

A Reconsideration of the Testimony of Two or Three Witnesses in the Damascus Document 9:16-10:3

Keun-Jo Ahn*

1. Introduction

The Damascus Document (CD) 9:16-10:3, contrary to the current discussions of some scholars, does not extend beyond the scope of the biblical law (Torah) in its regulation on the number of witnesses required in a capital case while the CD does reflect “sectually explicit”¹⁾ law due to circumstances of the Qumran sect. Through this paper I will raise one major and two minor problems: (1) the CD 9:16-10:3, a judicial law of the sect remains within the territory of the Hebrew Bible; (2) Yet, it reveals some characteristics of sectarian law caused by particular situations; (3) Any approach to relate some of the New Testament passages to this witnesses code of the Qumran sect would fail without cautious investigations on the rationale and circumstances of the regulations.

This paper consists of three parts: 1. discussion of the key scholars on the passage under question; 2. reconsideration of the passage with textual critical notes; 3. result and significance. The first part explores general outline of the CD and the translations and arguments of scholars on the CD 9:16-10:3. They will be mainly Jacob Neusner, Bernard S. Jackson and Lawrence H. Schiffman. The second part unfolds my own translation and understanding of the passage with critical comments on the discussions of the three aforementioned scholars. Finally, the result of the reconsideration explains the status of the CD 9:16-10:3 in relationship with the Hebrew Bible. We will reach to the conclusion that the

* A Professor at Hoseo University, Old Testament.

1) I have borrowed this term from the article of Carol A. Newsom, “‘Sectually Explicit’ Literature from Qumran”, William Henry Propp, Baruch Halpern and David Noel Freedman, eds., *The Hebrew Bible and Its Interpretation* (Winona Lake, Indiana: Eisenbrauns, 1990), 167-187.

CD text lies in the tradition of the Torah, which signifies that both the CD and biblical laws maintain the same position in the regulation of witnesses in a capital case.

2. An Original Development in *Halakhic* Exposition?

2.1. Structure of the Damascus Document

The CD is divided into two sections: Admonition (cols. 1-8 & 19-20 of the Cairo manuscripts) and Laws (cols. 15-16²⁾ & 9-14). In the Admonition, the author addresses his “sons” (2:14) on the themes of the sect’s teaching, many of which appear also in the Community Rule. His aim is to encourage the sectarians to remain faithful. He demonstrates how loyalty is rewarded and the apostasy chastised in the history of Israel.³⁾ The laws in the CD cover, among other topics, the purity of priests and sacrifices, diseases, marriage, agriculture, tithes, relations with non-Jews, entry into the covenant community and oaths involved, life within the community, sabbath, and communal organization.⁴⁾

Even though the CD appears to be composed of two different genres, it is basically a legal text. It was Dupont-Sommer who pointed out a close link between the two sections, the Admonition and the Law. Contrary to Rabin who discusses “two entirely different writings which the scribe of Manuscript A happened to copy out in the same book”, Dupont-Sommer argues that the first part is a sort of introduction to the second. “In reality, the whole purpose of the Exhortation is to advise the members of the sect to obey its ordinances.”⁵⁾ Baumgarten confirms the fact that the Admonition plays a role as essentially an

2) “It becomes obvious, as Milik has indicated, that cols. 15-16 belong before col. 9”: Joseph M. Baumgarten and Daniel R. Schwartz, “Damascus Document (CD): Introduction”, James H. Charlesworth, ed., *The Dead Sea Scrolls: Hebrew Aramaic, and Greek Texts with English Translation Vol.2: Damascus Document, War Scroll, and Related Documents* (Louisville: Westminster John Knox, 1994), 4.

3) Geza Vermes, *The Complete Dead Sea Scroll in English* (New York: Penguin Books, 1998), 126.

4) James C. Vanderkam, *The Dead Sea Scrolls Today* (Grand Rapids: William B. Eerdmans Publishing Company, 1998), 126.

5) A. Dupont-Sommer, *The Essene Writings from Qumran*. tr. by Geza Vermes (Oxford: Basil Blackwell, 1961), 117.

introduction to a corpus of Torah interpretation and sectarian rulings.⁶⁾ Vermes also categorizes the CD along with the Community Rule (1QS), the Temple Scroll (11QT), and 4QMMT under the list of “the Rules” in his book.⁷⁾

Before we begin to dig into our particular code of the testimony laws, general features of the CD are in order. First, the statutes in the CD are intended for the group members who live in the towns and villages while the Community Rule is for the people who have exiled themselves to remote Qumran. The author’s mention of “camps” (7:6), “take wives and beget sons” (7:7), “the camp” (10:23), “the assembly of the towns of Israel” (12:19), and “the assembly of the camps” (12:23) indicate a normal communal lifestyle.⁸⁾ Second, by contrast to the Temple Scroll that is a supplement to Torah, the laws in the CD are not directly revealed statutes. The use of exegesis, though sporadic, sets the laws of the CD apart from the divine revelation.⁹⁾ Instead, these laws are based on the interpretation of the scriptural words. Third, the law in the CD is primarily of composite in nature. It is a compilation, a digest, a collection of decisions which may date from different periods.¹⁰⁾ Accordingly, the legal codes expose accumulations representing the whole spectrum of Qumran exegesis and legislation.¹¹⁾ Yet, more recent scholars claim that the CD is a more coherent composition, even if it has been assembled from smaller units.¹²⁾

2.2. Ambiguities of the CD 9:16-10:3

The CD 9:16-10:3 is a law concerning the number of witnesses in executing a capital case and a property case. This passage is an exposition of the Torah,

6) Joseph M. Baumgarten, “The Laws of the *Damascus Document* in Current Research”, Magen Broshi, ed., *The Damascus Document Reconsidered* (Jerusalem: The Israel Exploration Society, 1992), 55.

7) Geza Vermes, *The Complete Dead Sea Scroll*, 125-156.

