

גרים as גויים in 4QOrdinances A:
Restoring Lacunae in the Slave Law of 4Q159 fr. 2-4 + 8 1-3a

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Précis

Lacunae in the slave law of 4Q159 frustrate attempts to reconstruct its commands, logic, and purpose. I argue that the best clue to its purpose and contents comes in an analogous slave law in 4QD^f, which focuses on the redemption (גאולה) of an enslaved Israelite. Assuming גאולה to be the theme of the law of 4Q159 brings an external control to bear on its interpretation and allows a greater degree of confidence in the restoration of crucial lacunae in its first line.

1. Introduction

In a recent study of laws on גרים in the sectarian scrolls, I argued that the Covenanters' eschatology excludes Gentiles of any kind from the restored people and land of Israel at the End of Days.¹ The clearest example appears in the so-called "Eschatological Midrash" (4Q174, 4Q177-178),² where 4Q174 1:1-6a identifies the Ammonite, Moabite, ממזר, ממוזר, and בן נכר, and גר equally as defiling, desolating זרים who will be banished eternally from the sanctuary, land, and people of Israel. I suggested that this eschatological scenario appears to render Gentile conversion incompatible with sectarian ideology; therefore we should not understand גר as "proselyte" in the sectarian scrolls, even those that seem to treat גרים positively.³ I argued that the halakah of MMT, which prohibits Gentiles from marrying Jews and participating in the Temple cult, is consistent with the apocalyptic purge of גרים from Israel in the Eschatological Midrash. However, I noted that no sectarian halakic text collapses all categories of Gentiles into one hostilely

¹ Y.M. Gillihan, "The גר Who Wasn't There: Fictional Aliens in the Damascus Rule," *RevQ* 98 (2011) 257-305. See also K. Berthelot, "La notion de גר dans les textes de Qumrân," *RevQ* 19 (1999) 171-216.

² See A. Steudel, *Der Midrasch zur Eschatologie aus der Qumrangemeinde (4QmidrEschat^{a,b}): Materielle Rekonstruktion, Textbestand, Gattung und traditionsgeschichtliche Einordnung des durch 4Q174 ('Florilegium') und 4Q177 ('Catena A') repräsentierten Werkes aus den Qumranfunden* (STDJ 13; Leiden: Brill, 1994).

³ Contrast statements on גרים in CD 6:20-7:3 and 14:3-6 with statements on other classes of Gentiles in 11:2, 12-15; 12:6-11. For other "good גרים" see 4QLots (4Q279) v 1-6; possibly 4QpNahum 3-4 ii 7-10. For discussion of scholarship see Gillihan, "גר," 258-64.

regarded group. But in a footnote I suggested that the very fragmentary slave law of 4QOrdinances A (4Q159 fr. fr. 2-4 + 8 1-3a), which mentions slavery both to גרים and to גויים, might have contained a halakhic analogy to the apocalyptic scenario of 4Q174.⁴ Now having studied 4Q159 more closely, I am more confident that this suggestion is plausible. An analogous slave law in 4QD^f focuses on the redemption of enslaved Israelites, apparently promising divine reward to a free Israelite who redeems (גלה) his fellow. Assuming גלה as the theme of the slave law of 4Q159 guides my decisions about how to restore two crucial lacunae in the first line. My restoration yields the specific circumstance to which the law pertains—when a גר owns an Israelite as a slave—and the law's primary commandment: Israelites must redeem the enslaved Israelite. From these I deduce the syntax that orders the law's components, the relationship of the slave law to other laws in 4Q159, and the relationship of the slave law to other statements on Gentiles in the sectarian texts.⁵ Identifying גלה as the central theme of the slave law is supported by numerous Jewish texts that interpret Deut 15 by focusing on its theme of "redemption" (גלה), and explicitly appeal to Lev 25 to furnish details.

This assumes study a few points about 4Q159 and its context that remain debatable, namely:

4Q159 is a sectarian text composed among the Covenanters.

Sectarian texts were composed in a relatively short time—about 100 years—within a tightly-knit association of highly educated, affluent dissidents. We should expect their theological and halakic contents to show general consistency.

⁴ Gillihan, "גר," 294 n.146.

⁵ I submit this admittedly far-reaching interpretation with full awareness of the risk inherent in making specific claims about the missing content of texts. But I think that bringing evidence from 4QD^f mitigates this risk sufficiently, especially in comparison with previous interpretations, which, lacking an external control, tended to be idiosyncratic.

When restoring lacunae in a sectarian text, initial proposals should be formed with an assumption of consistency with other sectarian texts.

The background of 4Q159

In recent articles anticipating his new edition of 4Q159,⁶ Moshe Bernstein has offered suggestions that move a number of long-standing questions a few steps closer to resolution.⁷ Thus:

4Q159 is not a set of communal regulations nor a miscellaneous collection of excerpts, but some sort of legal commentary that interprets Scripture by a variety of methods.⁸

Its author seems to have structured the composition by treating the main laws under consideration, most of which come from Deuteronomy, in the order in which they appear in their respective biblical texts.⁹

The interpretations of biblical law in 4Q159 show consistent alterations or limits to the plain sense of biblical texts or to known interpretations thereof.¹⁰

⁶ Prior to Bernstein's work, three attempts at a critical edition of 4Q159 appeared: J. M. Allegro, "159. Ordinances," in idem and A. A. Anderson, eds., *Qumrân Cave 4.I (4Q158-4Q186) (DJD V)*; Oxford: Clarendon, 1968) 6-9, pl. II; F. Weinert, "4Q159: Legislation for an Essene Community outside of Qumran?" *JSJ* 5 (1974) 179-207; L. Schiffman, ed., "Ordinances and Rules (4Q159 = 4QOrd^a, 4Q513 = 4QOrd^b)," in *Rule of the Community and Related Documents*, vol. 1 of *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations*, ed. J. Charlesworth (Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: Mohr Siebeck, 1994) 145-57. Two important text-critical notes on 4Q159 also appeared in response to Allegro: see Y. Yadin, "A Note on 4Q159 (Ordinances)," *IEJ* 18 (1968) 250-52 and J. Strugnell, "Notes en marge du volume V des 'Discoveries in the Judaean Desert of Jordan,'" *RevQ* 7 (1970) 175-79.

