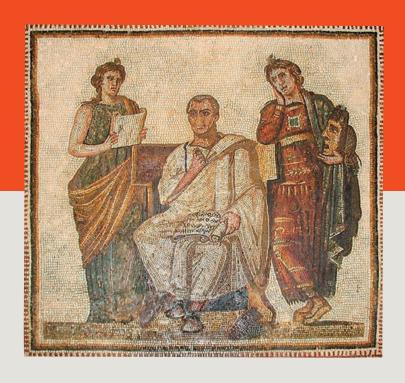Michal Bar-Asher Siegal / Tzvi Novick /
Christine Hayes (eds.)

The Faces of Torah

Studies in the Texts and Contexts of
Ancient Judaism in Honor of Steven Fraade

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Introduction

Steven Fraade, the Mark Taper Professor of the History of Judaism at Yale University, was born in New York City in 1949. He entered Brown University in 1966 as a physics major, and left in 1970 with a degree in religious studies, after taking courses with Salo Baron and Jacob Neusner. Steven spent a number of years after college in Israel, first as a member of the group that re-established Kibbutz Gezer, then at Kibbutz Hulda.

Upon returning from Israel, Steven took classes at the Jewish Theological Seminary, then, in 1974, entered the PhD program at the University of Pennsylvania in the Department of Oriental Studies, Near-Eastern Division. His studies there—especially under Jeffrey Tigay (Hebrew Bible), Barry Eichler (Ancient Near Eastern legal literature), Robert Kraft (Second Temple Judaism and Early Christianity), Zvi Rin (Aramaic), R. E. A. Palmer (Roman History), and most importantly Judah Goldin (Rabbinics), his advisor—shaped Steven's academic career. He also took advantage of the presence of numerous visiting scholars from Israel to develop ties with Israeli academia, another determinative influence on his scholarly trajectory. Steven's dissertation would serve as the foundation of his first book, *Enosh and His Generation: Pre-Israelite Hero and History in Post-Biblical Interpretation*. Finally, and of no little moment, Steven's stint in graduate school also yielded his marriage, in 1979, to Ellen Cohen. They are the parents of Shoshana, Tani, and Liora.

After graduating from Penn in 1980, Steven took up a position in the history of early Judaism in the Department of Religious Studies at Yale University, which has profited from his presence ever since. In his early years at Yale, Steven benefited from the support and guidance of senior colleagues in Religious Studies and beyond, among them Hans Frei, William Hallo, Geoffrey Hartman, Bentley Layton, Wayne Meeks, and Franz Rosenthal. The poststructuralist moment at Yale in the 1980s, which drew attention to the performative aspect of texts, helped shape Steven's second book, *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy*, which was published in 1991 and won the National Jewish Book Award for Scholarship. Together with his colleagues in the Judaic Studies Program and beyond, Steven has made Yale's Religious Studies Department a major international destination for the study of Second Temple and rabbinic Judaism.

Steven has contributed in major and enduring ways to our understanding of the legal literature of the Dead Sea Scrolls, the "halakhic midrashim" of the early rabbinic movement, the dynamics of ancient scholasticism, and an assortment of issues in late antique Roman Palestine: rabbinic asceticism, rabbinic institutions,

literary and orality, translation, targum, and multilingualism. His scholarship is notable for its capaciousness and nuance. It is capacious in its chronological scope, stretching from Second Temple literature to the late antique synagogue. It is capacious, more importantly, in its methodological framework, which combines the philological precision for which Israeli rabbinics scholarship is rightly famous with the theoretical interests more characteristic of American scholarship. If this dichotomy of Israeli philology and American theory is less helpful today than it was in the past, this is in part due to Steven's work and influence. Finally, Steven's scholarship is capacious in its recognition of the impossibility of considering texts apart from history, or, in the areas of interest to his scholarship, history apart from texts. The categories that dominate Steven's work—rhetoric, performativity, translation—inhabit precisely the interface between text and history. The bridging work that Steven's scholarship achieves between periods, between methodologies, between text and history, is distinguished by its uncommon nuance. When Steven asks, as in the title of one of his articles, whether "hermeneutics, history, and rhetoric [can] be disentangled," you can be sure that his short answer is no, and that his long answer involves an appreciative and instructive analysis of the entanglements. A collection of many of these articles was published in 2011 as *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages.*

Steven has contributed to the field of Jewish studies in ways other than through his scholarship. The relationships that he has cultivated with scholars of early Christianity in the Department of Religious Studies have helped to build bridges between this area and Jewish studies. His long-standing ties with scholars beyond Yale, in America, Europe, and especially Israel, have yielded rich and varied fruit, some easily discernible, in the form of edited volumes and conference proceedings, and some less palpable, but no less important: conversations, collaborations, friendships, insights.

