

## TRACES OF SECTARIAN HALAKHAH IN THE RABBINIC WORLD

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A comparison of rabbinic and Qumranic law reveals contradictory approaches and sharp divergences between the two. At the same time, this comparison serves as a tool for reconstructing a common ancient halakhic foundation and common halakhic terms. This article deals with a third phenomenon, which seems, as yet, not to have been adequately explored. I am referring to the existence of intersectarian polemics *within* the scholarly world of the sages themselves. The halakhic views of certain Tannaim often bear a surprising resemblance to sectarian or semi-sectarian halakhah, whether in the details or in general aspects of halakhic thinking. Elsewhere I have suggested that a certain similarity existed between the approach of Beit Shammai and that of sectarian halakhah.<sup>1</sup> Both appear to share an early, stringent halakhic outlook, based more on tradition and authority, and less on contemporary human exegetical creativity; both seem to adhere to the more literal meaning of Scripture, tending towards stringency and uniformity, in abstract principles as well as in everyday life. I have suggested that this resemblance may have been the factor that decided the fate of Beit Shammai's views, relegating them to the sidelines of Pharisaic discourse. Once the sectarian approach had been defeated and discarded, it was inevitable that its distant echo within the rabbinic world—namely, the opinions of Tannaim who embraced somewhat similar halakhic principles—would also be rejected.

Sectarian halakhic tendencies seem to have established a greater foothold in the Pharisaic world than is apparent, and part of the battle that the early sages waged against them some decades later took place “within the family,” against rabbinic fringe groups and esoteric sages. Mainstream rabbis continuously rejected these marginal views.

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<sup>1</sup> V. Noam, “Beit Shammai and the Sectarian Halakhah,” *Jewish Studies (World Union of Jewish Studies)* 41 (2002): 45–67 (Hebrew).

Nineteenth century scholars were vaguely aware of this phenomenon,<sup>2</sup> and several writers in the second half of the twentieth century hinted at examples of it,<sup>3</sup> but a systematic study of the phenomenon has never been undertaken, and the little that has been written preceded the publication of most of the sectarian halakhic literature. It is only since Qumranic halakhah has come into the spotlight that we are afforded new insight into the anti-sectarian nature of some intra-rabbinic disputes, and can comprehend their particularly bitter nature.

I shall now present several examples to illustrate the affinity between Qumranic views and certain halakhic positions which probably prevailed in Pharisaic circles and still survive in early rabbinic discourse. These examples are taken from the teachings of R. Eliezer b. Hyrcanus, a

<sup>2</sup> Abraham Geiger had long ago proposed that “Shammai and his disciples tended more to follow ancient halakhah...and this ancient halakhah was also the approach of the Sadducees...and thus Shammai, even though he was regarded as a leading Pharisaic sage and far from the Sadducees..., nevertheless had a certain affinity with their approach” (A. Geiger, *Kevutzat Ma’amarim* (ed. S. A. Posnansky; Warsaw: Tushiyah, 1910–1912; limited facsimile edition: Haifa: La-Student, The Publishing House of the Students’ Union, The University of Haifa, 1967), 346. In his book and in various papers, Geiger points out certain Samaritan and Karaite halakhot which, in his words, preserve “ancient halakhah that was rejected repeatedly over the ages” and which were adopted by the Sadducees. Sometimes he finds a similarity between these halakhot and the halakhah of Beit Shammai. See his discussions on the laws concerning a fetus (A. Geiger, *Hamikra vetargumav bezikatan lehitpathutah hapenimit shel hayahadut*, [Jerusalem: Bialik Institute, 1949], 345–46 [this discussion was added at the end of the Hebrew translation of the book by the translator Y. L. Baruch and is not in the German original]; = idem, “Igrot el hamol,” *Otzar Nehmad* 3 [1860]: 126–27); on the prohibitions against using fire and against cooking on the festivals (*Kevutzat Ma’amarim*, 64–65); on the laws pertaining to *eruv* on the Sabbath (ibid., 64–70). In Sonne’s opinion, the resemblance between Beit Shammai and Sadducean halakhah had been noticed originally in the Middle Ages, by the early Karaites. They attributed their halakhah to the Sadducees, and also felt a certain affinity between their own approach and that of Beit Shammai. See I. Sonne, “The Schools of Shammai and Hillel Seen from Within,” in *Louis Ginzberg: Jubilee Volume on the Occasion of his Seventieth Birthday. English Section* (New York: American Academy for Jewish Research, 1945), 275–91, and the bibliography presented there, 275 n. 1.

<sup>3</sup> See J. N. Epstein, *Mevot Lesifrut Ha-Tannaim* (Jerusalem: The Hebrew University Magnes Press; Tel-Aviv: Dvir, 1957), 278–79, 331 (Hebrew); Y. D. Gilat, *R. Eliezer Ben Hyrcanus: A Scholar Outcast* (Ramat-Gan: Bar-Ilan University Press, 1984), 26 n. 11; see also pp. 147, 425; Y. Sussmann, “The History of Halakha and the Dead Sea Scrolls: Preliminary Observations on *Miqsat Ma’ase Ha-Torah* (4QMMT),” *Tarbiz* 59 (1989–1990): 11–76, pp. 72–73 n. 237 (Hebrew; a shorter English version of this article appears in E. Qimron and J. Strugnell, *Qumran Cave 4. V: Miq’at Ma’ase ha-Torah* [DJD 10; Oxford: Clarendon, 1994], 179–200. It does not include the above-mentioned note in full, but cf. p. 190 n. 44 in the English version).

disciple of Beit Shammai.<sup>4</sup> This exceptional scholar was an adherent of ancient traditions<sup>5</sup> and a proponent of the plain meaning of biblical passages.<sup>6</sup> His entire life was spent in a drawn out conflict with the establishment,<sup>7</sup> ending with his excommunication<sup>8</sup> and the total rejection of his teachings. According to Talmudic legend, he complained on his deathbed: "...Much Torah have I taught, yet my disciples have only drawn from me as much as a painting stick from its tube. Moreover, I have studied three hundred laws on the subject of a deep bright spot [i.e., laws concerning leprosy], yet no man has ever asked me about them..."<sup>9</sup> The similarity between some of Eliezer b. Hyrcanus' halakhot and parallel sectarian passages may explain the hostility that he aroused and his problematic status in the tannaitic world. The halakhot we will discuss are taken from different halakhic fields—the festivals, matrimonial law, judicial law, sacrifices, and ritual purity. After studying these examples against the background of sectarian halakhah, we will explore the affinities between some of the underlying ideologies of R. Eliezer and those of the sect. These resemblances, in halakhic details and principles alike, would indicate that the boundary separating the Pharisees from their opponents was sometimes fainter than assumed. Further delving in this direction may furnish us with a somewhat more complex portrait of Jewish society during Second Temple times and shortly thereafter.