8) James C. Vanderkam & Peter Flint, *The Meaning of the Dead Sea Scrolls: Their Significance for Understanding the Bible, Judaism, Jesus, and Christianity* (New York: HarperSanFrancisco, 2002), 216.

9) Joseph M. Baumgarten, “The Laws of the *Damascus Document*”, 55-56.

10) A. Dupont-Sommer, *The Essene Writings*, 142.

11) Joseph M. Baumgarten and Daniel R. Schwartz, “Damascus Document (CD): Introduction”, 6.

12) P. R. Davies, *The Damascus Covenant: An Interpretation of the Damascus Document* (Sheffield: JSOT Press, 1982), 50; John J. Collins, *Beyond the Qumran Community: The Sectarian Movement of the Dead Sea Scrolls* (Grand Rapids: William B. Eerdmans Publishing Company, 2010), 13.

especially, Deuteronomy 17:6 and 19:15. Both biblical passages clarify that two or three witnesses are required to sustain a charge and that one witness is not enough to convict any crime. However, the regulation in the CD 9:16-10:3 is not unequivocal in several points.

First of all, two different renderings are possible in the decision of the number of witnesses demanded to complete a capital case. Some translators read two witnesses but others, three. Second, another problem in translating the text is a confusion between אַחַד and אַחֵר . Qimron discusses that those appearances in lines 19-21 are unclear.¹³⁾ Specifically, line 21 would make a significant change of the meaning by taking one of the two options.¹⁴⁾ Third, the CD law accepts the validity of a single witness, which the biblical law rejects (Deut. 17:6; 19:15). Does this mean that the sect has departed from the traditional teaching of the Torah? It could not be the case because the Damascus Document is full of biblical languages and also because part of its purpose is to present the sect as the true heir of the biblical Israel.¹⁵⁾ Then, how should the contradiction be resolved? Finally, there are two different judicial functionaries in our text: מבקר and שופטים . The מבקר is depicted as a main judiciary in lines 9:16-22.¹⁶⁾ However, שופטים suddenly takes the place of מבקר in the very next line (9:23-10:1). The relationship between the two is not clearly delineated in the text.

The vagueness of the text has attracted many scholars into a close investigation of the text. Among them, Jacob Neusner, Bernard S. Jackson, and Lawrence H. Schiffman have made considerable contributions. I will explore how the three experts understand the text and respond to the four problems raised above.

2.3. Extension of the Biblical Law

Neusner has looked into alternative translations of many other scholars and

13) Elisha Qimron, "The Text of CDC", *The Damascus Document Reconsidered*, 26-27.

14) In lines 19 and 20, אַחַד rather than אַחֵר is agreed preferable by most translators (Levine, Rabin, Vermes, Charlesworth, Garcia-Martinez, Yadin, Jackson, Schiffman and so forth; cf. Charles). Yet, for line 21, scholars show disagreement.

15) Philip R. Davies, George J. Brooke and Phillip R. Callaway, *The Complete World of the Dead Sea Scrolls* (London: Thames & Hudson Ltd., 2002), 18.

16) In particular, lines 16-20 show that the capital case appears to be complete (שלם משפטו) under the control of מבקר .

ended up with “three” witnesses in the completion of a case.¹⁷⁾ He summarizes his examination as follows: “Levine and Charles require *three* such testimonies; so too Levi demands ‘une troisieme fois’; and Vermes, following Ginzberg, suffices with two successive incidents.”¹⁸⁾ It shows us that the number of witness causes disagreement among translators.

However, what Neusner emphasizes in his research is not to determine the number of the witnesses but to observe the peculiar way in which the CD deals with a single witness. He has pinpointed the problem the biblical law also has in relation to the testimony of two witnesses. The case of a crime committed before only one witness cannot be prosecuted since the law sets it aside as an anomaly.¹⁹⁾ It is the anomaly that the CD 9:16-22 is concerned with. What is remarkable is that the rules of evidence in the CD supply a better solution when the Pharisaic-rabbinic law is proven as being unable to solve the case of the single witness. The CD suggests a combination of single witnesses.²⁰⁾

Neusner criticizes Ginzberg who has insisted that there are parallel laws of the single witnesses between rabbinic traditions and the CD. According to the CD, it is possible to combine the testimony of witnesses to two separate, but similar, crimes into a single action.²¹⁾ However, Ginzberg’s “parallels” fail to demonstrate any of those combination of separate successive commissions. Neusner asserts that the law of testimony in the CD does not exhibit “substantial agreement” with that of the rabbinic traditions. Furthermore, Neusner claims that the CD works on the basis of quite contrary principles.²²⁾ This argument is supported by Schiffman who argues, “...in regard to the law of testimony, the framers of the legislation recorded in the *Zadokite Fragments* reached substantially different conclusions from those of tannaim.”²³⁾

17) Jacob Neusner, “‘By the Testimony of Two Witnesses’ in the Damascus Document IX,17-22 and in Pharisaic-Rabbinic Law”, *Revue de Qumran* 30 (1973), 199, 216.

18) *Ibid.*, 202.

19) *Ibid.*, 197.

20) This concept of combining separate offences in CD is first introduced by Baruch A. Levine, “Damascus Document IX,17-22: A New Translation and Comments”, *Revue de Qumran* 30 (1973), 195-196.

21) Jacob Neusner, “By the Testimony”, 204.

22) *Ibid.*, 204.

23) Lawrence H. Schiffman, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony, and the Penal Code* (Chico, California: Scholars Press, 1983), 81. Also, refer his another book, *Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the*

Since the main interest is in the comparison of the CD with rabbinic traditions concerning the witness law, Neusner does not present a detailed study on the text itself, even without his own translation. However, we can infer that Neusner would choose אָחַר in line 21 (between אָחַר and אָחַר). So the translation goes: *if there are two each testifying to a different matter* for he would read the sentence that begins from line 20 as a continuing provision on the combination of single “separate” witnesses for the capital crime. On the other hand, in the case of selecting אָחַר, it reads: *if there are two who testify about one matter*, it would not be the anomaly (“a crime before only one witness”), which was the starting point of Neusner’s discussion, but would be a usual scriptural case of two witnesses.