⁷ M. Bernstein, "4Q159: Nomenclature, Text, Exegesis, Genre," in *The Mermaid and the Partridge: Essays from the Copenhagen Conference on Revising Texts from Cave Four*, edited by G. Brooke and J. Høgenhaven (STDJ 96; Leiden: Brill, 2011) 33-55; "4Q159 fragment 5 and the 'Desert Theology' of the Qumran Sect," in *Emanuel: Studies in Hebrew Bible, Dead Sea Scrolls, and Septuagint in Honor of Emanuel Tov*, ed. P. Shalom et al. (Boston: Brill, 2003) 43-56; "The Re-Presentation of 'Biblical' Legal Material at Qumran: Three Cases from 4Q159 (4QOrdinances^a)" in *Shoshanat Yaakov: Ancient Jewish and Iranian Studies in Honor of Professor Yaakov Elman*, ed. S. Fine and S. Secunda (Leiden: Brill, 2012) 1-20. The final edition will appear in M. Bernstein, G. Brooke, and J. Høgenhaven, eds., *Qumran Cave 4.I: 4Q158-186 (DJD 5a; rev. ed.)*; Oxford: Clarendon, in preparation).

⁸ Bernstein, "Nomenclature," 52-54, *contra* Weinert, "4Q159," 204-7, who views it as a rule for a poor Essene community.

⁹ Bernstein, "Nomenclature," 35-37; "Re-Presentation," 14-15. Contrast Schiffman, who perceives "no organizing principle" in 4Q159, nor in the related halakic text, 4Q513 ("Ordinances and Rules," 148). Bernstein offers his proposed organizing principle for 4Q159 in the most tentative of terms.

¹⁰ Bernstein, "Nomenclature," 51-55.

4Q159's most salient feature is the "mixed" nature of its contents; this justifies comparing it to other texts of "mixed genre," such as the *Damascus Rule*, 4Q251, 4Q265, 4Q513, 4Q514.¹¹ This consideration, along with paleography, suggest that fr. 5, which contains two instances of the *peshar*-formula also present in D and 4Q265, originally belonged to the composition.¹²

The attractiveness of Bernstein's proposals is strengthened by the clarity with which he explains his reasoning, consistent indication of where conclusions can only be reached by speculation, and admission that the principle underlying the author's choice of which laws to treat, like the ultimate purpose of 4Q159, may well be permanently obscured.¹³

2. The interpretation of biblical laws in 4QOrdinances A

Before turning to the three lines in question, an outline of the contents of Ordinances A is appropriate. The following outline follows Bernstein's reordering of the fragments based on the sequence in which the laws appear in Deuteronomy and Exodus.

Fr. 2 (= 2-4+8)

- A. **Deut 15 (?)** a lost column possibly introduced law on enslaved Israelites
Lev 25 (1-3) Israelites enslaved to non-Israelites
unclear due to fragmentation
- B. **Deut 17** (4-6) Final decision of court of twelve in capital case
legitimizes authority of non-biblical court of twelve on the basis of Deut 17
- C. **Deut 22** (6-7) Transvestitism
extends prohibition of a man wearing a woman's clothing to undergarments that cannot be seen
- D. **Deut 22** (8-10) Accused bride
restricts husband's right to accuse his wife of not being a virgin to period immediately after initial intercourse

Fr. 1 (= 1+9)

- E. **Lev 16?** (1-2) Atonement of sins
too fragmentary to determine

¹¹ Bernstein, "Nomenclature," 52-54; similarly C. Hempel, "4QOrd^a (4Q159) and the Laws of the Damascus Document" in *The Dead Sea Scrolls Fifty Years after Their Discovery*, ed. E. Tov et al. (Jerusalem: Israel Exploration Society, 2000) 372-76; J. Baumgarten, "Scripture and Law in 4Q265," in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls* (STDJ 28; Leiden: Brill, 1998) 25-33, esp. p. 29-30; idem, "4Q265. Miscellaneous Rules," in *Qumran Cave 4.XXV: Halakhic Texts*, ed. J. Baumgarten et al. (DJD 35; Oxford: Clarendon, 1999) 58-60.

¹² Bernstein, "Nomenclature," 36, and "Desert Theology," *contra* Schiffman, "Ordinances and Rules," 145; Weinert, "4Q159," 180; J. Fitzmyer, review of J. Allegro, DJD V, *CBQ* 31 (1969) 237.

¹³ Bernstein, "Nomenclature," 34, 36-37, 53-54; "Re-Presentation," 18-20.

- F. **Deut 23-24** (3-5) Gleanings
extends the right of the poor to glean harvested fields to allow collecting from the threshing floor or winepress
 - G. **Exod 30; 38** (6-12) Half-shekel donation
cites Exod 30 to justify once-per-lifetime assessment of half-shekel tax vs. annual assessment
 - H. **Ezek 45** (13-14) Proper measures
unclear due to fragmentation, but may conclude the rule on the half-shekel with a prophetic statement on exact and just measures (Ezek 45:11)
 - I. **Exod 32?** (15-17) Moses burns something (the golden calf?)
unclear due to fragmentation; שרף מוש[ה] may come from Exod 32:20
- Fr. 5**
- J. **Exod 33** (1-8) Narrative with two *pesher* interpretations
unclear due to fragmentation; seems to include pesher on Lev 16:1; may continue treatment of themes from Exodus in G-I

The laws treated in 4Q159 seem to have been selected because they pertained to practical legal questions. The use of Scripture shows high regard for the wording of the legal text, and also great flexibility in appropriating its meaning. While C, E, I are too fragmentary to yield meaning without substantive reconstruction, the laws with more extant content show consistent interest in halakic innovation and clarification. Thus:

B is a complete innovation that uses Scripture to justify the court's authority

D and F refine biblical law toward more precise, practical meaning

G restores tax law of Exodus against laws of Nehemiah etc., and refines tax calculation by carefully parsing Scripture

H may refine G by invoking prophetic authority in matters of measurement

3. The text and interpretation of the slave law in 4Q159

We now turn to the three lines in question. The most extensive restorations about which there is consensus result in something like this:

