 1QSa I:11 that there is equality of the sexes in the Qumran community.

71 García Martínez and Tigchelaar, *The Dead Sea Scrolls: Study Edition* equally translated: "Then she shall be received to give witness against him (about) the regulations of the law and to take his place in the proclamations of the regulations." Wassen, *Women*, 141, follows the above translation almost *verbatim*.

72 Joseph Baumgarten, "On the Testimony of Women in 1QSa," *JBL* 76 (1957): 266–69 at 266–67, proffers a number of logical and convincing arguments for his emendation of the term תקבל to the masculine mode יקבל, demonstrating the implausibility that its author intended the phrase to refer to women. However, Baumgarten also emendates the term עליו to על פי, "according to," and thus translates the relevant verse as "and he shall be received to testify in accordance with the laws of the Torah and to take his place in hearing the judgements." Baumgarten, however, changed his mind about the emendation, and in the *DJD* XVIII p. 165, after quoting his emendation in *JBL*, 1975, writes "The use of משפט for sexual rules, suggests that the wife upon her nuptials must promise (תקבל) to admonish (להעיד) her husband about the laws," hence annulling his previous emendation, which he quotes there. As it seems to me, the drastic adjustments in the classic meaning of the used terms, which assume a new identity by Baumgarten's new interpretation, distort the text radically more than the emendation of one character. Further, considering that the woman marries young and is much less instructed than her husband, who must be mature and well versed in the Law, it seems illogical that she should admonish her husband to keep the Law, even only in sexual issues, as Baumgarten interprets the dictum. Furthermore, he states that it devolves upon both partners to differentiate between good and evil, in contrast to the lemma's assertion that the husband must be of the mature age and instructed for ten years in order to discern between good and evil. I therefore prefer Baumgarten's original interpretation. Finally, his new interpretation does not indicate that

connected, both stylistically and grammatically, to vv. 6–10 (particularly v. 10) and 12–15, which are unequivocally written in the masculine and relate to a male person; this is acknowledged by Schuller, who perceives a division between inclusive and gender-specific verses at the end of verse 9. Hence, it is more than reasonable to assume that v. 11, too, relates to a man, despite the use of the feminine תקבל. Schuller's suggestion that the author deliberately inserted one verse related to a woman into a lemma referring exclusively to men seems unreasonable and adds to the list of oddities in her interpretation.

Moreover, suggesting an interpretation so opposed to the overwhelming indications on the basis of what is plausibly a transcription error seems to me unjustifiable. Schuller stresses that the feminine תקבל unquestionably appears in the MS; this is true, but does not account for the occurrence, four words later, of התורא for התורה. If an inexperienced copyist can mistranscribe such a frequently used term as התורה (Torah),[73] presumably he could also make grammatical errors, writing תקבל instead of יקבל, as he indeed has done, writing שפטותמ in the feminine instead of משפטים in the masculine, since מִשפט is masculine and the use of a feminine plural is clearly wrong.[74] The term מִשפטות does not occur either in Scripture or anywhere else in the Qumran writings, as is evident from the subsequent use of משפטים in the same verse.[75] Therefore, such a probable error as תקבל instead of יקבל does not justify an entirely new interpretation.

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the woman can bear witness against her husband, as Schuller alleges. For other scholars who corrected the term תקבל into the masculine mode, see Jacob Licht, *The Rule Scroll: A Scroll from the Wilderness of Judaea* (*1QS 1QSa 1QSb*) (Jerusalem: The Bialik Institute, 1965; repr., 1996), 253–4, and James H. Charlesworth, *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations* (with F.M. Cross et al.; vol. 1; Tübingen: J.C.B. Mohr, 1994), 113. Schiffman, *Sectarian Law*, 62–63, quotes Baumgarten's emendation, but although he agrees to the emendation of the term תקבל to יקבל, Schiffman suggests acknowledging Licht's proposition not to emend the term עליו, as Baumgarten initially suggested.

73 The Aramaic תורא "ox" appears often in the *Targumim* and in rabbinic writings, but never in the Qumran writings, whereas תורה appears 180 times.

74 Martin G. Abegg, Jr. "The Linguistic Analysis of the Dead Sea Scrolls: More than (Initially) Meets the Eye," *Rediscovering the Dead Sea Scrolls* (ed. Maxine Grosssman, Grand Rapids, MI: Eerdmans, 2010) 48–68 at 60 writes: "We must conclude that common scribes of Qumran and Classical Hebrew styles were equally poor spellers."

75 In all other uses of מִשפט in the Qumran writings, the term has masculine suffixes or pronouns. It is evident that the orthographic and grammatical errors in our lemma are the result of a careless copyist.

5.6.3 *Grossman's Interpretation*

I agree with Grossman that the מ of מִשפטות (not on משפטים) may have been erased or added by the copyist,[76] but then it should have been שפטי התורה in masculine, meaning sanctions/punishments.[77] It seems odd that we find in the *DSSEL* version the same symbol of unsure reading on the מ of משפ־טים in 1QS V:12 and in 1Q26 (1QInstr) 1:7 as in מִשפטות in 1Q28[a] (1QS[a]) I:11. In the Pentateuch the term משפטים/משפט is mainly translated as "laws/rules"[78] and in other books also as "judgements/castigation." The term שפטים means "punishment/sanctions."[79] It is translated by the KJV and NIV in Exod as judgements, but in essence it means "punishments," as the term judgements also connotes; the translators preferred "judgements" for its affinity with the biblical term from the root שפט. The LXX, for example, understands בשפטים גדלים in Exod 7:4 as ‘εκδικήσει μεγάλη "great punishment/revenge."

Considering the distinction between משפטים and שפטים, it is plausible that the copyist may have deliberately attempted to delete the מ in the abovementioned sites to discern between these two terms, and thus offer a better understanding of the relevant verse as: "From this time on to accept witness against him [regarding] שפטי התורה (without the מ) sanctions for [transgressions] of the Torah, and ולהת[י]צב במשמע משפטים to stand before a court to be judged." Thus, there is a distinction between משפטים and שפטים. In 1QS V:12–13, the term שפטים in the phrase שפטים גדולים makes much better sense, since it is obvious that the term refers to great punishments. The use of the term עשה in association with שפטים appears in Exod 12:12 and Num 33:4. The translators of the *DSSEL*, Wise, Abegg, and Cook with Gordon, interpreted it as "weighty judgements," and I assume that they intended it indeed as "punishments." In 1Q26 (1QInstr) I: 7: [ובידו פקד מ]שפטכה Strugnell and Harrington translated it: "He has determined [thy] la[w-case]," and in this case, I think that the context requires reading it as משפטים with the מ, as translated, but I would prefer "he has entrusted your law case."

Grossman[80] argues that both עליו and תקבל are clear in the manuscript and that this copula must be interpreted as relating to evidence against the

76 Although from the photo it seems that the scroll is torn precisely there, showing some part of a character before the tear.

77 Grossman, "Women and Men," 234 n. 14, refers to the transcriptions of Milik and Barthélemy, in which the letter מ is uncertain. In the *DSSEL*, the letter is marked with a dot on top, indicating a deletion, but nevertheless the letter is there.

78 For example, in Exod 21:1; Lev 26:46; Num 35:24, and Deut 4:1.

79 For example, in Exod 12:12; Num 33:4; Ezek 5:1; Prov 19:29; II Chr 24:24.

80 Maxine L. Grossman, "Women and Men in the Rule of the Congregation: A Feminist Critical Assessment," in *Rediscovering the Dead Sea Scrolls: An Assessment of Old and New*

man; therefore, she claims, this passage must be interpreted as meaning that a woman can testify against her husband.[81] I do not deny that עליו is correct, and that it refers to testifying against a man, but it does not necessarily follow that the person testifying against him is a woman. I argue below that the author meant witnessing against the man, but not by a woman, and that this interpretation perfectly fits the context of what happens when a man attains maturity. Further, if a woman is accepted as a witness in the same way as a man, why does the author restrict the discussion to her witness against her husband? Presumably her evidence should be valid against anyone. Moreover, if indeed a woman can testify against her husband, as Grossman interprets this dictum, it would follow that a man can only testify at the age of twenty, whereas a woman can testify at ten or younger, since there is no restriction on the age at which a woman may marry.

Describing the development and the career of a man from youth to old age in 1Q28ª (1QSª) I:6–19, the author notes his rights and duties at every rite of passage, denoting the transition from one stage of social life to another at age ten, twenty, twenty-five, and thirty and up to old age. Before the age of twenty, then, a person does not know right from wrong and, thus, as it seems, could not be judged for transgressing the law.[82] At the crucial age of twenty, the rite of passage from youth to maturity and membership in the holy *Eda*, the man is responsible for his deeds; one may bear witness against him for transgressing Torah rules, and he must stand before the court at the hearing of his case.

Approaches and Methods (ed. Maxine L. Grossman; Grand Rapids, MI: Eerdmans, 2010), 229–45 at 234.

81 Feminist writers such as Lena Cansdale, *Qumran and the Essenes: A Re-Evaluation of the Evidences* (Tübingen: J.C.B. Mohr, 1997), 51–52, and Tal Ilan, "The Attraction of Aristocratic Women to Pharisaism During the Second Temple Period," *HTR* 88 (1995): 1–33 at 32, express the same opinion about the interpretation of this verse.

82 I have already speculated about such contingency in Heger, "Stringency in Qumran?" 202–3. This issue, whether a man before the age of twenty is responsible for his deeds and can be judged, is a serious problem, and as it seems, we have no indications of Qumran's attitude in this respect. Furthermore, we do not know precisely what the law is regarding the maturity of a female, that is, at what age she is responsible for her deeds and becomes independent from her father's tutelage, if not married. The practical consequences are varied, as for example up to what age the father can sell her as a maiden slave (Exod 21:7–11) or annul her vows (Num 30). The rabbis established a clear *halakhah* that the father's authority over his daughter ends at her maturity regarding all aspects, but, as said, we have no indication whether Qumran *halakhah* is likewise, and at what age she is perceived mature to be judged for her transgressions. Schiffman, "The Law of Vows," 209–210 mentions the issue with respect to the father's authority to annul his daughter's vows, but does not offer a clear answer and does not raise the question of the period of her maturity, according to Qumran *halakhah*.

By the same token his evidence against others is also valid only at this age (CD IX:23–X:2).

From the perspective of grammar and syntax, the reading יקבל להעיד עליו "he will take upon himself to accept witness" is correct, whereas the reading תקבל and Grossman's interpretation, "she shall be received to give witness against him,"[83] is not a grammatically correct translation of the Hebrew text. In the original text, תקבל is in the indicative *kal* mode, whereas Grossman's interpretation would require תתקבל in the *hitpael* mode. Further, there is no subject for the verb קבל; from whom will she receive?[84] My interpretation does not present these irregularities.

I also changed the interpretation of the second part of v. 11 for a few reasons. First, I consider the use of ולהת[י]צב inappropriate for announcing such a great privilege as to "ta[k]e his place among the ranks for the ceremonial proclamation of the ordinances." Rather, it should be understood as standing before a court to be judged, as in 1 Sam 12:7, in 1Q28[a] (1QS[a]) I:12-13: "to present himself for the service of the congregation" or to fulfill a command, as in Num 11:16 and 2 Chr 11:13, or to stand up against an enemy, as in Deut 7:24; therefore, I interpret it as "it is his duty to stand before the court at the hearing of his case."[85] Further, in my interpretation this sentence follows logically from the previous

83 Grossman, "Women and Men," 234.

84 Davies and Taylor, "On the Testimony," 224, write that a "textual corruption is not 'clear' unless the text makes no grammatical or syntactic sense otherwise. Where the text does make sense, emendation is hazardous." As I indicate, the existing text does not make grammatical and syntactical sense, and therefore, the emendation is justified. Tal Ilan, "Reading for Women in 1QSa (Serekh Ha-edah)," in *The Dead Sea Scrolls in Context, Integrating the Dead Sea Scrolls in the Studies of Ancient Texts, Languages and Cultures* (ed. Armin Lange et al.; Leiden: Brill, 2011) 61–76 at 67, criticizes Lawrence Schiffman (*The Eschatological Community of the Dead Sea Scrolls: A Study of the Rule of Congregation* [Atlanta, GA: Scholars Press, 1989], 18–19), who writes, "Finally, it is unlikely that women were entrusted with assuring the faithfulness of their husbands to the sectarian way of life." Indeed, I believe he is correct, since it is the young man who receives a thorough education lasting ten years, whereas the young woman receives only a summary instruction. Therefore, women cannot be entrusted to understand and report transgressions about "the sectarian way of life," which they know only superficially.

85 David Rothstein, "Women's Testimony at Qumran: The Biblical and Second Temple Evidence," *RevQ* 21 (2004): 597–614 at 600, disputes Baumgarten's proposal in *The Damascus Document (4Q266–273), Qumran Cave IV* (*DJD* XVIII; Oxford: Clarendon Press, 1996) 165, that "ולהתיצב means 'appear,' 'be present'; hence, the phrase must refer to the wife's presence at some sort of session." There is no support for the assertion that this phrase, which grammatically could relate to a male or female person, refers to the wife; the context does not seem to substantiate it.

one, connected by the simple conjunction "and," which indicates an affinity between the two. We observe that the author, sensitive to the nuances of the literary style, chose an appropriate connection, ובכן, between the attainment of the faculty to discern between right and wrong and its consequence, being responsible for one's deeds. Here the author has bundled together two aspects of the man's new circumstances: that one may bear witness against him and that he is obligated to stand before the Court.[86] In addition, it does not seem logical that he may "ta[k]e his place among the ranks for the ceremonial proclamation of the ordinances" (we do not know exactly what this means, but it seems highly ceremonial) immediately after joining the *Eda*, before being "eligible to ta[ke] his place among the pillars of the holy congregation and to begin serving the congregation," as results from Wise et al.'s translation: "From this time on he may bear witness to the statutes of the Law, and ta[k]e his place among the ranks for the ceremonial proclamation of the ordinances." The logical order would be the reverse; he takes place among the ranks, and then he may bear witness. My interpretation does not raise this question.

At any rate, even if we assume that Grossman's interpretation conveys the author's intent, this does not indicate an improvement in women's status relative to the rabbinic regulations that, according to Grossman, have influenced scholars' biased patriarchal reading of Qumran texts. Although Scripture insists on male witnesses,[87] and the rabbis confirm this,[88] the rabbis also decreed that women may bear witness on some issues. We read in *m. Yeb*. 16:7 that one "may marry a woman on the basis of a second-hand witness, a slave's witness, a woman's witness, and a maid-servant's witness" that her husband died and she is free to marry another man. There are also other issues on which women are authorized witnesses; for example, a woman claiming to have been raped is believed, and may even continue to live with her husband (*y. Ket*. 1:5, 25c);[89] a mother may bear witness as to who are her children (*t. Qidd*. 5:8). As we read in *t. Yeb*. (Lieberman) 14:1: "a woman's witness is valid in all cases in which the witness of one man is valid."

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86 Licht, *The Rule Scroll*, 253–54, does not emend עליו as Baumgarten does, and hence his interpretation of the verse is similar to mine: that is, that one may bring witness against him at the age of twenty, at a man's maturity.

87 All scriptural instructions about witnesses are in masculine mode, for example, Exod 20:12; Lev 5:1; Num 35:30; and Deut 17:6 and 19:15. Rothstein, "Women's Testimony," 601 claims that Scripture does not preclude women's testimony.

88 *B. B. Qam*. 88a and *t. Bik*. (Lieberman) 2:5.

89 If her husband is a priest, however, he is not permitted to live with her and must divorce her.

It is also evident that on intimate issues, the woman's witness is valid,[90] as we read in *m. Ned*. 11:12: Initially, the husband was compelled to divorce his wife and pay her the *ketubah* in three circumstances: if she claimed to have slept with another man (there are no witnesses to convict her of adultery, but he is not permitted to live with her); if she complains that he is impotent; and if she declares to have made a vow[91] prohibiting her to have intercourse with any Jew.[92] In all these cases she was believed.

Further, the Qumran texts also provide an explicit rule that a woman's testimony of having been raped is valid (4Q270 (4QD^{e}) 4:3–4), whether her husband agrees or not. Thus, the contrived feminist interpretation of the odd Qumranic phrase quoted above does not indicate that women enjoyed a preferred legal status in the Qumran community relative to that established by the rabbis; it is also superfluous, given the existence of this explicit rule acknowledging the reception of a woman's evidence. As I stated at the outset, I believe that only the social status of women in Qumran was better than in rabbinic society; in contrast to the rabbinic literature, the Qumran writings contain no denigrating or slanderous statements.

5.6.4 *Further Debates on Women's Status in Qumran*

Oddly, Schuller chooses as support for her thesis that women were also members of the *Yahad* the absence of women from the list of exclusions from this group in 1Q28^{a} (1QS^{a}) II:2–22, since in 1Q33 (1QMilḥamah) VII:3–4 they are

90 Crawford, "Not According to Rule," 139, writes that a woman's testimony is only valid on issues against her husband.

91 Some commentators (*Ra"n*, ibid., and *Rashi* in *b. Yeb*. 112a) ask why she would have to leave him, since the husband has the authority to invalidate her vow and try to find a solution.

92 This rabbinic rule contradicts the argument made by Lawrence Schiffman, *Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the Lost Library of Qumran* (Philadelphia: JPS, 1994), 135, against the allegation by Schuller and others that the 1Q28^{a} text decrees that a woman can testify against her husband, because "imagine what marriages this would have made." We observe that the rabbis accepted a woman's evidence against her husband but changed this practice because of suspicion that a woman wanting to get rid of her husband might give false evidence. They have changed practices in similar instances, cancelling the performance of breaking the heifer's neck at an unsolved murder (Deut 21) and the test of the Unfaithful Wife (Num 5) as recorded in *m. Sotah* 9:9. The rabbis, however, did not repudiate the woman's witness altogether, convicting her of "rebellion" when she denied the husband sexual intercourse, as is the law; they just requested additional factual evidence to believe her claim, such as the identification of the man with whom she alleged to have committed adultery, and tried to find a solution by consensus regarding a woman's claim of the man's impotence.

explicitly excluded.[93] It seems more likely that women are not mentioned in this list of exclusions for reasons of impurity, physical deformity, and so on because they were never members of the *Yahad* in the first place; moreover, the entire lemma refers only to men, as we see in 1Q28ᵃ (1QSᵃ) I:27: These are נשים<א>ה the men appointed to the party of the *Yahad*: "מבן עש from the age of twe[nty]" and again in II:2: אנושי השם "the men of reputation, who hold commissions in the party of the *Yahad* in Israel." The list of those excluded therefore starts in II:3 with the phrase וכול איש "No man." 1Q28ᵃ (1QSᵃ) II:2–22 and 1Q33 (1QMilḥamah) VII:3–4 concern utterly different circumstances. The rule in 1Q33 does not concern membership in the *Yahad*; its topic is who should take part in the eschatological war and fulfill its different duties and who could not stay in the army camp. The impure man mentioned in 1Q33 VII:6 is not excluded from the *Yahad*; he is only excluded from the army camp for the duration of his impurity.

Tal Ilan similarly applies Schuller's argumentation to assert that women were members of the *Yahad*.[94] In addition to my arguments above, I wish to draw attention to a flaw in the argument that since women are not among the list of excluded men with defects, they must be included: if this is the case, then women with similar defects would also be included in the *Yahad*, since they too are omitted from the list of the excluded; I suspect that these scholars have overlooked this consequence of their conjecture.[95]

Schuller's deductions from other texts that women are part of the Community[96] are unconvincing. She begins by analysing CD XV:5–6 (taking

93 Schuller, "Women and the Dead Sea Scrolls," 133–34.

94 Ilan, "Reading for Women," 69–72.

95 Ibid., 73–75, attempts to support her thesis that women were members of the *Yahad* based on the phrase אלה הנשים (in 1Q28ᵃ [1QSᵃ] I:27), which is an obvious scribal error as this phrase is surrounded by an endless array of masculine nouns and verbs. As I wrote above regarding the scribal error of תקבל in I:11, the error in this case is even more apparent. In 1QS VIII:13, we encounter מושב הנשי העול, which unequivocally refers to men. The same scribe writes אנשי העול in the succeeding column, IX:17. We encounter in VIII:13 הנשי העול and in IX:17 אנשי העול in masculine but in X:20 מאנשי העולה in feminine; in 1Q28ᵃ (1QSᵃ) II:2 אנושי השם and in II:11 אנשי השם. These few examples of variations or errors are just the tip of the iceberg in terms of scribal irregularities in some of Qumran writings; building a thesis on one of these errors, which blatantly conflicts with the obvious text, seems unwarranted.

96 Schuller, "Women and the Dead Sea Scrolls," 129–130. She does not exactly specify the type of membership that includes women; it is obvious that the women, and similarly the children, are members of the Jewish people and are obligated to know the Torah precepts and fulfill those that apply to them. The focus of our investigation here is whether they

the oath to enter the covenant) and quoting two scholars who understand בניהם as a neutral term that includes women[97] and one who sees it as referring to men only.[98] It seems obvious to me that בניהם in CD XV relates exclusively to men, given the term's intrinsic association with being counted for enrollment, which applies only to men over age twenty; the same is evident in CD IX:23–X:2, written in singular masculine. Further, the age requirement for adulthood (age twenty) is specified only for men, not for women; only men are enrolled in the army (Num 1:45), the model for the *Yahad*, and only they take the oath of the covenant (1Q28[a] (1QS[a]) I:8–9).[99] At that stage, they can marry and partake in the Passover meal, a celebration of the members of the biblical *Eda* that women and children cannot attend. Hence, women were not obligated to fulfill scriptural precepts like men,[100] and obligations are intertwined with membership—a lesser range of obligations is associated with a lesser rank of membership and rights.

All the rules of the *Yahad* in 1QS are exclusively written in masculine, and cannot be related to women. Moreover, Col. VI, describing the behaviour of the *Yahad* group and some requirements for acceptance of new members, refers to some issues—as for example, in VI:2–3: to "work and money, to eat together, to bless together, to deliberate together"—which cannot be related typically to women. Women are not working, and it is implausible to assume that the other activities were performed by men and women together. The same applies to the obligation to study the Torah together every night in VI:7, confirmed in v. 22; to be enrolled at the appropriate rank בתוכ אחיו לתורה ולמשפט among his brothers for discussion of the Law and jurisprudence; in their discipline of speaking טרם יכלה אחיהו לדבר not to speak before his brother finishes what he has to say in VI: 10; and in the order of sitting איש אחר אחיהו "a man after his

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were considered members of the *Eda*, the Holy Community in which the angels are present, and thus in the *Yahad*, which has special rules and privileges. In my opinion, this group is limited to adult males over twenty.

97 Vermes, *The Dead Sea Scrolls in English*, translates the term as "children," and Stegemann, *The Library of Qumran*, 198, whose assertion does not interpret the term as children, does not, in my opinion, concur with Schuller's thesis.

98 She mentions only Schiffman, *Sectarian Law in the Dead Sea Scrolls*, 57, ignoring the following scholars, who translate it as "sons": Chaim Rabin, *The Zadokite Documents* (Oxford: Clarendon, 1954); Hartmut Stegemann, "The Qumran Essenes: Local Members of the Main Jewish Union in Late Second Temple Times," in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March* (ed., Julio Trebolle Barrera and Luis Vegas Montaner; Leiden: Brill, 1922), 83–166 at 129; and Martínez and Tigchelaar, *The Dead Sea Scrolls Study Edition*.

99 These assertions are amply demonstrated in this chapter.

100 See also Chapter 4 on this topic.

brother" in CD XIV:5. Moreover, every member must undertake ולפקוד את כול חוקיו "to observe all of the ordinances that He commanded," and we know that women are not obligated to perform all precepts, as demonstrated in Chapter 4.

Schuller's interpretation of the expressions זקנים וזק[נות בחורים]ובתולות נערים ונע[רות in 4Q502 (4Qpap Ritual of Marriage) as referring to leadership titles and roles of both sexes seems inappropriate.[101] Only older men are occasionally mentioned in association with some leadership activity in Qumran texts, as in the blessing of the army in 1Q33 (1Q Milḥamah) XIII:1. In 1QS VI:8 they sit before the other members only as a token of respect for the elderly, as commanded in Lev 19:32.[102] In neither case are older women mentioned. Indeed, in the text of 4Q502 frg. 19:4 that Schuller quotes, in which older women and men are mentioned together, no titles or other honorific functions are involved. The couplet "male and female elders" is equal to "young men and virgins," "boys and girls." The final phrase of the verse indicates its scope: "with all of us together," men and women, without any fear of men being tempted by females of all ages, young and old, as I have argued elsewhere in this book.[103]

Similarly, Schuller concludes that women participated in the liturgy on the basis of the phrase איש או אשה, a later superscript addition to 4Q512 (4Qpap Ritual of PurB) 41:2 that women also pronounce the purity blessing.[104] I do not perceive the purity blessing as a liturgical event.[105] Scripture makes clear that the precepts of purity are equally obligatory for men and women (Lev 13:2 and 17:2, Num 19:14), but does not command any blessing at the cleansing procedure. It seems that Qumran instituted such a blessing, possibly for men and women alike,[106] but from the text of 4Q512 it is not clear for which type or types of impurities. It is, however, evident that menstruation is not among them.[107]

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101 Schuller, "Women in the Dead Sea Scrolls," 137.

102 According to the text it seems that this obligation concerns only elder men, not women.

103 Crawford, "Not According to Rule," 137, quotes 4Q502 frg. 24:4 in support of the argument that there were some honorific titles given to elder women, but I think that my rebuttal of Schuller's claim, based on 4Q502, applies here as well.

104 Schuller, "Women in the Dead Sea Scrolls," 136–7.

105 Such individual blessings at special events are not perceived as liturgy; according to rabbinic rules, women, like men, are obligated to say the blessings before eating something, although it is evident that they are not allowed to participate in the public liturgies/prayers in the Synagogues.

106 The entire text is written in masculine singular mode, which makes doubtful the authenticity of the superscript.

107 We encounter phrases like "at sundown" in frag. 48–50:5, "washing water" in 42–44:5, and "washing the clothes" in 51–55ii:7, procedures required at some cleansing of impurities but not of the menstruant (Lev 12:2–8).

Crawford, in arguing for equal status of women in Qumran, draws on similar passages as Schuller, some of which I have discussed here. She asserts that 4Q284 (4QPurification Liturgy) relates to "a purification ritual for a woman following menstruation," but she too overlooks the fact that this document, as is evident from the text, unequivocally refers to purification of a pollution provoked by contact with a carcass, the only type of impurity that requires sprinkling the ashes of the Red Heifer.[108] On the other hand, Crawford admits that "certainly women could not attain the same status as men in the organization."[109]

Grossman asserts that 4Q502 (4Qpap Ritual of Marriage) "offers a balanced view of gender that is not otherwise visible in the scrolls," and "provides the closest thing that the scrolls offer to evidence for a more 'egalitarian' community."[110] While I agree with Grossman that 4Q502 depicts a natural social coexistence between the sexes, I note that when the time comes for saying the blessing (vv. 5–6), we read that only ידברו אנשי the men (plausibly the missing words should be "of the *Yahad*" or "of the holy community") say the blessing.[111]

The prayers and Words of the Luminaries 4Q503–5 are public rituals expressed in plural masculine, which could include women from the grammatical standpoint, but I believe that it is implausible to assume that these prayers were performed by a mixed public of men and women.

In conclusion, we observe that only men over the age of twenty are members of the Holy Community, the עדה; only they perform the prayers, blessings, and most of the precepts, and practise a particular way of life, as instructed in

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108 Crawford, "Not According to Rule," 136. The phrases במימי [הזיה "the waters of the sprinkling" in I:2–3, מי נדה "cleaning water" (Num 19:13 and 20) in frg. 3:3, and particularly the explicit phrase לנפש אדם אשר ימות "a human being who dies in [a tent]," the replica of Num 19:13 in which the phrase מי נדה appears, eliminate any possibility that 4Q284 refers to the cleansing procedure of a menstruate. The term נדה is used in a variety of circumstances; see, for example, Lev 20:21 and Ezra 9:11. I think that Crawford was misled by the term נדה (used in the lemma בנדת in II:1) and also by נדה in the succeeding fragment, which continues the subject of cleansing on the sunset of the seventh day, assuming that it refers to the cleansing of a menstruate. She not only ignores that all the verbs and pronouns are in masculine, but what is more significant, she seems not to be aware that no cleansing procedure or washing of the body is required in Scripture for a menstruating woman to become clean after seven days.

109 Ibid., 147.

110 Grossman, "Reading for Gender," 212–239 at 229.

111 Although in the text אנשי seems to indicate unequivocally that only the men say the blessing, Crawford, "Not According to Rule," 137, states that the lemma "describes women participating in the worshipping life of the community."

their writings. This obvious discrimination between men and women contradicts Grossman's assumptions of an "egalitarian" community in which women participate in ritual activities. 4Q502 depicts an idyllic communal life in which all community members—men and women, young and old—participate in social events; at the same time, however, the text distinguishes between men and women with respect to the performance of rituals. This distinction supports the thesis that women, like children, were members of the Qumran community but not of the exclusive *Yahad* group.

5.7 Debating Wassen's Theory

We read in 4Q270 (4QD^{e}) 7i:5–15, among an array of punishments of members for wicked behaviour, that one who murmurs (complains) against האבות "the fathers" is expelled forever from the congregation, but if the same occurred against האמות "the mothers," he is penalized for ten days, since the mothers do not have רוקמה "authoritative status" within the congregation.[112] On the basis of the title "mothers," Wassen deduces that "women had full membership"

112 Victor Hurowitz, "רוקמה in the Damascus Document 4QD^{e} (4Q270) 7i:14," *DSD* 9 (2002): 34–37 at 35, suggests that the term be perceived as a "legal claim," which comes from the Akkadian term *rugummu*, thus claiming that "mothers have *a priori* no legal claim on one who complains against them, so one who maligns them is punished less severely." Crawford, "Not According to Rule," 137–38, offers an array of scholarly assumptions for the odd term רוקמה. John F. Elwolde, "*Rwqmh* in the Damscus Document and Ps 139:15," in *Diggers at the Well: Proceedings of the Third International Symposium on the Hebrew of the Dead Sea Scroll and Ben Sira* (ed. Takamitsu Muraoka and John F. Elwolde; Leiden: Brill, 2000), 65–83, interprets the term רוקמה on the basis of the Hebrew רקמה "embroidered fabric." In his opinion, the term meant "essential being/authority/status," since people of standing would wear embroidered garments. Consequently, the term "embroidered fabric" would be "metonymy come to signify status itself" for the men, but women "count for nothing." Wassen, *Women*, 190, contests his assertions. George J. Brooke, "Between Qumran and Corinth: Embroidered Allusions to Women's Authority," in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity: Papers from an International Conference at St. Andrews in 2001* (ed. James R. Davila; Leiden: Brill, 2001) 157–76, presents a most extensive record of scholarly attempts to solve this rebus, but concludes (at 175) by suggesting that "the Damascus Document and 1 Corinthians [11:10] may be mutually illuminating," arguing that "the limitations of the status of the mothers in the congregation come about because they are not permitted to wear a mark of authority in the congregation." For our purposes it suffices to presume that the "Mothers" had a much lesser authority than the "Fathers," which supports our hypothesis.

in and "entrance to the community meetings,"[113] even though we find in this verse an unbridgeable gap between the punishments imposed for the same abusive act, depending on whether it is committed against men ("the fathers") or women ("the mothers"). This rule, presented within the ambit of a lemma concerning various punishments for mischievous and injurious behaviour of members, appears to discriminate against women; however, this is not the result of a belief in women's inferiority. Exceptionally, the author perceives a duty to explain the legal rationale—"since the mothers do not have authoritative status within the congregation"—in order to deny any actual discrimination between fathers and mothers. Scripture treats them equally in setting out the precept that one who honours his parents gains long life (Exod 20:12) and, similarly, in mandating the death penalty for hitting them (Exod 21:15) or cursing them (Exod 21:17). Qumran's strict adherence to the scriptural text was probably the author's motive in explaining that the different degrees of punishment do not discriminate between father and mother (which would be against the divine will) but between the father as an authoritative member of the עדה, the "Community," and the mother, who lacks such authority.[114] Wassen deduces from the use of plural "fathers" and "mothers" in 4Q270 (4QD^{e}) that both these "titles . . . carry positive connotations and are associated with leadership and authority,"[115] and that who held these titles "were viewed as fatherly and motherly protectors within the community where they held a high authority, with the authority of the Fathers surpassing that of the Mothers."[116]

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113 Wassen, *Women*, 210.

114 Maxine Grossman, "Rethinking of Gender in the Community Rule: An Experiment in Sociology," in *The Dead Sea Scrolls and Contemporary Culture: Proceedings of the International Conference Held at the Israel Museum, Jerusalem* (*July 6–8, 2008*) (ed. Adolfo D. Roitman et al.; Leiden: Brill, 2011), 497–512 at 510, notes that the fact that Qumran scholars "need to justify their argument demonstrates, at minimum, that it is neither a foregone conclusion nor a universal assumption among the people for whom they are writing." Grossman ignores the fact that one would expect the same degree of punishment for the sin of dishonouring the "fathers" and "mothers" as doing it to one's parents, since Exod 20:12 does not discern between them in this respect. Schuller, "Women in the Dead Sea Scrolls," 122, perceives "the obvious discrepancy" between the imposed sanctions for offences against fathers and mothers, but prefers to see the half-full glass, regarding it as an issue of "lesser honor accorded to the mothers," and therefore asserts that it "should not blind us to the fact that men and women are given parallel titles." I do not identify any awarded title to the fathers or to the mothers; they are simply called by their typical relational names. The term רוקמה indicates precisely some type of authority that the fathers retained in the inner community, which was not granted to the mothers.

115 Wassen, *Women*, 188.

116 Ibid., 196.

I do not exclude the possibility that the "mothers" had some authority over the women of the community, parallel to the fathers' authoritative rank and function over the male members of the *Yahad* group and, plausibly, over the entire community, including women and children. It is not reasonable, however, to assume that the "mothers" had authority over the male members of the community. In fact, 1QS VII:15–19 records almost *verbatim* the punishments for slanderers and those who murmur against the teachings of the *Yahad* or against a comrade, but not the sanctions against one who murmurs against the fathers and mothers; the absence of this ruling from the Rule of the Community, which sets out the particular rules of the *Yahad* group, corroborates that there were no women in the *Yahad*. It would have been enlightening to have information on the sanctions imposed on a woman who murmurs against "the mothers." 4Q270, however, unequivocally refers to men who murmured, not women. The low status of the "mothers" in the community is evident from the fact that a man "murmuring" against another member of the *Yahad*—one who has no authoritative rank, but may have been entrusted by the "fathers" or by the "many" to perform a specific function—is punished for six months (v. 7), but one who commits the same offence against a specific function of the "mothers," in their capacity of authority over the women, is punished for only ten days (v. 14). Baumgarten[117] translates the phrase ילון אשר לא במשפט (4Q270 7i: 7) as "other than in a legal proceeding," which does not seem to me to make sense; the term לון "murmur/grumble," used in this verse, is identical to that used in the grumbling against the fathers in v. 13, and implicitly against the mothers in v. 14. It means rather a complaint against someone's faulty performance of a function assigned him by authority, permanently or temporary.[118] García Martínez and Tigchelaar[119] translate it as "if he complains against his fellow without cause," which seems to me more appropriate, since it may be perceived as similar to my interpretation: conveying an unjustified complaint about the man's faulty performance of the function assigned to him.[120]

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117 *DSSEL*.

118 The term לון appears in Exod 16 at the people's grumbling against Moses and Aaron for not having food, in Num 14 at the Exploration event, and in Num 16 at the Korah rebellion.

119 *The DSS Study Edition*.

120 The phrase לא במשפט has many meanings, and only the context can guide us to the correct interpretation. The phrase in v. 7 refers to an inappropriate grumble against a fellow member, whereas in v. 13 it is associated with an illegal sexual act. The term משפט can be interpreted as "judgement" or "a law," among many other similar concepts; see Paul Heger, "Did Prayer Replace Sacrifice at Qumran?" *RevQ* 22, n. 2 (2005): 213–233 at 223–25, under the subtitle "The Term משפט in Context."

The author also itemizes, among the various punishments for physical transgressions, the punishments for two transgressions of metaphysical character: slander/defamation and murmur/grumble/complaint. There is a parallel between these two types of misbehaviour: an act against רעהו a member of the group, which receives a lighter sentence, and the same act against the "many" or the "fathers"—that is, an act against the supreme authority—which receives the utmost sentence, permanent expulsion. Identical misconduct directed against the "mothers" receives a trivial penalty in comparison even to that imposed for the abuse of a simple *Yahad* member. The justification for the apparent discrimination relates precisely to the issue of authority, as argued above.[121]

Even granting Wassen's assertion of the authority of the "mothers," I still find it difficult to understand how, based on this limited authority, she reached the conclusion that a group of "authoritative women, known as the Mothers" had "full membership" and "were allowed entrance into community meetings so holy that only full members . . . could enter."[122] To the contrary, the greatly differing punishments for the same delinquency against the "fathers" or a male member of the community versus the "mothers" (4Q270 7 i 13:15) and the latter's lack of authority or limited authority over the women, in comparison to that of the "fathers," seems to me to attest the opposite. Aside from the use of "fathers" and "mothers," the text gives no hint of the type of authoritative attributes being conferred on the "mothers." The author's choice to justify differing punishments for the same misdeed "because the mothers do not have authoritative status within the congregation" clearly shows that the "mothers" have no authority in the community and are not allowed to enter and participate in the *Yahad* meetings. The women, including the "mothers," are like the old man unable to do his share in the congregation, who may not enter to take a place in the congregation, because the holy angels are there (1Q28[a] (1QS[a]) II:7–10). For the same reason, women—like old men over sixty, youngsters, and men with blemishes—must not stay in the war camp (1Q33 (1QMilḥamah) VII:3, 6).

One who grumbles against the "fathers" receives the same drastic punishment—final expulsion from the Community—as one "who despises the law of the Many" (4Q270 (4QD[e]) 7i:11), instead of the longer period of temporary expulsion typically imposed for other severe misdeeds by the Community

121 Wassen, *Women*, 190–93, after quoting scholarly opinions about the meaning of רוקמה and its symbolism, agrees in essence that it is the symbol of authority or special function and status. That, however, distinguishes the fathers from the mothers, who do not have these prerogatives.

122 Ibid., 210.

(vv. 8–9). This indicates that the reason for his exclusion from the Community is his breach of discipline, which must be dealt with rigorously. We do not know the concrete way in which straying from the foundation of the community, apparently a lesser transgression, differs from grumbling against the "fathers," but the comparison between despising the law of the "Many" and grumbling against the "fathers" suggests that both were perceived as endangering the stability of the Community, requiring the same drastic punishment to avoid the menace to the group's foundation. We observe that the severity of punishments for misdeeds is linked to the danger posed to the group's stability, which is imperiled by grumbling against authority (the "fathers" or a member entrusted by the authority to perform some assignment) or by despising the law of the community. This explains the extreme difference between the punishment for grumbling against the "fathers," which jeopardizes the group's social structure, and the punishment for grumbling against the "mothers," which has no such effect, since the latter have no authority.

In support of her theory, Wassen cites arguments by Crawford and Satlow[123] based on the phrase בסוד זקנים, interpreted as "council of elders," in 4Q502 (4QpapRitual of Marriage) 19:4. However, סוד only rarely denotes "council," and context must guide us in determining whether to interpret it as "in the midst/ in company/gathering" and similar[124] or as "council." In our lemma in 4Q502 (4Qpap Ritual of Marriage), it seems to me, סוד cannot be interpreted as "council," since the pair זקנים and זקנות is usually linked in that text to mean the entire community—for example, "young men and virgins, boys and girls, with all of us together," as we read in 4Q502 frg. 19:1–4, relating to the assembly of the holy ones. Since the boys and girls are not members of the *Yahad*'s council, the lemma does not relate to the functions of the elders, whether male or female, and thus cannot serve as evidence for Wassen's assertion that "[s]ince female Elders are mentioned in the same document, one can assume that these also would

123 Ibid., 187, citing Sidnie White Crawford, "Mothers, Sisters, and Elders: Titles for Women in Second Temple Jewish and Early Christian Communities," in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity* (ed. James Davila; Leiden: Brill, 2003), 177–91 at 181–3, and Michael Satlow, "4Q502 A New Year Festival?" *DSD* 5 (1998): 57–68 at 65 n. 33.

124 For example, in Jer 6:11: סוד בחורים יחדו "the young men gathered together"; Jer 15:17, בסוד משחקים "the company of revelers"; and Ezek 13:9, בסוד עמי "in the assembly of my people." In Jer 23:22, ואם עמדו בסודי "But if they had stood in my council" (NIV), but the LXX interprets it as ὑπόστασις "substance/ the real nature of things," and hence סוד is interpreted as "understanding the [secret] real words of God," as a few traditional commentators interpret.

take part in the 'council of Elders.'"[125] I therefore dispute Wassen's argument that women had full membership in and entrance to the community meetings, although I agree that "fathers" and "mothers" are titles that "carry positive connotations and are associated with leadership and authority,"[126] and that both "were viewed as fatherly and motherly protectors within the community where they held a high [some, in my view] authority."[127]

I believe I have adequately supported my thesis that two legal and social entities existed in Qumran: Men, women, and children were all members of the Qumran community and had to live according to its rules, but only men over age twenty were members of the holy *Yahad/Eda* group, which had special functions, obligations, and ordinances.

A final note: It seems to me that "feminist readings" of ancient Israelite literature by feminist writers often tilt the original meaning of the text out of its boundary in one direction, just as "patriarchal" readings tilt it in the opposite direction, and that both are therefore flawed.[128] We should try our best to approach the interpretation of ancient writings in general, and writings relating to women in particular, with an objective attitude, if our aim is to reveal what the authors intended their texts to convey and their audience to hear.[129]

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125 Wassen, *Women*, 187.

126 Ibid., 188.

127 Ibid., 196.

128 Cansdale, *Qumran and the Essenes*, 52–53, for example, attempts to demonstrate "that in a number of cases men and women in the Scroll Community were in some respects considered equal under the law," taken from CD XI:12, that one must not scold one's male or female servant on Sabbath, and from 4Q159 (4QOrdin^{a}) 2–4; 8:6–7, that women must not wear men's garments and vice versa. The prohibition of the CD has no association with equalization of man and woman; it is a Sabbath law, among other Sabbath laws, addressed to the Israelite master prohibiting him to goad his slaves and employees to work. The other rule is a chastity rule against promiscuity, relating to men and women alike. Neither indicates social or legal equality, as Cansdale would have preferred.

129 This is particularly critical with vague biblical texts that can be interpreted in opposing ways. An example is the biblical rule in Gen 21:3: If an Israelite slave starts his service unmarried, he is freed alone; but if he has a wife starting his service, she is freed with him (in the seventh year). Scripture does not indicate any hint of the status of the woman during the period of her husband's slavery, and consequently we encounter many contrasting interpretations. Carolyn Pressler, "Wives and Daughters, Bound and Free: Women in the Slave Laws of Exodus 21:2–11," in *Gender and Law* (ed. Levinson et al.), 161, understands "that if her freeborn husband is forced into bondage, she is enslaved with him." In contrast, we read in *b. Qidd*. 22a an opinion based on the same rule that his wife is free, and her husband's master must pay for her sustenance during the period of her husband's slavery. In *b. Qidd*. 20a, we encounter another interpretation, namely that if he has a wife and בנים

I agree with Maxine Grossman that even audiences of the author's own period may have understood different nuances of the text, but the question is when a different perception can be identified as a nuance and when the reader's understanding of a text[130] (Eco's *intentio lectoris*) departs altogether from what the text intends (Eco's *intentio operis*).[131] It is obvious that if the *intentio operis* is disregarded in favour of the *intentio lectoris*—what each reader understands from the text according to his or her own cultural background, contemporary circumstances, and expectations—then there is no limit to the number of ways a text can be interpreted and reinterpreted.

"sons (children), the master has the right to give him a Canaanite (Gentile) maidservant to produce slave children for him (Exod 21: 4), but he is not permitted to do so if he is not married and has no sons (children)." Thus, we observe a range of possible interpretations depending on one's approach towards women in ancient writings. Martha Roth, "Law and Gender: A Case Study from Ancient Mesopotamia," in *Gender and Law* (ed. Levinson et al.), 173, asks a similar question regarding ancient Mesopotamian legal literature: "Can we recover gender assumptions in the surviving legal documents and the reflexes of legal action in ancient Mesopotamia? Can such a possible recovery aid our understanding of the documents and the legal system?"

130 Grossman, "Reading for Gender," 212–39 at 217, asks the question, "How diverse can the historical interpretations of this text be, and is it possible to identify some interpretations that are not historically likely?"

131 Umberto Eco, *The Limits of Interpretation* (Bloomington, IN: Indiana University Press, 1990), 50–54.

CHAPTER 6

The Polygamy Rules of CD IV:20–V:2 and 11Q19 LVII:15–19 and Their Sources: Implications for Divorce and Remarriage

6.1 Introduction

Two principal questions arise from the studying of three particular Qumran texts in which the prohibition of polygamy appears: Does polygamy pollute the Temple? Does the prohibition on polygamy also prohibit divorce and remarriage thereafter? In 11Q19 (11QTemple[a]) LVII:15–19 we read: "And he shall not take a wife from all the daughters of the nations, but from his father's house he shall take unto himself a wife, from the family of his father. And he shall not take upon her another wife, for unto himself another (wife) from the house of his father, from his family" (translation by Y. Yadin). In CD IV:20–V:1 we read: "they are caught in two: fornication, by taking two wives בחייהם in their lifetimes, although the principle of creation is 'male and female He created them' and those who went into the ark 'went into the ark two by two.' Concerning the Leader it is written 'he shall not multiply wives to himself.'" And in CD V:6–12 we read: "They also מטמאים defile the sanctuary, אין הם מבדיל for they do not separate clean from unclean according to the Law, and lie with a woman during her menstrual period. Furthermore they marry each man the daughter of his brothers and the daughter of his sister, *vac* although Moses said, 'Unto the sister of your mother you shall not draw near; she is the flesh of your mother'" (cf. Lev 18:13). But the law of consanguinity is written for males and females alike, so if the brother's daughter uncovers the nakedness of the brother of her father, she is the flesh (of her father). *vac* Also they have טמאו corrupted their holy spirit, and with blasphemous language they have reviled the statutes of God's covenant, saying, 'They are not well-founded'" (both translations by E. Cook).[1]

These texts are commonly interpreted as prohibiting both polygamy[2] and marriage between a man and his niece, but other interpretations have also been offered, such as a prohibition on divorce and on remarriage after

1 *DSSEL*.

2 See Géza Vermes, "Sectarian Matrimonial Halakhah in the Damascus Rule," *JJS* 25 (1974): 197–202. Tom Holmén, "Divorce in CD 4:20–5:2 and 11QT 57:17–18: Some remarks on the

divorce,[3] because of the apparent oddity of the term בחייהם in CD IV:21. The phrase "they are caught in two: בזנות fornication"[4] in CD IV:20 has similarly raised scholarly debates as to whether it relates to two nets, or to two types of illicit sexual relations,[5] or, as it seems to Schremer, to three "nets."[6] The prohibition of polygamy in CD IV:20–V:1 seems to have been deduced from the texts of Gen 1:27 (the creation of one man and one woman) and Gen 7:9 (the subsistence of each species is ensured by one male and one female) and from the indirect evidence of a particular interpretation of Deut 17:17 (which prohibits the king to take multiple wives). Gruber, in contrast, contends that Lev 18:18 should be interpreted as: "Do not marry אשה אל אחתה a woman with her fellow woman, בחייה while your wife is living," conflicting with the common interpretation which refers to a prohibition to marry two biological sisters at the same time. He came to this conclusion because the word בחייה in this verse is similar to בחייהם, used in the CD text.[7]

In this chapter I propose an interpretation of the phrase "they are caught in two," justifying the author's intent of two prohibitions; I then dispute Gruber's theory as to the source of the CD's prohibition of polygamy. Finally, I argue that the lemma of the CD relates exclusively to the prohibition of polygamy, and does not address the issue of divorce.[8]

Pertinence of the Question," *RevQ* 18 (1998): 397–408, at 398 writes: "No one has doubted that the texts apply to the issue of polygamy."

3 Adiel Schremer, "Qumran Polemic on Marital Law: CD 4:20–5:11 and Its Social Background," in *Damascus Document: A Centennial of Discovery; Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 4–8 February 1998* (ed. Joseph M. Baumgarten et al.; Leiden: Brill, 2000), 147–60, at 148–49 offers an extended list of the different scholarly interpretations of this lemma.

4 This is the common translation of זנות, but, as I will demonstrate later in the study, the term has a variety of meanings.

5 William Loader, *Philo, Josephus and the Testaments on Sexuality: Attitudes towards Sexuality in the Writings of Philo and Josephus and in the Testaments of the Twelve Patriarchs* (Grand Rapids, MI: Eerdmans, 2011), 110–13, deliberates at length on the various possible interpretations and proffers his solution to the phrase by referring to two nets: by taking two wives, a man effects both a sexual misdeed and an act of greed (by becoming richer with the receipt of two dowries).

6 Schremer, "Qumran Polemic," 149–52.

7 Mayer I. Gruber, "Women in the Religious System of Qumran," in *Judaism in Late Antiquity* (ed. Alan J. Avery Peck et al.; Leiden: Brill, 2001), 173–96.

8 See also Vermes, "Sectarian Matrimonial" and Schremer, "Qumran Polemic," 157–60.

6.2 The Interpretation of CD IV:20–V:1: Disputing Schremer's Theory

Schremer interprets the text of CD IV:20–V:1 as relating to three accusations: First, taking two wives; second, defiling the sanctuary (by lying with a menstruating woman); and, third, marrying one's niece. Hence, there are three nets, not two, as the author claims. In his translation of the lemma, Schremer inserts a full stop after each sentence: "And they also pollute the sanctuary by not separating according to the Torah. And they lay with a woman who sees blood of flowing. And they marry each one his brother's daughter or sister's daughter." Thus, he seems to be distinguishing between polluting the sanctuary and lying with a menstruating woman, although, in the original text, they seem to be intrinsically connected by the conjunctive phrase אשר אין הם מבדיל (CD V:6–7). Cook correctly translates as follows: "They also defile the sanctuary, for they do not separate clean from unclean according to the Law, and lie with a woman during her menstrual period." Schremer's punctuation suggests four evil deeds: the three named in CD V:6–7 and a fourth involving taking two wives in CD IV:20–21, which conflicts with his assertion, noted above, that there are three sins. Moreover, when the sentence about the pollution of the sanctuary is divided from the succeeding clauses, we have no clue as to what the phrase "not separating according to the Torah" means (i.e., to what type of separation the author refers); we must therefore assume that the pollution of the sanctuary is related to lying with a menstruating woman, despite Schremer's division of the sentences. Further, he argues that "as the texts stands before us now," the misdeed of marrying one's niece is preceded by the accusation of defiling the Sanctuary, and in his opinion this is incorrect, since the defilement should refer to the marriage with two women that precedes it, not to the marriage with one's niece that follows it (an act that does not defile the Sanctuary, according to his opinion). He justifies this assumption by arguing that since טמא, which he understands as "pollute," appears both in V:6 (וגם מטמאים את המקדש) and in V:11: (וגם את רוח קדשיהם טמאו), "one naturally assumes that they are related to one another." Therefore, the accusation of polluting the Temple should precede the sin of taking two wives, not the sin of marriage with a niece, which does not pollute the Temple. Schremer consequently proposes that we should "remove [the defilement of the sanctuary] from the text altogether" or "relocate it after the accusation of marriage with one's niece and before the accusation of defiling the holy spirit, where it is expected."[9]

9 Cook's translation, *DSSEL*, 151.

I dispute Schremer's interpretation and the resulting proposal, which are based, *inter alia*, on the assumption that טמא has always the same meaning; this assumption does not correspond with the facts, as is evident from the varied uses of טמא in Scripture, which are not comparable in their essence and implications. I discuss this issue at length in an Appendix to Chapter 8; here, I will confine myself to observing, for example, the difference in meaning between טמא in Lev 11:44, indicating a defilement of the soul by eating ritually detestable creatures; in Num 19:11, a seven-day unclean period for touching a carcass; in Num 5:13, the impurity of a married woman who has committed adultery; in Num 35:34, the defilement of the land by shedding blood; and in Lev 20:3, the pollution of the Temple by practising idolatry.

Moreover, the two instances טמא in our lemma are not comparable because they explicitly relate to distinct types of pollution of different elements through different misdeeds: the first refers to polluting the Temple by lying with a menstruating woman or by marrying one's niece, whereas the second refers to polluting (*corruption*, in Cook's translation) their holy spirit by using blasphemous language.[10]

I propose that we read the conjunction וגם as a correlative conjunction meaning *not only . . . but also*—that is, they are caught in two misdemeanours: (1) in the act of fornication, by taking two wives; and (2) in the act of polluting the Temple by lying with menstruating women and by marrying a niece, two transgressions that pollute the Temple. That is, polygamy is perceived as an evil deed, but it does not pollute the Temple. The pollution of the Temple, like the pollution of the land, is not necessarily associated with the concrete entrance into the Temple of a polluted person. The text associates the pollution with failing to separate clean from unclean, according to the correct Torah law,[11]

10 Schremer does not clarify the nature of the sin that pollutes the Temple, that is, whether it relates to the entrance into the Temple of an impure man who has slept with a menstruate or whether it is an abstract type of pollution—the very act of lying with a menstruate—similar to idolatry that pollutes the Temple (Lev 20:3) or the idolaters (Lev 19:31), or to the woman who practises bestiality (Lev 18:23). Since Schremer does not distinguish between the different types of טומאה "pollution" and does not envisage an abstract type, I assume that, in his opinion, the CD author refers to the concrete pollution of the Temple by a man entering it in a state of impurity after lying with a menstruate. Therefore, he does not conceive that marrying a niece pollutes the Temple. Such an interpretation conflicts with the text, which does not mention entering the Temple but refers exclusively to failing to perform separation and to lying with a menstruate.

11 In Paul Heger, "Celibacy in Qumran—Hellenistic Fiction or Reality? Qumran's Attitude towards Sex" in *RevQ*. 101 (2013) 53–90, at 81, I have hypothesized that Qumran may have practised a more stringent rule about the duration of impurity of the menstruating

namely a menstruating woman, and with marrying a niece, not with entering the Temple while unclean. Such pollution may be indirect, occurring through misdeeds, similar to the pollution of the land by spilling innocent blood (Num 35:33–34) or by failing to bury the hanged on the same day (Deut 21:23).[12] I doubt whether we have the expertise to decide that marrying two wives pollutes the Temple yet marrying one's niece does not, as Schremer seems to argue. Are we qualified to understand why cleansing the pollution resulting from touching a corpse requires sprinkling with water mixed with the ashes of the Red Heifer, whereas other types of pollution, such as leprosy (Lev 14:4–7), require sprinkling with another substance? Or why a man who has lain with a menstruating woman is impure for seven days but then becomes pure again, without even the requirement of a ritual bath (Lev 15:24), yet if he only touches her bed, he is impure for one day but must bathe and wash his clothes (Lev 15:23)? Similarly, we do not understand why shedding innocent blood pollutes the Temple, eating unclean insects pollutes the souls of the consumers, and some sexual misdeeds pollute the land (Lev 18:27). Therefore, Schremer's assumption that marrying two women pollutes the Temple, but marrying one's niece does not, has no foundation. One could conceive the opposite: whilst marrying one's niece is perceived an incest relation,[13] the marriage of two women is just an unethical deed, by virtue of acting contrary to the divine creation principle. Because we do not know what differentiates those transgressions which pollute the Temple from those that do not, we can understand the intent of the author of the CD lemma, who describes two of the three nets assumed to be hinted at in Isa 24:18: marrying two women is a form of a "sexual misdeed"[14]

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woman, similar to that established by the later rabbis, whereas it is possible that the Pharisees did not practise a strengthened rule. This would explain Qumran's accusation that their opponents transgressed the Torah rules, as they understood it, since it seems incomprehensible that the Pharisees, Qumran's opponents, would not obey the biblical restrictions of sexual intercourse during the woman's menstruation period of seven days.