Yet, there remain two problems unanswered in Neusner’s investigation. Why did the author of the CD accept the single witness as valid in the sect’s judicial procedure while the sages in the rabbinic tradition pronounce to be illegitimate? What about the function of מְבַקֵּר in relation to שׁוֹפְטִים? These are two questions with which Jackson and Schiffman struggle in the following.

Jackson has carried out a careful inquiry on the text, CD 9:16-23,²⁴ in which he divides it into four parts:

- A A special evidentiary procedure whereby a capital case may be rendered “complete” (lines 16-20)
- B A non-capital sanction to be imposed in a capital case on the evidences of two witnesses (lines 20-22)
- C A statement of the sufficiency of two witnesses in a case concerning property (lines 22-23)
- D The same non-capital sanction as in B to be imposed in a case concerning property on the evidence of one witness (line 23)

Among these parts, A and B (lines 16-22) deal with capital offences, while C and D (lines 22-23) concern property matters.

Lost Library of Qumran (Philadelphia and Jerusalem: The Jewish Publication Society, 1994), 284. Related volume, Joseph M. Baumgarten, *Studies in Qumran Law* (Leiden: E. J. Brill, 1977), 9. However, a counter argument of N. L. Rabinovitch, “Damascus Document IX,17-22 and Rabbinic Parallels”, *Revue de Qumran* 33 (1977), 113-116; Neusner’s response is in “Damascus Document IX,17-22 and Irrelevant Parallels”, *Revue de Qumran* 35 (1978), 441-444.

24) Bernard S. Jackson, “*Testes Singulares* in Early Jewish Law and the New Testament”, *Essays in Jewish and Comparative Legal History* (Leiden: E. J. Brill, 1975), 172-201.

Jackson rightly defines that the principal problem affecting the legal significance of the passage is the question whether two or three separate offences are required before the case may be regarded as complete.²⁵⁾ According to Jackson, the main linguistic issue is whether ושב והודיע למבקר (*and he also reports it to the Inspector*) in line 19 is to be construed as part of the clause commencing עד עשותו (until he does it) in the previous line. If the phrase is a part of the sentence, the requisite number would be two. Otherwise, it would be three. Jackson's decision is three because the construction of the phrase as part of the עד clause involves a major difficulty of illogicality or tautology.²⁶⁾

Also, Jackson considers the problem of the obscurity in line 21. Even though he admits the intelligibility of each reading (אָהָד and אָהָר), he judges that אָהָד does not appear to be what the scribe intended.²⁷⁾ He disputes the view of Schiffman who prefers אָהָד and concludes the section B (lines 20-22) as referring to “two simultaneous witnesses”. Instead, Jackson argues that B continues the theme A (three *testes singulares*²⁸⁾ required for capital case) with a further diminution of the weight of the evidence. Thus, it does not talk about two “simultaneous” witnesses but two *testes sigulare*.²⁹⁾ The relationship of A with B is, in Jackson's view, straightforward: if there are three *testes singulares* in a capital case, his judgment is complete; but if there are only two, the sanction is less-separation from the purity (הטהרה).

Jackson's translation of the sentence in question is as follows: *But if they (the witnesses) are two, and they (each) testify to a different case, the man shall only be separated from the purity...*

Now, a problem arises from this reading: what does דבר אהר (a different case) mean? Jackson explains it as “a different type of case”. He intends to stress that where the evidence consists of single witnesses offences (*testes singulares*), those separate offences must form part of a single class of action.³⁰⁾ It signifies that each witness testifies to a **separate offence**. Like Neusner, Jackson calls his

25) Bernard S. Jackson, “*Testes Singulares*”, 173.

26) *Ibid.*, 173.

27) *Ibid.*, 177.

28) Jackson uses this term for single witnesses to a separate (but similar) offence.

29) Bernard S. Jackson, “Damascus Document IX,16-23 and Parallels”, *Revue de Qumran* 35 (1978), 446.

30) Bernard S. Jackson, “*Testes Singulares*”, 177.

attention to the combination of single witnesses.

He also affirms the sufficiency of single witness as an incredible contemplation of the CD draftsman³¹⁾ as Neusner has alluded. Jackson observes that such a minimum evidence that requires only one was not unknown elsewhere.³²⁾ However, Jackson does not discuss about the circumstances of the CD law that renders the provision of single witnesses. Yet, he does make helpful comments on the function of מבקר.

In this regard, Jackson's discussion was affected by Rabinovitch who had mentioned about the capital jurisdiction of the mysterious רשות (*authority*).³³⁾ Rabinovitch argues, "there was an 'authority' other than regular court which was empowered to punish habitual murderers even if their crimes were witnessed by only one witness."³⁴⁾ He attempts to find a correspondence between the מבקר in the CD and the רשות. Jackson, however, contends that there is no indication that the CD elevates the מבקר into an authority with greater power than the regular court of the community.³⁵⁾ He concludes that the מבקר plays no role greater than that of clerk who takes the depositions of witnesses as the evidence becomes available. It is שופטים who exercises capital jurisdiction (10:1). The separate sections of the rule of שופטים and that of מבקר in 10:4-10 and 13:7-14:2 respectively, explain their different functions. Accordingly, for Jackson, מבקר appears as a prosecutor who collects evidences to convict a culprit while שופטים performs the role of judge who executes a final sentence.

Schiffman raises two significant questions in reading three witnesses for the conviction of capital crimes: (1) Why is it that the Qumran sect required three witnesses in capital cases where the Pharisaic-rabbinic law accepts two?; (2) Why does the sect allow the combination of testimony to separate occurrences of the same offense as a basis for conviction?³⁶⁾

The two questions indicate that Schiffman digs into a point that has been missed by Neusner and Jackson: how does the Qumran sect concede the validity of one witness which is not indicated in biblical law?

31) Ibid., 177.

32) Bernard S. Jackson, "Damascus Document IX,16-23", 446.

