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The Pharisees and the Sadducees: Rethinking Their Respective Outlooks on Jewish Law

I. INTRODUCTION

The body of literature on the Pharisees and the Sadducees is enormous.¹ Serious scholars have been working in the area for over a century.² However, not until the last two decades has an academic effort surfaced which seeks to examine the first century Jewish sects through a more critical and exacting analysis of the various literary sources which scholars have traditionally been unwilling or unable to criticize.³ As Jacob

1. "The literature on the Pharisees would make a complete library." Solomon Zeitlin, *The Pharisees and the Gospels*, in 2:2 ORIGINS OF JUDAISM: THE PHARISEES AND OTHER SECTS 485, 485 (Jacob Neusner & William S. Green eds., 1990) [hereinafter ORIGINS OF JUDAISM]. "Much has been written about the Sadducees and Pharisees, their respective tendencies, teachings and interpretations of the Law." Jacob Z. Lauterbach, *The Sadducees and Pharisees*, in STUDIES IN JEWISH LITERATURE 176, 176 (1913), reprinted in RABBINIC ESSAYS 23, 23 (Lou H. Silberman ed., 1951). The standard work in the area of Pharisaic and Sadducaic studies is Louis Finkelstein's two-volume magnum opus entitled THE PHARISEES: THE SOCIOLOGICAL BACKGROUND OF THEIR FAITH (3d ed. rev. 1962). For some of the other foundational works in the area, see Finkelstein's bibliography, 2 *id.* at 903-45. For a sampling of recent scholarly activity, see STEVE MASON, FLAVIUS JOSEPHUS ON THE PHARISEES 1-3 nn.2-11 (1991).

2. See EMIL SCHÜRER, THE HISTORY OF THE JEWISH PEOPLE IN THE AGE OF JESUS CHRIST (Geza Vermes & Fergus Millar eds., rev. ed. 1973) (1885). The early leader in Pharisaic and Sadducaic comparative studies was Jacob Z. Lauterbach. His foundational scholarship in the area is still the obligatory starting point for any comparison between the Pharisees and the Sadducees. For one of his earliest pieces, see Lauterbach, *supra* note 1, at 23-48. See also Jacob Z. Lauterbach, *A Significant Controversy Between the Sadducees and the Pharisees*, 4 HEBREW UNION C. ANN. 173-205 (1927), reprinted in RABBINIC ESSAYS, *supra* note 1, at 51-83 [hereinafter Lauterbach, *Controversy*]; Jacob Z. Lauterbach, *The Pharisees and Their Teachings*, 6 HEBREW UNION C. ANN. 69-139 (1929), reprinted in RABBINIC ESSAYS, *supra* note 1, at 87-159 [hereinafter Lauterbach, *Pharisees*].

For an early, but laudable discussion of the Pharisees and Sadducees by a noted Mormon scholar, see JAMES E. TALMAGE, JESUS THE CHRIST 65-67 (1981) (1915).

3. This movement has been particularly strong in the area of Pharisaic studies thanks to the efforts of Jacob Neusner. For a sampling of his copious works see his three-volume THE RABBINIC TRADITIONS ABOUT THE PHARISEES BEFORE 70 (1971) [hereinafter NEUSNER, RABBINIC TRADITIONS]; FROM POLITICS TO PIETY: THE EMERGENCE OF PHARISAIC JUDAISM (2d ed. 1979) [hereinafter NEUSNER, POLITICS]; FORM-ANALYSIS AND EXEGESIS: A FRESH APPROACH TO THE INTERPRETATION OF MISHNAH (1980) [hereinafter NEUSNER, INTERPRETATION OF THE MISHNAH]; and a variety of his articles collected in 2 ORIGINS OF JUDAISM, *supra* note 1.

For a good example of this new school of thought outside the area of rabbinic

Neusner, a key leader of this effort, has so cogently stated, "We must honestly attempt to understand not only what was going on in the first century, but also—and most crucially—*how* and *whether* we know anything at all about what was going on."⁴

In the spirit of Neusner's admonition, scholars have begun to rethink many traditional notions about the first century world.⁵ However, few have challenged the entrenched notions concerning the Pharisees' and Sadducees' respective outlooks on the *halakhah*, or Jewish law. Traditionally, scholars have portrayed the Sadducees as strict interpretationalists who accepted nothing as binding except the literal language of the Torah. At the other extreme, the Pharisees have been portrayed as the more progressive sect which accepted the whole corpus of traditional law—the "Oral Torah"—that had developed around the written Torah. This comment presents a tentative, but improved model of the Sadducees' and Pharisees' legal philosophies which rejects the breadth of these traditional notions.

Part II of this comment discusses the sources through which we learn of the Pharisees and Sadducees and presents a brief summary of their respective origins and characteristics. Part III compares and contrasts the legal views of the two groups by specifically analyzing several of their fundamental legal differences. This comment concludes that the complexities of the first century Jewish world simply will not allow for the traditional generalities: the Sadducees were not completely averse to the traditional law nor were the Pharisees always the more lenient, tradition-bound group.

II. UNDERSTANDING THE PHARISEES AND THE SADDUCEES

A. *The Sources: Josephus, the New Testament, and Rabbinic Literature*

As in many historical inquiries, we are limited in our knowledge of the Pharisees and Sadducees by the shortage of objective and detailed sources. Most of what is known about

literature, see MASON, *supra* note 1 (examining Josephus's Pharisaic references).

4. NEUSNER, *POLITICS*, *supra* note 3, at xix.

5. It is beyond the scope of this comment to review all of the various theories and controversies currently raging over the exact nature of the early Jewish movements. However, I will mention several significant divergences in scholarly opinion as they become relevant.

these groups is derived from three sources.⁶ The first is the account of Josephus.⁷ Josephus was born approximately 37-38 C.E. to a priestly family which was well connected with the chief priests in Jerusalem.⁸ Not only was he well educated and privy to the significant political and religious events of the time, but he apparently experimented with the philosophies of both the Pharisees and the Sadducees.⁹ Thus, Josephus was in a unique position to discuss the Pharisees and the Sadducees. While Josephus did not write on these groups in detail,¹⁰ his eyewitness account is a valuable source on early Judaism.¹¹

The second main source is the New Testament. Although the Gospels mention the groups several times, "[t]he gospels do not easily provide information for the historical understanding of the Pharisees . . . and Sadducees."¹² This is in part because the Gospels were written many years after the period they describe¹³ and are thus prone to the misunderstandings or historical inaccuracies which often arise after events take

6. ELLIS RIVKIN, *A HIDDEN REVOLUTION* 31 (1978). An excellent and extensive analysis of these three sources is found in ANTHONY J. SالدARINI, *PHARISEES, SCRIBES AND SADDUCEES IN PALESTINIAN SOCIETY* 77-237 (1988).

7. *THE WORKS OF JOSEPHUS* (William Whiston trans., 1987). Josephus's two major histories are *THE WARS OF THE JEWS* [hereinafter *JOSEPHUS, WARS*] and *THE ANTIQUITIES OF THE JEWS* [hereinafter *JOSEPHUS, ANTIQUITIES*]. The former is a general history of the various Jewish wars from the time of Maccabees to the final war with Rome in 70 C.E. The latter is a monumental attempt to trace the history of the Jews starting with the Biblical account of the creation. William Whiston, *Introduction to THE WORKS OF JOSEPHUS*, *supra* at ix.

8. SالدARINI, *supra* note 6, at 81.

9. JOSEPHUS, *THE LIFE OF FLAVIUS JOSEPHUS*, in *THE WORKS OF JOSEPHUS*, *supra* note 7, at 2:10-12. Josephus states that when he was 19, he "began to conduct [himself] according to the rules of the sect of the Pharisees." *Id.* at 2:12. Some scholars, however, doubt that Josephus really joined the Pharisees. *E.g.*, SالدARINI, *supra* note 6, at 118-19.