<sup>4</sup> See *t. Arak.* 4:5 and parallel passages. On identifying R. Eliezer as a follower of Beit Shammai, see Gilat, *R. Eliezer*, 462–73. See also Sussmann, "History of Halakha," 34 and n. 102 (p. 190 in the English version). On the similarity between R. Eliezer's approach and that of Beit Shammai with regard to susceptibility to impurity, see *t. Makshirin* 1:4, and see below. In Jacob Neusner's opinion, the connection between R. Eliezer and Beit Shammai was an invention of later generations; see J. Neusner, *Eliezer Ben Hyrcanus: The Tradition and the Man* (2 vols.; SJLA 3–4; Leiden: Brill, 1973), esp. 2:351–52.

<sup>5</sup> Gilat, *R. Eliezer*, 23–67. See Neusner's different evaluation; Neusner, *Eliezer Ben Hyrcanus*, 2:352–56. Nevertheless, Neusner also defines him as "an important representative of the old Pharisaism"; *ibid.*, 302.

<sup>6</sup> Gilat, *R. Eliezer*, 68–82. See Neusner's more hesitant view, *Eliezer Ben Hyrcanus*, 2:387–94.

<sup>7</sup> Gilat, *R. Eliezer*, 479–91. See also Epstein, *Mevo'ot Lesifrut Ha-Tannaim*, 65–70.

<sup>8</sup> *B. Baba Metzia* 59b; *y. Mo'ed Qat.* 3:1, 81d

<sup>9</sup> *B. Sanh.* 68a, and compare with *Abot R. Nat.* 25. See also *m. 'Ed.* 1:6; *t. 'Ed.* 1:4; *t. Hal.* 1:10; and see Gilat, *R. Eliezer*, 486 n. 66.

## A

Both sectarian and tannaitic law exhibit a stringent approach to the ritual impurity of liquids.<sup>10</sup> 4Q284a 1 1–4<sup>11</sup> prohibits the harvesting of תאנים (figs), רמנאים (pomegranates), and possibly also olives,<sup>12</sup> by [one] who has not been brought into the covenant, who is not considered ritually clean and איננו נוגע במשקי הרבים (“[who] may not touch the communal liquids,”) as these fruits will become defiled if their juice comes out when he presses them: ימעכו ויצא משקיהם.<sup>13</sup>

Joseph Baumgarten has already noted the connection between these fragments and the bitter and dramatic dispute attributed by the Babylonian Talmud to Hillel and Shammai with regard to the laws concerning “harvesting grapes for the winepress.”<sup>14</sup> Baumgarten states that, in contrast to tannaitic halakhah, the halakhah appearing in the Qumran fragments does not make the fruits’ susceptibility to impurity conditional on the desire of the owner. However, there is a further interesting parallel between this fragment and an internal Pharisaic dispute that has not as yet been explored. According to sectarian law, even fig and pomegranate juices make the fruits susceptible to uncleanness. Tannaitic law, however, stresses that fruit juices are not included in those liquids that cause susceptibility.

Scripture states: מכל האכל אשר יאכל אשר יבוא עליו מים יטמא וכל משקה אשר ישתה בכל כלי יטמא (“All food therein which may be eaten, upon which water comes, shall be unclean; and all drink in every such vessel that may be drunk shall be unclean”; Lev 11:34). The tannaitic midrash elaborates:

<sup>10</sup> See for example *m. Parah*, 8:5–7; *m. Kelim* 8:4; *t. T. Yom* 1:6; *Rule of the Community* 6:20–21 (text as in E. Qimron and J. H. Charlesworth, “Rule of the Community,” in: *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 1: Rule of the Community and Related Documents* [ed. J. H. Charlesworth; Tübingen: Mohr Siebeck; Louisville: Westminster John Knox, 1994], 28–29). See also Gilat, *R. Eliezer*, 397; Sussmann, “History of Halakha,” 29 nn. 76–77; 66 n. 216; J. M. Baumgarten, “Liquids and Susceptibility to Defilement in New 4Q Texts,” *JQR* 85 (1994–1995): 91.

<sup>11</sup> J. M. Baumgarten, “284a. 4QHarvesting,” in *Qumran Cave 4.XXV: Halakhic Texts* (ed. J. M. Baumgarten et al.; DJD 35; Oxford: Clarendon, 1999), 131–33.

<sup>12</sup> Completion of the editor based on the following verbs: ילאצו (press), לגלעם (open them), and on the reconstruction of ד[בב] ([in the olive pr]ess).

<sup>13</sup> The last quote is from the semi-parallel 4Q274 3 i–ii (Baumgarten et al., DJD 35.106–7), which deals with an herb that is susceptible to impurity because of dew or rain. Similar wording is found in 4Q284a 1 5.

<sup>14</sup> Baumgarten, “Liquids,” 91–100. See Sussmann, “History of Halakha,” 22 n. 53. For the halakhic dispute see *b. Shabbat* 15a, 17a and parallel versions.

אי 'כל משקה', יכול מי תותים או מי פירות או מי רימונים ושאר כל מיני פירות? תלמוד לומר: מים, מה מים מיוחדים שאין להם שם לווי אף אני מרבה הטל והיין והשמץ והדם והדבש והחלב שאין להם שם לווי ומוציא מי תותים ומי רימונים ושאר כל מיני פירות שיש להם שם לווי.

If [Scripture speaks of] “all drink,” might one think [that susceptibility to uncleanness is imparted also by] mulberry juice or fruit juice or juice of a pomegranate and all other sorts of fruit? Scripture says, “Water” [mentioned previously in the same verse]. Just as water is distinctive in that it has no additional name [i.e., it is defined by the term “water” alone, with no accompanying adjective, and is thus considered a liquid with an independent status], so I include dew, wine, oil, blood, honey and milk, which have no additional names, and I exclude *mulberry juice and juice of pomegranates* and of all other sorts of fruit, which do have additional names [i.e., liquids that are named after the fruits they were squeezed from, thus deemed as *not* having an independent status]. (*Sifra, Shemini* 8:1)<sup>15</sup>

This is an almost outright polemic against sectarian halakhah, which understands *the very same words* of Scripture, **וכל משקה אשר ישתה** (“and all drink that may be drunk”) to *include* any kind of liquid. Thus, the *Temple Scroll* states:

וכול אוכל אשר יוצק עליו מ[י]ם יטמא כול המושקה יטמא וכלי חרש יטמאו... והפתוחים יטמאו... כול המושקה אשר בהמה

And any foodstuffs, upon which wa[t]er is poured, shall be unclean; any liquid shall be unclean. And earthen vessels shall be unclean... and the open (vessels) shall be unclean... all the liquid which is in them.<sup>16</sup>

Fragment 4Q274 3 ii 11–12, as reconstructed by the editor, also appears to state: **כול[ה]משקה [יטמא]**... (“[...any] liquid be[comes unclean]”).