] ואם 1 [לגר או לעיקר¹⁴ משפחת גר ולא ירדנו בפרך]

¹⁴ From Lev 25:47, או לעקר משפחת גר. I prefer עיקר where Strugnell et al. read עוקר. (Allegro's שקד is implausible. Yadin's עקר preserves the MT Hebrew but does not match the photograph.) As in many mss., ו and י are often impossible to distinguish. It seems more reasonable to read י as a *mater lectionis* for *ṣērê*

2 לעיני יש[ראל ל]וא יעבודו הגויים בזר[וע נטויה וביד חזקה הוציא אותם מארץ]
3 מצרים ויצו עליהם¹⁵ לבלתי ימכר ממכרת עבד

- 1 And if[to]a resident alien or to the offshoot of the fami[ly of a resident alien (Lev 25:47)
... and he shall not rule him harshly]
2 in the sight of Is[rael (Lev 25:53). Let them n]ot serve Gentiles:¹⁶ With ar[m outstretched and
with mighty hand (Deut ?) He brought them out from the land]
3 of Egypt, and He commanded them that one not be sold in the sale of a slave (Lev 25:42).

Scholars agree about restorations of words immediately adjacent to the lacunae in lines 1-2, that the law concludes with עבד in line 3, and that much of the text's language is based on statutes in Lev 25:35-55 on the same topic. Linguistic connections between the texts suggests deliberate adaptation of Scriptural language: גר in line 1 comes from לגר או לעקר פחתמש גר in Lev 25:47. At the beginning of line 2, לעיני יש[ראל continues a commandment from the lost ending of line 1, which probably contained something similar to לא ירדנו בפרך לעיניך in Lev 25:53.¹⁷ There is also general consensus about the contents of the missing second half of line 2, which introduces an elaboration and explanation of the immediately preceding prohibition, [ל]וא יעבודו הגויים. This elaboration and explanation continues through the end of line 3: מצרים ויצו עליהם¹⁸ לבלתי ימכר רתממ עבד. This text comes from Lev 25:42, which grounds its prohibition of Israelite slavery to Gentiles on the basis of God's deliverance of Israel from slavery in Egypt.¹⁹ Thus line 2 must have ended with an adaptation of the preceding words of the same verse, הוצאתי אתם מארץ. The remaining few words of line 2 probably continue the sentence introduced with the broken final phrase of the extant text, בזר]. Several passages

than to accept Strugnell's identification of עוקר as "un des cas nombreux où le *qutl* est attesté à Qumrân alors que l'hébreu massorétique a un *qitl*" ("Notes en marge," 178).

¹⁵ Emended with Strugnell, "Notes en marge," 178. The text reads עליהם, a scribal error.

¹⁶ For discussion of direct objects unmarked by את in Classical Hebrew see H. van Loon, "Variational Use of the Particle תא," *Journal of Northwest Semitic Languages* 38 (2012) 93-114, esp. pp. 106-7.

¹⁷ Yadin, "Note on 4Q159," 250 (his citation of 25:35 is a scribal error); Weinert, "4Q159," 197 n.51; Schiffman, "Ordinances," 155 n.29. Weinert and Yadin have the same inclination, but Weinert retains one word that brings the line into closer conformity with the text of Lev 25:53, i.e., בפרך.

¹⁸ Emended with Strugnell, "Notes en marge," 178, as noted above.

¹⁹ The parallel text of Lev 25:42 is מצרים לא ימכרו ממכרת עבד.

in the Torah describe God's deliverance of Israel from slavery in Egypt with two instrumental phrases, one of which is consistently בזרוע נטייה. This phrase neatly fills the first part of the lacuna. Whether the final restoration should be ובשפטים גדולים, as Yadin proposes on the basis of Exod 6:6, or וביד חזקה, which, as Weinert points out, is conjoined to בזרוע נטייה in several passages of Deuteronomy, has no consequence for the meaning of the text.²⁰

Despite the impressive restorations, we lack clarity about the text of first line, even if we assume that the lacunae should be restored with language from Lev 25:39-55. Presumably the first lacuna described a circumstance under which an Israelite was enslaved to a גר; the second, what to do in such a case. The two lacunae thus pose a significant problem to understanding the passage as a whole. To make matters more difficult, it seems clear that l. 1 continues an argument that began in the preceding, now lost, material—thus we confront three lacunae, not two.

In order to be plausible, restorations of line 1 must fit both the space of the lacunae and the logic of the passage. The former is the easier task: 4Q159 employs the same language as the biblical laws that it interprets, so proposals must adapt the language of Lev 25:39-55. The more difficult matter is discerning the purpose of the law and how its component parts relate to its interpretation of Lev 25. Once we identify its purpose, the relationship of extant components should provide a basis for judging which possible restorations are plausible.

²⁰ Yadin, "Note on 4Q159," 250 n.3; Weinert, "4Q159," 198. See Exod 6:6; Deut 4:34; 5:15; 9:29; 26:28. Given the concentration of texts from Deuteronomy in 4Q159 fr. 2, I prefer Weinert's proposal. Further, Weinert's proposal yields about 66 letter-spaces, while Yadin's proposal yields about 71, which exceeds the average letter count in the relatively complete ll. 8 (62) and 9 (65). Guidelines based on letter-space counts are problematic, however, given the significant variability of letter size in the text. Compare, e.g., the small א in l. 1 (או, ואם) to the larger א in l. 8 (ואם, *bis*); small ל in l. 3 (עליהיה, לבלחתי) to large ל in ll. 5 (esp. in ישראל), 7, 8; and small ש in l. 1 (משפ[חת]) to large ש throughout ll. 6, 7.

Reconstruction of the slave law's logic requires identifying its major themes. The opening phrase of line 1, ׀א, seems to introduce a case to which some law already under discussion pertains, as ׀א does in 4Q159 fr. 2 8-10.²¹ Line 1 opens with the case: the enslavement of an Israelite to a גר or to the family of a גר. What followed is lost (1b), but the fact that a justification appears in 1c-2a seems to indicate that it was a commandment. Another commandment or justification follows in 2b: Israelites cannot be slaves to גויים. This is justified by two concluding justifications in 2c-3a: God delivered Israel from Egyptian slavery, and God commanded that Israelites not be sold as slaves. The law's components seem to be related along the following lines:

General topic: (Prev. col.?) Israelite slavery (Lev 25:35-55 || Deut 15:12-18; Exod 21:2-21)

Case: (1a) an Israelite enslaved to a גר (Lev 25:47)

Statute: (1b) ?

