

# Studies on the Texts of the Desert of Judah

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# The Dead Sea Scrolls: Texts and Context

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## QUMRAN AND THE RABBIS ON CORPSE-IMPURITY: COMMON EXEGESIS—TACIT POLEMIC

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### I. Introduction

Comparative study of the Qumran literature and the tannaitic midrashim may yield surprising results such as the reconstruction of ancient layers of pre-tannaitic halakhic midrash, an enriched understanding of the growth of early halakha, and insight into sectarian interpretative polemics from the Second Temple period. Each of these is illustrated in the following study, an investigation of laws of corpse-impurity in Qumran literature and in the two halakhic midrashim for Numbers, the Sifre Numbers and the Sifre Zuta on Numbers.<sup>1</sup>

### II. "A Whole Bone" and "A Whole Person": An Interpretative Polemic and the Evolution of Midrash

וכל אשר יגע על פני השדה בהלל חרב או בנת או בעצם אדם או  
בקבר יטמא שבעת ימים:

And in the open, whoever touches a person who was slain by the sword  
or who died naturally, or a human bone, or a grave, shall be unclean  
seven days. (Num 19:16)

In *Miqsat Ma'ase Hatorah* (henceforth MMT) the issue of the impurity of human bones is addressed in a passage the meaning and purpose of which is difficult to discern. The passage is restored and translated by the editors as follows:<sup>2</sup>

72 ועל [טמאת נפש]  
73 האדם אנתו אומרים שכול עצם ש[היא חסדה]  
74 ולעלה כמשפט המת או החלל הוא

<sup>1</sup> Translations of scripture, Mishna and BT are adapted, with greater or lesser freedom, from *NPS*, H. Danby, *The Mishnah* (Oxford: OUP, 1933), and the *Sonchyo Babylonian Talmud* (34 vols.; ed. I. Epstein, London: Soncino, 1935–1948) respectively. Translations of other works when not identified are my own.

<sup>2</sup> 4QMMT B 72–74, cf. E. Qimron and J. Strugnell, eds., *Qumran Cave 4. V: Miqsat Ma'ase Ha-Torah* (DJD 10; Oxford: Clarendon, 1994), 54–55.

- 72 And concerning [the impurity] of the [dead]  
 73 person we say that<sup>3</sup> every bone, [whether it]  
 74 has flesh on it or [not], should be (treated) according to the law of  
 the dead or the slain.

However, the restoration in line 72 must contain the word *עצם* bone—the reference in the following lines is to the scriptural words “*עצם* [טמאת עצם] האדם אדם, human bone” (Num 19:16). As I will show, it also seems that lines 73–74 assert that an incomplete bone is treated just as a complete one. The following new restoration results from a recent oral discussion with one of the editors, Elisha Qimron:

- 72 [טמאת עצם] ועל [טמאת עצם]  
 73 האדם אנתו אומרים שכול עצם ש[חטרה כמלאה]  
 74 ושלמה כמשפט המת או החלל הוא
- 72 And concerning [the impurity] of the human [bone]:  
 73 we say that every bone that is [incomplete should be treated as  
 74 whole]  
 74 and complete, according to the law of the dead or the slain.

Now, the Temple Scroll contains an allusion to a dispute over the issue of the bone of a corpse:

- 4 וכול  
 5 איש אשר יגע על פני השדה בעצם אדם מת ורחלל חרר  
 6 או במת או אדם בדם או בקבר וטהר כחוק המשפט  
 7 חוק.  
 (11Q19 Temple Scroll L, 4–7)<sup>4</sup>

And every man in the open field who touches the bone of a dead man, or one who is slain with the sword, or a dead man, or the blood of a dead man, or a grave—he shall cleanse himself according to this statute of ordinance.<sup>5</sup>

<sup>3</sup> The phrase “we say that” is Qimron’s revised translation in J. H. Charlesworth et al., eds., *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations. Volume 3: Damascus Document II, Some Works of the Torah, and Related Documents* (Tübingen: Mohr Siebeck, 2006), 245.

<sup>4</sup> Cf. E. Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* (Beer Sheva/Jerusalem: Ben-Gurion University of the Negev Press/IES, 1996), 73.

<sup>5</sup> Trans. Yigael Yadin, ed., *The Temple Scroll II: Text and Commentary* (Jerusalem: IES/The Institute of Archaeology of the Hebrew University of Jerusalem/The Shrine of the Book, 1983), 389.

The Temple Scroll stresses that the scriptural phrase “human bone,” literally “a bone of a person” (Numbers 19:16) refers specifically to the bone of a *dead* person. As Yadin observed, the point is undoubtedly made in opposition to a contrary position, that “human bone” refers not to a bone of a corpse, but to a limb separated from a living body (*אבר מן החי*), as found in rabbinic literature:

*Or a human bone* (19:16): This refers to a limb from a living body. Do you say it refers to a limb from a living body, or does it not refer to a bone (from the dead) the size of a barley-seed? Since scripture says *on him who touched the bone* (19:18), bone (from the dead) the size of a barley-seed has been mentioned. What does scripture teach in *human bone*? A limb from a living body. Two bones are mentioned in this context—*human bone* (19:16) refers to a limb from a living body; *on him who touched the bone* (19:18) refers to a bone (from the dead) the size of a barley-seed. Another saying is: Just as a limb from the dead is flesh, tendons, and bone, so a limb from a living body must be in its original condition (for the rules on corpse-impurity to apply), flesh, tendons, and bone. (Sife Num. 127)

The impurity of a limb from a living body is fundamental to the rabbinic laws of corpse impurity, and is found frequently in tannaitic halakha. The exegesis just quoted is based on the repeated mention of touching a bone: “On him who touched the bone” (19:18) refers to a bone of a corpse, of which the minimum defiling quantity is a barleycorn size; but the verse “And in the open, whoever touches... or human bone” (19:16) refers, contrary to its simple meaning, not to a bone from a corpse but to a limb from a living body.<sup>6</sup> The homily goes on to extrapolate from a corpse to a limb severed from a living body, that to convey impurity the limb too must be “in its original condition” and comprise all the parts of a limb—flesh, tendons and

<sup>6</sup> The scriptural quotation in the Hebrew original is *בעצם בועט* *לך*, in almost all textual witnesses of the Sife (with the exception of the Yalkut and MS London, but including Rabenu Hillel). This quotation does not match the scriptural text in 19:18, including Rabenu Hillel). However the apparent corruption in the text of the homily is a *sub-born* one, and found not only in the Sife. H. S. Horowitz, ed., *Sife Debe Rav: Numbers* (Leipzig: Gustav Fock, 1917), 165, refers to *Tosefot Yom-Tov* on *m. Kelim* 1:5, who found this reading in our homily, in the commentaries of Maimonides, Rabenu Shimon, and Bartenuza on that Mishna, as well as in a *baraita* in *b. Naz* 54a and in the commentaries of Rashi and Tosafot *ad loc*. The corruption appears to be a mechanical repetition of 19:16 *על פני השדה* *לך*.

<sup>7</sup> For other homilies concerning limbs from a living body, see Sife Zuta in M. I. Kahana, *The Geniza Fragments of the Halakic Midrashim. Part I* (Jerusalem: Magnes, 2005), 216–17, 219 [Hebrew]. Cf. Horowitz, *Sife Debe Rav*, 306–307, 309.

bone, just as these parts are found in a limb from a corpse. This rule is stated explicitly in the Tosefta: "That which has tendons and bones is considered a 'limb,' what does not have tendons and bones is not considered a 'limb.'" (t. *Ohal.* 1:7).<sup>8</sup> Hence if any of the bone is missing the limb is entirely pure.<sup>9</sup> The passage in the Temple Scroll, then, is a polemic against some early version of this very homily. It dismisses the possibility that "or human bone" in 19:16 refers to a limb from a living body and insists that these words too refer to the bone of a corpse.