Steven is not only a great colleague but an inspiring teacher and mentor. His seminars model careful, nuanced textual and contextual analysis, and his graduate students can attest to his exemplary concern and support for them in every aspect of their studies. That many of Steven's former students have contributed to this volume is a testament to the closeness of the bonds that he has formed with them. It is no coincidence that much of Steven's research—on Tannaitic midrash, for example, and on 4QMMT—concerns the practice of teaching. Pedagogy, for Steven, is a topic worthy of careful attention, in theory and in practice. Nor does he confine his pedagogical pursuits to the academy. At his New Haven synagogue, Beth El–Keser Israel (BEKI), he regularly leads a class on the weekly Torah reading. He has occupied leadership roles in other capacities at the synagogue, as well as at nearby Jewish schools, the Ezra Academy and the Jewish High School of Connecticut. Many of the community members whom he has influenced joined with some of his students and colleagues at a conference in Steven's honor at Yale

University in May 2014, "Rabbis and Other Jews: Rabbinic Literature and Late Antique Judaism," at which earlier versions of some of the papers included in this Festschrift were presented.

The articles collected here reflect many of Steven's scholarly interests. They divide into three sections, one on Second Temple literature and its afterlife, a second on rabbinic literature and rabbinic history, and a third on prayer and the synagogue.

Michal Bar-Asher Siegal
Tzvi Novick
Christine Hayes

Second Temple Literature and Its Afterlife

Elizabeth Shanks Alexander

Reading for Gender in Ancient Jewish Biblical Interpretation: The Damascus Document and the Mekilta of R. Ishmael

Introduction

Scholars interested in the early halakic construction of women and gender have repeatedly sought to identify patterns in the rabbinic interpretation of biblical terms that can plausibly be understood to include or exclude women.[1] The Bible uses a number of grammatically masculine terms (e. g. "man," "citizen," "sons of Israel") to signify the community of Israel. When the early rabbis read the biblical text, they faced an interpretive dilemma. Should they read these terms in a restrictive manner, as indicating the men of Israel only? Or should they read these terms in an open-ended manner, as referring to both men and women? Grammar alone does not resolve the matter since both possibilities are encoded within masculine forms. Scholars have identified this phenomenon—rabbinic interpretation of grammatically masculine forms that alternately include and exclude women—as data rich in potential insights into rabbinic gender. They seek to uncover the reasons—presumably fundamental rabbinic instincts as regards gender—to move sometimes toward inclusive interpretation and at other times towards exclusive interpretation.

My preliminary study of midrashic texts[2] engaging this interpretive dilemma suggests that a number of factors impact rabbinic interpretation and guide the rabbis towards inclusive or exclusive readings, respectively. Notably, rabbinic assumptions regarding gender are not intrinsic to all of these factors. Drawing in many

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1 Shaye Cohen, *Why Aren't Jewish Women Circumcised? Gender and Covenant in Judaism* (Berkeley: University of California Press, 2005), 122–42; Tal Ilan, "'Daughters of Israel, Weep for Rabbi Ishmael': The Schools Rabbi Akiva and Rabbi Ishmael on Women," *Nashim* 4 (2001): 15–34; Michael Chernick, "'Ish' as Man and Adult in the Halakic Midrashim," *The Jewish Quarterly Review* 73, no. 3 (1983): 254–80; and Chana Safrai and Avital Campbell-Hochstein, *Women out—Women in: The Place of Women in Midrash* (in Hebrew) (Tel Aviv: Mishkol, 2008).