10. In fact he mentions the Pharisees fewer than 20 times in his works and mentions the Sadducees only six times. SالدARINI relies on this modicum of references to the two groups to conclude that "[f]rom the viewpoint of the whole culture, and especially that of the ruling classes, the Pharisees were of minor importance." SالدARINI, *supra* note 6, at 79.

11. See generally SالدARINI, *supra* note 6, at 81-83; Jacob Neusner, *Josephus's Pharisees: A Complete Repertoire*, in *FORMATIVE JUDAISM: RELIGIOUS, HISTORICAL AND LITERARY STUDIES, THIRD SERIES: TORAH, PHARISEES, AND RABBIS* 61-82 (1983); Daniel R. Schwartz, *Josephus and Nicolaus on the Pharisees*, 14 *J. FOR THE STUDY OF JUDAISM* 157-71 (1983), reprinted in 2:2 *ORIGINS OF JUDAISM*, *supra* note 1, at 327-341 (1983).

12. SالدARINI, *supra* note 6, at 144.

13. Most authorities date the Gospels to the last third of the first century. See, *e.g.*, *id.*, NEUSNER, *POLITICS*, *supra* note 3, at 67-68.

place.¹⁴ In short, information gleaned from the New Testament should be carefully scrutinized for the various biases which may have been projected back into the record.¹⁵

The third and most extensive body of literature on the first century sects is the Rabbinic literature¹⁶—Mishnah,¹⁷ Talmud,¹⁸ and Midrash.¹⁹ This material is also the most prob-

14. SالدARINI, *supra* note 6, at 144 ("[G]ospel authors have woven Jesus' opponents into a dramatic narrative which is controlled by their purposes in writing the narrative rather than by a desire to faithfully reproduce the events of Jesus' life."); Lauterbach, *Pharisees*, *supra* note 2, at 91-93 (Gospel writers confused religious and historical positions of the two groups).

15. Lauterbach, *Pharisees*, *supra* note 2, at 93 n.8; accord NEUSNER, *POLITICS*, *supra* note 3, at 67-80; see also Lawrence H. Schiffman, *Jewish Sectarianism in Second Temple Times*, in GREAT SCHISMS IN JEWISH HISTORY 1, 6 (Raphael Jospe & Stanley M. Wagner eds., 1981) ("[W]e must exercise great caution [in attempting to learn of the Pharisees from the New Testament], particularly in regard to the description of the Pharisees. The New Testament writers clearly polemicize against the Pharisees and attempt to present them in an unfavorable light.").

16. The Rabbinic literature is also called Tannaitic literature from the name *Tanna* meaning one who remembers or studies. During the period of the Tanna'im (70-220 C.E.), professional "rememberers" were chosen to accurately transmit to succeeding generations the oral traditions they had received from preceding generations. ELLIOT N. DORFF & ARTHUR ROSETT, *A LIVING TREE: THE ROOTS AND GROWTH OF JEWISH LAW* 141 (1988). While widespread, the use of the word Tannaitic to describe the whole corpus of Rabbinic literature is technically incorrect. The Talmud, a principal Rabbinic work, was actually produced by the Amora'im, a group of scholars succeeding the Tanna'im. See *infra* note 18.

17. The Mishnah, a term stemming from the Hebrew root meaning "to repeat" or "to study," is the written compilation of all the detailed laws and observances which had developed out of the Torah. DORFF & ROSETT, *supra* note 16, at 141. It is considered to be second in importance and sanctity only to the Torah. ADIN STEINSALTZ, *THE ESSENTIAL TALMUD* 32 (Chaya Galai trans., 1976).

18. The Talmud is a collection of commentary and discussions on the Mishnah by scholars known as the Amora'im (220-500 C.E.). The Amora'im not only interpreted the Mishnah, but also created many laws not found in the Tannaitic literature. At first these laws were kept only in oral form, but political and economic conditions forced scholars to reduce the discussions to written form thus becoming the Talmud. Interestingly, during this period two separate Talmuds were compiled: One in Babylonia—the Babylonian Talmud, and one in Palestine—the "Western" or "Jerusalem" Talmud. DORFF & ROSETT, *supra* note 16, at 143-44. See generally STEINSALTZ, *supra* note 17, at 40-63.

19. The Midrash is a line-by-line interpretation of the Torah. More specifically, there are two types of Midrash: Midrash Halakhah, which is interpretation of the legal materials (*halakhah*) in the Torah (i.e., rites, procedures, and commandments), and Midrash Haggada, which is interpretation of the non-legal materials (e.g., stories, poetry, etc.) in the Torah. See generally HERMANN L. STRACK, *INTRODUCTION TO THE TALMUD AND MIDRASH* 201-29 (1983); Jacob Z. Lauterbach, *Midrash and Mishnah: A Study in the Early History of the Halakah*, in *RABBINIC ESSAYS*, *supra* note 1, at 163-256. Note that the term *halakhah* also refers to the whole legal system of Judaism, including all of the detailed observances and laws. 7 *ENCYCLOPEDIA JUDAICA Halakhah* 1156-67 (1972).

lematic. One scholar has identified three weaknesses of the Rabbinic literature:

First, the Rabbis regarded themselves as the spiritual heirs of the Pharisees. Hence, the Sadducees were the opponents. Second, as a result of censorship of Jewish texts by Christians in the Middle Ages, the word *seduqi* ("Sadducean") was often introduced into the text of the Mishnah and Talmud to replace words for "Christians" or "heretics." Therefore, many of the alleged references to the Sadducees in Rabbinic texts have no bearing on them. Third, the earliest strata of talmudic literature are . . . far removed from the early years of the . . . period and can at best be considered reliable for the last years of the Second Temple period.²⁰

Nevertheless, scholars have begun to analyze the Rabbinic literature in light of these problems and have made great strides in distinguishing between the historically accurate portions of the literature and those portions which may not be as reliable.²¹

By recognizing the shortcomings of the sources which discuss first century Jewish sects, scholars are reconstructing a more accurate picture of the groups. This comment now presents a brief overview of the Sadducees and the Pharisees before attempting to reevaluate the traditional notions about their respective legal views.

B. The Sadducees

Because the Sadducees left no literary remains, establishing their beginnings has proven difficult.²² While it is now generally accepted²³ that the title "Sadducee" (Hebrew *Zedukim*) is derived from the name Zadok—the high priest in

20. Schiffman, *supra* note 15, at 7 (footnote omitted).

21. See, e.g., NEUSNER, RABBINIC TRADITIONS, *supra* note 3; NEUSNER, INTERPRETATION OF THE MISHNAH, *supra* note 3.

22. Roger T. Beckwith, *The Pre-History and Relationships of the Pharisees, Sadducees and Essenes: A Tentative Reconstruction*, 11 REVUE DE QUMRAN 3 (1982), reprinted in 2:1 ORIGINS OF JUDAISM, *supra* note 1, at 57, 89-90.

Because of the dearth and ambiguity of source material, a multitude of views has developed on how and when the Sadducees originated. Compare Lauterbach, *Pharisees*, *supra* note 2, at 95 (Sadducees are the older movement) with Beckwith, *supra* at 63-64, 91 (Sadducees are a reform movement growing out of the inchoate Pharisaic movement).

23. Beckwith, *supra* note 22, at 64.

the days of David,²⁴ the most recent studies suggest that the proto-Sadducaic movement did not originate until the third century B.C.E.²⁵ A century later, the Sadducees were explicitly recognized by the Hasmonean²⁶ leader John Hyrcannus I (135/4-104 B.C.E.)²⁷ when he openly split with the Pharisees.²⁸ Subsequently, the Sadducees were active in political life and dominated life at the Temple.