The question arises, then, whether the passage in MMT quoted above is part of that same polemic. The editors assumed correctly that it is not. It seems that the MMT passage does indeed not challenge the question of הויה בן הויה, but rather other aspects of bone-impurity, namely the issue of the wholeness or incompleteness of the bone, as is evident in the use of the word *עצם* *בול* every bone.<sup>10</sup> The editors surmised that MMT was engaged in a polemic with the Pharisaic-tannaitic rule that a limb of the dead which "does not bear its proper flesh" does not convey impurity by overshadowing, but only by contact and carrying.<sup>11</sup> (According to Num 19:14 and later elaborations, discussed below in section III, anyone and anything under the same tent with a corpse becomes impure. In what follows I use 'impurity by overshadowing' and 'tent-impurity' for impurity contracted in such a manner—*ואת*, *ותמאת באהל*, *בטמאת באהל*.) Thus Strugnell and Qimron restored "וְלֹא־תִטְמָא" [ש, רי"א חסרה] "[whether it] has its flesh on it or [not],"<sup>12</sup> and explained that the principle in the scroll is that any bone, even if it is thoroughly stripped of flesh, conveys impurity by overshadowing just as a whole corpse does. They further proposed that the sect derived this rule from the proximity of the phrases, "a person who was slain by the sword or who died naturally," and "human bone" in Num 19:16. A bone, any bone, has the same status as a dead or murdered person, *וְהָיָה אִם הָיָה אֶת הַבְּשָׂרָה אֶת הַבְּשָׂרָה*. As evidence for their

interpretation of the restored phrase *טמאת* *עצם* as meaning a bone which does not bear its proper flesh,<sup>13</sup> the editors adduce the phrase *טמאת* *עצם* in *m. Ed.* 6:3.<sup>14</sup>

However, a mere glance at the text of that mishna reveals the very opposite: "טמאת *עצם* טמאת, *טמאת* *עצם* טמאת." "If any of the flesh is lacking it is (still) impure, but if any of the bone is lacking it is pure." The mishna *distinguishes* between the cases where flesh is missing and *טמאת* *עצם*. Here as well as elsewhere, *עצם* *טמאת* invariably means "some of the bone is missing."<sup>15</sup> Missing flesh is never termed *טמאת* *עצם*; even the phrase *טמאת* *עצם*, "missing flesh," appears only in *m. Ed.* 6:3, and there by way of comparison to *טמאת* *עצם*. Otherwise the expression regularly used for missing flesh is "על" *טמאת* *עצם*. It appears, then, that the correct interpretation of the scroll is that it is concerned with the issue of a lack in the bone itself; it is the bone which is whole or incomplete.

What, then, is the rule that MMT teaches? A review of the analogous rabbinic doctrines on the impurity of bones is instructive. In the rabbinic view, bones per se do not impart tent-impurity. Any piece of bone of a corpse of at least the size of a barleycorn does convey impurity, but only by contact and carrying.<sup>17</sup> Nonetheless, some particular bones do impart tent-impurity: "the backbone, or the skull, . . . a quarter-*kab* from the greater part (of a corpse, i.e. certain larger bones) or from the greater number (of bones, i.e. more than half of the bones in the human body); and the greater part of a corpse, or the greater number of its members, even if they are less than a quarter-*kab*." (*m. Ohal.* 2:1).<sup>18</sup> In other words, major bones of recognizable form, or bones that constitute the greater part of a human skeleton, in quality or quantity, convey impurity per se by overshadowing. At what point do such bones cease to convey impurity by overshadowing and convey impurity like all other bones only by contact and carrying? When they are incomplete, as stated in the following *mishnah*:

<sup>8</sup> See *ibid.* 1:4; and Maimonides, *Hilkhot Tum'at Met* 2:3.

<sup>9</sup> See *m. Ohal.* 2:5; t. *Ohal.* 1:4; *Sifre* 127.

<sup>10</sup> Strugnell and Qimron, *Qumran Cave 4, V*, 170–71. For this reason the editors rejected the possibility of restoring: *עצם* *אל* *ואם* *במת*.

<sup>11</sup> See *m. Ohal.* 1:8; 2:1, 3.

<sup>12</sup> The restorations *טמאת* *עצם*, incomplete, and *טמאת* *עצם*, broken, had already been proposed by Y. Sussman, "The History of Halakha and the Dead Sea Scrolls—A Preliminary to the Publication of 4QMMT," *Tarbiz* 59 (1990): 11–76 at 32 note 90 [Hebrew].

<sup>13</sup> See *m. Ohal.* 1:8; 2:1, 3.

<sup>14</sup> Strugnell and Qimron, *Qumran Cave 4, V*, 171 note 176.

<sup>15</sup> Compare: *טמאת* *עצם* *טמאת*, *טמאת* *עצם* *טמאת*, a backbone or a skull of which anything is lacking" (*m. Ohal.* 2:3); and "טמאת *עצם* *טמאת*, a limb from a living person of which the bone is lacking." (*ibid.* 2:5).

<sup>16</sup> E.g. *m. Naz.* 7:2; *Ed.* 6:3; *Kelim* 1:5; *Ohal.* 1:8; 2:1, 3; t. *Ed.* 2:10.

<sup>17</sup> See e.g. *m. Ohal.* 2:3; t. *Shegal.* 1:5.

<sup>18</sup> See *m. Naz.* 7:2; *Ed.* 1:7.

These convey impurity by contact and carrying, but not by overshadowing... a backbone or a skull in which aught is lacking. How much must be lacking in the backbone? The House of Shammai say: Two links. And the House of Hillel say: Even one link. And in the skull? The House of Shammai say: as much as (a hole made by) a drill. And the House of Hillel say: So much that, if it was taken from a living man, he would die. (*m. 'Ohal.* 2:3).

While the actual amount of missing bone is disputed here, the principle is not. This implies that the legal differentiation between bones that convey tent-impurity and those that do not, preceded the period of the Houses of Shammai and Hillel. These two schools flourished in the last century of the existence of the Second Temple. We can take it a step further. In *Edyot* the Mishna sets out the view of Shammai the Elder himself concerning the rule of "a quarter-kav of bones" that convey tent-impurity: "Shammai says: Even of one bone" (*m. 'Ed.* 1:7). In Shammai's opinion even a single bone, if its volume comes to a quarter-kav, conveys tent-impurity. Hence, the determination that the volume of bones that will convey tent-impurity is a quarter-kav precedes Hillel and Shammai themselves. That brings us to the earliest generations of the sages, namely the period of the "Pairs," or even earlier. Yaakov Sussman has demonstrated the anteriority of this rule from the following testimony of R. Eliezer:

R. Eliezer says: At first the elders were divided. Some said: A quarter-log of blood and a quarter-kab of bones [defile]; and some said: A half-kav of bones and a half-log of blood. A later court said: A quarter-log of blood and a quarter-kab of bones [defile] *terumah* and *kodashim*; A half-kav of bones and a half-log of blood [defile] the *nazir* and the Temple. (*t. Naz.* 5:1)<sup>19</sup>

According to this tradition, the question of the minimum quantity of bone required to convey tent-impurity was disputed "at first" by "the elders," and reviewed again by a later court; and both Talmudim testify that the decision of the later court was a tradition in the name of Haggai, Zechariah and Malachi.<sup>20</sup> These elders addressed only the question of the exact minima. This means that the rule itself that limits tent-impurity to a large quantity of bones must precede both groups of elders and hence date to the very beginnings of the oral law. In

<sup>19</sup> See also *t. 'Ohal.* 4:13-14 and parallels. See Sussman, "History," 32 note 90.

<sup>20</sup> *Y. Naz.* 7:2 56c; *b. Naz.* 53a. See J. N. Epstein, *Introduction to Tannaitic Literature: Mishna, Tosephta and Halakic Midrashim* (Jerusalem/Tel Aviv: Magnes/Dvir, 1957), 507-508.

light of all this it is reasonable to suppose that it was indeed the intent of MMT, composed at the time of the earliest sages, to dispute that already well established, basic rule and to put forward a contrary rule that even a small and incomplete bone conveys tent-impurity, just as the corpse of a dead or slain person does.<sup>21</sup>

However, it seems that scholarly literature has not yet noted the remarkable similarity of this sectarian rule to a rabbinic homily in *Sifte Zuta*.

אין לי אלא הונגע בעצם בן [המת, מת] אף הנה'אגע בעצם] [מן הריח',  
תל' לי' או בעצם' (כפי טו). > יכול לא יטמא כל שהוא אבל יטמא  
כשעורה, שכן מוצינו עצם כן [שעורה] טמא, א' שוב: 'בעצם < אדם' (שם).  
מה אדם שלם, אף עצם יראה שלם.

I have here only one who touches the bone of a corpse. From where do I know also about one who touches a bone severed from a living person? Scripture teaches: *or a [...] bone* (19:16). Could it be that though it will not convey impurity in any small quantity, it will convey impurity if it is at least the size of a barleycorn, for so we find that a bone the size of a barleycorn conveys impurity? He said again: *a human bone* (literally: *a bone of a person*) (19:16). Just as a person is whole, so a bone must be whole. (*Sifte Zuta* 19:11)<sup>22</sup>

This homily is based on the same verse (19:16) as the rule in MMT. Its structure is the same as well: MMT applies to "bone" the law concerning "the dead or the slain" person; *Sifte Zuta* applies to "bone" the rule derived from the whole "person." The terminology used in each is similar as well:

MMT	<i>Sifte Zuta</i>
שכול עצם ש[חסרה כמלאה] [...] ושלמה כמשפט המת [...]	מה אדם שלם, אף עצם יראה שלם
That every bone that is [incomplete should be treated as whole] and complete, according to the law of the dead [...]	Just as a person is whole, so a bone must be whole.

<sup>21</sup> As Sussman seems to intimate, "History," 32 note 90.

<sup>22</sup> See Kahana, *Geniza*, 216-17, and cf. Horowitz, *Sifte Debe Rav*, 306-307. The homily was badly mutilated both in the Geniza text and in the sources of the Horowitz edition (*Talkui* and *Midrash Hagadol*). For the restored text reproduced above see J. N. Epstein, "Sifte Zuta Parashat Parah," *Tarbiz* 1 (1930): 46-78 [Hebrew], here 63 note 1.