2 At this stage in my research, I have limited my investigation to interpretations preserved in the Tannaitic midrashic collections (Mekilta of R. Ishmael, Mekilta of R. Shimon bar Yoḥai, Sifra, Sifre Numbers, Sifre Zuta, Sifre Deuteronomy, Midrash Tannaim on Deuteronomy, and Sifre Zuta on Deuteronomy).

cases on the past thirty years of ground-breaking scholarship on midrash, I offer the following tentative list of factors influencing interpretive outcomes:

1. the availability of earlier interpretive traditions pursuing one or the other reading
2. constraints imposed by decisively gendered biblical language (e. g. "each male")
3. constraints imposed by related passages from elsewhere in the biblical text[3]
4. assumptions regarding the default gender of biblical subjects
5. assumptions regarding the grammatical gender of biblical language
6. assumptions regarding the divine, as opposed to human element of biblical language and halakah
7. real and ideal gender in rabbinic society
8. attention to textual irritants (repetition, contradiction, extra letters, etc.)[4]
9. adherence to the norms of Akivan vs. Ishmaelian midrash[5]

As is readily apparent, rabbinic assumptions regarding gender figure in only some of these factors (2, 4, 5, 7). Even where gender plays a role, it affects interpretation in different ways depending on whether it concerns the biblical text (2, 4, 5) or manifests in society (7). The process of distinguishing among these factors and identifying which come into play in any given instance offers scholars a finely calibrated device for understanding the ways in which gender and interpretation intersect. Where previous studies have focused almost exclusively on data provided by rabbinic choices to include or exclude,[6] this approach expands the aperture of its lens by additionally attending to the *rhetoric* of interpretation: How do the

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3 Daniel Boyarin's work has been foundational in alerting me to the pressures exerted by related passages from across the canon in the generation of midrashic readings of Scripture. See Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Bloomington: Indiana University Press, 1990), esp. 22–38.

4 I am indebted to James Kugel's work for my understanding of the role that textual irritants play in the generation of midrash. See James L. Kugel, "Two Introductions to Midrash," in *Midrash and Literature,* ed. Geoffrey H. Hartman and Sanford Budick (New Haven: Yale University Press, 1986), 77–103, and James L. Kugel, *In Potiphar's House: The Interpretive Life of Biblical Texts* (Cambridge: Harvard University Press, 1990).

5 I have learned most on this topic from Azzan Yadin-Israel. See Azzan Yadin, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash,* Divinations (Philadelphia: University of Pennsylvania Press, 2004); Azzan Yadin, "Resistance to Midrash? Midrash and *Halakhah* in the Halakhic Midrashim," in *Current Trends in the Study of Midrash,* ed. Carol Bakhos (Leiden: Brill, 2006), 35–58; and Azzan Yadin-Israel, *Scripture and Tradition: Rabbi Akiva and the Triumph of Midrash* (Philadelphia: University of Pennsylvania Press, 2015).

6 Scholars differ in their explanations of rabbinic choices. Where Michael Chernick sees rabbinic interpretation most intensively constrained by features of the biblical text (Chernick, "'Ish' as Man and Adult in the Halakic Midrashim"), Tal Ilan sees rabbinic attitudes towards women as a decisive factor (Ilan, "The Schools of Rabbi Akiva and Rabbi Ishmael on Women").

rabbis understand and frame their interpretive work? Borrowing a method from the scholarship of Steven Fraade, in this paper I examine rabbinic interpretation alongside that of other ancient Jewish readers of the Bible in order to highlight the distinctive way that the rabbis understand and frame their interpretive enterprise.[7]

The current essay considers a single midrashic text wrestling with this interpretive dilemma. The Mekilta of R. Ishmael (henceforth, Mekilta) proposes a general principle that appears to resolve the question of when to interpret inclusively and when exclusively, without having to decide on a case-by-case basis. While the text in question offers an inclusive reading, I argue that text's halakic conclusions are by no means its most interesting feature for the study of rabbinic gender. Following an approach that runs through Fraade's scholarship, I draw attention to the rhetorical framing of interpretation as the rabbinic interpreter interposes himself[8] and mediates between the scriptural text, on one hand, and the social world where gender is lived out, on the other. It is here, I argue, that this text most clearly illuminates rabbinic views about how gender operates in the world. Also as in Fraade's scholarship, this essay highlights distinctive features of the rabbinic phenomenon by juxtaposing it to comparable materials from Qumran. The essay focuses on this particular excerpt from the Mekilta because of its potential for generative comparison with Qumran texts.

The Mekilta in Comparative Context

The Mekilta offers the following principle for determining the legal subjects in a set of related verses employing the term "man" *('iš):*

היה ר' ישמע' או'.
הואיל וכל הנזיקין שבתורה סתם. ופרט באחד מהן שעשה בו נשים כאנשים. פורט אני כל
הנזיקין שבתורה לעשות נשים כאנשים.