12 It seems to me that Martha Himmelfarb, "Sexual Relations and Purity in the Temple Scroll and the Book of Jubilees," *DSD* 6, 1 (1999) 11–36 at 24–25, is of the same opinion. She writes: "the Temple Scroll saw the forbidden sexual relationships as producing impurity of the kind that threatened the sanctuary. In matters having to do with sexual relations, the Temple Scroll understands impurity much as P does, as the result of certain physical processes." We encounter a similar abstract pollution of the Temple by evil deeds in The Testament of Moses 5:2–3: "They shall turn aside from righteousness and approach iniquity, and they shall defile with pollutions the house of their worship."

13 Comparing the prohibition to marry a niece to the biblical prohibition of marrying one's aunt (Lev 18:13) classifies it as incest, similar to the other prohibitions in Lev 18.

14 See discussion below about the general meaning of the term זנות, other than fornication.

which does not pollute the Temple, while lying with a menstruating woman and marrying a niece do pollute it. The author then mentions another type of pollution, that of the holy spirit, which occurs through the use of blasphemous language against the statutes of God's covenant.

In conclusion, I propose to understand the lemma as follows: they are caught in two misdemeanours: (1) in the act of fornication, by taking two wives; and (2) in the act of polluting the Temple by lying with a menstruating woman and by marrying a niece, two transgressions that pollute the Temple; polygamy is perceived a sexual misdemeanour, but does not pollute the Temple.

6.3 Motivations and Sources of the Prohibition on Polygamy in CD

6.3.1 *The Motivation for the Prohibition: Wassen's Conjecture*

Wassen suggests that the prohibition of polygamy may have been welcomed by "the women in the community" because of tensions between co-wives, alluding to biblical stories that "illustrate such hostility within families with several wives."[15] We do not know, however, whether this or some other practical motive led Qumran scholars to "reinterpret" the biblical law accordingly, as Wassen alleges,[16] or whether their decision was based on their genuine interpretation of the biblical relevant text. Based on my studies of Qumran's interpretive system, I would not suggest that Qumran scholars would have "reinterpreted" some biblical rule to suit their practical considerations.[17] We should therefore attempt to reveal the biblical source and interpretation that may have led them to prohibit polygamy even though, as it seems to us, there is no such prohibition in Scripture. Careful scrutiny of the relevant CD text is the most appropriate way to begin our investigation.

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15 Wassen, *Women*, 128. I wonder why she refers to the events narrated in Gen 16:4–6 (erroneously identified as Gen 16:29–30 at 128 n. 66), which describe the tension between a maid servant and her mistress when the maid servant becomes the master's surrogate wife and the bearer of his child (vv. 4–5), rather than Laban's pronunciation in Gen 31:50, which refers precisely to the mistreatment of a wife, when her husband marries an additional one. Moreover, in the dialogues that follow between Sarai and Abraham and the angel and Hagar, the latter is never given the title of wife; she is called maidservant, and the abusive relations between a wife and her maidservant who displaces her are vividly portrayed in Prov 30:21–23, thus demonstrating the peculiar character of the Hagar narrative, which therefore cannot serve as a general model of behaviour at polygamous marriage.

16 Ibid.

17 See Heger, *Challenges*, 21–26 for an extended study concerning this particular topic.

6.3.2 *The Biblical Source of the Polygamy Prohibition in the CD*

6.3.2.1 Lev 18:18 or a Logical Consideration of Gen 1:27 and 7:9?

We read in CD IV:20–21 the accusation that the author's opponents take "two women בחייהם in their lifetime"; the author therefore contends that polygamy is prohibited as long as both women are living. The use of the masculine form בחייהם has produced interpretive difficulties, since one would expect the feminine form (meaning "during the women's lives")—that is, as long as a man's wife lives, he cannot marry another woman, but he may do so after her death.[18] The issue has become even more complicated because some scholars have associated this rule with the decree in Lev 18:18, simply because בחייה in Lev 18:18 is similar to בחייהם in the CD text. An array of diverging scholarly explanations for this apparent irregularity have been advanced, including a proposal to emend the masculine בחייהם to the feminine בחייהן and, as a consequence, to deduce from this verse the prohibitions on polygamy in cases of divorce—that is, that a divorced person cannot remarry as long as his or her former spouse is living.

It seems to me, however, that a conjecture that the CD author based his prohibition of polygamy on Lev 18:18 because of his use of בחייהם is not justifiable; in both texts, these similar terms are an essential element of the rules, which apply only during the lifetimes of the persons concerned; the similarity therefore does not serve as evidence that Lev 18:18 is the source of the CD's prohibition of polygamy.

Whereas the rabbis and most translators and commentators, including the LXX, understood אחתה in Lev 18:18 as relating to a real sister, and thus as forbidding marriage with two sisters during their lifetimes,[19] Ginzberg infers by a complex argument that the CD author does not interpret ואשה אל אחתה of Lev 18:18 literally, but in "the sense of 'a wife together with another one,'" thus forbidding polygamy.[20] Gruber, however, claims not only that the CD interprets

18 Nevertheless, a number of scholars interpret the term בחייהם as referring to women's lives, or to both, explaining the oddity as a grammatical possibility used in biblical and *mishnaic* Hebrew, or by proposing an emendation. For a list of relevant scholars, and their various interpretations on this topic, see Vermes, "Sectarian Matrimonial," 400, Wassen, *Women*, 114–18 and David Instone-Brewer, *Divorce and Remarriage in the Bible, The Social and Literary Context* (Grand Rapids, MI: Eerdmans, 2002), 62–72.

19 See *b. Yeb*. 8b.

20 Louis Ginzberg, *An Unknown Jewish Sect* (New York: Jewish Theological Seminary of America, 1976), at 19 argues that the CD cannot interpret the "sister" literally, because CD equated man and woman regarding sexual restrictions, as we see regarding the prohibition of marrying a niece, identical to the prohibition of a man marrying his aunt (CD V:9–10). Consequently, he assumes the CD author determined that a woman may not marry her brother-in-law after her sister's death, just as a man may not marry his sister-in-

Lev 18:18 as relating to a metaphorical sister, that is, a fellow woman, but also that this is the simple, real, and only intent of the biblical decree, and the basis of the CD's prohibition of polygamy.[21] Gruber attempts to demonstrate that Scripture prohibits polygamy and that its abrogation was instituted by the Pharisees, the forerunners of the rabbis,[22] who justified it by a deliberately biased interpretation of the scriptural rule, to the detriment of the women's legal status. He therefore argues that the phrase אשה אל אחתה in Lev 18:18 must be interpreted as referring to another woman, not to a real sister—like the similar phrase in Exod 26:3, referring to clipping one curtain to another, or the masculine phrase in Exod 25:20 referring to the cherubim facing איש אל אחיו "one to another"; hence, he declares that Lev 18:18 explicitly and clearly prohibits polygamy.

Gruber ignores the fact that the primary meanings of אח and אחות are "brother, sister and kinsfolk,"[23] and only by extension do they express the generic concept of two close and similar elements.[24] Moreover, in the parallel 4Q524 (4QTemple^b) 15–22:6, as reconstructed by Émile Puech: "No man may marry a woman and her sister; that is]abhorren[t,"[25] we see that the author adjusted the biblical אל אחתה to ואת אחותה, which must be understood as meaning her literal sister, not as one woman to another, as Gruber suggests.[26]

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law, his brother's widow, even after his brother's death. However, since Scripture restricts the prohibition of Lev 18:18 to בחייה "her life time," the decree cannot relate to a real sister, and must therefore be interpreted as referring metaphorically to "a wife together with another." It seems to me that this speculative consideration is not compelling, especially since CD IV:20–V:1 proffers other justifications for its prohibition of polygamy. I conjecture that Ginzberg was somewhat influenced by the Karaites, who deduce from Lev 18:18 the prohibition of polygamy; he records, however, that the polygamy prohibition is not absolute, and applies only when the second marriage is injurious to the first one, since Scripture conditioned it by the term לצרר "to vex her" (KJV). Aharon Shemesh, "4Q271.3: A Key to Sectarian Matrimonial Law," *JJS* 49/2 (1998) 244–263 at 245–6 also follows Ginzberg's theory, but in contrast to Ginzberg assumes that one cannot marry another woman as long as the previous divorced woman is alive. For an extensive deliberation about Shemesh's theory and motivation see section 6.4, pp. 244 ff.

21 Gruber, "Women in the Religious System of Qumran," 178–79.

22 See a more extended citation of Gruber's arguments in section 6.3.2.3.

23 See Gen 13:8, 11, 26:31, 37:19, 42:21; Exod 2:11, 32:29; Lev 25:46; Deut 1:16, 17:15; Isa 9:18, 19:2; and Jer 23:35.

24 Gruber, "Women in the Religious System," 187–8, turns the issue on its head, writing that "one of the meanings of אחות in Hebrew is 'sister' in the sense 'female sibling.'"

25 See Gershon Brin, "Reading in 4Q524 Frs. 15–22 DJD XXV," *RevQ* 74 (1999): 265–71 at 267.

26 Although this is the interpretation of the TS, we have no reason to assume that the CD conflicts with the TS.

Relying on his conception, however, Gruber states that Lev 18:18 is the source of the prohibition on polygamy in CD IV:20–V:1. He cites Ginzberg's interpretation of Lev 18:18 as referring to the marriage of a fellow woman, ignoring the fact that Ginzberg only contends that this was the interpretation of the "Unknown Sect," not the correct interpretation of the biblical text.[27]

6.3.2.2 The Meaning of זנות: Debating Gruber's Narrow Interpretation

Considering the prohibition of polygamy as an explicit and irrefutable Torah precept, therefore, Gruber interprets CD IV:20–V:1 as follows: "They are caught in the trap of two [sins]: in [the trap of] adultery by marrying two women in their lifetime"—comparing the transgression of polygamy to adultery, and thus translating זנות as expressing the most severe kind of sexual mischief.[28] But זנות does not denote sexual misbehaviour in most cases, either in Scripture or in Qumran literature, nor does it always suggest fornication or whoredom;[29] its general connotation is of evil and unethical deeds, whether or not associated with sexual mischief.[30] For example, we read in Exod 34:15: וְזָנוּ "they will go astray" after their gods, and in Lev 20:5: "to go astray" after Moloch. In Isa 1:21 we read: "See how the faithful city has become a זונה prostitute"; then follows the explanation of how it has done so, and there is no connection whatsoever to sexual misbehaviour. We find the same usage in Qumran literature. In 4Q397 (4QMMT^{d}) II:12, the phrase ועל הזנות relates to the marriage of priests with Israelite women. This is a transgression connected to a sexual issue, but it is not an instance of fornication, adultery or whoredom; rather, it is compared to

27 Ginzberg, *An Unknown Jewish Sect*, at 19 indeed notes that "this sect rejected the traditional interpretation of this verse."

28 Gruber, "Women in the Religious System," 180 n. 21, cites other scholarly interpretations of the term זנות, such as "fornication" and "whoredom," but defends his translation of "adultery." Wassen, *Women*, 118, translates the term as "fornication," and so does Lawrence H. Schiffman, "Laws Pertaining to Women in the Temple Scroll," in *The Dead Sea Scrolls: Forty Years of Research* (ed. Devorah Dimant and Uriel Rappaport; Leiden: Brill, 1992) 209–28 at 217. In fact, even a זונה "harlot" is not an extremely abominable personality, like an adulteress; only a priest is forbidden to marry a harlot, there being no such prohibition for an Israelite, and we do not encounter any sanction of defilement of her children with respect to marriage with Israelites. This is not comparable to a child born of an adulterous liaison. Marriage with a harlot may be perceived as immoral, but not prohibited.

29 In some occurrences in Scripture the term זנות denotes whoredom.

30 Even in our modern language, the term זנות in Hebrew or "prostitute" in English metaphorically describes a person who willingly uses his or her talent or ability in a base and unworthy way, usually for money.

the prohibition against *kil'ayim*, the mixing of two different species of animals or plants, and defiles the holy priestly seed, as appears in the parallel 4Q396 (4QMMT^c) IV:10. In 1QS I:6, the phrase ועיני זנות explains its reference to לעשות כול רע "to do every evil thing" (1QS I:7)—again, a generic expression of wicked deeds.[31]

The use of זנות in CD VI:21–VII:2 seems to me the overwhelming and definitive evidence of its generic meaning of wickedness, including sexual misdeeds among others. We read there: "and to seek each the welfare of his fellow, never betraying a family member; keeping away from הזונות *wickedness* according to the ordinance;[32] reproving each his fellow according to the command, but not bearing a grudge." There is not the slightest hint of sexual misdeeds in these verses, nor in the antecedent or subsequent verses. In CD VIII:5, זונות <זנות> appears in a description of a long list of misdeeds, among them just one obscure phrase, ויגשו לזמה, that may or may not refer to a sexual misdemeanour, depending on the interpretation. Cook translates: "each hating his fellow; each of them kept away from nearest kin but grew close to זמה indecency; they vaunted themselves in riches and in ill-gotten gains" (CD VIII:6–7). The interpretation of ויגשו לזמה as "but grew close to indecency" is vague and does not clearly express the author's intent. Further, all the ו "vav" conjunctions are joining conjunctions ("and"), but Cook translates the ו of ויגשו as "but," an opposite conjunction, because in his translation this phrase does not connect to the antecedent and subsequent phrases, as all others do within the extended lemma. In contrast, García Martínez and Tigchelaar translate, "And each one hating his fellow. Each one became obscured by blood relatives and approached for debauchery."[33] The interpretation of this entire sentence has no relationship to the text, and it also avoids translating the joining conjunction "and" at the beginning of the problematic sentence, since there is indeed no literary or factual connection to the antecedent phrase, as argued above. Both translators seem to have ignored the simple meaning of the phrase ויתעלמו איש בשאר בשרו, whose source is Isa 58:7: ומבשרך לא תתעלם "and not

31 John Kampen, "The Matthean Divorce Texts Reexamined," in *New Qumran Texts and Studies, Proceedings of the First Meeting of the International Organization for Qumran Studies, Paris 1992* (ed. George J. Brooke with Florentino García Martínez; Leiden: Brill, 1994), 149–67, who emphasizes the sexual character of זנות as fornication and whoredom in Qumran literature, admits at 165 that "at times the term also has broader connotations." I maintain that the broader use of the term occurs often, and therefore cannot serve as indication that a wicked deed with the sobriquet זנות necessarily indicates fornication.

32 Cook, *DSSEL*, translates הזונות as fornication, disregarding the context.

33 In *The Dead Sea Scrolls Study Edition* (ed. García Martínez and Tigchelaar).

to turn away from your own flesh and blood."[34] Without question, this source passage indicates the meaning and spirit of the phrase, which compels us to connect the antecedent and succeeding phrases, ignored by both translators. In consequence, I think that we must interpret זמה here as a generic expression of wickedness, similar to זנות. Although the term זמה is used in Lev 18 and in other occurrences as associated with sexual misdeeds, it appears often in association with wicked deeds and evil intentions.[35] In the context of our text it signifies bad intentions to cheat one's relatives. Furthermore, the term נגש, used by the author in connection with זמה, does not appear in Scripture in association with a sexual topic.[36]

6.3.2.3 Further Arguments against Gruber's Theory

Thus, Gruber's conjecture that Qumran scholars interpreted Lev 18:18 as prohibiting polygamy, and hence that marrying a second woman was considered similar to adultery, has no support. The use of בחייהם in the CD and כול ימי חייה in 11Q19 (11QTemple[a]) LVII:18 is no evidence that their authors determined the prohibition of polygamy from the biblical use of the similar term בחייה in Lev 18:18, as Gruber claims.[37] If this were the case, the author of the polemic CD rule would have justified it with the phrase "as is written/said," with or without quoting the biblical verse, as is common in the polemic MMT. Instead, however,

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34 The term תתעלם also appears in Ps 55:2 (55:1 in the KJV) in the phrase ואל תתעלם מתחנתי "do not ignore my plea." Although the context here requires a differing translation, the essence of תתעלם is conveyed similarly in both passages. Aharon Shemesh, "Scriptural Interpretations in the Damascus Document and their Parallels in Rabbinic Midrash," in *Damascus Document*, 161–75 at 164, correctly interprets the first part of CD VIII:6–7: "and each ignored the relation of his flesh," but then translates: "and they drew near (one to another) for incest," which is a literal translation of the text, but one that does not fit into the context; that is, to the antecedent and subsequent phrases that refer exclusively to social misdoings, not to sexual issues. Shemesh does not delete the joining conjunctions, but the interpretation, which suggests incest, is out of place with the preceding accusation of hating one's brother and ignoring the relationship, and the subsequent accusation of striving for wealth and profit, which seems to follow organically.

35 See, for example, Isa 32:7; Jer 4:28, 23:20, 30:24, 51:11; Ezek 16:58, 22:9; Ps 26:10; Prov 21:27 and many others in which the term זמה, even in association with זנות in its various grammatical forms are used metaphorically to express wickedness or evil intentions. The term זמם for the false witness in Deut 19:19 comes from the identical root.

36 See my interpretation of the term נגש in Exod 19:15 in Chapter 4, p. 134.

37 Gruber, "Women in the Religious System," 178, 187. The entire text of the lemma in 11Q19 is so different from that of Lev 18:18 that the similarity of the one phrase in both texts—citing an integral element of the rules—cannot definitively indicate that Lev 18:18 is the lemma's source.

he justifies his prohibition by a logical deduction from two biblical narratives;[38] since he avoids citing Lev 18:18 in support of his *halakhah*, we may assume that the CD author, like the rabbis,[39] interpreted this verse as a prohibition on marrying two real sisters. Gruber perceives the author's justification for his prohibition of polygamy—"the principle of creation is 'male and female He created them' (Gen 1:27), and those who went into the ark 'went into the ark two by two'" (CD IV:21–V:1)—as additional support to the prohibition of Lev 18:18 for the substantiation of the CD author's decree.[40] To justify the odd procedure of citing logical deductions instead of the explicit biblical verse, he builds a complex theory, arguing that since the "author of CD was fully aware that members of Jewish sects who believed that God's moral economy countenances polygamy would not be convinced by what they would regard as a thoroughly tendentious exegesis of Lev 18:18 . . . [he] brilliantly invoked the normative biblical narratives of Creation and the Flood."[41] An apparently careless statement immediately catches the eye, namely that the Pharisees are perceived by the CD author as "members of Jewish sects"; it seems to me that the common view is the opposite (that is, that the Qumran group separated from the bulk of the Israelite society), based on many sources but particularly the explicit statement in 4Q397 (4QMMT^{d}) IV:7. This is not the only oddity among Gruber's assertions on this topic, as we shall see below.

I find it somewhat strange that Gruber first tries to convince readers that the obvious meaning of ואשה אל אחתה in Lev 18:18 is "a woman to her fellow woman," because this interpretation "is attested eight more times in Scripture," and that this verse "is the only law in Scripture that pertains to the question of whether God's law allows or disallows polygamy,"[42] then suddenly turns around and alleges that the CD author did not cite Lev 18:18 to justify the prohibition on polygamy because Qumran's opponents would perceive this as an unconvincing and tendentious exegesis. The argument that an implicit deduction from a narrative would be more convincing than quoting a scriptural decree does not make sense; a simple interpretation of a clear biblical verse, as Gruber earlier claims, is always stronger and more convincing than a deduction from a biblical narrative. Further, it does not conform to Qumran's polemic writings

38 Crawford, "Not According to Rule," 127–50 at 133, writes: "The prohibition of polygamy is made by reference to the stories of creation and the flood, as portrayals of God's real intentions for humanity."

39 See, for example *b. Yeb*. 3b and *b. Yeb*. 28b.

40 Gruber, "Women in the Religious System," 183.

41 Ibid., 186 (Original text reads ". . . they brilliantly invoked . . .").

42 Ibid., 178.

attempting to convince their opponents in MMT and in CD, in which the biblical verse is cited or alluded to, and then following up with their interpretation. In 4Q394 3–10 (4QMMT[a]) II (3–7ii):14–16, for example, the debate starts with: "[And concern]ing כתוב what is written" (we do not know whether the biblical verse was quoted or only alluded to, as is common in the MMT); the authors' interpretation follows, with no logical or other support: "And we חושבים think that the Temple . . ." In 4Q394 3–10 (4QMMT[a]) III (8iii):7–9, we see the same principle in operation, but in reverse order—first the interpretation, then the quotation of the biblical verse: "[And concerning the eating, חושבים we think that one can eat] the fetus –*missing text*– [so and] the word כתוב is written."

In the CD, we find identical circumstances in which biblical verses are cited along with Qumran's interpretation, mainly in relation to prophecies, but also in relation to *halakhot* in CD IX:2–8, X:14–17, XI:17–18, and XVI:6–9. I would particularly emphasize the style of Qumran's polemic argumentation in CD V:7–11 with their opponents, who did not accept their rule prohibiting marriage between uncle and niece—similar in certain ways to our subject, the prohibition of polygamy. Moreover, with respect to polygamy, Lev 18:18, interpreted as Gruber suggests, would clearly and explicitly prohibit polygamy; by contrast, Lev 18:13, the verse cited in CD V:8, does not explicitly prohibit marriage with a niece, so that a logical deduction by the author is necessary to arrive at the desired conclusion. Nevertheless, the author of V:8 cites the biblical verse without fear that his opponents will not accept it; we have seen the same in 4Q394 3–10 (4QMMT[a]) III (8iii):7–9, quoted above, and we observe it in 4Q395 (4QMMT[b]):5–6. Yet the author of CD IV:20–V:1, according to Gruber, does not cite the explicit biblical support for his position with respect to polygamy because his opponents would not be convinced by it. Gruber's explanation for the missing citation therefore holds no water. I also wonder why Gruber claims that "the lawyers who composed the Qumran law books," like the sages of the *mishna*, sometimes go their "own way with respect to a specific subject or legal detail" because neither was "bound by the Lutheran doctrine of *sola scriptura*."[43] As I have argued elsewhere,[44] and as I think is commonly acknowledged in one way or another, the Qumran scholars usually adhered to the simple and straightforward interpretation of the biblical commands, in contrast to the rabbis' midrashic interpretive system.[45] In particular, in the case of the CD's prohibition of polygamy, the subject of Gruber's thesis,

43 Ibid., 188.

44 Heger, *Challenges*, 29–35.

45 Ibid., 21–26.

its author would have followed the simple and explicit meaning of Lev 18:18 by interpreting it as relating to two women, if that were as Gruber argues its obvious meaning;[46] there would be no divergence from the pentateuchal law, and no need for a higher authority to justify it, as Gruber argues.

Further, Gruber follows Neusner in arguing that it was the rabbis who misinterpreted the "obvious meaning of Lev 18:18" in order to permit polygamy.[47] He then states that "it has been clear that the persons whose practices are here [i.e., in CD IV:20–V:6] condemned are the spiritual progenitors of the sages of the *mishnah* and *tosefta*, who are commonly identified with the Pharisees of Josephus and the New Testament"[48]—implying that the Pharisees had already misinterpreted Lev 18:18 to permit polygamy. There is no doubt that in many cases the rabbinic writings follow the Pharisaic tradition, but it is also evident that the rabbis wrote many innovative *halakhot*. But however one perceives this connection, Gruber has no evidence that polygamy was prohibited initially and that the Pharisees permitted it by incorrectly interpreting Lev 18:18, as he asserts, or for that matter that it was permitted and practised in Israel but the Qumran scholars prohibited it.

To fit his theory that polygamy was initially prohibited, Gruber states, again without explanation or evidence, that the assertion in CD V:1–5 that a "sealed book" containing the prohibition on polygamy both for all Jews and for the king "was discovered in the Temple in the eighteenth year of the reign of King Josiah."[49] Thus, it relieves David, the Patriarchs, Elkana et al. of having transgressed the law, and confirms that polygamy was prohibited since then. He overlooks, however, the CD's explicit assertion that the "sealed book" was opened only by Zadok, Qumran's leader.[50] We must assume, therefore, that the book was opened by the Teacher of Righteousness, and consequently that polygamy was permitted until that time.[51] Sound logical consideration of the relevant texts from different sources would suggest that polygamy was the dominant

46 Gruber, "Women in the Religious System," 178.

47 Ibid.

48 Ibid., 179 n. 20.

49 Ibid., 184–5.

50 CD V:4–5.

51 The Teacher of Righteousness is mentioned in CD and other writings as the spiritual leader who revealed hidden things to the ignorant people (as in CD I:7–12, XIX:35–XX:2, XX:28 and 32; 1QpHabVII:4; and 4Q173 (4QPs^{b}) I:3–4); but their opponents did not believe him (as in 1QpHab II:2) or did not help him against the Man of the Lie (1QpHab V:9–11). The similarity between some of these verses and our verse is striking. The name Zadok does not appear in 2 Kgs 22–23, which narrates the events to which Gruber asserts that

custom in Israel until late in the period of the Qumran community and that at that time, as noted above, the Qumran scholars (alluding to a revelation by the Teacher of Righteousness),[52] and plausibly some other minor segments of Israelite society, attempted to eradicate this custom.

I also dispute Gruber's allegation that since Qumran revered *Jubilees*, which relies on the higher authority of "the Heavenly Tablets" in its *halakhot*, Qumran *halakhot* are based on the same authority.[53] As noted above, the Qumran scholars habitually adhered to the simple interpretation of biblical rules, without appeals to any higher authority. In fact, as I have argued elsewhere,[54] they do not justify the correctness of their interpretations by reference to the Heavenly Tablets, even in their polemical writings or when accusing their opponents of distorting the interpretation of biblical commands. The reference in the text to a passage from *Jubilees* in CD XVI:4 does not represent evidence of the significance and authority of its *halakhot*, since the passage in question relates to the "divisions of time," not to *halakhot*. Further, *Jubilees* does not prohibit polygamy, and the CD author does not mention the "Heavenly Tablets." In light of everything noted above, I postulate that the prohibition of polygamy in the CD was deduced, as clearly and explicitly stated, by means of logical considerations and deductions from the biblical narratives; there is no valid reason to search for other justifications than those indicated by the author.

As I understand the CD lemma, the author distinguishes between the general prohibition on polygamy for all Israelites, on the one hand, and the particular rule for the king. The latter rule, I conjecture, was brought up to justify David's behaviour in marrying many wives, in violation of the biblical rule in Deut 17:17: "He must not ירבה take many wives, or his heart will be led astray. He must not accumulate large amounts of silver and gold." A separate command prohibiting the king from marrying more than one woman, as interpreted by the CD author in IV:20–21, was necessary because otherwise one might think that one of the king's privileges is permission to have more

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CD V:2–5 refers; the High Priest mentioned is Hilkiah, and there is no discussion of his family of descent.

52 Although I have written in Paul Heger, "The Development of the Qumran Law—Nistarot, Niglot and the Issue of 'Contemporization,'" *RevQ* 90/23, 2 (2007): 167–206 at 182–3, that the Teacher of Righteousness mainly revealed mysteries, the future, the time of the eschaton, and similar doctrinal issues, rather than the correct interpretation of the *halakhot*, it fits our thesis here, since the CD does not assert that he established the prohibition of polygamy but, rather, declares that he revealed the hidden book in which it was written from time eternal.

53 Ibid., 188.

54 Heger, *Challenges*, 219.

than one wife.[55] In fact, on the basis of the rule in Deut 17:17, quoted *verbatim* in CD V:1–3, one would understand that a king may marry more than one wife, but not too many, as is the common meaning of ירבה. The preceding v. 16, using the identical term, obviously does not mean that he may have only one horse; the same applies to the other grammatical formulations of the root רבה in Scripture, as for example in Gen 16:10, Exod 32:13 and Lev 26:9—it always means "multiplying" or "more than one."[56] Reverting to the question posed in the title, we may assert that the rule in the TS is complementary to that of the CD. Although the latter mentions the prohibition on the king's/prince's marrying more than one woman, it does not indicate the particular halakhic details of the prohibition, which appear in the TS. Since the CD's main motive in referencing this passage is not to promulgate the rule, but to defend the conduct of David, the author is not expected to give these details.

6.3.3 *The Source of the Prohibition on Polygamy in 11Q19 LVII:15–19*

As we have seen, the TS prohibits the king from marrying another woman as long as his first wife lives. It is unclear from the text whether the same rule applies also to all Israelites and whether it accords with the CD rules, a question we shall try to answer in the study. Further, whereas the CD justifies its prohibition of polygamy by means of a logical consideration, the TS does not indicate a rationale for this particular unique rule, which does not appear in Scripture. Deut 17, as we have seen, cannot be interpreted as referring to no more than one wife, and 11Q19 (11QTemple[a]) LVI:17–19—which quotes it almost *verbatim*—prohibits only marriage with many wives.[57] Some scholars have

55 Gruber, "Women in the Religious System," 187, logically explains Qumran's strategy to enact special legislation for kings, because in the Ancient Near East, marriage or concubinage with many women "was generally confined to royalty and other wealthy and powerful men."

56 The Rabbis indeed disputed how many women the king may have (*m. Sanh.* 2:4): that is, what constitutes too many. They argued further about the determining factor of the prohibition: is it the number of wives or the danger of being led astray by them, as seems to be the rationale for the prohibition?

57 Johann Maier, *The Temple Scroll: An Introduction, Translation & Commentary* (trans. Richard T. White; ed. David J. A. Clines and Philip R. Davies; Sheffield: University of Sheffield, 1985), 124, writes: "the Scroll clarifies the biblical text; the many women are the subject of the subordinate clause; they turn the king's heart away from God." In contrast, Schiffman, "Laws Pertaining to Women," 212, argues that this verse also forbids polygamy, and hence "polygamy by the monarch is proscribed twice." I dispute Schiffman's interpretation of 11Q19 LVI:18–19; it does not concord with the text, which explicitly indicates many wives, as

again assumed that since the text of the TS mentions כול ימי חייה, the author deduced the prohibition of polygamy from Lev 18:18, in which בחייה appears.[58]

I do not see eye to eye with these scholars on this assumption; the two rules in Deut 17 and Lev 18 are so different, in both structure and essence, that the occurrence of a similar term in both rules cannot be perceived as indicating that one is the source of the other, nor as decreeing identical rules through the application of a rabbinic *Gzera Shava* midrashic interpretation.[59] I see rather a similar structure and essential affinity between 11Q19 LVII:15–19 and the rules governing marriage restrictions for the High Priest in Lev 21:13–14.[60] "The woman he marries must be a בתולה virgin. He must not marry a widow,

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Schiffman translates from the original Hebrew ירבה. I perceive it rather as an introduction to the Law of the King, paraphrasing almost *verbatim* Deut 17:15–20, followed by a detailed record of the supplementary rules of the TS. This method is similar to Vermes' Clarifying Additions and Recasting and Supplementations (see discussion on Qumran's interpretive methods in Heger, *Challenges*, 80–88). In Schiffman's conclusion to this study, at 228, he determines that the author of the TS "echoes either the simple meaning of the biblical text, or interpretations common in his time." Since in this case it is obvious that Qumran's interpretation was not the common exegesis of the time—polygamy was the norm—the author of the TS would have decided the *halakhah* according to the simple meaning of the biblical text, which prohibits many wives. I fully agree with Schiffman that the TS, like Qumran, adhered to the simple scriptural meaning in interpretations, but since there is no explicit biblical decree prohibiting polygamy, Qumran decided the *halakhah* on the basis of a simple, logical consideration, as quoted in CD IV:20–V:1. On this topic, see Heger, *Challenges*, 38–40.

58 John Kampen, "A Fresh Look at the Masculine Plural Suffix in CD IV:21," *RevQ* 16 (1993) 91–97 at 93, refers to the same term עליה in Lev 18:18 and 11Q19 LVII, and deduces that the author of 11QTemple "broadened its scope to include any second wife." Although he limits this restriction "to the lifetime of the wife, the resulting legislation is now applied to any other woman while the wife is alive." While Kampen declares: "we do have to accept the evidence [of LVI] that the scroll intends to limit the divorce regulation to the king" (96), he nevertheless assumes, without any textual support, that some persons would consider that a "standard of greater purity" mandated for "some office holder within Israel really should be applied to everyone. In addition to my primary argument against the use of a *Gzera Shava* by Qumran, it seems to me that a king cannot be perceived as "some office holder," to stimulate emulation in all Israel; I also question Kampen's assertion that the restriction to marry a divorcée is a matter of purity.

59 As I have written at length in *Challenges*, 29–35, and as is generally thought, Qumran scholars deprecated such rabbinic interpretive methods.

60 Steven D. Fraade, *Legal Fictions; Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages* (Leiden: Brill, 2011) 296–7 writes: "in this regard [the decree to marry a virgin from his own people] the king [according to 11Q19 LVII] is to behave in a high priest-like manner."

a divorced woman, or a woman defiled by prostitution, but only a בתולה virgin from מעמיו his own people." In 11Q19 LVII we read: "And he shall not take a wife from all the daughters of the nations, but from his ממשפחת אביהו father's family he shall take unto himself a wife, from the מבית אביהו ממשפחתו family of his father. And he shall not take upon her another wife, for she alone shall be with him all the days of her life.[61] But should she die, he may take unto himself another (wife) from מבית אביהו ממשפחתו the house of his father, from his family."

The triple repetition of this concept—ממשפחת אביהו, מבית אביהו and מבית אביהו ממשפחתו—within the short TS lemma on the status of the women the king may marry leads the imagination to the similar particular restrictions on the women the High Priest may marry. We must consider that there is no hint in Scripture that the king must marry even a Jewish woman, yet the TS insists that she must be not only Jewish but from an Israelite royal family, just as a priest may marry only a priestly daughter according to 4Q397 (4QMMT^{d}) II:12. I hypothesize, therefore, somewhat similarly to Schiffman's and Fraade's assertions,[62] that the TS author compared the king to the High Priest with respect to marriage rules, and decreed some particular genealogical and other requirements for a king's wife. We observe in 1Q28^{a} (1QS^{a}) II:11–14 an eschatological association between the Messiah and the Priest, plausibly influenced by the Qumran concept that a High Priest could marry only one woman, deduced from the use of the singular form בתולה in the relevant biblical rule in Lev 21:13, and reiterated in v. 14. If, as I have suggested, the king is compared to the High Priest, the same rule applies to him. The king must live with one wife as long as she lives, and cannot divorce his wife, like the High Priest to whom, as I propose, he is compared in 11Q19, and who cannot marry a divorcée or a widow. We have no idea why a priest cannot marry a divorced woman, or a High Priest a widow; Scripture tells us that marrying a widow or a divorced woman impairs holiness (Lev 21:7 and 21:15) but does not explain why.

Since special restrictions on marriage are imposed on the High Priest, it is reasonable to hypothesize that the author of the TS rule, comparing the king to the High Priest with respect to marriage, imposed some particular restrictions on him with respect to divorcing his wife. I am aware that this chain of reasoning does not constitute hard evidence for my assumption, but since we have no

61 Ibid., at 297, Fraade assumes that the TS rule that the king must not "marry another woman so long as his previous wife is still alive [is] based on an interpretation of Lev 18:18." His presumption is based on the occurrence the term חייה in 11Q19 LVII, similar to the term בחייה in Lev 18:18, a speculation, which I disputed earlier in the chapter.

62 Schiffman, "Laws Pertaining to Women," 216. Re Fraade, see n. 60.

idea what motivated either the biblical restrictions on priestly marriage or the marital restrictions on the king set out in the TS, my proposal seems to me to offer a plausible explanation.

6.3.4 *Further Questions on the Polygamy Prohibition*

A more difficult question arises regarding the levirate obligation: namely, what is the rule if the brother is married, and thus would be practising polygamy (prohibited by Qumran law) if he married his brother's widow? The rabbis promulgated a rule that absolves the obligation of levirate if marrying the widow would conflict with the Law, as for example if it would create an incest relationship (*m. Yeb*. 1:1). In that case she need not even perform the ceremony of "taking off the sandal" (Deut 25:9). However, neither Scripture nor Qumran addresses such a contingency.[63]

I would hypothesize that the Qumran scholars were aware of this problem and devised a solution, but we do not know whether they suspended the obligation of levirate altogether in such cases, as the rabbis did in cases of incest, or whether they decreed the performance of the ceremony of the sandal.[64] The second contingency, however, would be unreasonable and unjust; it would dishonour a family for no evil deed.[65] I would hypothesize a third contingency; since the Qumranic prohibition of polygamy is justified by its departure from the divine creation principle that one male and one female ensure the survival of humanity, one could envisage that this principle is not violated by a levirate relationship. In effect, the levir begets a son for his deceased brother, who

63 Gershon Brin, "Divorce at Qumran," in *Legal Texts and Legal Issues: Proceedings of the Second Meeting of the International Organization for Qumran Studies, Published in Honour of Joseph M. Baumgarten, Cambridge, 1995* (ed. Moshe Bernstein, Florentino García Martínez and John Kampen; Leiden: Brill, 1997) 231–44 at 239 alleges that the author of the TS "does not copy the law of the levirate marriage because this conflicted with his own view concerning the prohibition of marriage with a brother's wife." I am not convinced that because of an *ex silentio* consideration one could impose on the TS author and the Qumran group the annulment of an explicit biblical law. I rather prefer to admit my inability to resolve every difficult problem.

64 In fact, 11Q19 (11QTemple[a]) LXVI:8–11 qualifies the biblical obligation of the seducer to marry the girl only if if the marriage is not against the law, but we do not encounter such provision in Qumran writings.

65 Contemporary circumstances, namely that the levirs married their brother's widow for selfish motives, rather than to fulfill the Torah precept, convinced the rabbis (*m. Bek*. 1:7) to prefer the ceremony of the sandal, Scripture's second-rate alternative, to the accomplishment of the levirate decree. Thus, practical consideration motivated them to overturn the biblical choice.

has the God-given right to his genealogical survival, the justification for the levirate regulation (Deut 25:6). Such a contingency would be a legal fiction, but so is the levirate decree, and as it seems, it was part and parcel of the conventional social order that acknowledged the reality of legal fictions, deeming them as concrete facts. The son of the levir was actually perceived to be the son of his brother, not his own. Onan did not display any reluctance to have Tamar as his wife and enjoy sexual intercourse with her; he objected only to the reality that the offspring would not be legally his, as is clearly evident from Gen 38:9. The deemed identity of his offspring as his brother's son overwhelmed in Onan's perception the physical reality of the child being his own son. Similarly, Sarai, Rachel, and Leah gave servant girls to their husbands when they could not bear children, of their own initiative, not that of their husbands, as Scripture emphasizes. The literal implication of the explanatory phrase אבנה ממנה "I may be built from her"[66] is vague, but a Babylonian contract quoted by Westbrook indicates that in the Ancient Near East, children born in such circumstance are deemed to be the children of the wife, the mistress of the house, not of the servant who bore them.[67] Hence, such a contingency, could as postulated be perceived as reasonable, and would answer the difficult question posited above regarding Qumran's practice of the levirate decree when the brothers of the deceased were already married.

Lastly on this topic, Deut 21:15 (relating to two children from two wives), which some scholars have used to demonstrate that Scripture permits polygamy, creates no such problem, since it does not say that the man had the two wives at the same time: he could have loved one and hated the other even if he married the second only after the death or divorce of the first.

6.3.5 *Thoughts on the Motive behind Qumran's Prohibition of Polygamy*

We may now return briefly to the question of what could be envisaged as the philosophy or motive behind Qumran's prohibition of polygamy at a time when the majority of Israelites, including leading Israelite figures, seem to practise it. As I have mentioned above, I would suppose that the Qumran scholars were convinced that according to the Torah narratives, polygamy is prohibited because it is against the divine intent; no practical or other considerations influenced their halakhic decisions in general, or the prohibition of polygamy in particular.

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66 Gen 16:2 and 30:3. Scripture does not inform us of Leah's purpose giving her servant Zilpah to Jacob (Gen 30:9), but since it is recorded close to Rachel's deed and explanation, it is pretty obvious that she acted for the same reason.

67 Raymond Westbrook, *Old Babylonian Marriage Law* (Horn, Austria: F. Berger, 1988) 107.

I believe that at the time of Paul and his writings (e.g., 1 Tim 3:2–5, 3:12; Titus 1:6), there were Jews outside Qumran who opposed polygamy; we do not know, however, whether they were indeed convinced that the creation and Noah narratives came to teach us the prohibition of polygamy, or whether they opposed it for practical reasons, including the consideration of the first wife's discontent[68] or because of chastity considerations, as seems to have been Paul's motive.[69] At any rate, I do not think that those Jewish groups (including Qumran) that prohibited polygamy were driven or influenced by the "principle of equality between the sexes created by the legislation of monogamy," as Gruber alleges.[70] He further asserts that the same principle of equality of the sexes underlies the Qumran rule of CD V:9–10, which prohibits marriage between uncle and niece, parallel to the biblical prohibition against a man's marrying his aunt. Gruber perceives this rule as Qumran's declaration of equality between men and women, ignoring the fact that it appears amongst incest prohibitions that have no association with equality. Similarly, the prohibition of polygamy does not indicate equality between the sexes with respect to social and legal issues. Each topic is *sui generis*, and one has no automatic implications for the other. In fact, Qumran texts demonstrate the differences between men and women, as amply displayed in this book. 4Q416 (4QInstr^{b}) 2iv:6–11, declaring that Scripture granted the husband the authority over his wife, "so that she should walk in/according to thy good pleasure," and similar expressions, seems to me the conclusive antithesis of Gruber's allegation in this respect.

6.3.6 *Interim Conclusion on the Source of the Polygamy Prohibition in the CD*

I believe I have demonstrated the flaws of Gruber's theory that Qumran understood Lev 18:18 as relating to two women, not to two sisters, and that this

68 We encounter such consideration in a dispute between two Amoraim (Fourth Century CE) as to whether a man can marry another woman in addition to his first wife, against the latter's will. (*b. Yeb*. 65a). One declares that in such circumstances the husband must (according to the interpretation of the commentator *Ritb"a*) divorce the first wife and pay her the *ketubah*, but another one declares that a man can marry as many women as he wishes, subject to have the financial means to maintain them properly.

69 Instone-Brewer, "Jewish Women Divorcing their Husbands," 355, writes that "Monogamy is another teaching that became popular very early in Egypt and spread to sectarian Judaism, but it spread only gradually through rabbinic Judaism." Instone-Brewer, *Divorce and Remarriage*, 22, writes that the LXX, Qumran and Targumim were among the "many voices teaching that polygamy was against God's ideal."

70 Gruber, "Women in the Religious System," 189.

verse was the basis of their prohibition of polygamy. The strongest argument against this thesis, I think, is the fact that the CD author makes no such claim, but indicates other motives to justify the prohibition; I have also shown the flaw in Gruber's assertion that "the lawyers who composed the Qumran law books,"[71] like the Sages of the *Mishna*, went their own way in the interpretation of Scripture, rather than following a simple reading of the text. It seems strange to me that he makes this statement in connection with the prohibition of polygamy, when according to his own argument the CD author interpreted Lev 18:18 in the most straightforward way.

6.4 Does CD Prohibit Divorce?

The simple meaning of the CD text IV:20–V:2 prohibits polygamy and does not relate to any other issue, such as divorce or remarriage after divorce, as some scholars have claimed. I suggest perceiving בחייהם—understood as relating to the lives of the women (emended to בחייהן or perceived to be grammatically correct as relating to women in the plural)—to be interpreted: "as long as they [man and woman] live together," that is, as long as they are not separated (by divorce or by death); the masculine plural בחייהם is thus justified, since it relates to a man and woman living together.[72] The masculine plural may in fact be assumed to be a deliberate choice by the author to indicate his intent: namely, that it is prohibited to have two wives at the same time, as long as the first wife still lives together with the man.[73] This prohibition on living with two women at the same time, and this prohibition alone, is logically supported by the CD author through his allusion to the Creation and Noah narratives. For the survival of humanity, God created one man and one woman, and for the preservation of the other species he commanded Noah to save in the Ark one male and one female of each.

When we come across a difficult ancient text and are tempted to interpret it in association with other texts, we should first ask ourselves whether we

71 Ibid., 188.

72 Ginzberg, *An Unknown*, 20 understands it likewise, writing: "The addition of בחייהם in our text is borrowed from Scripture and means only that this prohibition of marriage differs from all the others in so far as it is in force only so long as a man lives with his first wife in marital union."

73 Schiffman, "Laws Pertaining to Women," 217 proposes a somewhat similar understanding of the term בחייהם, as referring to "both parties to the divorce," leading to a different conclusion than my proposition.

would come to the same conclusion in the absence of our knowledge of these other texts, as I believe is the case with the assertion that the CD text prohibits remarriage after divorce, based on its use of בחייהם. A further inducement in this direction was probably constituted by the texts of 11Q19 (11QTemple[a]) LVII[74] and the New Testament, which deduce a prohibition on divorce from Gen 2:24. I doubt very much whether the same conclusion would have been reached without considering these texts; the problem of the term בחייהם would have been resolved in different ways, as indeed Vermes and other scholars have done.[75] In fact, it is not the text of 11Q19 LVII that led scholars to interpret CD IV as relating to divorce and subsequent remarriage; rather, it seems to me, the greatest influence (conscious or not) is the prohibition of divorce and remarriage in the New Testament writings, which deduce it from the same biblical text quoted in part in our lemma. The common prohibition of polygamy in the CD and in the NT plausibly rationalized the scholarly assumption that divorce was prohibited in Qumran.

However, the comparison of CD IV:20–V:2 with Mark 10:6, and the consequent influence on scholarly considerations, is not justified, since the two sources build their theories on different biblical citations and interpretations. As Doering convincingly demonstrates, Mark's rule prohibiting divorce is based mainly on Gen 2:24, "becoming one flesh," although Gen 1:27 is also mentioned.[76] I would emphasize the stronger utterance in Mark's conclusion—"So then, what God has joined together, let man not separate"—as the core of his justification for the divine prohibition of divorce. This is Mark's interpretation of Gen 2:24. This verse is not mentioned at all in Qumran writings about polygamy (neither the CD nor the TS), which indicates that the Qumran authors did

74 Instone-Brewer, *Divorce and Remarriage*, 63 writes: "The publication of the Temple Scroll appeared to support this emendation [of the term בחייהם] into feminine" thus, interpreting it as prohibiting divorce and remarriage as long as the woman lived.

75 Vermes, "Sectarian Matrimonial," 56, writes that the passage "leaves the question of remarriage by divorcées and widowers intact." Holmén, "Divorce in CD 4:20–5:2 and 11Q19 57:17–18," 397–408 at 402, writes that "on the basis of the linguistically most obvious reading of בחייהם . . . the passage would simply be irrelevant to the issue of divorce."

76 Lutz Doering, "Marriage and Creation in Mark 10 and CD 4–5," in *Echoes from the Caves: Qumran and the New Testament* (ed. Florentíno García Martínez; Leiden: Brill, 2009), 133–63 at 136–37, claims that although the core of Mark's argument in vv. 6–8 "is a combination of two passages from the creation account," and "the argument is synthetical, with each of the proof-texts offering one 'hook,' on both of which it rests. It culminates, however, in the final statement of Gen 2:24 on becoming 'one flesh.' This is underscored by the conclusion, introduced by ὥστε, in v. 8b, '*Thus*, they are no longer two, but one flesh'" (author's italics).

not interpret Gen 2:24 in the same way as Mark, and do not use it as support for banning polygamy.

The CD gives no explicit biblical support for its prohibition on polygamy, and instead justifies the rule by means of a logical consideration. Had the Qumran scholars understood the phrase "one flesh" as the author of Mark did, they would have quoted it in support of their *halakhah*, particularly if they had wished to prohibit remarriage after divorce. In fact, however, CD V:1–2 offers biblical support only for the specific prohibition against polygamy on the part of the king, citing the author's interpretation of לא ירבה—a weak support in itself, since a simple interpretation denotes a prohibition of many wives, not two, as I have argued above. The CD does not quote Gen 2:24 at all, as argued earlier, and this fact demonstrates that the rule in CD IV:20–V:2 has no connection with Mark's theory that man should not separate what God has joined, as recorded in Gen 2:24. Moreover, we do not encounter in Jewish writings the concept that marriage is a sacrament, joined by God; hence, Mark's motive is not relevant in any case.

Does the CD then prohibit divorce? We have evidence from CD XIII:17 that divorce was practised in Qumran, and we have no indication that one cannot remarry after divorce; therefore, we have no logical or other reason to assume such a prohibition, particularly since Scripture explicitly permits divorce in Deut 24:1–4.[77] We also observe from Jesus' debates on this issue (Matt 19:3–12; Mark 10:1–12) that permitting divorce was the usual practice in Israel, and there is no justification for the argument that the Qumran texts promulgated a rule that blatantly conflicts with Scripture.[78] If such a rule existed, there would be

77 The existence of divorcées in Israel is documented in Scripture; Lev 21:7 and 21:14 prohibit priest to marry divorcées, implicitly permitting Israelites to marry them. Deut 24:1–4 explicitly permits remarriage after divorce.

78 The phrase כי שנא שלח in Mal 2:16—"The man who hates and divorces his wife" (NIV)—appears in 4QXII[a] *Minor Prophets* as כי שנתה שלח. Martin Abegg, Peter Flint and Eugene Ulrich, *The Dead Sea Scrolls Bible: The Oldest Known Bible for the First Time in English* (San Francisco: Harper, 1999), interpret this as "For if you hate and divorce," in a negative mode; however, Brin, "Divorce at Qumran," in *Legal Texts*, 231–44 at 234, interprets it differently, in a positive mode: "for if you hate her send her away." The text of *Tg. Ps.-J.*, ארי אם סניתּ לה פטרה, and the LXX translation could also be interpreted in both ways. *B. Giṭ.* 90b records a dispute between two Amoraim about how to interpret this same enigmatic verse. Brin, who interprets it positively, asserts at 231 that "divorce was recognized as a legitimate phenomenon in Qumran." Tal Ilan, "Women in Qumran and the Dead Sea Scrolls," in *The Oxford Handbook of the Dead Sea Scrolls* (ed. Timothy H. Lim and John J. Collins; Oxford: Oxford University Press, 2010) 123–47 at 127, comments on Brin's thesis that "Whether he is right or not is hard to decide." I consider that the enigmatic text

some attempt to justify it by means of a logical consideration, as is usually the case in the Qumran writings when a rule has no explicit biblical support and as we find in CD IV–V with respect to the prohibition on marrying two women and on marrying one's niece. We observe that 11Q19 LVII:19, which implicitly prohibits divorce *on the part of the king* by decreeing that the king's wife must remain with him all her life, does not mention a *general* prohibition on divorce, which would have conflicted with the biblical rule that permits it. The command to the king to keep his only wife all her lifetime is a specific rule relevant only to the king, and has no explicit or implicit association with the rules relevant to other Israelites.[79] The king/prince must live with one wife as long as she lives, and divorce is forbidden to him, as it is to the High Priest to whom, as I propose, he is compared in 11Q19, and who cannot marry a divorcée or a widow.

6.4.1 *Shemesh's Theory*: *Sexual Intercourse between a Man and an Unmarried Woman Is Equivalent to Marriage*

Shemesh[80] theorizes that according to Qumran law, "any sexual intercourse between a man and an unmarried woman creates a marital bond regardless of whether or not this was the couple's intent." Therefore, the reason that 4Q271 (4QD^{f}) 3:13 prohibits marrying an unmarried or widowed woman if she has had intercourse with a man in her home is that she thereby became legally married to that man; since Qumran does not recognize a separation by divorce, marrying another man, Shemesh argues, would then be adultery. I believe that 4Q271 is a recommendation not to bring into the community a promiscuous woman who is unfit to ensure the high standard of morality required for men and women alike—or even a prohibition on doing so—not an extension to all Israelites of the biblical prohibition upon the priests against marrying a

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in Mal 2:16 does not constitute hard evidence either for or against divorce at Qumran, particularly to affirm that the prophet contradicts Deuteronomy. I have therefore not cited it in support of my thesis, which is built and substantiated on other arguments.

79 Philip R. Davies, *Behind the Essenes: History and Ideology in the Dead Sea Scrolls* (Atlanta, GA: Scholars Press, 1987), at 75 similarly states that 11Q19 LVII is part of the "Torah of the King," and has no association with the CD rule, the subject of our inquiry. Brin, "Divorce at Qumran," 239–40 argues that 11Q19 LXVI:11, decreeing that the seducer cannot divorce the seduced girl all his life, attests "that divorce was known and permitted under ordinary circumstances." A similar evidence is offered by 4Q159 (4QOrdin^{a}) 2–4+8:9–10 with respect to the slanderer, who cannot ever divorce his wife.

80 Aharon Shemesh. "4Q271.3: A Key to Sectarian Matrimonial Law," *JJS* 49/2 (1998) 244–263 at 247–8.

prostitute, as Shemesh suggests.[81] In fact, all the exhortations addressed in this lemma (4Q271 Frag. 3) concern the avoidance of immoral acts, and would not generate grave consequences for disobeying them, rather than transgressions of rules that provoke severe punishments. According to Shemesh, however, marrying an unbetrothed woman who had casual sexual intercourse would be deemed adultery. Schiffman, commenting on v. 8, which exhorts the father to disclose to the bridegroom his daughter's blemishes, emphasizes that "no penalty be assessed against the bride or her father" if he fails to do so.[82] The father's obligation is the first rule of the lemma, indicating the overall advisory character of its various admonitions, in contrast to Shemesh's perception of them as apodictic commands.

The explicit details of the rule "Let no man bring [a woman בברית הקודש into the ho]ly [covenant?]" (partly reconstructed) in 4Q271 (4QD^{f}) 3:10–11 indicate that this is a particular ordinance for members of the community, not a general rule applicable to all Israelites, if indeed it would be deemed adultery, as Shemesh asserts. This rule, however, seems to me a precaution to ensure a high moral standard for both men and women in the community, and it is enforced by the Controller as good counsel within the ambit of his authority, as we read in CD XIII:16–18: "(the) overseer who is in the camp, and he shall do [ ] marries a woman and [ ] counsel and so to a divorced man and he shall inst[ruct]] in the love of mercy." The widow who has sexual intercourse is not therefore considered a married woman, for whom marriage is then prohibited as adultery or as an extension to all Israelites of the priestly prohibition on marrying a prostitute (Lev 21:14), as Schiffman suggests.[83] Moreover, if such a temporary liaison were considered a wedding, all Israelites would be forbidden to marry prostitutes; yet Lev 21:3 prohibits this only for priests. The rules of Lev 21 apply to priests only, and the Qumran texts attempt to maintain distinctions of rank between priests and Israelites, particularly with respect to restricting intermarriage. The decree in 4Q396 (4QMMT^{c}) IV:4–11 that a priest may not marry an Israelite woman is a classic example of the difference between the holy Israelites and the Most Holy priests; Schiffman's suggestion that this decree extends Lev 21, equating Israelites with priests, does not seem compatible with Qumran's distinct theology. Shemesh's argument that divorce was not recognized in Qumran, relying on 4Q271, is therefore not convincing.

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81 A similar dictum in *b. Git*. 90 a+b counsels a man to divorce his wife for shameful behaviour מצוה מן התורה לגרשה, and *b. Git*. 89a records a dispute as to when a man should divorce his wife for such behaviour.