33) N. L. Rabinovitch, "Damascus Document IX,17-22", 115-116.

34) Ibid., 116.

35) Bernard S. Jackson, "Damascus Document IX,16-23", 449.

36) Lawrence H. Schiffman, "The Qumran Law of Testimony", *Revue de Qumran* 32 (1975), 605.

Schiffman reconstructs the exegetical process of the CD which attaches a distinct meaning to each number mentioned in the Hebrew Bible. Regarding the law of sabbath limits, for example, the CD 10:21 states, “Let him not walk about outside of his city more than a thousand cubits.” In contrast, the CD 11:5-6 reads, “Let no man walk after an animal to pasture it outside of his city except two thousand cubits.” Schiffman argues that although these laws look contradictory, they are the result of sectarian *midrash halakhah*.³⁷⁾ The sect cited the description of the boundaries of the Levitical cities in Numbers 35:2-5 and used this definition of the city limits. Since the scripture states both numbers, a thousand and two thousand cubits, the sect seems to have concluded that there were two sabbath limits, that of one thousand cubits beyond which a man could not walk, and the other, of two thousand cubits, beyond which he could not go if pasturing his animals.³⁸⁾

Schiffman argues that the sect maintained both provisions in groups of numbers - each had to have its own significance. In relation to the law of testimony, the same principle was employed. If the Torah enjoined conviction by two or three witnesses, one could safely assume that the intention was for capital crimes to require three witnesses and for monetary matters to require only two.³⁹⁾ Thus, the sect’s requirement of three witnesses in capital cases where Rabbinic law accepted two may be traced to a different exegetical approach to the pertinent biblical material.⁴⁰⁾

The result of his reading of our text is clear: from the commands of Deuteronomy 17:6-7 and 19:15 regarding “two or three witnesses”, the CD law of testimony requires two witnesses for financial matters but three for capital cases.⁴¹⁾ This explains why Schiffman prefers רָאָה to רָאָה in line 21 as we have already noticed above in Jackson’s debate. Schiffman’s translation of the sentence reads: *If, however, there are [only] two witnesses who testify concerning one [and the same] matter, the person may only be removed from the*

37) Lawrence H. Schiffman, “The Qumran Law”, 606; Lawrence H. Schiffman, “Sectarian Law”, 74.

38) Lawrence H. Schiffman, “The Qumran Law”, 607.

39) *Ibid.*, 607.

40) Lawrence H. Schiffman, “Sectarian Law”, 75.

41) Lawrence H. Schiffman, “The Relationship of the Zadokite Fragments to the Temple Scroll”, Joseph Baumgarten, Esther G. Chazon, and Avital Pinnick, eds., *The Damascus Document: A Centennial of Discovery* (Leiden: Brill, 2000), 140.

Purity.⁴²⁾ He emphasizes that two simultaneous witnesses to one crime are not sufficient for capital conviction.

Schiffman does not directly investigate the relationship between מבקר and שופטים. However, his study of the law of reproof in the CD 9:2-8 displays significant answers to the question. He claims that the sect required a formal procedure of reproof for a violation before the offence could serve as the basis of trial and conviction. This process necessitated that witnesses to any offence censure the culprit formally in the presence of witnesses.⁴³⁾ It was the מבקר who officially recorded this reproof and supplied the basis for conviction if other single witnesses should later report the same offence. According to Schiffman, מבקר is an administrative official of the sect in the tribunal process who makes it possible to bring the violator to the court.⁴⁴⁾ Like Jackson, Schiffman also understands the מבקר as a clerk or a prosecutor at most, but not שופטים who have a prime jurisdiction.

The three scholars we have explored agree to the rendering of three witnesses in capital cases. Also, Jackson and Schiffman reveal a common opinion in their understanding of the relationship between מבקר and שופטים while they translate lines 20-21 discordantly due to their different judgment in reading either אָמַד or אָמַר. Most of all, they identically highlight the combination of single witnesses in the CD as original extension beyond the biblical law. However, they have disregarded the problem of the contradictory aspect of this *halakhic* exposition to the Torah. Schiffman tries to explain why the sect introduced the combination of single witnesses. Yet he does not pay his attention to the incongruity.⁴⁵⁾

3. Endorsement of the Evidence of Only One Witness in Biblical Law

3.1. An Alternative Understanding of the CD 9:16-10:3

42) Lawrence H. Schiffman, "The Qumran Law", 603.

43) Lawrence H. Schiffman, "Sectarian Law", 78.

44) *Ibid.*, 95.

45) In his "Sectarian Law", 77-78, Schiffman does point out the contradictory regulation of the fatal case of the CD to the *Temple Scroll* but no concern about the difference from the scripture is made.

16 כל דבר אשר ימעל
17 איש בתורה וראה רעהו והוא אחד אם דבר מות הוא וידיעהו
18 לעיניו בהוכיח למבקר והמבקר יכתבהו בידו עד עשותו
19 עוד לפני אחד ושב והודיע למבקר אם ישוב וניתפּש לפני
20 אחד שלם משפטו ואם שנים הם והם מעידים על
21 דבר אחר והובדל האיש מן הטהרה לבד אם נאמנים
22 הם וביום ראות האיש יודיעה למבקר ועל ההון יקבלו שני
23 עידי נאמנים ועל אחד להבדיל הטהרה ואל יקובל
10:1 עוד לשופטים להמית על פיהו אשר לא מלאו ימיו לעבור
2 על הפקודים ירא את אל אל יאמן איש על רעהו
3 לעד עובר דבר מן המצוה ביד רמה עד זכו לשוב

- 16 Anything that a man acts faithlessly
17 against the Torah and his fellow sees it, (if) he is alone, and if
it is a matter of death he shall report it
18 to *mevaqqr* reproving in his (the offender's) presence. And the
mevaqqr records it by his own hand until he does it
19 again before one and he shall report it again to the *mevaqqr*. If
he is caught again before
20 one, his judgment is complete. If they are two but they testify about
21 different things, the man shall be excluded only from the Purity,
providing they are trustworthy
22 and on the day that each saw the man each report to the *mevaqqr*.
And concerning property they shall receive two
23 trustworthy witnesses; upon one witness, to exclude for the Purity.
No witness shall be accepted
10:1 by judges to sentence death upon his testimony unless he has fulfilled
his days to pass
2 among those who are appointed and is fearful of God. No man shall
be trustworthy against his fellow
3 as a witness who transgresses any word of the commandment deliberately
until he becomes pure to return.