R. Ishmael used to say:

> Since all of the civil damages in the Torah are [stated] in a generic manner [*stam*] [using the term "man" without further modification] and [since] it [Torah?] specified [*paraṭ*] in one of them making women like men, I specify for all of the civil damages in the Torah to make women like men. (Mekilta of R. Ishmael, *Neziqin* 6)[9]

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7 See especially Steven D. Fraade, *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy,* SUNY Series in Judaica (Albany: State University of New York Press, 1991), esp. 1–23, 149–58, and Steven D. Fraade, *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages* (Leiden: Brill, 2011).

8 The rabbinic interpreter is most certainly a "he."

9 Oxford–Bodleian Library 151:2, translation my own; transcribed from Maagarim 3.0 (The Academy of the Hebrew Language). Citation corresponds to Horovitz-Rabin, 269.

In this excerpt from a passage to be discussed extensively below, R. Ishmael offers a general principle by which to resolve the confusion arising from grammatically masculine terms. R. Ishmael proposes that a particular domain of law (civil damages) be treated as a whole rather than adjudicated on a case-by-case basis. In all cases of civil damages, women should be included alongside men, who are Scripture's explicit subjects. The principle is articulated when glossing Exod 21:18 ("when men quarrel," with one injuring the other and becoming liable for damages). The redactor also cites the principle to include women as subjects in three adjacent verses (Exod 21:20, 22, and 26).[10] The principle is not, however, cited when discussing several other adjacent verses, nor is an interpretation of these verses presented that explicitly includes women (Exod 21:33, 37; 22:4).[11] It is noteworthy that the redactor does not refer to the principle when treating these verses, because two of them (Exod 21:33 and 22:4) are cited in the Mekilta immediately following the presentation of R. Ishmael's principle. In the ensuing discussion R. Yonatan rejects the need for a general principle to include women, since inclusion can be learned from other features of verses with male subjects. R. Yonatan uses Exod 21:33 and 22:4 to illustrate his contention that a general principle is not necessary. We will examine his argument in detail later in the essay, but for now R. Yonatan's discussion of female subjects with respect to these verses establishes the significance of the redactor's failure to cite R. Ishmael's principle when discussing those verses, as he does when discussing Exod 21:20, 22, and 26.[12] A later scribe was sufficiently troubled by the principle's absence in one of these cases that he viewed it as an oversight and added it in his text.[13]

It appears, then, that the principle was inconsistently invoked even when it was relevant; this fact suggests that the principle serves additional purposes alongside the straightforward task of resolving linguistic ambiguity in the Bible. I argue that the principle provides an occasion for the midrashic interpreter to position himself and the social world he inhabits relative to Scripture. Articulating the principle becomes a way for the interpreter to stabilize social dimensions of the world by grounding them in Scripture. The interpreter's efforts to connect the social world to Scripture are necessary because, ironically, the very activity (midrashic interpretation) that connects the two also constructs a gap between them.

Before proceeding further in my analysis of the Mekilta, I want to point our attention to an intriguing parallel in the Dead Sea Scrolls that, to my knowledge, has not been brought to bear in the study of midrashic engagement with grammati-

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10 See Mekilta *Neziqin* 7, 8, and 9 respectively.
11 Mekilta *Neziqin* 11, 12, and 14.
12 Mekilta *Neziqin* 7, 8, and 9.
13 See Yalqut Shimoni on Exod 21:33 (ed. pr., Saloniki 1526/7, ed. Venedig 1566), cited in the critical apparatus of Horovitz-Rabin, 287 (*Neziqin* 11).

cally masculine terms like "man." The Damascus Document (henceforth, CD) offers the following defense for the prohibition of marriage between uncle and niece:

> But Moses said,
> "To your mother's sister you may not draw near, for she is your mother's near rela-
> tion" [Lev 18:13]. [This verse prohibits a MAN from lying with his AUNT.]
> Now [the law concerning] forbidden relations is written for males, but [in this domain
> of law] women are like them [men], so if a brother's daughter [WOMAN] uncovers
> the nakedness of a brother of her father [UNCLE], she is a [forbidden] close relation-
> ship. (Damascus Document V, 9–11)