Thus, MMT is engaging in a polemic against just such a rule as is found in this midrash. The midrash argues that only a complete bone conveys impurity, and derives this from the rule on a corpse: Just as a corpse conveys impurity when it is whole, so does a bone convey impurity only if it is whole. MMT teaches the very opposite, i.e. even an incomplete bone conveys impurity, but derives this in the very same way: Just as a corpse conveys impurity, so does *any* bone, whether whole or not.

However, it must be noted that *Sifre Zuta* addresses not the issue of the bone of a dead person, but of one severed from a living person. This is stated clearly at the beginning of the passage. Indeed, completeness as a limiting condition for the impurity of a bone is found in rabbinic literature only with respect to a limb from a living person,<sup>23</sup> for a bone from the dead conveys impurity by contact and carrying even if its size is as small as a barleycorn. Should we, therefore, interpret MMT as a polemic on the issue of a limb from a living body, asserting a stringent rule that such a limb conveys impurity even when the bone is missing a part?<sup>24</sup> That would hardly be acceptable. The notion of *היה* from this passage in particular. Moreover, as we have shown above, the Temple Scroll explicitly rejects the possibility of deriving a rule on a severed limb from our verse. We must, therefore, return to our first interpretation, i.e. that MMT is addressing the issue of a bone from a corpse, which is the plain meaning of the biblical verse as well. According to MMT, every bone has the status of a complete corpse with regard to conveying tent-impurity, contrary to the Pharisaic/early-tannaitic halakha, which maintained that, with some exceptions, a bone does not convey tent-impurity.

In light of the similarity in context and wording between MMT and *Sifre Zuta* (note the words: *אדם/מת, שלם, עצם* in both works), I suggest that the tannaitic midrash as found in its present form in *Sifre Zuta* is citing an earlier midrash, which originally did *not* relate to a limb from a living person, but contained only the laconic statement: *שלם, עצם, אף על גב דאדם שלם, אף על גב דאדם שלם, אף על גב דאדם שלם* (Just as a person is whole, so a bone must be whole). Its original intent was the ancient and well-established

rule which exempted most bones from tent-impurity and limited that kind of impurity to bones that constitute the greater part of a skeleton by number or structure.

Since this substantially lenient rule is not found in scripture, from where does it arise? I suggest it arose from the fact that the verse on impurity by overshadowing mentions only *אדם* (person): *ימות אדם כי ימות* (When a person dies in a tent) (19:14). By contrast the verse which does mention "bone" treats only impurity conveyed by contact: *ובל אשר יגע על פני השדה בחלל חרב או במת או בעצם אדם* (And who died naturally, or human bone) (19:16). The inference was that "human bone," which is mentioned only in connection with contact and not with the tent, does not convey tent-impurity. Only bones that are similar to a complete corpse convey such impurity. It is reasonable to suppose that the rule on the bones of the dead was expressed in a homily very similar to the one in *Sifre Zuta*, "just as a person is whole, so a bone must be whole." In other words, the only bones that can convey impurity in the same manner as a corpse are those that are similar to a corpse, those that constitute most of a skeleton, by number or structure.<sup>25</sup> It should be recalled that in rabbinic literature rules are derived from a juxtaposition of "person" and "bones" with respect to other matters.<sup>26</sup> Furthermore, a comparable homily to the one we reconstructed is found in *Sifre Zuta* on another verse:

מה אני מוקיים אדם (יש, די: אדם כי ימות באהל), לרבות דבר אחר שיטמא כמות שלם, את מה אני מרבה, השייך [ה]א[ו]לולת,

How do I maintain "person" (19:14: *When a person dies in a tent*)? By extending it to include something else which conveys impurity in the same manner as a whole corpse does. What do I include? The spine and the skull. (*Sifre Zuta* 19:14)<sup>27</sup>

Admittedly, the exact midrash reconstructed here, which expounds the phrase *אדם עצם אדם* (bone of a person), extracting the condition of "wholeness" from *אדם אדם* (person) and applying it to *עצם* (bone), with reference to tent-impurity, has not survived in our sources.

<sup>23</sup> Indeed, Sussman noted the tannaitic conception that "spine and skull" constitute a corpse: "R. Yossi says: the spine and skull are as a corpse," (*m. Ohal.* 3:6). Sussman, "History," 32 note 90.

<sup>26</sup> See the amoraic homilies at *b. Nid.* 55a.

<sup>27</sup> Kahana, *Geniza*, 219. Cf. Horowitz, *Sifre Debe Rav*, 309.

<sup>23</sup> Compare the similar homily on the limb severed from a living body in the *Sifre*, quoted above, "just as a limb from the dead is flesh, tendons, and bone, so a limb from a living body must be in its original condition, flesh, tendons, and bone."

<sup>24</sup> Cf. *m. Ohal.* 2:5.

Nevertheless, there is an indication that this lost homily did exist, and indeed derived the limitation on impurity (by overshadowing) of bones of the dead from the phrase **דָּתָן עַצֵּם** (bone of a person). An echo of such a homily is found in Maimonides' commentary to the Mishna:

The spine conveys impurity... as does the skull... Each of these conveys impurity by overshadowing because the form of a person is recognizable in each of them, and they are included in the expression "דָּתָן עַצֵּם, a human bone (literally: a bone of a person)... We have already said that the basis for all this is in what scripture says "בְּעַצֵּם דָּתָן." In each of these three measures<sup>28</sup> the bones are visibly recognizable as דָּתָן עַצֵּם, human bone.  
(Maimonides, Commentary to the Mishna, *Ḥhal.* 2:1).

Clearly Maimonides saw in the phrase **דָּתָן עַצֵּם** (a bone of a person) the source for the rule that only such bones as reveal the form of a person convey impurity by overshadowing.

To summarize, early interpretation of scripture distinguished between a "person," that is, the corpse of a person, which does convey impurity by overshadowing (19:14), and a "human bone," which does not and is mentioned only in connection with contact (19:16). Hence the early halakha exempted bones from impurity by overshadowing, unless the bones constituted something similar to a whole corpse. This interpretation was supported by an early homily which derived from the proximity of "bone" to "person," or to "a person who was slain or who died naturally," in verse 19:16 that the bone must be whole just as a corpse is whole. In other words, only bones that are close to being a corpse (spine, skull, the greater part of a skeleton, and so on) convey tent-impurity. MMT, disputing this rule, proposes a contrary interpretation of its own, using the same midrashic strategy (inference from corpse to bone) and the same terminology ("whole bone"). It claims that the inference from corpse to bone operates contrariwise—just as a corpse conveys tent-impurity, so does "every (כָּל) bone, whether whole or not. Later, Pharisaic-tannaitic midrash attached a different homily to verse 16 taking the verse to refer to a limb severed from a living person. In consequence, the earlier homily requiring the completeness of bone was detached from its context of impurity-by-overshadowing and converted to requiring completeness in the context of

<sup>28</sup> The three measures are the greater part of a skeleton by number and by structure, and the quarter-kav, all discussed in detail earlier in the Maimonidean passage.

limb-from-a-living-person. The original homily on the completeness of bones of the dead disappeared from our sources and survived only embedded in the language of Maimonides. Its reflection, however, is clearly visible in the polemical words of MMT, and this is what makes its reconstruction possible. Two phenomena of great interest are revealed—an early interpretative polemic in which scripture was expounded in two contrary directions, and the evolution of an ancient stratum of midrash which received new meaning in the later tannaitic layers.<sup>29</sup>

### III. *The Dead Fetus in Utero: A Latent Midrashic Polemic*

כָּל הַנִּגְעוֹ בַּמֵּת בְּנִפְשׁ הָאָדָם אִשֶּׁר יָמוּת וְלֹא יִרְחָטָהּ אֶת כֶּסֶפֶן ה' טָמֵא

[...]

Whoever touches a corpse, the body of a person who has died, and does not cleanse himself, defiles the Lord's Tabernacle [...] (Num 19:13)

Qumran texts often lack clear signs of polemic or of scriptural reference. A comparison with rabbinic midrashim can nonetheless reveal obscured interpretative disputes generated by conflicting stances. A remarkable example can be found with reference to the issue of the impurity of a dead fetus *in utero* attested in the Temple Scroll:

וְאִשֶּׁר כִּי תְהִיָּה מְלֵאָה יָמוּת וְלֹדָהּ בְּמַעֲוִיָּה כּוֹל הַיּוֹמִים אֲשֶׁר  
 10 הָיָה בְּחֻבּוֹהָ מֵת טָמֵא בְּקֶבֶר כּוֹל בֵּית אִשֶּׁר תּוֹבֵא אֵלָיו יִטְמָא  
 11 וְכֹל כְּלָיו שִׁבְעַת יָמִים וְכוֹל הַנִּגְעוֹ בּוֹ טָמֵא עַד הָעֶרֶב וְאֵם  
 12 לְהוֹדוֹ תְּבִיֵּת יָמוּת עִמָּה וְטָמֵא שִׁבְעַת יָמִים  
 13 (11Q19 Temple Scroll L, 10–13)<sup>30</sup>

And if a woman is pregnant, and her child dies in her womb, all the days on which it is dead inside her, she is unclean like a grave; and every house she comes into is unclean, with all its furnishings, for seven days. And anyone who touches it shall be unclean until the evening; and if he enters the house with her, he shall be unclean seven days.<sup>31</sup>

<sup>29</sup> For a similar instance of a tannaitic homily changing the meaning of an earlier one, see M. Kister, "Studies in 4QMiqsat Má'ase Ha-Torah and Related Texts: Law, Theology, Language and Calendar," *Tarbiz* 68 (1999): 333–35 [Hebrew]. For another pre-tannaitic halakha embedded in a Qumran document and in a halakic midrash, see Vered Noam, "The Origin of the List of David's Songs in David's Compositions," *DSD* 13 (2005): 134–149.