<sup>15</sup> Translation according to J. Neusner, *Sifra: An Analytical Translation* (3 vols.; BJS 138–140; Atlanta: Scholars Press, 1988), 2:203, with alterations. See also the reasoning in *t. Shabbat* 8:23–28.

<sup>16</sup> *Temple Scroll* 49:7–10, E. Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* (Beer Sheva: Ben Gurion University of the Negev Press; Jerusalem: Israel Exploration Society, 1996), 71; translation cited from Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: Israel Exploration Society, 1977–1983), 2:213–14, with a slight revision: In his translation, Yadin incorrectly made a connection between the impure liquids in this chapter and the passage regarding **מוצקות** (poured liquids), in *Miqsat Ma'aseh Ha-Torah*, which at that time had not yet been published. See Yadin, *ibid.*, 213, commentary to lines 7–8. See also Sussmann, “History of Halakha,” 29 n. 77. Yadin also explained that *mushkeh* should be understood in the passive form, referring to a food that is susceptible to defilement by coming into contact with a liquid. But see Ben Hayyim (Z. Ben Hayyim, “Old but New from the Secrets of the Judean Desert,” *Leshonenu* 42 [1978]: 279–80 [Hebrew]), followed by Baumgarten (“Liquids,” 92 n. 5), who believes that this term refers to the noun **משקה** (a liquid), but that it was pronounced as the word **מושקה**.

As we have seen, in contrast to this sectarian approach, the Pharisaic halakhah stresses that only water and six other liquids that have an “independent” status (“no additional names,” as the *Sifra* puts it), such as oil, wine, honey and so on, make food susceptible to uncleanness. Indeed, in the previously-mentioned dispute described in the Babylonian Talmud,<sup>17</sup> Hillel and Shammai differed only with regard to the liquids exuded by olives and grapes, namely oil and wine, but not with regard to liquids from other fruits, in accordance with the Pharisaic halakhic principle:

Said Hillel to Shammai: Why must one harvest grapes in purity, yet not gather [olives] in purity? If you provoke me, he replied, I will decree uncleanness in the case of olive gathering, too. (*b. Shabbat* 17b)<sup>18</sup>

Nevertheless, in relation to this question, there still remains an echo of the sectarian approach *within* the tannaitic world. It is no coincidence that the divergent view is that of none other than R. Eliezer, who disagrees with the halakhah that limits susceptibility to defilement to seven liquids,<sup>19</sup> explaining the verse “and all drink that may be drunk” according to its literal meaning:<sup>20</sup>

דבש תמרים ויין תפוחים וחומץ סיתווניות ושאר כל מי פירות . . . ר' אליעזר  
 מטמא משם משקה. אמ' ר' יהושע: לא מנו חכמ' שבעה משקים כמוני<sup>21</sup>  
 פטמים! אלא אמרו: שבעה משקין טמאין ושאר כל המשקין טהורין.

Date honey, cider, winter-grape vinegar and all other fruit juices...  
 R. Eliezer<sup>22</sup> declares them subject to uncleanness *under the law regarding liquids*. R. Yehoshua stated: The sages did not take count of seven liquids

<sup>17</sup> See above, p. xxx.

<sup>18</sup> ino Press, 1961), *ad loc.*, with alterations.

<sup>19</sup> In Gilat's opinion, *R. Eliezer*, 396–98, 438–39, the halakhah of R. Eliezer is the earlier halakhah, and the use of fruit juices, which became prevalent “with the development of society to a higher level of luxury” (p. 397), is what led to limiting the number of liquids to seven.

<sup>20</sup> Regarding R. Eliezer's way of explaining the word *kol* ‘all’, see *b. Pesahim* 43b; and see Gilat, *R. Eliezer*, 86. R. Eliezer's opinion was not taken literally in *t. Terumot* 9.8, but this seems to be an apologetic for this sage's extreme, simplistic approach, particularly because of the sensitivity surrounding this halakhah. Cf. n. 50 below, on the Babylonian Talmud's reaction to R. Eliezer's literal interpretation of the verse, “an eye for an eye.”

<sup>21</sup> This is the way the text should read. In Ms. Kaufmann, the *vav* became a *yod* and the *mem* has the vowel *hirik*, and the first letter may have been corrected to a *bet*—במיני.

<sup>22</sup> In Ms. Kaufmann the name appears as “R. Elazar,” but the vocalization is that of “Eliezer.” However, in the beginning of this same mishnah (דבש תמרים ויין תפוחים) וחומץ סתווניות ושאר כל מי פירות של תרומה רבי אליעזר מחייב קרן וחומש ורבי יהושע (פוטור) the reading is “Eliezer,” and based on the dispute with R. Yehoshua and *t. Terumot* 8.9, there is no doubt that this is the correct reading.

like those that count up spices! But they said: Seven liquids are capable of acquiring uncleanness; *all other liquids* are clean. (*m. Terumat* 11:2)

This mishnah indicates some degree of resentment that R. Eliezer aroused in his opponent, R. Yehoshua, an eminent representative of the Beit Hillel mainstream (“The sages did not take count of seven liquids like those that count up spices!”). Both R. Eliezer and R. Yehoshua allude to the biblical phrase **כל משקה** (“all drink”). R. Eliezer adheres to the plain meaning of the words (**משם משקה**, “under the law regarding liquids”), just as the sect did, ruling that anything that can be called a liquid can cause susceptibility. In response, R. Yehoshua also uses the scriptural words “all drink/liquid” saying: “**ושאר כל המשקין טהורים**”—“all other liquids are clean,” to reject that very same interpretation.

## B

Fragment 4Q270 4,<sup>23</sup> which deals with the *sotah*, the woman suspected of infidelity (Num 5:11–31), begins with the following lines:

יבא איש אשה להאלותה [            ]  
הרואה אם יראה אשת [            ]  
...רעהו.]