As a group, the Sadducees have uniformly been identified with the wealthy, upper classes of the population.²⁹ Because they were largely derived from the aristocracy, some have argued that they had little influence over the Jewish population.³⁰ Indeed, the Pharisees' support among the common people acted as a check upon the Sadducees. They were often pressured by the people to accept Pharisaic interpretations of the scriptures.³¹ On the other hand, some scholars have argued that the Sadducees were the dominant party.³² Obviously, the extent of the Sadducees' influence in the first century world is still uncertain.

Nor is there agreement on the exact nature and characteristics of the Sadducees. They have been described as hedonistic³³ and as having a "contempt for scholarship."³⁴ Josephus

24. See 2 Samuel 8:17, 15:24; 1 Kings 1:34-45.

25. Beckwith, *supra* note 22, at 92-93.

26. The Maccabean Revolt (167-164 B.C.E.) officially ushered in the end of Seleucid (Syrian Kings) domination. Led by a priest named Mattathias the Hasmonean, the revolt began when Seleucid King Antiochus (reigned 175-164 B.C.E.) forbade the Jews from observing their religion. After Mattathias's death in 166, his son Judah, whose nickname was "Maccabee," took over leadership of the revolt. After several more years of fierce fighting, Judah successfully defeated the Seleucids. For the next 130 years, the Hasmoneans controlled Palestine. See generally A HISTORY OF THE JEWISH PEOPLE 201-16 (H.H. Ben-Sasson ed., 1976) [hereinafter HISTORY]; SCHÜRER, *supra* note 2, at 137-63; 1 Maccabees 1-4; 2 Maccabees 4-11.

27. SCHÜRER, *supra* note 2, at 200 & n.1.

28. JOSEPHUS, ANTIQUITIES, *supra* note 7, at 13:288-98; SCHÜRER, *supra* note 2, at 211-14.

29. 1 FINKELSTEIN, *supra* note 1, at 80 (stating that the Sadducees were "derived from the wealthiest strata" of the Jewish people); MARCEL SIMON, JEWISH SECTS AT THE TIME OF JESUS 24 (James H. Farley trans., 1967) (calling them "haughty and exclusive"); 2 HEINRICH GRAETZ, HISTORY OF THE JEWS 23 (1893).

30. See, e.g., RIVKIN, *supra* note 6, at 42; SIMON, *supra* note 29, at 24 ("They had little contact with the people and little influence over them.").

31. JOSEPHUS, ANTIQUITIES, *supra* note 7, at 18:17; see BABYLONIAN TALMUD, Yoma 19b (Soncino ed. 1978) ("Although we are Sadducees, we are afraid of the Pharisees.").

32. Herbert Danby, Introduction to MISHNAH xiv-xv (Herbert Danby trans., 1933).

33. 2 FINKELSTEIN, *supra* note 1, at 768; cf. HISTORY, *supra* note 26, at 271

called them "boorish" and "rude."³⁵ Countering these descriptions, some scholars have praised the Sadducees for their sturdiness, robust faith, and emphasis on such things as God's grace, God's majesty, Torah, and Temple.³⁶

After struggling to maintain its group identity in a tumultuous political and religious era, the Sadducaic movement eventually disintegrated. The most widely accepted explanation for their demise revolves around the destruction of the Second Temple in 70 C.E. Because the Sadducees were headquartered in the Temple, they were no longer able to function after it was razed by the Romans. In short, "[w]hen the temple was destroyed, [the Sadducees] disappeared with it."³⁷

C. *The Pharisees*

There have been efforts to trace the Pharisees' ideological origins as far back as the Old Testament prophets.³⁸ Whatever the merits are of attempting such an identification, the earliest mention of the Pharisees is during the time of Jonathan Maccabee (152-142 B.C.E.).³⁹ However, they "cannot have emerged suddenly, full-blown in the Hasmonean period. Their theology and organization must have been in formation some-

(stating that the Sadducees mocked the abstinence of the Pharisees).

34. 1 FINKELSTEIN, *supra* note 1, at 97 (calling this the Sadducees' dominant characteristic).

35. RIVKIN, *supra* note 6, at 54 (quoting JOSEPHUS, WARS, 8:166). Whiston translates these two adjectives as "wild" and "barbarous" respectively. JOSEPHUS, WARS, *supra* note 7, at 8:166.

36. See, e.g., 1 DANIEL J. SILVER & BERNARD MARTIN, A HISTORY OF JUDAISM 222-23 (1963).

37. SIMON, *supra* note 29, at 24; see also Schiffman, *supra* note 15, at 36 ("Sadducean movement was so tied up with the priestly aristocracy and Temple worship that when the Temple was destroyed and the social order decimated . . . [it] simply could not endure."); 13 ENCYCLOPÆDIA JUDAICA *Sadducees* 622 (1972).

A second, more recent theory rejects the close connection between the Temple and the Sadducees as resting "upon inference rather than evidence." Victor Eppstein, *When and How the Sadducees Were Excommunicated*, 85 J. BIBLICAL LITERATURE 213 (1966), reprinted in 2:1 ORIGINS OF JUDAISM, *supra* note 1, at 145. This theory suggests that the demise of the Sadducees resulted from a deliberate plot by the Pharisaic *hakhamim* (organized body of rabbinic scholars) to extirpate the Sadducees from the Temple sometime around 60 C.E. See *infra* notes 85-94 and accompanying text for a complete explanation.

38. E.g., Lauterbach, *Pharisees*, *supra* note 2, at 96-98 (Pharisees were the spiritual heirs and successors of the prophets).

39. JOSEPHUS, ANTIQUITIES, *supra* note 7, at 13:171. See generally JOHN KAMPEN, THE HASIDEANS AND THE ORIGIN OF PHARISAISM: A STUDY IN 1 AND 2 MACCABEES 209-22 (1988) (arguing that the Pharisees' roots can be traced to the Hasidean movement).

what earlier. How much earlier and in what form, we cannot say.⁴⁰ The most persuasive attempt to narrow down Pharisaic origins places their beginnings no later than 340 B.C.E.⁴¹

Over the next two centuries, the proto-Pharisaic ideology acted to counter the Hellenistic⁴² influence prevalent in Palestine.⁴³ Following the Maccabean Revolt,⁴⁴ the Pharisees apparently became organized more formally. But because open differences had not yet developed between the Sadducees and the Pharisees, the Pharisees apparently enjoyed some sway with the Hasmoneans. However, as mentioned above, John Hyrcanus split with the Pharisees and they were subsequently expelled from membership in the Sanhedrin by the Sadducees.⁴⁵ The Jewish leadership then gave this expelled group the name *Perushim* ("Separatists"). Initially the term was meant in contempt and derision,⁴⁶ but the *Perushim* or "Pharisees" took the name as a title of honor, interpreting the term to mean the "exponents" of the law.

The Pharisees were characterized by a love for scholarship and intellectual pursuits.⁴⁷ "The Pharisee was above all a schoolman and a scholar."⁴⁸ Indeed, Josephus noted that they "seem to interpret the laws more accurately"⁴⁹ and that they supposedly "excell[ed] others in the accurate knowledge of the laws of their country."⁵⁰ The Apostle Paul, who claimed to have been a Pharisee,⁵¹ stated that he was "taught according to the perfect manner of the law of the fathers."⁵² In addition to intellectual refinement, the Pharisees were apparently well

40. Schiffman, *supra* note 15, at 14.

41. Beckwith, *supra* note 22, at 85.

42. See generally SILVER & MARTIN, *supra* note 36, at 172-73; Schiffman, *supra* note 15, at 2-3.

43. But see Morton Smith, *Palestinian Judaism in the First Century*, in ISRAEL: ITS ROLE IN CIVILIZATION 67, 81 (Moshe Davis ed., 1956) (arguing that the Pharisees were "profoundly Hellenized").