Justification: (1c-2a) God commands that Israelites must not be treated harshly, especially in/among Israel (Lev 25:53)

Statute or justification: (2b) Slavery to גויים is forbidden

Justification: (2c-3a) God delivered Israel from slavery in Egypt

Justification: God forbids Israelites to be sold as slaves (Deut + Lev 25:42)

Scholarship on 4Q159 to date confirms that the argument of the slave law is not easily discerned, and it is noteworthy that only one scholar, Francis Weinert, has attempted to restore the lacunae in 1b-2a. The only scholars who address the slave law at any length, Weinert and Lawrence Schiffman, describe its purpose in very different terms. In a long article on 4Q159, Weinert argues that its slave law presents only a modest reinterpretation of the slave law in Lev 25:

The point of this legislation would be to reaffirm the biblical injunction against the enslavement of Israelites, particularly by foreigners, by repeating the stipulation set forth in Leviticus that the Israelite can sell his services to a foreigner only on a provisional basis (in this case, as a hired servant employed on a yearly basis).²²

²¹ In the law on a bride accused of non-virginity (4Q159 fr. 2 8-10) the phrase ׀א occurs twice in line 9 to introduce specific conditions relevant to the law as a whole. So also Weinert, "4Q159," 197.

²² Weinert, "4Q159," 197-98.

Thus the law provides evidence for an economically marginal Essene community "living in proximity to Gentiles wealthy enough to hire their services."²³

Weinert seems to base his restorations of two lacunae in l. 1 on the idea that the slave law reiterates in summary form the laws on Gentile enslavement of Israelites in Lev 25. The first restoration comes from 25:47, and the second fully implements the widely held view that the end of l. 1 was adapted from 25:53:

ואם [ימוך ונמכר ל]גר או לעוקר משפחה]ת גר כשכיר בשנה יהיה לוא ירדנו בפרך]

And if [he becomes impoverished and is sold to] a גר or to the offshoot of the famil]y of a גר, (25:47), then he shall be like a worker hired by the year. And let them not rule him harshly...] (25:53)

It is striking that Weinert's interpretation makes his restorations of the first two lacunae the central points of the law: it concerns any Israelite who גרים to ימוך ונמכר. They cannot serve as slaves but work כשכיר בשנה יהיה, by which Weinert seems to mean that the law requires wage-compensation when they "sell their services." If I am reading Weinert correctly, he subordinates the slave law's prohibition of Israelite enslavement to גויים (2b), and its more general prohibition of selling Israelites in a slave sale (3b), to the commandment requiring Israelite "slaves" to work as hired laborers.

This interpretation implies particular relationships between the law's components. Its purpose is rather narrow: to limit Israelite servitude to Gentiles to annual wage-labor, not enslavement (1a-b). A general principle gives guidelines for Israelites in this situation: they must not be treated harshly, and other Israelites may be responsible to prevent it (1c-2a). A more general principle justifies the requirement: although poor Israelites can enter into annual contracts for wages, they serve גויים as slaves (2b).

²³ Weinert, "4Q159," 206.

Weinert reads גויים in 2b as shorthand for גר או עוקר משפחת גר in 1a, referring to both categories as "foreigners," "pagans," and "Gentiles."²⁴ The last line offers an even more general condition that prohibits Israelite enslavement: because God brought Israelites out of in Egypt, he commanded them never to be sold in a slave-sale (2c-3a). Weinert's reconstructed slave law has these components:

Case: If poor Israelites are sold to גרים (=Gentiles/foreigners/pagans)

Statute 1: then גרים must employ Israelites as annually hired servants

Statute 2: and גרים cannot treat Israelite servants harshly

Justification 1: because Israelites cannot be slaves to גויים (= גרים)

Justification 2: because Israelites cannot ever be sold as slaves.

Two features of Weinert's slave law stand out. The first is that the logic of its case, commands, and justifications is coherent. The second is that the law makes no innovation: its purpose is only to reiterate the very clear conditions under which Lev 25:47-55 allows an Israelite to serve a גר. Given the tendency of 4Q159 to treat halakic issues in ways that refine or innovate some understanding of biblical law, we should suspect that Weinert's restoration and interpretation miss the mark.

Weinert's argument is further weakened by mistaken assertions about biblical law. While Lev 25:39-43 prohibits Israelite enslavement of other Israelites, Exod 21:1-11 and Deut 15:12-18 provide conditions for it. Further, Lev 25:47-55 does, in fact, allow Israelite slavery to גרים under certain conditions. And no biblical law explicitly prohibits enslavement of Israelites by גויים—the statement in 2b, לֹא יַעֲבֹדוּ הַגּוֹיִּים, is an innovation that should be regarded as central to the slave law's interpretation, not a shorthand way of referring to the גרים in the first line.²⁵ Further, Weinert's treatment of גרים and גויים in ll. 1-2 as "foreigners" collapses important distinctions that Lev 25 makes between peoples.

²⁴ Weinert, "4Q159," 197-98, 205-6.

²⁵ Schiffman, "Ordinances and Rules," 147.