[    ] a man brings a woman to have her tried by the curse  
[    ] who sees, if he sees [his neighbor's] wife

The case of the *sotah* in the Bible presents a supernatural, extra-judicial procedure motivated by a husband's “spirit of jealousy” (Num 5:14). The woman's guilt is determined in the Tabernacle and not in the courts, by magical rather than judicial means. However, tannaitic law imposed judicial elements upon the procedure, and made mandatory the presentation of objective proof and the involvement of a court, judges and witnesses. The procedure was restricted, *inter alia*, to cases in which, although the husband had warned his wife in front of two witnesses that she should not be alone with a certain man, she was subsequently seen going into a place of seclusion with him by two witnesses.

In spite of its fragmentation, the Qumranic text appears to be referring to the **סתירה**—the case of the *sotah* being alone with a strange man. The Qumranic approach requires that the woman be seen going

<sup>23</sup> “4QDamascus Document,” in *Qumran Cave 4.XIII: The Damascus Document* (ed. J. M. Baumgarten; DJD 18; Oxford: Clarendon, 1996), 152.

into seclusion with the strange man prior to the initiation of the biblical ritual of inquiry; the biblical “spirit of jealousy” that overpowered the husband was not deemed sufficient. Thus, as in other cases, some halakhic development of scriptural law did take place in sectarian law. On the other hand, there is not a full judicial development in the extant text, as compared with tannaitic halakhah. The customary requirement of two witnesses is lacking. All that was necessary was that someone “see” the woman going off alone with another man. This is exactly the opinion of R. Eliezer,<sup>24</sup> as brought in the mishnah:<sup>25</sup>

המקנא לאשתו רבי אליעזר אומר מקנא לה על פי שנים ומשקה על פי עד אחד או על פי עצמו רבי יהושע אומר מקנא לה על פי שנים ומשקה על פי שנים:

When a husband gives expression to his jealousy or suspicion of his wife’s fidelity by warning her of unbecoming conduct, R. Eliezer says: He must so warn her before two witnesses, and he must cause her to drink *even on the evidence of one witness* [as to the secret liaison] or on his own evidence. R. Yehoshua says: he must so warn her before two witnesses and make her drink on the testimony of two witnesses [as to the secret liaison]. (*m. Sotah* 1:1)

Like CD, R. Eliezer does not require two witnesses who saw the woman going into seclusion with a strange man. One witness suffices for him, even if this witness is the husband himself.<sup>26</sup> This approach is closer to the plain meaning of the biblical text, which mentions the “spirit of jealousy” that overtakes the husband without calling for objective proof, such as that furnished by other witnesses. This opinion of R. Eliezer’s is an individual opinion that was rejected outright. The passage from *m. Sotah* 6:3 below presents the opinion of R. Yehoshua as an anonymous, self-evident halakhah:<sup>27</sup>

<sup>24</sup> As alluded to by Baumgarten, DJD 18.153.

<sup>25</sup> There is also a different version of R. Eliezer’s view. R. Yose son of R. Yehudah transmits a tradition, attributed to R. Eliezer, which reverses the terms of *m. Sotah*: The husband may warn her before one witness, but must cause her to drink on the evidence of two witnesses. See *t. Sotah* 1:1, which is cited in both Talmuds as well. Disputes among later sages as to the true opinion of R. Eliezer and deliberate changes to his sayings are widespread. This phenomenon is another outcome of the reservations with which this outcast scholar was regarded. See J. N. Epstein, *Mevo’ot Lesifrut Ha-Tannaim*, 66.

<sup>26</sup> See *t. Sotah* 1:1, and the commentary of R. Ovadia of Bartenura on this mishnah.

<sup>27</sup> See the Jerusalem Talmud ad loc.: מתניתא דרבי יהושע—“the mishnah is according to R. Yehoshua’s opinion” (*y. Sotah* 6:3, 21a). Evidently, this statement is not acceptable according to the other version of R. Eliezer’s opinion (see n. 25 above), as noted in *y. Sotah*, *ibid.*

שהיה בדין ומה אם עדות ראשונה שאין אוסרתה איסור עולם אינה מתקיימת בפחות משנים, עדות אחרונה שאוסרתה איסור עולם אינו דין שלא תתקיים בפחות משנים? תלמוד לומר (במדבר ה') ועד אין בה, כל עדות שיש בה. קל וחומר לעדות הראשונה מעתה: ומה אם עדות אחרונה שאוסרתה איסור עולם הרי היא מתקיימת בעד אחד, עדות הראשונה שאין אוסרתה איסור עולם אינו דין שתתקיים בעד אחד? תלמוד לומר (דברים כ"ד) כי מצא בה עדות דבר. ולהלן הוא אומר (שם י"ט) על פי שנים עדים יקום דבר. מה להלן על פי שנים עדים אף כאן על פי שנים עדים.

Surely, the deduction should have been thus! Seeing that the first evidence [that she had a secret liaison] which does not prohibit her for all time *can not be upheld by less than two witnesses*, should not the inference therefore be that the latter testimony [i.e. that she had actually committed adultery] which renders her forbidden forever can not be sustained by fewer than two witnesses! Scripture teaches (in Numbers 5), “And there be not witness against her”—whatever testimony there be against her. From this to the preceding evidence is a deduction from minor to major: Now, if the latter evidence which makes her forbidden for all time can be sustained by one witness, should not the inference be that the former testimony which does not render her forbidden for ever can also be upheld by one witness? But Scripture teaches (Deut 24:1 “Because he hath found some unseemly *thing* in her,” and in another verse (Deut 19:15) it says, At the mouth of two witnesses... shall a matter (literally: *thing*) be established; just as there it must be at the mouth of two witnesses, so here too, it must be at the mouth of two witnesses.

The mishnah begins with the obvious assumption that the “first evidence,” namely, pertaining to the secret liaison, cannot be upheld with less than two witnesses, as stated by R. Yehoshua. Further on, the mishnah brings the opinion of R. Eliezer, without mentioning his name, as an incorrect argument, (“should not the inference be that the former testimony... can also be upheld by one witness?”) and immediately rejects this opinion. Might there be a connection between the rejection of this ruling and the resemblance it bears to sectarian halakhah?