As in the Mekilta, here too a principle is articulated that ostensibly relieves the need to adjudicate female inclusion in the Bible's stipulations on a case-by-case basis. As with the Mekilta's principle, CD's principle operates in a particular domain of law, in this case the laws of forbidden relations. Also as with R. Ishmael's principle, that of CD is inconsistently invoked within the Qumran corpus of halakic materials.[14] Aharon Shemesh argues that the principle is operative, though not cited, in Jubilees 41:25–26, where the punishment of burning specified in Lev 20:14 (which prohibits a MAN from having relations with his MOTHER-in-law) is assigned for the sin of a WOMAN having relations with her FATHER-in-law.[15] Shemesh also notes the silence of the Qumran corpus regarding two relations that the androcentric bib-lical text does not address. Lev 18 prohibits the inverse of neither 18:10 (a MAN with his grandDAUGHTER) nor 18:17 (a MAN with his step-grandMOTHER, that is, the wife of his paternal or maternal grandfather).[16] CD's principle leads us to expect that the gendered inverse of the stated relations (that is, a WOMAN with her grandSON and a WOMAN with her step-grandFATHER) are likewise prohibited. The Qumran corpus, however, does not confirm that the principle is applied to these relations. Shemesh argues that the Qumran sectarians followed the dominant position attested in other ancient Jewish writings, prohibiting these relations (woman with grandson and woman with step-grandfather). He explains that the sectarians were not prompted to articulate their position because it was

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14 Aharon Shemesh argues that legal materials from Qumran should be viewed as a coher-ent collection of law, on account of the fact that legal materials (whether exegetical or code-like in format, whether from early or later documents) consistently reflect the perspective of sectari-ans of priestly Sadducean origins. Though the Qumran corpus encompasses both exegetical and code-like legal materials, he regards the differences between the two genres as inconsequential in view of the fact that "the sectarians themselves didn't distinguish between biblical and non-biblical ordinances" (*Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* [Berkeley: University of California Press, 2009], 30). On the idea that halakic mate-rials from Qumran form a unified corpus, see ibid., esp. 15–19.

15 Shemesh, *Halakhah in the Making*, 84–5.

16 Shemesh, *Halakhah in the Making*, 85–6.

Elizabeth Shanks Alexander

not controversial.[17] Like R. Ishmael's principle, then, that of CD is inconsistently invoked. I argue that it too serves rhetorical purposes that go beyond clarifying the gender of scriptural law's subjects.

The parallels between the Qumran corpus and rabbinic literature are striking and invite comparison. Fraade's work provides a powerful model for thinking about which scholarly questions are well served by bringing the Qumran corpus into dialogue with rabbinic literature, and which less so. He writes,

> Juxtaposing these textual corpora to one another may be less useful for tracing putative lines of direct genetic filiation, than for highlighting the distinctive reliefs of their respective morphologies of teaching. We thereby gain a richer understanding of how each corpus of textual practices performatively responded to and worked within its distinct cultural setting.[18]

In the analysis that follows I explore how each text structures the relationship between Scripture, on the one hand, and behavioral norms and the social world, on the other, and how each positions the interpreter within that relationship. Though CD and the Mekilta wrestle with similar exegetical dilemmas and propose similar solutions, the rhetorical framing of interpretation offered by each stands in sharp contrast to that of the other. Fraade's work redirects our attention from "exegetical outcomes," where both CD and the Mekilta include women by devising a broadly applicable principle, to the rhetorical framing of exegesis, where important differences give us insight into different ways of thinking about Scripture, gender, and interpretation. Studying the rabbinic phenomenon against the backdrop of Qumran illuminates rabbinic practices of interpretation by setting them against a project executed differently.[19] Though the broader interest of this essay is to illuminate an exegetical phenomenon in its rabbinic manifestation, its comparative dimension requires attention to the Qumran phenomenon on its own terms and it is there that I begin.

Damascus Document

CD's principle appears in the text's polemical introduction, called by scholars the Admonition, in which the sect's history is narrated and the basis for its separation articulated. In the section of the Admonition that scholars call the "Nets of Belial" the text distinguishes between the appropriate practices of the sect and sinful ones

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17 Shemesh, *Halakhah in the Making,* 85.