Its laws identify three classes that live in Israel—Israelites, גרים who dwell in the land, and גויים from the surrounding nations—and regulate enslaving and being enslaved from the perspective of Israelites. Thus: Israelites may not enslave Israelites but may own both גרים and גויים as slaves in perpetuity as heritable property (25:44-46). As non-Israelites, גרים are partially exempt from the prohibition of enslaving Israelites; as residents of the land of Israel they must observe laws that protect native Israelites. Thus Israelite slaves of a גר must be emancipated at the jubilee year (25:54) and retain the right to be manumitted prior to that year at a price equivalent to the wages that a hired worker would earn during the amount of time between the year of the Israelite's enslavement to the jubilee year (25:47-53).²⁶ The passage lacks laws on slavery that does not involve Israelites, i.e., within and between גרים and גויים; it also gives no guidance on how גויים should treat Israelite slaves, presumably because free גויים do not live in the land of Israel and cannot be subjected to its laws. These relationships can be summarized as follows:

<u>relationship</u>	<u>enslavement of</u>	<u>slavery to</u>
Israelite-Israelite	prohibited	prohibited
Israelite-גרים	permanent	temporary
Israelite-גויים	permanent	—
גרים-גרים	—	—
גויים-גרים	—	—
גויים-גויים	—	—

Finally, Weinert's restorations and interpretation seem to me to be based on a misunderstanding of the perspective from which the slave law is written. Weinert focuses on the conditions under which an individual Israelite is enslaved—if he becomes poor

²⁶ While Israelite slaves do not earn wages, the terms of redemption attribute to them a status more like that of a laborer hired on a yearly basis than as chattel. As J. Milgrom puts it, the Israelite slave has only been "leased" to the גר so that his master possesses only his labor, not his person. See *idem*, *Leviticus 23-27* (AB 3b; New York: Doubleday, 2000) 2233. For full commentary see pp. 2212-71. For a more succinct statement see C. Hezser, *Jewish Slavery in Antiquity* (Oxford: Clarendon, 2005) 29-31.

and is sold to a גר, then he must be treated as an annual wage-laborer and not abused.²⁷ As I argue below, the law as a whole seems to focus on the community's obligations to an enslaved individual: free Israelites must protect poor Israelites who are enslaved to Gentiles. The laws of Lev 25 stress that Israel's most important responsibility is procuring emancipation through redemption (גאולה) by a family member or by the slave himself (25:48-52). The concluding law provides that if they are not redeemed then they must be treated as laborers hired by the year, treated well, and emancipated on the jubilee year (25:53-54)—but this provision is not ideal. I believe that, like Leviticus, and more importantly, like with a law on slavery in 4QD^f, the lacunae in 4Q159 originally contained some instruction on the גאולה of Israelites enslaved to גרים.

Lawrence Schiffman's analysis of the slave law comes in a few comments and notes accompanying his critical edition of 4Q159 for the PTS DSS project.²⁸ Their sparse nature and discrepancies between the Hebrew text and English require that Schiffman's own interpretation be partially reconstructed, not unlike 4Q159 itself. His disagreement with Weinert is clear, as Schiffman claims that 4Q159 adapts the material of Lev 25 "quite radically."²⁹ The purpose of the slave law is to introduce the new legal principle in line 2b, ל[י]א יעבודו הגויים.³⁰ Despite his strong views on the purpose and logic of the slave law, Schiffman offers no restorations of the crucial lacunae in the body of the main text.

²⁷ Weinert, "4Q159," 182, 197-98.

²⁸ L. Schiffman, ed., "Ordinances and Rules (4Q159 = 4QOrd^a, 4Q513 = 4QOrd^b)," in *Rule of the Community and Related Documents*, vol. 1 of *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations*, ed. J. Charlesworth (Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: Mohr Siebeck, 1994) 145-57.

²⁹ Schiffman, "Ordinances and Rules," 147.

³⁰ As Schiffman writes, the new principle is that "Israelites may not under any circumstances be sold to a non-Jew" ("Ordinances and Rules," 147).

Refraining from restoring the lacunae in l. 1 might appear to be conservative,³¹ but Schiffman makes remarkably strong claims for the line's function: it raises the topic of Israelite slavery to a גר in Lev 25:47 "only as an introduction to proceed to Lev 25:53 prohibiting his being worked 'in your presence'"; overall the slave law "has no concern with the question of manumission" that is so central to the biblical text.³² Instead, its treatment of Israelites and גרים departs significantly from the emphasis of the original laws because its purpose has changed: instead of prescribing particular relationships between three lineal classes, it introduces a new statute in 2b on slavery between two classes: Israelites cannot be enslaved to "non-Jews," as Schiffman translates גויים.³³ This innovation is possible in part because, Schiffman speculates, by the time the law was composed גר no longer simply designated a Gentile residing in Israel, but a proselyte who partially observed Jewish law—the equivalent of the גר תושב in rabbinic literature.³⁴ The author of the slave law recognized that Lev 25 distinguishes between Israelites, גרים, and גויים. Because its laws only instruct the first two groups on ownership of Israelite slaves, גויים are excluded from its prescriptions and prohibitions, including the right of גרים to own Israelite slaves temporarily.³⁵ In Schiffman's scenario, distinctions between the three classes are extremely important to the exegete. Schiffman points to 2a as evidence that the author saw this distinction: where Lev 25:53 prohibits Israelite slaves "being worked 'in your presence'," 4Q159 more narrowly prohibits their slavery "in the presence of

³¹ Note that while Schiffman refrains from restoring large lacunae in his main text, his footnotes show interest in restorations. However, they also show the difficulty involved in making a decision: in a note on the Hebrew text he expresses preference for Yadin's restoration of 2c along the lines of Exod 6:6, against proposals of Strugnell and Weinart ("Ordinances and Rules," 154 n.16), but follows Weinart's restoration on the basis of Deut 5:15; 26:8 in a note on the English translation (155 n.31).

³² Schiffman, "Ordinances and Rules," 155, 147.

³³ In the text of 4Q159 see Schiffman, "Ordinances and Rules," 155; in his discussion, pp. 147, 155 nn. 30, 32.

³⁴ Schiffman, "Ordinances and Laws," 147; see also 155 n.30.

³⁵ Schiffman, "Ordinances and Laws," 147.

Isr[ael]," apparently allowing Israelite slavery to גרים.³⁶ Schiffman seems to infer that, because גרים were proselytes and trusted to be observant, the interpreter allowed that they could own Israelite slaves. Schiffman also suggests that the allusion to Lev 25:42 in 2c-3a shows that the author of the SL thought of Israelite slavery to גרים as a special provision: Israelites are categorically forbidden from being sold in "through the normal conditions of a slave sale," i.e., those conducted by market conventions and that result in permanent bondage.³⁷ The text also points to God's deliverance of Israel from Egyptian slavery to justify the prohibition: entering into permanent slavery amounts to rejecting God's claim on Israel as his servants, and indeed of rejecting God's exclusive right to own Israel as slaves (Lev 25:42, 55).³⁸ In Schiffman's interpretation the components of the slave are related as follows:

Claim: Israelites cannot be enslaved to non-Jews.