<sup>30</sup> Cf. Qimron, *Temple Scroll*, 73.

<sup>31</sup> Trans. Yadin, *Temple Scroll*, II: 391.

In the following lines instructions are given on procedures for purification of persons and utensils that touch the house with the pregnant woman or are found in it.

Rules concerning the fetus and its legal and moral status are among the most fascinating subjects, from both ontological and ethical perspectives. Qumranic halakha, like other legal systems in antiquity, considered a fetus to be a distinct individual. Accordingly it required ritual slaughtering of a fetus found in its dead mother and forbade the slaughtering of a pregnant animal because of the restriction on slaughtering an animal and its offspring on the same day.<sup>32</sup> Moshe Weinfield noted the similarity between the Qumranic view of the individuality of the fetus and a comparable view common in the Hellenistic world.<sup>33</sup> Against this theoretical background the impurity ascribed to the dead fetus is well explained, for it is considered a distinct individual, and hence can be impure and convey impurity just like an adult corpse. The sect did not recognize anything like what later rabbinic literature termed *בלועה טומאה* (absorbed impurity),<sup>34</sup> and hence determined that a dead fetus conveys impurity to the mother from within and that the impurity spreads past the woman's body and defiles the house surrounding her and its utensils according to the usual rules of impurity by overshadowing of a corpse.

Tannaitic halakha, on the other hand, stands out in its singularity on issues relating to fetuses. There the fetus does not have the status of a live person before birth.<sup>35</sup> Hence, killing a human fetus is not

<sup>32</sup> 11QT<sup>a</sup> 52:5-7; cf. Qimron, *Temple Scroll*, 76; MMT B 36-38. cf. Strugnell and Qimron, *Qumran Cave 4*, V, 50; 4Q270 2 II, 15-16. cf. J. M. Baumgarten, ed., *Qumran Cave 4. XIII: The Damascus Document* (DJD 18; Oxford: Clarendon, 1996), 144. For the Qumranic paraphrase of Exod 21:22-25, concerning one who pushes a pregnant woman, in 4Q251 frag. 13, see A. Shemesh, "4Q251: *Midrash Mishpatim*," DSD 12 (2005): 280-302. See also Yadin, *Temple Scroll: Introduction*, 336-38; MMT Strugnell and Qimron, *Qumran Cave 4*, V, 157 (see there on Philo and Karaitic halakha, similar to Qumranic halakha); J. M. Baumgarten, "A Fragment of Fetal Life and Pregnancy in 4Q270," in *Pomegranates and Golden Bells: Studies in Biblical, Jewish and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom* (ed. D. P. Wright et al.; Winona Lake: Eisenbrauns, 1995), 445-448 and Baumgarten, *Qumran Cave 4. XIII*, 146.

<sup>33</sup> M. Weinfield, "The Genuine Jewish Attitude Towards Abortion," *Zion* 42 (1977): 135-6, 142 [Hebrew].

<sup>34</sup> The term originates in the BT—see b. *Hul.* 71a-b, b. *Nid.* 42a-b—but the principle, that an absorbed impure object does not even defile anything else in the same body, is tannaitic. See further below.

<sup>35</sup> This is because it is in its mother's womb—"his mother's thigh" is the term particular to the BT—not because it is not fully formed, (as in the Septuagint, for example, where the development of the fetus determines the punishment of the person who

considered murder,<sup>36</sup> separate ritual slaughtering of a fetus found in its slaughtered mother is not required; and the slaughtering of a pregnant animal is permitted without concern for the restriction on slaughtering an animal and its offspring on the same day.<sup>37</sup> We do nonetheless find the opinion that a fetus *in utero* conveys impurity in tannaitic literature:

וְכָל אִשָּׁה יָצֵעַ עַל פְּנֵי הַשָּׂדֶה—לְהוֹצִיאַת אֶת הַטֶּעֹמֶר אֲשֶׁר דָּבְרָהּ ר' שְׁמוּעֵאל; ר' עֲקִיבָה אָמַר לְרַבִּיאַת אֶת גּוֹלֵל וְדוֹפְקִי.

*And in the open, whoever touches a person who was slain by the sword or who died naturally, or human bone, or a grave, shall be unclean seven days.* (Num 19:16)—This comes to exclude a fetus *in utero*, says R. Yishmael; R. Akiva says: This comes to include a *golēl* (the stone that seals a grave) and *dofeq* (its buttressing stone). (Sifre 127).<sup>38</sup>

R. Yishmael derives from the words "in the open" that corpse impurity is conveyed only outside the body, not inside it. Hence a dead fetus does not convey impurity to its mother while still *in utero*. R. Akiva,

struck a pregnant woman causing the death of the fetus, see Weinfield, "Abortion," 129 and the parallels referred to there). A stillborn fetus conveys impurity when it emerges from the womb, irrespective of its stage of development. (See e.g. m. *Ohal.* 16:6, 18:7; *Ohal.* 16:1; *Sifre* Numbers 125, contra Weinfield, "Abortion," 142, who holds that the tannaitic view concerning a dead fetus *in utero* requires that a stillborn fetus will not be impure.) Indeed, the considerations in the BT's deliberations concerning the status of a fetus are "its mother's thigh" as against "it is destined to emerge," but not the stage of the fetus' development (b. *Naz.* 51a).

<sup>36</sup> See Exod 21:22. On rabbinic and other interpretations of the verse, and on other views of the matter in antiquity, see A. Aptowitz, "The Status of the Fetus in Jewish Penal Law," *Sinai* 11 (1942-43): 9-32 [Hebrew]; G. Alon, "The Halakha in the Teaching of the Twelve Apostles (Didache)," in *idem, Studies in Jewish History in the Times of the Second Temple, the Mishna and the Talmud I* (Tel Aviv: Hakibutz Hameshad: 1957), 274-294 at 279-80 [Hebrew]; E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. I. Abrahams; Cambridge MA: Harvard University Press, 1979), 242-45; Weinfield, "Abortion," Baumgarten, "Fetal Life," and the references in Strugnell and Qimron, *Qumran Cave 4*, V, 157 note 115.

<sup>37</sup> References and further halakhic implications are presented in A. Geiger, "Sever-Abhandlungen jüdische Literatur betreffend III (ed. I. Blumenfeld, Vienna, 1860), 1-15 at 12-14 [Hebrew]; repr. *inter alia* in A. Geiger, *Urschrift und Übersetzungen der Bibel in ihrer Abhängigkeit von der innern Entwicklung des Judentums* (2nd ed.; ed. N. Courtowski; Frankfurt am Main: Madda, 1928), appendix, 26; the Hebrew translation of that volume, *Ha-Mikra Ve-Targumav: Bezikatam Lehitpachutah Hapenit Sifet Hayehadut* (trans. Y. L. Barukh; Jerusalem: Mossad Bialik, 1949), 343-46; and *Kewizat Ma'amarim Me'et Avraham Geiger (Abraham Geiger's Gesammelte Abhandlungen in hebräischer Sprache)* (ed. S. Poznanski; Warsaw: Tuschijah, 1910; repr. Haifa: Lashidat, 1967), 116-20. See also the works cited in the previous note.

<sup>38</sup> Cf. Horowitz, *Sifre Debe Rav*, 164.

however, turns the exposition in another direction. It seems that R. Akiva's dispute with R. Yishmael centered not merely on the exposition of the verse, but also on the very rule that a dead fetus does not convey impurity.<sup>39</sup> Indeed, the Mishna indicates the potential of a fetus to convey impurity:

A woman's fetus died in utero; and a midwife inserted her hand and touched it: The midwife has seven-day impurity; the woman is pure until the fetus emerges. (*M. Hul.* 4:3).<sup>40</sup>

The mishna appears to reflect the doctrine of R. Akiva that the fetus is impure, for the midwife receives impurity from contact with it.<sup>41</sup> The Babylonian pericope on this mishna quotes the above midrash and asserts that the dispute between R. Akiva and R. Yishmael is not limited to the exegesis of the verse, but concerns the very status of the fetus. According to a *baraita* of R. Hoshai'a quoted there, R. Akiva explicitly derived the scriptural impurity of a fetus from Numbers 19:13:

And R. Akiva, from where does he derive that a fetus in utero is impure from scripture? R. Oshai'a said, Scripture says: *בנת בנת* *Who ever touches a corpse in a body of a person* (19:13). Now what can "a corpse in a body of a person" refer to? You must say it refers to a [dead] fetus in the womb of its mother. (*B. Hul.* 72a).<sup>42</sup>

Wresting the verse from its plain meaning,<sup>43</sup> R. Akiva derives the impurity of a dead fetus from the compound phrase *האדם הנתון* (*a corpse, a body of a person*), as if it refers to "a corpse in the body of a person". Indeed, in *Sifre Zuta*, a Midrash from the school of R. Akiva, this very homily is found, ascribing impurity to a fetus and to the midwife who touches it:

ובני ארץ תרכבה ששלחה ידה בתוך כעורה שלאשה תראה טמאה, תלי לילי: *רננוע*.