44. See *supra* note 26.

45. JOSEPHUS, *ANTIQUITIES*, *supra* note 7, at 13:288-96; RIVKIN, *supra* note 6, at 34-38.

46. Zeitlin, *supra* note 1, at 487; see also *infra* note 55.

47. See, e.g., 1 FINKELSTEIN, *supra* note 1, at 91-97.

48. SIMON, *supra* note 29, at 31.

49. JOSEPHUS, *WARS*, *supra* note 7, at 1:110.

50. JOSEPHUS, *supra* note 9, at 38:191.

51. Acts 23:6.

52. *Id.* at 22:3.

mannered and polite. Josephus's interesting description of them is worth quoting:

Now, for the Pharisees, they live meanly, and despise delicacies in diet; and they follow the conduct of reason; and what that prescribes to them as good for them, they do; and they think they ought earnestly to strive to observe reason's dictates for practice. They also pay a respect to such as are in years; nor are they so bold as to contradict them in anything which they have introduced.⁵³

Finkelstein sums up the Pharisees with the word "urbane." These descriptions are all in considerable opposition to those offered in the Gospels. For example, the author of Matthew called them "hypocrites" and a "generation of vipers."⁵⁴

As for their role in Jewish life, the Pharisees have been portrayed as the leaders of Jewish society and the advocate for the Jewish people.⁵⁵ Scholars accepting this view have described the Pharisees as immensely popular,⁵⁶ "the people's party,"⁵⁷ "extremely powerful and influential,"⁵⁸ "enjoy[ing] the strong support of the masses,"⁵⁹ and so on. Other scholars⁶⁰ have challenged the traditional view and argued that the Pharisees were "simply one of several sects, each of limited membership, competing for the attention of the unaffiliated majority."⁶¹ In other words, the Pharisees may have been the largest and most influential of the sects, but they did not reflect normative Judaism.⁶²

Inevitably, the debate will continue on the exact nature of the Pharisees before the destruction of the Temple. However,

53. JOSEPHUS, *ANTIQUITIES*, *supra* note 7, at 18:12.

54. *Matthew* 23:29, 33.

55. Zeitlin, *supra* note 1, at 497, 503. While Zeitlin accepts the idea that the Pharisees were the leaders of the Jewish State and the Jewish people, he argues that the Pharisees were not an organized sect. Instead, he suggests that those Jews who accepted the oral Torah were merely termed "Pharisees" by the embittered Sadducees who resented their new laws and reforms. *Id.* at 487.

56. Schiffman, *supra* note 15, at 29.

57. LEO BAECK, *THE PHARISEES AND OTHER ESSAYS* 19 (1966).

58. RIVKIN, *supra* note 6, at 38-39.

59. *Id.* at 39.

60. See, e.g., Schwartz, *supra* note 11, at 327-41 and sources cited in n.23 therein; 3 NEUSNER, *RABBINIC TRADITIONS*, *supra* note 3, at 304-06, 318.

61. D. Goodblatt, *The Place of the Pharisees in First Century Judaism: The State of the Debate*, 20 J. FOR THE STUDY OF JUDAISM 12, 13 (1989) (summarizing the views of Smith, *supra* note 43).

62. Smith, *supra* note 43, at 81.

there is now little controversy over the enormous Pharisaic influence on Judaism after 70 C.E. After the demise of the Sadducees and other rival sects, the Pharisees successfully consolidated their support and in effect became *the* Jewish sect.⁶³ Modern Judaism is largely the Pharisaic version of the religion.

III. COMPARING THE LEGAL VIEWS OF THE PHARISEES AND THE SADDUCEES

Finkelstein states that "[t]o their contemporaries, the difference in manner between the Pharisees and the Sadducees was less important than their legal controversies."⁶⁴ This assertion is hardly surprising when it is understood that Jewish law is all-encompassing; it governs all areas of life including diet, religious ritual, family relationships, and civil and criminal jurisprudence.⁶⁵ With this in mind, the following section attempts to analyze the legal differences between the Pharisees and the Sadducees, first by briefly discussing the traditional notions about their legal views, and then by detailing some specific controversies which demonstrate why a rethinking of these notions is necessary.

A. *The Traditional Notions*

The essence of the legal difference between the Pharisees and the Sadducees stems from their respective outlooks on the Torah. The Pharisees accepted the oral Torah to be as binding and authoritative as the written Torah.⁶⁶ In other words, the Pharisees believed that all of the oral traditions interpreting the Torah were just as authoritative as the written Torah. The unwritten law was the "core of Pharisaism."⁶⁷

63. See RIVKIN, *supra* note 6, at 258. Rivkin states that the dying out of the Sadducees caused the term "Pharisee" to become irrelevant: the terms Judaism and Pharisaism effectually merged.

64. 1 FINKELSTEIN, *supra* note 1, at 101.

65. See, e.g., 1 *id.* at 91-93.

66. Only a small portion of Jewish law found written expression in the Torah. The written Torah, or Pentateuch, includes the first five books of the Bible—Genesis, Exodus, Leviticus, Numbers, and Deuteronomy.

67. RIVKIN, *supra* note 6, at 72. In the context of a modern analogy, it would be as if the Pharisees accepted all of the case law interpreting the Constitution as equally authoritative with the Constitution itself. The Sadducees, on the other hand, would reject the notion that this case law was as equally authoritative as the Constitution.

For the Sadducees, only the written Torah was obligatory as a source of law.⁶⁸ They refused to recognize any other authority as equal to that of the Torah—including the enormous corpus of traditional laws developed from the Torah.⁶⁹ They did not reject all traditional laws, they only refused to consider such laws equal to the absolute authority of the Torah.⁷⁰ Indeed, the Sadducees found in the Torah itself authority to promulgate temporary rules and interpretations necessary for the welfare of the community.⁷¹

The difference between the approaches of the Pharisees and Sadducees toward the *halakhah* can be appropriately illustrated through a similar dichotomy found in Christianity.⁷² Roman Catholics have developed an enormous corpus of traditional law which includes doctrines not mentioned in the Bible, but which are regarded as a separate and supplementary source of truth.⁷³ Protestants, on the other hand, tend to view the Bible as the sole source of divine revelation and doctrine.⁷⁴ "[I]n Jewish history, the Sadducees and Pharisees took the 'Protestant' and 'Catholic' positions respectively."⁷⁵

While this analogy is not exact, it illustrates the general positions of the Pharisees and Sadducees with respect to the Torah. However, as will be seen, the generalizations must be

68. JOSEPHUS, *ANTIQUITIES*, *supra* note 7, at 13:297. The Sadducees "held that there was only one law of absolute authority and this was the Law of Moses, as contained in the Pentateuch." Lauterbach, *supra* note 1, at 30-31.

69. See Lauterbach, *Pharisees*, *supra* note 2, at 95; Danby, *supra* note 32, at xvii, xviii (quoting JOSEPHUS, *ANTIQUITIES*, *supra* note 7, at 13:297).

70. "The Sadducees were not fundamentalists who believed that the Torah said it all, and that all the Torah said was readily apparent . . . [They] obeyed many . . . traditions, but they saw them as customary law of great antiquity, valid but not immutable, and refused to declare them Torah." 1 SILVER & MARTIN, *supra* note 36, at 221.

71. "And thou [the people] shalt do . . . according to the sentence of the law which they [priests—i.e., Sadducees] shall teach thee, and according to the judgment which they shall tell thee . . ." *Deut.* 17:10-11. Lauterbach points out that the people are not acting upon that which the Torah tells them to do, but rather what the priests tell them to do. Lauterbach, *supra* note 1, at 34 n.14. Therefore, the Sadducees had authority to issue their own binding rules which were not explicitly written in the Torah. Lauterbach, *Pharisees*, *supra* note 2, at 115-16.