### C

The *Temple Scroll* 63:10–15 paraphrases the laws of Deut 21:10–14 regarding the beautiful captive woman.<sup>28</sup> Scripture instructs the captive: ... וגלחה את ראשה ועשתה את צפרניה והסירה את שמלת שביה מעליה (“and she shall shave her head and pare her nails; and she shall put the

<sup>28</sup> Qimron, *Temple Scroll*, 88; Yadin, *Temple Scroll*, 2:286.

raiment of her captivity from off her . . .” Deut 21:12–13). Yigael Yadin notes, however, that in the *Temple Scroll*, (as well as in the Septuagint) it is the *husband-to-be* who must perform all of these tasks:

... וגלחתה את ראושה ועשיתה את צפורנ{י}ה והסירותה  
את שלמות שביה מעליה... .

... and *you* shall shave her head and pare h{c}r nails and you shall put off her captive’s garb . . . (63:12–13)

Yadin comments that this difference also proves that, according to the author of the scroll, **ועשתה את צפרניה** meant cutting her nails and not growing them.<sup>29</sup> In this context, Yadin cites the dispute between R. Eliezer and R. Akiva:

רבי אליעזר אומר: תקוץ, רבי עקיבה אומר: תגדל. אמר רבי אליעזר: נאמרה עשיה בראש ונאמרה עשיה בצפרנים, מה עשיה האמורה בראש העברה, אף עשיה האמורה בצפרנים העברה. רבי עקיבה אומר: נאמרה עשיה בראש ונאמרה עשיה בצפרנים, מה עשיה האמורה בראש ניוול, אף עשיה האמורה בצפרנים ניוול

R. Eliezer said: “She shall cut them.” R. Akiva said: “She shall let them grow.” R. Eliezer said: “An act was mentioned in respect of the head, and an act was mentioned in respect of the nails; as the former signifies removal, so does the latter also signify removal. R Akiva said: “An act was mentioned in respect of the head, and an act was mentioned in respect of the nails; just as the act mentioned in respect of the head is for unsightliness, so the act mentioned in respect of the nails is for unsightliness. (*Sifre Deut.* 212; *b. Yevamot* 48a)<sup>30</sup>

Lawrence Schiffman states that this dispute is only one of several controversies over the issue of the captive woman, each representing two different tannaitic approaches to the matter. R. Akiva’s approach, which is clearly a sharp departure from the *plain* meaning of the verses, lends an element of censure to the neutral biblical description of marriage to the captive. It regards the ritual procedure described in Scripture “as an attempt to make the captive woman repugnant to the husband-to-be.”

<sup>29</sup> Y. Yadin, *Temple Scroll*, 1:364.

<sup>30</sup> *Sifre on Deuteronomy* (ed. L. Finkelstein; New York: The Jewish Theological Seminary of America, 1969, 245–46. Translation by Yadin, *Temple Scroll*, 1:364, with additions. For the different interpretations reflected in the translation of the biblical words “ועשתה” in Philo and Josephus, see L. H. Schiffman, “Laws Pertaining to Women in the *Temple Scroll*,” in *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant and U. Rappaport; STDJ 10; Leiden: Brill; Jerusalem: The Hebrew University Magnes Press and Yad Izhak Ben-Zvi, 1992), 219 n. 45.

The other approach, that of R. Eliezer, views the very same procedure as “designed to cleanse and purify.”<sup>31</sup> Here, too, R. Eliezer and sectarian halakhah share the same attitude, both adhering to the more literal sense of Scripture.<sup>32</sup> And here again, R. Eliezer’s interpretation was eventually rejected by rabbinic halakhah.

## D

Fragment 4Q271 3 prohibits marriage to a maiden or a widow who is suspected of improper sexual behavior:<sup>33</sup>

... אל יבא איש  
 [אשה בברית(?) תקו] דש אשר ידעה לעשות מעשה בדבר אשר ידעה  
 [מעשה בבית] אביה או אלמנה אשר נשכבה מאשר התארמלה וכול  
 [אשר עליה ש]ם רע בבתוליה בבית אביה אל יקחה איש כי אם  
 [בראות נשים] נאמנות וידעות ברורות ממאמר המבקר אשר על  
 [הרבים נא]ת] ר יקחנה ...

Let no man bring  
 [a woman into the ho]ly [convenant?] who has had sexual experience,  
 whether she had such  
 [experience in the home] of her father or as a widow who had intercourse  
 after she was widowed. And any  
 [woman upon whom there is a] bad [na]me in her maidenhood in her  
 father’s home, let no man take her, except  
 [upon examination] by trustworthy [women] of repute, selected by  
 command of the Supervisor over  
 [the Many. After]ward he may take her . . .

Aharon Shemesh interprets this fragment as constituting a prohibition, which derives from the laws of marital relationships addressed to the priests in Lev 21:7: “They shall not take a woman that is a harlot.”<sup>34</sup> The sect broadened the scope of this prohibition, as they did in other cases, to include all of Israel. They apparently included in the definition

<sup>31</sup> Schiffman, *Laws Pertaining to Women*, 218–20. See also: D. Stern, “The Captive Woman: Hellenization, Greco-Roman Erotic Narrative, and Rabbinic Literature,” *Poetics Today* 19 (1998): 91–127.

<sup>32</sup> See Gilat, *R. Eliezer*, 69–70, 75.

<sup>33</sup> Text and translation according to Baumgarten, DJD 18.175–76.

<sup>34</sup> A. Shemesh, “4Q271.3: A Key to Sectarian Matrimonial Law,” *JJS* 49 (1998): 244–63, pp. 246–47. The translation of the *Sifra* passage which follows is taken from this article, p. 247.

of a “harlot,” i.e., one who was prohibited from marriage, any woman who had performed **מעשה בדבר** (“an act of that matter”)—in other words, who had engaged in sexual relations outside the matrimonial context. Shemesh suggests that this definition is common to both the sect and to R. Eliezer, as can be learned from the *Sifra* (*Emor* 1:7):

**אשה זונה רבי יהודה אומר זונה זו איילונית וחכמים אומרים אין זונה אלא גיורת ומשחררת ושנבעלה בעילת זנות. רבי אליעזר אומר אף הפנוי הבא על הפנויה שלא לשם אישות.**

*They shall not take a woman that is a harlot.* R. Yehudah says: This refers to a barren woman. The sages say: “Harlot” refers to a woman who has converted, or a freed bondwoman, or a woman who has had sexual relations licitiously. R. Eliezer says: Even a case in which an unencumbered man has had sexual relations with an unencumbered woman not for the sake of bringing about a marital relationship, [the upshot is that the woman falls into the category of harlot].

If Shemesh’s analysis is correct, this is a further example of an ancient, stringent approach to matrimonial law that was shared by both sectarian halakhah and R. Eliezer.