And how do we know that even a midwife who inserted her hand into the womb of a woman is impure, scripture teaches, *Whoever touches* (*Num.* 19:13). (*Sifre Zuta* 19:16).<sup>44</sup>

The proof text appears in abbreviated form here, and undoubtedly the reference is to the subsequent words in the verse, *בנת בנת* [*רננוע*] *Whoever touches [a corpse, a body of a person]*, taken as—a *corpse in the body of a person*, which is exactly the homily we just encountered in BT.

Nonetheless, the doctrine of R. Akiva is not identical with that of the Temple Scroll. It must be emphasized that in R. Akiva's view the impurity of the fetus is conveyed only by external contact, such as the hand of a midwife. It is unanimously agreed among the rabbis that impurity is not conveyed to the mother who carries the fetus in her

<sup>39</sup> We cannot tell whether R. Akiva's view is a remnant of a general ancient view that defined the fetus as an individual distinct from its mother, with all that entails, which was rejected and marginalized by the tannaitic world, or whether R. Akiva addressed only the specific circumstance that the womb opened and that hence the fetus could be considered "quasi-born." Neither is it easy to determine whether R. Yishmael's contrary view that the fetus is free of any impurity flows from a fundamental doctrine that a fetus is considered "his mother's thigh," or rather from the less fundamental doctrine that "absorbed impurity" does not defile. Ever since its inception critical talmudic scholarship has deliberated this question. See Geiger, *Ha-Mikra*, 280–81, 343–46 [Hebrew]; *idem*, *Keuzat Ma'amrim*, 116–20; Alon, "Didache," 280; Aptowitzer, "Fetus," 12–13 note 8, 14–15 note 21. But see H. M. Pines, *The Way of the Torah* (Vienna, 1861; repr. Jerusalem: Karmiel, 1965), 190–91 [Hebrew]; L. Ginzberg *apud* Geiger, *Keuzat Ma'amrim*, 398–400 [Hebrew]; H. S. Horowitz and I. A. Rabin, *Mekhila of Rabbi Ishmael* (Frankfurt: Kaufmann, 1931; repr. Jerusalem: Wahmann 1970), 275 line 3; H. Albeck, *Shisha Sidrei Mishna. Seder Kodshim* (Jerusalem/Tel Aviv: Mossad Bialik/Dvir, 1957), 377; Urbach, *Sages*, 242–43.

<sup>40</sup> On the similarity of the language of the mishna and that of the Temple Scroll, see Yadin, *Temple Scroll*, I, 336.

<sup>41</sup> The BT interprets the mishna differently, aligning it with the determination of Shmuel that the impurity of the midwife in this case is only rabbinic (*מדרבנן*) rather than scriptural. Hence the mishna is not limited to the doctrine of R. Akiva, "but can be accommodated to that of R. Yishmael as well, who holds that a fetus in utero is pure, and even so it was decreed impure rabbinically (יגדרוהו)." In other words, impurity was decreed for a dead fetus in utero out of concern for the case of a dead fetus whose head already emerged, which is certainly impure. This interpretation, however, surely does not fit the plain sense of the mishna. As we will show below, tannaitic midrash (*Sifre Zuta*) represents the rule in the mishna as deriving from scripture.

<sup>42</sup> R. Yishmael derived from that verse the impurity of blood.

<sup>43</sup> In the plain sense of the phrase *נתון* *אדם* *בנת בנת* the *נתון* in both *בנת* and *בנת* indicates transitivity (P. Joüon, S.J., *A Grammar of Biblical Hebrew* [trans. and rev. T. Murdock, Rome: Editrice Pontificio Istituto Biblico 1991, 1993], 448), and the phrase *נתון* *אדם* *בנת בנת* is in apposition to *נתון*. The homily takes the *נתון* subordinate to *נתון* and *נתון* as modifying *נתון*.

<sup>44</sup> Cf. Kahana, *Gemiza*, 221; Horowitz, *Sifre Debe Rav*, 311. Though R. Akiva holds that the fetus is impure, other sages hold that "absorbed impurity" does not defile anything, not even that which is found within it inside the body; cf. *m. Ohal.* 7:5; *t. Ohal.* 8:8. The dispute in this mishna, and especially R. Meir's view there, is not easily understood nor accommodated in relation to the explanations given in the Tosefta passage. Rabenu Shimshon connects the dispute in *m. Ohalot* with the dispute of R. Akiva and R. Yishmael on the impurity of a fetus. In any case, it is clear that on both views, a dead fetus will not convey impurity to its live twin before its birth.

womb, and certainly not to persons in contact with her, nor to the house in which she is present.<sup>45</sup> Indeed, even *Sifre Zuta*, the Midrash from the school of R. Akiva, excludes pregnant women from the application of this impurity:

*A person who was killed (literally: Slain by the sword) (Num. 19:16): a victim of the sort that is killed by sword. This excludes a woman with a dead fetus in her womb. (Sifre Zuta ad loc.)*<sup>46</sup>

And immediately following:

Could it be that for as many days as the midwife is impure the (pregnant) woman would also be impure? He said: *whoever touches* (19:16), excluding this. (*Sifre Zuta ad loc.*)

This homily is clearly intended to oppose a doctrine such as that of the sect.<sup>47</sup> It asserts that although the midwife does become impure, the mother herself does not contract impurity from the dead fetus in her womb, for she did not actually “touch” it with a visible external limb, such as hand or foot.<sup>48</sup> Since the pregnant woman herself is pure until she delivers the dead fetus, she certainly does not convey impurity to anyone who touches her, nor to the house in which she lives during the pregnancy. This view is also expressed in other sources which

<sup>45</sup> But see L. H. Schiffman, “The Impurity of the Dead in the *Temple Scroll*,” in *Archaeology and History in the Dead Sea Scrolls* (SPSup 8, ed. L. H. Schiffman, Sheffield: JSOT Press, 1990), 135–156 at 150–151. According to David Weiss Halivni, the above-cited mishna contains an element of polemic against the view that the dead fetus conveys impurity to its mother. The words (here italicized) in the phrase “the woman is pure until the fetus emerges” are superfluous, in his view, since it is obvious that the woman will be impure once the dead fetus emerges. The point of the phrase, then, is to emphasize that the woman is pure as long as the fetus is within her, contrary to the sectarian view that the dead fetus conveys impurity to her when still *in utero*. Thus Halivni in a lecture to the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls at the Hebrew University in Jerusalem, 2003, and in private oral communication. This is contrary to his previously expressed view in D. Weiss Halivni, *Midrash, Mishnah, and Gemara* (Cambridge MA: Harvard University Press, 1986), 35–37, where he argues that there is no conscious polemic between rabbinic doctrine and the views expressed in the Temple Scroll here. According to Halivni he now retracts his earlier view on the matter.

<sup>46</sup> The reasoning of this homily is not quite clear. It may be understood as follows: one who contracted impurity from a corpse does so by external contact, for it is in the nature of a corpse that it is exposed to external contact, just as the sword had pierced it previously from the outside. By contrast, a woman with a dead fetus *in utero* cannot be rendered impure by a contact which takes place inside her body.

<sup>47</sup> Note the intriguing similarity of the wording *אשר אף בתוכה הוא טהור* *אשר אף בתוכה הוא טהור* in the midrash: and *אשר אף בתוכה הוא טהור* *אשר אף בתוכה הוא טהור* in the Temple Scroll.

<sup>48</sup> Contra: Horowitz, *Sifre Debe Rav*, 312 note to line 1; Halivni, *Midrash*, 36.

stress that the house of a woman who miscarried becomes impure only when it is known that the womb opened while she was in the house, and the impurity of the dead fetus emerged and defiled the house. Until that point the house is pure.<sup>49</sup>

There are, then, three doctrines on this issue:

1. That of the Temple Scroll, according to which a fetus is a distinct individual and as such can become impure and convey impurity just like an adult corpse. This entails that the fetus conveys impurity to its mother, an impurity which is in turn conveyed to the house where the mother is present, to the utensils in the house, and to anyone who enters the house.
2. That of R. Yishmael, according to which a dead fetus is pure, whether because it is considered “the thigh of its mother,” or because its impurity is “absorbed.” According to the plain meaning of tannaitic sources, R. Yishmael considers the midwife, who touched the dead fetus “externally,” from outside the mother’s body, to be pure as well, and so *a fortiori* the mother.
3. That of R. Akiva, which shares elements of each of the first two. On the one hand something remains of the ancient, severe doctrine which viewed the fetus to some extent as a distinct individual capable of conveying impurity upon death. On the other hand, the impurity affects only the midwife, whose contact with the fetus is “external,” and not the mother, whose contact with the fetus is “internal.” Furthermore, the notion that the fetus’s “absorbed impurity” does not even affect the mother, let alone the house and its utensils.