18 Fraade, *Legal Fictions,* 123.

19 A similar approach to comparison is found in Beth Berkowitz, *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures* (New York: Oxford University Press, 2006), esp. 181–213.

of the sect's opponents. The text here is difficult; to facilitate discussion I divide the text into three paragraphs (A, B, and C), drawing on the source-critical analysis of Philip Davies.[20]

(A) But during all those years, Belial is let loose on Israel, as God spoke through the hand of Isaiah, son of Amoz, saying, "Fear [*paḥad*] and the pit [*paḥat*] and the snare [*paḥ*] are upon you, O inhabitant of the land," [Isa 24:17]—**Its meaning *[pišro]* is the three nets of Belial,** of which Levi, son of Jacob said, that he [Belial] entrapped Israel with them, making them seem as if they were three types of righteousness. The first is **unchastity,** the second is **wealth** and the third is **defilement of the sanctuary.** One who escapes from this is caught by that, and he that is saved from that is caught by this.

(B) "The builders of the barrier," [Ezek 13:10]—[are those] who walked after the Commander, the Commander is the spitter, of whom it is said, "Spitting, they spit," [Mic 2:6]—[indicating] **they are caught by two [nets].**

(C) **By unchastity:**

(1) *Taking two wives during their lifetimes,*

While the foundation of creation is "male and female he created them" [Gen 1:27].

And those who entered [Noah's] ark "went two by two into the ark" [Gen 7:9].

<And of the prince it is written, "Let him not multiply wives for himself" [Deut 17:17].

[In response to an objection that might be raised regarding King David's many wives:] And David did not read the sealed book of the Torah [with its prohibition against multiple wives] which was in the Ark, for it was not opened in Israel since the day of the death of Eleazar and Joshua and the elders. For [their successors] worshipped the Ashoreth, and that which had been revealed was hidden until Zadok arose, so David's deeds [including his taking multiple wives] were accepted, with the exception of Uriah's blood, and God forgave him for them.>[21]

And they also polluted the sanctuary by not separating according to the Torah:

(2) *They lie with a woman who sees a blood flow.*

(3) *And they marry each one his brother's daughter or sister's daughter.*

But Moses said, "To your mother's sister you may not draw near, for she is your mother's close relation" [Lev 18:13]. Now the law concerning forbidden relations is written for males, but [in this domain of law] women are like them [men], so if a brother's

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20 Philip R. Davies, *The Damascus Covenant: An Interpretation of the "Damascus Document"* (Sheffield, UK: Dept. of Biblical Studies, University of Sheffield, 1983, c1982), 110–16.

21 Davies, following a number of scholars, suggests that the bracketed text has been interpolated. The analysis offered below is not affected one way or another by its status, whether interpolated or original. See Davies, *Damascus Covenant,* 116.

daughter [NIECE] uncovers the nakedness of a brother of her father [UNCLE], she is a [forbidden] close relation. (Damascus Document [MS A] IV, 12 – V, 11)[22]

According to Davies, the text before us was created by joining two distinct sources (A and C), with B serving as a redactorial gloss. In A, a verse from Isaiah is interpreted to indicate that those outside the sect are caught in Belial's three nets, leading them to sin in three areas: promiscuity, wealth, and defilement of the sanctuary (references to Belial's nets in the text are indicated by **boldface** type). In Davies view, C was initially a separate source accusing those outside the sect of three types of sexual sin: (1) polygamy,[23] (2) relations with a menstruating woman, and (3) uncle-niece marriage (these accusations are indicated in the text with ***boldface italics***).[24] A and C were joined on account of the common count of three that appears in each source. In order to reinforce the connection between the two sources the redactor glossed accusation #2 (sexual relations with a menstruating woman) in C so that it now referred to defiling the sanctuary, the third net of Belial. Even so, there remains incongruity between the two sources, as there is no accusation that corresponds to the second net of Belial (wealth)[25] and insofar as recasting accusation #2 as defilement of the sanctuary is not entirely convincing, as several scholars note.[26]

   Two of the three accusations in C are supported by a biblical prooftext. The first accusation against polygamy is bolstered by three prooftexts, though scholars speculate that the third prooftext was interpolated after the text had been stable for some time (proposed interpolation is indicated with <brackets>).[27] Davies argues that the prooftext verses support the polemical argument of the Admonition. He writes,

The criticism of non-community halachah is justified on the basis of Mosaic law, public, not esoteric; … The argument is: you can see that their (your?) interpretation

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22 James H. Charlesworth, ed., *Damascus Document, War Scroll and Related Documents,* vol. 2 of *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1995), 18–20; translation my own in consultation with Davies, *Damascus Covenant,* 243–45.