82 Schiffman, "Laws Pertaining to Women" 547–569 at 563.

83 Ibid., 565.

On the other hand, since according to Shemesh, Qumran law deems that the physical sexual intercourse creates a marital bond, the same principle applies conversely, he argues, after one partner's death; the permanent physiological separation utterly rescinds any prior relationship between them. Consequently, he conjectures that the biblical prohibition of sexual intercourse with one's father's wife does not apply after the father's death. Shemesh substantiates his viewpoint by means of an apparently odd dictum in *Jub*. 33:15–16: "to Reuben was granted life and forgiveness after he had lain with his father's concubine, and to her also though she had a husband, and her husband Jacob, his father, was still alive."[84] From the phrase "his father . . . was still alive," Shemesh—in common with Michael Segal—deduces implicitly that according to *Jubilees* a son may have intercourse with his father's widow.[85] He assumes that *Jubilees* and Qumran had an identical viewpoint on the theory that the physical act engenders a legal association, and conversely its dissolution rescinds it. I dispute this assumption: I doubt that the Torah-centered Qumran scholars would have accepted such a *halakhah*, which does not correspond to the simple meaning of the relevant text (Lev 18:7–8). We must instead interpret these verses as relating to cases occurring after one's father's death, as the rabbis declare (*m. Sanh*. 7:4) and as is evident from the text, which gives no hint of any limitation on this command; such intercourse, that is, as long as the father lives, would in any case (without this specific rule) be prohibited, either because she would be a married woman or, if divorced, because, as Shemesh declares (although I dispute it), Qumran rules do not permit the remarriage of a divorcée, as long as her husband is alive. Further, the preceding v. 6, which introduces the sexual prohibitions, reads: "No one is to approach any close relative to have sexual relations. I am the LORD." The verse stresses the character of the close relationship between the partners, irrespective of whether the relative is living or not. In the one case in which such a distinction is made—that of the prohibition to marry one's wife's sister—Lev 18:18 specifies the distinction explicitly as long as she lives; we may therefore assume *ex silentio* that death does not affect the other prohibitions.

I also doubt whether *Jubilees*' author indeed intended to pronounce a *halakhah* permitting sexual intercourse with one's father's widow. *Jubilees* does not contain *halakhot* contradicting scriptural law, and its interpretations of scriptural commands are stringent, rather than promoting leniency. The fact

84 Translation: *The Apocrypha and Pseudepigrapha of the Old Testament* (trans. R.H. Charles; Oxford: Clarendon Press, 1913).

85 Michael Segal, *The Book of Jubilees: Rewritten Bible, Redaction, Ideology and Theology* (Leiden: Brill, 2007).

that *Jubilees* accuses Reuben of lying with his father's concubine, considered sinful because his father was still alive, does not absolutely imply that it would be permitted after the father's death. The principle that if something specific is prohibited, anything else is permitted, cannot be applied indiscriminately and without due consideration. A mental lapse by the author of *Jubilees*, failing to anticipate a possible misinterpretation—such as indeed, in my opinion, Shemesh's deduction—cannot be excluded, but I think that another consideration may explain this apparently odd detail in *Jubilees*. Reuben slept with Bilhah—Jacob's concubine, not his wife[86]—and it is plausible that *Jubilees* distinguishes between a concubine, who is not prohibited to a son after his father's death, and אשת אביך his wife, who is prohibited forever. We observe that there was no concern about Adonijah's marrying Abishag the Shunammite, a concubine of his father King David, after the latter's death (1 Kgs 2:15–25); his execution, by Solomon's order, was rather for fear that he might try to regain the kingship, as is evident from Solomon's reply to his mother Bathsheba (1 Kgs 2:22). Although 1 Kgs 1:4 declares that David did not have intercourse with Abishag, her legal status was that of a concubine, and therefore Adonjiah could marry her. At any rate, even if Qumran indeed interpreted *Jubilees*' dictum as Segal asserts, we have no evidence that Qumran acknowledged all of *Jubilees*' *halakhot*, as Shemesh assumes. Though many Qumran *halakhot* concur with those of *Jubilees*, Qumran texts never mention *Jubilees* as a source of or support for their halakhic interpretations or decisions. For more on this particular issue see Heger, *Challenges*, 224–25.[87] Although I wrote there, relying on scholarly opinions, that Qumran did not recognize the validity of divorce, I have now changed my mind, after delving myself into the study of this issue.

6.4.2 *Vered Noam's Theory That Qumran Followed the Rule of the Ancient* Halakah, *Prohibiting Divorce Altogether*

Vered Noam understands בחייהם in CD IV:20–V:1 as prohibiting divorce altogether.[88] She supports her reading by arguing that an early *halakhah* in *Sifre Num piska* 7 permitted divorce only after a "judicial procedure," and hence Qumran's *halakhah* followed the rule of the generally acknowledged early

86 The author discerns between her concubine status in relation to Jacob, and his status of husband in relation to her.

87 See further motives for disputing Shemesh's theory in Heger, "Qumranic Marriage Prohibitions" at 448–51.

88 Vered Noam, "Divorce in Qumran in Light of Early Halakhah," *JJS* LVI:2 (2005): 206–23 at 206–7.

halakhah. I entirely disagree with her interpretation of the *Sifre*, quoted by her, as evidence for her assertion, but since the contention of her thesis requires a lengthy and complex debate of exclusively rabbinic writings, I do not consider it appropriate to be part of this book. I will therefore limit myself at this stage to indicating that Friedman published an extensive study disputing Noam's thesis.[89] I agree to his conclusion, which coincides with my interpretation of the relevant rabbinic writings; I present, however, different arguments in my analysis, to be published in due course.

In conclusion, in light of the earlier analyses and discussion of the relevant texts and my arguments against contending scholarly opinions, I believe we can reasonably postulate that divorce was not prohibited in Qumran and that divorced people could remarry, as Scripture, Qumran's *fons et origo*, explicitly declares.

89 Shamma Friedman, "Sorting Out the Wages of Adultery: Execution, Ordeal or Divorce," in *Shoshanat Yaakov: Jewish and Iranian Studies in Honor of Yaakov Elman* (ed. Shai Secunda and Steven Fine; Leiden: Brill, 2012) 77–109.

CHAPTER 7

Asceticism in Scripture and in Qumran and Rabbinic Literatures

7.1 Introduction

The question of whether asceticism and suffering were perceived as auspicious in the Qumran community and rabbinic society is a matter for debate among scholars. Asceticism in Christianity, as well as descriptions of the Essenes by Greek historians such as Philo, Pliny the Elder and Josephus, has influenced scholarly opinions that some types of asceticism were similarly practised by both the Essenes and the rabbis. This theory is presented by Fraade with respect to the Essene/Qumran community and rabbinic society.[1] While I agree with Fraade's general definition of asceticism, I dispute his evidence and disagree with his definition of mourning and Nazirite practices as aspects of asceticism.[2] In this chapter, by scrutinizing scriptural dicta, rabbinic literature, and writings from Qumran (which most scholars consider to be identical with the Essene community), I argue that both Scripture and rabbinic literature characterize the desire for pleasure, its practice, and its enjoyment as a necessary and auspicious human attribute, subject to the judicious exercise of a sense of right and wrong. As against theories about asceticism in ancient Israel and the association between asceticism and holiness, I argue that both Scripture and the rabbinic literature affirm the enjoyment of life, carried out according to the law. Likewise, we have no evidence in the Qumran writings that suffering was believed to confer spiritual or other benefits, nor any evidence of denial of legitimate pleasures and joy—just as we would expect from a Torah-centred group that habitually adhered scrupulously to the simple interpretation of its foundational text.[3] Ancient Judaism, in effect, affirmed the worship of God with joy and opposed any form of self-denial other than

1 Steven D. Fraade, "Ascetical Aspects of Ancient Judaism," in *Jewish Spirituality from the Bible through the Middle Ages* (ed. Arthur Green; New York: Crossroads, 1986) 252–88.

2 In a separate study I will address the concept of "instrumental asceticism" proposed by Eliezer Diamond, *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture* (Oxford: Oxford University Press, 2004).

3 See Heger, *Challenges*, 15–101, esp. at 2–35.

those commanded in Scripture and those deemed necessary to ensure the correct accomplishment of God's commandments.

Although my core subject here is women and sexual relations, I propose to examine the topic of asceticism as it relates to both sexuality and food, because the philosophy behind these two aspects of asceticism is identical: the denial of pleasure and the virtue of abstention. Many of the rabbinic passages scrutinized below relate to both topics, which makes it difficult to divide them. Because the Qumran texts do not explain their authors' theology as the rabbinic texts do, and because scholarly studies of asceticism in Qumran are strongly influenced by the Greek historians, my discussion of rabbinic and Qumranic texts focuses mainly on the ample relevant rabbinic literature and on scholarly views of the rabbis' alleged theories. For this reason, and because of the relative scarcity of Qumran material on this topic, I deviate from the regular sequence of discussion based on chronology (first Qumran and then rabbinic literatures) by reversing the order of presentation. This approach is imperative because rabbinic attitudes towards asceticism may be seen as implying a similar attitude in the Qumran community, whose writings have much in common with rabbinic *halakhot* and doctrines, despite their well-known disagreements.[4] I begin with a brief discussion of the meaning of asceticism, a topic of debate among scholars.

7.2 What Is Asceticism?

The modern term *asceticism* derives from the Greek *askesis*, which denotes exercise or training leading to physical excellence.[5] In current language, however, *asceticism* refers to a practice of self-denial and the "virtue" of abstention from pleasures, culminating in suffering. Fraade surveys various scholarly opinions on the definition of asceticism in general,[6] including those of Weber and Yinger,[7] and the views of Urbach and Baer[8] regarding rabbinic ideology

4 Fraade, "Ascetical Aspects," 265–69, citing the Greek historians, asserts that the Essenes practised asceticism, and (at 270) that the rabbis likewise saw abstinence as the favoured method of attaining spiritual perfection.

5 Ibid., 256.

6 Ibid., 254–60.

7 Max Weber, *The Sociology of Religion* (4th Rev. Ed.; trans. E. Fischoff; Boston: Beacon, 1963) 164–84; J. Milton Yinger, *Religion, Society and the Individual: An Introduction to the Sociology of Religion* (New York: Macmillan, 1957) 417–20 and 519–21.

8 Ephraim E. Urbach, "Ascesis and Suffering in Rabbinic Writings," in *The World of the Sages: Collected Studies* (Hebrew; Jerusalem: Magness Press, 2002); Yitzhak Fritz Baer, *Yisra'el Ba-Amim* (Jerusalem: Bialik, 1955).

on this topic. I can therefore focus on the primary texts of the three literary corpora, with occasional supporting scholarly citations, in presenting my own understanding of the term "asceticism." I discuss somewhat more extensively Boyarin's thesis on the positive element of divinely implanted desire in humankind, as he discerns it in the rabbinic literature—the antithesis of asceticism. I then debate at length Fraade's theory on the practice of asceticism, which he claims to deduce from rabbinic writings.

I understand asceticism as self-denial or abstention from what is permitted, either to attain personal spiritual perfection, or to achieve an uncommon degree of self-control (a virtue admired in Classical Greek philosophy), or in the belief that one can please or honour God through "sacrifice" or "restraint" for a higher purpose and receive the consequent reward; this definition concurs with Fraade's.

It appears to me that some scholars, influenced by Greek historical and philosophical writings and by the unconventional opinions of some individual rabbis, have concluded *a priori* that abstinence—that is, some type of asceticism—was advocated and practised by the rabbis, and thus was part of their theology and of their theory on the optimal way of life. When the bulk of the evidence seems to oppose our current notion of asceticism, and thus to conflict with that conclusion, supplementary types or aspects of asceticism have been devised. Fraade, in the course of disputing the view that early Judaism "eschewed asceticism root and branch,"[9] attempts to reconcile the "facts" (that is, his interpretation of rabbinic dicta) with his theory by arguing that "*perushim* [Pharisees] are identified with separation[10] and abstinence"[11] and that

9 Fraade, "Ascetical Aspects," 257.

10 He writes at 270: "They organized themselves separately but not in isolation from the larger Israelite society." It is unclear to me what type of separation he means. The origin of the name *perushim* is doubtful. While the meaning of separation is common, the meaning of "interpreter" from the root פרש "define/interpret" is plausible; Josephus' portrayal of the Pharisees in *Wars* II:162 indicates in the first instance their reputation as being "considered the most accurate interpreters of the law."

11 Ibid., 271: "we find a clear tension within rabbinic literature between the promoting of abstinence as an ideal to which all of Israel should, in fact are commanded to, aspire and the realization that many who undertake forms of *perishut* do so for vain, self-serving reasons." Fraade arrives at this conclusion from his interpretation of and deductions from rabbinic dicta listed in nn. 69 and 70, which I discuss below. In fact, there is no tension between the abstract ideal and the reality; there is, as I understand it, a severe condemnation of what some fools do wrong in practice, in contrast to what the rabbis do. Generally, the rabbis advocate the fulfilment of precepts even with the wrong intentions, as we read for instance in *b. Sotah* 22b, because [by doing them] not for their own sake, he will [ultimately] attain [the spiritual rank to perform them] for their own sake."

"the rabbis prefer a milder and more symbolic form of self-denial."[12] Eliezer Diamond, similarly, perceives *a priori* that the rabbis practised an "'instrumental' asceticism," not "the 'essential' asceticism which is usually discussed,"[13] thus nullifying, in effect, any association with asceticism as a method of attaining spiritual perfection through self-denial. On the other hand, I assume we can all agree that scriptural prohibitions are not perceived as enjoining any kind of asceticism, even though Israelites are required to deny themselves the enjoyment of physical pleasures permitted to other nations.[14] The same perspective applies to the rabbinic preventive principle of שמא "perhaps"—that is, prohibiting a permitted act because it may lead inadvertently to performing a prohibited act. This system, obligatory for all Israelites, is presented not as an ascetic custom but as a practical and efficient way to ensure the foolproof accomplishment of divine decrees. *M. Sabb*. 1:3 offers this example: a tailor should not carry a needle on Friday close to dusk, because he may leave his home for the public street after dark, forgetting that he is carrying it, an act prohibited on Sabbath. This principle is a cornerstone of the rabbis' halakhic system; it establishes a method for ensuring that the biblical rules are not inadvertently transgressed. Like the scriptural rules themselves, the rabbis' preventive principle bears no relation to asceticism.

7.3 Fraade on Rabbinic Asceticism

To support his theory of rabbinic asceticism, after describing the Pharisees' behaviour (such as being scrupulous in the fulfilment of divine precepts that do not seem to me to indicate asceticism), Fraade concludes that "according to one later rabbinic tradition (*Avot de-Rabbi Nathan* 5), they [the Pharisees, the forerunners of the rabbis] expected their self-denial in this world to be rewarded in the future world."[15] Fraade's supporting quotation seems to me imprecisely interpreted, as I will demonstrate. We read in *Abot R. Nat*. Recension a, Chapter 5 (paraphrased): Antigonus from Sokho קבל received traditions from Simeon the Just; he was saying: "Do not serve God like a slave לקבל פרס expecting reward from his master, but serve God without expecting reward; the fear of God should guide your deeds and ultimately תקבלו you will receive remuneration as if you have done it in this world and in the world to come."

12 Ibid., 272.

13 Diamond, *Holy Men*, 12.

14 See discussion of *Sifra Qedoshim, parsha* 10, on p. 268.

15 Fraade, "Ascetical Aspects," 270.

The paraphrased narrative continues: Antigonus from Sokho had two students, Zadok and Boethus, who taught to their students what they learned from him. They cogitated on his maxim: "Why did our fathers [rabbis] say that there is no reward for good deeds; is it plausible assuming that a labourer would work all day, without receiving his pay in the evening? Hence, if our fathers/rabbis had known that there really is resurrection and another world, they would not have said that." Consequently, they ceased fulfilling the Oral Torah precepts, and rejected the belief of resurrection and the World to Come. From their action two schisms occurred: Sadducees after Zadok and Boethusians after Boethus. They were using precious vessels all their lives, because they were not insolent about it.[16] But the Sadducees say that the Pharisees have a tradition of distressing themselves in this world, and have nothing in the world to come.[17]

This narrative shows many irregularities in the redaction process. The second sentence repeats the name and origin of Antigonus, indicating that two separate passages, each relating to another issue, were later amalgamated into one narrative. There is no consistency between the two constituent passages. In the first part Antigonus is assumed to have clearly stated: "and you will ultimately receive remuneration," whereas in the second element, the students seem to have misunderstood him, asserting that there is no reward. It is difficult to bridge this inconsistency between what Antigonus said and what his students are supposed to have understood. The students' cogitation and the alleged basis of the schism between the Pharisees/Rabbis and the Sadducees/Boethusians is built on this inexplicable misunderstanding. Antigonus' assertion "you will receive remuneration as if you have done it in this world and in the world to come" does not make sense; it seems likely to be a corruption of: receive remuneration in this world and in the World to Come. The assertion that the Sadducees/Boethusians used silver and golden vessels all their lives seems unconnected to the preceding narrative. The two component parts explicitly contradict each other; the redactor has evidently joined incompatible dicta from different sources. Indeed, the last sentence giving the Sadducees' opinion about the Pharisees does not appear in Recension B, and

16 It is not clear from the text whether this sentence relates to them personally or to their sects/movements. The sentence is bizarre, and the commentators have no reasonable translation or explanation for it. I have translated it literally, even though it makes no sense.

17 Hebrew text from *Avoth de-Rabbi Nathan: Solomon Schechter Edition with references to parallel in the two versions and to the addenda in the Schechter edition with Foreword by Menahem Kister* (Hebrew; New York and Jerusalem: JTS, 1997).

the whole fictional and inaccurate saga of the foundation of the Sadducees and Boethusians appears in no other rabbinic source.[18] This fact raises serious suspicions about its authenticity.[19] Moreover, even the extant text tells us only what the Sadducean founders alleged about the Pharisees' conduct, not what the Pharisees themselves believed.

It is highly plausible that some scribe or copyist of the late Middle Ages, a period when the Ashkenazi Jews were inspired by Christian pietism and exaltation of asceticism,[20] added this last sentence.[21] Moreover, the entire narrative about the origin of the Sadducean and Boethusian sects, found in a misinterpretation of Antigonus' doctrine of the most auspicious way to serve God conflicts with ample rabbinic records of their disputes with the Sadducees and Boethusians on halakhic interpretational issues.[22] On the doctrinal issue of whether there is a reward for fulfilling scriptural decrees—an idea that explicitly contradicts the simple meaning of the biblical texts—the Sadducees and

18 Only the traditional commentator *Rashbam* quotes it in his comment on *b. B. Bat*. 115b, without the sentence about the Pharisees' tradition of self-distress and adding that "the students erred by thinking that he [Antigonus] said: 'serve God without receiving reward,' and said that as this axiom is futile, so are all the rabbinic dicta, and they erred and repudiated the rabbinic dicta."

19 Kister, in his foreword to the Schechter edition, writes at 12 that comparing the text of *Abot R. Nat*. with the parallels of the *Midrashei Halakhah* and other tannaitic data indicates clearly the gap between them. The text of *Abot R. Nat*. is the result of multiple transmissions over centuries, in which many errors and erroneous corrections were inserted, which gives the book a character of a very low standard, with texts that are sometimes impossible to understand. Our analysis of this text seems to concur with Kister's negative evaluation, and I think we should hesitate to deduce from it opinions about rabbinic philosophy, particularly against overwhelming conflicting dicta. (My paraphrased translation from the original Hebrew).

20 Extreme asceticism appears in and among Twelfth- and Thirteenth-Century German Ḥasidism.

21 In his comments on this sentence, Schechter conjectures that it is was added by some scribe who had also copied the writings of Josephus, who states in *Ant*. XIII:298: "the Sadducees are able to persuade none but the rich." Perhaps the second part of the sentence about the Pharisees was also added from *Ant*. XVIII:12: "Now, for the Pharisees, they live meanly, and despise delicacies in diet; and they follow the conduct of reason." I demonstrate below the inconsistency of Josephus' portrayal of the Pharisees, the rabbis' forefathers.

22 For a discussion with examples, see Heger, *Cult as the Catalyst*, 44, n. 17.

Pharisees had no conflict, according to Josephus (*Ant*. XIII:297–8).[23] By searching for related rabbinic dicta, as Kister suggests, one can find an explanation for this odd and confusing text (except the sentence about the opulent living of Zadok and Boethus, an unconnected topic). My explanation will demonstrate that the narrative is utterly unconnected with asceticism. The students' misunderstanding of Antigonus' aphorism and their doubtful conclusion relate to the question of resurrection and the world to come, as the text explicitly states when describing their "heretical" thinking.[24] I suggest that we can better understand this narrative by perceiving Antigonus' assertion as a reply to an eternal question: Why do some righteous persons have a good life and others an awful one, and why do some wicked persons have a good life and others an awful one? *B. Ber*. 7a declares that this is what Moses asked God in his plea: "teach me your ways." (Exod 33:13). Antigonus' answer—"Do not expect immediate reward, but ultimately you will receive it both in this world and in the world to come"—fits this question. It also makes a connection between what Antigonus said and what his students (mis)understood.

B. Sanh. 90b records that Rabban Gamaliel tried to convince the "heretics" of the validity of the miracle of resurrection, and the acronym צר"ק lists the Zadokites/Sadducees first among them. Both Josephus[25] and the New Testament[26] acknowledge that the Sadducces did not believe in resurrection, and this was an outstanding issue of the conflict between the Sadducees and the Pharisees, initiated by Antigonus' two students, according to the narrative in *Abot R. Nat*. Thus, we can now understand the last sentence of the additional text: the Sadducees said that the Rabbis abstain[27] from indulging in pleasures

23 See Deut 11:13–15, which promises reward (in this world) for those who fulfil the divine commands; hence, the students' claim that there is no reward for those who obey the law, comparing it to the payment of the labourer, is incorrect.

24 The text of the *Abot* dictum treats the concepts of a world to come and of resurrection as interchangeable. *M. Sanh*. 10:1 (in some MSS, 11:1) and its justification in *b. Sanh*. 90a similarly amalgamate these concepts.

25 *Ant*. XVIII:16; *War* II:166.

26 Matt 22:23; Mark 12:18; Luke 20:27; Acts 23:8.

27 צער appears only twice in Scripture, in Jer 30:19, meaning "decrease," and in Job 14:21, meaning "brought low" (NIV translations). The LXX interprets it in these cases as "lessen/diminished" and "being few." It appears often in rabbinic literature with the meanings in *piel* "to narrow, restrain; inflict pain, annoy" (Jastrow), but in our context I would suggest interpreting it as it must be understood in *b. Ta'an*. 11a: זה שלא ציער עצמו אלא מן היין "the one who inflicted on himself only the pain of abstinence from [drinking] wine." In the context of my interpretation of the entire narrative, I believe this is the

prohibited by rabbinic restrictions in this world. This is the consequence of the rabbinic *midrashim* and preventive restrictions of the Oral Torah,[28] which the Sadducees rejected;[29] in the end, the Sadducees reasoned, these self-restraints will be in vain, and they "will have nothing in the world to come," since no such world exists. The Sadducees accused the Pharisees of not divulging their true opinion that there is no world to come. Thus, even if we accept the authenticity of this addition, it has no association with asceticism, since the entire narrative relates to the question of reward and punishment in the Next World; it does not concern attaining spiritual perfection, through asceticism or otherwise. The restrictions the rabbis imposed by applying their preventive method cannot be perceived as asceticism, and nor does Fraade make this claim. The Pharisees denied the Sadducees' allegation,[30] made on the basis of their mistaken interpretation of Antigonus' dictum, which thus cannot serve as evidence for the existence of a rabbinic conception of asceticism, for the reasons argued above.

The same applies to another passage from the same late source, *Abot R. Nat*. 28, which Fraade translates as an epigraph to his article: "Whoever accepts the pleasures of this world is denied the pleasures of the world to come. And whoever does not accept the pleasures of this world is granted the pleasures of the world to come."[31] The original Hebrew text, Recension A, reads: "Rabbi Judah the Prince says המקבל עליו the one who receives the pleasures of this world, one withholds from him the pleasures of the next world; and the one who does not receive the pleasures of this world, נותנין לו one gives him the pleasures of the world to come." This dictum does not appear at all in Recension B, which may indicate that here again is a later ficticious addition to the text. The use of the phrase המקבל עליו in *Abot R. Nat*. 28, which Fraade interprets as "accept," is an inappropriate expression in association with accepting pleasure; it indicates the stylistic irregularity of this dictum.

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correct interpretation, fitting what we know about the rabbis' preventive method and their conduct.

28 One of the three principal pillars of Jewish conduct affirmed in the exhortations by the members of the Great Assembly in *m. Abot* 1:1. For example, *B. Hul*. 4b prohibits the consumption of fowl with milk, permitted in Scripture, because it may lead to involuntary consumption of animal meat with milk.

29 We have no authentic Sadducean documents; see *Ant*. XIII:297–98 about the Sadducees' rejection of the pharisaic rules, claimed to be of ancient tradition, transmitted orally. *Sifra Behar parsha* 1 asserts that the entire Oral Torah was given by God to Moses at Sinai, and Moses transmitted it to the entire people.

30 Although the narrative does not explicitly state this, we must assume it, because of the context and the rabbis' unquestionable belief in the Next World.

31 Fraade, "Ascetical Aspects" 253.

קבל usually means "receive," although it may also mean "accept," but the context in our dictum requires to understand it as "receive":[32] the protasis identifies the one who does not receive the pleasures of this world, and the apodosis affirms that he will be given the pleasure of the world to come. This interpretation gives the dictum a sensible meaning, although carelessly expressed here, as in other occasions in the narrative, demonstrated above. In contrast to Fraade's interpretation, I conjecture that the dictum's author had in mind an entirely different concept, similar to the assertion in *b. Qidd*. 39b: one whose sins overweigh his merits is recompensed for his merits in this world, thus forfeiting any reward in the Next World; the one whose merits overweigh his sins, is punished for those sins in this world, and thus receives all the pleasures in the Next World.[33]

Further, this passage, assumed to glorify abstention from pleasure in this world, the enjoyment of which precipitates the loss of pleasure in the Next, is quoted in the name of Rabbi Judah the Prince, who is said in *b. Ber*. 57b to have enjoyed the best amenities of life, like his friend the Roman emperor Antoninus Pius. *B. Moed Qat*. 28a records a similar narrative about the wealthy Rabbi Hisda, called צדיק most righteous, and the affluent life of his household. These rabbis are not criticized for enjoying their opulent style of living.[34] In effect, renowned and wealthy rabbis enjoyed the culinary pleasures they could afford.[35] The idea that Rabbi Judah the Prince could have made the above statement is therefore inconceivable, which confirms our doubts about its authenticity. Hence, the authenticity of these quotations is more than doubtful,[36] and his interpretation is flawed; it cannot serve as evidence of any rabbinic theology or *halakhah*.

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32 See, for example *m. Abot* 1:1: Moses קבל received the Torah at Sinai.

33 We encounter a similar pronouncement in *Psalms of Solomon* 13:8–10: "For He correcteth the righteous as a beloved son, And his chastisement is as that of a firstborn. For the LORD spareth His pious ones, and blotteth out their errors by His chastening." Translated from Greek and Syriac manuscripts by G. Buchanan Gray in *The Apocrypha and Pseudepigrapha of the Old Testament in English* (ed. R. H. Charles; Oxford: Clarendon Press, 1913) 2: 631–652.

34 Josephus' portrayal of the Pharisees as shunning the good life in *Ant*. 18:12 does not constitute reliable evidence. His statement is equivocal, and its interpretation varies. Moreover, Josephus' intent to present to the Hellenistic readers the Jewish sect as exalted is known, and is confirmed in his statement in *Life* 12, in which he compares the Pharisees to the Stoics (transl. H. St. J. Thackeray; Loeb Classical Library; Cambridge, MA: Harvard University Press, 1926).

35 Urbach, *The World*, 445 (56), quotes another general maxim to this effect. *T. Arak*. 4:27 recommends adapting the quality of the food to one's income; the higher the income, the better the food. A scriptural verse is cited to bestow a biblical connection on this maxim.

36 See n. 19 for Kister's negative evaluation of *Abot R. Nat*.

Fraade's interpretation of this passage and his deductions from it seem to assert that the denial of pleasure *in itself* ensures the achievement of that most precious reward, the pleasures of the world to come. This theory seems to me flawed, since it conflicts with the fundamental doctrine of Jewish faith and teachings. Judaism requires that one fulfil the divine commands, and refrain from transgressing the divine prohibitions, to be rewarded.[37] Abstention from permitted pleasure is definitely not one of the virtues that gain reward; on the contrary, this is a sinful act, as I shall demonstrate below. Fraade, indeed, does not use this passage from *Abot R. Nat.* to support his thesis that the rabbis "expected their self-denial in this world to be rewarded in the future world,"[38] although it would seem to be the strongest explicit evidence for his idea that asceticism existed in rabbinic Judaism; nor does he elaborate upon it, as he does on many of the other passages he quotes. Instead, he uses it as one of two epigraphs, deducing from two contradictory dicta a tension between two rabbinic theories (one opposing asceticism, the other promoting it), and hence concluding that a segment of rabbinic Judaism practised asceticism; thus, he does implicitly affirm that this passage promotes asceticism.

Fraade's other epigraph, presumed to extol the enjoyment of pleasure, comes from *y. Qidd.* 4:12 (66b): a person will be punished for not eating what he has seen. Fraade appears to understand this dictum (the supposed opposite of the antecedent quoted epigraph) as glorifying pleasure by severely criticizing abstention from eating and enjoying whatever one has seen and has been able to acquire. I would have liked to use this passage to support my thesis that the rabbis strongly upheld the advantages of pleasure and severely disapproved of abstaining from the pleasures available to humankind; I cannot do so, however, because this is not what this dictum is meant to express. The context in which it appears relates to a quite different issue: namely, that it is prohibited to live in a town in which there is no doctor, no bathhouse, no Court to combat delinquency, and no garden to cultivate vegetables. It is recorded that a poor rabbi collected small coins to enable him to purchase and eat many types of vegetables, at least once yearly.

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37 We read in *m. Abot* 6:5 that the Torah is outstanding: it grants life to those who engage with it in this world and in the Next World." *M. Abot* 2:7 declares: "who studies the Torah and performs its decrees, acquires the life of the Next World." The identical attitude is diffused throughout Scripture, and I would quote one example in Lev 26:3–13 of God's rewards for good deeds, and opposing it in vv. 14–39 His harsh punishments for disobeying His commands.

38 "Ascetical Aspects," 270.

Clearly, then, the entire lemma is focused, not on enjoying the pleasure of eating a great variety of food, but rather on the broader practical issue of assuring an orderly and healthy life in order to preserve well the body that God gave to humans.[39] Fraade seems to have overlooked this context. He could have quoted other rabbinic dicta that encourage enjoyment; an example is a guidance in *m. Ta'an*. 4:6 and *b. Ta'an*. 29a to limit joyful events (those that are practised all year) at the beginning of the month Ab, and to intensify such events in the beginning of the month Adar."[40] Enjoying the holidays is an explicit Torah obligation (Deut 16:14), and *b. Pesaḥ*. 109a elucidates how best to accomplish it: one rabbi advises offering wine, and another qualifies it specifically: wine to men and dresses to women, to each as is most appropriate, even different clothes for women in Babylon and in Israel. We observe the significance accorded to enjoyment through the rabbis' efforts to ensure its perfection by adjusting their gift recommendations to male and female lifestyles.

Fraade's arguments and supporting citations, outlined above, demonstrate that in his opinion, the Pharisees believed that self-denial in this world would be rewarded in the world to come.[41] He further claims that *perishut* (the source of the name "Pharisee") is "a *stage* in the attaining of spiritual perfection,"[42] and thus considers that the rabbis, their ideological descendants, practised a form of asceticism. While, as stated, I agree with Fraade's definition of conventional asceticism, I refute his assumption that his quoted evidence supports his argument, and I shall quote below other rabbinic dicta that contradict it. Scripture asserts explicitly on many occasions the obligations the Israelites must accomplish to reach the highest degree of perfection, that is, to be holy like God is holy; nothing more is expected or required. We have all agreed that obeying the biblical prohibitions is not deemed to be asceticism.[43]

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39 *Lev. Rab. parsha* 34 records that Hillel told his students that in going to the bathhouse, he was fulfilling a precept to preserve and care for his body, given to him by God. He compared it to the work of the official custodians, who care for the perfect maintenance of the state's statues.

40 According to tradition, both Temples were destroyed in the month of Ab, and the miracle of Purim occurred in the month of Adar; one is adjured to re-enact these momentous historical events symbolically.

41 Fraade, "Ascetical Aspects," 270.

42 Ibid. I discuss Fraade's concept of *perushim* separately below.

43 I disagree with Fraade's assertion at 257 that "for the ancients including Jews, *askesis* was not simply the negative denial of the world, body, sense, pleasure and emotion, but the willful and arduous training and testing, often through abstention from what was generally permitted, of one's creaturely faculties in the positive pursuit of moral and spiritual perfection." I agree with Fraade that Hellenistic intellectuals, possibly including also

In support of his theory regarding *perishut*, Fraade quotes from *b. Abod. Zar*. 20b (his translation): "It is taught: 'Be on your guard against anything evil' (Deut 23:10): A person should not have impure thoughts during the day, lest he encounter impurity at night. From here R. Phinehas ben Jair says: זהירות heedfulness leads to cleanliness, נקיות cleanliness leads to abstinence (*perishut*), abstinence leads to טהרה purity, purity leads to קדושה holiness, holiness leads to ענוה modesty, modesty leads to fear of sin, fear of sin leads to חסידות saintliness, saintliness leads to רוח הקודש the Holy Spirit, the Holy Spirit leads to the revivification of the dead."[44] Fraade translates *perishut* as abstinence, relying on *m. Sotah* 3:4, in which the term may once be so interpreted, but he ignores the other two quotations of this term in the same *mishna*, which absolutely cannot be interpreted as abstinence.

It seems curious that Fraade decided to deduce or defend his theory from this vague and undefined pious play of words, with no precisely defined doctrinal or concrete consequences, which appears in different versions in rabbinic literature in the name of the same rabbi. My version of the same source shows different stages of progression, and in a different order. Further, the highest degree in my version is modesty according to one rabbi and piety according to another. In the parallel narrative in *m. Sotah* 9:15 resurrection is indeed the highest degree, but it is said to be brought by Elijah, the prophet. There is a lack of logic in their progression, as betrayed by the different order of the stages in the two MSS. How does heedfulness זהירות (זריזות "zeal" in my version) lead to cleanness, and what precisely does cleanness mean in any case? It is not purity, which is mentioned later as טהרה. How does cleanness lead to *perishut* in Fraade's version? In the parallel *m. Sotah* 9:15, the order of *perishut* and purity is reversed: cleanness leads to purity and purity leads to *perishut*.

In *b. Abod. Zar*. 20b, Rabbi Phinehas ben Jair's dictum appears after an array of advice on how to avoid staring at things and events (women and their colourful dresses; the sexual acts of animals) that lead to arousal, which indicates the purpose of the dictum: that obeying these warnings will lead the person on the righteous path to avoid sin, and thus to reach perfect conduct. This exhortation does not validate Fraade's deduction from this erratic lemma that the rabbis

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Jews, had such ideas, but Judaism, scriptural, Qumranic (CD V:1; 4Q370 (4QAdmonFlood) I:1; 4Q418 (4Q Instr^{d}) 81+81a:18–20), and rabbinic, does not deny the world; on the contrary it affirms it, as God's creation perceived by Him as good. In this respect, Greek philosophy is the antithesis of Israelite philosophy. Perfection and holiness is attained by correctly fulfilling the divine rules; this is the Israelite ethos, absent in Greek culture.

44 Ibid., 270.

embraced asceticism; heedfulness to avoid sin is not asceticism, even according to Fraade's definition. In the parallel *m. Sotah* 9:15, this dictum appears in a totally different context: it is attached to distressing events that occurred after the death of certain great rabbis and national afflictions.

At any rate, in rabbinic thought, the *midrash* that recommends abstaining from lustful thoughts to attain *perishut* and holiness is not perceived as asceticism. Rather, it is a fundamental element of the rabbis' preventive system, as demonstrated above.[45] In fact, preventive abstention leads straightaway to holiness, without the intermediate stages described as in the lemmas quoted above. Indeed, *b. Yeb*. 20a, relating to *m. Yeb*. 2:4, advises to sanctify oneself by abstaining from from doing what is preventively prohibited by the Sages, although permitted by Scripture.

Even were we to admit that the passage from *Abod. Zar*. can be interpreted as Fraade suggests, it would, it seems to me, represent an isolated voice with no halakhic or other concrete consequences, and thus could not be classified as representing rabbinic asceticism.[46] The variety of conflicting halakhic opinions in rabbinic literature is well known; this theoretical freedom of thought and speech, however, turned into a strict authoritarian system when an individual rabbi actively took the initiative to enforce his own halakhic decision in opposition to the final consensus. An example is the story told in *b. B. Meṣi'a*. 59b about Rabbi Eliezer, who was excommunicated because he did not agree to the majority decision and continued to dispense his own halakhic decisions.[47] Similarly, while *m. Sanh*. 11:2 sanctions the behaviour of a rabbi who diffuses his halakhic decision as a non-binding conflicting opinion after its rejection by the majority, it condemns him to capital punishment if he propagates it as a binding *halakhah*.

These are only a few of a range of arguments showing that this lemma, which is not a *halakhah*,[48] is not an appropriate source from which to deduce rabbinic

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45 See p. 252 and n. 28.

46 *Abot. R. Nat*. Recension a, quoted in Chapter 2 p. 87, criticizes Adam severely for applying the preventive method in his directive to Eve, thereby provoking the first human sin. We do not, however, deduce that there was a rabbinic minority group that opposed the preventive method. The same should apply in our consideration of this solitary homily in *Abod. Zar*.

47 See an extended deliberation about this topic in Paul Heger, *The Pluralistic Halakhah: Legal Innovations in the Late Second Commonwealth and Rabbinic Periods* (Berlin: De Gruyter, 2003) 64; and in Heger, *Cult*, 123.

48 One dissenting *midrash* or homily does not indicate a different ideological strain; many *midrashim* and homilies were created and developed by accretion, with no intent or

doctrines on concrete and behavioural issues that contradict many other rabbinic texts explicitly declaring the opposite—in this case, an unquestionable opposition to asceticism—as I will show.[49] On the other hand, no explicit rabbinic dicta exist that praise asceticism, in the sense of suffering as a virtue *per se*, as we find in Christian writings; Fraade's claim that rabbinic thought has ascetic aspects is based on his own deductions from some rabbinic texts, which can be interpreted as endorsing asceticism but do not unequivocally do so. Hence, the passages that Fraade adduces in support of a rabbinic asceticism are not hard evidence for his opinion, and have no prevalence over opposing viewpoints.

7.4 The Biblical Attitude towards Pleasure: The Antithesis of Asceticism

Whereas the Bible does not condemn pleasure or enjoyment, we do find in it an array of passages promoting enjoyment of the bounty God has provided for humanity. Since the Bible's affirmation of joy and pleasure are generally acknowledged, I shall quote only one passage relating to each type of enjoyment and pleasure. Deut 14:26 commands enjoyment of food and drink; Deut 26:11 commands enjoyment of God-given bounty; Ps 100:2 commands the Israelites to worship God with joy, and in Deut 28:15–68, we find a long list of curses as the punishment for not doing so, with the justification at v. 47: "Because you did not serve the LORD your God joyfully and gladly in the time of prosperity."

We also find favourable attitudes towards sexual activity. In Gen 1 we read God's blessing and first command to humanity to procreate (Gen 1:28), as well as God's evaluation of it: והנה טוב מאוד "and it was very good"[50]

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pretence of representing a rigid ideology. We do not deduce, for example, that the author of the *midrash Gen. R.* 18:2, discussed in Chapter 1 pp. 49–50 rejected belief in God's omnipotence, the consequence of the divine failure to create the woman as he intended, nor that the *midrash* represents a rabbinic minority contending as such. The same should apply to our present *midrash*.

49 Leopold Zunz, *Hadrashot Be'Israel and Their Historical Development* (Hebrew; ed. H. Albeck; Jerusalem: Mossad Bialik, 1954) 32, states that "the *aggadah* is the outcome of the individual's free cogitation, whereas the *halakhah* derives from the solemn prerogative of the authority . . . what the *halakhah* develops is something of permanence that reveals itself in practical life, whereas the *aggadah*'s aim is mainly the perception of the idea's significance."

50 In a *midrash* in *Gen. Rab*. 9:7, quoted below, the outstanding evaluation טוב מאד "very good" is linked to procreation.

(Gen 1:31), whereas all other creations are evaluated as כי טוב "good." Consequently, Deut 24:5 exempts the newly married man from military service, even during wartime,[51] to ensure the fulfilment of woman's God-given right to sexual pleasure; for one year he is to stay at home ושמח את אשתו and bring happiness[52] to the wife he has married. Finally, we find the conclusive axiom that obedience to divine commands is rewarded by a good life. The promise למען ייטב לך so that it may [always] go well with you [in this world]"[53] appears in various styles, referring to those who obey the divine commands. The significance of joy in Israelite theology is also manifest in the prophetic and hagiographic literature, demonstrating Scripture's positive stance towards all aspects of life[54] and thus negating any virtue in suffering.[55]

This attitude does not foster abstinence from pleasure or from performing permitted deeds; I would not hesitate to state, in fact, that it opposes such abstinence. The Israelites' abstention from sexual relations before participating in the Sinai revelation (Exod 19:15)[56] does not suggest that there is anything evil about sexual activity,[57] only that—like touching or carrying the carcass of an animal (Lev 11:26–28)—it ritually pollutes the participants, who must not approach a holy place before being cleansed. For this reason, Moses orders abstention from sexual relations before participating at the Sinai revelation, though this is not specified in God's directives to Moses.[58]

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51 The rule in Deut 24:5 implicitly refers to wartime; the parallel rule in Deut 20:7 declares this explicitly.

52 This is the NIV translation, but שמח in *piel* should be translated "will enjoy his wife [make her enjoy]."

53 In Deut 6:18 and on many other occasions.

54 I will cite a few examples: Ps 68:4 (v. 3 in KJV), Eccl 9:7, Ezra 6:22, 1 Kgs 8:66, Isa 28:9, 56:7, 61:7, Jer 15:17, Joel 2:23, and Zech 2:14.

55 Rob Kugler, "Making All Experience Religious: The Hegemony of Ritual at Qumran," *JSJ* 33/2: 131–52 at 133, states that "religious experience is not characterized by ecstasy, fanaticism, or fervor, but by a patterned daily existence"; neither, I would add, is it characterized by suffering.

56 This is the common interpretation of Moses' undefined command אל תגשו אל אשה (Exod 19:15), but it does not exclude other interpretations of this odd instruction. See Chapter 4 pp. 133 ff.

57 Jacob Neusner, *Aphrahat and Judaism: The Christian-Jewish Argument in Fourth-Century Iran* (Leiden: Brill, 1971) 178–80, referring to the Jewish–Christian polemic, asserts that "the rabbinical tradition could never reconcile itself to the life of celibacy and regarded marriage as the normal condition of man," although they "had an ambivalent view of women."

58 God said to Moses: "consecrate them today and tomorrow; have them wash their clothes."

Human beings, with their good and bad inclinations—their hearts of stone and of flesh (Ezek 36:26)—are God's creation, and whatever God has created is good. Humanity's strong desire, implanted by God in the process of creation, is not inherently wicked; it is good or evil depending on how humans use it. The term תאבה "strong desire" is used both for good purposes, as in Prov 11:23, and for evil deeds, as in Ps 112:10.

In fact, the Tenth Commandment in Exod 20:14: "לא תחמד do not covet your neighbour's house, wife, servants, household animals or anything else he owns"[59] is understood both by the rabbis[60] and by modern scholars[61] as applying only to practical schemes and concrete actions aimed at acquiring the neighbour's wife or property. Desire (coveting) alone is not forbidden, since חמד denotes sensuality or lust leading to an action intended to achieve the object of the desire.

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59 In Deut 5:18, this commandment appears with some literary alterations; the wife is mentioned first, and the text uses a different verb, אוה, translated as "set your desire" by the NIV. The KJV translates חמד as "desire" and אוה as "covet." The LXX translates both תחמוד in Exod 20:13 and Deut 5:18 and תתאוה in Deut 5:18 as ἐπιθυμέω "covet/long for/desire." Some scholars, such as Dominik Markl, *Der Dekalog als Verfassung des Gottesvolkes, Die Brennpunkte einer Rechtshermeneutik des Pentateuch in Exodus 19–24 und Deuteronomium 5* (Freiburg: Herder, 2007) 217, perceive a difference in theological approach between the two books. Benno Jacob, on the other hand, in *The Second Book of the Bible: Exodus* (trans. Walter Jacob and Yaakov Elman; Hoboken, NJ: Ktav Publishing House, 1992) 589–90, does not acknowledge different ethical/practical considerations in the two books.

60 *Mek. Jethro, mass. d'Paskhah, parsha* 8 interprets the prohibition as applying only to undertaking concrete steps to appropriate the neighbour's belongings.

61 Alexander Rofé, "The Tenth Commandment in the Light of Four Deuteronomic Laws," in *The Ten Commandments in History and Tradition* (ed. Ben-Zion Segal; English version ed. Gershon Levi; Jerusalem: Magnes Press, 1990) 45–65, discusses this point at length, citing the LXX's and Philo's interpretations as well as the commandment's varied developments in the scholarly milieu. He concludes (at 54) that "the original prohibition, as we have interpreted it, applied only to actual machinations and deeds—legal as well as illegal—aimed at acquiring control of someone else's property." Hans Joas, *Die Zehn Gebote, Ein widersprüchliches Erbe?* (Cologne: Böhlau Verlag, 2006) 145–57, after a lengthy philosophical discussion of desire, concludes that because, in practice, human nature empowers one's will not to yield to one's desire, but is incapable of stopping one from desiring something, desire cannot be prohibited, and the Tenth Command therefore does not prohibit it. Bernard S. Jackson, "Liability of Mere Intention in Early Jewish Law," *HUCA* 42 (1971), 197–225, elaborates on the issue of liability for mere intention from a legal perspective, and concludes (at 213) that in ancient Jewish law, as in Roman law, intention is not liable.

Whereas Greek mythology records that Prometheus was cruelly punished for teaching humans how to make fire, against the will of Zeus, Judaism teaches that God, who created everything that exists, gave humans the faculty to discover the world and its potential, leaving them free to choose how to use their inborn aptitudes and knowledge for good or evil purposes, and judges them according to their choices and their deeds;[62] people are rewarded for good behaviour, and punished for doing evil. Thus, Scripture presents an optimistic view of the world: humans are masters of their destiny, and an almighty God, who cares for his creatures, is a righteous judge. I believe that Christianity succeeded in winning hearts in the Hellenistic world relatively quickly because it offered people hope, promising a loving God (a somewhat adjusted view of Judaism's caring God) in place of the frivolous desires and caprices of the Greek gods. This optimistic *Weltanschauung*, based on the biblical idea that God created everything, and what God has created is essentially good, sees no virtue in suffering or in the denial of joy. At the same time, it explains why Judaism has seen no religious movements such as Manichaeism and Gnosticism, or any tradition of a demiurge creator with a negative view of the material world.

I have devoted much attention to biblical attitudes towards human joy and pleasure because both Qumran and the rabbis shaped their doctrines and *halakhot* on the basis of Scripture, even when their interpretations disagree. We must keep in mind, as we attempt to reveal the motivations behind rabbinic and Qumranic assertions and *halakhot*, that these texts cannot be in conflict with the scriptural text, unless such conflict is explicitly declared and explained. Our assumptions or *ex silentio* conjectures cannot impose on the Qumran texts or on the rabbis ideologies that conflict with Scripture.

7.4.1 *The Scriptural Concept of Fasting*

Although the command "afflict your souls" in Lev 16:29, interpreted as intending fasting, may seem to advocate suffering, this command and its grammatical derivative in the rules for the Day of Atonement in v. 31 are not evidence of the virtue of suffering or self-denial.[63] It seems to me that fasting on the

62 In Deut 30:15 God tells humans that they can choose between good and bad, and in 30:19 advises them to choose life and blessings.

63 It is outside the scope of this study to investigate why Leviticus uses the undefined ענה, which is commonly interpreted here as "fast" but has a great array of meanings in Scripture according to context, instead of the defined צום "to fast" (Judg 20:26), practised in times of calamity. It is plausible that the decision to interpret ענה here as "fasting" was deduced from the phrase עניתי בצום נפשי "and [I] humbled myself with fasting" (Ps 35:13), but this does not resolve the question of why Leviticus did not use the defined term צום.

Day of Atonement, as prescribed in Scripture, should be seen as a self-inflicted punishment to ensure the forgiveness of sins without enduring punishment inflicted by God. The symbolic self-administered punishment that induces divine forgiveness of sins is similar to the symbolic offering of animals, instead of one's own life, for the identical purpose, as we read in Lev 17:11 that the blood makes atonement for one's life.[64] The parallel passage in Lev 16:29–30 describes atoning for sin by self-denial (fasting), a self-inflicted punishment. The two passages are intrinsically linked; just as the sprinkling of the blood on the altar, a symbolic sacrifice, induces atonement, the fast, a symbolic self-inflicted punishment, invokes the same result. There is no association with suffering as a virtue, and in fact fasting is not suggested in the Pentateuch except on the Day of Atonement, a celebration for the sake of the entire people of Israel.

Fasting is depicted in Scripture on occasions when calamities befall individuals or the people, and since, according to biblical theology, punishment is imposed by God for human sins, fasting is an attempt to avert divine punishment by symbolic self-affliction. We observe in Judg 20:26 that the people, after suffering heavy casualties, undertake two acts in order to be forgiven for the sin[65] that has brought their misery. David fasts and prays to God when his child by Bathsheba becomes ill. He knows of his sin and knows that for this reason his son will die, as Nathan the prophet told him (2 Sam 12:14); he hopes that God will accept his fast as atonement for his sin and will save his son, and ceases his fast after the child's death (v. 20).[66]

The LXX translates the term תענו in Lev 16:29 by the verb ταπεινόω "to humble"; this translation may support my proposition that fasting be perceived as humbling oneself before God, as part of the process of praying to be forgiven

64 Cf. David Lambert, "Fasting as a Penitential Rite: A Biblical Phenomenon," *HTR* 96, 4 (2003): 477–512 at 479–80, who attaches fasting to prayer, stating that "with the exception of mourning the dead, fasting hardly ever occurs without prayer." He further claims that prayer in a state of affliction is performed to arouse divine attention and pity, instead of my thesis that fasting pleads for forgiveness. At 480–1, however, he admits that the biblical evidence "suggests, at first glance, an association between fasting and penitence," but adds "that fasting and prayer also occur in the absence of wrongdoing." This seems unfounded, since the fasting on the Day of Atonement pleads for forgiveness of known and unknown sins, as we read in I Kgs 8:46: "there is no one who does not sin." At any rate, Lambert's assumptions do not claim that fasting is associated with asceticism, as Fraade alleges.

65 Lambert, ibid., 497, perceives "fasting as an expression of grief," used to add urgency to their supplication.

66 Ibid., 485: "David has indeed sinned; but by fasting and weeping, he is looking for pity—not forgiveness."

for transgressing his commands. We read in Ps 34:19: "The LORD is close to the brokenhearted," and Ps 51:19 affirms that God will heed the prayer of a broken spirit more than sacrifices. It seems reasonable to assume that the LXX translator/interpreter used "humble" instead of "deny oneself/inflict" or "fast"—although fasting on the Day of Atonement was practised in Egypt, as Philo writes in *Spec*. 2:193–203—to emphasize the significance of humbling oneself before God as the essence of fasting, conducive to attaining forgiveness of sins. The author may have chosen to use ענה instead of the defined term צום for exactly this reason: that the purpose of the fast is to humble oneself for the sins one has performed, not the suffering of the fast, which only creates a suitable state of mind for genuine repentance.

7.5 Pleasure and Self-Denial in the Rabbinic Literature

7.5.1 *Boyarin's Thesis: The Good and Evil Desires*

I begin with Boyarin's study on the rabbinic attitude towards sexual desire and its implications.[67] Boyarin quotes rabbinic legends and *midrashim* that go a step further than the Scriptural perception of human desire discussed above. Instead of the common rabbinic opinion that two impulses (or desires), a good one and a bad one, are implanted by God in humans at birth, these rabbinic dicta mention what Boyarin terms "Evil Desire" and "Good Desire," but claim that Evil Desire is "itself composed of constructive and destructive forces within its own singular existence and essence."[68] This theory is built on an *aggadah*, recorded in *b. Yoma* 69b, that when the returnees from the Babylonian exile imprisoned the (evil) Desire of sexual sins to prevent future sinning, the hens ceased laying eggs—that is, all sexual activities, good and evil, were discontinued—and so they understood that the world would end without this desire; they released it, therefore, since heaven did not agree to a desire for licit sex alone. A further *midrash* in *Gen. Rab*. 9:7 complements and elucidates the philosophy and theology of *b. Yoma* 69b: On the seemingly superfluous term טוב מאד "very good," in Gen 1:31 referring to all that God has made by creating humans and commanding them to procreate, the *midrash* deduces that God's evaluation of very good relates to both good and evil human inclinations. The consequent question of how this evil inclination

67 Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993).

68 Ibid., 63.

can be perceived as good is answered thus: without it a man would not build a house, marry a woman, beget children, or work for his subsistence.

Hence, the Evil Desire, as Boyarin translates, or the evil inclination, as יצר הרע is commonly interpreted, is a categorical requirement for the survival of the world; it can be used for good and for evil purposes. Boyarin notes that since God created the evil inclination, and whatever God created is good, the evil inclination, too, is essentially neutral, and humanity can choose to use its intrinsic constructive or destructive forces. He concludes that sexuality in itself is neither evil "nor is it uncomplicated good," and that desire is necessary and has "very positive overtones."[69] He also raises the question of what constitutes the Good Desire, "if the role and the possibility of the Evil Desire can be good."[70]

Boyarin perceives "two partially conflicting psychologies within the rabbinic culture": the common thesis that the two inclinations implanted in humans—the יצר טוב, the good inclination, and the יצר רע, the evil inclination—are "at war with each other," which he calls the theory of ethical dualism of good and evil powers; and in contrast, the theory that the Evil Desire, "composed of constructive and destructive forces within its own singular existence and essence[,] is very good," deduced from the *aggadah* and *midrash* discussed above. Thus, the Evil Desire is *perceived* as bad because of its destructive side, yet it is the driving force for the accomplishment of constructive human and worldly functions. For Boyarin, this view rejects the theory of ethical dualism, affirming that human beings have only "one monistic nature, which is, however, dialectical in structure." The same force that leads humans to create, causes them "to do evil and destroy."[71]

I would not be inclined to deduce from the *midrashim* cited above two divergent rabbinic ideas, since such subtle philosophical deductions are based on modern ways of thinking that did not concern the rabbis; the differences between these two theories seem to me presentational, not essential. Both hold that the inclinations/desires/impulses, good and evil, implanted by God in humans (whether separately or together) are created by God, and therefore are good, and that humans have free will to follow either the good or the evil inclination. For example, *Sifra Qedoshim parsha* 10 tells us that the desire for forbidden acts, such as eating pork or lying with a woman forbidden by law, is not perceived as wrong; on the contrary, the *midrash* recommends saying, "I do desire it, but I do not do it, because God forbids it"—the desire itself is actually

69 Ibid.

70 Ibid., 64.

71 Ibid., 63–4.

commended, since controlling it is a virtuous behaviour. This is the essential basis of rabbinic belief; whether there is one basic inclination that a person can guide in a chosen direction or two opposing inclinations was not, it seems to me, a concern of the rabbis[72] or of Qumran.[73] Both tried to understand why humans sin.[74] Since humans possess the wisdom to discern good from evil, it is incomprehensible that they should sin—that is, engage in acts that they know *a priori* are wrong and will be punished. Both theories offer the same logical answer to that pivotal question; therefore, I would presume that the rabbis perceived no conflict and did not see a need for a dialectical approach to understand the relevant dicta.