As we have seen, the two tannaitic doctrines rest on derivations from the same biblical verse, Num 19:16 (*And in the open* [literally: *on the surface of the field*], *whoever touches a person who was slain by the sword or who died naturally, or human bone, or a grave, shall be unclean seven days*). R. Yishmael declares the fetus pure, by virtue of the phrase *on the surface of the field*; that is, to be effective impurity must be as open and uncovered as a field,<sup>50</sup> not hidden in someone

<sup>49</sup> *M. Ohal* 7:4, t. *Yebam*, 9:5.

<sup>50</sup> See *Mek. Mishpatim*, *Nezikin* 14 (Horowitz and Rabin, *Mekhila of Rabbi Ishmael* 297): *ולגלגל בגלגל אף הקיפה בגלגל* and *Rashi, Hul. 72a s.v. על פני השדה*; *על פני השדה בגלגל אף הקיפה בגלגל* and *Rashi, Hul. 72a s.v. על פני השדה*; here matches R. Yishmael: *דאמרי דבכריתא ולא בכריתא ולא בכריתא* *על פני השדה*.

else's abdomen. R. Akiva declares the dead fetus and the midwife who touched him "externally" impure, and thus rejects R. Yishmael's inference. Yet R. Akiva himself also stresses that the mother is not impure until the fetus emerges, and this is derived by his school from the phrase *slain by the sword* in the same verse—"a victim of the sort that is killed by the sword: this excludes a woman with a dead fetus in her womb."

Let us now return to the Temple Scroll. *Prima facie* the Scroll does not adduce biblical verses here, neither does it explicitly oppose other views. Nonetheless, in light of the two homilies explicated above, an implicit midrash can be discerned in the text of the Temple Scroll. A woman with a dead fetus *in utero*, says the Temple Scroll, "shall be unclean *like a grave*." The comparison to a grave is undoubtedly an allusion to a third phrase in the same verse, "whoever touches... a grave." Surely this enables us to reconstruct a third homily: לְרַבּוֹת—*a grave*—אוֹ בְקִבְרָא בְקִבְרָא (or *a grave*, this includes a woman with a dead fetus in her womb.)

We may now be able to read between the lines a polemical interchange conducted between the three homilies. The implied homily in the Temple Scroll declares, "A woman carrying a dead fetus resembles the 'grave' mentioned in the verse, in which a corpse is placed. The corpse conveys impurity to the tomb, which, in turn, conveys impurity to anyone who touches it." The other two homilies, which support the more lenient doctrine that the fetus, or at least its mother, was pure, responded to that earlier exegesis by saying, "Not so. The legal status of a woman and her dead fetus should not be inferred from a grave, but rather from an open field, or from a person who was slain by the sword, mentioned in the same verse."

Homily of R. Yishmael ( <i>Sifte Numbers</i> )	Homily of R. Akiva ( <i>Sifte Zuta</i> )	Homily of Temple Scroll (reconstructed)
'על פני השדה—לְהוֹצִיא את העובר שבמעי אשה מעיָה	בְּחַלְלֵי חַרְבֵי—פֶּרֶט לְאִשָּׁה שֶׁהַמּוֹת בְּחוּךְ מַעֲיָה	"אוֹ בְקִבְרָא—לְרַבּוֹת הָאִשָּׁה שֶׁחוּלַד מוֹת בְּמַעֲיָה">
<i>And in the open (literally: on the surface of the field)—this excludes a fetus in utero.</i>	<i>A person who was slain by the sword—this excludes a woman with a dead fetus in utero.</i>	<i>Or a grave—this includes a woman with a dead fetus in utero.</i>

Indeed, there is a circumstantial similarity between the grave in which a corpse is located, and the impurity of which is stressed by the Torah, and the woman carrying a dead body inside her. This similarity, implied in the Bible itself<sup>51</sup> and evidenced by tannaitic terminology as well,<sup>52</sup> provides a convenient basis for the Qumranic homily. Therefore, it seems that this homily is the most original one. It may also represent the earlier halakhah. The rabbinic evidence is, by contrast, rather forced. It must have originated as a reaction to opposing conceptions in the course of a halakhic dispute. This dispute has probably taken place during the Second Temple era, though the rabbinic homilies are transmitted by second century CE sages. It should also be noted that the position advocated in the Temple Scroll derives the rule on the dead fetus from the biblical reference to "a grave." The scriptural foundation of this exegetical approach is implied and not spelled out explicitly as is the case in the tannaitic midrashim.

This is one more instance of a general characteristic of Qumranic midrash observed by scholarly research—Qumran homilies do not quote verses explicitly, and lack a distinct exegetical terminology.<sup>53</sup> Yet, the scriptural exegesis in the background of Qumranic texts can be discerned by other means. Aharon Shemesh demonstrated the presence of such exegesis by analyzing the sequence of statements in a Qumran text paralleling that of a scriptural text.<sup>54</sup> In our case the demonstration rests on the allusion to the scriptural word "grave," and on the tannaitic parallels.

#### IV. *The Parts of a House: The History of an Ancient Halakha*

זאת התורה אדם כי ימות באהל כל הבא אל האהל וכל אשר באהל  
יטמא שבעת ימים:

<sup>51</sup> "Because he did not kill me before birth so that my mother might be my grave and her womb big [with me] for all time" (Jer 20:17, trans. JPS, Philadelphia 1999). I am indebted to Prof. Menahem Kister for this reference.

<sup>52</sup> The term "grave" as a metaphor for a womb is quite common throughout tannaitic literature, see e.g. *m. 'Ohal* 7:4; *t. 'Ohal* 8:8.

<sup>53</sup> See, for example, S. D. Fraade, "Looking for Legal Midrash at Qumran," in *Biblical Perspectives: Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls* (STDJ 28; ed. M. E. Stone and E. G. Chazon, Leiden: Brill, 1998), 59–79, and earlier bibliography mentioned there.

<sup>54</sup> Shemesh, "4Q251 Midrash Mishpatim."

This is the law: When a person dies in a tent, whoever enters the tent and whatever is in the tent shall be unclean seven days. (Num 19:14, slightly revised)

ולקוח אוזוב וטבל ואיט במים איט טהור וזהו על האהל ועל כל הכלים ועל תנפשות אשר היו שם [...].

A person who is clean shall take hyssop, dip it in water, and sprinkle on the tent and on all the vessels and people who were there [...]. (Num 19:18)

The Temple Scroll, like the Septuagint, Philo and Josephus, substitutes "house" for the "tent" of the dead in Numbers 19.<sup>55</sup> To the impurity of "everything which is in the house and every one who comes into the house" (XLIX, 6) the Scroll adds "every house in which a dead (man) died shall become unclean, seven days" (XLIX, 5–6).<sup>56</sup> It goes on to itemize the exacting measures taken to purify the defiled house—"And on the day on which they will take the dead body out of it, they shall sweep the house of any defiling smirch of oil and wine and moisture of water: they shall scrape its floor and its walls and its doors, and they shall wash with water its locks and its doorposts and its thresholds and its lintels (XLIX, 11–13).<sup>57</sup> A parallel law in the Damascus Document also instructs that the materials which make up the house contract corpse-impurity—

וכל העצים והאבנים והעפר אשר גזאול בטמאת האדם לגאול שמו  
בהם כפי טמאתם יטמא הנון וגע במ וכל כלי (מסמר) מסמר או יתד  
ככותל אשר יהיו עם המות בבית וטמאן בטמאת אחד כלי מעשהו.

And all the wood and the stones and the dust which are defiled by man's impurity, while with stains of oil in them, in accordance with their uncleanness will make whoever touches them impure. And every utensil, nail or peg in the wall which is with a dead person in the house will be unclean in the same uncleanness as tools for work. (CD XII, 15–18).<sup>58</sup>

<sup>55</sup> XLIX, 5–1, 19; Qimron, *Temple Scroll*, 70–73; Philo, *Spec.* 3.206; Josephus, *Ag. Ap.* 2.205; see the discussion by Yadin, *Temple Scroll*, I: 325–26.

<sup>56</sup> Trans. Yadin, *Temple Scroll*, II: 387.

<sup>57</sup> Trans. Yadin, *Temple Scroll*, II: 389.