72. Thomas C. Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1, 5-7 (1984).

73. Grey lists as examples "the cults of Mary and the saints, the seven sacraments, and above all the Church hierarchy of priests and bishops." *Id.* at 5.

74. *Id.* at 3.

75. *Id.* at 7 (citing Marcel Simon, *The Ancient Church and Rabbinical Tradition*, in HOLY BOOK AND HOLY TRADITION 94, 104 (F.F. Bruce & E. Rupp eds., 1968)).

applied only loosely, for indeed, both groups are known to have taken halakhic viewpoints inconsistent with these traditional notions.

B. Specific Legal Controversies

Before discussing several examples of legal issues on which the Pharisees and Sadducees took positions inconsistent with the traditional notions about them, this comment discusses a controversy which, while supporting the traditional notions, also illustrates the complexities of Pharisaic and Sadducaic legal thought and the multitude of forces that shaped their viewpoints.

1. The red heifer ceremony

The red heifer ceremony was at the heart of early Jewish purification rituals. The Torah outlines the procedure for sacrificing and burning the red heifer.⁷⁶ After the animal was burned, its ashes were gathered, mixed with water, and used to render a person levitically pure—an absolute necessity for Temple worship. If a person had been rendered unclean through, for example, contact with a dead body,⁷⁷ the “water of separation”⁷⁸ was sprinkled upon him thus rendering him pure and eligible for Temple worship. To enter the Temple in an unclean state would result in extirpation, or being “cut off” from the congregation.⁷⁹

Because of the extreme importance of having ritually effective ashes, the priests went to great lengths to ensure that the ceremony proceeded flawlessly. The heifer could only be one that had never known the yoke and was without blemish.⁸⁰

76. *Numbers* 19:1-10.

77. *Id.* at 19:11-19.

78. *Id.* at 19:13, 20.

79. *Id.* at 19:20.

80. *Id.* at 19:2. The stringent qualifications which the heifer had to satisfy are illustrated by the following passage:

If a man had ridden thereon or leaned thereon or if aught had been hung on its tail or if any had crossed a river by its help or doubled its leading-rope on its back or set his cloak on it, it is invalid. . . .

If a bird alighted on it it remains valid. If a male beast mounted it it becomes invalid. R[abbi] Judah says: If it was made to mount it becomes invalid; but if it acted of itself it remains valid.

If it had two black or white hairs [growing] from within a single hole it is invalid. R[abbi] Judah says: Or even from within a single hollow. If they grew from within two hollows that were adjacent, it is invalid. . . .

The water used in the ceremony was drawn by young boys specifically born and reared in isolated caves for this purpose.⁸¹ In addition, the priest who was to perform the ceremony underwent elaborate procedures to ensure his purity. Seven days before the ceremony took place, the priest was separated from his wife, presumably to keep him from becoming contaminated if she menstruated during that time.⁸² During the week, the priest resided in a special chamber of the Temple called the House of Stone because stone was incapable of defilement.⁸³ After a week of ritual cleansings, the priest made his way up the Mount of Olives on a suspended causeway to ensure that he did not walk on a grave and thus become unclean.⁸⁴

Upon arriving at the Mount of Olives via the plankway, the levitically pure priest was ready to perform the ceremony. Typically, the Pharisees and the Sadducees would both have been satisfied at this point that the priest was eligible to perform the ceremony and that any ashes resulting from it would be efficacious provided the ceremony was performed correctly. However, when Ishmael ben Phiabi prepared the seventh⁸⁵ and final⁸⁶ red heifer sometime around 60 C.E., the Pharisees engaged in a plot to prove that their legal views were binding vis-à-vis those of the Sadducees.⁸⁷ When the priest arrived on

R[abbi] Joshua b. Bathyra says: Even though it has but one [black hair] on its head and one on its tail, it is invalid. If there were two hairs with their roots black but their tips red, or their roots red but their tips black, all is according to what is the more manifest. . . . But the Sages say: According to the root.

MISHNAH, *Parah* 2:3-5. The dissenting Rabbis illustrate the disagreements over exactly what was necessary, however, it is clear that the heifer had to be nearly perfect.

81. MISHNAH, *Parah* 3:2. Presumably, the boys had to be young enough so as to be clean from any seminal ejaculation. 2 FINKELSTEIN, *supra* note 1, at 666. The caves were to protect the boys from possibly walking on some forgotten grave and thus becoming contaminated by touching the same ground as a dead body. MISHNAH, *Parah* 3:3.

82. MISHNAH, *Parah* 3:1; MISHNAH, *Yoma* 1:1; 2 FINKELSTEIN, *supra* note 1, at 665-66.

83. MISHNAH, *Parah* 3:1; 2 FINKELSTEIN, *supra* note 1, at 666.

84. MISHNAH, *Parah* 3:6. The rationale underlying the use of the plankway was that "a grave defiles only those standing on solid ground above it, but not those separated from it by empty space." 2 FINKELSTEIN, *supra* note 1, at 666-67.

85. The Mishnah states that only seven red heifers had been prepared since Ezra's time, this one by Ishmael being the seventh and last one. *Parah* 3:5 (one dissenting Rabbi says only five had been prepared since Ezra's time).

86. Because the Temple was destroyed about ten years later, the need for the ashes from the red heifer ceremony disappeared.

87. MISHNAH, *Parah* 3:5. See generally *id.* at 3:7-8 (discussing the Pharisees'

the Mount of Olives, the Pharisees deliberately rendered him unclean.⁸⁸ Unable to perform the ceremony immediately, the priest was required to take a cleansing bath.⁸⁹ It was at this point that a serious difference between the Pharisees and the Sadducees presented itself.

The dispute arose over the vague language in *Numbers* which stated that if the priest became unclean, he should bath himself and would thereafter be "unclean until the even."⁹⁰ Reading this passage literally, the Sadducees believed that the presiding priest had to bath and then wait until sundown before being eligible to perform the ceremony.⁹¹ The Pharisees, on the other hand, held that the priest could officiate before sundown as long as he had first taken the cleansing bath.⁹² Supporting the Pharisees' position, the *hakhamim*⁹³ ordered the priest to prepare the ashes without waiting until sundown and thereby publically displayed that the Pharisaic position was authoritative.⁹⁴

plot to extirpate the Sadducees).

88. *Id.* at 3:7. The Mishnah does not make clear how this was done but simply having an unclean person or thing touch him would have been enough. Interestingly, Rivkin argues that this was standard Pharisaic procedure to render the priest unclean. RIVKIN, *supra* note 6, at 262. However, why would the Pharisees insist on such an elaborate purifying ritual for the priest merely to render him unclean just before he was to perform the ceremony? Rather, Eppstein's theory that the Pharisees engaged in a one-time subterfuge to shut the Sadducees out of the Temple seems more tenable. See Eppstein, *supra* note 37, at 148.

89. *Numbers* 19:7. Although this verse literally refers to the post-ceremonial bath, Jewish tradition, apparently accepted by both the Pharisees and the Sadducees, required the priest to be "pure" before participating in the ceremony. See Eppstein, *supra* note 37, at 149. See generally MISHNAH, *Parah* 3:1, 8 (procedures for purifying the priest).

90. *Numbers* 19:7.