I suggest that we perceive the seeming variances in rabbinic statements about humans' opposing inclinations as complementary, not conflicting (as Boyarin proposes). The evil inclination in humans is the selfish tendency, similar to the survival instinct in animals: focused on one's own advantage, guided by one's desire and passion, with no consideration for the rules instituted by God or for the collective and individual rights and benefits of one's society. The good inclination, by contrast, is the altruistic stance that constrains one's own desires according to divine rules and/or for the benefit of others. Since both inclinations were created by God and implanted in humans, the evil inclination must also contain some goodness, since everything created by God is essentially good or has a necessary function. There is no absolute evil or good in the world, as we read in *b. Sanh*. 98a that the Messiah will come only when the entire generation (world) is either righteous or wicked"—in effect, an absolutely righteous world can be realized only in the eschatological era, and until then all good contains some evil, and all evil contains some good. Humans' selfish inclinations and their passions thus play a useful role in curbing the altruistic drive towards absolute good and total renunciation of one's own benefit. The rabbis enunciated the legal principle "a person is near (affectionate) to himself" (*b. Sanh*. 10a) based on their knowledge of human nature. I believe this awareness also explains Hillel's renowned dictum: "That which is hateful to you, do not do to your fellow. That is the whole Torah; the rest is the explanation; go and learn" (*b. Sabb*. 31a). I believe that Hillel deliberately changed the biblical command "love your neighbour as yourself" (Lev 19:18), from which his dictum derives; this command corresponds to the absolute domination of the

72 *B. Ber*. 61a.

73 1QS II:18–20.

74 See the extended discussion in Heger, *Challenges*, 256–7.

altruistic inclination, which Hillel restricted by introducing an element of the self-regarding evil inclination.[75]

We find a similar constraint on the absolute altruism of the good inclination in *b. B. Meṣi'a*. 62a, which inteprets Lev 25:36 "let your brother live with you" as intending that your life has priority over the life of your neighbour/brother.[76] From the same text *Sifre Deut*. 116 deduces priorities for financial assistance to people based on their relationship to the benefactor—that is, based on a consideration of one's selfish evil inclination: a brother from the same father has priority over a brother from the same mother; dwellers in the same city have priority over those from another city, and those from one's own country over those from another country. In each case, the force of the good inclination is restricted by that of the evil inclination; thus, the evil inclination has good elements and accomplishes useful functions. The same force and desire that leads someone to marry and build a house for his own well-being (*Gen. Rab*. 9:7, quoted above) would conflict with an obligation to build a house for one's neighbour also, as an unrestricted application of the good inclination would suggest—obeying literally the command to "love your neighbour as yourself." *B. Ket*. 50a records that the Sanhedrin of Usha promulgated a rule not to spend on charity more than a fifth of one's wealth or of one's yearly income. A baraita explains its motive, because ultimately one may be compelled to ask for charity in turn. Commenting on Deut 15:7b "do not be hard-hearted" towards the poor *Sifre Deut*. 116 and the odd use of the term do not תאמץ "strengthen" your heart at the recommendation to help him (one would expect the opposite), the *midrash* explains: "there is a person who is sorry if he gives (lends money to the poor), and if he does not give." He is caught between the claws of the tongs, of which one is the evil and the other the good inclination. In this way, I believe, we can reconcile the apparently contrasting rabbinic dicta (as postulated by Boyarin), within the boundary of the rabbis' presumed reflections.

7.5.2 *Rabbinic Attitude towards Pleasure*

I shall now quote some more rabbinic citations indicating their positive attitude to pleasure of all kinds, indicating implicitly that self-denial of permitted acts is not their ideal. We find a remarkable dictum in *b. Hul*. 109b: Whatever the Merciful God prohibited us, he permitted us something similar; in

75 The NT, by comparison, maintains both versions. Matt 7:12 and Luke 6:31 record a positive parallel to Hillel's dictum; Luke 10:27 and Gal 5:14, in the name of Jesus, repeat verbatim the text of Lev 19:18.

76 See a dispute in *b. B. Mez*. 62a regarding the practical application of this dictum.

substitution of the prohibited consumption of blood, he permitted eating liver (perceived to be concentrated blood); instead of the prohibited fat of animals suitable for sacrifice, he permitted the fat of wild animals; instead of pork, he permitted the head of a fish; instead of the prohibited sexual intercourse with the wife of one's brother, he permitted it to the levir, and so on—a long list of similar substitutes. Whether or not the substitutes are indeed equally satisfying is not crucial for our thesis. This passage exemplifies the rabbinic view that Scripture does not command abstention from pleasure or from satisfying one's desires, including sexual desire; there is nothing evil in sex as long as it is legally permitted. We read in *b. Ber*. 57b: "A man is gratified by three things: a refined dwelling, a beautiful woman, and neat objects." Another maxim there declares: "Three things are comparable to the [pleasures] of the other world, and these are: Sabbath, sun, and תשמיש sexual intercourse."[77] *B. Ned 20b* rejects an expressed opinion that denounces perverted sexual acts, declaring that a man may perform intercourse as he pleases, just as he may eat his food prepared in different ways.[78] *B. Sanh*. 100b declares: "Happy is the husband of a beautiful woman; his days [of life] are doubled." Such applause for the attributes of women must be understood as most approving of the pleasures and benefits of married life and sexual intercourse. How can this pronouncement concur with Fraade's assertion that the rabbis practised some form of asceticism, and that satisfying one's desires would hinder the attainment of "spiritual perfection," which could be reached only "by virtue of abstaining from . . . indulgences"?[79]

Moses' decision—made on his own initiative, and approved by God—to abstain from sexual intercourse indefinitely, as the rabbis interpret Exod 19:15 in a *midrash* in *b. Sabb*. 87a, does not indicate a negative attitude towards legitimate sexual activity. We read there that Moses abstained perpetually from sexual relations, because he reasoned that if the Israelites must not approach a woman for three days before hearing God's words, he must *a fortiori* totally abstain from it, since God spoke to him all the time without prior warning. As is evident, his abstention, according to this *midrash* and the midrashic

77 Since תשמיש is usually the euphemism for sexual intercourse, an anonymous question is posed, claiming that it weakens the man; in response, a device is contrived that it refers to relieving onself. This frivolous interpetation and answer should be discarded, since it is inconceivable that the comfort of relieving oneself would be compared to the enjoyment of the Sabbath and the sun, as a reflection of the delights of the world to come.

78 See text and deliberation in Chapter 2, p. 99.

79 Fraade, "Ascetical Aspects," 270.

interpretation of Num 12:1,[80] is not motivated by any implied criticism of permitted sexual acts or any moral debasement associated with sexual activity.[81]

Finally, the rabbis granted women the unrestrained right of pleasure from regular, non-deviant sexual intercourse on the basis of their desire for men, implanted in them by God (Gen 3:16) and reconfirmed in Exod 21:10.[82] *Midrash Sechel Tov* (Buber edition) Exod 11:1 asserts that deprivation of sexual intercourse is an affliction for a woman, expressed in Gen 31:50 by the term עִנָּה. We read in *b. Ket*. 48a that the woman has the right to demand that both partners be naked during sexual intercourse, and if the husband does not agree, she may ask for divorce and he must pay her the *ketubah*.

7.6 Fraade's Thesis: Obstacles to Spiritual Fulfillment

If I understand correctly the theory presented in Fraade's introductory premise, he perceives in rabbinic Judaism, within the bounds of what he understands as asceticism, "a tension inherent in all religious systems: humans aspire to advance ever closer to an ideal of spiritual fulfillment and perfection, while confronting a self and a world that continuously set obstacles in that path." He then elucidates the real questions: "How can one proceed along that path with a whole, undivided undistracted 'heart' . . . while living among the distractions of the present world? How can one relate to and commune with a transcendent, supernatural order, to submit wholeheartedly to the divine will, while living a worldly existence ruled by appetites and archons?"[83] I understand

80 The text of Num 12:1–3 is extremely confusing. The simple meaning of the text, however, would suggest that Moses married another wife, a Cushite, in addition to Zipporah, his first wife. The LXX, KJV, and NIV translate accordingly, but the rabbis did not like the idea that Moses took another wife, and overturned the text, asserting that he abstained from sleeping with Zipporah (*Deut. Rab. parsha* 11:10), whose nickname was Cushite (*b. Mo'ed Qat*. 16b). Consequently, *Tg. Onq*. adds רחיק "repudiated her" after the second term לקח, which means "married." *Tg. Ps.-J*. interprets v. 1 as declaring that Moses divorced the Queen of Cush, whom he married on his escape from Egypt, and lived with her for forty years. This odd story appears only in *Yal. Sh*. Exod 168; its original source is unknown.

81 See Chapter 4 pp. 135 ff for another interpretation of the relevant verses in Exod 19:10–15, unrelated to the rabbinic midrashic exegesis.

82 We read there: "he must not deprive her of food, clothing, and marital rights."

83 Fraade, "Ascetical Aspects," 255. Although most of Fraade's quotations in nn. 11 and 12, supporting the statement quoted above, relate to Christianity, at the end of n. 12 he writes, "For most of the above, except where caricatures of Judaism still cloud the picture, a broader view of asceticism permits a more balanced assessment of its place in Judaism."

Fraade's question to be in fact a complex of topics: the contrast between human desire and divine restrictive rules; and opposition between matter and spirit, between flesh and soul, so that consequently the flesh impedes the soul's desire for communion with the transcendent. I will present my argument in this order.

The rabbis sanctified the performance of physical requirements by establishing, for example, blessings and prayers to God before and after eating, in accordance with the biblical dictum in Deut 8:10. The table (conducted according to the law) is compared to the altar, generating atonement, as we read in *b. Ber*. 55a: "As long as the Temple existed, the altar atoned for Israel, but now the table atones for him." A dictum in *Abot R. Nat*. Recension b, Chapter 30, and *Lev. Rab. parsha* 34 go a step further in sanctifying human acts for physical well-being and pleasure by perceiving them as accomplishing the divine will and intent.[84] There is no division between body and soul; caring for one's body is perceived as fulfilling the divine will, as expressed in Scripture.[85] Therefore, humankind can love God with both the good (altruistic) and the evil (selfish) inclinations, as we read in *m. Ber*. 9:5.[86] This doctrine seems to me incompatible with any form of asceticism. The scriptural and rabbinic principle of self-control is not one of self-denial, in sharp contrast to the Greek philosophical basis of asceticism. This crucial difference offers an answer to Fraade's question, posited above. Hillel taught the appropriate way in his own cultural context to blend the seemingly opposed principles in complementary fashion; he sanctified his desire and associated deeds for his physical well-being and pleasure (permitted by the Law) by perceiving them as accomplishing the divine will and intentions.

I do not perceive in rabbinic literature a striving to commune with the Deity, although I believe that in Judaism God is both transcendent and immanent—that is, God is immanent in his involvement in the world, but transcendent for humans, who are not involved in heavenly matters. We read in Ps 115:16: "The highest heavens belong to the LORD, but the earth he has given to man," which

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Thus, one must assume that his list of characteristics "inherent in all religious systems" consciously includes Judaism.

84 See note 39. A similar narrative attributed to Hillel regarding going to the toilet is recorded in *Lev. Rab*.

85 Ephraim E. Urbach, *The World of the Sages: Collected Studies* (Hebrew; Jerusalem: Magness Press, 2002) 439 (50), writes that Philo attempted to impose on Scripture his Hellenistic theory of the division between body and soul, using daring allegorical methods. He concludes that there is no evidence of Jewish sources in Philo's theory.

86 The *midrash* deduces this from the command to love God בכל לבבך "with all your heart" written with two ב (Deut 6:5).

suggests God's transcendence, but most biblical statements on this topic imply God's immanence and active involvement in the world's affairs. Ps 89:12 states: "The heavens are yours, and yours also the earth; you founded the world and all that is in it"; divine immanence is also acknowledged in Deut 3:24, 4:39, and 10:14; 1 Kgs 8:23; and Hab 3:3. We also read in Josh 2:11, Isa 66:1 and Jer 23:24 that heaven and earth are filled with God's presence.

On the other hand, a striving for communion with God is explicitly thwarted in a rhetorical narrative in *b. Sukkah* 5a. Ps 115:16, cited above, is challenged, on the grounds that God descended on the top of Mount Sinai (Exod 19:20), and will stand in future on the Mount of Olives (Zech 14:4), and that Moses went up to God (Exod 19:3). The reply is that in both circumstances there were more than ten hand-breadths (the space considered a division) between God and the summit of Sinai, and similarly the same distance between Moses and heaven. Hence, God did not really stand on the earth and Moses did not enter into heaven. This *midrash* confirms the division between humanity and heaven; the former cannot reach the latter.[87]

The Talmud, the rabbis' *magnum opus*, does not try to answer Fraade's question about a relationship of communion with God—see, for example, how to love God, written in the *Shema* (Deut 6:4–9), the Jewish declaration of faith.[88] But the rabbis debate at length how to accomplish in practice the commands in the succeeding verses of the *Shema*: for example, the structure of the phylacteries (assumed to be the טטפות in Deut 6:8), including their form, colour, and content, where exactly to tie them, whether hand or forehead phylacteries should be bound first, and which should be untied first (*b. Menaḥ.* 36a). Occasional narratives in the rabbinic literature convey implicitly doctrinal ideologies, thus telling readers how to understand them; but the overwhelming mass of these writings are dedicated to practical questions of how to accomplish correctly and perfectly the positive precepts and avoid transgressing the prohibitions. The rabbinic literature, in common with Scripture,[89] does not perceive the

87 It is remarkable that in Michelangelo's *The Creation of Adam*, part of the ceiling fresco in the Sistine Chapel, God stretches out his hand towards Adam's, outstretched to receive life, but their hands do not quite touch. This may represent the same idea as the *midrash*. I am indebted to Professor Harry Fox for drawing my attention to the details of this painting.

88 *B. Yoma* 86a argues that the verse means to make God's name to be loved through your good deeds and gentle dealing with people. Consequently, people will say: "blessed is his father and teacher, who taught him Torah, and thus God, who gave the Torah, will be revered."

89 Scripture encourages humankind to enjoy life's bounties and physical pleasures, and Deut 4:6 declares that other peoples will admire the laws given to Israel.

divine rules as "confronting a self and a world that continually set[s] obstacles in that path [of attaining spiritual fulfilment]," as Fraade asserts.[90]

7.6.1 *Fraade's Definition of* Perushim

Fraade first asserts that the Pharisees (the *perushim* of the rabbinic literature) maintained that the Israelites, the holy nation, "are to be *perushim* in the double sense, first, of being separate and distinct from the other nations and, second, by virtue of abstaining from their indulgences."[91] Separation from the other nations is not a pharisaic innovation; it is decreed by God explicitly in Lev 20:24 and 20:26, and implicitly on many other occasions, and it applies to all of Israel. Ezra took drastic measures to restore this highly compromised separation (Ezra 9:1). Further, Fraade admits that "the exact character of this group [*perushim*] . . . is a matter of scholarly controversy";[92] yet he nevertheless quotes rabbinic maxims about them, attempting to substantiate his thesis of asceticism in rabbinic Judaism by asserting that the "*perushim* are identified with abstinence."[93] Practising ritual purity and being "particularly careful concerning Sabbath observance and tithing,"[94] however, are not indications of asceticism. I have quoted above the rabbinic aphorism comparing the table to the altar: the table must be pure if it is to take the place of an altar, and carefully performing the scriptural laws is a universal duty for all Israelites;[95] this is a matter of self-control, the core of the scriptural doctrine and regimen as understood by the rabbis, not of self-denial.[96] I have disputed above[97] Fraade's

90 Fraade, "Ascetical Aspects," 255.

91 Ibid., 270. The study is based on the premise that the rabbis are the ideological and halakhic followers of the Pharisees. Fraade expresses this in a different literary style.

92 Ibid., 269–70.

93 Ibid., 271.

94 Ibid., 270.

95 Joseph Blenkinsopp, *Wisdom and Law in the Old Testament*: *The Ordering of Life in Israel and Early Judaism* (Oxford: Oxford University Press, 1995) 82, states that framing the civil, social, and ethical rules of the Book of the Covenant with cultic laws provides a civic code with a religious framework. Hans Jochen Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East* (trans. Jeremy Moiser; Minneapolis, MN: Augsburg Publishing House, 1980) 138, 144, 145, states that this theological statement places the laws regulating how the Israelites are to relate to one another in the context of laws regulating how they are to relate to God. I am indebted to Christiana van Houten, *The Alien in Israelite Law* (Sheffield: Sheffield Academic Press, 1991), for this information.

96 Fraade, "Ascetical Aspects," 270.

97 See pp. 256 ff.

interpretation of—or, rather, deduction from—the narrative/dictum in *Abot R. Nat*. 28, showing that it does not support his theory of a rabbinic asceticism.

Since Fraade does not quote the original biblical text of the *Sifra*,[98] I am uncertain which of the similar, but not identical, texts in *Sifra* his translation matches. In *Sifra Qedoshim. parsha* 10, Chapter 11,[99] we read: "[It is written] 'You are to be holy to me, because I the LORD am holy' (Lev 20:26a):[100] as I am holy you should be holy, as I am separate you should be separate." Then follows the interpretation and illustration of 26b: "'and I have set you apart from the nations to be my own; if you are apart from the [other] nations, you are mine, but if not you are of Nebuchadnezzar and his comrades.'" If indeed this is the *midrash* Fraade cites, it does not seem to me to convey the idea that the concept of *perishut/perushim* implies "abstaining from indulgences," as he asserts,[101] or that abstinence from what is permitted leads to sanctification;[102] all Israelites are holy by virtue of accomplishing the rules and restrictions of Scripture, as is evident in most of these aphorisms from associated texts.[103] For example, the entire chapter Lev 19 from v. 3 to v. 37 itemizes the requirements of the Israelite to be holy, as God is holy in the opening v. 2, and the verses preceding Lev 20:26 (quoted by the *Sifra*) describe the separation decreed by God between clean and unclean animals and the divinely ordained separation between Israel and the other nations as the requisites to be holy, as God is holy.[104] Thus Scripture indicates explicitly, it seems to me, the meaning of the

98 Fraade, "Ascetical Aspects," 270.

99 *Sifra* (ed. Weiss; Vienna, 1861).

100 Either Fraade or the typesetter appears to have erroneously cited *Sifra Qedoshim parsha* 1 for *parsha* 10, which refers to Lev 20:26, not to Lev 19:1, as Fraade states. I have found no such dictum on the latter verse, nor any other similar to it. Fraade does not quote the original Hebrew, which would enable readers to ascertain to which text he refers. In fact, Lev 19:1 reads קדשים תהיו, whereas 20:26, the source of the cited *midrash*, reads והייתם לי קדשים.

101 Fraade, "Ascetical Aspects," 270.

102 Ibid., 276.

103 The linking of holiness with abstention from what is permitted is a separate topic, recently taken up by Naomi Koltun-Fromm, *Hermeneutics of Holiness: Ancient Jewish and Christian Notions of Sexuality and Religious Community* (New York: Oxford University Press, 2010), which cannot be discussed here.

104 I disagree, therefore, with Hannah K. Harrington's theory in "The Halakhah and Religion of Qumran," in *Religion in the Dead Sea Scrolls* (eds. John J. Collins and Robert A. Kugler, Grand Rapids, MI: Eerdmans, 2000) 74–89 at 84–5 that "for Qumran human holiness does not come simply by obedience to the law. That is a given but holiness must increase by serving God to the best of one's ability." I do not find in Scripture a concept of greater holiness, "achieved by discovering and fulfilling God's perfect will." Obedience to the

command to be *perushim* "separated"—namely, not to eat unclean animals; by obeying this decree Israel will be holy and chosen by God as his people, separated from all other peoples. There is no hint in Scripture—or, consequently, in *Sifra*—that any abstinence is required, except obeying the divine decrees (in this case, refraining from consuming unclean animals), to attain holiness and be separated (*perushim*) from the nations. Moreover, nowhere do we find any precise indication of the practical meaning of the term *perushim*, and, whatever we may hypothesize about the concept's meaning for humanity, it is impossible to compare this meaning to the presumed meaning of *perushim* in relation to God, to whom humans are compared. Its meaning therefore cannot be defined[105] except by reference to its context, and this is precisely what we have done here.

The parallel rabbinic maxim in *Sifra Shemini parsha* 10,[106] which relates to the phrase והייתם קדשים כי קדוש אני in Lev 11:44–45, also clearly indicates the link between Israel's holiness and its compliance with the divine prohibition on consuming unclean animals, birds and insects, as well as the associated purity rules, as the motive for God's choice to liberate the Israelites from Egypt. The *Sifra*, complementing the biblical text, bolsters the linking of holiness and *perishut* to the fulfilment of the divine precepts. As in the preceding *Sifra*, there is no hint that any particular abstention is required, except those decreed in Scripture and obligatory for all Israelites. Fulfilling that commitment, and that commitment alone, is what is required to achieve holiness. Are we then to perceive all biblical prohibitions as aspects of asceticism?

The *baraita* about the seven types of *perushim* recorded in *b. Sotah* 22b, which Fraade quotes, does not relate to abstinence; it severely criticizes those who behave improperly on various occasions for pretending to be *perushim*,

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Law is simply the rule valid for all Isralites; Qumran writings accuse their opponents of not accomplishing the divine laws correctly, but through performing them correctly, as members of Qumran do, they become holy, "by the obedience of the law." (4Q249q (4Qpapcr-A Frg MentPlanting), Frgs. 1–2:1) There are no different degrees of accomplishing the divine laws, and consequently no different degrees of holiness in Scripture and likewise none in Qumran writings. The requirements to attain holiness, like the divine holiness in Lev 19 and 20, refer to all Israelites, not only to the priests, as Harrington seems to hint, arguing that Qumran "looks to the priestly laws for guidance." This argument is utterly mistaken; Qumran attempted to discern as fully as possible the distinction between priests and laics. See Heger, "Qumranic Marriage Prohibitions" at 450 on this issue.

105 See p. 256, Fraade's admission of the scholarly controversy about the exact character of the *perushim*.

106 Probably corresponding to Fraade's mention, in n. 66 of "Ascetical Aspects," of *Sifra Shemini* 12.4.

which indicates that true *perushim* do not behave so. An example is קיזאי—זה המקיז דם לכתלים, interpreted by *Rashi* as "who pretends to close his eyes [so as] not to look at women, and because of that hits his head into a wall and bleeds." Evidently the true *perushim* did not close their eyes while walking in the street; otherwise they would have suffered the same consequences. The rabbis indeed advised avoiding unnecessary contact with women, in order not to stumble and be led to sin—according to their general system of preventive prohibitions—but did not prohibit seeing women, only looking at women with the specific intention of erotic arousal (*b. Erub*. 18b)[107] and excessive talking (spending too much time) with them.[108] This dictum, however, applies to all Israelites, and, as noted, is not associated with self-denial, asceticism, or abstinence, but is rather an example of the rabbinic preventive method.[109] The other types of feigned *perushim* mentioned in the *baraita* have no association with abstinence or other forms of asceticism: "the one who humbles himself excessively in his way of walking, and thus hits his legs"[110] and the מדוכיא type, that is, those who want to do more than is commanded (or abstain from doing what is permitted), and who ask: "What precepts other than those I have done

107 See Chapter 2, p. 98. With respect to a similar rabbinic exhortation not to look at women in *b. Abod. Zar*. 20b, Maimonides in *Hil. Issurei Biah* 21:2 explains that it relates to staring at women with the intent to derive pleasure, that is, sexual arousal.

108 We read in *m. Abot* 1:5: "Do not talk much with a woman; and that is not only with another woman, but [the same applies] with your own wife." The commentators grapple with the reason for denouncing excessive talking with one's own wife, in addition to the reason indicated by the *mishnah*—that it interrupts one's Torah study. Some contend that it relates to excessive talk while she is menstruating, which may evolve into prohibited sexual activity; others suggest that it relates to excessive talk about sex, which may lead to illegitimate sexual acts.

109 In *b. Ned*. 20a we read: "Do not talk much with the woman, because ultimately it will lead you to fornication. Rabbi Akha son of Rabbi Jashia says: 'Everyone הצופה who gazes at women will ultimately sin, and everyone who gazes at a woman's ankle will have indecent children'" (this dictum refers to a woman married to someone else, and the restriction relates only to excessive "socializing," in modern parlance). Rabbi Akha uses the term צפה, which expresses persistent and attentive looking, as in 2 Kgs 9:17); simply looking at women is neither prohibited nor criticized. It is all a matter of self-control, and any excessive act may lead to the loss of it.

110 Matt 23:5–6 and 23:8–12 claim that the Pharisees showed off their status as holy men: they enlarged the borders of their garments and of their tassels, loved the best places at feasts and the chief seats in the synagogue, and desired to be called "rabbi."

could I still perform,"[111] a portrayal demonstrating rabbinic repugnance at such behaviour.

7.6.2 *Self-Denial of Pleasure during Mourning Is Not Asceticism*

Fraade quotes passages from *t. Sotah* 15:10–12 that speak explicitly of abstaining from pleasures to mourn the destruction of the Temple, commenting that "once again *perushim* are identified with abstinence."[112] Abstention from pleasure during mourning has no connection with asceticism or self-denial to attain higher spiritual perfection; these pleasures are explicitly prohibited to all mourners, and this prohibition does not promote general abstinence from permitted deeds, which is Fraade's criterion for asceticism. Self-denial during mourning is a symbolic way for the individual to participate in the commemorated event. We read in *t. Sotah* 15:10: "Said Rabbi Ishmael [another variant reads 'Rabban Simeon ben Gamaliel']: 'From the day of the Temple's destruction, the rule should have been not [ever] to eat meat and not to drink wine'"—as is the rule for mourners after a relative dies. We read in *b. Ta'an*. 30a: "All the precepts applying to the [individual] mourner apply to the ninth of Ab [the annual day of mourning for the Temple's destruction]: the prohibition of eating and drinking, anointing and wearing shoes, and sexual intercourse; and it is prohibited to read the Pentateuch, Prophets, and Hagiography and to study *mishna, Talmud, halakhot* and *aggadot*."[113] Moreover, the rabbis criticized those who abstained from eating meat and drinking wine all year, both forbidden in principle, and established symbolic signs of mourning, as cited below. Hence, in this case they decreed that one should not abstain even from pleasures that were legally prohibited. The rabbis did not abrogate the obligation of mourning or its reward,[114] but they reduced it to one day a year (the ninth of Ab), and similarly considered people's desire to live in painted houses by permitting them merely to leave a small spot unpainted as a symbol of continual mourning, and suggesting that a woman should leave some small part of her ornament unfinished.[115] Such conduct cannot be reconciled with a

111 A midrash in *Psikta d'Rav Cahana, We'zoth Habrachah* records that Esau, pretending to be a most righteous person, asked his father, Isaac, whether water and salt should also be tithed.

112 Fraade, "Ascetical Aspects," 271.

113 The rabbis considered studying the Torah and its commentaries to be a pleasure, and it is therefore prohibited to mourners.

114 We read in *b. B. Bat*. 60b: "[the one] who mourns about [the destruction of] Jerusalem will be privileged to partake in its joy [after its rebuilding]."

115 Considering how to reconcile between the difficulty of the obligation to mourn the destruction of Jerusalem and the duty to do it, Rabbi Joshua proposed to paint the house,

regimen of self-denial, and does not display even a milder form of asceticism, as Fraade argues.[116] It demonstrates again the rabbis' system of adapting scriptural rules to legitimate human physical needs and desires through appropriate midrashic interpretation.

In the extended passage Fraade quotes from *t. Sotah* 15:10–12, the number of פרושין *perushin* who abstained from eating meat and drinking wine increased as a symbol of their mourning for the Temple's destruction, but Rabbi Joshua criticized them,[117] advising them on the correct comportment for all Jews. It is often unclear when Fraade refers to obligations applicable to all Jews and when he means those valid only for the *perushim*. If the restrictions apply only to the *perushim*, the phrase "rabbinic Judaism" is misleading, since this expression would seem to refer to a religious system for all Jews based on the teachings of the rabbis, similar to the expression *rabbinic literature*, which denotes writings by the rabbis applicable to all Jews.

From the context and the spirit of Rabbi Joshua's style of polemical contention it seems that the פרושין/בישראל *perushim* in *t. hal.* 11 cannot be identified with the Pharisees,[118] as Fraade asserts,[119] but were a group of "dissident" Israelites who abstained from drinking wine and eating meat. This assumption is supported by the fact that all the succeeding *halakhot*, intrinsically connected to Rabbi Joshua's criticism, certainly refer to the entire people.

The rabbis' aversion to suffering and abstention from permitted deeds is evident in their efforts to minimize the discomfort of the symbolic acts of mourning, as decreed in *t. Sotah* 15:12–14[120] and in *m. Ta'an*. 4:6. *M. Ta'an*. 4:7 indicates

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but leave a small spot unpainted, as a symbolic remembrance of Jerusalem's destruction (*t. Sotah* 15:12).

116 Fraade, "Ascetical Aspects," 272.

117 When they tried to justify their behaviour, saying that they did so because the daily *Tamid* offering (meat) and the wine libations to God on the altar were suspended, he ridiculed them, saying: Following your rationale you should not eat bread, nor drink water and eat fruits, because the offering of bread on the Feast of the Weeks and the Bread of Presence, the water offering on the Festival of the Booths and the offering of First Fruits are also suspended. They remained silent, demonstrating that their behaviour was wrong.

118 The sobriquet *perushim* seems to refer to pre-70 CE Sages, and since the *tosefta* explicitly states that the event occurred after 70 CE, it must refer not to a specific sect but to a number of Israelites who "separated" themselves from (denied themselves) the pleasure of eating meat and drinking wine as a symbol of mourning, or separated from the majority, who did not behave likewise.

119 Fraade, "Ascetical Aspects," 271, describes the quotation from *t. Sotah* as "another rabbinic tradition that employs the word *perushim*," alluding to the Pharisees.

120 See the instruction of *t. Sotah* 15:12–14 on p. 279 and in n. 115.

the practical implications of limiting enjoyment because of mourning for Jerusalem's destruction: "On the eve of the ninth of Ab a person should not eat two kinds of cooked food, should not eat meat and drink wine."[121] Rabban Simeon ben Gamliel, the Patriarch is even more lenient, saying that at the last meal before the fast one should decrease one's usual consumption of food and drink by half; one kind of food instead of two and five cups of wine instead of ten. The rabbis do not prohibit Jews from eating meat and drinking wine even on the eve of the ninth of Ab, with its particularly severe restrictions that do not apply to other fast days commemorating historical calamities.[122] I would not classify this edict as a restriction at all, and certainly not as a form of abstention or self-denial. The rabbis did not decree a restriction on eating meat and drinking wine even once a week, whereas Christians practised this form of self-denial for centuries as an act of symbolic suffering associated with Jesus' crucifixion on Friday. Fraade's conclusion that "*perushim* and *perishut* remained rabbinic ideals" (as he understands these terms) seems to me unwarranted. It is worth noting that Rabbi Joshua, who is involved in admonishing the dissenters and describing the correct conduct in *t. Sotah* 15:11–15, habitually speaks for the majority of the rabbis in cases of halakhic disputes where there is a minority voice at the final stage of practical application and extreme measures are taken to silence this dissenting voice.[123]

The same is true in our case: the rabbis established the *halakhah* of a minimal symbolic mourning on the basis of their aversion to excessive abstention. Their success can be observed in the contemporary behaviour of the Jewish people, in this as in many other respects.[124] It is plausible to assume, therefore, that the rabbis prevented the creation of dissenting groups in this case as in others, and that they succeeded in imposing their *halakhot* on the

121 *B.Ta'an*. 30a specifies that this restriction relates only to the last meal before the fast, taken less than six hours before the start of the fast; there is no restriction before that time.

122 The current custom (mainly of Ashkenazi Jews) not to eat meat or drink wine during the first nine days of Ab is a later tradition, probably instituted in the Middle Ages, under the influence of the Christian pietistic movement of that period.

123 See p. 261 for a comparison between the rabbinic way of promoting free speech and conflicting opinions at the stage of deliberations and cogitation, and the strong reaction after the promulgation of the final law.

124 See the total suppression of the apocryphal books from Jewish bookshelves. Although the rabbinic literature includes rules about the Hanukkah rituals, the books of Maccabees were eradicated to such an extent that *b. Šabb*. 21b asks: מאי חנוכה? "What is the motive for the Hanukkah celebration?" A few lines then record the legend of the single jar of pure oil that miraculously lasted for eight days to light the lamp in the Temple.

non-conformist individuals. When they were unable to suppress such movements, they expelled them, as occurred when the Karaite movement refused to acknowledge the *gaonic* halakhic decisions as the only true and valid ones.[125] The ephemeral behaviour of a minority segment of Israelite society, whose significance we do not know, if there were such, cannot be perceived as representing an "Ascetic Tension in Rabbinic Judaism" (a heading in Fraade's study about rabbinic asceticism). Fraade writes: "What bothers the rabbis is the fact that a *group* of Jews undertakes a theoretically proper course of abstinence which the *community as a whole* cannot bear. The rabbis prefer a milder and more symbolic form of self-denial which the whole community can successfully sustain and legally institutionalize."[126] But this does not seem to me compatible with the real circumstances, in view of the rabbinic narratives and historical events discussed above. Moreover, even if one agrees that such a dissident group existed, abstention for purposes of mourning cannot be classified as asceticism, as I have argued above.

7.6.3 *Nazirite Abstention is not Asceticism*

Fraade describes the voluntary self-denial of the Nazirite as an example of "the ascetic tension within rabbinic Judaism."[127] We do not know what originally motivated the probably ancient custom of the perpetual Nazir, who seems to have had a particular revered function in the community, nor of the Nazirite rule, likely instituted later, of abstaining for a short, defined period from two very different acts: drinking wine and cutting one's hair.[128] These Nazirite abstentions, however, do not seem to have been stimulated by a quest for self-denial or self-inflicted pain. Amos 2:12 compares the Nazirites to the prophets, which indicates their enigmatic essence and function.[129] In the introductory

125 The Karaite movement started around the Eighth Century CE.

126 Fraade, "Ascetical Aspects," 271–2 [original emphasis].

127 Ibid., 272–4.

128 Anne Katrine de Hemmer Gudme, "How Should We Read Hebrew Bible Ritual Texts? A Ritualistic Reading of the Law of the Nazirite (Num 6,1–21)," *Scandinavian Journal of the Old Testament* 23, 1(2009): 64–84 at 75, states: "The Old Testament is silent with regards to the duration of the Nazirite period and the reasons for making a Nazirite vow." In a note on the same page she adds: "the Law of the Nazirite in Num 6 reflects a relatively late and legalistic development of the Nazirite institution."

129 Eliezer Diamond, "An Israelite Self-Offering in the Priestly Code: A New Perspective on the Nazirite," *JQR* 88, 1–2 (1997): 1–18, at 1 writes that the issue of the Nazirite "has long puzzled scholars." At 2–3, Diamond records the ritual offering of hair in ancient cultures.

verse Num 6:2 we find the equivocal meaning of נזר, its derivative נזיר,[130] and להזיר in *hiphil* mode. The use of the *hiphil*, I think, may offer us some guidance in our attempt to reveal the essence of the Nazirite in ancient times and, perhaps, an idea of its essence in the biblical and rabbinic periods. נזיר seems to indicate something "reserved, put aside,"[131] and by extension "designated/dedicated/separated [from the rest]."[132] The Nazir, then, dedicated himself fully to the service of God in ancient times, and had a function similar to that of the ancient prophets, as we see when Nazirites are compared to them by Amos. The Nazirite's hair is described literally as "God's crown is on his head"

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130 The term נזיר also has a variety of meanings. In Num 6:3 we must interpret יזיר as "abstain from wine"; but in Lev 25:5 ענבי נזירך seems to allude to the grapes put apart, as *Rashi* interprets, although the NIV has "do not harvest the grapes of your *untended* vines." In addition, we find נזר, from the same root, in Exod 29:6 and Lev 8:9 (as נזר הקדש "sacred diadem," referring to the ציץ "gold plate" among the High Priest's vestments, as the NIV translates); in Lev 21:12, however, נזר שמן refers to the anointing oil of his God" (NIV); the diadem/crown has disappeared, and the same occurs in the NIV interpretation of Num 6:7, in which the Hebrew כי נזר אלהיו is translated as "the symbol of his dedication to God is on his head." The LXX likewise uses an array of terms for the translation/interpretation of the term נזר and its derivatives: ἀφαγνίζω "purify," ἁγνέυω "to be pure," ἐυχή "prayer or vow," ἔυχομαι "pray or vow," ἀγνίζω "purify" and ἁγίζω/ ἁγιάζω "to hallow, dedicate." We see the translators' difficulties in their attempt to arrive at a sensible interpretation according to the context as they understood the text. In Num 6:2–12, the NIV interprets נזר and its grammatical derivatives as "dedication," "Nazirite," "symbol of dedication," "rededication," and "period of dedication." In CD VIII:8, נזרו must be translated as "separated." Stuart Chepey, *Nazirites in Late Second Temple Judaism, A Survey of Ancient Writings, the New Testament, Archeological Evidence, and Other Writings from Late Antiquity* (Leiden: Brill) 2005, 25–28 alleges, on the basis of the LXX translation of נזיר להזיר (Num 6:2b) as ἀφαγνίσασθαι ἁγνείαν, that the vow of the Nazirite is "a non-technical special purity vow." While it true that the term ἀφαγνίζω means "to purify," it has also a broader meaning, such as "to purify oneself by offerings to the gods." The term ἁγνεία, especially in the form ἁγνεύω has even a wider range of meanings, such as: "to consider as part of purity, make it a point of religion, to be pure, clean in hands," and "keep oneself pure from a thing," which seems to me more appropriate in our verse in which the term לה' "to God" follows the difficult phrase נזיר להזיר. Further, the term נזיר אלהים in Judg 13:5 is translated in the LXX as ναζιρ θεοῦ "Nazirite to God." It would seem that the LXX translator of Numbers had difficulties interpreting the odd phrase and used Greek terms, which lend themselves to a variety of meanings.

131 The LXX translates והזיר לה' in v. 12 as ἁγιάζω "to hallow/dedicate."

132 Plausibly this is the correct interpretation of נזיר אחיו in Gen 49:26. In fact, the LXX translates it by the term ἡγέομαι "to go before/to lead," which in this association means that Joseph separated from his brothers. See Chepey, *Nazirites*, 2–3 about the meaning of the term נזיר.

(Num 6:7), and it is קדש holy to the Lord throughout the period of their dedication, as we see in v. 8,[133] similar to ציץ נזר הקדש "the plate, the sacred emblem [crown]" of the High Priest, on which was engraved קדש לה' "dedicated/consecrated to the LORD" (Exod 39:30).[134] The hair of the Nazirite is consecrated to God, and becomes his holy crown, like the High Priest's. Therefore, when his hair becomes polluted (Num 6:9), it cannot be burned upon the altar, as it would be on the completion of his dedication. The hair is holy: "They are to take the hair and put it in the fire that is under the sacrifice of the fellowship offering." (Num 6:18). The ancient Nazirite seems to have been dedicated to this function all his life, from before his birth "to the day of his death" (Judg 13:7); Num 6 probably describes a later era in which a temporary period of Nazirite vows was established.[135] Niditch writes: "the Nazirism of Samson and Samuel reveals an important symbolic association between hair and manliness, warrior status, charisma, and divine selection."[136] She states further that a close reading of Num 6 "reveals a quite different version of Nazirism. Some of the heroic and charismatic symbolic resonances of the Nazir's long hair may still reside in the culture behind the phenomenon described in Num 6,[137] . . . but the vow itself has been shaped by a particular priestly world view that is highly concerned with issues of purity even while democratizing holy status itself."

Similarly, just as the priests must not drink wine or other fermented drinks when they come to serve in the Tent of Meeting (Lev 10:9), in order to be in full

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133 The term קדש means "designated/consecrated," and by extension "holy." In Deut 15:19 תקדיש לה' "consecrate to God" refers to the firstborn of the flock, which is not holy; it is designated to be eaten by the owner in the "place God will choose," according to the rabbis, or by the priests, according to 4Q251 (4QHalakha A) 10:6–9. De Hemmer Gudme, "How Should We Read," states, "The Nazirite's hair plays an important part in the Law of the Nazirite. The hair appears to be the external sign of the Nazirite's special status. The Nazirite's head, and the hair on it, is consecrated (ראש נזרו), and the shaving off of the hair indicates the end of the Nazirite's sacred status."

134 Jacob Milgrom, *Numbers/*במדבר*: The Traditional Hebrew Text with the New JPS Translation* (Philadelphia: Jewish Publication Society, 1990) 355–6, compares the Nazirite to the High Priest, and the Nazirite's temporary dedication to God to that of the land in Lev 27:16.

135 Chepey, *Nazirites*, 3 states: "formulating any general characterization of the Nazirite in the biblical period is difficult." At 4 he proffers the example that a Nazirite model like Samson does not correspond to the rules in Num 6.

136 Susan Niditch, "Defining and Controlling Others Within: Hair, Identity, and the Nazirite Vow in a Second Temple Context," in *The "Other" in Second Temple Judaism: Essays in Honour of John J. Collins* (eds. Daniel C. Harlow et al.; Grand Rapids, MI: Eerdmans, 2011) at 72.

137 Ibid., at 75 she writes: "The long hair is linked to a temporary immersion into the sacred," and at 76: "One might also suggest that the hair is invested with holiness."

possession of their mental capacities, so the Nazirite, constantly dedicated to God, is prohibited to drink intoxicating liquids and derivatives all his life, or throughout the period of his dedication.[138] Although an extended study of this lemma is not within the scope of this book, I wish to draw readers' attention to its stylistic and textual problems, long ago observed by scholars: Samson's mother is admonished not to drink wine and not to cut Samson's hair (Judg 13:4–7), rules that utterly differ from the Nazirite rule in Numbers and from the angel's directives to Zechariah before John the Baptist's birth (Luke 1:15). Numbers indicates that a woman may also become a Nazirite, whereas from Amos 2:11 we observe that only males were Nazirites. One should therefore scrutinize its contents carefully, before using it to draw doctrinal or halakhic conclusions. It does, however, demonstrate clearly that the Nazirite's abstention from drinking wine is not associated with asceticism, nor is the prohibition to shave his hair. Asceticism would require, first and foremost, abstaining from sexual activity, but no such self-denial is mentioned in connection with Nazirites.[139] There is no criticism of Samson's marriage; his parents merely oppose his marrying a Philistine woman and try to convince him to seek a wife among his own people (Judg 14:3). However, his marriage with a Philistine woman is an element of the divine scheme (Judg 14:4). Hence, it is evident that Nazirites did not abstain from marriage.

Fraade posits, and I may partially agree, that "the practice of Nazirite vows, biblically prescribed in Num 6, was *widely* [italics added: this aspect I doubt] undertaken in Second Temple times for various durations," and that these vows were motivated by "penitence, divine favour and self-discipline,"[140] based

138 Diamond, "Israelite Self-Offering," 5, argues that the Nazirite who offers his hair as a symbolic offering of himself is both an offering and an officiant; he therefore underlines the prohibition on inebriating substances, which also applies to the priest. De Hemmer Gudme, "How Should We Read," 58, asserts that since "the priest and the Nazirite are considered holy to Yahweh . . . intoxication is incompatible with their holiness."

139 See Bar-Tuviah, *The Book of the Nazirites* (Hebrew; Warsaw: Publisher Safruth, 1910) 13–15.

140 Fraade, "Ascetical Aspects," 273. In all sources, indicated by Fraade in n. 77, Nazirites are indeed mentioned, but some sources relate to one person, another to four. *M. Nazir* 3:6 merely records a *halakhah* indicating how a person who accomplished many Nazirite periods outside of Jerusalem should act, after arriving there; that *halakhah*, however, does not indicate that many people acted likewise. In fact the *mishna* mentions just one similar odd case of one person. Only in *Ant*. XIX:294 does Josephus mention many Nazirites. His reliability in such cases of details is doubtful, particularly since in *Wars* II:313 he writes "it is customary for those suffering from illness or other affliction to make a vow to abstain from wine and to shave their heads during the thirty days preceding that on which they must offer sacrifices." His portrayal of Nazirites, without mentioning

on a narrative in *m. Nazir* 3:6, but I do not find in that narrative any hint of association with self-denial or the virtue of suffering.[141] However one interprets this passage and the others Fraade quotes, they do not constitute effective evidence for his thesis.[142] Moreover, as Fraade acknowledges, the rabbis were

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Nazirite terminology and their motive for making the vow, does not add support for his reliability on this topic. At any rate, even this sole source mentions divine favour, but no penitence, and definitely no self-discipline, Fraade's main claim. Niditch, "Defining and Controlling," 80–81 states that the "desire to partake in the expression of religious devotion offered by the Nazirite vow" was the motive of the newly rich, who could afford the expensive sacrifices. Nazirism would "project an aura of holiness . . . adding to their status in the community." Her portrayal of the Nazirite seems the opposite of Fraade's claim of an aspect of asceticism of Nazirism. She deliberates in depth upon the topic of hair in connection with Nazirism in *My Brother Esau is a Hairy Man: Hair and Identity in Ancient Israel* (New York: Oxford, 2008).

141 Fraade quotes a narrative from *t. Nazir* 4:7 about a young man whose piety and genuinely pious thoughts inspired him to make the Nazirite vow, to shave off the beautiful hair that might have provoked him to sin (the character of the potential sin is not indicated). His confession to the High Priest Simeon the Just (beginning of the Second Century BCE) convinces Simeon to eat from his offering at the end of his Nazirite period, whereas he was critical of the motivations of all other Nazirites, and refused to eat their offerings. This narrative raises many questions. Here, we are told that the young man decides to be a Nazirite in order to shave his beautiful hair. But to avoid being corrupted by it, he could simply have cut it off, without undertaking the entire Nazirite process in a way that does not correspond to the general objective of Nazirism, and which might lead him into an invalid offering, a prohibited deed—precisely Simeon's reason for not consuming the offerings of the other Nazirites. I would therefore hypothesize that the entire story was devised to demonstrate the failures of the Nazirite vows, with the consequential intimation to avoid them. At any rate, the narrative does not support Fraade's thesis of the Nazirite vows as a form of rabbinic asceticism. Diamond, "Israelite Self-Offering," 17, comments on this narrative that "the goal of the Nazirite is to offer himself to God."

142 *M. Nazir* 3:6 records a story about the Nazirite vow taken by Queen Helena to symbolize her thanks for her son's safe homecoming from war. Her Nazirite vow was not associated with penitence or self-discipline, as Fraade classifies the reasons for becoming Nazirite; it could be considered as thanks for received favours, but this motive is not included in Fraade's categorization of asceticism, and does not indicate suffering. I also doubt whether it can serve as evidence for Fraade's assertion that Nazirite vows were "widely undertaken in Second Temple times" (273). The dispute as to whether she was a Nazirite for fourteen years or for twenty years seems to me to show its imaginative character. Similarly doubtful is the narrative that tells of 300 Nazirites who came to Israel, whose requirement for so many sacrifices at the end of their Nazirite period provoked the rift between Simeon ben Shatah and King Yannaeus (Alexander Jannaeus), who married his sister (*y. Ber*. 7:2 (11b); *y. Nazir* 5:3 (54b); *B. Sanh*. 19a records an entirely different event as the cause of the rift). *1 Macc*. 3:47–51 records the mourning of the people and the priests,

against vows in general[143] and the Nazirite vows in particular.[144] Moreover, how can a biblical law disapproved by the rabbis be considered as included in the category of "ascetic tensions in rabbinic Judaism," as understood by Fraade? It could only be understood as a tension between the biblical rule, which cannot be abolished, and the rabbis' opposition to it, which we often encounter.[145]

I have examined the Nazirite question at length to demonstrate that regardless of the oddities of the relevant lemma, the Nazirite's abstention from intoxicating drinks—like the abstention of the priests before their service at the Temple—cannot be associated with asceticism. The Nazirite, however, had to abstain from drinking inebriating liquids and their derivatives throughout the period of his dedication to God, just as Moses abstained from sexual activity (*b. Šabb*. 87a).

A final argument against Fraade's thesis is that the narratives he cites relate to the period before the Temple's destruction. We may plausibly assume that the Nazirite practice disappeared after the cessation of the Temple offerings, an essential element of this ritual; the rabbis' deliberations about it, therefore, were theoretical, and do not attest the historical authenticity of what Fraade calls "ascetic tension in rabbinic Judaism."

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as we read in v. 51: the "sanctuary is trampled down and profaned, and thy priests mourn in humiliation." The motive of the Nazirites who were stirred up after the completion of their days is not indicated. The order of King Agrippa "that many of the Nazarites should have their heads shorn" (Josephus, *Ant*. XIX:294), according to the law, is vague and does not tell us why they originally took the vow. *War* II:313 gives us some more information about the events that drove people to make Nazirite vows, but does not associate the vows with suffering or self-denial. In none of these texts do we find any clarification of the motives that may have led people to become Nazirites, nor of what they expected to achieve by doing so; dedication to God, as I have argued, seems a more plausible hypothesis than what Fraade perceives as "suffering." The Nazirite vows of Paul and his four men (Acts 18:18, 21:23–24), similarly, acknowledges that Nazirite vows were practised at the time but gives us no indication of their motives.

143 We read in *m. Ned*. 1:1: "If one makes a vow to be a Nazirite, bringing an offering, or an oath not to do something, qualifying it as a vow made by the wicked, it is a valid vow [and he must accomplish it]; if he qualifies it as a vow made by the righteous, the vow is invalid, because righteous people do not make vows."

144 We read in *y. Nazir* 5:3 (54b) that Simeon ben Shatah (beginning of the First Century BCE) tried to annul the Nazirite vows of the people who came to Judah, demonstrating even then the opposition to the Nazirite vows.

145 See n. 92 of Chapter 5 p. 208.

7.6.4 *The Rabbinic Concept of Fasting*[146]

I have illustrated above the rabbis' positive attitude towards permitted pleasures (*b. Pesaḥ*. 109a); the rabbis were also averse to fasting or denying oneself permitted deeds and pleasures, even the enjoyment of drinking wine. We read in *b. Ta'an*. 11a that Samuel's dictum: "One who fasts is a sinner" is assumed to have come to this conclusion by rationalizing the pronouncement of Rabbi Eliezer Hakapar that the Nazir had to bring a sin offering at the completion of his Nazirite period (Num 6:11b) because he inflicted upon himself the suffering of abstinence from drinking wine, and that is a sin. Hence, reasoned Samuel, the one fasting, inflicting upon himself a greater suffering is *a fortiori* a sinner. Fraade quotes a similar dictum from *Sifre Num. piska* 30, without Samuel's assertion, but he rejects the significance of this *midrash*, which blatantly subverts his thesis: "To be sure," he writes, "Rabbi Ishmael rejects this exegesis, arguing that Scripture speaks only of the defiled Nazirite as a sinner. In my view, Rabbi Ishmael does not declare that the Nazirite, or one who fasts, is not a sinner; he merely disputes the *midrash* used by Rabbi Eliezer Hakapar, arguing that the sin in the verse is that of the Nazirite who polluted his hair. Rabbi Ishmael had a particular method of midrashic *halakhah*; he often disagreed with Rabbi Akiba's midrashic method, arguing that a certain *halakhah*, to which he in principle agrees, can be deduced by a simple midrashic method, אינו צריך without requiring Rabbi Akiba's complex midrashic method. Many articles have been written about this type of disagreements between the two rabbis.[147] Furthermore, Samuel did not associate his condemnation of the one who fasts with Rabbi Eliezer Hakapar's *midrash*; it was the redactor of the *Gemara* who made this connection. His dictum therefore stands on its own. In *b. Ta'an*., Samuel's dictum is followed by conflicting assertions, some praising the one who fasts (relying on biblical verses, appropriately interpreted), but the final acknowledged opinion affirms the condemnation of fasting."[148]

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146 Fraade, "Ascetical Aspects," 270, writes in support of his theory of a rabbinic asceticism that "[the Pharisees] were known for their fasting," but cites no evidence of this.

147 See Heger, *Challenges*, 88–101.

148 One assertion goes so far as to pronounce: "Said Rav Sheshet: a dog eats the meal of a fasting disciple." He mocked the student who fasted, saying that the dog ate his meal. Another one declares: "a scholar is not permitted to fast because it will cause him to lessen his work of heaven (studying Torah)." Simeon Lowy, "The Motivation of Fasting in Talmudic Literature," *JJS* 9 (1958): 23–24, states that "It would be wrong to assume that an ascetic tendency towards extensive fasting was prevalent. On the whole, Judaism was set against such extreme practices. From the very earliest times—even before the ascetic sects came into existence—down to the amoraic period such practices were generally discouraged. There were many limitations on fasting."

My arguments with respect to Scripture's attitude towards fasting apply equally to the rabbis' perspective on the motive for fasting. Fasting, like a guilt sacrifice, is a self-inflicted punishment aimed at avoiding a more severe punishment by God for sins one has committed.[149] Fraade mentions, but does not quote, the following narrative in *b. Ber*. 17a:[150] after the fast, Rabbi Sheshet pleaded: "when the Temple stood, the offering of the sacrifice's blood and fat upon the altar atoned for one's sin; now, let my fat and blood, diminished by my fast, be perceived as offered upon the altar and atone my sin."[151] This attitude towards fasting seems to me ideologically alien to the broadest view of asceticism. While some rabbinic dicta do seem to approve of fasting,[152] the overwhelming majority of rabbinic texts express opposition to excessive fasting. Suffering, as such, is not a virtue, but rather is reprobated; moderate fasting for atonement of sins, by those who can fast without too much pain, is the approved behaviour, whereas fasting with suffering is perceived as a sin;[153] this again shows the rabbis' aversion to suffering. Penitential fast days were habitually proclaimed as a means to pray for rain during droughts, which were perceived as punishments for the sins of the community. We read in *m. Ta'an*. 1:4: "When there was no rain at the seventeenth of MarHeshvan, the selected sages fast three days." If the drought persists more people at greater frequencies join the fasts. *M. Ta'an*. 1:7 and 2:1 elucidate the purpose of the fasts; the eldest preaches repentance for the evil deeds, for which they are chastisized by God, and exhorts pledging to behave properly in the future, the key act to attain divine forgiveness. He downgrades the significance of the fast and emphasizes repentance and redressing evil, reminding the congregation that God relented from destroying Nineveh because its people amended their wrongful behaviour, not because they fasted and put on sackcloths.[154] Although a dictum in *b. Ta'an*. 22b permits an individual to fast when in danger, Rabbi Jose prohibits this because it may debilitate him. A suitable *midrash* on Gen 2:7 is quoted as support: ויהי האדם לנפש חיה "and the man became a living being," meaning a command to "keep alive the soul I have given you."

149 Urbach, *The World*, 446 (55), writes that the fast days practised by the *perushim* were both a way of mourning the Temple's destruction and a substitute for the guilt and sin offerings.

150 Fraade, "Ascetical Aspects," 275.

151 We encounter a similar utterance in *Psalms of Solomon* 3:8.

152 We read in *b. Ta'an*. 11a–b a rhetorical debate on whether Rabbi Eliezer considers fasting a virtue or an evil, since two contrasting statements on this point are recorded in his name.

153 See *b. Ta'an*. 11a–b.

154 The purpose of the rabbinically instituted process for bringing rain follows Lev 26:19 and Deut 28:23.

Thus the fast, like the guilt offering, should atone for the people's sins—in this case, to lead them to repentance, and thus bring about the return of the rain. Rabbi Judah the Prince voluntarily accepted the affliction of disease as punishment for not showing compassion to a calf on its way to slaughter, which sought safety in his garment; after showing compassion by saving the life of a weasel, he was healed (*b. B. Meṣi'a* 85a): a sin brings suffering, which atones for it, or a good deed repeals it.[155] This is the rabbinic theology: afflictions are punishment for sins,[156] and conversely fulfilling God's commands averts them (Exod 15:26). There is no perception that one becomes holier by abstaining from permitted deeds;[157] rather, catastrophic events raise the consciousness of punishment for sins and encourage the process of redemption by fasting and prayer.[158] This process has no kinship with asceticism.