<sup>58</sup> Cf. M. Broshi, ed., *The Damascus Document Reconsidered* (Jerusalem: IES/The Shrine of the Book/Israel Museum, 1992), 33; Trans. F. Garcia Martínez and E. J. C. Tigheleær, *The Dead Sea Scrolls Study Edition* (2 vols.; Leiden: Brill, 1997), I: 571. A very fragmentary parallel is found in one of the Qumran copies of the Damascus Document, 4QD\* (= 4Q266) 9 II, 2–5, for which see Baumgarten, *Qumran Cave 4. XIII*, 68. Recently H. Eshel, "CD 12:15–17 and the Stone Vessels Found at Qumran," in *The Damascus Document: A Centennial of Discovery. Proceedings of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and*

The impurity of the tent itself, in addition to the persons and utensils found in it, is explicit in scripture—"and sprinkle on the tent and on all the vessels and people who were there" (Num 19:18). The halakic midrash makes the same point—"Sprinkle on the tent: scripture comes to teach that the tent contracts impurity," (Sifre 129).<sup>59</sup> However, as Yadin emphasized, according to rabbinic doctrine any covering fastened to the ground that is not made of cloth, skin or the like, but of materials characterizing permanent structures, such as wood, metal and stone, remains pure. That is, rabbinic doctrine—in contrast to the sectarian halakha—considered the house itself, the walls and floor, in which a corpse is found to be pure, and not in need of any purification. Only a tent made of tent cloths can itself become impure.<sup>60</sup> The amoraic justification for this rule, given in both Talmuds, is based on an analogy of the "tent" here and the "tent" of the tabernacle in the desert:

Here it is written, *This is the law: When a person dies in a tent* (Num 19:14); and there it is written, *He spread the tent over the Tabernacle* (Exod 40:19); just as there [the covering] of linen is designated 'tent,' so here too, [a covering] of linen is designated 'tent.' (*b. Shabb.* 28a).<sup>61</sup>

*Associated Literature*, 4–8 February 1998 (STDJ 34, ed. J. M. Baumgarten, Esther G. Chazon and Avital Pinnick; Leiden: Brill, 2000), 45–52 at 48–49, proposed returning to an old emendation of Louis Ginsberg and emending *העפר והאבנים והעץ* for *וכל כלי העצים והאבנים והעפר* (כלי העצים והאבנים והעפר), where no house is mentioned, from the impurity of the floor and walls of the house of a corpse as described in the Temple Scroll. The proposal is made improbable by *Tg. Ps.-J.* (see below) where, in the context of the impurity of a house, the impurity of floor, stones and wood are explicitly mentioned, distinct from utensils ('תכלי', mentioned separately later—"תכלי רבבועטבועט ותכלי קרקעיתו ותכלי וקיסו" וכו'),<sup>62</sup> Furthermore, CD does explicitly mention that "which is with a dead person in the house," as well as features of the house—"nail or peg in the wall." There can be no doubt that the rules in the Temple Scroll, CD, and *Tg. Ps.-J.* are in fact a single rule concerning the components of the house in which a dead person is found. See further below.

<sup>59</sup> Horowitz, *Sifre Debe Rav*, 166. Seven-day impurity of the tent itself is found in R. Akiva's statement in *m. 'Ohal.* 1:3, listing four items liable to seven-day impurity—"the tent, the peg, the man that touches the peg, and the vessels that touch the man." There are no grounds for Schiffman's comment ("Impurity," 139) that the sages in this mishna dissent on the very principle of the impurity of the tent itself. The dispute only relates to R. Akiva's reference to it as a distinct level of impurity in his list of five such levels. See all commentaries to this mishna.

<sup>60</sup> This fundamental rule derives from several partial statements in tannaitic literature: *m. Shabb.* 2:3; *m. Kelim* 27:1; *Sifre Zuta* 19:13. See Epstein, "Parah," 66 note to line 24. The rule is stated clearly and unambiguously by Maimonides, *Mishneh Torah*, *Hilchot Tumat Met* 5:12, from which it is quoted by Yadin, *Temple Scroll*, I: 326.

<sup>61</sup> See also *y. Shabb.* 2:3, 4d.

It can be inferred from the anonymous discussion in each of the Talmuds that not only linen, the biblical *שט*, but all the materials that were used to cover the tabernacle are designated tent, and they, and only they, contract seven-day impurity and require sprinkling with the water of the red heifer.

This is a surprising doctrine considering the general rabbinic notions interpreting the scriptural "tent." Biblical "tent-impurity" involves two distinct issues open to interpretation—(a) a structure or overhang under which there is a corpse becomes itself impure for seven days and requires purification by sprinkling with "water of purification" ("and sprinkle on the tent," 19:18); and (b) a structure or overhang conveys "tent-impurity" to persons and utensils that are in it when a corpse is in it even without contact ("whoever enters the tent and whatever is in the tent shall be unclean," 19:14). Tents of this latter sort are said to be *מכאן* in tannaitic literature, that is, they give passage to, or bring, impurity.<sup>62</sup> On this issue tannaitic halakha was expansive almost without limit. Yadin, who was searching for polemical strands in the Temple Scroll and for evidence of its propensity for stringency, placed great emphasis on the difference between the Temple Scroll and rabbinic halakha in the matter of the impurity of the house itself (a), but entirely ignored the other fundamental difference between rabbinic halakha and the Temple Scroll, namely, the expansive definition of "tent" in rabbinic halakha (b).<sup>63</sup> Here we have a tannaitic stringency of major proportions and with far-reaching implications, one that extends impurity very broadly in daily life.

Comparison with the Temple Scroll reveals the force of the innovation in the terms used by the rabbis. Tannaitic halakha extends the concept of "tent" not merely to houses but to virtually anything that overshadows. As halakic midrashim state it, "How do you know to make all overhangs equivalent to a 'tent?'" (*Sifre Num.* 126). "For it says 'וְהָיָה, הַחֵדָּר, הַחֵדָּר, הַחֵדָּר'—the law of the 'tent,' everything that overshadows." (*Sifre Zuta* 19:14).<sup>64</sup> Tannaim thus stretched the definition of

<sup>62</sup> Most objects which can "bring" can also "screen," that is, they separate the place where the impurity is found, and spreads, from its environment, so that the impurity does not pass to another place. The sorts of utensils and other objects that variously bring and screen, bring but do not screen, screen but do not bring, and neither bring nor screen, are listed in *m. Ohal.* chapter 8.

<sup>63</sup> Yadin, *Temple Scroll*, I, 325–26.

<sup>64</sup> This midrash, starting from the word *וְהָיָה* extends the category of "tent" to a long list of overshadowing things, and from the word *חֵדָּר* excludes several others.

"tent" to include houses, cisterns, and caves;<sup>65</sup> persons and utensils,<sup>66</sup> chests, boxes, tanks on ships, sheets and mats, domesticated and undomesticated animals, plants and certain foods, pigeon-coops, rocks, overhanging trees, and much more.<sup>67</sup> Whereas for the Temple Scroll it was sufficient to extend the circumstances of the scriptural command from tent and desert, predictably, to house and city, the tannaim severed "tent" from its definition as a dwelling-place, movable or stationary, and transformed it from an *object* to a *condition* which may obtain under certain circumstances when anything, be it human, animal, vegetable or mineral, overshadows a corpse. In other words, as Jeffrey Rubenstein has shown at length, tannaitic halakha turned the scriptural "tent" into an *absolute abstraction*.<sup>68</sup>

The far-reaching conceptual expansion described above found linguistic expression as well. Abraham Goldberg showed that the form *אָרַל* (from which the plural *אָרָלוֹת* is formed), characteristic of the vocalized manuscripts of the Mishna, is not a variant form of the noun *אָרַל* (tent) but rather a verbal noun, similar to those in the phrase *בָּנֵה וְנָשָׂא*, contact and carrying, and in its form it is a participle of the *gal* conjugation, *אָרַל* equivalent to *אָרַל*.<sup>69</sup> In effect, the denotation of the whole complex of laws on corpse impurity,<sup>70</sup> and the title of the tractate treating them, *אָרָלוֹת*, is derived from the verbal noun for the action of overshadowing a corpse. The vast expansion of the definition of this state was perceived as the prime characteristic feature of the laws on corpse impurity, and consequently gave them its name.

The forms of the homilies of Sifre and Sifre Zuta are characteristic of their midrashic methods as a whole. Sifre, a product of the school of R. Yishmael, derives its rule by an *a fortiori* argument (*מֵחֵדָּר לְכָל חֵדָּר*) from the "leper." Sifre Zuta, a product of the school of R. Akiva, does so by extension and limitation (*מֵחֵדָּר וְכֵלָיו*) of the relevant verse.

<sup>65</sup> *Sifre Zuta, ibid.*

<sup>66</sup> *M. Ohal.* 6:1: "Persons and vessels can serve as 'tents' so as to give passage to impurity."

<sup>67</sup> See *m. Ohal.* 8. Overhangs which do not give passage to impurity are listed in 8:4–5; they are the exceptional ones, by virtue of not being permanent, stationary, woven, or the like. Cf. Maimonides, *Mishneh Torah, Tum'at Met* 13. For more overhanging things and their details, see especially *m. Ohal.* chapters 6 and 9; *Sifre Zuta* 19:14.