Justification 1 (assumed): Torah approves particular social practices only for groups that it names as subject to laws on those practices.

Justification 2: Lev 25 regulates debt slavery of Israelites to Israelites and to proselytes, but does not mention non-Jews (1a-b).

Result: Israelites cannot be enslaved to non-Jews (2b).

Justification 3: God delivered Israel from slavery in Egypt (2c-3a).

Justification 4: Torah commands Israelites not to be sold in a normal slave sale (3b).

The third and fourth justifications can be strengthened: first, a normal slave sale results in the permanent and heritable ownership of slaves, as in Lev 25:44-46; second, slavery in Egypt was probably understood both as the normal, permanent sort, and also as slavery to Gentiles.

In Schiffman's scenario, the prohibition of slavery to Gentiles appears to be a relatively straightforward halakic completion of an incomplete biblical law: for Israelites, proselytes, and Gentiles, Lev 25:39-55 comprehensively regulates how Israelites own

³⁶ Schiffman, "Ordinances and Laws," 155 n.29.

³⁷ Schiffman, "Ordinances and Laws," 147.

³⁸ Schiffman, "Ordinances and Laws," 155 n.32.

slaves, but only regulates how Israelites are owned as slaves for Israelites and proselytes; the exegete simply adds Gentile ownership of Israelite slaves. The proposal is plausible, given the scholastic character of the Covenanters, and consistent with other halakic interpretations that complete patterns established by laws in the Torah.³⁹ On the basis of Schiffman's analysis we could speculate that the law also reveals why the statute on Gentile ownership of Israelite slaves is missing in Scripture. Not only was it *not* necessary to include it in the first place, including it might have implied divine approval of an abominable legal situation. Far from showing Scripture's deficiency, the slave law might be seen as confirming an essential interpretive principle that the Covenanters articulate elsewhere: Scripture lacks nothing, but the principles of its interpretation have been hidden from all but the elect.

Schiffman's analysis has appealing features. It clearly identifies a problem that the slave law solves through fairly transparent logic: interpreters of biblical law wished to remedy or explain the Torah's silence on Israelite slavery to גויים. Unlike Weinert, Schiffman does not strain credulity by requiring that 4Q159 be read as ordinances for a specific community in particular historical circumstances—the text could just as easily represent a scholastic exercise in legal interpretation.

Nevertheless Schiffman's interpretation seems dubious. It requires adding several strong assumptions to the slave law, none of which has direct textual support. First, the writer and readers must assume that where Torah regulates an activity for specific named groups and omits mention of other known groups, that activity is allowable for the named groups and forbidden for the unnamed groups. As an abstract principle the assumption

³⁹ E.g., CD 5:7b-11a applies the prohibition of sex between an aunt and a nephew (Lev 18:13 || 20:19) to the relationship between an uncle and niece.

might work, but seems quite odd when applied to the slave law of Lev 25:39-55: the first named group, Israelites, is forbidden to enslave Israelites; the second named group, גרים, is permitted to enslave Israelites temporarily. It seems unlikely that the unnamed גויים would be treated as though under the same commandment as the named Israelites. Instead, a legal interpreter's quest to use logical inference to complete Lev 25's rules on slavery would produce the opposite of the ruling in 4Q159, whether we assume that גרים are proselytes or resident aliens. Thus: if enslaving Israelites is *completely restricted* for native-born Jews and *partially restricted* for גרים (Gentile converts to Judaism or Gentile residents of Israel), then it would be *unrestricted* for גויים (Gentiles who have not converted to Judaism and/or do not live in Israel). Whether Gentile enslavement of Israelites could be accepted would be a natural matter for the interpreter to address. One might suggest that the SL does just this with its assertive conclusion, לָא עֲבוּדֵי הַגּוֹיִים. But this phrasing is hardly that of a logical inference that solves a halakic puzzle.

A second problem with Schiffman's reading is that it treats what appear to be real commandments regarding גרים into merely justifications of a new legal principle. Third, Schiffman's identification of גרים as proselytes poses what seems to me to be an insurmountable problem for his argument. It only makes sense to allow גרים to own slaves if they are not Jews, i.e., as long as they retain their status as Gentile resident aliens of the land of Israel. Once they become Jews through conversion, they are responsible for observing all laws of Torah. This means that they must lose their right to hold Israelite slaves. Schiffman attempts to avoid this problem by suggesting that the גרים are Gentiles "who have taken on certain Jewish laws and practices," similar to the גר תושב

who, in rabbinic law, observes minimal commandments but has not converted fully.⁴⁰

Such גרים are neither "full non-Jews" nor full Jews; this interesting solution raises many problems, not least of which is the definition of proselytism in sectarian ideology. As I have argued elsewhere, the Covenanters seem to have opposed the idea that Gentiles could become Jews.⁴¹

There are other problems. First, in Schiffman's reading the slave law becomes more a scholastic exercise than a practical law or a legal interpretation with practical halakic consequence. This goes against the tendency of 4Q159 as a whole: its laws seem to be quite practical and aimed at resolving real legal dilemmas. Further, the logic required to produce the law seems unnecessarily complex, particularly in light of the rather slight results that the effort yields.

4. A new proposal for restoring the slave law of 4Q159 by analogy with 4QD^f

Restoration should draw on the language and show substantive engagement with the laws of Lev 25, follow trends within 4Q159 as a whole, and provide a law whose logic is internally sound. We should prefer inferences that are simple over those that are excessively complex. When possible, external evidence from analogous halakic texts should be used as a guide to themes that concerned sectarian interpreters.

It happens that we have an excellent external evidence in a collection of laws from 4QD^f (4Q271) fr. 2-3. This collection preserves several laws that also appear in 4Q159. The fact that the laws also appear in the same order in both texts is interesting, but there is little to suggest the dependence of one text upon the other.⁴² Each text

⁴⁰ The full convert is the גר צדק. For discussion see Gillihan, "גר," 279-82 and the literature cited there.

⁴¹ Gillihan, "גר," *passim*.