I conclude this discussion with a passage from *m. Ta'an*. 3:9 (paraphrased): If the fast for rain started before dawn, and the rain started before dawn, one did not continue the fast, since the fast for rain starts legally only at dawn, hence

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155 We read there that Rabbi said in that connection: יסורין חביבין "suffering is dear/favourable," because it atones for sins. We encounter in *b. Ber*. 5a the concept of "suffering of love," understood to mean that because of God's love, a person who has unconsciously sinned is punished in this world is to become clean and fully enjoy the other world. Prov 3:12, quoted in support, substantiates it.

156 Miriam is afflicted with leprosy as punishment for her wickedness (Num 12:10–15).

157 Fraade, "Ascetical Aspects," 260. There were rabbis who consciously took upon themselves suffering for the glorification of the faith—for example, it is recorded that Rabbi Akiba provoked punishment from the Roman authorities by publicly flouting their decree not to teach the Torah—but others opposed this approach, and attempted to conceal their prohibited activities in order to stay alive. Such suffering, however, has no affinity with asceticism. It was not the suffering itself that glorified the faith, but Rabbi Akiba's commitment to offer his life for it; his suffering was secondary, only constituting the means by which he demonstrated that commitment. Even so, the rabbis disputed the point, and the overwhelming majority were against provoking martyrdom. *B. Sanh*. 74a asserts the *halakhah* that a person may, and should, transgress any prohibition in order to save his life, except the three interdictions against idolatry, murder and forbidden sexual relations. This rule is further modified, qualifying that the duty of martyrdom for avoiding idolatry is valid only if associated with the public defamation of the divine name, otherwise one should commit the idolatry and stay alive. This radical rule demonstrates the rabbis' valuation of life and their aversion to suffering. The radical Rabbi Akiba also promoted the Bar Kochba rebellion, which the majority of the rabbis opposed (*Lam. Rab*. *parsha* 2). It is therefore plausible that his provocative action was driven by his intense opposition to the Roman occupation, rather than by his zeal for martyrdom.

158 Urbach, *The World*, 449 (60), states that according to rabbinic doctrine, afflictions of an individual or nation are perceived to be the consequence of some sin.

it was not started. If the rain started after dawn, the fast continued, since a fast once started must be completed. A story is recorded of a fast for rain proclaimed in Lydda before midnight, but the rain started before midnight; the fast was annulled and Rabbi Tarfon declared it a day of merriment with food and drink and praise of God.

We observe in these passages the authoritative rabbinic view on the objective of fasts and their futility if not undertaken for a defined purpose, such as averting drought, persecution, or a personal calamity such as illness by atoning for the sins that caused them. In the narrative of the events at Lydda, the revered Rabbi Tarfon decrees that one should thank God for redemption and relief by making merry and enjoying food and drink; asceticism has no place in such a theological environment.

Finally, I agree with Fraade that there is a tension in the rabbinic literature between the motivation to study Torah and other obligations or abstention from permitted deeds; however, I perceive this tension as similar to that experienced by the person who renounces the joys of family life and other pleasures, and often social obligations as well, in order to achieve success in a demanding career; in neither case is asceticism relevant. Moreover, since studying Torah is perceived to generate great joy, it is prohibited on days of mourning and on the fast of the ninth of Ab;[159] hence, forsaking other pleasures to study Torah cannot be classified as an ascetic practice. In reality, then, it is a matter of choice whether to grant priority to one's passion for studying Torah or for marrying and having children. The rabbis criticize those who abstain from marrying and having children to facilitate intense and uninterrupted Torah study; they believe that one must rather grant priority to the divine decree to procreate. In *b. Yeb*. 63b, the Tanna Ben Azzai, who did not marry because of his passion for Torah study, is told: "you interpret [the Torah] well, but you don't accomplish [its precepts] well by not marrying." This explicit dictum stands in stark opposition to St Paul's advice not to marry because a married man must consider his wife and children, and thus cannot dedicate himself totally to the service of God; therefore it is advisable, if one can, to do as he did and not marry (1 Cor 7:32–35). On this topic the Christian and Jewish theologies are opposed, and they likewise differ on the topic of asceticism.

Fraade's inference that scholars—both those who find ascetic aspects in rabbinic Judaism and those who reject this hypothesis—approach the topic with opposing preconceptions concurs with my perspective on this issue. Because of these preconceptions, they interpret the same rabbinic passages differently. Fraade, based on his knowledge and study of rabbinic literature

159 See p. 271.

and on his apparent privileging of the Greek historical writings which claim that the Essenes/Qumran practised asceticism over the genuine Qumran texts which indicate that they did not,[160] argues that ascetic aspects exist in these texts. In contrast, my study of the same sources and my reflection on how scriptural attitudes with respect to this topic might have influenced the rabbis lead me to the opposite conclusion: that they strongly disapproved of asceticism. The reader must decide, on the basis of the arguments presented, which theory seems more plausible; there is no single truth, particularly with respect to the interpretation of ancient texts.

7.7 Asceticism in the Qumran Texts

7.7.1 *Preliminary Considerations*

The portrayal of the Essene lifestyle by Greek historians such as Pliny the Elder, Philo, and Josephus, and the absence of any other ancient documentation on this group, led the scholarly community to adopt their description of the Essenes' theology, organization, and way of life. As is well known, these historians, writing for a Hellenistic public, intended to present the Essenes as an exalted community adhering to the highest standards, according to the expectations of their Hellenistic readers. They therefore depicted the Essenes as a Jewish brand of Pythagoreans, cultivating ascetic observances, maximum physical endurance and self-restraint, and thus had to portray them as disdaining women and marriage, living celibate lives. It is no wonder that, until the discovery of the Qumran Library, scholars were so profoundly influenced by these writings in their opinions about the Essenes. While the genuine writings discovered have a great deal in common with the Greek historians' descriptions of the Essenes, they also display significant features that utterly contradict them. Most contemporary scholars nevertheless assume that the Essenes and the Qumran group are one and the same. For the purposes of this discussion, I make the same assumption, and investigate the contradictions between the Greek historians' portrayals and the Qumran writings on the specific issue of Essene/Qumran attitudes towards women, marriage, and sexual life. Scholars such as Stegemann, Schiffman, Wegner, Grossman, and Qimron have

160 See below on the issue of Fraade's approach to Essene asceticism. It is reasonable to assume that if asceticism were practised in Israel by the Essenes, as Fraade contends, it might consequently have been adopted by other segments of society, gaining some influence over some pharisaic and rabbinic groups. Such an attitude may have been Fraade's basis for his primary assumption of asceticism in Israel.

shifted their perspectives on this issue.[161] Some have attempted to reconcile the conflicting texts; some, like Stegemann and myself,[162] discard altogether the authenticity of the Greek historians' portrayal of the Essenes; and some, like Regev,[163] argue that the Essenes cannot be identified with the keepers of the Qumran Library.

I have discussed elsewhere the internal and external contradictions in the Greek historians' portrayal of the Essenes' attitude towards women and sexual activity, and have therefore proposed that their assertions on this subject be disregarded,[164] since there is no hint of such an attitude in the Qumran writings: they were not celibate, and had no moral aversion to legitimate sex. I can therefore limit myself to discussing Fraade's opinions and my own on the topic of whether or not an ascetic community existed at Qumran.

7.7.2 *Fraade's Thesis*: *An Ascetic Community in Qumran?*

Fraade describes the Essenes as "a Jewish group rooted in the Hebrew Bible and committed to the fulfillment of its precepts . . . which incorporated many ascetic practices into its *communal* way of life,"[165] but, with one exception, which I discuss later in the chapter,[166] quotes no Qumran texts supporting his thesis. Although he admits that "the Dead Sea Scrolls do not fully agree with the reports of the ancient [Greek] observers in that they seem to assume the

161 Hartmut Stegemann, "The Qumran Essenes," in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March 1991* (ed. Julio Trebolle Barrera and Luis Vegas Montaner; Leiden: Brill, 1992), vol. 1, 83–166 at 131; Lawrence H. Schiffman, *Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the Lost Library of Qumran* (Philadelphia: JPS, 1994) 129; Judith Romney Wegner, "Philo's Portrayal of Women—Hebraic or Hellenic?" in *"Women Like This": New Perspectives of Jewish Women in the Greco-Roman World* (ed. Amy-Jill Levine; Atlanta, GA: Scholars Press, 1991) 41–66; Maxine Grossman, "Women and Men in the Rule of Congregation: A Feminist Critical Assessment," in *Rediscovering The Dead Sea Scrolls: An Assessment of Old and New Approaches and Methods* (ed. Maxine Grossman; Grand Rapids, MI: Eerdmans, 2010) 229–45 at 230; Elisha Qimron, "Celibacy in the Dead Sea Scrolls and the Two Kinds of Sectarians," in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18–21 March 1991* (ed. Julio Trebolle Barrera and Luis Vegas Montaner; Leiden: Brill, 1992) 287–94 at 293.

162 Heger, "Celibacy" at 73.

163 Eyal Regev, "*Cherchez les femmes*: Were the *Yaḥad* Celibates?" *DSD* 15 (2008): 253–84 at 282–4.

164 Heger, "Celibacy," 73.

165 Fraade, "Ascetical Aspects," 266 (original emphasis).

166 At p. 297.

existence of women and marriage within the order,"[167] he nevertheless seems to rely implicitly on the authenticity of the Hellenistic descriptions. His choice of words suggests such a preconception; the clear documentation in the Qumran writings of the presence of women in the group, which flatly contradicts Philo's and Pliny's accounts, is described hesitantly by Fraade, who says that these documents "do not fully agree with the reports of the ancient [Greek] observers" and that "they *seem to assume* the existence of women";[168] by contrast, as quoted above, he states categorically that the group "incorporated many ascetic practices."[169] Moreover, Fraade seems to ignore the many internal contradictions in the Greek historians' descriptions, as well as their discrepancies with what we know of the Qumran group via their genuine writings.[170]

Fraade quotes from the books of Maccabees and from the writings of Josephus to support his above-quoted assertion. The passages he quotes from *2 Macc*. 15:4 and *4 Macc*. 12:11 and 13:22 use the Greek ἀσκέω "train/practise" and its derivatives, which have no association with asceticism, self-denial, or suffering of any kind. Moreover, as Fraade acknowledges, all quotations from *2* and *4 Macc*. refer to the practice of Torah precepts such as observance of the Sabbath, of righteousness, and of God's law.[171] The common translations of the relevant texts essentially concur with Fraade's assertion:

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167 Fraade, "Ascetical Aspects", 268.

168 Ibid. (emphasis added).

169 Ibid., 266. It is plausible that in 1986, when Fraade's article was published, the scholarly world was less convinced than today that the Hellenistic historians' portrayal of the Essenes on this issue is unreliable.

170 See Heger, "Celibacy," 62 and 71. Lawrence H. Schiffman, "Laws Pertaining to Women in the Temple Scroll," in *The Dead Sea Scrolls: Forty Years of Research* (ed. Devorah Dimant and Uriel Rappaport; Leiden: Brill, 1992) 209–28, at 228 concludes his study by stating, "There is no hint there [in the Temple Scroll] of any ascetic or celibate tendencies." William Loader, *The Dead Sea Scrolls on Sexuality: Attitudes towards Sexuality in Sectarian and Related Literature at Qumran* (Grand Rapids, MI: Eerdmans, 2009) 139, states that Josephus' allegation that denial of pleasure is the basis of the prohibition on sex with a pregnant woman "is not at all evident here [in the Qumran text]."

171 The accomplishment of these divine laws are equally obligating all Israelites. I dispute Louise Lawrence's assertion in "Men of Perfect Holiness (1QS 7.20): Social-Scientific Thoughts on Group Identity, Asceticism and Ethical Development in the Rule of the Community," in *New Directions in Qumran Studies, Proceedings of the Bristol; Colloquium on the Dead Sea Scroll, 8–10 September 2003* (Eds. Jonathan G. Campbell, et al.; London: T & T Clark International, 2005) 83–100 at 88 that the participants in the group [of the Rule of the Community], not least through the categorization of the covenant, holiness and perfection are presented as a spiritual elect—called to develop a higher ethos." All Israelites are obligated to perform the divine rues and decrees in the most perfect way,

> And when they declared, "It is the living LORD himself, the Sovereign in heaven, who ordered us to *observe* the seventh day . . ." (*2 Macc*. 15:4)
>
> He said, "You profane tyrant, most impious of all the wicked, since you have received good things and also your kingdom from God, were you not ashamed to murder his servants and torture on the wheel those who *practise* religion?" (*4 Macc*. 12:11)
>
> And they grow stronger from this common nurture and daily companionship, and from both general education and our *discipline* in the law of God. (*4 Macc*. 13:22)

I have italicized the translations of ἀσκέω and its grammatical derivatives.

Similarly, Fraade's quotations from *Ant*. and *J.W*. relate to the Torah or to training. In *Ant*. 20:265, τὴν ἄσκησιν is translated as "teaching," referring to knowledge of the law, the Torah; in context, it refers to τὰ νόμιμα "the laws" in 20:264. In *J.W*. II:150, ἀσκήσεως is translated "according to the duration of their discipline," that is, their training. In none of these cases do we see any association with any current understanding of the term "ascetic." Their constant

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as we observe in the requirements to be in the *Yahad* (1QS: 8, 13–14 and 16). The others, who do not correctly follow the divine rules, will be utterly destroyed (1QS IV:13–14). Qumran does not acknowledge neutral Israelites. Their group performs correctly the divine laws, as is mandatory for all Israelites, and their opponents fail to do it; they are not called to develop a higher ethos, as Lawrence alleges. In fact, Lawrence at 89 states that "the community saw itself as the true Israel, with its behaviour constituting an explicit antidote to the iniquities of the children of Israel." Hence, they correctly comply with the requirements of the true Israel, and nothing more. Living differently from their Israelite sinners is their goal, not asceticism, as Lawrence states at 91. As it seems to me, her preconception at 84 of an affinity between Qumran and early Christian monastic communities induced her presumption that Qumran practised asceticism. She has overlooked the crucial theological and practical differences between the two ancient movements. For example, a comparison at 95, n. 46 between Judaea and Sherpa Nepal, motivated her assertion that both movements espoused a religious ideology of "egalitarianism." I do not perceive an "egalitarianism" in Qumran; on the contrary, we observe in CD XIV: 13–14 that the Overseer collected money from the members for assisting "the poor and needy and the sickly elder." The common management of the wealth does not indicate "egalitarianism"; its motivation was the negative approach to accumulated wealth, as I discuss at length in Chapter 5. Murphy, *Wealth in the Dead Sea Scrolls*, writes that the inception and function of the communal wealth constituted "a material symbol of individual commitment and communal identity" (155), and "of separation from outsiders or transgressors" (157).

enedeavour to fulfill correctly the Torah's precepts and to exercise self-control, turning away thoughts caused by the sinful urge and lecherous eyes (CD II:15–16), as practised by the members of the Qumran community (an obligation imposed on all Israelites, and the foundation of Jewish theology), does not constitute ascetic behaviour.

It is odd, moreover, that Fraade quotes Josephus' statements about the Essenes without doubting his reliability. The three verses describing the Essenes in *J. W.* 2:150–53, which Fraade mentions, consist of fictitious assertions that bear no resemblance to the real circumstances and are not supported in the Qumran texts or in external historical writings.[172] As I have suggested elsewhere,[173] the Greek historians' writings on this topic should be discarded altogether after the discovery of the Qumran writings, if we perceive the Qumran community and the Essenes to be one and the same; or else, as Eyal Regev suggests, this latter opinion should be discarded, rendering the Greek historians' descriptions irrelevant in any case.[174]

The rule in 11Q19 (11QTemple[a]) 45:7–17 that a man who has had a nocturnal emission may not enter the Temple for three days (vv. 7–10), but a man who has had sexual intercourse with his wife with an emission of semen may not even enter Jerusalem for three days (vv. 11–14)—more stringent than the biblical rule decreeing that each of these cases results in one day's pollution (Lev 15:16–18)—does not indicate any particular aversion to sexual acts. The extended cleansing period is due to the greater holiness of Jerusalem and the Temple, not to the greater severity of the pollution or the iniquity of sexual intercourse. Lev 15:16–18 does not clarify the state or the degree of purity that one attains the next day; Deut 23:11 specifies that after a bath, the man may enter the מחנה "the camp" after sundown. Since Qumran accords a higher degree of holiness to the Temple than to Jerusalem, as we see in 4Q394 3–10 (4QMMT[a]) II (3–7ii):16–18, a strictly logical approach would suggest that for someone entering the Temple, more than one day's abstention should be required.[175] The requirement of three clean days before participating in the Sinai revelation indicates the extent and practical application of this rule for

172 See Heger, "Celibacy" 55–63 for an extensive scrutiny of Josephus' and the Greek historians' relevant texts on the Essenes, and their dubious authenticity.

173 Ibid., 73.

174 Regev, "*Cherchez les femmes*," 282–84.

175 De Hemmer Gudme, "How Should We Read," 74, states that "[t]he different grades of holiness are indicated and underlined by means of ritual. Ritual delimits the rules of access to the sanctuary and contact with sancta."

entering the Temple.[176] The difference in holiness between the "camp" outside Jerusalem and the "camp" of Jerusalem is evident from 11Q19 (11QTemple[a]) XLV:7–15, and justifies a more extended cleansing period of three days after sexual intercourse for entering Jerusalem, the city of the Temple, than for the cities or "camps" outside it. The holiness of Jerusalem is additionally and explicitly emphasized in vv. 14–15: "And you shall not purify a city of your cities to (the degree of) my city."

Atoning for sins by suffering punishment, as described in 1QS VIII:3–4 (which Fraade quotes), is a cornerstone of Jewish theology and not a sign of asceticism, as I argued above in the rabbinic context.[177] On the Day of Atonement, the self-inflicted punishment of fasting, fulfilling the decree "afflict your souls" (Lev 16:29), atones for the people's sins.[178] The suffering of the individual or the people, as a punishment for sins, atones for those sins; it does not constitute a form of asceticism. Deut 30:2–3 declares that the Israelites, repentant after suffering punishment for their sins, will be forgiven and redeemed. In fact, the members of the Qumran community did not even impose afflictions on themselves (a precondition of any kind of asceticism); as written in 1QS VIII:3–4,[179] their afflictions were imposed on them by their opponents. Thus, this lemma could not in any case substantiate Fraade's thesis of asceticism in Qumran.[180] The term צום "fast" in Qumranic literature (both sectarian and non-sectarian) is associated with the Day of Atonement, as in 1QpHab XI:8 and in 4Q513

176 Joseph M. Baumgarten, "Purification after Childbirth and the Sacred Garden in 4Q265 and Jubilees," in *New Qumran Texts and Studies, Proceedings of the First Meeting of the International Organization for Qumran Studies, Paris 1992* (eds. George J. Brooke with Florentíno García Martínez; Leiden: Brill, 1994) 3–10, at 6–7 states that the "Qumran exegetes attributed sanctity to the entire garden (of Eden)," like the author of *Jub*. who postponed the entrance of Adam and Eve to the Garden, because he "held it incongruous for the consummation of their union to take place in the sacred precincts of the Garden." Similarly, sexual relations are prohibited in the City of the Sanctuary.

177 Hacham, "Communal Fasts," 140–1, alleges that the Qumran community, being "disassociated" from the Temple rites, created "substitutes" to replace the atonement sacrifices. They regarded fasting "as a physical act that constituted a means for addressing God and catalyzing the corrections of actions."

178 Ibid., 143: "It was likely that fasts and sacrifices were considered to belong to the same system of religious ritual, either practised together or one replacing the other."

179 We read there: "atoning for sin by working justice and suffering affliction. They are to walk with all by the standard of truth."

180 Frank Moore Cross, *The Ancient Library of Qumran* (3rd revised and extended edition; Sheffield: Sheffield Academic Press, 1995) 70, referring to their going into the desert "imitating the ancient desert sojourn of Mosaic times," concludes: "They are priestly apocalyptists, not true ascetics."

(4Q Ordin[b]) frgs. 5 and 6; 4Q266 (4QD[a]) XI:5 and its parallel 4Q270 (4QD[e]) are associated with repentance and atonement for sins, and fasting is compared to the sin and guilt offerings brought by individuals to atone for sins committed (Lev 4–5).[181] The fast is not decreed for the purpose of attaining spiritual perfection in the future but, rather, is a self-inflicted punishment for prior sins.[182]

We also find expressions of joy, in its various philological forms, in the Qumran writings—a feature incompatible with the concept of asceticism. For example, in 11Q5 (11QPs[a]) XIX:17, in 11Q5 (11QPs[a]) XXII:4 and in 11Q5 (11QPs[a]) XXII:4.

Finally, we should consider that the Qumran community meticulously followed the biblical text, which asserts that God implanted sexual desire in woman (Gen 3:16). Extirpating this desire would therefore be against the divine order; and, indeed, 4Q416 (4QInstr[b]) uses this biblical assertion to justify the husband's authority to annul his wife's vows. The absence of any hint, in both sectarian and non-sectarian writings from Qumran, against enjoying sexual intercourse supports our theory that Qumran scholars had no aversion to enjoying the pleasures of legally permitted sexual activity.[183]

7.8 Conclusion

In conclusion, I wish to reiterate that in Jewish law and theology, intent is of great significance and establishes the character of the deed performed. For example, Scripture does not command capital punishment for an unintentional killing. Num 35:16–25 discerns between a murderer, one who kills intentionally

181 Hacham, "Communal Fasts," 137–8, asserts that there were no public fasts in the Qumran community. At 128–37, he demonstrates that most occurrences of the word "fast" in the Qumran writings relate to the Day of Atonement. Referring to 4Q266 (4QD[a]) XI:1–5, in which צום "fast" appears, he affirms that it relates to individuals, and, following J. Baumgarten, states: "This source, which is concerned with punitive measures, indicates that the sect members regarded their system of punishment as an alternative to sacrifices offered for sins." He therefore affirms (at 139): "Thus, except for Yom Kippur, there are no public fasts in the scrolls."

182 We observe that Qumran does not criticize bountiful eating, as we read in 4Q370 (4QAdmonFlood) I:1: God promises plentiful food to those who obey his rules, and this leads them to bless God—an extremely positive approach to food and its consumption that concurs with Ps 100:2's injunction to worship God joyfully, quoted above. Conversely, we read in 4Q271 (4QD[f]) 4ii:14: "Let no man sanctify the fo[od of his mouth unto God."

183 See Heger, "Celibacy" 86–7 the interpretation of 4Q270 (4QD[e]) 2ii:15–16 about sex with a pregnant woman.

out of hatred or enmity towards a person, who shall be put to death; and a killer who was not his victim's enemy and did not seek to do harm, in which case the congregation shall rescue him from the hand of the avenger of blood, even if he was guilty of negligence, and decrees the institution of cities of refuge for such situations. This ruling, which grants priority to the intent behind the deed, is a specific Israelite principle that differs from the rules and laws of the surrounding cultures. The Hammurabi Code, from which the Israelite laws are assumed to have absorbed some rules, is very different in this respect: for example, §229 decrees that "if a builder constructs a house for a man but does not make his work sound, and the house that he constructs collapses and causes the death of the householder, that builder shall be killed"; §218 decrees that if a physician performs major surgery on a member of the aristocracy and causes death or blindness in an eye, his hand shall be cut off.[184] In neither case did the "offender" hate his "victim," and each presumably had the best intentions to avoid the calamities that occurred—yet both are severely punished.

The rabbis went a step further by refining the biblical rule to emphasize the importance of intent. We read in *m. Sanh*. 9:2 (paraphrased): If one intended to strike someone on the hip, which could not cause death, but missed, and hit his heart and caused death, he is not guilty of murder. Rabbi Simeon says; "even if he intended to kill one person, but killed another he is not guilty [of murder]." This pronouncement was established as the final *halakhah*. On the same principle, intent determines whether or not an act is perceived as a transgression of the Sabbath. We read in *m. Šabb*. 2:5: "The one who extinguishes the candle because he is afraid of idolaters (enemies), robbers, or a bad spirit (of a sick person when the candle burns) (or, in a different version, 'because [it disturbs] a sleeping sick person'), he is not guilty, but if [he extinguished it] because he [intended] to save the candle or the [lamp] oil or the wick, he is guilty [of transgressing the prohibition to light or extinguish a fire/light on Sabbath]." The same consideration should be granted to intent in the case of fasting: if it is undertaken as a self-inflicted punishment for sins, it cannot be considered an ascetic act of any kind, whereas if it is undertaken in order to reach spiritual perfection by abstaining from permitted deeds or pleasures, it is considered a kind of asceticism.[185] The fasts described in the scriptural,

184 The Mesopotamian rules are from Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (2nd Ed.; Atlanta, GA: Scholars Press, 1997).

185 Urbach, *The World*, 457 (68), discerns between abstention from something as a procedure and doing so as a goal in itself; the first is not asceticism, whereas the second—practised by the early eremites in the deserts of Egypt and Syria, who evaluated its significance

rabbinic, and Qumran writings are of the first type, and thus have little, if any, association with asceticism.

Further, Judaism, as documented in all three corpora, does not perceive a constant struggle between the body and soul, between matter and spirit; the good and bad inclinations or impulses come from the same spiritual source. In Scripture, the לב "heart" is seen as the seat of human emotions and passions and the source of inspiration for good or bad behaviour:[186] in Exod 25:2, לב relates to good inclinations, and in Exod 28:3 to intelligence and talent; in Num 32:9 and Deut 29:18, to bad inclinations; and in Num 24:13, to both. Among the Qumran writings, we read in 1QS IV:16: "God has appointed these spirits (the good and the wicked) as equals," and in 1QS III:17–19: "He created humankind to rule over the world, appointing for them two spirits in which to walk until the time ordained for His visitation. These are the spirits of truth and falsehood." The rabbis similarly refer to two equal impulses, called יצר, probably because of the biblical association of לב and יצר in Gen 8:21.[187]

Thus, there is no theological constraint to subdue the body through suffering or abstention, since the struggle is between the two spirits, not between desires of body/matter and desires of spirit. Newsom writes that "rabbinic thought reifies the יצר, making it a part of the moral faculties of the person."[188] I differ, however, with her further clarification: "In choosing for God, however, one is choosing against one's natural self and its desire"—that is, there is only one evil impulse in humans, who can only decide "not to follow it," as Abraham did.[189] Such a view would conflict with the Qumranic Two Spirits Discourse (1QS III:17–19), which clearly relates to two spirits, and the rabbinic theory of two inclinations, discussed above[190] and explicitly emphasized in *b. Ber*. 61a.[191] I believe that CD II:14–17 expresses the same theory of two impulses; the lemma is built on parallels of good and evil, and human wisdom can choose which impulse to follow: "living perfectly in all His ways or turning away through thoughts caused by the sinful urge and lecherous eyes." The author specifies

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in relation to the severity of its adversity to human nature—definitely qualifies as asceticism.

186 On this topic see Heger, *Challenges*, 303–5.

187 1QS IV:2–5 also uses the biblical לב and יצר along with the Qumran texts' usual רוחות "spirits."

188 Carol A. Newsom, "Models of the Moral Self: Hebrew Bible and Second Temple Judaism," *SBL* 131, 1 (2012): 5–25 at 16.

189 Ibid., 17. Newsom's approach is similar to Boyarin's, discussed above.

190 See pp. 268–270.

191 We read there: "The Holy One, blessed be He, created two impulses, one good impulse and one bad impulse."

the character of the evil impulses—"sinful urge and lecherous eyes"—hence there are equally good impulses embedded in human nature, leading humans to choose what pleases God, namely living perfectly in all His ways—or, in modern parlance, doing what is morally correct. It does not seem plausible that Qumran and rabbinic scholars believed that God gave humans only evil impulses. However we understand human beings' decision to follow their desire or their reason—in obedience to ethical rules, by abiding by the divine commands, or in accordance with other logical or moral considerations to contain one's natural desires—this choice has no association with asceticism.

The common thread running through the biblical, Qumranic, and rabbinic corpora is this notion that what God has created is good, and that to abstain from enjoying pleasures created and permitted by God, in a quest for some imagined higher spiritual perfection, formed no part of Jewish law and philosophy in the ancient world. Some exceptional rabbinic dicta that may suggest an opposing view represent an integral attribute of the rabbinic system, which allows conflicting viewpoints and interpretations of Scriptural texts, but does not affirm their practical applications in Israel.

CHAPTER 8

Genealogy and Holiness of Seed in Second Temple Judaism: Facts or Creative Supposition?

8.1 Introduction

Cecilia Wassen states that "Second Temple Judaism was highly concerned with genealogical purity"[1] concerning wives' racial origins, deducing this from the forbidden marriages in 4Q269 (4QD[d]) 9:2–4 and 4Q397 (4QMMT[d]) II:12–14, associated in these texts with the rule against כלאים *kil'ayim* (mixture). To begin with, I do not perceive such a concern over "genealogical purity" with respect to laics, and although Wassen adds that "priests, more than others, had to be careful with regard to the lineage of their spouses," she does not quote any support in her argument that the "high concern" related also to laic Jews.[2] Further, Wassen's association of these rules with "genealogical purity" is inappropriate, as I shall argue. Indeed, the association of "improper marital matching" with *kil'ayim* seemed odd to Wassen too,[3] since she qualified her assumption as a "metaphoric use," but did not attempt to resolve this oddity by discussing the authors' motives for such an association, despite the fact that two different authors of two distinct writings in distinct circumstances indicate the same seemingly odd motive.

The primary purpose of this chapter is to argue against the notion, proposed by some scholars, that Second Temple Judaism, including the Qumran community, extended the existing priestly marriage restrictions to laics; they claim that this modification was indeed established by Ezra's intermarriage prohibition, which they argue was founded on an innovative concept of preserving the Israelite holy seed from intermixing with profane seed, which defiles it.

I shall argue that such a concept was not in the mindset of the Israelite community in all its aspects, and did not induce Ezra's prohibition. I shall contest the evidence cited by these scholars, and propose a different interpretation of the writings of Ezra and Nehemiah on the issue of intermarriage, demonstrating that their concern for the survival of the Israelite people with its particular

1 Wassen, *Women*, 76–78.

2 For an extended discussion of these marriage restrictions, regarding their character of holiness, see pp. 308–310.

3 Wassen, *Women*, 76.

culture among the idolatrous nations surrounding and threatening to overwhelm it induced them to promulgate the intermarriage prohibition. Wassen's *kil'ayim* rebus will also be resolved.

8.2 Genealogical Purity or Cultural Survival?

8.2.1 *The Nature of Restrictions on Marriage in Second Temple Judaism*

Before disputing Wassen's thesis and presenting my own interpretation of the above Qumran writings, I wish to clarify the connotation of the different biblical terms used in connection with the admixture of different elements. In the first instance, I would assert that the concept of "genealogical purity" is not an ancient Israelite principle, and we do not encounter it in Scripture, Qumranic or rabbinic literatures; race is, in my opinion, a modern concept, alien to Israelite history and culture. The marriage restrictions for priests have no association with genealogy; they are imposed on them "because they offer up the food of your God" (Lev 21:8), the same motive for which they are prohibited from shaving their heads, from being polluted by coming in contact with a corpse, and from marrying a divorcée, as decreed in Lev 21:7, circumstances that have nothing in common with a holy genealogy.[4]

Additional restrictions are imposed on the marriage of the High Priest, "for the consecration of the anointing oil of his God is on him" (Lev 21:12). Moreover, the offspring of his prohibited marriage are defiled (v. 15); this consequence introduces a principle that some prohibited marriages have a detrimental effect on their offspring. This generational aftermath, however, has no association with "genealogical purity"; the same effect of polluting his son and debarring him from serving as a priest would occur if the High Priest were

4 The requirement that the priests must be Aaronite was not originally perceived as due to an inherent holiness of this lineage. As Num 18:8–24 emphasizes, God has not granted land to the Aaronites and Levites at its distribution to the other tribes; instead he has given them and their descendants the various tithes and offerings to God, "an everlasting covenant" to "their sons and daughters." They became holy by their function, presenting the offerings to the Lord, and that role imposed on them various restrictions, enumerated in Lev 21. Therefore, only Aaron's descendants could be priests enjoying these privileges, much like the dictum that an Israelite had to be the descendant of a particular tribe to have the right to receive his heritage land, given to the tribe; we see at the Zelophehad narrative in Num 27 and 36 that inheritance cannot pass from one tribe to another. The same principle is applied in the priest's case: he must be the descendants of Aaron in order to enjoy the privileges given to him and his descendants. A priest with blemishes could not serve at the Temple, although he was of Aaronite strain; he could, however, eat holy food, since he has not inherited land.

to marry a widowed or divorced daughter of a priest, hence a genealogically pure woman. The High Priest must marry a virgin; marriage with any woman who does not fulfill this requirement is forbidden, and would defile their offspring. Moreover, as I shall demonstrate, the race of the woman has no effect on the race/ethnicity of the offspring, which is established exclusively by the father. Ezra invalidated the priestly status and privileges of some returnees, because they could not prove their fathers' ancestry[5] from Aaron in the "genealogical record of those who have been the first to return," found by Nehemiah (Ezra 2:62; Neh 7:5 and 64).[6] The same applied to other families, who could not find their records of their fathers, as we read in the antecedent verses Ezra 2:59–60 and Neh 7:61–62: "but they could not tell בית אבתם וזרעם their fathers' houses, and their seed, whether they were of Israel." In both cases the issue was whether they were descendants of priests or Israelite fathers,[7] not the ethnicity of their mothers; whether their male ancestors married aliens or prohibited Israelite women was not at question,[8] and the origin of their mothers was not the determinant factor that established their ethnic identity. At that time, as throughout the entire biblical period, the offspring's identity depended on the father, the source of the Israelite seed.[9] Hence, children born to a foreign woman and an Israelite man were legally of Jewish ethnicity.

The offspring of a sinful, prohibited marriage of two "racially pure" Israelites is a *mamzer*,[10] eternally defiled from entering the assembly of the Lord, as is the "racially pure" emasculated man (Deut 23:2–3). The prohibition of the

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5 They were called the sons of Barzillai, the name of their ancestor mother, because their ancestor father was unknown.

6 *M. Yeb*. 4:13 confirms the existence of such records.

7 All the censuses of the Israelites, starting with that recorded in Num 1:2, mention exclusively men. See more about this topic in Chapter 5, pp. 182–184.

8 We read in *m. Qidd*. 4:1 (paraphrased): Ten genealogical categories immigrated [to Judah] with Ezra from Babylon. There follows a list of the permitted and prohibited intermarriages among them: Levites, Israelites, defiled, converts and free slaves may intermarry; only priests are restricted and may solely marry Levites and Israelites.

9 Lev 24:10 confirms explicitly that the son's ethnic identity is established by his father's ethnicity; it discerns between בן הישראלית ואיש הישראלי "the son of the Israelite woman and the Israelite" at the narrative about the son of an Egyptian father who cursed God; it is evident that the first is not perceived an Israelite.

10 Scripture does not tell us how the *mamzer* is engendered; neither do we find this information in Qumran writings, which use the term mainly as a metaphorical portrayal of wicked spirits similar to demons, and as a sobriquet for a congregation of wicked people in 4Q510 (4QShir[a]) and 4Q511 (4QShir[b]). In *m. Yeb*. 4:13 we encounter a dispute between *tannaim* about it. One asserts that it is the offspring of any prohibited sexual relationship between a physically related couple, and the other limits it only to cases in which

Moabites and Ammonites to join the assembly of the Lord is not associated with a concept of racial purity; Deut 23:5–7 indicates its motive.[11] Similarly defiled and banned from serving as a priest is the offspring of a priest and a "racially pure" divorcée (Lev 23:15). None of these rules is associated with racial purity.

Moreover, Scripture does not prohibit intermarriage with alien women, because when a Jewish man marries an alien woman, she becomes Jewish;[12] the exception being the seven nations of Canaan, as per the decree in Deut 7:1–4 which affects both men and women.[13] This particular prohibition is, however, explicitly justified as an expedient to avoid evil idolatrous influence, as is also evident from the decree to practise social separation; thus, genealogical purity is not a factor in this decree. By contrast with the prohibition on intermarriage with Canaanites in Deut 7, Deut 23:4: "No Ammonite or Moabite or any of their descendants may enter the assembly of the LORD, not even in the tenth generation," does not forbid marriages with the daughters of the nations listed, which one would expect if the passage were concerned with intermarriage. Deut 23 only forbids the absorption of males, who have an everlasting impact on their offspring through their seed, but does not apply to Ammonite or Moabite women who are solely the bearer of their husbands' seed, and become Israelite concurrently with their marriage to Israelite men; this decree thus has no affinity with the specific prohibition of intermarriage in Deut 7.[14] Consequently, the author of Ruth did not hesitate to assert that Ruth, a Moabite, was the ancestor of King David and his dynasty;[15] there was nothing illegal in Boaz' marriage

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the transgression of the prohibition imposes the *Karet* punishment; this represents the established *halakhah*.

11 Whether the indicated rationale represents the real motive is beyond the scope of this enquiry, as is the motive on account of which a common priest cannot marry a divorcee, or the High priest a widow, and how this affects the priest's qualification to serve the Lord's bread.

12 In biblical times, there was no conversion procedure, and all the alien women married to Israelite scriptural characters automatically became Israelites. Conversion procedure is a late institution, like the rabbinic rule that the ethnic identity of children born from intermarriage with aliens follows the mother.

13 This is also the understanding of Shaye Cohen, "From the Bible to the Talmud: The Prohibition of Intermarriage," *Hebrew Annual Review* 7 (1983) 23–39.

14 See an extended discussion on this specific issue in Paul Heger, "Patrilineal or Matrilineal Genealogy in Israel after Ezra," *JSJ* 43 (2012) 215–248 at 232–233 and "Unabashedly Reading Desired Outcomes" at 113–118.

15 Scholars who do not acknowledge this difference between the forbidden absorption of males into the Israelite people and the permitted marriage with Moabite and Ammonite

with Ruth, as the rabbis likewise assert.[16] Therefore, Scripture records as normal, without any censure, the intermarriages of Israelite heroes with Gentile women: Abraham married Keturah (Gen 25:1),[17] Judah a Canaanite (Gen 38:2),

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women have a hard time reconciling the alleged scriptural prohibition of marriage with the fact that a Moabite was the mother of the revered, perpetual Davidic dynasty. A. Siquans, "Foreignness," among other scholars, argues at 449 that there were two opposing trends or groups in Israel with regard to intermarriage with foreign women, writing that "the book of Ruth is an answer to Ezra's and Nehemiah's politics of demarcation against foreigners and their interpretation of Deuteronomy." Karen S. Winslow, "Mixed Marriages in Torah Narratives," in *Mixed Marriages; Intermarriage and Group Identity in the Second Temple Period* (ed. Christian Frevel, New York: T & T Clark International, 2011) 132–149, at 149 perceives contradictions between the pro- and contra-exogamy narratives in Scripture, which she sees as reflecting "conflicts among groups of Jews over exogamy." See also the opinions of: Thomas and Dorothy Thompson, "Some Legal Problems in the Book of Ruth," *Vetus Testamentum* 18 (Leiden: Brill, 1968) 79–99 at 88, B.A. Levine, "In Praise of the Israelite Mishpaha: Legal Themes in the Book of Ruth" in *The Quest for the Kingdom of God*: *Studies in Honor of G. E. Mendehall* (eds. H.B. Huffmon et al.: Winona Lake, IN, 1983) 95–106, Gillis Gerleman, *Ruth, Das Hohelied* (Neukirchen-Vluyn: Neukirchener Verlag des Erziehungsvereins, 1965), and Jack M. Sasson, *Ruth: a new translation with a philological commentary and a formalist-folklorist interpretation* (Baltimore, MD: Johns Hopkins University Press, 1979) 232.

16 We read in *b. Yeb*.76b: עמוני ולא עמונית מואבי ולא מואבית: (paraphrased): The biblical command in Deut 23:4 against the absorption of Ammonites and Moabites into the assembly of the Lord, written in masculine, applies only to Ammonite and Moabite men, not to women. It is true that at times the rabbis devised all kinds of strategies to solve biblical contradictions in a manner inconsistent with modern critical viewpoints, but in this case their solution may be endorsed, in light of the results of my investigation presented above, although they did not apply the same exclusion of females in the case of the prohibition of intermarriage with a *mamzera*, maintained as valid for both men and women. The commentators of the *midrash* in *b. B. Bat*. 91b on 1 Chr 4:22b explain its content, namely that Elimelech's emigration to Moab, and the death of his children were elements of the divine plan to bring Ruth to Judah and be the mother of the Davidic dynasty. Hence, the marriage with Ruth was a propitious act. See Heger, "Patrilineal or Matrilineal" 33–34 note 36 on this issue.

17 While Gen 25:1 records explicitly that Abraham took Keturah as a אשה wife, the author of 1 Chr 1:32, composed after Ezra's extension of the prohibition against marrying Canaanites to comprise all foreign women, calls her "concubine," which the Chronicles author assumed were excluded from Ezra's prohibition: it is not the only anachronism in Scripture. *Jub*. 19:11 records that Abraham married "Keturah, from among the daughters of his household servants, for Hagar had died before Sarah." I assume that he attempted to justify Abraham's marriage to a foreign woman, instead of taking Hagar, his previous concubine. Indeed, *Gen. R. parsha* 61/4, probably concerned by the same question, states that

Joseph an Egyptian (Gen 41:45),[18] Moses a Midianite (Exod 2:21) and a Cushite (Num 12:1);[19] King David married Maachah, the daughter of King Talmai, king of Geshur (2 Sam 3:3),[20] and Solomon wed Pharaoh's daughter, a fact recorded without any trace of critique, but rather related to indicate the prominent status in the region accruing to Solomon by marrying into the Egyptian Royal family (1 Kings 3:1);[21] Zipporah, Moses' Midianite wife, even fulfilled the precept of circumcising their son (Exod 4:25), a command plausibly applicable to Israelites alone.[22]

In addition to these particular notable marriages with alien women, I think we should also count David's marriage with Bathsheba as decisive evidence for the proposition that intermarriages with aliens were not censured. 2 Sam 11:3 records that David did not know initially who she was and "sent someone to find out about her;" he was informed that she was "the wife of Uriah the Hittite." Scripture does not tell us whether she was a Hittite herself or an Israelite

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Keturah was indeed Hagar. We observe again how one cannot reliably deduce *halakhot* or doctrinal thinking from *midrashim*.

18 A *midrash* in *Mass. Soferim* Supplement 1, Chapter 1, *hal.* 5 asserts that Asenath was really Dinah's daughter born from her sexual encounter with Shechem.

19 A *midrash* in *Sifre piska* 99 asserts that this actually refers to Zipporah, his first wife.

20 The rabbis were indeed aware that she was an alien, and *b. Sanh.* 107a justifies this, arguing that she was a Captive Woman, whom the Torah permitted to be taken in marriage.

21 Intermarriages between dynasties inevitably had a political background, and Egypt was the dominant power in the region at that period. In fact, in 1 Kgs 11:1, the introduction to Solomon's stumbling because of being led astray by his many alien wives, Pharaoh's daughter is the only one brought into prominence by citing her separately among his many anonymous wives.

22 In fact, Scripture does not specify that only an Israelite may accomplish this command, since the first instruction in Gen 17:10 is written in a passive voice, המול "shall be circumcised," and the subsequent direct active command in v. 11 appears in plural mode, ונמלתם "and you should circumcise," without any specific indication of who must accomplish it. However, reason would dictate that an Israelite must fulfill such a crucial precept, and indeed we encounter a dispute about it in *b. Abod. Zar.* 27a+b and in *b. Men.* 42a. A *halakhah* was established to the effect that a Gentile may not perform circumcision, but an Israelite woman may do it (*Mishne Torah, Hil. Milah* 2:1), though it is preferable for it to be performed by an Israelite male. It therefore seems odd that Gwynn Kesssler, "Let's Cross that Body When We Get to It: Gender and Ethnicity in Rabbinic Literature," *JAAR*, Vol. 73/2 (2005) 329–359 at 333 states that Moses' wife Zipporah "is an outsider, a non-Israelite" who "seems to hover between inside and outside." The circumcision of her son seems to indicate her "insider" status. *M. Qidd.* 1:7 states that circumcision is one of the precepts obligatory for men, not for women, namely that a man transgresses the Law if he fails to circumcise his son, but a woman does not; it implicitly confirms that a circumcision performed by a woman is valid.

woman who had married a Hittite.[23] In either case this event would serve as evidence for the legitimacy of intermarriages at that time in Israelite history, and it is recorded in Scripture without any disapproval based on Bathsheba's Hittite identity.[24] Ruth the Moabite, Bathsheba, and the Canaanite Tamar are the mothers of the revered Davidic dynasty.[25] "Genealogical purity" was not a component of Israelite law and ideology; indeed, it was an unknown concept.

8.2.2 *The Basis of the Qumranic Marriage Rules of 4Q271 and 4Q396*

I shall now return to the first topic of our investigation, namely Wassen's linkage of genealogical purity to the *kil'ayim* prohibition. The two Qumranic rules about marriage associated with *kil'ayim*, perceived by Wassen as being associated with the issue of genealogical purity, are built on a quite different principle: they rely on the logical extension of the biblical *kil'ayim* rules, which have no association whatsoever with genealogical purity. Each of the two rules relates to a different case and cites a different biblical decree. 4Q271 (4QD^{f}) III:9–10: "[Moreover, he should not give her to one unfit for her, for] [that is *kil'ayim*, (ploughing with) o]x and ass and wearing wool and linen together,"[26] quotes the biblical rule against *kil'ayim* from Deut 22:10–11, omitting v. 9, not to plant seeds in the vineyard, although the term *kil'ayim* appears in that verse, whereas the rule of 4Q396 (4QMMT^{c}) IV:4–11 against intermarriage of priests with Israelites, "[be] cause they are holy. But the sons of Aaron are the ho[liest of the holy]" cites the

23 The marriage of an Israelite woman to an alien man would be perceived in the Second Temple period as a much greater evil that the marriage of an Israelite man to an alien woman; see p. 339 and n. 118 on this issue.

24 The traditional commentators attempt to absolve David from the transgression of intermarriage, alleging that Bathsheba was an Israelite, being the daughter of Eliam and Ahithophel's granddaughter, as recounted among David's Mighty Men in 2 Sam 23:34, and Uriah converted to Judaism or was initially an Israelite, only called the Hittite because he lived among them. These strained solutions indicate the problematic nature of adjusting ancient customs to later rules.

25 In its disapproval of Solomon regarding his marriage with foreign women, 1 Kgs 11:1b–2 bundles together an array of nations, among them Moabites and Ammonites as the peoples with whom God prohibited marriage. This pronouncement cannot serve as evidence against my thesis that Deut 23:4 does not prohibit marrying an Ammonite or Moabite woman. 1 Kgs indicates explicitly the motive of its criticism "because they will surely turn your hearts after their gods," alluding to the prohibition of intermarriage with the Canaanites (Deut 7:3–4), whereas the prohibition to incorporate Ammonites and Moabites is justified by utterly different motives. Therefore, 1 Kgs bundles together nations who are not mentioned anywhere regarding a marriage prohibition, such as the Sidonians, since they are all potential agents of apostasy.

26 Transl. J.M. Baumgarten, *DSSEL*.

biblical rule of Lev 19:19: "Do not mate different kinds of animals. Do not plant your field with two kinds of seed. Do not wear clothing woven of two kinds of material." I would argue that these different citations and the omission of Deut 22:9 are not accidental; rather, they offer us a clue to the distinction between the philosophical and legal bases of the two rules.

4Q271 constitutes a recommendation for the father to avoid giving his daughter in marriage to someone unfit for her,[27] thus avoiding the suffering arising from an ill-suited union.[28] Its author substantiates his ordinance by quoting the relevant verses Deut 22:10 and 11 that refer to a similar type of *kil'ayim*, namely the prohibition against working with two animals of differing physical capacities yoked together. Although Scripture does not divulge the motive of this decree, logic indicates it to be a mandate against causing animals to suffer;[29] we can only speculate, however, on the motive for the prohibited use of linen with wool cloth.[30] Further, the transgression of these rules has no association with offspring, whereas planting seeds in the vineyard, mentioned in Deut 22:9, has a detrimental effect on the outcome; the produce must be destroyed.[31] Therefore, the author of 4Q271 chose not to cite v. 9, since it is not commensurate with the recommendation not to give a daughter to one unfit for her. While such a marriage will bring her personal misery, like the yoking together of two different animals, any offspring are not affected.

The prohibition in 4Q396 IV:4–11 of intermarriage between priests and Israelites, however, is compared to the mating of two distinct species of animals and sowing two different species of plants, prohibited as כלאים in

27 Since no legal sanctions or consequences are indicated, it is probably safe to assume that the suggestion against marrying an unsuitable woman constitutes advice rather than a strict prohibition.

28 See an extensive study regarding these two Qumranic rules and particularly the legal differences between them in Heger, "Qumranic marriage prohibitions." Remarkably, *b. Sanh*. 76a decrees a similar recommendation to avoid giving one's daughter to a man unsuitable for her, for example to an old man, but support it with a suitable interpretation of Lev 19:29.

29 TS 11Q19 (11QTemple[a]) LII:12–13 bundles together two rules that appear in Scripture in different locations, since both are motivated by the same aim to avoid the suffering of animals: "And you shall not muzzle an ox when it treads out the grain (Deut 25:4), and "you shall not plough with an ox and an ass together" (Deut 22:10).

30 *Maimonides* and other traditional commentators attempted to proffer motives for this odd rule.

31 The biblical text is undefined and is usually interpreted as he will be deprived of it. *M. Sheqal*. 1:1–2 decrees destruction.

Lev 19:19. This comparison is the outcome of a logical consideration "[be] cause they are holy. But the sons of Aaron are the ho[liest of the holy]." Holy (all Israelites) and the holiest of the holy (the priests) represent two distinct cosmological categories, such as those implied by innate differences between the various species of animals and plants. Therefore, intermarriage between the two is forbidden, for the same reason as breeding animals of two distinct species or planting two different kinds of plants together: these are actions that have an effect on future offspring, since they change the type of animal or fruit from their original breed as created by God. Similarly, the prohibited mating of priests and Israelites, two different "species," has the effect of defiling their offspring. The child of a priest with an Israelite woman is defiled and cannot serve in the Temple according to Qumran law [הקודש]˚ את זרע [ם]ומטמאי˚ "and defile the [holy] seed" (4Q396 IV:10), just as the child of a priest with a divorcée,[32] or of the High Priest and a widow, is חלל "defiled," as in Lev 21:15.[33]

In conclusion, the comparison made by the two Qumranic laws on intermarriage with the prohibitions of *kil'ayim* are not "metaphoric," but the result of logical considerations on the part of the authors, having no association with "genealogical purity" as Wassen claims. The rabbis, who do not accept the Qumranic doctrine of the "most holy" status of the priests, since Scripture calls them holy in Lev 21:6 and identical to all Israelites in Lev 20:6, explicitly deny the Qumranic *halakhah* in *b. Sanh*. 76a;[34] that circumstance explains also the recording of this rule in the polemical 4Q396. Since we have seen that this modern concept of racial purity does not appear in Scripture or in Qumran decrees and narratives, we may now consider the philosophical and legal basis of Ezra's extension of the specific biblical intermarriage prohibition to all aliens from a more historically authentic perspective.

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32 Although Lev 21:15 only defiles the son of a High Priest with an illegitimate partner, *b. Yeb*. 60a likewise extends the rule to include the offspring of a simple priest and an illegitimate partner, like a divorcée or a prostitute.

33 Using the term טמא the author of 4Q396 is not careful in discerning between the biblical uses of the terms חלל and טמא. Scripture, however, never uses the term טמא for the defilement of the priest's offspring.

34 See Heger, "Qumranic Marriage Prohibitions" at 450 a similar dispute between the Qumranic and rabbinic differentiation between priests and laic Isralites. *B. Mak*. 20a equalizes the prohibition of shaving the entire head for Israelites, although Lev 21:5 prohibits it only to priests, whereas 11Q19 (11QTemple[a]) XLVIII:7–8 prohibits Israelites only the shaving of the forehead as written in Deut 14:1.

8.3 Interpreting Ezra and Nehemiah on Intermarriage

8.3.1 *The Relevant Texts and Their Main Meaning*

Let us begin by quoting the most relevant selections from the texts of Ezra and Nehemiah:

> After these things had been done, leaders came to me and said, "The people of Israel, including the priests and the Levites,[35] לא נבדלו have not kept themselves separate from the neighbouring peoples with כתועבותיהם their detestable practices, like those of the Canaanites, Hittites, Perizzites, Jebusites, Ammonites, Moabites, Egyptians and Amorites. They have taken some of their daughters as wives for themselves and their sons, and have mingled the זרע הקדש holy people (literally seed) with the peoples around them. And the leaders and officials have led the way in this unfaithfulness." (Ezra 9:1–2)

Ezra 9:14 criticizes intermarriage with עמי התעבות האלה "the peoples who commit such detestable practices," and 10: 11b exhorts the Jews והבדלו מעמי הארץ ומן הנשים הנכריות "to separate from the peoples around you and from your foreign wives."

Neh 10:29b records the Covenant made with וכל הנבדל מעמי הארצות "all who separated themselves from the neighbouring peoples."

Finally, Neh 13:23–25, 26b states another motive against intermarriage: ואינם מבירים לדבר יהודית "they [the sons of the foreign women] do not know how to speak the language of Judah."

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35 I dispute Daniel L. Smith-Christopher's theory in "The Mixed Marriage Crisis in Ezra 9–10 and Nehemiah 13: A Study of the Sociology of the Post-Exilic Judean Community," in *Second Temple Studies* 2 (ed. Tamara C. Eskenazi and Kent Richards. Sheffield: Journal for Studies of the Old Testament (JSOT) Press, 1994) 243–265, at 255 that the mention of the priests and Levites in 9:1 emphasizes the primary sins "of the priests and Levites," because they "are listed first among the guilty." The MT, the LXX, the Leningrad MS published by the *Biblia Hebraica Stuttgartensia* and the KJV all list the Israelites first, followed by the priests and Levites. I similarly dispute George W.E. Nickelsburg's interpretation in *1 Enoch 1: A Commentary on the Book of 1 Enoch, Chapter 1–36: 81–108* (Minneapolis, MN: Fortress Press, 2001) at 231 of Ezra 9:1: "that many of the Israelites, but notably a significant number of priests and Levites, have married foreign women, an allegation that has no basis in the scriptural text;" the scriptural text does not in any way indicate whether there were few or many priests among the Israelites who intermarried. The significance of the leaders, however, in terms of having been a bad example is explicitly emphasized in v. 2: "And the leaders and officials have led the way in this unfaithfulness."

The scope of a narrative is indicated by its introduction, and of an agreement or a law by its preamble, and this is exactly what Ezra 9:1 reveals: The people of Israel, of all its classes, priests, Levites, leaders, and officials (Ezra 9:2) "have not kept themselves separate from the neighbouring peoples," as they should have done. The scale of the sinful intermingling indicates its gravity. The essential theme of the narrative is the absolute necessity of separation from the neighbouring peoples. The Hebrew term בדל "to separate" appears continually as the core of the issue, in the account of the evil circumstances and in the issue's resolution. The text of Ezra 6:21, 9:1, 10:11 and 16; Neh 9:2, 10:29 and 13:3 demonstrates that Ezra's goal of reestablishing the division between the Jews and the others induced his decision to act forcefully and drastically in reestablishing this division.[36] Then follows the rationale for the required and decreed separation: because of their "detestable practices," as decreed in Deut 7:1–4.[37]

8.3.2 *Ezra and Nehemiah's Motivation in Extending Prohibition of Intermarriage*

Ezra and Nehemiah extended the prohibition of intermarriage to all foreign women (Ezra 9 and 10 and Neh 13:23–28), but their innovative rule was founded on cultural concerns,[38] not on their quest for the preservation of the "material" genealogical purity of the holy seed, as some scholars contend.[39] They interpret

36 Willa M. Johnson, *The Holy Seed has been Defiled: The Interethnic Marriage Dilemma in Ezra 9–10* (Sheffield: Sheffield Phoenix Press, 2011), 87 writes: "The overall need to create a functional, collective social identity drove Ezra to summon the people and issue an edict." At 79 she writes that by creating communal boundaries "the community leaders were able to better establish and differentiate between the insiders and outsiders."