Our text is largely divided into three: (1) regulation of testimony in capital case (9:16-22); (2) regulation of testimony in property case (9:22-23); (3) regulation of trustworthy witness (9:23-10:3). Again, the first part consists of two sections: 1. capital case with one witness (9:16-20), and 2. capital case with two conflicting witnesses (9:20-22).

In the first part (9:16-22), the key words to understand the structure of the text are **והוא אחד** and **ואם שנים הם**. The author undertakes the testimony provision of a capital crime with two options: one is the case of **one witness** and the other one is **two witnesses**. Both cases are insufficient for conviction of a capital crime. Yet, three consecutive single witnesses would complete the case, while two different testimonies⁴⁶⁾ should drive the offender out of the Purity.⁴⁷⁾ The second part elucidates that two witnesses suffice whether simultaneous or sequential in monetary case.⁴⁸⁾ Only one witness in this property case directly signifies the separation. The third portion is straightforward concerning the requirements of trustworthy witness upon which judges would pass the sentence of death.

3.2. A Treatment for Ambiguities

We have noticed the vagueness of our text. Four issues were elaborated: 1. In a capital case, what is the number of witnesses, two or three?; 2. For the translation of the first part of the CD 9:21, should it be **אחד** or **אחד**?; 3. Why did the sect accept one witness that is contradictory to the scriptural law?; 4. What is the relationship between **מבקר** and **שופטים**?

As I have presented in my translation above, the text claims three single witnesses in capital case. On this point, I agree with all three scholars above. In addition, I accept Jackson's reading of **אחד** instead of **אחד** but on a different basis. Yet, I am not convinced with the understanding of the relationship between **מבקר** and **שופטים** discussed by Jackson and Schiffman. Most of all, I strongly disagree with their unanimous contention on the combination of single witnesses as an original extension of the sect beyond the biblical law. I would argue that the witness regulation in the CD still stays within the bounds of the biblical law. If my argument proves cogent, the problem of the discrepant state of the *halakhic* exposition in contrast to the Torah will be disposed.

46) "Different testimonies" (**דבר אחד**) could mean either two sequential isolated witnesses (the offender commits two crimes) or two discordant testimonies of simultaneous witness (the offender makes one violation). At this point we cannot determine which one is the case.

47) Both Schiffman and Garcia Martinez appropriately explains the message of exclusion from the Purity (**הטהרה**; pure food) in the sect as demotion to the status of a first year novice: Schiffman, "Sectarian Law", 165; Florentino Garcia Martinez & Julio Trebolle Barrera, *The People of the Dead Sea Scrolls*, Wilfred G. E. Watson, tran. (Leiden: E. J. Brill, 1993), 224, 231.

48) James H. Charlesworth, *The Dead Sea Scrolls*, 45.

First of all, I prefer the reading of אָחַר to אָחֵד with a perspective different from that of Jackson. He disputes the view of Schiffman who selects אָחֵד and reads the case of two witnesses as “two simultaneous witnesses.” Jackson suggests that lines 9:20-22 indicates a further diminution of the weight of the evidence with his reading of אָחַר.⁴⁹⁾ To determine a capital violation three *testes singulares* are required but there are only two. That is why non-capital sanction, the separation, is introduced. For me, however, lines 9:20-22 simply depicts the situation of two witnesses with different testimonies by contrast to the condition of only one witness. The lines are not necessarily related to the two sequential separate witnesses. So preoccupied with the concept of *testes singulares*, Jackson overlooks the basic meaning of the text.

Second, Jackson and Schiffman render מִבְּקֵר as a judicial clerk or an administrative official ranked lower than שׁוֹפְטִים concerning the relationship between מִבְּקֵר and שׁוֹפְטִים. This interpretation seems to be true from a casual reading of the text. Yet, two problems prevent us from accepting this initial reading. Firstly, if we examine the process of a capital case in lines 9:16-20, we might be puzzled by its sudden conclusion: “...his judgment is complete (שלם משפט)”. In what way is the case complete? The text clarifies that the tribunal procedure of the capital case is performed only by the authority of מִבְּקֵר. We have to note that, the same text, a few lines below introduces שׁוֹפְטִים as an executioner of the death sentence (line 10:1). Then, why the execution of שׁוֹפְטִים does not follow immediately after the שלם משפט? It indicates the independent authority of מִבְּקֵר in the legal course. The regulation of one witness in capital case would stop unfulfilled at an unexpected point for Jackson and Schiffman who maintain the final administrative judgment of שׁוֹפְטִים. If מִבְּקֵר was no more than a judicial clerk, the provision of line 9:20 should have proceeded to the completion of the case by שׁוֹפְטִים.

Next point is concerned with the job description of the מִבְּקֵר in 13:7-14:2 of the CD. It reveals that his position is more than just a judicial secretary in the sect.⁵⁰⁾ Specifically, 13:9 regulates his duty as a father and shepherd for the

49) Bernard S. Jackson, “Damascus Document IX,16-23”, 446.

50) Regarding the leadership position of מִבְּקֵר, different depictions of the CD from the text of IQS are discussed by Moshe Weinfeld, *The Organizational Pattern and the Penal Code of the Qumran Sect* (Göttingen: Vandenhoeck & Ruprecht, 1986), 19-21. Weinfeld judges that the CD pictures מִבְּקֵר as a spiritual leader.

community: *He shall love them as a father loves his children, and shall carry them in all their distress like a shepherd his sheep* (Vermes' version). Also, in lines 13:12-13, his authority in the decision of membership prevails over anyone of the camp: *No member of the camp shall have authority to admit a man to the Congregation against the decision of the מבקר of the camp* (Vermes). Of course, Schiffman has already mentioned about the role of the מבקר as a spiritual leader of the sectarian settlement as well as a legal administrative official.⁵¹⁾ Yet, he does not see any parallel function of the מבקר as שופטים in the judicial procedure.