## E

After having dealt with examples taken from the laws of ritual purity and matrimony, we will now turn to rulings concerning the festivals. In the Sabbath code of the *Damascus Document* we read:

**אל יילד איש בהמה ביום השבת ואם תפיל אל בור  
ואל פחת אל יקימה בשבת<sup>35</sup>**

Let no man deliver (the young of) an animal on the Sabbath day. And if it falls into a pit or a ditch, let him not raise it on the Sabbath.<sup>36</sup>

Although these prohibitions receive no explicit mention in Scripture, the same rulings appear in rabbinic literature.<sup>37</sup> R. Eliezer and R. Yehoshua

<sup>35</sup> CD 11:13–14.

<sup>36</sup> Translation from J. M. Baumgarten and D. R. Schwartz, “Damascus Document,” in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations. Vol. 2: Damascus Document, War Scroll, and Related Documents* (ed. J. H. Charlesworth; The Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: Mohr Siebeck; Louisville: Westminster John Knox Press, 1995), 49.

<sup>37</sup> *T. Shabbat* 14:3 and parallels; *m. Betzah* 3:4. For discussion and bibliography see L. H. Schiffman, *The Halakhah at Qumran* (SJLA 16; Leiden: Brill, 1975), 122.

debated a related matter, namely the lifting of an animal from a pit on a festival:

אותו ואת בנו שנפלו לבור, ר' ליעזר או': מעלה את הראשון על מנת לשוחטו ושחטו, והשיני עושה לו פרנסה במקומו בשביל שלא ימות. ר' יהושע או': מעלה את הראשון על מנת לשוחטו, ואינו שוחטו, ומערים, ומעלה את השני. רצה שלא לשחוט אחד מהן—הרשות בידו.

If an animal and its young (which may not both be slaughtered in one day [see Lev 22:28]) have fallen into a pit (on a festival), R. Eliezer says: One lifts out the first on condition of slaughtering it, and one must actually slaughter it. The second he feeds where it is, in order that it may not die. R. Yehoshua says: One lifts out the first in order to slaughter it, but does not slaughter it, and uses legal evasion [in not slaughtering the first] and raises the second [ostensibly in order] to slaughter it; if he does not want to slaughter one of them—he is not bound to. (*t. Betzah* 3:2)<sup>38</sup>

Although lifting an animal from a pit on the Sabbath or on a festival is forbidden, one may in fact lift an animal from a pit on a festival if it is fit for slaughter, on the condition that one intends to eat it on the same day, since preparing food on a festival is permitted. In the case described above, two animals fell into a pit, only one of which may be slaughtered on that day. R. Yehoshua employs legal evasion in order to save both animals. He permits each animal to be lifted out, pretending that only the one currently being lifted is intended for slaughter, and eventually leaving one of them alive.<sup>39</sup> However, R. Eliezer adheres to the straightforward, plain halakhah and permits only one animal to be lifted from the pit, to be slaughtered and eaten afterwards. There is no exact parallel to this halakhah in sectarian writings. Nevertheless, we see that the sect placed particular emphasis on this marginal, extrascriptural prohibition against lifting an animal from a pit on the Sabbath and on festivals. R. Eliezer as well was inclined to be stringent with regard to the details of this prohibition, which was of interest primarily to the sect, as noted already by Gilat.<sup>40</sup> Thus in this case as well, the general characteristics of R. Eliezer's rulings, such as simplicity, non-elaboration of Scripture and stringency, are reminiscent of sectarian halakhah.

<sup>38</sup> Translation according to Gilat, *R. Eliezer*, 323, with alterations.

<sup>39</sup> According to some commentators, R. Yehoshua even permits leaving both animals alive! See S. Lieberman, *Tosefta Kā-fshutah* (Jerusalem: The Jewish Theological Seminary of America, 1992), 5:965–66; Gilat, *R. Eliezer*, 323 n. 125.

<sup>40</sup> Gilat, *R. Eliezer*, 322–24. Another interesting reference to this halakhic issue appears in Matt 12:11–12 / Luke 14:5. I thank Dr. Ruth Clements for this reference.

## F

A famous halakhah found in MMT<sup>41</sup> would appear, according to the editors' interpretation, to prohibit the acceptance of offerings from Gentiles.<sup>42</sup> Long before this scroll came to light, Israel Knohl postulated, on the basis of later aggadic midrashim and Karaite literature, the existence of a halakhic tradition from the Second Temple era that prohibited the receiving of sacrifices from Gentiles.<sup>43</sup> This tradition is contrary to accepted tannaitic halakhah. In commenting on Knohl's hypothesis, Gilat demonstrates that this exceptional opinion had already surfaced in tannaitic literature.<sup>44</sup> In *m. Parah* 2:1 we read: "R. Eliezer says: [The red heifer] may not be purchased from Gentiles; and the sages declare it permissible." Concerning this mishnah, a *baraita* brought in the Babylonian Talmud adds: "Thus R. Eliezer applied this disqualification to all other kinds of sacrifices."<sup>45</sup> According to R. Eliezer, even sacrifices brought by Jews may not be purchased from Gentiles. Here too, we find the stringent, dissenting, individual opinion of R. Eliezer. Later sages of the Talmud tried to guess, "What would his [i.e., R. Eliezer's] colleagues answer him in refutation of his opinion?"<sup>46</sup> The question indicates that all of R. Eliezer's "colleagues" disagreed with him. The common opinion of the "colleagues" is also represented in an anonymous halakhah that indeed permitted the acceptance of sacrifices from Gentiles: "All individual and communal sacrifices may come from the Land of Israel and from outside the Land of Israel, even from Gentiles."<sup>47</sup> In this case as well, R. Eliezer's opinion was relegated to the sidelines of tannaitic literature until it all but disappeared. If the interpretation of the above MMT passage is correct, then this ruling demonstrates yet another similarity between R. Eliezer and sectarian halakhah. This politically-charged conception may have been the view of broader priestly circles,

<sup>41</sup> Qimron and Strugnell, DJD 10.46.

<sup>42</sup> Qimron and Strugnell, DJD 10.47, 149–50. For a different suggestion for the meaning of the text, see J. M. Baumgarten, "The 'Halakha' in *Miqsat Ma'ase Ha-Torah* (MMT)," *JAO* 116 (1996): 513.

<sup>43</sup> I. Knohl, "The Acceptance of Sacrifices from Gentiles," *Tarbiz* 48 (1979): 341–45 (Hebrew).