37 Ralf Rothenbusch, "The Question of Mixed Marriages between the Poles of Diaspora and Homeland: Observations in Ezra-Nehemiah," *Mixed Marriages*, 60–77, at 71 writes: "the rationale for the prohibition of mixed marriages in Ezra 9: 11a 12c–f, B+B', as a whole quite clearly points to the Deuteronomic/Deuteronomistic literature." The Moabites and Ammonites and Egyptians are not included in Deut 7 and in the motive for their exclusion from the assembly of the Lord, but it seems that since Ezra extended the intermarriage prohibition to all foreign women on account of their potential evil influence, he bundled them together as performing abominable practices to justify their inclusion in the prohibition.

38 Armin Lange, "Mixed Marriages and the Hellenistic Religious Reforms," *Mixed Marriages*, 205–219, at 219 similarly perceives *Jubilees*' severe criticism of intermarriage, which became "one of the most serious threats against the cultic and religious identity and integrity of Judaism." See our interpretation of *Jub*. 30:7–12, on this issue in section 8.4.6 of this chapter, pp. 335–340.

39 Christine E. Hayes, "Intermarriage and Impurity in Ancient Jewish Sources," *HTR* 92, 1 (1999) 3–36 and *Gentile Impurities and Jewish Identities: Intermarriage and Conversion*

the phrase זרע הקדש, which appears in the announcement of the leaders to Ezra (9:1), as the decisive essence of the sin of intermarriage that had taken place. While other scholarly propositions on this issue will be discussed in the course of my argument against the "holy seed" theory, my primary focus will be on Hayes' writings, since they are the most elaborate on this issue. I will first present my interpretation of the relevant texts in Ezra and Nehemiah and then present grounds for refuting her theory.

Ezra and Nehemiah's extension of biblical intermarriage restrictions with the Canaanites to all Gentiles was motivated by the precarious situation of the small Jewish community of returnees as a people with a distinct culture in the midst of a multitude of idolatrous peoples and partly apostatized non-exiled Jews. This prohibition of intermarriage was intended to ensure the survival of the Jewish people and its particular culture and way of life in these new conditions. Intermarriage tends to lead to lively social interaction with the woman's family, customs and culture, creating the potential of adopting alien ways of life and thus eroding one's own.[40]

The separation of Israel from all other nations appears in the Pentateuch in implicit and explicit expressions. The concept of being chosen from all nations of the world (Deut 7:6), often reiterated[41] to underline its significance, suggests Israel's exclusivity and is reinforced by manifold commands to behave differently than other peoples (Deut 7:6), creating a hermetic social boundary between Israel and the nations. The result is the explicit description "I see a people who live apart and do not consider themselves one of the nations" (Num 23:9). The conditions in Judah after the return from Babylon were quite different than before the Exodus. At that earlier period the Jews were the overwhelming majority of the inhabitants, and the few alien residents were compelled by law to accomplish many biblical rules,[42] particularly those with public character, such as observing the Sabbath (Exod 20:9), the Day of

from the Bible to the Talmud (Oxford: Oxford University Press, 2002) 28–33 and 68–91, and Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton, NJ: Princeton University Press, 2001) 136–141.

40 F. Charles Fensham, *The Books of Ezra and Nehemiah* (Grand Rapids, MI: Eerdmans, 1982), 124 writes: "The reason for this attitude [of Ezra] had nothing to do with racism, but with concern for the purity of the religion of the Lord" and "the influence of a foreign mother, with her connection to another religion, on her children would ruin the pure religion of the Lord and would create a syncretism."

41 See for example Deut 10:15.

42 For example, the prohibition of blood consumption (Lev 17:40), sexual transgressions (Lev 18:26), the rule of the blasphemer (Lev 24:16), various matters of civil laws (Lev 24:22) and their participation in the teaching of the basic Torah laws at the seven yearly meetings (Deut 31:12).

Atonement (Lev 16:29) and the Passover restrictions (Exod 12:1), and avoiding idol worship (Lev 20:2). In such circumstances, alien women who married into the prevailing Jewish culture had no influential impact on it. Both the alien residents and the alien wives adapted to Israelite customs and rules. Ezra and Nehemiah came to the conclusion that the changed circumstances called for changed laws, and that a sharp, impenetrable separation, leading to the total isolation of the small Jewish community, was the only effective method of ensuring the continuance of the Jewish people and their particular faith. The extension of the intermarriage prohibition to all foreign women is the result of that consideration.

8.3.3 *Ethnicity and Intermarriage*

Sections 8.3.1 and 8.3.2 illustrate my understanding of the relevant texts of Ezra and Nehemiah on the issue of intermarriage, based on careful consideration of the topics associated with the significance and pre-eminence of the principle of Israelite separation, which runs like a red thread through the entire history of Israel from its conception (Gen 17:7–8). It is remarkable to note that two female scholars, working in different historical contexts and with different backgrounds and agendas, reached identical conclusions to mine regarding the Ezra-Nehemiah prohibition of intermarriage in two recently published books. Katherine Southwood asserts that their concern was the preservation of Israelite identity, endangered by the circumstances of "migration and, especially, return immigration."[43] In her introduction she writes: "Ezra's intermarriage crisis is laden with implications of ethnic differentiation."[44] She states further that "Purity terminology and ideologies are applied to those supposedly not included within Israel in order to debase them."[45] In another article, however, as it seems to me, Southwood blurs the distinction somewhat between the concepts of ethnicity and genealogical purity as Ezra's motivation for his intermarriage prohibition.[46] She writes: "Effectively, Ezra transforms the language of holiness by applying it to ethnicity," a statement that seems to me incompatible with Hayes' theory of racial purity, but a page later, after stressing the broad semantic range of the noun "seed," she claims that "In Ezra the title [holy seed] is . . . imbued with notions of commonality

43 Katherine E. Southwood, *Ethnicity and the Mixed Marriage Crisis in Ezra 9–10: An Anthropological Approach* (Oxford: Oxford University Press, 2012), 213.

44 Ibid., 2.

45 Ibid., 3.

46 Katherine E. Southwood, "An Ethnic Affair? Ezra's Intermarriage Crisis against a Context of 'Self Ascription' and 'Description of Others,' " *Mixed Marriages* 46–59, 56–57.

or, as Hayes puts it, 'genealogical purity,' " an assertion seeming to contradict her previous statement. Willa Johnson goes a considerable step further, asserting that "Western culture has strongly influenced the development of biblical interpretation. As an African-American woman born in a culture invested for centuries in the slavery of Africans and which utilized Ezra 9–10 as a racialist and racist argument against interethnic marriage . . ."[47]

She writes further: "The intermarriage dilemma establishes that identity issues and the result of exile rather than rampant racialist or racist concerns motivated the mandate against interethnic marriage."[48] Both are clearly opposed to the holy seed/race theory, because of these and similar considerations. Southwood builds her theory on the results of her examination of "the relationship between migration and ethnicity, and the dynamics of the association between ethnicity and intermarriage."[49] Johnson states that "in antiquity, if not racial concerns, certainly issues of ethnic difference presented considerable stress for early Jewish communities."[50] Many scholars have postulated different motives for Ezra's prohibition of intermarriage and the consequent application of such a drastic measure as breaking up families, some envisaging the preservation of the Jewish religion's purity and the avoidance of syncretism as Ezra's motivation.[51] I shall not enlarge the scope of the discussion along these lines, however, concentrating instead on disputing the racial/seed

47 Willa M. Johnson, *The Holy Seed*, 7.

48 Ibid., 15.

49 Southwood, *Ethnicity*, 17.

50 Johnson, *The Holy Seed*, 15.

51 Sara Japhet, "The Expulsion of the Foreign Women (Ezra 9–10): The Legal Basis, Precedents, and Consequences for the Definition of Jewish Identity," in *Sieben Augen auf einem Stein* 141–161 does not identify racial or seed purity as Ezra's motive for the expulsion of the foreign women; following her own line of argument, she asserts that the children of a foreign woman, like the children of a slave woman, are affiliated "with their mothers" (148). I dispute her thesis, since Ezra 9:1 explicitly accuses the intermarriage families of not separating from the neighbouring peoples. Further, as we demonstrated Ezra did not recognize as Jews those who did not know their fathers. Hyam Maccoby, "Holiness and purity: the holy people in Leviticus and Ezra–Nehemiah," in *Reading Leviticus: a conversation with Mary Douglas* (ed. John F.A. Sawyer; Sheffield: Sheffield Academic Press, 1996) 153–170, at 160–163 vigorously disputes some scholars' suggestion that Ezra's action was driven by an exclusivist "racial" ideology. He identifies the alien women expelled by Ezra as elements of the "people of the land," who approached the returnees to build the Temple together, and were rejected by them, as appears in Ezra 4. As recorded in 2 Kgs 17, they were undeniably syncretists, and were regarded by Ezra as idolaters. He realized that if these 'Jews' were permanently accepted by intermarriage, the Jewish monotheism "would have been fatally compromised."

purity motivation, as proposed by Hayes and others. I do not exclude the possibility that other secondary motivations, such as for example economic interests, particularly land ownership and inheritance,[52] or marrying up in status for participation in the aristocratic society,[53] as postulated by some scholars, were also on Ezra's mind, but I do not accept that a racialist aspect, such as purity of seed or blood, was among them. On the basis of my reading of the text and context, without such extraneous considerations as the cruelty of the rule against intermarriage or other suppositions, I believe that the survival of the Jewish people and its particular culture and religion was Ezra's primary motive for his legal provisions.

8.3.4 *The Problematic Concept of "Holy Seed"*

Ezra does not, as it seems, explicitly refer to the similar prohibition in Exod 34:15–16 against socialization and intermarriage with the Canaanites because of their potential evil influence,[54] since the Exodus prohibition relates only to the marriage of Israelite men with alien women, whereas Ezra wanted to extend the decree of Deuteronomy, which prohibits exogamy in either direction. He did not, however, forget the Exodus rule in considering an extension of the prohibition that explicitly portrayed the consequences of marriage and socialization with foreign peoples, as indeed happened according to Judg 3:6. The prohibition in Exodus follows the sin of the Golden Calf, which God wanted to avoid in future, and the same motive induced Ezra to attempt the separation of the Israelites from the surrounding peoples and their תעבתיהם "abominations," often cited in Scripture as referring to idolatry. There is no mention of the preservation of "holy seed" in either source. Moreover, we observe that the intermarriage of foreign women with Israelite men was the situation that enraged and exasperated Ezra, inducing him to such spectacular behaviour as described in Ezra 9:3–5. In contrast, we find Ezra in a more composed state when mentioning in v. 12 the prohibition against giving Jewish women to Gentile men. The contrast indicates his outrage against the misconduct that had occurred and that represented the most dangerous circumstance for the survival of his people, as opposed to his much calmer attitude towards

52 See for example Tamara Cohn Eskenazi, "Out from the Shadows: Biblical Women in the Postexilic Era," *JSOT* 54 (1992) 25–43, at 35.

53 Smith-Christopher, "The Mixed Marriage Crisis," 261.

54 Shaye J.D. Cohen, "Solomon and the Daughter of Pharaoh: Intermarriage, Conversion, and the Impurity of Women," *JANESCU* 16–17 (1987) 23–37, at 25 writes: "Judg 3:5–6 confirms the wisdom of the Mosaic prohibition," adding at 26: "Kings argues that Solomon's intermarriage did in fact lead to idolatry."

the potential transgression of Gentile men marrying Jewish women. If the issue of the holy seed were the primary source of Ezra's indignation, one would expect him to reiterate it at this point, since Jewish belief certainly held at this time that it is the man who produces the seed, while the woman merely harbours it. Moreover, Ezra does not mention the phrase זרע הקדש (the foundation of the scholarly concept of race purity) in all his manifold denunciations, exhortations and edicts. Furthermore, at Neh 9:2 where the achievement of his goal, namely the separation from the foreigners, is recorded, the phrase זרע ישראל is specified, indicating the two phrases' correlation in the context of this episode, and the manifest meaning of the phrase זרע הקדש, as discussed below.

The preamble is followed by the details of how the breakdown of the separation occurred, and what its precursors were: "They have taken some of their daughters as wives for themselves and their sons, and have mingled the זרע הקדש holy people with the בעמי הארצות peoples around them" (Ezra 9:2a). The phrase זרע הקדש must be interpreted here as "the holy people" rather than as holy seed for a number of reasons. The phrase appears only once here, and elsewhere in Scripture only in Isa 6:13, which has no connection to the concept of the holy seed that must not be mixed with other seed; rather, it has more affinity in that context with the concept of the holy Israelite people who will experience a flourishing renaissance after almost total eradication.[55] Therefore, we have no comparison to ascertain its meaning from another biblical text, and we must deduce it from the use of the term זרע in biblical literature, from its literary use in Ezra 9:2 and from the context of the intermarriage texts of Ezra and Nehemiah, as argued above.

The term זרע is used for seed in living and plant entities, but also to mean descendants, children or offspring, often in contexts where it must be interpreted in that way. For example, in Gen 3:15 as "offspring/descendants";[56] in Gen 4:25 as [another] "child"; in Gen 13:16 as "offspring like dust of the earth"; in Gen 15:3 as "children";[57] in Gen 38:9 as [Onan's] "offspring"; in Gen 46:7 as [Jacob's] "offspring" [to Egypt]; in Gen 48:11 as [Joseph's] "children"; in Lev 18:21 as "children" [to Moloch]; at Lev 22:13, [without] "children"; in Deut 28:46 as [a sign to your] "descendants"; in 1 Sam 2:20: "children" [by this woman]; in

55 The text of Isa 6:13 presents many difficulties of which scholars have attempted to make sense. I prefer the interpretation of Otto Kaiser, *Isaiah 1–12: A Commentary* (translated from German by R.A. Wilson; Philadelphia: Westminster Press, 1972).

56 Hartley, *Genesis* at 69 comments on this verse: "There would be enmity between the serpent and the woman, between the offspring of both."

57 Abram possessed seed, but Sarai did not become pregnant; Sarai offered her maid to Abram for procreation (Gen 16:1–2).

1 Sam 20:42: [witness to your] "descendants"; at 2 Kgs 17:20 as [the rejection of] the "people" [of Israel]; in Isa 1:4 as a "people" [a "brood" of evildoers]; and in Isa 9:19, feeding on the flesh of his own "offspring." More occurrences of the term זרע could be cited that must be interpreted as descendants in its different variants according to the context,[58] not as seed, and in my opinion the phrase זרע הקדש in Ezra 9:2 must be counted as one of them.[59]

Semantically, one cannot mix two quite different elements such as seed and peoples; the literal meaning of the text of Ezra 9:2, translating the term זרע as "seed" would read: "and have mingled the holy seed with the peoples around them," an impossible interpretation. At the next portrayal of the same sinful deed of mingling with the aliens, at 9:14, Ezra describes the details: "to intermarry with the peoples who commit such detestable practices." The separation from the idolatrous peoples is frequently reiterated, indicating the core of the misbehaviour that Ezra is attempting to redress.[60] The alleged issue of

58 Victor P. Hamilton, *Book of Genesis*, 198–199 comments on the term זרע and its correct interpretation at the serpent's curse in Gen 3:15, stating: "in a number of passages Heb. *zera* is a collective referring to distant offspring or a large group of descendants," and cites a substantial list of biblical verses corroborating his assertion.

59 Juha Pakkala, *Ezra the Scribe, The Development of Ezra 7–10 and Nehemiah 8*, BZAW 347 (Berlin: De Gruyter, 2004) at 109–110 emphasizes that the main motivation "for forbidding mixed marriages in the first place is the religious threat that the other nations pose." He makes a similar assertion emphasizing Ezra's association of his intermarriage prohibition with "Deuteronomistic theology/ideology" in "Intermarriage and Group Identity in the Ezra Tradition (Ezra 7–10 and Nehemiah 8)," *Mixed Marriages*, 78–88 at 83–84. Regarding the meaning of זרע הקדש, however, he seems to waver in the latter article between on the one hand his assertion that Ezra linked his decree with the deuteronomic motivation, aiming to attain an "inward consolidation of a threatened minority," namely, a social separation, and on the other hand his contemplation that the phrase intends the "holy seed mixes with something that was regarding unclean or impure." I dispute Smith-Christopher's assertion in "The Mixed Marriage Crisis," 256 that Ezra's obsession was the "separation between pure and impure," a qualification that does not appear in the text. Compare Nickelsburg, *1 Enoch 1* who at 231 interprets Ezra 9:1–2 as meaning that the Israelites "have married foreign women and thereby mixed and polluted the holy people," not the seed.

60 James Kugel, "The Holiness of Israel and the Land in Second Temple Times," in *Texts, Temples, and Traditions: A Tribute to Menahem Haran* (eds. Michael V. Fox et al.; Winona Lake, IN: Eisenbrauns, 1996) 21–32, at 22–24 states that Ezra founded his prohibition of intermarriage on the text of Deut 7:3–6 that "Marriage with the Canaanite peoples will lead to idolatry," and that Israel's holiness "is indeed contrasted in direct fashion to the practices of other nations." These are resolute statements about the danger of apostasy as

polluting the seed or the blood does not reappear. At the account of Ezra's commands and the ensuing separation, Ezra and Nehemiah's objective, no occurrence of the term בדל "separate" is associated with the term זרע in their two books, but rather בדל appears in terms of a separation between two concrete elements, the body of Israelites and the other nations. For example, in Ezra 10:11 we read: "separate yourselves from the peoples around you, and from your foreign wives;" in Neh 10:29: "all הנבדל who separated themselves from the neighbouring peoples for the sake of the law of God;" and in Neh 13:3: "ויבדילו they separated from Israel all the mixed multitude." The term זרע, supposed to mean "seed," is mentioned in just one occurrence, in Neh 9:2: ויבדלו זרע ישראל "those of Israelite descent had separated themselves from all foreigners." Clearly, the phrase זרע ישראל at the separation refers to the accomplishment of the hoped-for result of their intervention in the parallel phrase והתערבו זרע הקדש בעמי הארצות in Ezra 9:2, which must be interpreted as the children of Israel בני ישראל, who stood there and confessed their sins (Neh 9:2),[61] like the many biblical phrases זרע ישראל with the identical meaning.[62]

We observe that at the successful conclusion of the crisis the author does not describe the Israelites' separation from נשים נכריות "the Gentile women," a phrase used in the books of Ezra and Nehemiah regarding the intermarriage issue, but their separation from "all foreigners." By separating from their Gentile women, the Israelites accomplished their segregation from the alien people, the primary divine command; thus, they could confess their sin of having transgressed it by intermarriage. And as here זרע ישראל relates to the "children of Israel," the scriptural sobriquet for the Israelite people, the phrase זרע הקדש, its counterpart, must be interpreted as "the holy people," an attribute

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Ezra's motive for his decree, an assertion which in my opinion requires the interpretation of זרע הקדש as the holy people; Kugel, however, subsequently interprets it as "holy seed," whose mixing would consist of "a violation of cultic law," like "*kilayim*, namely 'sowing with mixed seed.' " There is no hint in Ezra of such allegation, and in my opinion his conjecture conflicts with his viewpoint about Ezra's motive, as cited above.

61 The LXX translates it thus: οἱ υἱοὶ Ισραηλ "the sons of Israel" versus υἱοῦ ἀλλοτρίου "the sons of the foreigners."

62 See for example 2 Kgs 17:20; Isa 45:25; Jer 31:35; Ps 22:24; and 1 Chr 16:13, which must be interpreted as בני ישראל "the children of Israel." Fensham, *Ezra and Nehemiah*, 125 translates the phrase זרע הקדש in Ezra 9:2 as "the holy people," relying, among other arguments, also on the phrase זרע ישראל in Neh 9:2. He further writes: "The term 'holy' shows that the term 'seed' has nothing to do with racial prejudice. It is the people whom God had elected as his people" (Exod 19:6).

of the Israelites[63] bestowed on them in Lev 20:26 on account of their concrete separation from other nations; there is no mention here of seed.[64] Moreover, since the woman has no seed in the ancient Jewish view, there is no mixing of Israelite and foreign seed in a union between an Israelite man and a foreign woman.[65] Although Abraham sired Isaac upon Sarah, an "Israelite" woman, and Ishmael upon an Egyptian woman, both are perceived by God as the exclusive

63 The phrase עם קדוש appears in Deut 7:6; 14:2 and 21. The term קדושים appears in Lev 11:44, 45; 19:2; 20:7 and 26; and Num 15:40.

64 Bob Becking, *Ezra, Nehemiah, and the Construction of Early Jewish Identity* (Tübingen: Mohr Siebeck, 2011) at 52 writes that the concept of holy seed "is a combination of two traditional depictions of Israel: the idea of Israel as a 'holy nation' and its depiction as the 'seed of Abraham.'" At 53–4 he interprets Ezra's quotation of Deut 7:1–5 as relating to the aliens' uncleanness or pollution, having conducted abominations, founded on the term נדה in Ezra 9:11, as referring to "moral turpitude." As it seems to me, Becking does not articulate a clear and defined vision of Ezra's motive for his prohibition of intermarriage, citing apparent contradictory assumptions; at 58–59 he states that the election of Israel created a biologically entity that may not be defiled by foreign elements, versus the assertions at 60 that intermarriage and that the foreign women "would almost certainly lead to syncretism and apostasy" and "formed a threat for the pure form of Yahwism." At 99, Becking quotes and translates Timo Veijola's assertion in *Moses Erben: Studien zum Dekalog, zum Deuteronomismus und zum Schriftgelehrtum* (Stuttgart: W. Kohlhammer, 2000) 230: "Both Ezra and Nehemiah—do not condemn the exogenous marriages on ethnic, racist or ritual grounds, but on a confessional basis," an assertion with which he seems to agree. Becking may perceive a double motivation: the issues of identity and of evil influence. In my opinion, the issue of identity and of drawing a borderline between Israel and "others" is also the consequence of the desire to preserve the purity of the particular Israelite culture, as opposed to Israelite biological purity. We observe that a number of scholars hesitate to take a defined position regarding the conflicting data between the general attitude of the entire text in Ezra and Nehemiah clearly pointing at their concern about the perseverance of the Jewish particular culture amidst the surrounding pagan world, and the motive of "holy seed," as they perceived it. The failure to grasp that the term זרע, like many other biblical terms has many meanings other than seed, is hard to comprehend.

65 The phrase אשה כי תזריע, (Lev 12:2) which may allude to the idea that the woman contributes seed, does not conflict with this statement, reflecting assumptions in the biblical and later periods until the developments of physical principles in the 19th Century. In fact, the LXX translated it σπερματισθῇ "to beget," but in passive mode, namely begot by the man's seed. Both the KJV and the NIV likewise interpreted it in a passive mode; "if a woman have conceived seed," and "a woman who becomes pregnant." *B. Nid.* 31 refers it to the woman's discharge at intercourse, adding that if the woman discharges before the man, she bears a male; it explains the succeeding text of the verse "and gives birth to a son." Tirzah Z. Meacham in her dissertation *Mishna Tractate Niddah* with Introduction. A Critical Edition with Notes on Variants, Comments, Redaction and Chapters in Legal

seed of Abraham, without any admixture of foreign seed (Gen 21:12–13).[66] Along similar lines, I disagree with Schiffman's interpretation/translation of the term והתערבו in Ezra 9:2 as "diluting of their holy seed."[67] Philologically the root of ערב in *Hithpael* means "mingled," as in Prov 14:10 and in Ps 106:35. The latter, stating that the adoption of foreign customs is the result of intermingling with them, is an exactly parallel issue to our verse Ezra 9:2.

Nehemiah offers us further evidence of the motivation to extend the restricted biblical prohibition on defined alien women to all foreign women. He justifies the intermarriage prohibition in Neh 13:25 by his observation that the sons of the foreign women did not know the Jewish language (13:24). The lack of knowledge of the Hebrew language is not a transgression of the law, which would justify the prohibition of intermarriage, and *a fortiori* the expulsion of the married women and their offspring; hence, we must attempt to understand the circumstances that induced him to perceive it as a serious menace to the survival of the Jewish people and their particular culture, and to act vigorously to prevent it.

It seems to me that Nehemiah drew the following conclusion from the foreign women's comportment: contrary to the hitherto common custom according to which Gentile women married to Israelites became Jewish, just as any woman became part of her husband's household and way of life, their sons' comportment demonstrated that they did not agree to follow that custom.[68] Their refusal to learn and to speak the Hebrew language indicated their reluctance to adhere to the Jewish people and fulfill the Torah laws;[69] the women and their offspring desired to remain involved with their foreign families, unlike those who separated from the unclean practices of the Gentiles (Ezra 6:21 and Neh 10:29 [28 in the KJV]) and were recognized as part of the

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History and Realia (presented at the Hebrew University, Jerusalem, 1989) writes extensively on this verse according to ancient and modern, physiological and linguistic aspects.

66 *Gen. R.* 17:8 has a similar dictum: "Why does the man entrust [his] seed to the woman and the woman does not entrust seed to the man."

67 Schiffman, "At the Crossroads" 115–56 at 121.

68 Becking, *Ezra*, 103 asserts in this connection: "The inability to speak Judean most probably is remarked here as a sign of alienation from the Judean/Yehudite/Yahwistic identity as favoured by Nehemiah."

69 Joseph Blenkinsopp, *Ezra/Nehemiah: A commentary* (Philadelphia: Westminster Press, 1988) at 363 writes that "What was really at stake was not so much speaking a foreign language as the inability to speak Hebrew," that "language has always been an important ingredient of national identity," and "that Nehemiah's religious measures were part and parcel of a larger objective, namely, the survival of a 'people,' was easily neglected."

Jewish people.[70] This fact constituted a great danger of assimilation of the Jewish minority (as it was at that time) by the surrounding idolatrous nations,[71] and therefore Ezra and Nehemiah decided to apply the drastic measure of expulsion, although, according to the contemporary law, the children born from the seed of Jewish men were Jews,[72] as I have demonstrated.[73]

8.3.5 *Interpreting Pollution and Cleansing*

Before proceeding with my arguments against Hayes' theory that the mixing of the Israelite seed with foreign seed was the basis of Ezra's blanket intermarriage prohibition, based on the phrase זרע הקדש, I shall briefly describe and also dispute Saul Olyan's similar theory, deduced from the same phrase, that the mixing of the blood types was its foundation.[74] In contrast to Hayes, Olyan perceives a new, two-pronged conceptualization effected by Ezra and Nehemiah that induced them to extend the restricted biblical intermarriage prohibition to all aliens. The first is the "notion that all things alien are polluting," and the second "that intermarriage with aliens pollutes the bloodline." Olyan corroborates

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70 Daniel Schwartz, "On two Aspects of a Priestly View of Descent at Qumran," in *Archeology and History in the Dead Sea Scrolls* (ed. Lawrence H. Schiffman, Sheffield: JSOT Press, 1990) 157–179, at 165–6 claims that Ezra, a Zadokite priest, obviously rejected the possibility of conversion; marriage with foreign wives constituted pollution of the "holy seed." Consequently, he argues at 174 note 41 that "all who had separated themselves from the unclean practices of their Gentile neighbours (Ezra 6:21) were initially Israelites, and were now accepted, because they were of Israelite genealogical stock. I would argue that at Ezra's time conversion, as we know it today, was not yet established in Israel. Lawrence H. Schiffman, "At the Crossroads: Tannaitic Perspectives on the Jewish–Christian Schism," in *Jewish and Christian Self-Definition*, Vol. 2: *Aspects of Judaism in the Greco-Roman Period* (ed. E.P. Sanders et al.; Philadelphia: Fortress Press, 1981) 115–56, at 120 states that "there could not have been an institution for religious conversion at this time [of Ezra]."

71 Blenkinsopp, *Ezra/Nehemiah*, 361 comments on Nehemiah's record of the intermarriage crisis in Neh 13:23–31 under the subheading "Nehemiah's Anti-Assimilationist Policy." This indicates Blenkinsopp's opinion on what constituted the core of the extension of the intermarriage prohibition.

72 Schiffman, "Tannaitic Perspectives," at 121 asserts that "Neh 13:23 once again emphasizes that these children were regarded as not Jewish." I dispute his assertion that has no basis in Scripture; on the contrary, as I demonstrated on pp. 304–305 they were ethnically Jews. Moreover, Nehemiah's accusation that they do not speak Hebrew, would be senseless if they were not Jewish.

73 See a more extended discussion of this particular issue in Heger, "Patrilineal or Matrilineal" at 239–242.

74 Saul M. Olyan, *Rites and Rank: Hierarchy in Biblical Representations of Cult* (Princeton, NJ: Princeton University Press, 2000) 82–84.

his principle of alien pollution from his interpretation of Neh 13:4–9: ויטהרו הלשכות "and they purified the rooms [in the Temple]." Olyan interprets the term טהר here as a ritual purification, necessary because Tobiah the Ammonite, an alien, had been there; thus, it is demonstrated that aliens pollute.

The Hebrew terms טמא and טהר, like חלל and זרע, have a wide range of meanings;[75] the term טהר is used, for example, to mean cleansing from sins in Lev 16:30, clear as the sky in Exod 24:10, pure gold in Exod 30:35, healed from leprosy in 2 Kgs 5:12, pure eyes not to look on evil in Hab 1:13 and finally clean from/clear out in 2 Chr 34:3, which I believe is the most appropriate match for the correct interpretation of Nehemiah's assertion; it relates to a comparable issue of cleaning out iniquitous artifacts, and both texts are from the Second Temple period, in which we encounter many novel terms and meanings. We read there: "he began to purge לטהר Judah and Jerusalem of high places, Ashera poles, carved idols and cast images." The passage does not say that Josiah cleansed Judah and Jerusalem, but rather that he disposed of or cleaned out the idolatrous artifacts from Jerusalem, and in Neh 13:4–9 we find the same meaning: he cleaned out from the rooms all of Tobiah's belongings.

The phrase וטהרתים מכל נכר "I cleaned them [the priests] from all foreigners," similarly cannot be interpreted as ritual cleaning, and must instead be interpreted as cleaning/removing all that is foreign, as in the cleaning of or removing from the rooms in Neh 13:9. Olyan, however, perceives it as further evidence for the theory that aliens represent a pollution. Moreover, the ritual pollution of a person or a substance has no affinity with an abstract defilement of blood. Scripture uses different terminologies for the status of the offspring of forbidden marriages than for ritual pollution. The first is denoted by חלל, the second by טמא. In his description of the foreigners, Ezra uses the term טמא in Ezra 6:21, in the sense of their wickedness and as the motive for his provision to separate from them לדרש לה' אלהי ישראל in order to worship the Lord, in contrast to the foreigners the idolaters. It is reiterated in 9:11b: "... is a land נדה impure with the בנדת impurity of the peoples of the lands, with their abominations that have filled it from end to end with their בטמאתם uncleanness."

Thus, the evil deeds of the people who made the land impure formed the motive for the separation of this group, as we see in Ezra 6:21, and for Ezra's decree of separation from them, as is evident from their portrayal in Ezra 9:11 in his justification for the decree. Finally, as it seems to me, Olyan's claim is

75 Mila Ginsburskaya, "Leviticus in the Light of the Dead Sea Scrolls: Atonement and Purification from Sin," in *The Dead Sea in Context; Integrating the Dead Sea Scrolls in the Study of Ancient Texts, Languages, and Cultures* (eds. Armin Lange et al.; Leiden: Brill, 2011) 263–277, at 272 ff. analyses the copulas כפר + סלח, סלח + טהר, כפר + טהר.

untenable because of a key flaw in his argument, namely that a building of stones or wood, as the rooms in the Temple were, does not become ritually polluted, and hence does not need ritual cleansing. The phrase ויטהרו "they purified/cleaned (the people and) the gates and the wall" (Neh 12:30) must also be perceived merely as cleansing of abominable things, since nowhere in Pentateuchal law do we encounter a ritual cleansing of gates and walls.[76] The only structure to require ritual cleansing is the house cleansed of mildew (Lev 14:49–53), which is to be explicitly declared unclean and closed before the contaminated stones are taken out.

While he confirms that in earlier texts, namely before Ezra, "an alien mother did not affect a child's Israelite ancestry as long as the child's father was an Israelite," alluding that it was no longer applied in Ezra's period,[77] Olyan appears to have overlooked the significance of Ezra 2:59 and Neh 7:61, cited above, which clearly confirm that Ezra and Nehemiah continued practising according to the ancient law that the father, not the mother, establishes the offspring's ethnicity. Because of this presumed oversight, he searches for a motive for what he takes to be a "major innovation" on the part of Ezra and Nehemiah that "the native category belongs only to those whose parents are both classed as Israelites,"[78] a statement which I feel does not concord with reality. To rationalize this innovation, Olyan claims that Ezra alluded in his citing of abominations in Ezra 9:2 to Lev 18:26–30, verses that relate to defiling sexual abominations, thus justifying the absolute exclusion of all defiling aliens from cult and community. My understanding of Ezra's text avoids such tortuous cogitation.

8.4 Disputing Hayes' Theory

8.4.1 *The Core of the Theory*

Hayes' core assertion is that the underlying rationale for the ban on interethnic sexual unions that she observes in *Jubilees* and in 4QMMT is not the fear of

76 Num 19:14–15 specifies that anyone who enters the tent and what is inside it, rather than the tent, becomes polluted. However, since v. 18 may be perceived as suggesting that the tent becomes polluted as well, and must be cleansed by sprinkling, the rabbis decided that only a tent made from linen cloth is affected, such as the cover of the Tent of Meeting (*m. Shabb*. 2:3 and *b. Shabb*. 28a); dwelling structures of other materials such as wood or stone, do not become polluted, and do not require cleansing.

77 Olyan, *Rites and Rank*, 89.

78 Ibid., 89.

contracting ritual impurity from a Gentile, a view I fully endorse, but rather the fear of profaning the holy seed of Israel—an entirely new and distinct concern, which she suggests was Ezra's innovation. At the outset of her thesis, Hayes acknowledges that the biblical rationale against intermarriage with the Canaanites because of turning the Israelite partner to idolatry can be logically extended to intermarriage with any Gentile, the argument I postulate as the rationale of Ezra's decision, but since such an argument would undermine her theory of seed purity—the only determining motive she chose among many possibilities[79]—she argues that "only those exogamous unions that result in the moral or religious alienation of the Israelite partner are prohibited," but "at the same time it does not render the law of universal application,"[80] in contrast to Ezra's decree, which in her opinion does not discern between exogamous unions in this way.

This line of argument seems to me lacking in coherence. Although Deut 7:4 uses the term כי יסיר "for he will [turn your son away]," rather than the term פן "eventually/he may," as in Gen 3:3, in neither case does the meaning convey that it will surely happen; the term in Deuteronomy is in the progressive future mode, which indicates its possibility, but not its absolute necessity. There was as yet no conversion in Israel at that period, and therefore there was no official method to ascertain prior to marriage whether a woman would want to join the Jewish people with its faith and culture; hence a universal prohibition of intermarriage was the only sure method of avoiding the evil influence of idolatrous women. Moreover, as I understand Nehemiah's concern (see pp. 325 ff), the Gentile women and their offspring did not *a priori* want to join the Jewish people or its culture.

Hayes builds her theory on the assumption that since "Deut 21:10–14 permits marriage to a beautiful captive woman . . . the women of foreign nations are considered to be ultimately assimilable, while those of the seven Canaanite nations are not." Hence Ezra's universal prohibition of intermarriage must have another motive, and that, argues Hayes, is to avoid the admixture of the holy seed.[81] By this device, however, she cuts off the branch she is sitting on. The

79 Johnson, *The Holy Seed*, 15 writes: "For contemporary interpreters, Ezra-Nehemiah makes possible the exploration of several germane matters because the intermarriage dilemma is a multidimensional phenomenon which poses questions related to gender, sexual, economic, and religious issues."

80 Hayes, "Intermarriage and Impurity," 7.

81 Ibid., 8 states indeed in note 15 that Louis Epstein, *Marriage Laws in the Bible and Talmud* (Cambridge, MA: Harvard University Press, 1942), 158–59 "that war captive wives and foreign slave wives are permitted because the Gentile partner is clearly in an inferior

concept of assimilability or otherwise is clearly a cultural affair, entirely distinct from the issue of race or seed; hence, it would follow from Hayes' assumption that the motivation of the intermarriage prohibition is the danger of acculturation rather than of seed intermixing. Moreover, it would seem that based on this assumption, there is no mixing of holy and unholy seed at the marriage with Gentile women, except with Canaanites, and hence intermarriage with non-Canaanite foreign women should be permitted. Ezra, however, prohibited intermarriage with all foreign women, including those previously considered assimilable.

I would argue in any case that Hayes' reading is anachronistic. Admixture of seed or race was not in the mind of Ezra or of the general society at that time; Scripture records intermarriages of Israel's most revered personages, and the fact that intermarriage was practised by the entire Israelite aristocracy of the highest rank, of both political and religious circles, including the genealogically cognizant priests, demonstrates that in marriages the superiority of seed or race—the difference is semantic—was an unheard-of concept. Intermarriage was not seen as taboo even at the later time of the Hellenistic era: Alexander the Great married Roxane, a Persian (Bakhtian) princess, and commanded his officers to do likewise to foster the spread of Hellenistic culture in the East or throughout the *oikumene*. Alexander's goal, and intermarriage as the most efficient method to attain it, were precisely what Ezra attempted to avert by his prohibition. The mixing of races or seed in the modern sense was of no concern to Alexander or to the Greek people, although the question whether the Greeks perceived themselves as superior to other nations is a debated topic.[82]

The Maccabean revolt of 167 BCE was a response to the cultural Hellenization process; intermarriage, as it seems, was of no concern and is not mentioned

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position and thus not able to impose her idolatrous practices upon her captor or master, but must accept Israelite religion," a logical opinion that fully supports my thesis, but since it refutes her theory, she ignores it and clings to her idea of discerning between some "seeds/races," who are "assimilable" according to their particular character, and others who are not, instead of considering the political circumstances explicitly portrayed in Deuteronomy 7:1: when you enter the Canaanites' land, who will not be driven out immediately (Exod 23:29–30) as was the situation facing Ezra and the returnees—as opposed to a single captive woman after victory in war.

82 The requirement of being the offspring of both Athenian father and mother to be eligible as an Athenian citizen has no association with race. In fact, at the "end of the fifth century, the number of the citizens was then reduced on the basis of a wealth quota." See Ida Fröhlich, "*Mamzer* in Qumran texts—the problem of mixed marriages from Ezra's time. Law, literature and practice," *Transeuphratène* (2005) 103–115, at 107–108, with indications of her original sources.

anywhere in accounts of the revolt. Acculturation, not racial or seed seclusion, was the name of the game at that period. Ezra's logical basis for his decree, as presented by Hayes, has an intrinsic flaw: if Ezra had taken the liberty of promulgating a rule to prohibit the mixture of Israelite seed with that of other nations, explicitly extraneous of Scripture as Hayes claims, he could instead have extended the existing biblical prohibition of the Canaanites, as he indeed did, without devising a new concept that was unfamiliar in past Jewish society and would be rejected in the future. Ezra's decree, driven by the danger of potential apostasy, pertinently and clearly justified in the *Ezra* text, as I postulate, is not an extra-biblical rule; it is no different from the logical extension of the biblical law of Exod 21:33–34 that a man who uncovers a pit must pay for the loss of a sheep that has fallen in, although Scripture mentions only an ox or a donkey.[83] Similarly, he would be liable if he created another impediment in the public domain and caused a loss to someone's livestock, although Scripture mentions only a pit. This is exactly analogous to what Ezra has done in his logical and legitimate extension of the boundary of the biblical law of Deut 7. According to Hayes, however, Ezra devised a new law, extraneous to Scripture, and transgressed the biblical prohibition to add to or revoke one of the given precepts (Deut 13:1, 12:32 in KJV).[84] While she writes that Ezra added an entirely "new rationale" to the older "Torah rationale," in fact, as she argues it, he added a new law, a prohibition against the mixing of races, on the basis of this rationale.

Hayes claims that Ezra compared the holy Israelites to the priests: both were separated from a large group, and "as the priest's holy seed is preserved by means of certain marriage restrictions, so also are marriage restrictions needed to preserve the holy seed of the ordinary Israelite."[85] This conjecture is logically flawed, since she draws a conclusion founded on the unproven concept of holy seed, and constructs upon it a further assumption of her own. Furthermore, as I have demonstrated (pp. 303–304), the biblical restrictions imposed on priestly marriage are not associated with the preservation of their holy seed; all Israelites are holy, but the marriage restrictions for the High priest, the ordinary priests and the Israelites are each different (as are other rules and restrictions). The issue of the preservation of holy seed is not mentioned, nor hinted at in Lev 21, the source of the priestly marriage restrictions.

Hayes' assertion that in the Restoration period a universal ban on intermarriages was instituted "for the novel reason that marital union with a

83 See *m. B. Qam.* 5:7: "Scripture uttered what is common."

84 In *b. Shabb*. 104a, the rabbis deduce from this verse that even a prophet may not add any precept to those of the Torah.

85 Hayes, "Intermarriage and Impurity," 9.

Gentile profanes (that is, renders non-holy) the holy seed" has no textual foundation.[86] The text of Ezra 9:1–2 she quotes does not say this; at this stage in her argument she is still in the process of attempting to prove it. Mal 2:11–12 cannot serve as evidence, as she suggests, since the issue of holy seed does not appear in these verses. Further, the phrase בת אל נכר in Malachi, criticizing the marriage of women who worship a foreign god, indicates the focus of the evil deed: namely, the danger of idolatrous influence seems to support the identical motive for Ezra's decree. Moreover, the name and date of the author of Malachi is unknown and a matter of some speculation. *B. Meg*. 15a hypothesizes that Ezra is its author, while scholarly conjectures perceive an association of many circumstances in Malachi with those recorded in the books of Ezra and Nehemiah. Hence, it should not be surprising that the prophet refers to Ezra's prohibition against intermarriage. Finally, some scholars hypothesize that some later additions were made to the original texts, and our v. 11, part b to be precise, is perceived to be one of them. Drawing halakhic or doctrinal conclusions from poetic prophetical texts is akin to walking through a minefield, particularly regarding verses such as ours, with a doubtful history.

8.4.2 מעל*: Desecration or Transgression?*

Hayes is aware that "Ezra does not use the term חלל profane to describe [the consequences of] intermarriage,"[87] used in Scripture at the portrayal of the offspring of a prohibited priestly marriage, the core of her thesis that intermarriage of an Israelite with a Gentile profanes the holy seed, since Ezra compared the holy Israelites to the priests, as cited above; she attempts, therefore, to prove her case on the basis of the term מעל used by Ezra: "And במעל הזה in this faithlessness the hand of the officials and chief men has been foremost" (Ezra 9:2), and in consequence, as recorded in Ezra 10:19, they brought a ram as a guilt offering after pledging to put away their wives. Hayes interprets the term מעל referring to intermarriage with foreign women as "a technical term

86 Ibid., 10. Fröhlich, "*Mamzer* in Qumran," at 106–107 interprets Ezra 9:1 "The holy race has become mixed with the alien population," a concept that is undefined and could mean the holy people, such as a nation, or signify the modern sense of race. On the other hand she writes: "Ezra's measure seems to sharpen the division between Jews and their neighbours," a statement that seems to emphasize the division between the peoples, rather than the mixture of races, as Ezra's motive for promulgating the prohibition of intermarriage with all alien nations. Fröhlich does not, however, attach much significance to the issue of what the phrase זרע קודש means, since the core of her interest is another topic, the comparison with the Athenian rule of citizenship.

87 Ibid., 10.

connoting desecration or profanation of a sanctum,"[88] like the guilt associated with involuntary use of holy things (Lev 5:15–16), for which a ram must likewise be brought as a guilt offering. As evidence for support of her thesis, I perceive this argument as "a splintered reed of a staff" (2 Kgs 18:21 and Isa 36:6).

The term מעל in our verse is translated as "trespass" in the KJV, "unfaithfulness" in the NIV, "faithlessness" in the RSV, ἀσυνθεσία "contrary to the covenant/agreement" in the LXX and *transgressione* "transgression" in the Vulgate. But none of these translations/interpretations fit Hayes' theory of profanation of a sanctum, and therefore she chooses the one scriptural occurrence of the term that relates to sacrilege, an instance that has no logical association with intermarriage and no corresponding legal consequence (how would the sinner add a fifth of the value, decreed in Lev 5:15, quoted by Hayes as evidence?), ignoring the many other occurrences of the term that are more appropriate to understanding Ezra, as I shall now demonstrate. The term מעל, like similar terms such as טמא and טהר, has a broad range of meanings or rather applications according to the context, but its generic meaning connotes something done that is wrong, and it is used in Scripture mainly to indicate a breach of trust amongst people or between people and God. In Jewish creed, from its inception and in contrast to the pagan religions, doing evil to a person is a sin against God and a breach of His trust, as we read in Lev 5:21: "If anyone sins ומעלה מעל and commits a breach of faith against the LORD by deceiving his neighbour in a matter of deposit or security, or through robbery, or if he has oppressed his neighbour."[89] Notice that in this case, the sinner did not desecrate or profane a sanctum, but cheated his neighbour, and he must therefore bring an *asham* "guilt" offering as indicated in Lev 5:25.[90]

We encounter a similar eventuality and the use of identical terms in Num 5:6–7, in which a breach of trust against another person is called מעל and requires an *asham* offering. The term מעל is used at the misbehaviour of the suspected Unfaithful Wife (Num 5), and at various misconducts in Lev 26, Deut 32:51, Ezek 39:23, and in other occurrences, all unconnected with sacrilege.

88 Ibid.

89 Rothenbusch, "The Question of Mixed Marriages," at 67 writes: "Both terms [מעל and פשע] express 'infidelity,' targeted mostly against YHWH, but they can also refer to infidelity against people."

90 See also K. Southwood, *Ethnicity*, 89–90 for arguments against Hayes' assumptions deduced from the use of the terms אשם and מעל by Ezra.

Moreover, the term מעל is used in 2 Chr 36:14, an almost *verbatim* parallel condemnation of abominable practices to our verses in Ezra 9:1–2.[91] The condemnation, and the term מעל, do not relate to intermarriage or to any transgression associated with sacred things, but to wicked deeds, like the abominations of the nations that defiled and desecrated the divine Temple, causing its destruction and the exile (Lev 18:28; 20:3; 22; Num 35:34). Ezra warns the people to avoid such behaviour, engendered by intermarrying with these nations, as might precipitate the same repercussions; on the other hand, he promises them that through obedience to the divine rules they shall be strong, eating the good things of the land and leaving it as an inheritance for their children.[92]

8.4.3 *The Significance of the* asham (*Guilt*) *Offering*

Hayes' argument addresses Ezra's decree that those who married foreign women must bring an *asham* (guilt) offering (Ezra 10:19). She argues, erroneously in view of my findings, that this transgression was perceived as a sacrilegious mixing of the holy seeds, thus requiring the guilt offering for its expiation, like the same offering to be brought for enjoying sacral food in Lev 5:15–16.[93] While it is true that the latter verse refers to sacrilege, she ignores the fact that Lev 5 enumerates a great number of sacrilegious transgressions which do not require a ram guilt offering, and non-sacrilegious transgressions that do

91 The NIV and the KJV do not translate the term מעל, and interpret its double mention למעול מעל as "transgressed very much," associating it with all the abominations of the heathen. The LXX doubles the term ἄθετως "lawlessly, despotically" (Liddell and Scott). Albert Pietersma and Benjamin Wright, in *A New English Translation of the Septuagint* (Oxford/New York: Oxford University Press, 2007), interpret it: "multiplied violating with violations of abominations." There is no hint of sacrilege or impurity in all these translations and interpretations. The Greek translation of 1 Esdras 8:66, the parallel of Ezra 9:1, which mentions the term ἀκαθαρσία "impurity," quoted by Hayes as support for her thesis, cannot contradict the original Hebrew text and the great variety of translations cited above. It is plausible that the author of 1 Esdras used in his Hebrew original writing Ezra's terms, and we cannot speculate why its Greek translator deviated from the plain sense of the original text.

92 Jan Clauss, "Understanding the Mixed Marriages of Ezra-Nehemiah in the Light of Temple Building and the Book's Concept of Jerusalem," in *Mixed Marriages*, 109–131, at 130–131 states: "The obligation to endogamy is an ethical requirement due to Israel's essential trait—the exclusively close relation to YHWH." I fully agree with this statement, and also with Clauss' assertion that "the mixed marriages [should be understood] as a sacrilege committed against the sanctuary," because the idolatrous worship resulting from these marriages leads to the defilement of the Temple, as indicated in Lev 20:3.

93 Hayes, "Intermarriage and Impurity," 10.

require just such an offering. In the first group, not requiring an *asham*, vv. 2 and 3 relate to sacrilegious transgressions, while vv. 1 and 4 do not.[94] In the second group, which do require a ram as a guilt offering, only one, in vv. 15–16, refers to a sacrilegious transgression, whereas all the others (vv. 17, 21, 22 and 24) refer to non-sacrilegious transgressions. Hayes, however, chose from this great array of cases the only one that matched her argument.

Hence only the specific transgression of involuntary use of holy things as recorded in Lev 5:15–16 requires a guilt offering. Therefore Ezra's command to bring a guilt offering for the transgression of intermarriage could not have been derived from this biblical rule, completely different in its type of transgression and legal consequence: it did not require to pay the fine of a fifth, as *Leviticus* decrees. Hence, it cannot serve as support for Hayes' theory.

Moreover, the fact that Ezra's decree demands an *asham* sacrifice of those who have intermarried does not serve as evidence that it should be equated with or considered comparable to the biblical *asham* offering for inadvertently using sacred property, since Ezra also instituted other offerings that have no scriptural basis, such as, for example, the novel concept that community offerings must be twelve in number, corresponding to the twelve tribes of Israel,[95] as explicitly stated in Ezra 6:17.[96] In Ezra 8:35 we encounter bizarre types and numbers of offerings: "twelve bulls for all Israel, ninety-six rams, seventy-seven male lambs, and as a sin offering twelve male goats, all a burnt offering to the

94 Although Scripture does not elucidate the nature of the sins in vv. 2 and 3, it is clear that he entered a holy place or touched holy things in his polluted state, forgetting his uncleanness. (*M. Sheb*. 2:5), since becoming polluted by touching a carcass is not a sin in itself. The offering for the transgressions in vv. 1–4 is a חטאת "sin offering," not an *asham*. The numerous mentions of the term חטא in various grammatical forms, and the offering of a sheep or a goat as for a sin offering, not of a ram for an *asham*, serve as evidence for the type of the offering (*b. Kerit*. 27b).

95 S. Talmon, *The World of Qumran from Within* (Leiden: Brill, 1989), 41 ff. speculates that the twelve offerings were to demonstrate that only the returnees were the genuine Jewish people. On the identity of צרי יהודה ובנימן "enemies of Judah and Benjamin" in Ezra 4:1 and עם הארץ "the peoples around them" in v. 4, possibly linked to this topic, see also Lester L. Grabbe, *Ezra-Nehemiah* (London–New York: Routledge, 1998), 137, and P.R. Davies, "The birthplace of the Essenes: where is "Damascus?" *RevQ* 14, 4 (1990) 503–519, at 514.

96 The twelve male goats offered by the twelve tribal leaders at the Tabernacle's consecration (Num 7:2–8) are of an entirely different character than the concept of twelve offerings instituted by Ezra. The latter were clearly offered by the people as a sin offering "for all of Israel," whereas in Numbers these offerings—among many others—were given by the leaders on their own behalf.

LORD."[97] However, no pentateuchal requirement for the number of twelve sacrifices, nor its multiples, nor the strange number of seventy-seven lambs for sin offerings, is recorded for any of the sacrifices, whether obligatory public offerings, the daily offering,[98] or the communal sin offerings.[99] Moreover, the biblical *asham* offering is brought only for involuntary sins, yet intermarriage in Judah does not seem to have been involuntary. We observe the opposition Ezra and Nehemiah encountered in their efforts to enforce the intermarriage prohibition.[100] Their dramaturgic spectacles (Ezra 9:3, 4; 10:1; Neh 13:25), and as the last resort threatening the confiscation of property from those who would disobey (Ezra 10:8), confirms the assumption that the intermarriage of the people did not have the character of an involuntary offence that one attempts to redress after becoming conscious of its sinful aspect. Last not least, as it seems from the text of Ezra 10:19, the *asham* was offered only by the priests, whereas the laics, the majority, did not bring it.[101]

In view of all these facts, the *asham*/guilt offering instituted by Ezra cannot serve as evidence that intermarriage constitutes a sacrilegious sin or that he perceived it as such, and therefore decreed it.

8.4.4 *Intermarriage: Cultural Dilution, Not Profanation*

Hayes cites as further support for her thesis the fact that "the prohibition on intermarriage with Canaanites in Deut 7:2b–5, upon which Ezra clearly relies, is followed immediately in v. 6 by the statement 'For (כי) you are a people consecrated קדוש [holy] to the LORD your God.'"[102] She perceives this verse as the justification for the prohibition of the preceding v. 3, writing: "do not

97 The numbers of the offered animals are multiples of twelve, except for those of the lambs, which are multiples of seven and eleven. *B. Tem*. 15b correctly presumes that the multiple of twelve corresponds to the twelve tribes, but declares that the offering of the peculiar number of lambs was an extraordinary, *ad hoc* command.

98 See Exod 29:38–42, as well as vv. 43–45 which relate the sacrifices to God's presence and His dwelling among the people of Israel.

99 Only one ox is required as a sin offering for a transgression by the Israelite community (Lev 4:14); on the Day of Atonement, two goats are required, one as a regular sin offering and one as a scapegoat (Lev 16:15–20).

100 Joseph Blenkinsopp, *Ezra-Nehemiah*, 177 writes that the "measures taken by Ezra against intermarriage were not successful."

101 Maccoby, "Holiness and Purity," 166–68 claims that the Jewish women who remained in the land, but married priests from the returnees committed a sacrilege by eating the holy food permitted only to priests and their household, because they were not recognized as Jewish by Ezra. Therefore, Ezra decreed that the priests must bring a guilt offering.

102 Hayes, "Intermarriage and Impurity," 11.

intermarry with Gentiles, *for you are holy* (my italics), adding the text from v. 6 to that of v. 3, and a devised explanation: *while they are not*. Just as a priest's marriage to one who is unfit profanes his holy status, so Israel will be profaned by marriage with those who are not holy."[103] I thoroughly dispute her imagined and contradictory additions to the text. Deut 7:6 is not the justification/explanation for the intermarriage prohibition in v. 3, which is justified by the succeeding v. 4 "for they will turn your children," but rather mainly for the decree in its preceding v. 5 to destroy their altars. The decrees of vv. 3–4 are distinct in their subject and character from those of vv. 5–6 or up to v. 11. The first are in negative mood, referring to intermarriage, whereas the latter are in positive mood, referring to the destruction of their altars. It seems that Hayes has skipped over the content of v. 4, the obstacle to her theory, connecting v. 3 instead to v. 6.