91. MISHNAH, *Parah* 3:7.

92. *Id.*

93. *Hakham* (pl. *hakhamim*) was the title given to rabbinic scholars. 7 ENCYCLOPÆDIA JUDAICA 1145 (1972). These scholars were "the moving spirit of the most important religious current among the Jews of the Second Temple era—the Pharisees." Stern, *supra* note 26, at 235. This Pharisaic element of the *hakhamim* was one reason the Pharisees were so influential at the time. Indeed, the *hakhamim* "were generally involved in everyday activities and initiated rules that governed a wide range of subjects." *Id.* at 234. Most importantly, "[w]hether or not these rules were officially sanctioned by the Sanhedrin[,] . . . they were accepted as binding" by the Jewish people in general. *Id.* In short, the *hakhamim* had a major role in the development of the *halakhah* and a great influence on the people.

94. Eppstein, *supra* note 37, at 152-54. Eppstein argues that the red heifer controversy caused the demise of the Sadducees and so rejects the traditional theory. See *supra* note 37 and accompanying text. Because the ashes prepared were worthless to the Sadducees, Eppstein points out that they could not thereafter

Although technically supporting the traditional notions about the Pharisees and Sadducees, the red heifer controversy actually represents an ironic twist in the groups' legal views. In actuality, the Pharisees were extremely strict in their observance of Biblical purification laws.⁹⁵ Thus, their position on the red heifer ceremony seems to contradict their usual views. On the other hand, the Sadducees did not observe the purification laws outside the Temple.⁹⁶ Because the red heifer ceremony was performed on the Mount of Olives rather than in the Temple, their view on the ceremony is similarly inconsistent with their usual stance. If the Sadducees did not follow the purification laws out of the Temple, why would they have any objection to the way Ishmael ben Phiabi prepared the red heifer?

Obviously, the forces at work were much more complex than the traditional notions concede. The red heifer controversy was not simply a dispute over interpretation of the Torah, with Pharisees taking the traditional approach and the Sadducees strictly interpreting the Biblical command; but rather it was a complex political, sociological, and halakhic struggle for dominance. Indeed, both groups were vying for political power and willing to sacrifice their legal views as necessary to obtain a desired end. One scholar has noted, "They both were ready to

enter the Temple. *Id.* at 146. Cut off from the Temple, the Sadducees consequently disappeared. However, note the inconsistency in Epstein's analysis. He attacks the traditional theory because of its inaccurate emphasis on the relationship between the Sadducees and the Temple, *id.* at 145-46, and yet his own theory also relies on this relationship in explaining the demise of the movement. Apparently, the only difference between the two theories is the reason why the Sadducees were unable to participate in the temple rites. Under the traditional theory, the Sadducees were unable to attend the Temple because it was destroyed. Under Epstein's own theory, it was because the Sadducees experienced a "*de facto* excommunication." *Id.* at 148. However, he never satisfactorily explains why the Sadducees disintegrated under his theory if in fact they were not as closely connected with the Temple as he suggests.

95. Jacob Neusner, *Pharisaic Law in New Testament Times*, 26 UNION SEMINARY Q. REV. 331, 331 (1971). Some sense of the Pharisees' exacting emphasis on purity can be gleaned from Jesus' scathing denunciation of them in *Matthew* 23:25-28.

96. 2 FINKELSTEIN, *supra* note 1, at 664. In fact, the Sadducees mocked the Pharisees for their emphasis on purity with such taunts as, "It wants but little, and the Pharisees will try and cleanse the sun." 2 GRAETZ, *supra* note 29, at 23.

adhere to the letter of the Law or to depart from it as best suited the needs of their following."⁹⁷

2. *The inheritance rights of female heirs*

The Torah states, "If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter."⁹⁸ The strict mandate is that daughters inherit property only in the absence of a son. The operation of this simple rule was unambiguous in some situations. For instance, if a man (*M*) died and was survived by his father (*F*), a sister (*S*), a son (*N*), and a daughter (*D*), the Torah would give *N* precedence over *S* and *D* in a fight over *F*'s estate.⁹⁹ Although clear in this case, one can easily imagine situations for which the Torah gives no explicit guidance. For example, if a man (*M*) has two daughters, one of whom is living (*A*) and the other who is dead (*B*), should the son of *B* take precedence over *A*? With the Jewish law's strong emphasis on male domination, both the Pharisees and the Sadducees would undoubtedly give precedence to the grandson in this situation.¹⁰⁰

A more controversial issue involved the rights of a daughter of a deceased son vis-à-vis her aunt. The Sadducees maintained that in such a case, the daughter and the granddaughter split the estate.¹⁰¹ However, the Pharisees insisted that the granddaughter was the sole heir—in effect disinheriting the decedent's own female children.¹⁰² Strangely, the Sadducaic approach seems more equitable while the supposedly more lenient Pharisees take an approach which appears harsh and unjust. One scholar explains the paradox in terms of the two groups' differing sociological backgrounds. The Sadducees—representative of the wealthy patrician class—were accustomed to passing on large estates that could be easily and amply divided among several heirs. On the other hand, the plebeian Pharisees, "whose estates were so small that they could hardly maintain a family in comfort, . . . consistently opposed any rule which made for further division."¹⁰³ In other

97. 1 FINKELSTEIN, *supra* note 1, at 101.

98. *Numbers* 27:8.

99. 1 FINKELSTEIN, *supra* note 1, at 139.

100. *See* 2 *id.* at 695-96.

101. 2 *id.* at 694.

102. 2 *id.*

103. 1 *id.* at 140-42.

words, the respective viewpoints were dictated by pragmatics rather than principle.¹⁰⁴

However, to explain the difference solely in terms of economics obscures a critical, and often overlooked, argument. Perhaps the Sadducees were not as harsh and unyielding as they have been portrayed. If in truth they strictly adhered to the exact language of the Torah, they should have been the sect arguing that the granddaughter must prevail over the daughter. A more faithful interpretation of the policies incorporated into the male-dominant Torah would indicate that even though the son was dead, his right to inherit should pass on to his heirs—regardless of their gender.¹⁰⁵ That the Sadducees took the more lenient view on female inheritance rights is more than just coincidence; it is evidence that Sadducees and the Pharisees were not the polarized movements depicted in the scholarly literature. Both sects had halakhic views which seem inconsistent with traditional characterizations.

3. *False witnesses*

Another area where the two groups seem to contradict their stereotype is the law of false witnesses.¹⁰⁶ The Bible

104. Silver and Martin criticize Finkelstein's thesis that the legal differences between the Sadducees and the Pharisees were based mainly on political, social, and economic class interests. They argue,

There is no doubt that [the two sects] represented different interests, the Sadducees perhaps the older, land-based upper class, the Pharisees a growing urban middle class. However, the differences between them cannot be reduced to narrow Marxian terms, for they involved primarily each group's respect for a particular tradition of Torah exegesis No meaningful economic consequences can be drawn from their separate interpretations of such matters as whether metal utensils, like pottery vessels, are subject to the possibility of being rendered religiously impure.

1 SILVER & MARTIN, *supra* note 36, at 221. The legal dispute mentioned in this passage is presented more fully in the table following this comment. See *infra* TABLE at page 946.

105. As mentioned above, the Torah does not specifically resolve such disputes. But the dominant policy surrounding inheritance rights and birthrights in the Bible is that the male takes precedence over the female. The Pharisees strictly followed this policy and interpreted the scriptures to mean that even if the son dies, his priority passed on to his children. 2 FINKELSTEIN, *supra* note 1, at 694-95.