<sup>44</sup> Y. D. Gilat, "A Comment to 'The Acceptance of Sacrifices from Gentiles,'" *Tarbiz* 49 (1980): 422–23 (Hebrew). See also Gilat, *R. Eliezer*, 450–51.

<sup>45</sup> *B. Avodah Zarah* 23a. See also *y. Avodah Zarah* 2:1, 40c.

<sup>46</sup> *B. Avodah Zarah* 24a.

<sup>47</sup> See *t. Menahot* 9:1, and see Gilat, *R. Eliezer*, 450–51.

since those who abolished the offering of sacrifices on behalf of Rome on the eve of the great revolt were priests.<sup>48</sup>

## G

We will conclude with an example taken from judicial law. According to a *baraita* in the Babylonian Talmud,<sup>49</sup> R. Eliezer interpreted the words “an eye for an eye” (Exod 21:24; Lev 24:20) “literally” (ממש).<sup>50</sup> There are no vestiges of any rulings concerning this pentateuchal verse in Qumranic writings. However, it should be noted that *Scholium O* of *Megillat Ta’anit* attributes the literal interpretation of “an eye for an eye” to a dissenting sect.<sup>51</sup>

בארבעה בתמוז עדה ספר גזרתא: [...] ספר גזרתא—שהיו בייתוסין או: עין תחת עין, שן תחת שן. הפיל שן חבירו, יפיל שינו. סימא עין חבירו, יסמא את עינו ושניהן שוין. . . אמרו להן חכמים: והלא כבר נאמר: והתורה והמצוה אשר כתבתי להורותם, וכת': ועתה כתבו לכם את השירה הזאת ולמדה את בני ישראל שימה בפהם. ולמדה—זו מקרא. שימה בפהם—אלו הלכות.

On the fourth of Tamuz was the Book of Decrees removed: [...] The Book of Decrees—The Boethusians would say: An eye for an eye, a tooth for a tooth. If one had knocked his fellow’s tooth, his own tooth should be knocked. If one had blinded his fellow’s eye, his own eye should be blinded, and they [i.e. the aggressor and the victim] will be equal . . . The Rabbis said to them: Has it not been said already [in Scripture]: “and the Law and the commandment, which I have written down, that thou mayest teach them” (Exod 24:12); and it is further written: “Therefore write ye this song for you, and teach thou it the children of Israel; put it in their mouths” (Deut 31:19)? [That is to say]: “teach it”—that is the Written Law. “Put it in their mouths”—these are the halakhot [the Oral Law].

Scholarship on this issue offers contradictory hypotheses regarding the time and credibility of the *Scholium* in general and the reliability of this

<sup>48</sup> *Bḥ* 2.408. I thank Prof. D. R. Schwartz for this observation.

<sup>49</sup> *B. Baba Kama* 84a. See also *Mekhilta d’Rabbi Ishmael, Nezikin, Mishpatim* 8 (ed. S. Horovitz and I. A. Rabin; Jerusalem: Shalem, 1997; repr. of 1931 ed.), 277. Note the different versions and the editor’s notes in the *Mekhilta*.

<sup>50</sup> The anonymous “*stam*” in *b. Baba Kama* 84a avoids the plain meaning of R. Eliezer’s exegesis of Scripture: “Literally, you say? Could R. Eliezer be against all those Tannaim [enumerated above]?” and suggests several somewhat forced interpretations of his opinion. Cf. Geiger, *Kevutzat Ma’amarim*, 88–89.

<sup>51</sup> See V. Noam, *Megillat Ta’anit: Versions, Interpretation, History, with a critical edition* (Jerusalem: Yad Izhak Ben-Zvi, 2003), 77–79, 209–13 (Hebrew). For bibliography concerning the “*Lex Talionis*,” see p. 211 n. 43.

comment in particular.<sup>52</sup> However, my research indicates that authentic ancient traditions were indeed preserved in both versions of the *Scholium* to *Megillat Ta'anit*, and there is evidence as to the reliability of this individual tradition as well.<sup>53</sup> This source may thus serve as a further indication of the similarities between R. Eliezer's halakhic approach and that of the sect.

### *R. Eliezer and the Qumranites: General Characteristics*

Following this study of specific halakhic examples, we will now broaden the scope of our perspective to include more general characteristics of R. Eliezer's halakhic approach. Can we find any traceable resemblance between the underlying *Weltanschauung* of R. Eliezer and that of the Qumranites? In addition to the common characteristics noted in the above comparisons, such as stringency, simplicity and adherence to the plain meaning of Scripture, other interesting similarities may be observed as well.

Daniel Schwartz, in an attempt to define the general nature of sectarian (and Sadducean) law, argues that the sect and the Sadducees "seem to have been mainly realists, while rabbis were mainly nominalists."<sup>54</sup> Schwartz defines the "realism" with which he characterizes sectarian law to mean that "law must conform to nature."<sup>55</sup> In other words, halakhah is meant to reflect objective, absolute, a priori truths about reality, rather than human consensus. It would appear that such a description might fit R. Eliezer's approach as well. Gilat maintains, based on R. Eliezer's position on measurements, that in R. Eliezer's opinion, "one becomes liable to penalty on the Sabbath for the most minute quantity, the only condition being that this must be a *natural* and independent unit (e.g. one stitch, but not half stitch). The sages,

<sup>52</sup> See also V. Noam, "The Scholium to *Megillat Ta'anit*: Towards an Understanding of its Stemma," *Tarbiz* 62 (1993): 55–99, esp. 56–58, 71–74 (Hebrew).

<sup>53</sup> For a detailed discussion of the authenticity of this commentary, see V. Noam, "From Philology to History, the Case of *Megillat Ta'anit*," in *Recent Developments in Midrash Research: Proceedings of the 2002 and 2003 SBL Consultation on Midrash* (ed. L. Teugels and R. Kern-Ulmer; Judaism in Context 2; Piscataway, N.J.: Gorgias, 2005), 53–95.

<sup>54</sup> D. R. Schwartz, "Law and Truth: on Qumran-Sadducean and Rabbinic Views of Law," in Dimant and Rappaport, *The Dead Sea Scrolls, Forty Years of Research*, 229–40. The citation is from p. 230.

<sup>55</sup> *Ibid.*

however, insist on a *definitely fixed norm*, i.e. two units: one who removes two hairs, weaves two threads, writes two characters and so on....” (my emphasis, V.N.). According to Gilat, R. Eliezer is concerned with “defining measurements in accordance with the specific characteristics of the act or object, rather than by applying a single inflexible standard to numerous cases.”<sup>56</sup> The difference between these two attitudes, that of R. Eliezer and that of mainstream sages, is an impressive example of the realism vs. nominalism parameter described by Schwartz above.