My argument is that if the מבקר played a key role in the camp ranging from its organizational concerns to spiritual matters, why didn't he take the judicial authority as well? With regard to the relationship with שופטים, we find that the מבקר functions exactly the same as the שופטים in collecting relief supplies of the camp in the CD 14:12-13: *They shall place the earnings of at least two days out of every month into the hands of the מבקר and the שופטים*. . . Here, at least, the מבקר is not inferior to the שופטים in practicing his authority.

Now, I have reached the point that is critical in my criticism to the discussion of the previous scholars. I have maintained that the testimony law of the CD 9:16-10:3 is not a novel development of the sect. Instead, it keeps the tradition of the Torah.

The scholars' misunderstanding of the text originates from their lack of discretion in grasping the various stages of the scriptural law expressed in Deut. 17:2-8. At least, four steps are taken toward the completion of a capital case:

- I. Initial Exposure: “. . .and if it is reported to you or you hear of it” (NRSV) 17:4a
- II. Collection of Evidence: “you make a thorough inquiry” 17:4b
- III. Conviction: “and the charge is proved true that such an abhorrent thing has occurred in Israel” 17:4c
- IV. Execution: “then you shall bring out to your gates that man or that woman who has committed this crime and you shall stone the man or the woman to death. **On the evidence of two or three witnesses the death sentence shall be executed; a person must not be put to death on the evidence of only one witness**” 17:5-6

51) Lawrence H. Schiffman, “Sectarian Law”, 95.

As we see, the law of “two or three witnesses” is applied at the final stage of the procedure, “Execution”. As a matter of fact, each of the four stages could not be carried out without the testimony of witnesses.⁵²⁾ The concern of the law maker here is to secure the minimum number of witnesses, two, at the level of execution. It means that only one witness can be accepted as valid in earlier stages. Without consideration of the stages in legal process, Neusner unduly judged that the law isolates the case of a crime committed before only one witness as an anomaly.

What stage of the process does our text, especially the CD 9:16-20 belong to? It is definitely not the stage of execution. It is the beginning of the legal process, the stages of “Initial Exposure” and “Collection of Evidence”. If this is true, the consideration of the single witnesses and their combination are not idiosyncratic elements of the CD law because the biblical law would allow the legality of a series of single witnesses in those stages of gathering information about the violation.

Those scholars who tried to understand our text fails to discriminate the application of the testimony provided for the conviction of a crime. What the author of the legal code is concerned about is a proper process of collecting evidences: three consecutive single witnesses are enough to make the case public. In other words, the case gets ready (שלם)⁵³⁾ to go for the next stage.

Ignoring the different stages in the judicial procedure of the biblical law lead scholars to also overlook in their discussion about the connection of the CD 9:16-23 to the New Testament. For example, Jackson debates that Paul adapts the unusual procedure of our text to his purpose of emphasizing his third visitation in 2 Cor 13:1-2.⁵⁴⁾ He proposes that the New Testament exegesis appears to have been one of the channels through which the institution of *testes singulares* was transmitted from the CD. However, the author of the CD law does not suggest that he should convict and then punish his offenders since it is

52) Gerhard von Rad, *Deuteronomy* (Philadelphia: Westminster Press, 1966), 117.

53) Here we find a solution to the problem left unsolved previously. That is the unexpected stop of the regulation in the process of capital case (CD 9:20). Now, the reason for sudden finishing is understandable because the completion of “his judgment” (שלם משפט) is not the final phase of the case but beginning of it; meaning only the end of the first two stages of exposure and collection of evidences. The reticence of the following procedure is natural since the next one (the stages of conviction and execution) is well known from the biblical law (Deut 17:4c-6).

54) Bernard S. Jackson, “*Testes Singulares*”, 180, 193-201.

his *third* visit. Paul is simply saying that when he arrives in Corinth, he will (if needed) execute judgment since he has given more than ample warnings of possible future action.⁵⁵⁾

Therefore, all the discussions of the scholars on the combination of single witnesses as an original development in *halakhic* exposition are rejected. The consideration of one witness as valid in the CD law is not contradictory but in the same tradition of the biblical law.⁵⁶⁾

3.3. Sectually Explicit Law

Although I have claimed that the CD law in 9:16-10:3 remains in the boundary of the biblical law, it does reflect sectarian characteristics owing to the particular circumstances of the sect for it tries to explicate all the numbers of two and three witnesses in Deut 17:6-7. As Schiffman has observed, the sect gives attention to each number and its significances.⁵⁷⁾ The Damascus Document itself pronounces the capital punishment to be completed by three witnesses, yet the law takes consideration of two separate testimonies on “different things”. It indicates that the number of three witnesses for capital punishment could be reduced to two witnesses. In sectarian communities, two witnesses are not enough for capital punishment. Yet, the two witnesses as well as three execute the capital sentence in biblical law. In spite of the difference in required number, we witness the sect's endeavor to interpret the biblical stipulation of the “two or three witnesses”.

Baumgarten states that the bulk of the CD laws is not formulated in polemical fashion.⁵⁸⁾ This comment is applicable to the testimony of law in our text. Newsom points out the problem of “sectually explicit” literature from Qumran caves is that it is often not sectually explicit enough.⁵⁹⁾ However, she demands an integrated investigation of the text from the questions of content/rhetoric, of authorship, and of use.

55) Ralph P. Martin, *2 Corinthians* (Waco: Word, 1986), 470.

56) Deut 19:16-21 shows that only one witness causes to bring a public court. Again, the only one witness is not being applied to the stage of execution but that of thorough inquiry toward final conviction. The previous verse 19:15 is applied to the stages of conviction and execution.