106. Finkelstein calls this "[t]he only instance in which the Pharisees are known to have demanded a harsher interpretation of the Law than the Sadducees." 1 *id.* at 142. Finkelstein may be correct if by harsh he means "unkind" or "cruel." But, if by harsh he means "strict" or "literal" then he is erroneous in his statement. This comment discusses several issues on which the Pharisees took the more literal stance toward the *halakhah*. In fact, Finkelstein himself acknowledges this

makes clear that false witnesses should suffer the same punishment they were trying to inflict on the accused. It states that "if the witness be a false witness, and hath testified falsely against his brother; Then shall ye do unto him, as he had thought to have done unto his brother" ¹⁰⁷ The Pharisees focused on the intent of the false witness. Thus, even if the accused was never subjected to the penalty, the false witness was still punished. ¹⁰⁸ The entering of judgment triggered the penalty. Taking the more lenient stance, the Sadducees held that this rule only applied when the accused actually suffered some injury due to the false testimony. ¹⁰⁹

This dispute is well illustrated by a murder case wherein a witness was proven to have testified falsely. ¹¹⁰ Fortunately, this discovery was made before the accused was executed. Nevertheless, the court executed the false witness over the dissent of Judah ben Tabbai. ¹¹¹ The court's approach was soon orthodox ideology among the Pharisees.

Again, the Sadducees emerge as the more equitable and just sect while the Pharisees seem procrustean and unbending. This inconsistency must have a more persuasive explanation than that the "whole structure of Jewish judicial procedure was based on the reliability of witnesses," ¹¹² and that therefore the Pharisees in this instance "could not afford to indulge their inclination to be merciful." ¹¹³ If the Pharisees were truly a magnanimous movement concerned with the welfare of the Jewish commoner, could they not have come up with a less drastic punishment for a false witness—civil fines, labor, or im-

in the context of inheritance. He states that the proto-Pharisaic scholars disagreed with their opponents [proto-Sadducees] because they disregarded "the express word of Scripture." 2 *id.* at 695.

107. *Deut.* 19:19.

108. MISHNAH, *Makkoth* 1:1-10.

109. *Id.* at 1:6 ("False witnesses are put to death only after judgment has been given. For lo, the Sadducees used to say: Not until he [that was falsely accused] has been put to death . . .").

110. TOSEFTA, *Sanhedrin* 6:6; BABYLONIAN TALMUD, *Makkoth* 5b; 2 FINKELSTEIN, *supra* note 1, at 843 n.76.

111. Even though Judah was a Pharisee, he was aligned with the patrician faction that had developed within the Pharisees. In any event, his opposition to such a harsh penalty on false witnesses was adopted by the Sadducees. See 2 FINKELSTEIN, *supra* note 1, at 843 n.76.

112. 1 *id.* at 143.

113. 2 *id.*

prisonment, for instance? Instead, they chose to follow the strict wording of the Torah.

Moreover, the Sadducees would undoubtedly agree that the integrity of the judicial process must be maintained; yet, they were able to interpret the Torah's command in a way that preserved deterrent effect against perfidious testimony while maintaining a merciful outlook on the false witness. For example, if the false witness was also to act as the executioner,¹¹⁴ the Sadducees would agree that the *Lex Talionis* would properly apply.¹¹⁵ Otherwise, the false witness would only be executed if the accused was executed.

The law of false witnesses is persuasive evidence that the traditional notions about the Pharisees and Sadducees are inaccurate. In this instance, the Sadducees mitigated the harsh commands of the Torah while the Pharisees adopted a literal interpretation.

4. *The proper procedure for the burning of the incense on the Day of Atonement*

Certainly one of the most significant¹¹⁶ legal differences involved a detail in the ritual performed by the High Priest on the Day of Atonement. The Torah commands,

And [the High Priest] shall take a censer [shovel] full of burning coals of fire from off the altar before the Lord, and his hands full of sweet incense beaten small, and bring it within the vail: And he shall put the incense upon the fire before the Lord, that the cloud of the incense may cover the mercy seat [Ark-cover] that is upon the testimony, that he die not¹¹⁷

Interpreting these verses very strictly, the Pharisees insisted that only *after* the High Priest had passed through the veil should he put the incense upon the shovel full of fiery coals.¹¹⁸ The Sadducees, on the other hand, apparently fol-

114. See, e.g., Deut. 17:7; MISHNAH, *Sanhedrin* 6:4.

115. 1 FINKELSTEIN, *supra* note 1, at 143.

116. See Lauterbach, *Controversy*, *supra* note 2, at 51.

117. *Leviticus* 16:12-13.

118. III SIFRA, *Parashat Aharé Mot Pereq* 3, 178:11B,C (Jacob Neusner et al. eds., 1988) ("The point is that one should *not* prepare it outside and then bring it inside" as the Sadducees maintain.) (emphasis added). The SIFRA is a volume of Midrash Halakhah, see *supra* note 19, prepared by the School of Akiba (Amora'im scholars, see *supra* note 18). It is essentially a commentary on the legal portions of

lowed the traditional practice¹¹⁹ that had developed over the centuries. They claimed that the offering should first be prepared outside the Holy of Holies.¹²⁰ The High Priest should put the incense upon the shovel full of hot coals *before* passing through the curtain. By so doing, a plume of smoke would be rising before he faced the Ark and the presence of God.¹²¹ In support of their position, the Sadducees argued that "[i]f the incense is prepared in the outer hall for a human master, how much more should be done for the King of kings of kings."¹²²

Maimonides, perhaps the greatest Jewish scholar of the Middle-Ages, maintained that the Pharisees were following an oral tradition in their strict interpretation of this ritual.¹²³ However, modern scholarship has revealed that "the Pharisees were not the advocates of an old oral tradition on this subject but the innovators of a radical reform."¹²⁴ Again, we see the inconsistency between the Pharisees' and Sadducees' actual legal views and the traditional notions about them. And yet Lauterbach still insists that "the Sadducees insisted upon a strictly literal interpretation of the Law, while the Pharisees favored a free and more liberal interpretation."¹²⁵

IV. CONCLUSION

These examples and others¹²⁶ demonstrate that the traditional views concerning the Pharisees and Sadducees are somewhat inaccurate. While many examples could be given which demonstrate that the Sadducees were the strict and dogmatic interpretationalists and that the Pharisees were the more moderate, flexible group, the point is that in the light of modern scholarship, neither group completely lives up to the sweeping generalizations of the traditional views.

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Leviticus. See generally STRACK, *supra* note 19, at 206-07.

119. See, e.g., RIVKIN, *supra* note 6, at 261 (arguing that the Sadducees appealed to what had always been the practice in their interpretation of *Leviticus* 16:12-13).

120. III SIFRA, *Parashat Aharé Mot Pereq* 3, 178:11C.

121. BABYLONIAN TALMUD, *Yoma* 19b.

122. 2 FINKELSTEIN, *supra* note 1, at 656 (quoting III SIFRA, *Parashat Aharé Mot Pereq* 3, 178:11D).

123. Lauterbach, *Controversy*, *supra* note 2, at 52-53.

124. *Id.* at 54.

125. *Id.* at 52.

126. See the Table following this comment for several additional examples.

TABLE

Selected Legal Views of the Pharisees
and the Sadducees Compared¹²⁷

ISSUE	PHARISEES	SADDUCEES
General Legal Controversies		
The Use of Fire on the Sabbath ¹²⁸	Prohibited the <i>igniting</i> of fire on the Sabbath, but permitted the <i>use</i> of fire kindled on Friday before the start of the Sabbath.	Prohibited the use of any fire on the Sabbath.
The <i>Omer</i> and the Date of <i>Shabuot</i> ¹²⁹	Interpreted "sabbath" in <i>Lev. 23:11</i> to mean Festival-day, the first day of Passover. Thus, the <i>Omer</i> was to be performed on the second day of Passover. The Festival of <i>Shabuot</i> occurred 49 days thereafter. ¹³⁰	Interpreted "sabbath" in both verses 11 and 16 to mean the <i>weekly</i> sabbath. Thus, the <i>Omer</i> occurs on the Sunday of Passover week with the <i>Shabuot</i> festival taking place 7 weeks later. ¹³¹

127. Unless otherwise noted, the information in this Table has been compiled from 1 FINKELSTEIN, *supra* note 1, at 101-85, and 2 *id.* at 637-819. I have shaded those controversies which support my thesis.