One of the most famous stories that reflect the crisis in the relationship between R. Eliezer and the rabbinic establishment is the story of his excommunication.<sup>57</sup> The Jerusalem and Babylonian Talmuds present two different accounts of this event.<sup>58</sup> The origin and development of this magnificent story, as well as its possible Babylonian reworking, are not within the scope of the present discussion. However, a dominant motif in both versions is R. Eliezer’s attempt to obtain divine confirmation of his halakhic view, by inducing supernatural events. The carob tree was uprooted, the water in the aqueduct flowed backwards, the walls of the schoolhouse tilted; a voice from heaven even declared explicitly: הלכה כאליעזר בני—“The law follows Eliezer, my son.” Nevertheless, the sages insisted: לא בשמים היא—“It is not in heaven” (Deut 30:12). What is the fundamental difference in worldview that the narrator is trying to convey here, cloaked in legend? It seems that two major issues are the subjects of debate. One is quite obvious, the other frequently neglected in scholarly discourse. The first, clear issue of dispute is the source of authority. According to the majority of the sages, in contrast to R. Eliezer’s opinion, halakhah is a product of human activity, and it is determined by a human process, not by divine, supernatural events. However, another distinction is encapsulated in this story. It is an outstanding illustration of the same difference in approach described above, i.e. nominalism vs. realism. The mass of the sages viewed halakhah as the *innovative product of a legal process*, dependent on a coincidental majority of human opinions. This legal process does not *reveal* any preexistent halakhic truth, but rather *creates* it! For this reason, the sages disregarded even truth revealed by miracles. In contrast, R. Eliezer ignored the legal

<sup>56</sup> Gilat, *R. Eliezer*, 40.

<sup>57</sup> See n. 8 above.

<sup>58</sup> In the Jerusalem Talmud it is not completely clear that the reason for the excommunication is the dispute over “Akhnai’s oven,” as in the Babylonian parallel. See the discussion of J. Neusner in *Eliezer Ben Hyrcanus*, 1:422–27; 2:410–11.

procedure and searched for clues to *absolute, pre-existent truth* in nature itself.<sup>59</sup> The carob tree and the stream of water, despite the fact that they operate here *contrary* to natural law, are nevertheless clear symbols of this total, unconditional, truth, based on the observable operations of nature.

Let us return now to the first motif: the source of authority. Our story implies that R. Eliezer's perception of the sources of the authority of oral Torah differed from that of the mainstream. In R. Eliezer's opinion, oral Torah derived continuously directly from a divine source, and may be discerned through revelation. This very issue appears to be one of the most significant differences between the sect and the Pharisees. The Pharisaic world makes a very clear distinction between the *written* Torah, given by heaven, and the oral Torah, which is subordinate to human discourse. Whereas the tannaitic literature clearly differentiates between the written Torah and the oral Torah, forbidding the writing of the latter and the reciting of the former,<sup>60</sup> sectarian halakhah does not refrain from weaving its own exegeses and additions into the scriptures, as in the case of the *Temple Scroll*, or at the very least, from presenting its exegeses as the creations of divinely inspired persons. "The Covenanters perceived themselves as standing within the framework of the biblical period... the Qumran Covenanters did not subscribe to the idea that the biblical era had been terminated..."<sup>61</sup> I am not suggesting that R. Eliezer's views were identical to the extreme ideas of the sect in this respect. However, his attitude to the origins and authority of the oral Torah appears not to be any closer to the mainstream Pharisaic concept than to the sectarian approach. This may explain the harshness with which R. Eliezer was treated, and the fact that, according to both Talmuds, all his "purities," i.e., all the foods and dishes he had ever defined as pure, were burnt(!) in front of him. Even if the sages considered R. Eliezer wrong in the

<sup>59</sup> For a similar example, see Schwartz, "Law and Truth," 234–35.

<sup>60</sup> *B. Gittin* 60b. See Y. Sussmann, "כוחו של קוצו—כחוש כמשמעה—תורה שבעל פה! פשוטה כמשמעה—כוחו של קוצו," in *Talmudic Studies 3: Dedicated to the Memory of Professor Ephraim E. Urbach* (ed. Y. Sussmann and D. Rosenthal; 2 vols.; Jerusalem: The Hebrew University Magnes Press, 2005), 1:209–384 (Hebrew).

<sup>61</sup> See S. Talmon, "The Textual Study of the Bible—A New Outlook," in *Qumran and the History of the Biblical Text* (ed. F. M. Cross and S. Talmon; Cambridge, Mass.: Harvard University Press, 1975), (321–400), pp. 378–79. A. Shemesh and C. Werman, "Halakha at Qumran: Genre and Authority," *DSD* 10/1 (2003):104–29, have recently grouped the Qumran halakhic writings into two different categories, one in which halakhah is presented as divine revelation, the other in which halakhah is attributed to inspired human activity.

single halakhic case described in the above story, why should his other purities have been disqualified?<sup>62</sup> This episode is reminiscent of a very similar reaction of the sages, this time in a sectarian context: the Tosefta reports that on one occasion the ashes of the rare and expensive red heifer, which were prepared in perfect purity, were thrown away only because they were prepared in accordance with the stringent demands of sectarian halakhah.<sup>63</sup> The total disqualification of R. Eliezer may have been a similar form of countermeasure against a semi-sectarian worldview, which, this time, threatened from within.

### *Conclusion*

Scholars have tended to emphasize the differences that exist between Qumranic sectarian law and dissenting, seemingly monolithic Pharisaic approaches preserved in rabbinic literature. However, these approaches, as reflected in tannaitic literature, for the most part, echo majority opinions that crystallized and were formulated in the later tannaitic period. I have argued that a search for fringe opinions and polemical disputes among the early Tannaim, prior to the crystallization of accepted halakhic axioms, may reveal the existence of semi-sectarian ideas within rabbinic circles. Furthermore, disputes that took place within the rabbinic world often run parallel to those that took place earlier between the Pharisees and adversaries from without. Thus, sectarian halakhah can shed new light on later internal rabbinic conflicts and their unexpected bitterness.

<sup>62</sup> Rashi's commentary on s.v. "כל טהרות שטיהר ר"א" ("all the purities that R. Eliezer defined," *b. Baba Metzia* 59b), does not seem to conform to the plain, original meaning of the story.

<sup>63</sup> *T. Parah* 3.6.