57) Lawrence H. Schiffman, “The Qumran Law”, 607

58) Joseph M. Baumgarten, “The Laws of the *Damascus Document*”, 56.

59) Carol A. Newsom, “‘Sectually Explicit’ Literature”, 185.

It would be out of the scope of my paper to expound those questions here. However, the overall “sectually explicit” elements are in order. First, the appearance of specific terminology such as מבקר and הטהרה indicates the sectarian origin of this law. Second, this fact is strengthened by the exclusive regulation of “trustworthy witness”. The witness should be one of the members of the community. Even among the members, the trustworthy witnesses should only be those who are enrolled into the Congregation and qualified for the Purity(הטהרה). Third, the testimony stipulation in the CD 9:16-10:3 as a whole is a piece of communal legislation,⁶⁰⁾ rather than *halakhic* exposition, in which the sectarian life attempts to follow its peculiar way throughout the satellite communities.⁶¹⁾

4. Conclusion

A heated controversy around the number of witness in the CD 9:16-10:3 and its acceptance of only one witness, which is seemingly contradictory to the Torah, have brought me into a scrutiny on the text in debate. Moreover, I have found a more serious issue that the Qumran sect appears to have departed from the tradition of Torah when a prominent scholar like Schiffman concludes that the sect developed its original exegesis and regarded single witness as valid in dealing with capital crimes. This is definitely not the case of the Torah to which the sect is always eager to return (CD 15:12). It impels me to enter into a dialogue with the experts in this regard and to face the text of the CD directly.

The presupposition of the three scholars above (Neusner, Jackson, and Schiffman) that a peculiar way of exegesis of the sect governs the text has directed them into a conclusion: the original development of *halakhic* exposition in the CD 9:16-23. However, I have refuted such conclusion, arguing that the testimony law in the CD still holds the tradition of the biblical law: both the CD and the biblical law maintain the number of witnesses in the execution of a capital case as two or three. Discreet understanding of the various stages of the

60) Charlotte Hempel, *The Law of the Damascus Document: Sources, Tradition and Redaction* (Leiden: Brill, 1998), 99.

61) Lawrence H. Schiffman, *Reclaiming the Dead Sea Scrolls*, 274.

scriptural law expressed in Deu 17:2-8 gives us a clue to understanding the validity of single witness. In the stage of investigating a criminal charge, the evidence of only one witness along with that of two or three witnesses is effective in both biblical and CD law. The rendering of $\eta\eta\aleph$ instead of $\eta\eta\aleph$ in line 21 and consideration of the sectarian circumstances of the CD production have contributed to reinforcing my discussion.

(투고 일자: 2010. 8. 19, 심사 일자: 2010 9. 5, 게재 확정 일자: 2010. 10. 6)

<Keywords>

CD 9:16-10:3, Damascus Document, Testimony of Witnesses, Deuteronomy 17:4-6, Qumran Sect.

<참고문헌>(References)

- Baumgarten, Joseph M., “The Laws of the *Damascus Document* in Current Research”, Magen Broshi, ed., *The Damascus Document Reconsidered*, Jerusalem: The Israel Exploration Society, 1992, 51-62.
- Baumgarten, Joseph M., *Studies in Qumran Law*, Leiden: E. J. Brill, 1977.
- Baumgarten, Joseph M., & Schwartz, Daniel R., “Damascus Document (CD): Introduction”, James H. Charlesworth, ed., *The Dead Sea Scrolls: Hebrew Aramaic, and Greek Texts with English Translation Vol.2: Damascus Document, War Scroll, and Related Documents*, Louisville: Westminster John Knox, 1994, 4-58.
- Collins, John J., *Beyond the Qumran Community: The Sectarian Movement of the Dead Sea Scrolls*, Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2010.
- Davies, Philip. R., *The Damascus Covenant: An Interpretation of the Damascus Document*, Sheffield: JSOT Press, 1982.
- Davies, Philip. R. & Brooke, George J. & Callaway, Phillip R., *The Complete World of the Dead Sea Scrolls*, London: Thames & Hudson Ltd., 2002.
- Dupont-Sommer, A., *The Essene Writings from Qumran*, Geza Vermes, trans., Oxford: Basil Blackwell, 1961.
- Hempel, Charlotte., *The Law of the Damascus Document: Sources, Tradition and Redaction*, Leiden: Brill, 1998.
- Jackson, Bernard S., “Damascus Document IX,16-23 and Parallels”, *Revue de Qumran* 35 (1978), 445-450.
- Jackson, Bernard S., “*Testes Singulares* in Early Jewish Law and the New Testament”, *Essays in Jewish and Comparative Legal History*, Leiden: E. J. Brill, 1975, 172-201.
- Levine, Baruch A., “Damascus Document IX,17-22: A New Translation and Comments”, *Revue de Qumran* 30 (1973), 195-196.
- Martin, Ralph P., *2 Corinthians*, Waco: Word, 1986.
- Martinez, Florentino Garcia & Barrera, Julio Trebelle, *The People of the Dead Sea Scrolls*, Wilfred G. E. Watson, trans., Leiden: E. J. Brill, 1993.
- Neusner, Jacob, “Damascus Document IX,17-22 and Irrelevant Parallels”, *Revue de Qumran* 35 (1978), 441-444.
- Neusner, Jacob, “‘By the Testimony of Two Witnesses’ in the Damascus