128. This dispute is based on the Biblical command, "Ye shall kindle no fire throughout your habitations upon the sabbath day." *Exodus* 35:3.

129. *Leviticus* 23:11, 16 describe the procedure for the *Omer*, a ceremony which "consisted of cutting a sheaf of barley at the beginning of the harvest, and its sacrifice as the first fruit." 2 FINKELSTEIN, *supra* note 1, at 641. "And he shall wave the sheaf before the LORD, to be accepted for you: on the morrow after the sabbath the priest shall wave it." *Leviticus* 23:11. The Bible further orders that two loaves of leavened bread be offered as the "firstfruits unto the Lord." *Id.* at 23:16. This offering started off the Pentecost, the Feast of Weeks, and was to take place "on the morrow after the seventh sabbath," *id.*, or in other words, 50 days after the sabbath mentioned in verse 11. The ambiguity arose over the exact meaning of "sabbath" which could mean either the weekly "sabbath" or the "Festival-day," the first day of the Passover festival. See MISHNAH, *Menahoth* 10:3 & n.1. See generally 1 FINKELSTEIN, *supra* note 1, at 115-18; 2 *id.* at 641-54.

130. The Pharisees' interpretation of "sabbath" in this context attempted to link the *Shabuot* festival with Moses' theophany on Mt. Sinai. But Finkelstein writes, "Perhaps the association of [Moses'] Revelation with the festival of *Shabuot*, nowhere mentioned in Scripture, was part of the Proto-Pharisaic endeavor to obtain support regarding the date of the festival." 2 FINKELSTEIN, *supra* note 1, at 650.

131. See MISHNAH, *Menahoth* 10:3 & n.1; *Hagigah* 2:4 & n.12. The Sadducees' approach ensured that the Festival of *Shabuot* would always occur on Sunday.

ISSUE	PHARISEES	SADDUCEES
Impurity of Metals	Believed that metal is subject to impurity and that, just like anything else, it must be purified properly.	Believed that the impurity of metals is limited strictly to the context of <i>Numbers</i> 31:21-24 (metals captured in war).
Liability for Damages Caused by a Slave	Held that a master is not liable for damages or wrongs committed by his slave as long as the master did not know or sanction the slave's action.	Believed that a master is liable for the acts of his slave.
Capital Punishment	Rejected the idea that a money ransom could be paid in lieu of executing a properly condemned criminal.	Allowed a compensatory payment to substitute for the execution of a criminal.
The Water-Libations on <i>Sukkot</i> ¹³²	Believed that, although not in the Torah, these ceremonies were part of the oral Torah which had been given to Moses and handed down by the Prophets. All of these rituals should be followed.	Rejected these ceremonies and traditions as not having any basis in the written Torah.
The <i>Nizzok</i> ¹³³	Believed that the <i>nizzok</i> is not unifying. An unbroken stream of liquid will not render the pure pouring vessel impure.	Believed that the <i>nizzok</i> is unifying. The impurity of the receiving vessel is transferred to the pure pouring vessel.
Leniency in Punishment	Tended toward leniency in enforcing the strict penalties of the Torah. ¹³⁴	Tended toward a strict interpretation of the Torah's harsh punishments.

132. On each day during the week of the *Sukkot* festival, elaborate ceremonies were performed around the altar of the Temple involving the pouring of water on the altar and beating of willow branches about the altar.

133. *Nizzok* means "stream of water." The legal issue involved here was whether, when liquid is poured from a clean to an unclean vessel, the stream is connective so that the uncleanness transfers through the stream back to the pure vessel. MISHNAH, *Yadain* 4:7.

134. See *Christianity, Judaism and the "Law of Retaliation,"* N.Y. TIMES, Dec. 21, 1980, § 4, at 16 (letter to the editor).

ISSUE	PHARISEES	SADDUCEES
Probable Post-Biblical Controversies ¹³⁵		
Hand-Washing	Pharisaic scholars held that the hands must be washed before worshiping or eating any sacred food or heave-offering. Emphasized purity in all situations. ¹³⁶	Believed that washing the hands before eating sacred meats was not necessary.
The 'Erub ¹³⁷	Sanctioned the carrying of burdens in or out of the house on the Sabbath based on the legal fiction that a group of houses or even a whole neighborhood could be "merged" into a single household by erecting a symbolic wire around the area.	Rejected the concept of 'Erub. It is simply inappropriate to carry any burden on the Sabbath.
Theological Controversies		
Resurrection	Believed that souls are immortal. Good souls will be resurrected while evil souls are eternally punished. ¹³⁸	Believed that the soul perishes with the body. ¹³⁹
Angels	Believed in personal angels.	Rejected the existence of angels or spirits. ¹⁴⁰

135. See 2 FINKELSTEIN, *supra* note 1, at 718.

136. The Pharisees derived part of their support for their strict stance on hand-washing from *Leviticus* 15:11 which states, "And whosoever [a man] toucheth that hath the issue, and hath not rinsed his hands in water, he shall wash his clothes, and bathe himself in water, and be unclean until the even." (emphasis added). The emphasized phrase indicated that a man could rinse his hands and be clean if he had touched someone who was unclean.

137. The 'Erub was a traditional notion meaning "merging of households." The question here was whether it is appropriate to carry burdens on the Sabbath day. See *Jeremiah* 17:21 ("[B]ear no burden on the sabbath day . . .").

138. JOSEPHUS, *ANTIQUITIES*, *supra* note 7, at 18:14.

139. *Id.* at 18:16.

140. *Acts* 23:8. Simon argues that this probably means evil spirits and demons because angels are mentioned frequently in the Pentateuch. SIMON, *supra* note 29, at 27.

ISSUE	PHARISEES	SADDUCEES
Fate ¹⁴¹	Believed that men are bound by fate in all that they do—both good and evil.	Believed that men have free will and can choose either good or evil. The consequences of our actions are reaped during mortal life.
Later, Possibly Unauthentic Controversies		
<i>Lex Talionis</i> : "Eye for an Eye"	Allowed monetary compensation to substitute for the literal retribution except in capital cases.	Applied the doctrine of <i>Lex Talionis</i> literally. No leniency in retribution.
Impurity of a Woman After Childbirth ¹⁴²	Believed that during the respective 33- and 66-day cleansing periods, there was no prohibition against marital intercourse.	Forbade marital relations during the cleansing periods.
Virgin Bride Suspected of Fornication ¹⁴³	Ruled that husband had to produce witnesses to testify that his wife had been unfaithful during the period of the betrothal.	Held that parents had to produce the blood-stained garments as proof of the bride's virginity.
<i>Halizah</i> Ceremony ¹⁴⁴	Held that a childless widow must take off her shoe and spit <i>before</i> her brother-in-law in order to effect a release from the obligation to marry him.	Believed that the childless widow is to spit, literally, <i>in</i> his face.

141. JOSEPHUS, *ANTIQUITIES*, *supra* note 7, at 13:171-73; RIVKIN, *supra* note 6, at 56.

142. *Leviticus* 12:2-6 mentions that for seven days after the birth of a son and for 14 days after the birth of a daughter, a woman is unclean. Thereafter, for 33 days or 66 days respectively, a woman could not enter the Temple nor eat holy food.

143. *See Deut.* 22:13-21.

144. *Id.* at 25:5-10. Essentially, the Torah commanded a brother to marry his sister-in-law if his brother died childless. The firstborn son was then to carry on the deceased brother's name. *Id.* at 25:8. If the brother did not want to marry his brother's wife, the wife was to "come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and shall answer and say, So shall it be done unto that man that will not build up his brother's house." *Id.* at 25:9 (emphasis added). This procedure was known as the *Halizah* ceremony.