23 Scholars debate the intentions of the sectarian prohibition against taking two wives in one's lifetime. I follow Schremer and others who read it as a reference to polygamy. See Adiel Schremer, "Qumran Polemic on Marital Law: CD 4:20–5:11 and Its Social Background," in *The Damascus Document: A Centennial of Discovery,* ed. Joseph M. Baumgarten, Esther G. Chazon, and Avi Pinnick (Leiden: Brill, 2000), 147–60, esp. 148–49 (nn. 3–5), 157–60 and Davies, *Damascus Covenant,* 116.

24 Davies, *Damascus Covenant,* 115–16.

25 Davies, *Damascus Covenant,* 113.

26 See Davies, *Damascus Covenant,* 110, and Schremer, "Qumran Polemic on Marital Law," 150.

27 See Davies, *Damascus Covenant,* 116, and Schremer, "Qumran Polemic on Marital Law," 152.

is contrary to (revealed) scripture, whereas ours is not …. This passage is a demon-
stration that those outside the community are misled …; [their halachah] is thought
to be right by those who follow it only because they themselves are misled by Belial.[28]

Those outside the sect have been deceived into regarding their practices as appro-
priate. Their misdeeds do not follow from lack of access to esoteric teachings, to
which the sect alone might have access.[29] Rather, the outsiders' interpretations are
manifestly wrong, and Belial has deceived them into thinking they act appropri-
ately. Davies suggests that no prooftext is provided for the second accusation (rela-
tions with a menstruating woman) because this behavior is *not* a point of dispute
between those inside and outside the sect.[30] The first point to make, then, about
CD's principle is that it is articulated in the context of a polemic about behavior.
Scripture in this context is not a point of interest in and of itself, nor is interpreta-
tion pursued in an open-ended fashion. Rather, the principle is deployed to clar-
ify what is and what is not correct practice, to sharpen the boundaries between
insiders and outsiders, and to emphasize the errors of the outsiders.

 Correct practice is the primary concern of the polemicist, and Scripture is cited
to legitimate sectarian practice rather than as a topic of interest in its own right.
Shemesh notes that the sectarians do not distinguish between legal directives that
are independent of Scripture and those that are derived from Scripture.[31] Practice
and Scripture are two sides of the same coin. Fraade suggests that sectarian prac-
tice itself has an "*ongoing* revelatory quality."[32] The fact that sectarian practice is
regarded as authoritative in and of itself may explain why scriptural language is
conceptually subordinated to the law/practice that it conveys. When discussing
Lev 18:13, which prohibits relations between nephews and their aunts, CD distin-
guishes between the law (*mišpaṭ*) concerning forbidden relations and the (appar-
ently incidental) language in which it is written (*katub*). Though the law is written
in a manner that names men as the primary subjects, women are like men insofar
as they too are subjects of the law. Law (*mišpaṭ*) regulating practice is something
that one encounters in its written form in Scripture, but it appears to have a real-
ity independent of its (incidental) scriptural articulation. In its essence, this law
includes both men and women as subjects. Furthermore, insofar as the polemic
represents sectarian law as self-evident from Scripture, it minimizes its own inter-
pretive intervention via the principle.

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28 Davies, *Damascus Covenant,* 109.
29 In contrast to the "hidden things" *(nistarot)* mentioned earlier in the Admonition (CD III,
13–14).
30 Davies, *Damascus Covenant,* 115.
31 Shemesh, *Halakhah in the Making,* 30.
32 Fraade, *Legal Fictions,* 57.

The Qumran corpus refers on two additional occasions to the prohibition of uncle-niece marriage in the context of reworked biblical passages.[33] 4QHalakha A, which includes a paraphrastic rendering of Lev 18, records two prohibitions when rendering the single prohibition of Lev 18:13. The first prohibition ("No man shall uncover the nakedness of the sister of [his] mo[ther or of his father]") is addressed to a man and forbids intimate relations with his aunt (as per Lev 18:13). The second prohibition ("[A woman shall not be given to the brother of] her father or to the brother of her mother") is directed to a woman and forbids intimate relations with her uncle (as per CD's principle).[34] The second prohibition is a mirror image of the first, except that the gender of the parties has been reversed. 4QHalakah upholds the logic of CD's principle, insofar as it states the nonbiblical uncle-niece prohibition alongside the biblical nephew-aunt prohibition. The fact that the two prohibited relations are presented in comparable terms in 4QHalakhah A highlights the rhetorical import of CD's distinction between biblical and nonbiblical prohibitions. Unlike 4QHalakhah A, CD distinguishes between them *in order to* highlight the errors of the sect's opponents. Hindy Najman explains that reworkings of biblical texts like 4QHalakha A