⁴² See C. Hempel, "4QOrd^a (4Q159) and the Laws of the Damascus Document," *The Dead Sea Scrolls Fifty Years after Their Discovery*, ed. L. Schiffman, E. Tov, and J. VanderKam (Jerusalem: Israel Exploration Society, 2000) 372-76. Hempel speculates only that the writer of the laws preserved in 4QD^f "drew upon a

presents several laws that the other lacks in between shared laws that the other juxtaposes, and the treatment of legal topics is not identical. But for the present study, it is important to find that the three extant lines of the slave law in 4QD^f 3 1-3a discuss an Israelite slave's redemption בכסף (l. 1; cp. Lev 25:50-51), based on a calculation associated with the jubilee year (l. 2b).⁴³ The law's requirements appear to come in ll. 2a and 3a. Baumgarten reconstructs 2a to read [וידו לואה]שיגה ידו לה[שיב לו], which appears to describe the situation of a slave who lacks means (יד) to redeem himself בכסף. The identification of יד with כסף comes from Lev 25:49-51.⁴⁴ The consequence of the redeemer's action appears in the concluding line of the law, אלו יעזוב לן כולן [עונותיו] (l. 3a). Here Baumgarten plausibly suggests that the law promises "divine reward for those who redeem their brother from bondage," an idea with precedent in Scripture (e.g., Ps 41:2).⁴⁵ Thus the slave law of 4QD^f treats the problem of enslaved Israelites by focusing on free Israelites' responsibility to redeem them. 4QD^f offers, in addition to the authority of the laws of Torah, a promise to the redeemer: God will exonerate him from all his sins.

Analogies between the slave laws of 4Q159 and 4QD^f are obvious: both oppose the enslavement of Israelites, and both are based on interpretation of Lev 25. I suggest that the theme of גאלה in 4QD^f is the same theme in the slave law of 4Q159: both primarily concern the obligation of free Israelites to redeem their enslaved compatriots. The case for inferring the theme of 4Q159 from 4QD^f is strengthened by survey of the relationship between the texts:

collection of traditional laws not dissimilar to 4QOrdinances^{am} (376). See also J. Baumgarten's spare observations in his article, "The Laws of the Damascus Document in Current Research," in *The Damascus Document Reconsidered*, ed. M. Broshi and E. Qimron (Jerusalem: Israel Exploration Society, 1992) 56, and in his edition of the 4QD mss. (*DJD* 18, 174, 177).

⁴³ See the brief discussion and restorations in J. Baumgarten, *DJD* 18, 175-77.

⁴⁴ יד seems also to refer to personal wealth in 1QS 7:8. For brief discussion see Gillihan, *Civic Ideology, Organization, and Law in the Rule Scrolls*, 398-99.

⁴⁵ J. Baumgarten, *DJD* 18, 176.

4QD ^f 2 1a	gleanings (?) from threshing floor must be tithed (Deut 24:19-21?; Lev 19:9-10?)	gleanings from threshing floor or winepress may be taken home vs. gleanings from field must be eaten in field (Deut 24:19-21; Lev 19:9-10)	4Q159 1 3-5
		one-time half-shekel donation (Exod 30:12-15)	4Q159 1 6-7a
		standardization of shekel	1 7b
		calculation of offering for wilderness generation (Exod 38:25)	1 8-12
2 1b-3a	standardization of ephah and bath as equal units (Ezek 45:11)	standardization of ephah and bath as equal units (Ezek 45:11)	1 13-14
2 3b-13	lamb offering priestly blessing of produce mixed field (?) purities of donations to temple: sacrifices (?) metals leather and textiles utensils age of maturity for purification service		
4QD ^f 3 1-3a	redemption of an enslaved Israelite (Lev 25:39-55)	an Israelite enslaved to a גר (Lev 25:39-55; Deut 15?)	4Q159 2 1-3a
		authority of duodecimal court (Deut 17:8-13)	2 3b-6a
3 3b-4a	transvestitism (Deut 22:5)	transvestitism (Deut 22:5)	2 6b-7
3 4b-7a	defrauding in commerce (Lev 25:14)		
3 7b-12a	marital laws (Deut 22:13-21?) father discloses betrothed daughter's status; no marriage to sexually active unmarried woman		
3 12b-16	examination and judgment of accused virgin and her future husband (Deut 22:13-19)	examination and judgment of accused bride and her husband (Deut 22:13-19)	2 8-10a

The trend to refine, explain, reform law is evident in 4Q159. The author's motive in bringing Lev 25 to bear on slavery plausibly was to challenge an existing law or legal idea, or to give a new law. Other passages treated in fr. 2 show a pattern: laws from Deuteronomy are treated in their biblical order. Thus we may infer that Lev 25 has been brought to bear on another law on slavery, i.e., that of Deut 15. Why? Deut 15 allows Israelites to enslave other Israelites, but Leviticus forbids it. Leviticus, however, allows גרים to own Israelite slaves temporarily: they retain the right of redemption (גאולה) at any

time prior to the jubilee year; at the jubilee year they must be emancipated. Perhaps Lev 25 has been brought to bear on Deut 15 in order to prohibit any form of Israelite slavery to Gentiles.

The restorations that I propose are as follows:

ואם] אחיהם נמכר ל[גר או לעוקר משפח[ת גר ואחד מאחיו יגאלנו ולא ירדנו בפרץ]

And if [their brother is sold to] a resident alien or to the offshoot of the famil[y of a resident alien, then let one from among his brothers redeem him (25:48). And let them not be ruled harshly...]

In l. 1 the first lacuna is restored with the term אחי, which appears in the slave law of Lev 25 many times (vv. 35-36, 39, 46-47). "Their brother" emphasizes what I take to be the central theme of the law: Israelites' responsibility to redeem an Israelite who has been sold (נמכר). The term אחי is appropriate for such a sectarian law since it is used regularly in other texts to designate members of the sect.⁴⁶ The second restoration offers the appropriate commandment, drawn verbatim from Lev 25:48: ואחד מאחיו יגאלנו. For the remainder of the second lacuna my restoration follows consensus.