I similarly dispute the second part of Hayes' comparison—"Just as a priest's marriage to one who is unfit profanes his holy status, so Israel will be profaned by marriage with those who are not holy"[104]—on the grounds that the priest does not profane his own holy status by marrying an unfit woman, as Hayes claims, but profanes only his offspring (Lev 21:15).[105] Hence, Hayes' comparison is flawed, since the priest himself is not profaned, and neither, we may conclude, is an Israelite who marries a woman prohibited to him.[106]

8.4.5 *Disputing Hayes' Support from* Tobit

Hayes' claim of support from *Tobit*, arguing that "Preserving seed is the concern of the book of *Tobit*," seems to me to be wishful thinking rather than a substantiation of her thesis. Tobi, Tobit's father, does not refer to marriage with a foreign woman in his advice to his son. Such marriage was prohibited by Ezra, and there is no need for Tobi to remind Tobit of the prohibition. And indeed, as is evident from the text of Tobit 4:12, he does not tell him that it was forbidden, as Hayes argues. He merely advises his son to marry a woman from his family, not from another Israelite tribe (φυλέ), promising him an auspicious future if he does so, as happened with our ancestors the Patriarchs, who married from their own clan (Tobit 4:12b). The Book of Tobit was probably written originally in Hebrew, and the author may have used the term זרע, but as argued this term

103 Ibid.

104 Ibid.

105 This is the simple meaning of the biblical text, and is acknowledged as such in *b. Qidd.* 77a.

106 In severe cases, such as marrying a *mamzer*, any offspring are defiled, but he himself is not.

has many meanings, and as I will further corroborate, it must be understood here as descendants, rather than in terms of a racial concept of seed. The entire text relating to Tobit's marriage corroborates our thesis that Tobi referred in his advice exclusively to Sara, the daughter of his cousin Raguel, according to the author's careful plotting of the narrative.

Immediately after the portrayal of Tobit's lamentation because of his distressing conditions and the false reproaches he has heard, and his praying to God to relieve him from his affliction by taking his life (Tobit 3:6), the author inserts (vv. 7–15) the parallel misfortunes of Sara praying to God to take her life or to provide some pity for her not to hear further reproaches accusing her for the death of her seven husbands. The author starts the intercalation of the Sara narrative into the life of Tobit's family with the opening sentence at 3:7: "It came to pass in the same day" that both sad events occur, and makes it clear that divine help already reaches the united couple Tobit and Sara. We read in the concluding vv. 3:16–17a of this passage: "So the prayers of them both were heard before the majesty of the great God. And Raphael was sent to heal them both, that is, to scale away the whiteness of Tobit's eyes, and to give Sara the daughter of Raguel for a wife to Tobit the son of Tobi." The scheme of the narrative is now unveiled, and then follows its actualization, which adds further credible evidence that Tobi's initial counsel to Tobit related to his marriage with Sara. The same applies to Sara's burying seven husbands, because her destiny was to marry Tobit, and divine providence sent the angel Raphael to bring this to its fulfillment.

We read in Tobit 6:12–13 the angels' speech to Tobit: "and when we return from Rages we will celebrate the marriage: for I know that Raguel cannot marry her to another according to the law of Moses, but he shall be guilty of death, because the right of inheritance doth rather appertain to thee than to any other." In v. 16 the angel reminds Tobit of his father's mandate to him before his departure that he should marry a wife of "thine own kindred" (family).[107] Now it is entirely evident that Tobi's mandate to his son in 4:12 has no suggestion at all of warning him not to marry a foreign woman, but rather of counseling him to marry Sara, dedicated to him by the law of Moses as we saw in 6:13, and further acknowledged in Raguel's speech to Tobit in 7:13. Nevertheless Hayes does not discuss these textual clues, claiming instead that Tobi warned his son not to marry a foreign woman, relying on her narrow interpretation of the term "seed."

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107 For example, the translated phrase "thine own kindred," in 6:15, appears in the LXX as γένους σου: your "family, stock, race," not "seed."

8.4.6 *Disputing Hayes' Support from* Jubilees

Hayes next attempts to adduce further support for her theory, claiming that *Jubilees* relied for its rules about intermarriage and its interpretation of Gen 34 on Ezra's decree. She starts by criticizing Cana Werman's theory about the intermarriage ban in *Jubilees*,[108] because Werman "does not take into account the notion of holy seed and its ideological freight."[109] I do not agree with all of Werman's theories and assumptions, but I dispute Hayes' reproach, because there is nowhere in *Jub*. 30 a mention of holy seed or of a prohibition to mix it with impure/profaned/defiled seed, the basis of Hayes' theory. Since she considers her theory as a given, however, she therefore criticizes Werman for not acknowledging it.

The term "seed" appears four times in *Jub*. 30; however, these instances cannot be interpreted as denoting the abstract seed, according to Hayes' assertion, but rather as a generic sobriquet for descendants, children or people. I have already demonstrated the many meanings of this term in Scripture and will now do the same regarding its use in *Jub*. 30. In v. 7, "any man who is of the seed of the Gentiles" must be interpreted according to the context, as denoting from the peoples/nations. An "abstract" interpretation of "seed" in the sense of Hayes' theory is inappropriate here. In fact, the author writes explicitly in *Jub*. 30:13: "those that take the daughters of the Gentiles" are denounced: "for this is unclean and abominable to Israel." This statement relies on Jacob's sons' assertion: "We will not give our daughter to a man who is uncircumcised." In v. 9: "written in the heavenly tablets regarding all the seed of Israel," the antithetical phrase to the seed of Gentiles in v. 7 must be interpreted likewise as the people of Israel or better as the common sobriquet בני ישראל "Israelites," as habitually translated. The qualifying adjective "all" (v. 9) excludes the possibility of relating it to "seed" in the sense of Hayes' theory.[110] Verse 10, "he has given of his seed to Moloch," founded on Lev 20, which refers to actual children, along with its further comparison to the concrete affair of Dinah, excludes any possibility of relating the term to the abstract "seed." Verse 18, "And the seed of Levi was chosen for the priesthood," could be interpreted in either way, and therefore cannot serve as conclusive evidence for Hayes' theory. The term "holy"

108 Cana Werman, "*Jubilees* 30: Building a Paradigm for the Ban on Intermarriage," *HTR* 90:1 (1997) 1–22.

109 Hayes, "Intermarriage and Impurity," 15.

110 Ibid.: "one need only point out that terms of defilement/impurity in *Jubilees* 30 always refer to (the seed of) Israel (vv. 8–10) (to which I referred in the text) or to the act of sexual union itself (vv. 8, 13–15), and never to the individual Israelite partner." In *Jub*. 30:13–15, however, there is no mention of seed.

appears twice in *Jub*. 30, but never in association with seed. In v. 8 we read: "for Israel is holy unto the LORD," as we encounter in Scripture in association with obeying and fulfilling the divine precepts;[111] sexual misbehaviour is only barely mentioned among other precepts, indicating its relative insignificance in determining the holiness of Israel. Such behaviour is, however, significant in association with polluting the land in Lev 18, and I shall revert to it in examining the array of meanings of the term טמא in Scripture in an appendix to this chapter. In conclusion, I believe that Werman was correct in not apprehending in *Jub*. 30 the notion of the mixing of the holy seed as the main motive of its narrative and halakhic decision, or in Hayes' characterization "its ideological freight."

Hayes also states that "*Jub*. 16:17–18 relies on Exod 19:6 to establish that Israelites and Gentiles are two distinct 'seeds'—one holy and one profane."[112] Aside from the issue whether the translated term "seeds" is to be understood as "seed" in Hayes' sense, or as "children/descendants"—the meaning of the term זרע, the presumed original source of the translated "seeds," as I have argued—her claim has no textual support, since Exod 19:6 does not employ the term זרע "seed,"[113] and consequently cannot offer any suggestion of mixing holy and unholy seed in any case. Hayes does not quote Lev 20:26 (see p. 23), which explicitly indicates the holiness of Israel versus the other nations, in support of her thesis, because it would also clearly demonstrate that Israel's holiness is the consequence of physical separation from the other peoples, not the

111 The phrase גוי קדוש in Exod 19:6 is the consequence of obeying the unspecified divine commands mentioned in the preceding verse. The phrase אנשי קדש in Exod 22:30 is associated with fulfilling the rules of avoiding the consumption of carcasses and torn animals, והיה מחניך קדוש in Deut 23:15 with proper sanitation, and עם קדוש in Deut 26:19 with accomplishing all precepts. The habitual term קדשים in Lev 11:44 is again associated with avoiding the consumption of forbidden animals, in Lev 19:2 with ethical behaviour; in Lev 20:7–8 it is used *either* with reference to obeying all precepts, including sexual misbehaviour of all kinds, if perceived as referring to the succeeding verses, *or* as an exhortation against idolatry, magic and sorcery if it refers to the preceding verses. In Lev 20:26, the term קדשים appears after ethical rules, a list of sexual misconduct, and forbidden consumption of unclean animals—the transgression which concludes the list, and which seems to be the critical motive for the separation of holy Israel from the other peoples, rather than sexual misdoings; in Lev 22:32, the term relates to the appropriate manner of offering sacrifice, while in Deut 14:2 it is associated with the prohibition of extreme signs of mourning, and in v. 21 with forbidden food and animals. The concept of holiness is intrinsically associated with real deeds, not with the abstract topic of mixing seeds.

112 Ibid., 18.

113 We read there: "you will be for me a kingdom of priests וגוי קדוש and a holy nation."

abstract separation of the seeds. Neither do I find in *Jub*. 16:17–18 any indication that "This passage sets the rhetorical stage for repeated warnings against the intermingling of seeds that ought to be kept distinct and the consequent profanation of the holy seed."[114] The term "seed" appears many times in this short passage, but Hayes' assumption that it refers to the seed as opposed to children or descendants is definitely flawed, as I shall now show. To quote the relevant text:

> And (that) all the seed of his sons should be Gentiles, and be reckoned with the Gentiles; but from the sons of Isaac one should become a holy seed, and should not be reckoned among the Gentiles. For he should become the portion of the Most High, and all his seed had fallen into the possession of God, that it should be unto the LORD a people for (His) possession above all nations and that it should become a kingdom and priests and a holy nation (*Jub*. 16:17–18).

To apprehend literally the term זרע as seed in this passage would constitute a bizarre premise. From a logical and physical point of view, how could "holy seed" be engendered from one of Isaac's sons (Gen 21:12) and "unholy seed" from another? The sentence "and should not be reckoned among the Gentiles," interpreted by Hayes as referring to seed, is the *verbatim* translation of Num 23:9b, which relates to "a people dwelling alone, and not counting itself among the nations," not to the abstract seed. The subsequent phrase: "and all his seed had fallen into the possession of God, that it should be unto the LORD a people for (His) possession above all nations and that it should become a kingdom and priests," founded on Exod 19:5b–6a, must be interpreted as relating to the people. Hayes' literal perception of seed in *Jub*. 16:17–18 would mean that God is now in possession of Isaac's seed, a grotesque assertion. Hayes, however, seems unconvinced that one cannot literally interpret the Hebrew term זרע plausibly used in the original text and in other similar cases as seed, but rather one must interpret it as descendants or people. She persists in her determination to understand the term "seed" literally, despite the author/translator's clear indication that he intends that the people—not the seed—should be God's possession, and the biblical source of the sentence also relates to people.

Jubilees discerns between the Israelite man who marries a foreign woman and the one who gives his daughter or sister in marriage to an alien man. Only the latter is punished by stoning, since his action is considered as having "given of his seed to Moloch." This biblical citation refers in its straightforward and

114 Hayes, "Intermarriage and Impurity," 19.

habitual meaning to the strict prohibition of concretely offering one's children to the Moloch idol; the rabbinic writings and traditional commentators interpreted it in the same way. The author of *Jubilees*, as it seems, interpreted the phrase metaphorically, intending it as giving in marriage one's daughter to an alien idol worshipper.[115] His comparison of marrying one's daughter to an alien to giving one's children to the idol, and his consequent declaration of the punishment of stoning, the most severe type of execution, can only be understood and justified by the following logical consideration. Since the daughter will ultimately adopt the religion and customs of the foreign husband's people, as was typically the consequence, giving her in marriage to an alien is like giving one's descendants to be burned as worship to the idol. This clearly indicates that the author's motive for applying such harsh punishment as a deterrent against giving one's daughter in marriage to an alien was the survival of the Israelite people and their particular faith and culture.

Therefore, *Jubilees* perceives giving a daughter in marriage to an alien as a much greater sin than the marriage of an Israelite man with a foreign woman: since the latter action does not endanger Israel's survival, it cannot be compared to giving one's offspring to Moloch, and consequently does not justify capital punishment.[116] On the other hand, Hayes' argument that the prohibition of mixing the seed is *Jubilees*' motive does not support the comparison to giving a child to the Moloch, since the woman has no seed, and capital punishment cannot therefore be justified.[117] Further, there is no logical justification according to Hayes' theory for the distinction between the punishments promulgated by Jubilees for intermarriage of an Israelite man with an alien woman, and of an Israelite woman with an alien man, since in both cases there would be a mixing of seeds. However, here too, Hayes claims that *Jubilees* imposes stoning on both cases, since according to her theory the defilement of the "holy seed" is equal, ignoring the clear, conflicting texts of vv. 7 and 10–11,

115 *M. Meg.* 4:9 criticizes an interpretation prohibiting sexual relation with a Gentile woman, giving her your seed. Mixing the seed, however, was not the issue.

116 Shaye Cohen, "Conversion to Judaism in Historical Perspective: From Biblical Israel to Postbiblical Judaism," *Conservative Judaism*, 36, 4 (1983) 31–45, at 38 writes that *Jubilees* "bitterly denounces intermarriage," but "giving one's daughter to a Gentile is a much greater sin in this author's [*Jubilees*'] eyes than is the taking of a Gentile's daughter." Werman, "*Jubilees* 30," 13 likewise understands that the comparison to giving one's child to the Moloch relates only to the marriage of a Jewish woman to a Gentile man.

117 Hayes, "Intermarriage and Impurity," 16 admits that "in reality no one biblical verse in isolation expresses the prohibition as formulated by *Jubilees*." Only "a complex concatenation of several biblical verses," chosen and interpreted according to her preconceptions, leads to her conclusion.

which decree the stoning only to the man marrying his daughter to a foreigner.[118] Hayes' attempt to link *Jubilees*' rules against intermarriage to Ezra's regulations[119] demonstrates the fallibility of her holy seed thesis; Ezra does not decree capital punishment for the men who married foreign women, as Hayes alleges that *Jubilees* established for such transgressions.[120]

Further, *Jub*. 30:7–10 decrees the stoning of the father who gave his daughter or sister to "any man who is of the seed of the Gentiles . . . for he hath wrought shame in Israel." The father is thus accused of having defiled the holy people of Israel,[121] giving his daughter to the Moloch, but the Gentile man is not likewise accused of defiling his daughter; the mixing of seed is not the issue here.[122] We read further: "and they shall burn the woman with fire, because she has dishonoured the name of the house of her father, and she shall be rooted out of Israel." The woman too is accused of having defiled "the house of her father", not the seed of Israel or the people of Israel.

Jacob's sons, *Jubilees*' model similarly perceives Shechem's action as a חרפה "shame" (Gen 34:14), not a defilement.[123] The character of their justification before Jacob of their action (Gen 34:31) equally indicates the protection of Dinah's honour as their motive, not a punishment for having defiled her.

I likewise dispute Hayes' statement that according to *Jubilees*, "sexual intercourse with a Gentile . . . jeopardizes the continued existence of the entire community on God's land,"[124] founded on its understanding of Lev 18:28 and 20:22. However, in both chapters sexual intercourse with a Gentile does not appear in the long list of sexual misbehaviours indicated as inducing their vomiting out of the land. Similarly, her superlative affirmation is not hinted at in *Jubilees*. We read there in 30:15b: "the whole nation together be judged for

118 We read in 30:7: "And if there is any man who wishes in Israel to give his daughter or his sister to any man who is of the seed of the Gentiles he shall surely die, and they shall stone him with stones;" and in v. 10: "the man who has defiled his daughter shall be rooted out in the midst of all Israel, because he has given of his seed to Moloch."

119 Hayes, "Intermarriage and Impurity," 39 writes: "and especially Ezra."

120 Ezra 9:12 prohibited both types of intermarriage, comparing all foreigners to the biblical rule against intermarriage with the Canaanites (Deut 7:3–4), but does not establish punishments for its transgression, except their separation.

121 Charles translates *Jub*. 30:8b: "for Israel is holy unto the Lord, and every man who has defiled (it) shall surely die."

122 It is evident that the term מזרעו of Lev 20:2, the source of *Jubilees*' dictum, must be interpreted as denoting his children, not his seed.

123 Charles' interpretation "for that were a reproach unto us" (*Jub*. 30:13) does not represent the correct translation of the biblical text to which it surely relates.

124 Hayes, "Intermarriage and Impurity," 18.

all the uncleanness and profanation of this man"; while the entire nation may be judged, and possibly punished, there is no threat to its continued existence. I agree with Hayes' statement about the threat to Israel's continued existence as recorded in Ezra, but the nature of the threat is the danger of assimilation by the surrounding foreign nations through intersocialization, rather than defilement of the holy seed.

8.4.7 *Concluding Reflections*

I believe I have rebutted Hayes' theory of the mixing of holy Israelite seed with unholy Gentile seed as Ezra's motivation for prohibiting intermarriage with all foreigners, and demonstrated the flaws in all her presumed supporting evidence from different sources. Finally, having concluded my debate against her theory, let me reflect about a general consideration. The indiscriminate use by *Jubilees*' author of a variety of distinct concepts such as shame, uncleanness, abomination, defilement and profanation in the portrayal of the Dinah narrative demonstrates the futility of deducing philosophical or halakhic conclusions from this book, and likewise with other similar writings. Moreover, the author of *Jubilees* did not have in mind Hayes' or my conjectures about the motive of the intermarriage prohibition, and we do not know precisely the terms he used in his original Hebrew version. His changes in crucial details of the biblical narratives were motivated, not by his intention to classify the type of transgression of intermarriage, but by his aspiration to blot out the impression of any wrongdoing by Simeon and Levi and on the contrary to laud their act, and to justify his imposition of capital punishment for giving one's daughter in marriage to a Gentile man by comparing it to giving a child to Moloch, as decreed in Lev. 20:2.

8.5 Disputing Hayes on Qumran's Attitude towards Intermarriage

I shall now turn to Hayes' interpretation of the authentic Qumranic document 4QMMT, with which she aims to support her theory of Ezra's "holy seed" motivation for his comprehensive intermarriage prohibition by demonstrating the identical principle in Qumran texts. I shall therefore critically scrutinize Hayes' supporting quotations and interpretations, which I believe are inappropriately used or else adjusted to fit the substantiation of her theory. In her quotation of 4Q396 (4QMMT^{c}) IV:4–11, for example, she adds the term "seed" in her interpretation of והמה בני קדש (vv. 4–5) "being sons of the holy [seed],"[125]

125 Hayes, "Intermarriage and Impurity," 26.

versus the translators' literal "they are (members of) holiness." Hayes indeed puts the term in brackets, like many other restructured texts in this document, but the term "seed" is not such a reconstruction: seemingly, it could not originally have been mentioned there. The term זרע "seed" appears only in v. 10, relating solely to the priestly seed, criticizing its mixture with Israelite seed, a concept utterly opposed to Hayes' theory of equalizing the holiness of the Israelite and priestly seeds. The insertion of "seed" in the text is thus inappropriate and in conflict with a straightforward reading of the Qumran texts, similarly to Hayes' interpretations of biblical and post-biblical texts, as demonstrated above, and presumably motivated by an urge to prove her theory by any means.

4Q396 (4QMMT^{c}) IV:4–11, commonly interpreted as referring to marriages of priests with Israelite women, is interpreted by Hayes as relating to Israelites marrying Gentiles, since "Holy Israel" is written in v. 5; hence, according to Hayes, the contamination of holy seed must refer to contamination of ordinary Israelites.[126] She ignores, however, the rationale for the term טמא, "they defile the holy seed," interpreted by her as "contamination;" this rationale appears only in v. 10, unquestionably referring to priests, after the accusation in v. 9: "that a part of the priests and of the [people mingle] [and] th[ey]unite with each other and defile the [holy] seed." In fact, the entire lemma vv. 4–11 constitutes one unit, referring to one single topic: the intermarriage of priests with Israelite women. Indeed, vv. 5–7, which seemingly interrupt the literary flow of the lemma, simply provide the legal basis for their claim that intermarriage of priests with Israelite laics is similarly prohibited as *kil'ayim*, because the Israelites are holy, but the priests are the holiest of the holy (v. 8). This justification, the core of the lemma, cannot be attributed to intermarriage of Israelites with foreign women. Hayes' claim that the term העם in v. 4 relates to the "people," and thus supports her theory that the *zenut*—the marriage of Israelites to foreigners—is condemned, is equally incorrect. The term is qualified by the preposition בתוך העם (literally) "in the midst of the people," and, as I understand also from the context, means "spread among the people"—an expression including the entire people, Israelites and priests, but no foreigners. We observe that, at the separate mention of priests and people, in v. 9, the term is written: הכהנים והעם with the conjunction "and," intending two separate and distinct entities "in the midst of the people." Thus, her claim that the *zenut* refers to the marriage of Israelites to foreigners is unwarranted, also because its nature, namely intermarriage with foreigners, is not mentioned, whereas intermarriage between priests and Israelites is explicitly identified.

126 Ibid., 27.

The heavily reconstructed vv. 10–11 את [הקודש ואף] ˚את זרע [ם] ˚ומטמאי זרע]ם עִם הזונות] could be interpreted, as Hayes claims, as being that the second phrase relates to Israelites, but we do not know definitely the exact original text, nor the missing words between v 10 and 11; its rationale, which plausibly followed the subordinate conjunction כי "because," regrettably is lost. Hence, it cannot serve as supporting a supposed/visionary interpretation that has no endorsement from another explicit source. On the other hand, 11Q19 (11QTemple[a]) LXIII:10–15 acknowledges the biblical permission to marry a foreign captive woman, and one must assume that their offspring are perceived as Jewish: while the lemma decrees a seven-year waiting period for permission to eat sacred offerings and touch pure food, intercourse is permitted after one month according to the biblical rule, and hence any children must have been understood to be legal Jews, not a defiled entity of mixed holy and unholy seed. Hayes, aware of this rule, patently contradicting her theory, dodges it by devising a scheme that it does not include Canaanite women, without any scriptural or TS hint of such a restriction.[127] See our disputing arguments to this claim on page 326.

8.5.1 *The Meaning of זרע and זנות in Qumran Literature*

Having explored the different meanings of the term זרע in Scripture, I shall now do the same regarding its use in Qumran literature, indicating where the term must be perceived as meaning the people, descendants, or offspring, but not "seed." I did not find any use of the term that must be interpreted as seed, except those referring to actual seeds of plants in 4Q367 (4QRP[e]) and of man in 4Q274 (4QTohorotA).[128] Conversely, I will cite some of those verses in Qumran writings (including citations from *Jubilees*) that must be interpreted as people/offspring or as descendants; the remaining instances can be interpreted in either way. For example: "If the זרע ישראל people of Israel lives according to this law" in CD XII:21–22; "But [זרע האד]ם the offspring of ma[n] kind has not understood" in (1Q34+34bis (1QLit Prayers[a,b]) 3ii:3; "יות ˚זרעם ל]ה [ ] [th]at their offspring might be in Your presence forever" in 1QH[a] IV:14; ופרות זרע "and multiple progeny" in 1QS IV:7; "to b[e] for להמה ולזרע˚ם them and for their descendants" in 4Q158 (4QBibPar [4QRP[a]]) 4:7–8; "and ע בניכה זר[ ] the descen]dants of your children" in 4Q158 (4QBibPar [4QRP[a]]) 14:6–7; "And the nations shall [not] work with the בזר]ע ישראל with children of Israel" in 4Q159 (4QOrdin[a])

127 Ibid., 8.

128 The phrase ומזרע הקד˚ [ושי]ם in 11Q11 (11QapocrPs) V:6–8 cannot serve as contrary evidence since it is an element in an esoteric ritual of exorcism, a reference that has no implications for its regular use.

2–4+8:2; "And to them will belong all the inheritance of Adam and toולזרעם their offspring forever" in 4Q171 (4QpPs^a) 1–10 III:1–2; "וזרעו מבקש לח ֯]ם nor his offspring seeking brea[d" in 4Q171 (4QpPs^a) 1–10 III:17–18; "and[שעים] זרע ר ֯ he offspring of the wi[cked are cut off," in 4Q171 (4QpPs^a) 1–10 IV:1; "And he chose בזרע יעקוב the descendants of Jacob" in 4Q216 (4QJub^a) VII:11; "[and cut you off]ואת זרעך and your offspring [from benea]th the sky" in 4Q221 (4QJub^f) 1:3; "יהיה רעבה כככה so will be your offspring, unable to be counted" in 4Q225 (4QpsJub^a) 2i:6–7; "[the dwelling of לכו]ל ז ֯ רע ישראל of al]l the offspring of [Israel" in 4Q266 (4QD^a) 9iii:11–12; "לזרעם to their descendants you gave your truthful statutes" in 4Q266 (4QD^a) 11:11; "an eternal law for them ולזרעמה and their offspring" in 11Q20 (11QTemple^b) V:10i, 11:4. Hence, Hayes' claim that the term זרע in Qumran writings should be understood as seed has no substantiation; in contrast, the above evidence disputes it.

Hayes grants great significance to the term *zenut* for the substantiation of her thesis, and possibly also of her association of the term with the prohibition of the "priestly/lay intermarriage," as she interprets 4Q396 (4QMMT^c). The term זנות, like זרע and חלל, has many meanings in Scripture, primarily as wrongfully leaving God, prostitution, and by association "wicked deeds."

The term זנה intending betraying/rejecting God appears in Exod 34:15–16; Lev 20:5; Deut 31:16; Judg 2:17; 8:27, 33; and Ezek 6:9. It appears further with the same meaning in the metaphoric term "prostitute." I postulate that in Qumran writings some instances of the term must be interpreted as "wicked deeds," as in Scripture, while others that are associated with sexual misconduct can be understood as sexual transgressions, although this is not absolutely required since sexual misconduct is included in the generic meaning of "wicked/wrongful" acts. For example, the phrases מעוון הזנות (4Q225 (4QpsJub^a) 1:1 translated as "guilt of immorality," but also בדרכי זונות CD VIII:5 and CD XIX, translated as "customs of fornication," should be interpreted rather as "wrongful ways/courses of action," because of their association with the term גלל in ויתגוללו בדרכי זונות that intends idolatry, as we encounter the same copula ללכת אחרי הגללים "going after idols" in 1 Kgs 21:26, and the context—the antecedent and succeeding wicked deeds, such as traitorous practices, filthy lucre, bearing a grudge against one's brother, hating one's fellow, keeping away from nearest kin—comprises delinquencies that have no connection to sexual misconduct.

The same applies to the phrase ברוח זנות in 1QS IV:10 that has the same meaning in relation to its context, which mentions hypocrisy, want of self-control, foolishness, arrogance, abominable deeds, fashioned by whorish desires. The phrases ועיני זנות in 1QS I:6 and similar in CD II:16 should also be interpreted as a generic expression of desiring wickedness, like the phrase זנות עינים in 4Q436 (4QBarkhi Nafshi^c) 1ii:1: "the urge of the eyes[for evil things] you have

removed from me." The translation "adulterousness" is in my opinion incorrect in the context. The author advocates the removal of the generic urge for wickedness and its substitution with "[the spirit of ho]liness you have set in my heart." The translation of the terms זנות as "fornication" in 4Q513 (4Q Ordin^{b}) 2 ii 2 and 5 in the *DSSEL* is patently wrong; it is explicitly associated with מאכ־ ליהם "eating forbidden food." Two different grammatical variations of the term in 4Q169 (4QpNah) 3–4ii:7–8 refer literally to a harlot, but are pronounced as the metaphor for all that is wrong. In fact, I do not disagree with Hayes that in some occurrences the term זנה intends some sexual misdeed, but I dispute her assertion that, like the terms זרע and מעל, it always has the same meaning of "seed" and "sacrilege."[129] In fact, the philological root of the term זנה is not clear; its root may have been זנח "abandon/forsake," and it is mainly used in Scripture in that sense. The meaning of "prostitute" is probably an extension; since she is not loyal to the man she sleeps with, but abandons him and goes with another.[130] Its root from זן, זיו "species/gene" (associated with sex) is another possibility, but then again as an extension, not as its primary and only meaning, as claimed by Hayes.

Christian Frevel and Benedikt J. Conczorowski build on the identical and in my opinion inaccurate interpretation of the term זנות a complex theory to demonstrate that "a purity-based pattern was added to the Deuteronomistic 'religious' pattern."[131] For the substantiation of this theory, the lemma on Lev 20:1–5 in which the term appears (v. 5), they assert that it relates to a "mixed marriage," and as such defiles the sanctuary. This assertion is substantiated in a note on the basis of *Jub*. 30:10 that interprets it as relating to giving one's daughter in marriage to an alien man. Strangely, they overlooked the straightforward meaning of the text and its contexts, and on the basis of a midrashic interpretation of *Jubilees*, founded on heavenly tablets, claim that Scripture

129 John Kampen, "The Matthean Divorce Texts Reexamined," in *New Qumran Texts and Studies: Proceedings of the Fist meeting of the International Organization for Qumran Studies, Paris 1992* (ed. George J. Brooke with Florentíno García Martínez, Leiden: Brill, 1994) 149–167, at 161 writes: "We can only conclude that זנות is one of a few major terms employed for the purpose of defining activities contrary to the sectarian lifestyle elaborated in the various compositions, most frequently referring to the issue of marriage and sexual relations."

130 This root seems to be substantiated by the use of the term זנה in Judg 19:2, in which case it is appropriate in the context: "she left him."

131 Christian Frevel and Benedikt J. Conczorowski, "Deepening the Water: First Steps to a Diachronic Approach on Intermarriage in the Hebrew Bible," *Mixed Marriages*, 15–45, at 38–39.

indeed relates to a mixed marriage.[132] As a result of the same mistaken interpretation of the term זנה they similarly make out the Phinehas narrative of Num 25:1–5 to add "a purity-based pattern" to the deuteromomistic prohibition of intermarriage (which in fact was based on a religious motive, namely the concern of leading to apostasy), creating a complex mixed and undefined concept thereby. The Phinehas narrative does not offer any hint that it relates to intermarriage; the term לזנות in v. 1 must be interpreted here as "prostituting,"[133] not marrying, since in v. 2 they invited the people, not their husbands, to sacrifice to their gods. In Exod 34:16 marriage is portrayed with the habitual term לקח and the worship of idols is portrayed with the term זנה, used for evil deeds including sexual misconduct, when not followed by its specific character.[134]

Then, on the basis of their presumptions, Frevel and Conczorowski attempt to impose on Nehemiah a theory that "mixed marriages turn into a crucial danger when the society's core is constituted by the sanctuary," asserting that this argument is "in the background of Neh 13:28–29." Close attention to these verses in context, however, reveals no such "background." Nehemiah's dramatic intervention against the intermarriage with foreign women, from its beginning in 13:23 to v. 29, is exclusively driven by a "religious pattern," namely the danger of apostasy, as forcefully portrayed by the example of King Solomon, and has no association with the sanctuary. In v. 28 at the conclusion of this topic of intermarriages, he boasts that he has even driven away one of the sons of the high priest, because he married the daughter of Sanballat the Horonite, an alien and Nehemiah's great enemy. On the basis of this last daring act he concludes his achievements regarding the elimination of intermarriage, but does not mention the purity of the sanctuary; he pleads to God to remember his good deed by driving out those priests and Levites because "they defiled the priestly office and the covenant of the priesthood." An issue of sanctuary purity, such as Frevel and Conczorowski allege, does not seem to be in the cards here or in Ezra 9–10.

8.5.2 *The Meaning of* מעל *in Qumran Literature*

The interpretation of the term מעל in Qumran writings is similar to that in Scripture. Among the thirty-some occurrences in these writings, there are none that *must* be interpreted as referring to sacrilege; five occurrences *could* be interpreted in either way, that is, breach of trust or sacrilege, because of the lacunae in the texts that do not permit us to ascertain with which matter

132 See section 8.4.6, on this topic.

133 The LXX translates the term זנה: ἐκπορνεύω "to commit fornication."

134 *Tg. Onq.* translates here the term וזנו: ויטעין "to make them err/to lead astray."

the term is associated. I shall cite a number of occurrences of the term מעל that *must* be interpreted as breach of trust/treachery: (CD IX:16–17), (CD XV:13), (4Q166 (4QpHos[a]) i:9), (4Q299 (4QMyst[a]) 7:5–6), (4Q378 (4QapocrJosh[a]) 3i:7–8), (4Q387 (4QapocrJer C[b]) 2ii:3) and (4Q418 (4QInstr[d]) 101ii:5).

The phrase וכל המעל אשר ימעל in 4Q251 (4QHalakha A) 16:3–4: should also be perceived as unfaithfulness (as translated by Martínez and Tigchelaar), because of its context, but I have classified it among those that *could* be interpreted as sacrilege, granting more significance to the term לאכול, which appears in the verse, than to the subsequent term תועבה, which has no association with sacrilege since it represents idols. The same applies to]מעלו אשר מעל in (4Q300 (4QMyst[b]) 2ii:4), which I believe (as does the translator) to represent breach of faith in this context, although I concede that taken in good faith, without considering the context, it could be interpreted differently.

Hayes, however, claims that the interpretation of the term מעל as "sacrilege" in 4Q397 (4QMMT[d]) IV: 4 is "the more ordinary translation," although she acknowledges that Qimron and Strugnell translated it as "treachery."[135] On that basis, passing over the long list of divergent interpretations of this term, she continues to affirm that "the association of women and sacrilege is a clear appropriation of the language of Ezra" and that the author of 4Q397 thus evokes the "holy seed reasoning as the basis for its condemnation of intermarriage."[136] Since, however, the author founded his declaration on the biblical verse Deut 7:26: "do not bring תועבה a detestable thing into your house," which plainly relates to idols, Hayes writes: "It appears that the prohibition against bringing an idol (*to'ebah*) into the home is interpreted by the author of MMT 4Q397 IV:6 as a prohibition against bringing an idolatress or foreign women into one's home as a wife."[137] To postulate such an interpretation against the simple, conventional meaning of the biblical verse, Hayes plausibly avails herself of the term זנות,[138] appearing in the antecedent verse, together with violence as one of the motives leading to destruction. However the term זנות again has many meanings, and the context in this case does not support Hayes' supposition. It seems that she was aware of the flaw of her interpretation, and attempted to

135 Hayes, "Intermarriage and Impurity," 30. Martínez and Tigchelaar, *DSSEL* interpreted it as "disloyal."

136 Ibid.

137 Ibid., 31.

138 Ibid., at 17 she writes: "an Israelite woman who commits this *zenut* (illegal marriage) will be subject to death by burning because of the profanation incurred." This punishment, however, appears only in *Jubilees*, and we have no indication that Qumran concurs with it.

correct it by adding a second interpretation "a foreign woman," but this has no association with the term *to`ebah* appearing in the verse.

Hayes further attempts to prove her case from the phrase ומלבוא עֹ[מהם]לגֹב אלהֹ of 4Q397 IV:8, "from associating wi[th them]in these things and you k[now that there is not]to be found in our action מעל ושקר ורעה disloyalty or deceit or evil." The phrase לגֹב אלהֹ has no parallel in Scripture or in Qumran writings, and therefore, Hayes asks, "What might the expression mean?" Despite relying on Qimron and Strugnell's suggestion that "it occurs in Mishnaic Hebrew in contexts of mixing pure food," she criticizes them, alleging that "What they fail to observe is that the context in which the preposition occurs in *m. Yebamot* 1.4 is equally concerned with intermarriage between groups with different purity standards."[139] In the same vein, I would remark that she has misunderstood or misinterpreted this *mishna*, and that Qimron and Strugnell were correct in their assertion. The aim of the above *mishna* is to attest a high standard of behaviour on the part of the Houses of Hillel and Shammai. Their halakhic disagreements did not provoke personal friction between them: they intermarried, despite opposing *halakhot* regarding marriage issues, and likewise they borrowed vessels from one another, despite the opposing *halakhot* regarding pollution and purity of food and vessels. Neither of the two displayed topics is "concerned with intermarriage between groups with different purity standards," as Hayes claims. The marriage disputes refer to issues associated with the levirate rules,[140] while the purity topic, in which the peculiar phrase אלו על גבי אלו appears, relates to purity of vessels; they are two distinct topics, but Hayes combines them to argue for another incorrect interpretation of 4Q397 IV:8, contrary to its clear and logical meaning as concurring with the context: "from associating wi[th them]in these things," as translated in the *DSSEL*.

Finally, if indeed Qumran perceived marriage between an Israelite man and a foreign woman to be a sacrilege by mixing the holy seed, as Hayes claims, one must wonder why we do not encounter an explanation or justification for David's marriage with the foreign Maacah, the daughter of the King of Geshur (2 Sam 3:3b), like that regarding his marriages with more than one woman in CD V:1–3.

Hannah Harrington, following in Hayes' footsteps, does not discern between the concrete and abstract concepts of the term טמא and the various meanings

139 Hayes, "Intermarriage and Impurity," 32.

140 *B. Yeb*. 14b and the commentators explain that they informed each other of such cases of disputes, and in such occurrences they avoided intermarriage, because the consequences were critical; in some cases the woman was perceived by one group as a married woman, and by others as unmarried.

of the terms זרע מעל and תועבה in Scripture and consequently in Ezra/Nehemiah, and perceives all to mean sacrilege.[141] Her linkage of the ill-defined term ערב in 4Q271 (4QD[f]) 5i:1–2, associated with forbidden work on the Sabbath, and in 4Q396 (4QMMT[c]) I:5 II:1–2, associated with blind people, with the term והתערבו in Ezra 9:2 to prove that intermarriage is a sacrilege, seems to me an association of apples with oranges. The term ערב has many meanings in Scripture, and also in Qumran writings; for example, in 4Q416 (4QInstr[b]) and 4Q417 (4QInstr[c]) it is associated with inheritance, but never in connection with marriage; see our interpretation of Ezra 9:2 on page 321.

8.5.3 *Disputing Hayes' Interpretation of the Phinehas Narrative*

Last but not least, Hayes attempts to substantiate her thesis from 1 Macc 2:49–55, "where Abraham is explicitly coupled with Phineas in connection with zeal for the law." I do not see this in the text; Mattathias speaks to his children, asking them to "be ye zealous for the law," and to remember "what acts our fathers did in their time," but does not say that they were zealous; he attributed to each of them different virtues, and did not try to "couple" them in any particular common virtue. Only Phinehas and Elijah are mentioned with the attribute of zeal, not Abraham, which Hayes "couples" with Phinehas. Further, their "zeal" relates exclusively to their fight against idolatry in Israel, as is evident from Num 25:2, 3, 11, and 13, and has nothing in common with preventing the preservation of Israel's seed, as Hayes claims, uniting them instead in their zeal to preserve Israel's "seed."[142] God's anger was kindled because of Israel's worshiping the Baal Peor, not because of the whoring of Israel with the Moabite women. In this narrative, the Numbers' author exclusively uses the typical term קנא as in Exod 34:14 The divine jealousy קנא relates to the worship of other gods, not to the Israelites' "whoring with the daughters of Moab" (Num 25:1), as in Hayes' imagination.

Phinehas, in his act, בקנאו את קנאתי really fought God's jealousy, like Elijah, who used the phrase: קנא קנאתי "I have been very jealous for the LORD" (1 Kgs 19:10). Phinehas was awarded perpetual priesthood for his "jealousy" for God; the Moabite women were only an accessory to the idolatrous worship, and are not mentioned, even in lauding him for killing the Midianite woman.[143] Hayes,

141 Hannah Harrington, "Intermarriage in Qumran Texts: The Legacy of Ezra-Nehemiah," *Mixed Marriages*, 251–279, at 259–61.

142 Hayes, "Intermarriage and Impurity," 24, n. 68.

143 The text of Num 31:16, "They were the ones who followed Balaam's advice and enticed the Israelites to be unfaithful to the LORD in the Peor incident," accusing the Midianite women instead of the Moabites as appears in Num 25:1–2, indicates the incompatibility of

however writes "Phineas' zealous defense of the holy seed against the incursions of Gentile fornicators is reckoned as righteousness"; despite great effort I have been unable to detect in the Phinehas narrative "his defense of the holy seed" or being "reckoned as righteousness." I did retrieve the reward to be "reckoned as righteousness" suggested by Hayes, but in reference to Abraham, as appears in Gen 15:6. In my text, Phinehas was awarded eternal priesthood, demonstrating a distinction between Abraham and Phinehas regarding deed and reward. It seems that Hayes' linking them creates a total fusion of both, and thus a fantastic portrayal of them in which Abraham, who married a Gentile woman, became the defender of the holy seed—a pinnacle of ignoring contrary texts and facts in order to prove a preconceived and highly speculative thesis—while Phinehas is reckoned as righteous, an attribute of Abraham. The scriptural confusion between the Moabite women in Num 25:1 and Midianite women in 25:6, 15, and 18 and in Num 30:16 indicates the insignificance of the women in the cause of God's anger and in Phinehas' act, versus Phinehas' jealousy against idolatry, rewarded by eternal priesthood.

I suspect that Hayes founded her allegation about Abraham's involvement in a sexual issue because of the KJV translation of 1 Macc 2:52: "was not Abraham found faithful in temptation," but her erudition should have induced her to be skeptical about the correctness of this translation. Abraham was not tempted by anything; indeed, he was supremely tested in this regard through God's command to sacrifice Isaac (Gen 22:1). The LXX translates Abraham's virtue in Maccabees by the term πειράζω "to make proof, a trial of." The author of Maccabees bundled together the biblical source of his statement—"he believed the LORD, and He credited it to him as righteousness" (Gen 15:6)—with his text of Gen 22, because Scripture perceives the test of Isaac's sacrifice as Abraham's most distinguished virtue in Israelite mythology.[144] It is almost incomprehensible how Hayes, possessing considerable erudition, overlooked all of the above questions in using these arguments to support her theory of "a vigilant preservation of Israel's seed," tortuously deduced from these verses of Maccabees in her effort to substantiate an untenable preconception.

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the two narratives, which has been observed by scholars and traditional commentators. At any rate, the women were only the intermediaries for the main mischief, the worship of idols, emphasized in both verses.

144 We read in *m. Abot* 5:3 that Abraham was tested by God with ten tests, and passed them all, to his great esteem.

8.5.4 *Hayes' Interpretation and Ezra's Intentions*

In sum, I suspect that Hayes' interpretive thesis is founded on a rigid attitude of refusing to acknowledge that some scriptural terms can and must be understood in many ways according to context; for her, as we have seen, the term זרע always means "seed," מעל is always associated with "sacrilege," זנות with sexual mischief, and so on. The fact that in many instances (in some cases, an overwhelming majority) a term must be interpreted differently due to its context, does not seem to alter her immutable approach. I admire Hayes' willingness to undertake the Sisyphean chore of substantiating her theory of Ezra's decree, which is founded on the concept of the preservation of the Israelite "holy seed" on the basis of one inadequately researched phrase והתערבו זרע הקדש in Ezra 9:2, not pronounced by Ezra, the decree's legislator, all the while rigidly ignoring the significance of the context for the correct interpretation of crucial terms that demonstrate the opposite conclusion. Her tenacious effort to justify her primary misapprehension leads to building further questionable concepts on that shaky foundation, at times even against well-established contrary viewpoints. I have discussed a number of these terms, proffering plentiful examples (the various meanings of the term טמא in Scripture are reviewed in a separate Appendix to this chapter). There are, however, additional questions that, in my opinion, contradict her thesis of Ezra's motive for his extension of the intermarriage prohibition to all Gentiles.

Hayes uses in her article an array of expressions to portray the implications of a mixed marriage, such as: "the holy seed of Israel becomes intermingled with unconsecrated, or profane, seed" (p. 10); "the Israelites themselves are the objects of desecration" (p. 13); it constitutes a "profanation of the holy seed of the people Israel, a form of sacrilege" (p. 11); it "is *zenut*, a sin that generates a moral impurity, thus defiling the holy seed of Israel and indeed the entire house of Israel" (p. 21). Relying on her interpretation of Lev 18 and 20, she asserts that according to Ezra's theory sexual intercourse with a Gentile woman constitutes a transfer of seed with dire consequences: "(1) it defiles the parent, the land, the sanctuary, profanes God's name; (2) is punished by extirpation of the offender and his kin; and (3) jeopardizes the continued existence of the entire community on God's land."[145] As a practical question relating to her theory, the intermixing of seeds is not an abstract occurrence; it represents a concrete fact, and I am asking how such "intermingling/intermixing" or "contamination" materializes, since only the man impregnates the wife with his seed; it cannot be mixed with any other seed, because according to the common belief in Ezra's period, the woman has no seed. There are also a great number of other

145 Hayes, "Intermarriage and Impurity," 17–18.

practical questions about the status of the "transgressors" of the intermarriage prohibition, according to her theory, and the methods of redressing the iniquitous deeds. Specifically, how does it affect the Jewish men who married the foreign women, their offspring, the people as a whole and the possible remedies?

Scripture records only the defilement of the son of a priest with a prohibited woman, making his descendants ineligible to serve in the Temple; the son is called חלל (Lev 21:15), but the priest himself is not defiled.[146] Scripture does not divulge to us the status of an Israelite who married a *mamzer* female or of their offspring.[147] Hence, what is the status of someone who marries an alien woman? Since Hayes claims that intermarriage "defiles the parent," and "in Ezra 9:1–2 at least, it is clear that the Israelites themselves are the objects of desecration,"[148] one must ask: does the desecration relate solely to the man who has married a foreign woman, or are all Israelites desecrated, as Hayes alleges, and in what does this desecration consist? Is he no longer considered an Israelite? Is an Israelite woman prohibited to marry him? She states further: "sexual union with a Gentile results in defilement and profanation of a variety of sancta but particularly the holy seed of Israel," of all Israelites, "since all Israel is holy" (p. 18). Would it result in his seed being profaned throughout posterity? And what would be the consequences of the profanation of his seed and of the sacrilege: would the profanation affect his future children with an Israelite woman, and what are the functional consequences of the incurred sacrilege? What are the practical and functional consequences of "the moral impurity [caused by intermarriage] that defiles the holy seed of Israel and indeed the entire house of Israel"? Who is affected by the "dire consequences for the seed of Israel," the seed of the transgressor or of all Israel; and what are the functional consequences? Ezra and Nehemiah do not divulge any information on these issues, and moreover it does not seem that their decree and its accomplishment had any additional adverse effect on the men who married the Gentile women beyond their separation from their wives and children. Hayes, as it seems, does not care to address these practical questions, crucial for comprehending the legal consequences of Ezra's belief and decree, as she perceives it.

146 *B. Sotah* 23b confirms it.

147 As a consequence of the rabbinic permission to marry Ammonite and Moabite women (see pp. 305–308), the same rule should relate to marrying a *mamzer* woman, but applying a selective midrashic exegesis (see Heger, *Cult as the Catalyst*). *b. Yeb*. 76b prohibits the marriage of an Israelite with a *mamzer*, male or female alike.

148 Hayes, "Intermarriage and Impurity," 12–13.

Furthermore, the most intractable question is: what has Ezra achieved for the re-establishment of the holy seed of the transgressors and of Israel by the separation of the foreign women and their children? The mixing and profanation of the holy seed was a *fait accompli* at conception, and the separation of the women and children could not change it. Neither Ezra nor Nehemiah tell us what happened to the women and their children; were they driven out from the territory of Judah or did they remain there? As cited earlier, it does not seem that Ezra expelled the families whose Jewish identity was unproven from Judah; in the same way he could have left the children of intermarriage with their fathers.[149] Further, were these latter children perceived as Jews, since according to the contemporary law they were legally Jews (as is evident from Ezra 2:59–60 and Nehemiah 7:61–62, as demonstrated above);[150] or were they perceived as Gentiles, despite being born from the Israelite "holy seed" of their fathers? I would hypothesize that the male children were circumcised, since they were born in an Israelite family from the seed of a Jewish father, and the Jews were commanded to circumcise every male of their household, including slaves (Gen 17:12–13). The leaders who raised the issue of the intermarriage before Ezra would certainly have complained acrimoniously about a failure to accomplish the most significant divine decree and sign of God's covenant with Israel, if they were not circumcised. To avoid further sinning by future sexual intercourse with the foreign women, Ezra could have ordered separation from the women, but not from the children, keeping them with their fathers. That could have made the separation less painful, even if the children were perceived as Gentiles, and could have ensured better chances for a successful fulfillment of the decree. How did expelling the children rehabilitate those affected by the intermarriages and the resulting conceptions, which occurred through "sexual intercourse with a Gentile," as Hayes claims?[151] Their contaminated, desecrated, "alloyed and tainted mixed seed," according to Hayes,[152]

149 Many different terms are used in Ezra and Nehemiah to portray separation/expulsion/banishment, such as: אבריחהו מעלי in Neh 13:28, ויבדילו in Neh 13:3, ואשליכה in Neh 13:8, להוציא כל נשים in Ezra 10:3 and 19 and הבדלו in Ezra 10:11, but none of these terms offers us an exact indication as to what happened to the women and their children.

150 Shaye J.D. Cohen, *The beginnings of Jewishness: Boundaries, varieties, uncertainties* (Berkeley, CA: University of California Press, 1999) at 273 states, "The matrilineal principle was not yet known in second-temple times," and "The matrilineal principle is first attested in the *Mishna*." Hence, the offspring of a Jewish father were considered Jewish regardless of the mother's ethnicity. See also Heger, "Patrilineal or Matrilineal," 224–230 on this issue.

151 Hayes, "Intermarriage and Impurity," 17–18. See above, p. 350.

152 In fact, at ibid. 13 Hayes asserts that the "desire to preserve the seed of Israel unalloyed and untainted" expressed by Tobit's author corresponded to "Ezran terms."

could definitely not be separated, and their expulsion could not retroactively reinstate the holy-seed status of their fathers and/or the land, or reverse the profanation of God's name caused by consummated sexual intercourse with a Gentile woman.[153] Repentance and ceasing such intercourse could, according to Jewish theology, reinstate the holy status of the Israelites, but the physical separation from their children would have no effect on that restoration. The fact that Ezra and Nehemiah do not provide us with any information about all these questions, relevant to the theory of seed contamination, seems to me a clear indication that this theory was not in their mind, and the prohibition of intermarriage was instead induced by their effort to prevent acculturation with the surrounding nations, the source of the Gentile women—they declare this explicitly—and thus coincides with the texts of Deut 7:3–4 and Exod 34:15–16. The expulsion of the foreign women *and* their offspring, and only this action, fully accomplished this goal.

8.5.5 *In Conclusion: Ezra's Prohibition in Relation to Divine Law*

Finally, Hayes' theory would attribute to Ezra a halakhic decision that would taint with grave transgressions all the great Israelite personalities—a list headed by Abraham and Moses themselves—who married Gentile women and thus by her interpretation intermixed the holy seed of Abraham's descendants. According to my thesis, however, neither Abraham nor Judah or Moses transgressed the law, since the decree prohibiting marriage with Canaanites comes into force only after the entrance of the Israelites into Canaan (Exod 34:12–16 and Deut 7:1–6). This detail indicates that the concern of evil influence was the motive for the intermarriage prohibition, not the mixing of the seeds, which anyhow would have already occurred at Abraham's intercourse with Hagar, if indeed Ezra asserted that by intermarriage the Israelite זרע הקדש, literally the "holy seed" is defiled or profaned by its mixing with unholy seed, and thus loses its holiness, as Hayes suggests. Consequently, there would have been no logic in prohibiting intermarriage, since the holy seed would have been already mixed and defiled.

Ezra does not maintain that he introduced a new law, a prohibited deed, as Hayes alleges; the leaders accuse the people of having already mingled the holy "seed" before Ezra's intervention (Ezra 9:1–2); Ezra complains that the people have forsaken the commands of God given by the prophets (9:10–11), referring

153 S. Japhet, "The Expulsion," 141–161, at 143–144 draws attention to the fact that although Scripture forbids intermarriage with some nations, there is "no indication of the procedure that should be followed in the case of transgression." The expulsion of the women and their children has no "support of social precedents or legal considerations."

to an ancient divine law, broken again (9:14). It is beyond question that he does not pretend to have introduced a new rationale[154] or prohibition; he only argues that the original divine law prohibiting intermarriage with Canaanites was motivated by the necessity to avoid evil influence. Ezra merely extended it to include all Gentiles, because of the changed circumstances: the acute contemporary danger from the other foreign nations in the surroundings of Judah, all of whom practised idolatry. Thus, exactly corresponding conditions to those extant at the arrival of the Israelites in Canaan required Ezra's adjustment of the original decree. Ezra justified his decree and its motivation by referring to the intermarriage prohibition of Deut 7: הנשוב להפר מצותיך ולהתחתן בעמי התעבות האלה "Shall we break your commandments again and intermarry with the peoples who practise these abominations (Ezra 9:14)?"

8.6 Conversion and the "Holy Seed" Theory

We do not know exactly when the institutionalized act of conversion was universally introduced in Israelite society, but it is evident that it was generally adopted in the rabbinic period and acknowledged by them, as Hayes confirms.[155] Conversion is the antithesis of seed purity, and hence if her theory were correct, it would follow that the rabbis promulgated halakhic rules in blatant conflict with Ezra. That seems implausible, since Ezra was highly revered as the agent of the Torah's renaissance,[156] unless they interpreted Ezra's text as I postulate it, and as is confirmed in *b. Yeb*. 23a's statement that the intermarriage prohibition of Deut 7 applies to all Gentiles: "for they will turn your sons away" (v. 4). The rabbis understood Ezra's extension of the intermarriage prohibition to all foreigners in terms of the same Deuteronomic motive for the prohibition of intermarrying with the Canaanites. Hayes, however, attempts to upset this clear and simple dictum by substituting for it a complex and vague cognitive construction; as Isa 40:4 puts it, "the uneven ground shall become level, and the rough places a plain." Hayes has not adequately considered the issues of the ethnic identity of the offspring of a marriage between a Jewish man and a Gentile/slave woman. This rule has no association with matrilineal descent or with concern about evil cultural influence, and according to the

154 Hayes, "Intermarriage and Impurity," 9.

155 Hayes, *Gentile Impurities*, 166 states, "the rabbis maintain that the marriage of a convert and an Israelite is permitted."

156 We read in *t. Sanh*. 4:7: "Ezra merited that the Torah should have been given by him, if Moses would not have anticipated him."

rabbis, in all permitted marriages the ethnicity of the offspring is established by that of the father. Only at prohibited marriages that do not allow a legal marriage agreement between the two partners, the basis of the Jewish marriage laws, is the ethnicity of the offspring established by the mother, since the father is legally unknown. That is the rabbinic philosophy, as I have demonstrated elsewhere.[157] Similarly, one should wonder why Ezra would oppose the acceptance of foreigners who wanted to join the Israelite community, as Hayes alleges, in blatant conflict with the Second Temple prophet Zechariah's declaration: "Many nations will join themselves to the LORD on that day, and they will be my people" (Zech 2:11).[158]

In her relentless quest to prove her case, Hayes tries to demonstrate that indeed, *Jubilees* does not acknowledge conversion of Gentiles, because of the pollution of the holy seed. Analysing *Jub*. 30, which relates to the Dinah narrative and its aftermath, she claims that one may understand from the scriptural text that Hamor's "acceptance of this [circumcision] requirement satisfies the Israelites, and the marriage is to take place in due time,"[159] but she then argues that the author of *Jubilees* maintains that there is "no way to contract marriage properly with a Gentile, even when the Gentile partner is willing to undergo circumcision and join the Israelite community."[160] I cannot agree with either her premise or her conclusion. The proposal of Jacob's sons to Hamor to circumcise was not a genuine offer or a serious consideration, but was from the beginning a plot to kill the Shechemite Royal family and their people, as is evident from Gen 34:13: "Jacob's sons replied deceitfully as they spoke to Shechem and his father Hamor"; thus, this incident does not reveal whether the author/redactor of Genesis, or of *Jubilees*, permitted conversion of Gentiles or not, or whether it constituted a problem requiring a decision by Jacob's sons to accept them or not.