- Document IX,17-22 and in Pharisaic-Rabbinic Law”, *Revue de Qumran* 30 (1973), 197-218.
- Newsom, Carol A., “‘Sectually Explicit’ Literature from Qumran”, William Henry Propp, Baruch Halpern and David Noel Freedman, Winona Lake, eds., *The Hebrew Bible and Its Interpretation*, Indiana: Eisenbrauns, 1990, 167-187.
- Qimron, Elisha., “The Text of CDC”, Magen Broshi, ed., *The Damascus Document Reconsidered*, Jerusalem: The Israel Exploration Society, 1992, 9-50.
- Rabinovitch, N. L., “Damascus Document IX,17-22 and Rabbinic Parallels”, *Revue de Qumran* 33 (1977), 113-116.
- Rad, Gerhard von, *Deuteronomy*, Philadelphia: Westminster Press, 1966.
- Schiffman, Lawrence H., “The Relationship of the Zadokite Fragments to the Temple Scroll”, Joseph Baumgarten, Esther G. Chazon, and Avital Pinnick, eds., *The Damascus Document: A Centennial of Discovery*, Leiden: Brill, 2000.
- Schiffman, Lawrence H., *Reclaiming the Dead Sea Scrolls: The History of Judaism, the Background of Christianity, the Lost Library of Qumran*, Philadelphia and Jerusalem: The Jewish Publication Society, 1994.
- Schiffman, Lawrence H., *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony, and the Penal Code*, Chico: Scholars Press, 1983.
- Schiffman, Lawrence H., “The Qumran Law of Testimony”, *Revue de Qumran* 32 (1975), 603-612.
- Shanks, Hershel, *Understanding the Dead Sea Scrolls: A Reader from the Biblical Archaeology Review*, New York: Vintage Books, 1993.
- Stone, Michael E. & Chazon, Esther G., ed., *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls*, Leiden: Brill, 1998.
- Vanderkam, James C., *The Dead Sea Scrolls Today*, Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1998.
- Vanderkam, James C. & Flint, Peter, *The Meaning of the Dead Sea Scrolls: Their Significance for Understanding the Bible, Judaism, Jesus, and Christianity*, New York: HarperSanFrancisco, 2002.
- Vermes, Geza, *The Complete Dead Sea Scroll in English*, New York: Penguin

Books, 1998.

Weinfeld, Moshe, *The Organizational Pattern and the Penal Code of the Qumran Sect*, Göttingen: Vandenhoeck & Ruprecht, 1986.

<abstract>

두세 사람의 증언에 대한 다메섹 문서 9:16-10:3 읽기 재고

안근조 교수
(호서대학교)

소위 다메섹 문서 (Damascus Document)로 알려진 사해사본의 법전 중 두세 증인에 대한 법 조항이 학자들 간에 논란의 대상이 되어 왔다. 이는 다메섹 문서 CD 9:16-10:3에 걸쳐서 소개되어 있는데, 문제는 신명기 17:6 그리고 19:15와 관련하여 사형 선고를 받을 만한 범죄에 있어서 최소한 두세 증인의 증언으로 사형을 집행할 수 있다는 정경적 규정과 달리 다메섹 문서에서는 한 사람의 증언이라도 각기 다른 연속적인 증언이 있다면 통합할 수 있다는 법적 유효성을 허락하고 있는 점이 문제가 된다.

이에 대하여 저명한 사해사본 연구자들은 쿵란 공동체를 결과한 소종파 집단 내에 고유한 법전 해석이 이루어진 것으로 보고 이를 할라카 해석과 관련된 미쉬나적 가르침으로 발전되었을 가능성을 논한다. 그러나 본 논문은 소종파 내의 특별한 해석이라기보다는 본래의 정경적 율법해석과 그 맥을 같이하고 있음을 본문비평과 해당 문서 비교 연구를 통하여 주장한다.

무엇보다도, 본문해석의 쟁점이 되는 CD 9:21의 첫 두 단어가 דבר אחד 인가 아니면 דבר אחד 의 문제에 있어서 전자를 택함으로써 “한 사건”에 대한 두 명의 증언이 아니라 “다른 사건”에 대한 두 명의 각각 다른 증언으로 본문을 읽는다. 이는 여전히 공동체 내의 믿을 만한 한 명의 목격자가 있더라도 범죄에 대한 재판 구성요소가 됨을 인정하는 것이다. 잭슨(B. S. Jackson)이나 슈프만(L. H. Schiffman)과 같은 전문가들 역시 똑같은 읽기를 채택한다. 그러나 그들은 근거로서 정경적 입장을 떠나 한 명의 목격자의 실효성이라는 (*testes singulares*) 새로운 관념을 강조한다. 더 나아가 서로 다른 한명의 목격자들의 축적된 증언들을 통한 사형 집행이라는 새로운 법전 해석으로 다메섹 문서 공동체가 발전하고 있음을 주장하고 있다.

그러나 이는 한 목격자의 실효성이라는 미쉬나적 법해석의 특별한 관념이라기보다는 본래 신명기의 해당 법령 형성 시 드러난 본래적 오경 법전의 전통이라 보는 것이 더 타당하다. 왜냐하면, 신명기 17:4-6은 두세 증인을 근거로 한 사형선고의 법이 집행되는 과정을 그 단계별로 분명히 제시하고 있기 때문이다. 즉, 한 명의 목격자가 있더라도 범법자가 사형에 해당하는 죄를 지었을

경우 범죄 선고를 위한 증거의 수집 단계에서는 당연히 실효성 있는 증언으로 작용하고 있음을 관찰할 수 있기 때문이다. 일반적으로 알려진 대로 사형 집행을 위해 최소한 두세 증인이 있어야 한다는 규정이 한 명의 목격자의 법적 효력을 무시하는 것은 아니다. 도리어 한 명의 목격자의 최초의 증언이 사형집행 재판과정의 실제적인 출발점이 되기 때문이다. 한 목격자의 유효성은 다메섹 문서에서 간접적으로 증명하는 바, 오경 법전의 본래적 구성 요건이다.

다메섹 문서 9:16-10:3의 모호성은 אחר 또는 אחר 확정된 문제뿐만 아니라 מבקר과 שופטים 사이의 관계성, 9:21의 “his judgment is complete (שלם משפטו)” 이해의 문제 등, 본문 해석의 어려운 문제를 야기 시켰다. 그러나 본 논문은 모세 오경의 정경적 전통에 기반한 읽기를 근거로 비교 연구를 실행함으로써 보다 타당한 본문 읽기를 제시하고 있다.