> wove their own versions of law, temple ritual, calendrical system and covenant, along with the very words of already authoritative traditions, into a single seamless whole. Thus they claimed, for their interpretation of authoritative texts, the already established authority of the texts themselves.[35]

Reworkings of biblical law that elide the differences between scripturally attested and interpretively derived mandates appear to be the norm at Qumran.

A second source, the Temple Scroll, obscures the interpretive process that yields the uncle-niece prohibition even further. The derived prohibition is reworked so that it no longer is addressed to the woman, as it is when formulated as a female inversion of Lev 18:13 in 4QHalakha A. Temple Scroll 66:16–17 addresses the man rather than the woman as in 4QHalakha A, forbidding *him* to have relations with

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33 Hindy Najman proposes that we avoid the term "Rewritten Bible" coined by Geza Vermes in favor of the term "Reworked Bible," to avoid the anachronistic assumptions that accompany the concept of writing in our day. She considers the Temple Scroll (discussed below) as a premiere work of Reworked Bible. Hindy Najman, *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (Leiden: Brill, 2002), 7–8, 43–6.

34 4QHalakha A (4Q251) 17: "No man shall uncover the nakedness of the sister of [his] mo[ther or of this father. This is wickedness. A woman shall not be given to the brother of] her father or to the brother of her mother." Geza Vermes, ed. and trans., *The Complete Dead Sea Scrolls in English,* rev. ed., Penguin Classics (London: Penguin, 2004), 233.

35 Najman, *Seconding Sinai,* 45.

his niece.[36] "A *man* shall not take the daughter of his brother or the daughter of his sister for this is abominable" (emphasis added). The prohibition against uncle-niece relations now conforms stylistically to other biblically prohibited relations in Lev 18, which are likewise addressed to men. Aharon Shemesh writes that the "scroll's author brings to its conclusion the process that started with a hermeneutical maneuver. It is not only that the law written from the male point of view should be read as directed to women as well. It is now actually written down this way."[37] Although CD presents the prohibition against uncle-niece marriage as deriving from Scripture with the aid of a hermeneutical principle, the sectarians saw fit to distinguish the original biblical prohibition from the hermeneutically derived in the context of polemical argumentation only.

A final observation concerns the role of gender in CD's polemic. On the face of it, CD's principle equates women with men, whom Scripture represents as active agents and law's primary subjects. Maxine Grossman, however, cautions against such a reading. She writes that the principle's

> inversion of [male] action and [female] passivity is not complete here. [It is true that] the woman "uncovers nakedness," but it is she, and not the man, who is the forbidden close relation [at the end of passage]. As such, she is the one who is presented as sexually unavailable and unacceptable for marriage.[38]

The Temple Scroll's reworked version of the prohibition with its direct address to the man underscores Grossman's point that the primary subject of the law remains the man. Grossman draws out the implications of the CD's androcentrism for its polemic:

> Rather than focusing on women as actors, this text utilizes a slight alteration of its normal gender construction as an exegetical tactic that ultimately confirms the passive and secondary role of women with respect to the normative male covenanter … A covenanter is a righteous man who is in control of his sexuality—and the sexuality of his female partner and his female offspring—while a sinful outsider is someone who is willing to engage in inappropriate sexual or marital behavior, even though scripture clearly shows that such actions are forbidden.[39]

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36 Temple Scroll 66:16–17: "A man shall not take his father's sister of his mother's sister, for this is immoral. A man shall not take the daughter of his brother or the daughter of his sister for this is abominable." Vermes, *Complete Dead Sea Scrolls,* 220.

37 Shemesh, *Halakhah in the Making,* 89.

38 Maxine L. Grossman, *Reading for History in the Damascus Document: A Methodological Method* (Leiden: Brill, 2002), 51.

39 Grossman, *Reading for History in the Damascus Document,* 52.