8.6.1 *Qumran and Converts*

Hayes' attempt to impose the holy seed theory on Qumran brings us to the topic of whether Qumran accepted converts or not. If they did so, they could not have accepted the holy seed theory, as indeed Hayes argues, stating: "Circumcision does not convert profane seed into holy seed, and thus miscegenation is forever and always *zenut*,"[161] in an attempt to connect this principle

157 Heger, "Patrilineal or Matrilineal," 224–230.

158 See Maccoby, "Holiness and Purity," 166.

159 Hayes, "Intermarriage and Impurity," 21.

160 Ibid.

161 Ibid., 22.

relating to *Jubilees* with 4QMMT.[162] Similarly, Schwartz writes that "Qumran texts show little interest in circumcision,"[163] explaining that "no community [like Qumran] that ascribed such prestige and authority to priests *qua* descendants of Aaron could easily admit that differential birth might be overlooked or overcome by any commitment or operation." He builds his theory on the oddity that *Jubilees*, a "priestly book," retells Gen 34 without mentioning the circumcision of the Shechemites to legitimize their intermarriage with Jacob's family, at the suggestion of Jacob's sons."[164] But as we have just seen, the circumcision offer cannot serve as evidence for a thesis for or against the conversion of Gentiles.

Moreover, Schwartz misses the fact that the author of *Jubilees* attempted in relating this story to portray Jacob's sons Simeon and Levi (particularly the latter) in a very positive light. Genesis does not tell us that Jacob was angry when he became aware of what had happened, nor that he was among those who spoke deceitfully with Shechem and Hamor, as *Jubilees* contends. Further, *Jubilees* maintains that Levi was chosen for the priesthood for his executing "righteousness and judgement and vengeance on all those who arose against Israel" (*Jub*. 30:18), whereas Jacob denounces them harshly for their deeds (Gen 49:5–7). In other words, the author of *Jubilees* altered the text and the spirit of the Dinah narrative to put all the blame on the Shechemites, while completely exonerating Simon and Levi. Using the sacred act of circumcision as a stratagem in a deceitful act, and killing circumcised people—converts to Judaism—could have been perceived as sinful and repulsive, and that may

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162 Ibid.: "it resonates like passages in 4QMMT."

163 Daniel R. Schwartz, "Yannai and Pella, Josephus and Circumcision," *DSD* 18/3 (2011) 339–359 at 352.

164 Ibid., 356. Conczorowski, "All the same as Ezra?" at 100–101 also alleges that the intermarriage issue in Ezra's time was associated with the earlier intermarriage prohibition in Gen 34; I dispute this assumption. The indignation of Jacob's sons was unconnected with an intermarriage prohibition (Judah and Joseph married foreign women), but because of Shechem's נבלה insulting and humiliating action towards Dinah's family (Gen 34:7), treating her like a prostitute (as v. 31 explicitly states), The identical term נבלה for the portrayal of the repulsive act describes the rape of Tamar (2 Sam 13:12–13); the issue there was definitely unconnected with illegal sex, but rather with Amnon's loathsome behaviour. The term טמא has no "cultic connotations" as Conczorowski claims; neither has the term נבלה in Deut 22:21, to which he compares Gen 34; adultery is not a cultic transgression in Israel, nor in the surrounding cultures. See in the Appendix to this chapter the great variety of meanings of this term. See also a deliberation about the Dinah affair in Chapter 2 on pp. 92–94.

have been the motive for its concealment.[165] Such a hypothesis may demonstrate that Jubilee's author acknowledged conversion, and therefore attempted to absolve Simeon and Levi from the guilt of killing Jews.

It is curious that Schwartz does not quote the relevant Qumranic texts about their attitude towards proselytes in his deliberations about circumcision in Qumran. We read in CD XIV:3–6 that proselytes were included at the community's discussions; albeit they were the last, after the lay Israelites in their order of sitting and right of speech, they were nevertheless full members, as is entirely evident. On the other hand 4Q174 (4QFlor) seems to oppose CD XIV: "This (is) the house which these will not enter] [for]ever, nor an Ammonite, a Moabite, a bastard, בן נכר a foreigner, or a וגר proselyte forever, for his holy ones (are) there. [His glory shall] be revealed for[ev]er; it shall appear over it perpetually. And זרים strangers shall lay it waste no more, as they formerly laid waste."

Gudrun Holtz's viewpoint about this issue of the proselytes in Qumran is somehow confusing or not adequately focused.[166] She writes: "The passages mentioned concerning the proselyte [CD VI:21, IX:2 and XII:10–11] indicate that the Community apparently was willing to accept ethnic non-Jews in their ranks," but in note 89 she seems to agree with Hayes that 4QMMT "prohibits marriages between Jews and proselytes."[167]

8.6.2 *The Meanings of* ger *and* ezrakh

K. Berthelot offers an extensive study about the status of the גר "proselyte" in Qumran.[168]After a short exposition about biblical passages regarding the *ger* and the problems of attempting to trace the biblical source of each of the Qumranic quotations about the *ger*, she perceives the term's different meanings as perhaps an issue of diachronic versus synchronic reading; that is, the result of an evolution in its meaning. It seems to me that Berthelot, following Rendtorff,[169] perceives the term אֶזְרָח in Scripture as indicating an Israelite or

165 A similar apologetic stance is pursued by Josephus in *ANT*. 1:337–340. For example, he contends that Dinah was raped, and conceals entirely the deceitful proposal of circumcision by Jacob's sons. Josephus conceals the Shechemites' circumcision, alleging that Simeon and Levi killed them in their sleep, after a great feast.

166 Gudrun Holtz, "Inclusivism at Qumran," *DSD* 16/1(2009) 22–54 at 45–6.

167 She erroneously adds that such a union "is also prohibited in rabbinic law," explicitly permitted to Israelites in *m. Qidd*. 4:1; such prohibition applies only to priests.

168 Katell Berthelot, "La Notion de גר dans les Texts de Qumrân," *RevQ* 19, 2 (2000) 171–216.

169 Rolf Rendtorff, "The 'ger' in the priestly laws of the Pentateuch," in *Ethnicity and the Bible* (ed. M.G. Brett; Leiden: Brill, 1996) 77–87.

one perceived to be like an Israelite,[170] a presumption I doubt, and an issue I will discuss later in my proposition, but this demonstrates the complexity of the topic. Berthelot also raises the question whether the *ger* can be perceived as a brother, in the sense the term אח appears the phrase איש אחר אחיהו in CD XIV:5, literally "[All four groups shall be mustered by their names] one after his brother," and comments that it may be understood as "one after the other," in the context, as the translators of the *DSSEL* indeed did, without any connotation of brother or metaphorically appertaining to the same people. Considering, however, that the citation CD VI:21–VII:1 "to grasp the hand of poor and needy *vac* and alien and to seek each the welfare of אחיהו his brother," Berthelot conjectures that the *ger* is also perceived as a "brother." In conclusion, she states that in the CD the *ger* seems to be the most strongly associated and integrated in Israel, but nevertheless remains a *ger*.[171] In contrast to Hayes, Berthelot attempts to reveal the practical consequences of that hybrid status, acknowledging that we do not have any halakhic dictum, allowing us to determine what is the real definition of the *ger* in the CD community.[172] She attempts, in an extended deliberation,[173] to find a solution for the association of the *ger* in the CD community and the opposite viewpoint in 4Q174 (4QFlor)

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170 Berthelot, "La Notion," at 174 does not declare this explicitly, but at 175 she explicitly denotes אזרח and אח as Israelites, stating: "Thus, the *ger* though being different from the Israelite (אזרח, אח), and not being included in the assembly (קהל), is almost integrally associated in the life of the 'sons of Israel.'"

171 Ibid., 192. Agnethe Siquans, "Foreignness and Poverty in the Book of Ruth: A Legal Way for a Poor Foreign Woman to Be Integrated into Israel," *JBL* 128/3 (2009) 443–452, at 446–7 writes that Ruth could not be called a גר, as she would expect, because "in Biblical Hebrew the term גר exists only in a masculine noun," and therefore a foreign woman cannot live on her own in Israel, as she does not enjoy the same legal status as a man." I have doubts about this statement. The term *ger* refers to a "resident alien," as Shaye J.D. Cohen writes in "Conversion to Judaism in Historical Perspective: From Biblical Israel to Postbiblical Judaism," *Conservative Judaism* 36 (4) (1983), 31–45 at 33; namely, someone living in Israel for an extended period, like the Israelites who lived for centuries in Egypt, and who are called *gerim* in Exod 22:20, 23:9 and in other occurrences. Ruth, however, was a newcomer and could not be called by that name. The absence of the term *ger* for a female is due to the circumstances. A foreign woman immigrating into Israel as the wife of a foreign man shared her husband's status, and equally occurred if she married an Israelite, because women had no separate legal status. Cohen, "Conversion," at 34 states: "By marrying Israelite men, foreign women would automatically adopt the clan, tribe, nation, and consequently religion of their husbands." See an extended analysis of this issue on p. 321.

172 Ibid., 192.

173 Ibid., 195–211.

1–2i, 21:3–5), but finally she admits: "La contradiction avec CD demeure," "the contradiction [of 4Q174, which she calls *4QMidrEschat*] with CD remains."[174]

García Martínez notes the problems of the term גר in CD and in Scripture, whereas in rabbinic literature "it has a completely different meaning."[175] In contrast to Berthelot, García perceives the biblical "brother" and *ger* as clearly distinct entities.[176] He further writes that "the גר belong to the "people" (עם), although not to the "assembly" (קהל). I am not sure that the term קהל indicates a more ultimate communion with the people than the term עם.[177] On the other hand, I doubt whether the term עדה, used in Scripture for the description of the Israelite community and for the conveyance of commands (and often in association with the term קהל, indicating their equivalence) expresses a lesser affiliation with the Israelite people than the term קהל. In Exod 12:19, the *ger* and the *ezrakh* are components of the *Eda*: "And anyone, מעדת ישראל בגר ובאזרח הארץ from the community of Israel, whether foreigner or native-born"; this indicates that both groups are elements of the community of Israel. Similarly the phrase: "כל העדה The entire assembly כגר כאזרח whether an alien or native born" (Lev 24:16) plainly implies that both are elements of the assembly.[178] The terms עדה and קהל are equated as parallels in Exod 12:6: כל קהל עדת ישראל and in Lev 4:13.[179]

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174 Ibid., 211.

175 Florentino García Martínez, "Invented Memory: The 'Other' in the Dead Sea Scrolls," in *Qumranica Minora II, Thematic Studies on the Dead Sea Scrolls* (ed. Eibert J.C. Tigchelaar; Leiden: Brill, 2007), 187–218 at 202.

176 In Deut 1:16b, we read: "Judge fairly, whether the case is between two Israelites or between an Israelite and ובין גרו a foreigner residing among you." From the text of this verse we may perceive a difference, at least from the linguistic aspect, between the terms brother and *ger*. On the other hand, it makes no difference in terms of their rights.

177 We see, for example, the equivalence of the two terms עם and קהל in Lev 16:33: ועל כל עם הקהל יכפר "[make atonement for] all the members of the community."

178 These are the interpretations of the NIV and KJV, but I would like to remark that from the linguistic aspect, it is not evident whether the *ger* is indeed an element of the community, or lies under the same rules as the Israelite. The interpretation is also dependent on the status of the אזרח in these verses, a topic we discuss below. The rabbinic and traditional commentators' writings are not considering this question explicitly, but implicitly one could deduce opposite viewpoints. From the context of Josh 8:33, we could deduce that the copula כגר כאזרח are elements of the people—they participated in the blessings—but it does not absolutely confirm that it has always the same meaning.

179 We encounter in *b. Qidd.* 73a a dispute between two rabbis whether a *ger* may marry a female *mamzer*; the rabbi who believes that the *ger* is included in the קהל ה' prohibits it (Deut 23:3) and the other who permits it maintains that he is not included in the assembly of the Lord.

García further states that the גר is also mentioned in opposition to the אזרח, whereas the אזרח belongs to the "sons of Israel," the גר does not. It is not perfectly clear to me who is meant by the אזרח: does it intend the Israelites, or the non-Israelites that lived in Israel since time immemorial, as the LXX term αὐτόχθων "indigenous" is presumed to intend? We must consider that Scripture is supposed to have been written in the desert, before the entrance of the Israelites into the Promised Land, which was perhaps populated by other peoples in addition to the Canaanites. If indeed the אזרח intends the Israelites, as one may understand from García's exposition and the statement that they are בני ישראל, that is, ethnic Israelites, the *ger*, in contradistinction, according to García, cannot cross the ethnic barrier and "can never become an element of בני ישראל."[180] I have however some problems with the identification of the term אזרח in Scripture. *Tg. Onq*. translates אזרח in Num 15:13 as יציבא "planted," that is, someone planted in the land,[181] a denomination that seems odd referring to Israelites in a law whose inception would be after entering the land (Num 15:2). It seems rather to relate to the autochthonous inhabitants of the land.[182] Num 15 distinguishes between the *ezrakh* and the *ger*, citing them in separate vv. 13 and 14 to communicate that the same rule is valid for both, but it does not state explicitly whether the *ezrakh* is an Israelite. *Tg. Ps. J*. adds "except the sons of the nations" to it. Lev 19:34 כאזרח מכם "like a native born *from you*" (my italics) seems to indicate the *ezrakh* as an Israelite. Num 9:14, however, חקה אחת יהיה לכם ולגר ולאזרח הארץ "the same regulations for you and the *ger* and the *ezrakh*," seems to indicate that neither are an element of the people; they are only compared with respect to the law. והיה כאזרח הארץ "[the *ger*] will be like one born in the land" in Exod 12:48 seems to perceive the *ezrakh* as an Israelite, but verse 49: לאזרח ולגר הגר בתוככם "[The same law applies] both to the native-born and to the foreigner residing among you," is ambiguous; it depends whether the qualification "residing among you" refers to both the *ezrakh* and the *ger*, and thus, the *ezrakh* is *not* perceived as an Israelite, or only to the *ger*, in which case the *ezrakh is* perceived an Israelite. *Mek. R. Simon* Ch. 12, v. 48 interprets *ezrakh* here as a converted foreigner after circumcision, ritual bath and offering, and hence an element of the people. *Tg.Onq*. translates it as native-born, a vague literal interpretation, whereas *Lekah Tov* perceives

180 Ibid., 203.

181 The root of the term is נצב "to plant," as *Tg. Onq*. translates the term ויטע "he planted" as ונצב in Gen 2:8.

182 The Hebrew אזרח has the same affinity with "plant," as we see from its use in Ps 37:35: "flourishing like a green tree in its native soil," or in Amos 9:15: "I will plant Israel in their own land."

it as referring to an Israelite. It is not in the scope of this study to offer a solution to these questions; I wish only to draw the attention to the complexity of scriptural terms that compel us to be careful before making conclusions about the semantic range of a particular term. These terms have many meanings, as I have demonstrated in this chapter regarding a number of them.

Before approaching the more complicated topic of the many meanings of the term גר in Scripture, I will mention in short the Qumranic and the rabbinic understanding of the term אזרח. As it seems from the text of 1Q28ª (1QSª) I:6–7, the term אזרח relates to Israelites. One can derive the same conclusion from 4Q423 (4QInstrᵍ) 5:4: *gerim* and *ezrakhim* are different entities, but both are part of the community, and will enjoy the same privileges, although the *ger* is classified lower in the community's hierarchy. 4Q365 (4QRPᶜ) 22a–b and 23:1 repeat the biblical verses Lev 18:26 and 23:42. Lev 18:26 is ambiguous, as said above about the similar text of Exod 12:49, but 23:42, as I understand, explicitly perceives *ezrakh* as Israelite. It is the only command to live in the booths, and is followed by its justification, connecting their future generation to their past, the exodus from Egypt.

The rabbinic view is identical with that of Qumran, apprehending the term אזרח as the children of Israel. We read in *b. Sukkah* 27b: "[It is written] כל האזרח בישראל 'all native-born Israelites are to live in booths' (Lev 23: 42), that comes to teach us that all Israelites may sit in one Sukkah." Other rabbinic dicta confirm this rule; the succeeding rabbinic *midrash* decrees that an alien converted in the middle of the Booths holiday changes his status; he becomes an *ezrakh*, and is obligated immediately to sit in the booths. *Mek. Bo Mass. D'Piskha parsha* 15, relying on the phrase והיה כאזרח הארץ, states that an alien converted between the First and Second Passover must perform the Second, because he is perceived to be an *ezrakh* by his conversion.[183]

The term גר in biblical literature has many meanings, just like the other terms discussed earlier in the study, and I believe that there is no way to reconcile between them, except admitting that they represent different stages and types of aliens' acculturation in Israel. The rule that you may give לגר a dead animal to eat (Deut 14:21) must relate to a foreigner who resides in the land, but

183 Although there is some dispute in *b. Pesah*. 93a about the convert's obligation to perform the Second Passover, it does not affect our statement. The dispute refers to a legalistic principle about the character of the Second Passover, namely whether it is an atonement for the failure to make the First, and since the convert was not obligated to make the First, he is *not* obligated to make the Second, or whether on the other hand it is a substitution for the First, so that he *is* obligated to perform it. Both rabbis agree that a convert becomes an *ezrakh*, a full-fledged Israelite.

who has not accepted fulfilling all the precepts commanded for the Israelites. He is only obligated, as I understand it, to fulfill mainly those precepts who have an effect on public life, such as keeping the Sabbath, avoiding idolatry, and not consuming blood, which has a special, probably ancient occult significance.[184] On the other hand, atonement of the foreigners ולגר for involuntary transgressions in Num 15:26 seems to relate to the *ger*, who has joined the people of Israel. In contrast, the *ger* of Deut 14:21 does not need atonement for involuntary transgressions, since he is not commanded to fulfill all precepts. I also think[185] that the obligation to wash oneself and one's clothes after eating polluted food, as in the admonition to wash one's clothes after eating a carcass, otherwise one shall sin (Lev 17:15–16),[186] does not relate to an alien who has not joined the people of Israel and its laws. It refers, rather, to a *ger*, who has taken upon him the fulfillment of all precepts like an Israelite, and must wash himself and his clothes before entering a sanctuary.[187] There is no transgression to remain polluted for a longer period, if one does not enter a sanctuary in a polluted status.

The extreme difference between the identity and character of the *ger* in biblical literature seems to me to be most pronounced at the comparison of his status in Deut 29:9–12 and 31:12, and also in Deut 28:43. We read in Deut 29:9–12 (10–13 in KJV), at the making of the Covenant in which the וגרך אשר בקרב מחניך "foreigners living in your camps" participate together with the entire community. We encounter in Deut 31:12 a similar inclusion of the *ger* in the community, at the decree of the Assembly to "listen and learn to fear the LORD your God and follow carefully all the words of this law."

Conversely, we read a strikingly antagonistic dictum in Deut 28:43: "הגר אשר בקרבך The foreigners who reside among you will rise above you higher and higher, but you will sink lower and lower." There is no way to reconcile between these two portrayals of the *ger*. Since both appear in Deuteronomy, one cannot even presume a diachronic difference. We must admit that the *ger* in Deut 29 and 31 refer to fully integrated foreigners, who joined the people

184 We observe in Lev 10–12 the strong admonition against eating blood, its motive, and God's "personal" involvement in the punishment of the transgressor.

185 Berthelot "La Notion," 174 writes: "whereas Lev 17:15 forbids the *ezrakh* and the *ger* to eat meat of a torn animal, Deut 14:21 permits the *ger* to eat it." In fact, Lev 17:15 does not prohibit eating such meat; it only decrees that the Israelite and the *ger* must cleanse themselves after eating it. I therefore propose this statement with some reservations.

186 The literal translation is "he will bear his sin," and *Sifre Num piska* 1 states the punishment of *Karet* for failing to wash oneself and punishment of lashes for his clothes. The LXX translates it: λήμψεται ἀνόμημα "bearing his lawlessness."

187 *Sifra Lev*. 17 on this verse confirms it.

of Israel, and as we can deduce from Deut 23:4–9 they include members of all other nations not enumerated there who can join the קהל ה' "enter the Assembly of the LORD." They may still be called *gerim*, because as is clear from the Pentateuch they did not have land, a determinant factor for keeping one's name, as we have seen at the narrative of Zelophehad's daughters (Num 27 and 36). We can observe that a person's shame and tarnished reputation was remembered for a long period, as we read in Deut 25:10 regarding the man who refused to accomplish his levirate duty. A similar deprecating sobriquet may have plausibly been attached to a "landless man."

On the other hand, there were non-Israelites, probably Canaanites, who were not annihilated as Deut 7 commands (1 Kgs 9:20–21) but remained living among the Israelites, as we see from the places that were not conquered by the various tribes, enumerated in Judg 1. They were not treated well by the Israelites: the Gibeonites were used as woodcutters and water carriers (Josh 9), and the *gerim* were employed as forced labourers by David and Solomon (1 Chr 22:2 and 2 Chr 2:16).[188] These foreigners may have been the *gerim* of Deut 28, but at any rate there were alien peoples living among the Israelites, who were happy when the Israelites, who may have treated them badly, were defeated.

I postulate, therefore, that by analogy with these irreconcilable references from Deuteronomy we ought to consider the two outright dicta in Qumran literature as referring to two utterly different types of *gerim*. Those of the CD XIV:3–6 ordinance[189] refer to those *gerim* who joined the Jewish people and undertook the obligations to live according to the Law of the Sons of Zadok. They were called גר נלוה in 4Q169 (4QpNah) 3–4ii:9,[190] and were fully fledged

188 The traditional commentators, presuming that all the members of the seven Canaanite peoples were annihilated according to the command in Deut 7 and the narratives in Josh 9:7 and 24, allege that they were the descendants of the Gibeonites, an assumption that would conflict with the narrative of 2 Sam 21 that most of them were killed by Saul. I am not claiming that these narratives, and the numbers of the forced labourers in 2 Chr 2:16 called *gerim*, are authentic, but they may contain a kernel of truth. 1 Kgs 9:20–21 affirms that Solomon's forced labourers were the Canaanite remnants whom the Israelites could not exterminate. Sara Japhet, in *The Ideology of the Book of Chronicles and its Place in Biblical Thought* (translated from the Hebrew by Anna Barber; Winona Lake, IN: Eerdmans, 2009) postulates that all these references should be perceived as complementary, relating to the same group of persons. These quotations demonstrate the wide array of usages of the concept *gerim* in Scripture.

189 See p. 357.

190 Its source is probably Isa 56:3: "Let no foreigner הנלוה אל ה' who is bound to the LORD say 'The LORD will surely exclude me from his people.'" We observe the use of biblical

members of their community, with the right to ask questions, that is, participate in the debates: a privilege which women, children, and deformed persons did not have. The other *gerim*, mentioned in 4Q174 (4QFlor), never joined the Israelite people or adopted their belief and customs, and thus did not enter the Israelite community and could never enter the Temple. The uncircumcised גר is compared to the בן נכר, a sobriquet with a vicious connotation in Qumran writings; its source seems to be Ezek 44:9: כל בן נכר ערל לב וערל בשר "No foreigner uncircumcised in heart and flesh is to enter my sanctuary, not even the foreigners who live among the Israelites." Its parallel in 4Q174 is בן נכר וגר "the alien and the uncircumcised Gentile living in the land of Israel," who must never enter the Temple. I would hesitate to suggest that the Torah-centered community of Qumran would prevent the entrance of foreigners into the "Assembly of the LORD," in contradiction to the implicit biblical rule that members of other nations than those specified in the prohibition may join the assembly, subject to acknowledging the Jewish God and fulfilling his commands.[191] Such an assumption would be contrary to the audience's horizon of expectation, a condition for the reception of a thesis by its audience/readers, as defined by Robert Kugler.[192] As we have seen (p. 357), the author of 4Q174 employs biblical language from Deuteronomy and an allusion to Ezekiel.[193]

8.7 Conclusion

In bringing this chapter to a close, however, I would like to propose another conceivable solution to the apparent contradiction between the Qumranic dicta regarding the attitude towards the *ger*. We encounter in *m. Yad.* 4:4 the rabbinic decision to permit the conversion of Ammonites and Moabites, on the basis that there were no more pure Ammonites and Moabites, since Sennacherib

language in Qumran literature to emphasize the biblical source as their foundation of *halakhot* and doctrines.

191 In addition to the dicta cited above that explicitly acknowledge the acceptance of the converted *ger* as a member of the Qumran community, we encounter many implicit texts pointing in the same direction, for example in 1QS II:18–23, 1Q33 (1QMilḥamah) VII:3–6, 11Q19 (11QTemple[a]) XXI:4–7 and 1QS VI:7–9. Since we know that Qumran accepted proselytes, and they are not excluded from participating in the above-cited occurrences, it is obvious that they participated in them, like all regular members of the *Yahad*.

192 Robert A. Kugler, "Hearing 4Q225: A Case Study in Reconstructing the Religious Imagination of the Qumran Community," *DSD* 10/1 (2003) 81–103, at 89.

193 We read in Ezekiel 30:12: "By the hand of foreigners I will lay waste the land and everything in it."

had mixed the nations by transferring conquered peoples to other lands in which there remained some people from the previous nationalities.[194] Thus, they intermarried and were mixed. One cannot exclude the possibility that, as in many other instances, Qumran scholars did not acknowledge the Rabbis' *halakhah*, especially in this case. Hence, it is possible that Qumran disputed this early rabbinic or already Pharisaic *halakhah*, since the Patriarch Rabban Gamaliel also disputed it; thus, 4Q174 refers to the conversion of Ammonites and Moabites. The rabbis involved in the dispute were living at the time of the Temple's destruction, that is, before and after the conquest of Jerusalem, and hence such a circumstance could be plausible from the aspect of the period.

I hope to have offered a reasonable explanation for the serious apparent differences between the two Qumranic dicta regarding their attitude towards the "converted" alien, the biblical *ger*, while at the same time effectively disputing the claim that Qumran scholars, as in Ezra's intermarriage prohibition, prohibited any sexual relationship between Israelites and Gentiles because of the forbidden admixture of Israelite holy seed with alien profane seed, as Hayes claims. Such a concept was extraneous to Ezra and the ancient Israelites, and I have attempted to demonstrate that an attentive reading of the text without predispositions implies Ezra's fear of acculturation with the surrounding nations by socializing with them. Such circumstances would ultimately lead to the apostasy of the tiny, impoverished Jewish minority through the culture and religion of the wealthy pagan majority.

8.8 Appendix: The Term טמא in Scripture, Qumran and Rabbinic Literature, and Scholarship

This appendix will consider the meanings and applications of the term טמא in Scripture, as well as its interpretation and use in scholarship, demonstrating its various connotations. We encounter common ritual impurities, such as contact with a human[195] or animal carcass, in Num 19:14–16, Lev 11:25, and many other occurrences. There are, however, different types and degrees of impurities, depending on the manner of becoming impure, its duration, and the

194 See 2 Kgs 17:24–41 and 18:11. In 2 Chr 30 we observe that King Hezekiah sent messengers to the Israelites that lived in the land after the displacement of the Israelites by Sennacherib.

195 In the case of a human carcass the concept of contact includes not only physical contact but also being in the same room/tent. Contact with animal carcasses and with other sources of impurities generated different complex rules, but it is not in the scope of this broad schematic list to deliberate about these intricate details.

procedure for cleansing; for example, contact with a human carcass requires cleansing by sprinkling ashes of the Red Heifer, diluted with water. All those rendered impure are prohibited to enter a holy place or touch holy substances during the period of their impurity.

Similar to these impurities, there are the impurities of the menstruate woman (Lev 15:19), the woman in childbirth (Lev 12:2), the man after an involuntary discharge (Lev 15:16), and both man and woman after sexual intercourse (Lev 15:18). There are different durations of impurity and procedures for cleansing. Again, entering a holy place and touching holy substances are forbidden during the period of impurity. The woman who has given birth is required to bring a special offering at her cleansing procedure.

Then we have the impurity of the diseased discharges of men and women (Lev 15:2–15 and 25–33), and the impurity of the leper (Lev 13:2–46). Both are required to bring offerings at their cleansing procedures, although these offerings and procedures are different to each other in all aspects. Both are prohibited to enter a holy place or touch holy substances during their impurity, but the leper is banned from the Israelite camp, must stay in isolation, and must warn the people of his "impure" status. Impurity radiates upon the pure person or substances through physical contact, except that the leper, as the human carcass also radiates impurity upon what is present under the same roof.[196]

We also encounter the use of the term טמא for mildew in cloth and leather (Lev 13:47–59) and in a building (Lev 14:34–53). Although these items are declared impure, contact with them has no effect on persons or substances. There is no provision for a cleansing procedure; the elimination of the mildew ends the impurity of the materials, or else they are destroyed if the mildew persists.

The above impurities, despite their differences, can be classified as "concrete" impurities, in the sense of being the consequence of some sort of physical occurrence, either by their own action, by an action done to them, or through what has happened to them, as for example sickness. The termination of the impurity occurs at predetermined times or at healing, without or with special procedures, such as the sprinkling of the Red Heifer solution, special offerings after the healing of diseases, or a specific cleansing procedure for the healed leper.

We come now to the more complex metaphorical uses of the term טמא for a great variety of applications, beginning with the simple "impurity" of animals

196 In the case of the leper this is a matter of rabbinic interpretation, being not clearly evident from the scriptural text.

in the sense that one may not consume them (Lev 11:4–7). Touching them while alive does not transmit impurity, only their carcasses have this effect (Lev 11:27–38), but the same applies to the carcasses of pure animals, those which are permitted for consumption (Lev 11:39–40). Thus, we observe already a difference in the essence of the טמא concept for animals, but we encounter a much greater distinction with creeping or crawling creatures, an impurity with far-reaching consequences, as we read in Lev 11:43–44. In contrast to the other unclean animals, we observe severe consequences of consuming these creatures; they have an impact on the souls of Israelites, making them detestable/abominable/disgusting (according to the different translations NIV, KJV and LXX) and impure, and infringing on their holiness.[197] We have three quotations of the term טמא in the two verses, out of which the NIV translated two as "defile" and one as "unclean." The different translations indicate the translators' interpretations as founded on previously acquired knowledge or preconception, pointing to the complexity of the issue of interpreting a generic biblical term into distinct English terms (or indeed distinct terms of other languages), according to interpreters' choices and preferences.

Lev 14:40b: "and throw them into מקום טמא an unclean place outside the city" raises other questions. Does the term טמא here intend a "ritually impure site" or just a soiled place outside the city, to which all kinds of the city's refuse and garbage are removed? Further, if it is a "ritually impure" place, we don't know how an open place outside the city can become "impure": there is no such rule in Scripture. *Rashi* is aware of the problem, and postulates that טמא intends a place where "pure" matter is not brought, since it would become impure as long as the "impure" stones remain deposited there. I am not, however, convinced that this is the correct interpretation in this case. It is the only place in Scripture using the phrase מקום טמא. We encounter the phrase מחוץ למחנה "outside the camp" without any qualification, and in some instances with the attribute אל מקום טהור "a clean place." I also have not found anywhere that the ground becomes impure when an impure substance is placed upon it.

197 Whether theses specific consequences relate to all "impure animals and creatures" or only to those creatures quoted in vv. 41–42 is debatable. See Martin Noth, *Leviticus: A Commentary* (transl. from German by J.E. Anderson; London: SCM Press, 1965) and Karl Elliger, *Leviticus* (Tübingen: Mohr (Siebeck), 1966) 147–8 and 154–5. From Lev 20:25–26 it seems that the same consequences apply to all impure animals and creatures. These verses contain the identical concepts of שקץ, טמא and the holiness of Israel; they add the concept of separation. Just as God separated the Israelites from other peoples, choosing them as his people, he separated the pure and impure animals and creatures.

The state of impurity of foreign lands is a late rule, instituted about the middle of the Second Century BCE (*b. Shabb*. 14b). I would hypothesize that in our case, it means just a dirty place, outside the town, to which all refuse and garbage are removed. Hence, we have another meaning of the term טמא. I would like to draw attention to a difference between the phrases במקום קדש "holy place" and במקום טהור "[NIV adds ceremonially] clean place" in Lev 10:13 and 14. According to the rabbinic interpretation, which seems to be correct in the context, במקום קדש relates to the Temple precinct, and במקום טהור refers to the city of Jerusalem.

Another similar odd meaning of the term טמא is found in Josh 22:19, at Phinehas' speech to the tribes that chose the land east of the Jordan as their inheritance. We read there: "But now, if the land of your possession is טמאה unclean, pass over into the LORD's land." The NIV interprets the term טמא as "defiled," the KJV and the RSV as "unclean," but the LXX, probably since these habitual interpretations make no sense at all in the context, interprets it as μικρὰ "small." The traditional commentators adhere to the text, and explain its meaning as intending not holy enough for God to build the Temple there, with various nuances. We observe the many meanings of these terms and their opposites, the subject of our current inquiry.

We come now to a number of abstract usages of the term טמא, whose real meanings and consequences are not divulged. I refer first to the use of the term in Gen 34:5, 13 and 27, all three times inserted by the author/redactor of the narrative rather than being assertions of Jacob and his sons, and translated as "defiled," but without any indication of a motive. The manner of Shechem's sexual intercourse with Dinah, namely seducing or raping her, is not clearly indicated. The text of Gen 34:2 reads ויענה "violated her" in the NIV, "defiled her" in the KJV and "humbled her" in the RSV, following the LXX translation ταπεινόω "to humble." The same term ענה is used in Deut 22:29 regarding a rape case, according to rabbinic interpretation (*m. Ket*. 3:4 and *b. Ket*. 39b), and a seducing event by the Temple Scroll 11Q19 (11QTemple[a]) LXVI:8–11. Here, the LXX and the NIV are consistent: the first translates the term ענה "humbled" and the second "violated." On the other hand, the KJV translates here the term "humbled," and the RSV "violated"; it confirms again the complexity of adapting the translations of the term to our modern preconception of how it should be interpreted according to the context. However we interpret the term ענה in Deut 22:29, either as "humbled" or "violated," it does not indicate the essence of the term טמא as used by the author/redactor of Gen 34, and does not justify its usual translations as "defiling/making impure/profaning." Although the sexual intercourse of Shechem with Dinah is portrayed by the term ענה in Gen 34, exactly as in Deut 22:29 and hence relating to an identical event, the term טמא

is not used in the biblical text of Deut 22:28–29, and its significance in Gen 34 remains elusive.[198]

We can now approach the scrutiny of another biblical text relating to sexual delinquencies, that of adulterous intercourse (Lev 18:20) associated with the phrase לטמאה בה interpreted as "to defile yourself" by the LXX and the other translators. It would seem that this interpretation was preferred because there is no mention anywhere what type of "impurity" the adulterous man bears; but neither does the interpretation "defile" divulge in what his defilement consists. The term נטמאה in Num 5:13–14 regarding the suspected unfaithful wife is translated by the LXX as μιαίνω "defile," as is the KJV and RSV, whereas the NIV translates it as "impure." Further, it appears from the grammatical structure of the phrase לטמאה בה that the defiling applies only to the man, not to the woman, his partner in the misdeed. The complexity of interpretation of the term טמא is again evident.

We find a similar oddity, the distinction between man and woman, at the discussion of bestiality in Lev 18:23; the man's action is portrayed: לטמאה בה "to make yourself unclean with it," but the woman's identical act is portrayed as תבל "perversion." Capital punishment is equally imposed on the adulterous woman as upon the man (Lev 20:10), and the punishment for bestial intercourse applies to man and woman alike (Exod 22:18); hence, we are left unaware what the distinct terminology indicates, and whether different consequences are associated with their specific nomenclature. A similar puzzle concerns the meaning of other terms with an affinity to sexual issues, used in Scripture and deliberated upon in this study, such as: טהור, טמא, זרע, קדוש, תבל, תועבה and חסד.[199] For example, male homosexuality is called תועבה "detestable" (Lev 20:13) and woman's bestiality intercourse תבל "perversion" (Lev18:23), but the transgression of both is identically punished by execution. On the other hand, intercourse with one's sister is called חסד,[200] and imposes the *karet* punishment (Lev 20:17), seemingly a lighter penalty.

198 The assumption of some scholars that sexual contact between holy Israelites and unholy Gentiles profanes/defiles the seed/blood refers exclusively to the allegation that the *Jubilees* author and/or Qumran scholars interpreted it in such a way; all agree that Scripture does not indicate such a theory.

199 I do not perceive the term מעל as related to sexual transgressions. The phrase ומעלה בו מעל in Num 5:12 does not refer to the sexual act; this is expressed in the term תשטה "[his wife] goes astray." The term מעל indicates she was "unfaithful" to her husband as in similar instances, discussed in section 8.4.2 pp. 328–330.

200 In Hebrew the term חסד means "kindness"; in Aramaic it also means "shame," and that is how translators and commentators translate it here and in Prov 25:10.

We can now return to our main question posited above regarding the practical meaning of defilement, as interpreted for the adulterous or bestiality-practising man, and the absence of the same status or castigation of the woman for the identical transgressions and punishment. I would suggest that the "impurity/defilement" of the term לטמאה בה is intrinsically associated with the succeeding verses linking them with the nations who defiled the land that then vomited them out for their wicked deeds; the term טמא appears five times in the succeeding seven verses (Lev 18:24–30). That solution seems logical to me in the context, and demonstrates the significance of the term טמא in this occurrence, as intended by the author, even though its exact meaning remains undefined.

Lev 18:24–25 concludes a list of other sexual transgressions with the term טמא used for both the portrayal of the status of the active sinners and the abstract status of the land, translated by the term "defile" by the NIV, KJV and LXX. Num 35:33–34, referring to the sin of shedding blood, uses two parallel terms, חנף and טמא. The removal of the land's "defiled" status of טומאה and the atonement of its enigmatic sin seems to be possible solely by the killing of the perpetrator, in this case the murderer.[201] The enigma concerning how actions or inactions by the people טמא "pollute/make impure/defile" the land arises again in a number of places: in Lev 19:31 at the prohibition of turning to mediums and spirits; in Ezek 20:18 where idols "defile" the land; and in 20:26a with the enigmatic assertion "let them become defiled through their gifts." The phrase טמא שפתים in Isa 6:5 and 52:1 is translated by the LXX as ἀκάθαρτος "unclean," which the NIV, KJV and RSV follow, except that the NIV translates the latter instance as "defiled."

We come now to two peculiar uses of the term טמא in Deut 21:23, translated as "desecrate" (NIV) and "defile" (KJV and RSV), following the LXX μιαίνω "to defile" the land by refraining to bury the hanged man in it on the same day. This constitutes an exception, since the term טמא as discussed until now was used for doing something or being exposed to something done by others, but

201 Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000) 26 ff., postulating a distinction between ritual and moral impurities, states: "the moral impurity leads to a long-lasting, if not permanent, degradation of the sinner and, eventually the land of Israel." I will discuss his theory later in this appendix, but this attribute is not appropriate for all types of the alleged "moral impurities." We observe, for example, that in our case, concerning the murderer, the removal of the land's "impurity" can be swift, by the refusal to take pecuniary compensation for the death of a person, and execution of the perpetrator's prescribed punishment. The prompt removal of this type of "impurity" demonstrates the key deficiency of bundling together different wicked acts under one category.

never for the failure of others to do something, as in this case. Again we are not informed about the essence of this type of טומאה, its repercussions and removal; is the land cleansed by burying the man the next day, or is another procedure necessary? Another enigmatic use of the term appears in Deut 24:4 at the prohibition of the divorcée to return to her previous husband after having been married to another man, and thus הטמאה "defiled"; and would be תועבה "detestable in the eyes of the LORD." Traditional commentators and modern scholars attempted to introduce some sense into this obscure rule, but the meaning of the term הטמאה interpreted as "defiled" by the LXX, NIV, KJV and RSV, namely, what the divorcée had done or to what type of defilement had she been subjected in order to generate, as a single person, a sin upon the inherited land, remains elusive. Unlike other transgressions of sexual delinquencies, such an infraction would not provoke "defilement" of the land or the potential to be driven out of it; the emphasis on its bringing sin upon the land without indicating the precise consequences.[202]

Klawans[203] attempts to postulate a solution for the seemingly odd uses of the term טמא, a terminology inappropriate for example to the portrayal of an adulterous sexual intercourse or to the impurity of the land because of the wicked practices of its inhabitants. He postulates perceiving a "ritual impurity" for the common impurities and a concept of "moral impurity" for the others. The compound expression "moral impurity," however, is a fusion of the ancient mystical concept of "impurity" with the modern concept of morality/ethics. There is no such concept in Scripture; all those rules that seem to us as socially motivated, and hence founded on ethical principle, are presented in Scripture strictly as divine decrees, their transgressions being punishable directly by God or by humans according to divinely established, rigid and immutable rules. Human courts must decide whether the accused is guilty or not, but cannot alter the divinely prescribed verdict for the delinquency or forgive the criminal altogether. In cases in which humans cannot know whether a person

202 David Instone Brewer, "Deuteronomy 24:1–4 and the Origin of the Jewish Divorce Certificate," *JJS* 59/2 (1998) 230–243, at 231–235 offers a record of various scholarly hypotheses proposed to explain this apparently odd rule. He seems to endorse Westbrook's complex theory in "Prohibition of Restoration of Marriage in Deuteronomy 24:1–4," in S. Japhet, *Studies in the Bible 1986: Scripta Hierosolymytana* 31 (Jerusalem: Magnes, 1986) 387–405, but I do not see eye to eye with them on this justification. While I agree that we should attempt to reveal the logical root of ancient bizarre rules and customs, we must sometimes admit our inability to disclose their rationale, which in some instances may have been already obscure to the composers of the ancient document. I would suggest considering this rule of prohibiting remarriage with a divorced wife as one such case.

203 Klawans, *Impurity and Sin* 26 ff.

performed a wicked act, as for example indicated in Lev 19:14 not to curse the deaf or to put a stumbling block before the blind, the seemingly superfluous phrase "fear your God: I am the LORD" at its end and at similar decrees in that chapter indicates that God himself, who knows whether these evil deeds were performed (the concerned persons being unaware of it), will punish the transgressor. Similarly, the perpetrator of an ethical offence, according to our viewpoint, which cannot be prosecuted by a human court, will be punished by God "personally," as for example we read in Exod 22:21–22 (22–24 in KJV).

Moreover, Klawans' theory does not solve the impasse; whereas the classification of animals as טמא and טהר (Lev 11:47) can be codified in terms of ritual impurity, the theory does not explain what type of impurity pollutes the earth because of the failure to bury a hanged man on the same day (Deut 21:23). The earth cannot be classified as either ritually or as morally impure. Neither can it explain the type of טומאה "impurity" in similar circumstances in which the land becomes טמא. Consequently, the generic label "moral impurity" cannot be attached to the term טמא in all occurrences that cannot be classified as "ritual impurities"; doing so seems to me unwarranted, and also leading to erroneous conclusions. I therefore postulate that we should conceptually detach the term טמא in these instances from any relationship with the notion of purity and impurity.

The use of the term טמא in these occurrences in which the concept of ritual impurity is not appropriate is due to the want of other suitable terms in the biblical language, but need not stimulate the devising of modern concepts of "moral impurity." The biblical concept טמא is difficult to explain to a modern person; it is beyond perceptible reality and our modern way of thought, and its undifferentiated use in Scripture at different instances makes it even more elusive to our tangible perception.

How can we hope to understand why a person rendered ritually impure as a result of some contact with a corpse (even only being in the same room) must be sprinkled with a solution of water mixed with the ashes of the Red Heifer, while another ritually impure person, for instance one with a diseased discharge, does not require it? Further, why are the priest who burns the purifying Red Heifer and the man who collects its ashes impure for one day? The Zoroastrian religion, for example, possesses a division between good and bad animals, associated respectively with the good god Ahura Mazda and the evil god Ahriman. Likewise it acknowledges the concept of an abstract type of טומאה, and its removal is a significant element in that religion. In the Indo-Iranian practice of the great purification for the initiation of priests and corpse-bearers, an important part is played by gomez, consecrated urine,

originally cow's urine.[204] We must, therefore, accept the biblical terms as not fully comprehensible for modern readers, and avoid imposing our current manner of thought and method of research on ancient writings, particularly regarding esoteric topics.

We have observed the different meanings of the term טמא in Scripture, and its varied interpretations into English terms dependent on the exegesis of the text by the translator/interpreter. Some English terms are perfectly interchangeable in some instances, but not in others. Consider, for example, the correlated terms "defile" and "desecrate." In the rule to bury the hanged man on the same day, the term "defile" the land, chosen by some translators, seems to me more appropriate than "desecrate" chosen by another. For the description of the transgressing of the Sabbath prohibitions or the desecration of God's name, both expressed in Hebrew by the term חלל, the term "desecrate" seems to better me than "defile," whereas for the son of a priest from a prohibited marriage, identified in Scripture by the same term חלל, the translation "defile" seems to me more appropriate. The son was never sacred in the first place, being unfit to serve as a priest from his sinful conception, and thus cannot be desecrated. Utmost care must, therefore, be applied to the correct interpretation of the various terms considered in this survey, before drawing philosophical and/or theological deductions from a possible incorrect translation.

We observe similar conceptual variances of the term טמא in Qumran literature. I would suggest dividing them in three categories:

a) concrete ritual impurity, such as contact with human and animal corpses or with specific human discharges and diseases, as well as mildew of cloth and houses;
b) metaphysical impurity, such as ritually pure and impure animals, and abstract impurity of the soul;
c) abstract impurity resulting from i) adultery, ii) defilement of land, Temple, or altar by people's wicked behaviour, iii) the presence of blemished persons who pollute (make impure) Jerusalem.

I would include in group a) occurrences of the term טמא in the following writings:

204 Adapted from the *Encyclopedia of Religion* (ed. Mircea Eliade; New York: MacMillan Publishing Co., 1987).

CD IV:18 and V:6;[205] X:13; XI:19 and 22; XII:17–18; 1Q28[a]: XI:3; 4Q265 (4Q Misc Rules) 7:15; 4Q266 (4QD[a]) 9ii:3; 4Q271 (4QD[f]) 2:11; and many others.

In group b) (metaphysical impurity), I would classify CD VI:15; XII:20; 1Qp-Hab VIII:13; 1QS III:5; V:12; VI:20; 4Q177 (4Q Catena A) 7:6; 4Q257 (4Qpap S[c]) III (iii, 2a–g):7; 4Q262 (4QS[h]) 3; 4Q365 (4Q RP[c]) 17a–c:4; 4Q383 (4Q apocr Jer A) 6:2; 4Q396 (4QMMT[c]) IV:10; and others.

In group c) (abstract impurity of land, altar, Temple, and holy spirit), I would place CD IV:18; V:6[206] and 11; XX:23; 1QpHab. XII:8; 4Q183 (MidrEschat[e]) 1ii:1; 4Q251 (4QHalakha A) 18:2; 4Q270 (4QD[e]) 2ii:11; 4Q390 (4Q apopcr. Jer C[e]) 2i:9; 11Q19 (11Q Temple[a]) LI:14, 11Q19 (11Q Temple[a]) LXIV:12; 11Q 19 (11Q Temple[a]).

We observe that the term טמא in Qumran literature has similar meanings to those of Scripture, and this must be considered when interpreting them; context is the key for a correct understanding of the text.

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205 See a discussion in Chapter 6, p. 223, on the consequences of a different interperation of the term טמא in these two verses by me and by Adiel Schremer, "Qumran Polemic on Marital Law: CD 4:20–5:11 and its Social Background," *Damascus Document: a Centennial of Discovery; Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature 4–8 February 1998* (eds. Joseph M. Baumgarten et al.; Leiden: Brill, 2000) 147–160 at 149–152. According to my interpretation these two terms should be considered as abstract impurity of the Temple by wicked deeds, as in Lev 20:3, whereas Schremer perceives them as concrete impurity.

206 See antecedent note.

Epilogue: Some Reflections

Since I have offered conclusions on each topic discussed in the individual chapters of the book, I would like to end by offering the reader some general reflections on the status of women in ancient Judaism. The writings of that period have had a great impact on the status of women in contemporary Western society, despite the fact that they did not represent the real circumstances with complete fidelity. There is always a distinction between what ought to be and what is—the writings do not represent the actual facts of life, though they nevertheless had a practical effect, if not to the extent of becoming fully realized—but this truth does not neutralize the effect of writings deemed to be decreed by God, duly interpreted, and thus holy and mandatory. The nevertheless incomplete fulfillment of the rules thus conveyed is due to a number of factors that explain this baffling and unexpected reality. The first is the deeply entrenched anthropological disposition to reject that which is imposed by authority, the instinctive opposition to any restriction of an idealized boundless freedom to do as one pleases, and, last but not least, the temptation to do what is forbidden and the pleasure derived from rebellion in itself. Ancient philosophers and thinkers were already aware of the potential allure of this innate human urge, as we observe in Prov 9:17: מים גנובים ימתקו ולחם סתרים ינעם "Stolen water is sweet; food eaten in secret[1] is delicious," and they warned against the dangers of succumbing to it. The second significant factor lies in the different interpretations of rules assumed to be divine, creating distinct ordinances in different societies or in different groups within the same society; they may range from doctrinal or ritual issues that seem minor from a modern perspective but were deemed of great significance at the time, up to the most crucial concerns, leading to unbridgeable chasms and decisive splits; yet all these questions alluded to the same primary scriptural source, equally revered by all parties. The disagreements between the Pharisees and the Sadducees about the interpretation of Scripture did not provoke a split such as occurred between the Pharisees and the Essenes/Qumran, although all these conflicts turned on the issue of whose interpretation of the same source was correct. It is not easy, in part because of the lack of any authentic Sadducean writings, to determine whether the conflicts between the Essenes and the Pharisees were of greater importance than those between the Pharisees and the Sadducees, circumstances that would explain the different practical consequences of the

1 A metaphoric axiom referring to evil deeds (fornication, according to some traditional commentators), usually performed in secret.

ideological dissensions. Nevertheless, I would hypothesize that other factors also influenced the different reaction of the Essene community; one may envisage that they were more zealous in their adherence to the simple meaning of the text, accusing their opponents of adulterating the biblical text through reprehensible interpretive methods. The practical differences between the *halakhot* of the Essenes and the Pharisees were not of greater significance than those between the Pharisees and the Sadducees, but it was their dissimilar attitudes towards the meticulous and correct fulfillment of biblical decrees which lay at the root of their different reactions. We can also not exclude that personal rivalries between the respective leaders, and the extreme loyalty and devotion of the Qumran community to their revered leader—as we may glean from their writings—bolstered the escalation of enmity between the two groups, provoking the creation of further peculiar dogmas which in turn led to a final schism. The split between Judaism and Christianity, however, was motivated by much more significant interpretational differences, albeit concerning the identical holy writ of the Old Testament. It is not within the scope of this book to elaborate on this topic, despite its supreme significance for Western culture; the comparison is offered simply as an example of the varying extent of differences that can result from divergent interpretations of the identical primary source.

One of the book's key tasks has been to analyse differences among interpretations of relevant biblical texts regarding the character of women, along with their practical ramifications. We do not possess an authoritative primeval interpretation of the Creation and Fall narratives, which would be a crucial primary source for the establishment of attitudes from a variety of perspectives towards women. I have brought maximum intellectual rigour to the task of detaching myself from the common interpretations of these narratives in Judaeo-Christian culture, in order to present an objective interpretation as the basis for comparison with the Qumranic and rabbinic interpretations. My hope in doing so is to proffer a reasonable assumption of each group's interpretation of the relevant biblical texts, despite the lack of elaborate interpretations of the biblical texts and *halakhot* relating to women in Qumran writings, comparable to rabbinic literature. Guided also by my conviction, based on my comparative studies of Qumranic and rabbinic interpretational methods, that Qumran adhered to a straightforward interpretation of Scripture, I believe I have demonstrated this method at work in relation to Qumran's attitude towards women, as deduced from examination of the relevant Qumranic writings. Women were not members of the exclusive *Yahad* group, nor were they obligated to fulfill all biblical precepts as the men were, and they lacked any independent legal status in marriage; on the other hand, they are not accused

in Qumran of the instigation of the Fall, and their character is not sullied as agents of temptation, engendering evil behaviour in men. In this, Qumran follows an objective, unbiased interpretation of Gen 1–3, similar to the basis of my own interpretation. The rabbis, on the other hand, interpreting the identical texts that both groups believed to be the most holy and mandating divine utterances, reached different results. In my opinion, this was due to their preconceived attitude towards women: as pragmatists they considered the realities of life in their period, and the prospects for their halakhic decisions to be acknowledged and practised by the people. Accordingly, their approach was to interpret the relevant biblical texts and rules according to the circumstances of the time and their own thought processes. They believed that the Israelite nation's learned spiritual leadership had the competence and authority to interpret the divine will and intention, adapting it to current circumstances and asserting that their halakhic decisions corresponded to God's omniscient intention in light of such circumstances.

We have observed how the different interpretive methods of Qumran and the rabbis affected their respective attitudes towards women. In contrast to Qumran, the rabbis offer us a clearly negative portrayal of women, deduced through their midrashic interpretive method from the identical texts. The rabbinic attitude towards women may have been influenced by prejudicial Greek conceptions about women, but in the end the rabbis claimed their viewpoint to be derived from Scripture. By the same token we encounter rabbinic *midrashim* that glorify the importance of women for the husband and the family, in apparent contradiction to those *midrashim* which emphasize their allegedly wicked and dangerous character. I have attempted to reconcile these two seemingly conflicting perceptions by discerning the distinct aspects of the two topics. Woman was created by God for the purpose of being a helper and companion to the man, and hence she is to be praised for fulfilling her divinely ordained function. On the other hand, her God-given desire for men makes her a source of danger to men's ethical behaviour, due to her physical fascination. Pragmatically, the rabbis distrusted men's ability to resist stumbling into sin, and therefore imposed the onus of ensuring society's ethical behaviour on women. Qumran, in contrast, did not accept the frailty of men's nature as a reason to concede them indulgence, but insisted that their members must be able to resist women's attractiveness; they did not consider practical circumstances in their halakhic decisions in this case, as they did in other situations.

We may thus see how interpretive systems affect the outcome of doctrinal and practical (halakhic) topics. I have devoted much attention to the interpretation of the Creation and Fall narratives, since such interpretation established the background of the halakhic ramifications of the status of women, their

rights and obligations. While I am aware that the respective circumstances had an impact on both the compilation of the biblical narratives and their later interpretations—that is, they were in part aetiological formulations—we must recognize that both the compilers of the Torah and its later commentators and interpreters did not compose and redact their writings to reflect without qualification the current circumstances, intending to justify those circumstances as ordained from heaven. Judaism, from its inception, absorbed narratives and rules from the surrounding cultures, but adapted these to particular Israelite beliefs and viewpoints about right and wrong in the course of their incorporation in Israelite lore and civilization. Here too, as it seems to me, we must consider that both Qumran and the rabbis were aware of human inclinations and shortcomings, as well as the influence of the surrounding societies and cultures that in part created the prevailing circumstances; they did not by any means accept this influence wholesale, but rather attempted to eradicate or to modify it through their rules and homilies, each group in its own manner and to its own extent, according to its particular theology.

These reflections have constituted the guiding principles of my research on the status of women in different periods and segments of Israelite society and on the ramifications of the Creation and Fall narratives on the practical and legal aspects of the problem. Finally, I would like to add that although I have tried to substantiate my vision of this topic by the citation of supporting quotations, scholarly opinions, and logical considerations, I have never considered my conclusions to be the one and only truth; I have followed one mode among many of reading the primary texts. While I may believe that my arguments, supporting evidence, and logic are more convincing than those offered by other scholars, I remain aware that others may perceive things differently; it behooves the readers to decide his or her own preference.

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Citations Index

Apocrypha and Pseudepigrapha

Babylonian Talmud

Extra-Canonical Tractates

Midreshe Aggadah

Targumic Texts

Cuneiform Writings

Quran