At this point I must explain ל[וא יעבודו הגויים in 2a. I read it as a command that serves as a justification, and that is based on a sectarian interpretation of Lev 25: an Israelite enslaved to גרים must be redeemed, because God commanded "Let them not be enslaved to Gentiles!" Establishing that גרים are גויים in the case of Israelites enslavement requires two steps: first, the exegete must discover the prohibition against enslavement to גויים; then he must find a principle by which to equate גר and גוי in matters of slavery. On the first point, the exegete recognized ויצו עליהם לבלתי ימכר ממכרת עבד (l. 3a). This verbatim quotation from Lev 25:42 is applied to all cases of Israelite enslavement, but especially to enslavement to Gentiles. As noted above, the Egyptian slavery to which l.

⁴⁶ See CD 6:20; 8:5-6; 20:18; 1QS 6:10.

2c-3a refers, probably drawing on Lev 25:55, was both the conventional *ממכרת עבד* that l. 2a forbids, and slavery to גויים. Most importantly, גויים are not mentioned in the laws on Israelite enslavement in Lev 25. The exegete may have assumed that Leviticus only allows enslavement to גרים because Israelites control the law of the land and have power to compel גרים to treat Israelites well, to allow redemption, and to emancipate on the jubilee year. The law of Leviticus, in other words, is coercive: it places limits on harm against Israelites that Gentiles who live in the land of Israel, i.e., גרים, can inflict. In situations where Israelites do not have coercive legal power, i.e., among Gentiles living outside the land of Israel, the גויים, Israelites must not be enslaved.

If I am reading the exegete's reading of Lev 25 correctly, then the statement in 2a, *ל[וא יעבודו הגויים*, appears to be a hortatory reminder: גרים may live in Israel, but they are still non-Israelites, i.e., גויים. Collapsing the categories of גר and גוי is simple, once one assumes that the terms distinguish Gentile classes solely by geography. The exegete could claim fairly strong support from Lev 25:44-46a, which treats enslaved גר and גוי families as equal: both may be owned in perpetuity as heritable property. This provides a textual basis for a strong legal principle of fundamental Gentile equality, i.e., *If equal as slaves, then equal as slaveholders*. Adding this principle of equality to others described above conditions the interpretation of Lev 25 in this way: all Gentiles are equal; God mightily delivered the Israelites from slavery to Gentiles in Egypt and commanded them never again to be sold as slaves. This means that slavery to any Gentile is forbidden; it must be prevented whenever possible, and corrected when it occurs, through the actions of the community of Israel. While slavery to Gentiles who live abroad is difficult to remedy, the law of גאלה in Lev 25 give practical procedure for Jews in Israel to follow.

On its own, the existence of the law might suggest that redemption of slaves is imperative, although this is certainly not the only way that the statute was interpreted in Jewish communities, both in antiquity and after.⁴⁷

If my analysis is correct, then the slave law of 4Q159 presupposes that all Gentile statuses are equal and to be regarded with hostility. This makes 4Q159 a halakic corollary to the Eschatological Midrash, which classifies five named categories—Ammonite, Moabite, *mamzer*, בן נכר, and גר—as defiling זרים, to be excluded eternally from restored Israel. I think it is important that גר is only Gentile category that these lists share. Usage of the term seems to have been evolving around this time, with some using it to designate proselytes. The Covenanters' usage seems more conservative: in 4Q159 and 4Q174, גרים are permanent Gentile residents of Israel, not converts to Judaism. As I argued in the earlier article, this is consistent with usage of גר in other sectarian texts (

Finally, for comparison with schema above, my restoration and interpretation yield the following relationship between the law's components:

- (Introduction: prev. col.?)* Israelite slavery (Lev 25:35-55 || Deut 15:12-18)
Statute: (1a) When an Israelite is enslaved to a גר, fellow Israelites (אזחיו) must redeem him (Lev 25:47-48).
Justification 1: (1c-2a) God commanded Israelites to prevent גרים from harshly treating other Israelites. (Lev 25:53).
Justification 2: (2b) גויים are גרים, and slavery to גויים is forbidden (Lev 25:44-46).
Proof 1: (2c-3a) God delivered Israel from slavery (to גויים) in Egypt.
Proof 2: (3b) God forbade any Israelite to be sold as a slave (Lev 25:42)

⁴⁷ See Hetzner, xxx.

Francis Weinert's proposed restoration of l. 1

ואם] ימוך ונמכר ל[גר או לעוקר משפח]ת גר כשכיר בשנה יהיה ולא ירדנו בפרף]

And if [he becomes impoverished and is sold to] a *ger* or to the offshoot of the famil[y] of a גר, (Lev 25:47), then he shall be like a worker hired by the year. And let them not rule him harshly...] (Lev 25:53)

Schiffman's interpretation:

Claim: Israelites cannot be enslaved to non-Jews.

Justification 1 (assumed): Torah approves particular social practices only for groups that it names as subject to laws on those practices.

Justification 2: Lev 25 regulates debt slavery of Israelites to Israelites and to proselytes, but does not mention non-Jews (1a-b).

Result: Israelites cannot be enslaved to non-Jews (2b).

Justification 3: God delivered Israel from slavery in Egypt (2c-3a).

Justification 4: Torah commands Israelites not to be sold in a normal slave sale (3b).

My proposal restoration of l. 1, based on the theme of גאלה

ואם] אחיהם נמכר ל[גר או לעוקר משפח]ת גר ואחד מאחיו יגאלנו ולא ירדנו בפרף]

And if [their brother (Lev 25:35-36, 39, 46-47) is sold] a resident alien or to the offshoot of the famil[y] of a resident alien, then let one from among his brothers redeem him (25:48). And let them not be ruled harshly...]

General topic: (Prev. col.?) Israelite slavery (Lev 25:35-55 || Deut 15:12-18; Exod 21:2-21)

Case: (1a) If an Israelite is enslaved to a גר (Lev 25:47)

Statute: (1b) then other Israelites ("his brothers") must redeem him (Lev 25:48)

Justification 1: (1c-2a) because Israelites must not be treated harshly, especially in Israel (Lev 25:53)

Justification 2: (2b) because Slavery to גויים is forbidden, and גויים are גויים (Lev 25:44-46)

Justification 3: (2c-3a) because God delivered Israel from slavery (to גויים) in Egypt

Justification 4: (3b) because God commanded the no Israelite be sold as a slave (Lev 25:42)