<sup>68</sup> J. L. Rubenstein, "On Some Abstract Concepts in Rabbinic Literature," *JSQ* 4 (1997): 34–40.

<sup>69</sup> A. Goldberg, *The Mishnah Treatise Ohaloth: Critically Edited and Provided with Introduction, Commentary and Notes* (Jerusalem: Magnes, 1955) [Hebrew], 2.

<sup>70</sup> E.g., *b. Pesah* 50a, *b. Hag.* 11a, 14a.

Considering the enormous expansion of the class of "overhanging things" in tannaitic halakha, it is surprising that the tannaitic halakha reverses direction with respect to the impurity of the "tent" itself and limits its impurity to "tent" in the most literal sense, as it is in the plain meaning of the biblical text, and by *gezeira shava* further limits the definition of "tent" by determination of the materials of which it is composed. This apparent discrepancy inherent in the tannaitic halakha is all the more striking when compared to Qumranic halakha, which is perfectly consistent in its move from tent to house, both with respect to "giving passage" to impurity and with respect to the impurity of the structure itself. Why, then, were the rabbis so severe in the matter of "overshadowing impurity," assigning impurity to anything or anyone found under the same covering, of any sort, with a corpse, yet were so lenient in the matter of the definition of the impurity of the tent itself, limiting it to that composed of textile tent-sheets only? Conversely, why did the Qumran sect hold that only a house counts as a "tent," yet take such a severe position on all the materials that make up a house even those attached to the ground? Which of these is the earlier halakha, and which is the innovation?

With respect to the definition of "tent" as any overhang, tannaitic law was indeed, uncharacteristically, much more severe than Qumranic law. However, the sophistication of the conceptual change is typical of rabbinic halakha and foreign to Qumranic halakha. On reading the Temple Scroll one does not sense any obvious polemic. The abstraction that turned people and objects into "tents" seems not to have occurred to the author of the Scroll. Philo and Josephus also appear unaware of any covering other than a house that "brings" impurity.<sup>71</sup> Despite the absence of this sophisticated abstraction from the Second Temple Jewish literature, it is apparently of a surprisingly early provenance. Already well known by the time of the two schools of *Beit Hillel* and *Beit Shammai* who disagreed only with regard to its measurements.<sup>72</sup> Hence, different circles in the Jewish society of the last centuries BCE must have had, simultaneously, extremely diverse conceptions of the biblical "tent." A similar dispute took place within

<sup>71</sup> Josephus, *Ag. Ap.* 2.205; Philo, *Allieg. Interp.* 3.206.

<sup>72</sup> *m. Kelim* 17:8; *m. Ohal.* 16:1; *t. Shabb.* 1:18; *t. Ohal.* 15:12; *y. Shabb.* 1:4; *b. Shabb.* 16b–17a. Rubenstein, "Abstract Concepts," 40, also believes that, "The concept of the rabbinic-tent evidently developed in early Tannaitic or pre-tannaitic times, for it is presupposed by the Tannaim and finds no opposition" (see also *ibid.*, 70).

the rabbinic sphere as well. The survival of a minority view limiting the definition of "tent" within the tannaitic world constitutes the exception that proves the rule. The doctrine of R. Yehudah states that "any tent" that is not made by the hands of man does not count as a "tent." (*m. Ohal.* 3:7). This tradition is much closer to the plain meaning of the scriptural "tent," but it constitutes a substantial departure from the common rabbinic rule classifying all covers as "tent," and indeed was itself much limited in both tannaitic and amoraic halakha.<sup>73</sup> It is quite plausible that R. Yehudah, known as a tradent of ancient and eccentric halakhic traditions, sometimes those of R. Eliezer ben Hyrcanus,<sup>74</sup> preserves here an early tradition which became marginalized over time and otherwise disappeared.

Thus, the views of the Qumran sect contrast with tannaitic views in two aspects—(a) only tents and houses bring impurity by overshadowing; and (b) the materials that make up a house, even those attached to the ground, also contract impurity. How would these positions be justified by the sect? The first is explained simply by its closeness to the scriptural text. The text addresses a "tent," and the extension to "house" is natural.

As for the second position of the Qumran sect, concerning the impurity of the parts of the house, varying explanations have been proposed. Yigael Yadin suggested that the sect's requirement of purification for parts of a house was drawn from the rules concerning *רִצְוֹת* (eruptions) in a house (Leviticus 14).<sup>75</sup> Chaim Rabin suggested that the source of the ruling was a popular feeling that the more purification

<sup>73</sup> In the same mishna cf.: "But he agrees that the rules apply to clefts and overhanging rocks." Cf. *t. Ohal.* 5:4, and Epstein, *Introduction to the Text of the Mishna* (2nd ed.; Jerusalem/Tel Aviv: Magnes/Dvir, 1964, repr. 2000) [Hebrew]; Goldberg, *Ohaloth*, 32. See also *b. Sukkah* 21a, where the eccentricity in the opinion of R. Yehudah is substantially moderated.

<sup>74</sup> See Epstein, *Introduction to Tannaitic Literature*, 106–107. For semi-sectarian elements in the halakhic thought of R. Eliezer himself, see Vered Noam, "Traces of sectarian Halakha in the Rabbinic World," in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls. Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature*, 7–9 January, 2003 (STDJ) 62; ed. S. D. Fraade, A. Shemesh, and Ruth A. Clements; Leiden: Brill, 2006), 67–85.

<sup>75</sup> Yadin, *Temple Scroll*, II, 389, interpretation of I. 12. This explanation is improbable. It is more likely that the sect distinguished between the house defiled by something other than itself, to wit a corpse, and the house defiled by an eruption, in which the source of impurity is the house itself.

applied to a house with a corpse the better.<sup>76</sup> Jacob Milgrom counted the impurity of the components of a house among the halakhot which underwent a process of what he calls "homogenization," that is, a process by which rules affecting objects, animals or humans are extended to other things of the same sort. In our case, the scriptural rules on vessels and persons found in the tent with the corpse are extended to parts of the house itself.<sup>77</sup> Milgrom supposed that the impulse for this came not from the interpretation of texts, but rather from early halakhaic traditions which the sect sought to anchor in the Pentateuch.<sup>78</sup> Louis Ginzberg attempted to reconstruct a stratum of early halakha within the rabbinic world that attributed impurity even to the ground and things attached to the ground. His evidence, apart from one testimony in the translation of the Torah attributed to Jonathan to be discussed below, is weak.<sup>79</sup> Common to all of these proposals is their attempt to explain away the sect's ruling which is seen as a deviation from our accustomed (rabbinic) halakha that the house itself remains pure. However, it appears that in this instance an early homily indicates the direction in which this halakha developed and implies that the *tannaitic* rule—that which exempts houses from impurity—is the one that represents radical change and requires explanation, just as the expansion of the concept of "tent" was, almost certainly, a later halakhaic revolution.

Several scholars have noted the affinity between the Qumran texts—Damascus Document and Temple Scroll—and Targum Pseudo-

<sup>76</sup> C. Rabin, *The Zadokite Documents* (Oxford: Clarendon, 1958), 63.

<sup>77</sup> J. Milgrom, "The Scriptural Foundations and Deviations in the Laws of Purity of the Temple Scroll," in Schiffman, ed., *Archaeology and History in the Dead Sea Scrolls*, 83-99 at 93.

<sup>78</sup> *Ibid.*, 95.

<sup>79</sup> L. Ginzberg, *An Unknown Jewish Sect* (New York: The Jewish Theological Seminary of America, 1976) 81, 146-147, 351-355. The so-called "דבריהם" is irrelevant to our concerns, first because its content deals with menstrual, not corpse impurity, second because of its late date, and finally because of its general halakhaic eccentricity. The particular rules concerning the implements used at the execution of criminals, *i. Sanh* 9:8, indicate nothing about the corpse-impurity of soil and stones in general; and in any case the readings of the text there are inconsistent (see Ginzberg, *Unknown Jewish Sect*, 352). Ginzberg's interpretation of the cryptic matter of the watercourse in *m. Yad* 4:7 is purely speculative. The rule that "the floor of the house down to the nethermost deep is reckoned like to the room itself" (*m. Ohal*, 15:5) relates to what has been hidden in the space under the floorboards, and not to the soil and stones. One must keep in mind Ginzberg's general tendency to force the sectarian positions in CD in the direction of accepted rabbinic ones. For his attempt to emend תעצים וכל תעצים וכל תעצים, see above.

Jonathan, which presents here a halakha radically different from that of the rabbis. Yadin pointed to the explicit disagreement between these three (Temple Scroll, CD and Ps.-J.), on the one hand, and tannaitic halakhaic midrash on the other.<sup>80</sup> However, attention does not seem to have been drawn to the existence of a single midrash which is echoed in these sources, nor to its implications for a reconstruction of the development of the halakha. Targum Pseudo-Jonathan, we note at the outset, reads: **מכל דבמשכנא ואפילו קרקעיה ואבנוי וקיסווי וננוי** (Everything in the tent, and even its ground, stones, wood, and vessels, will be impure for seven days.)<sup>81</sup> Let us now look at the wording of the three disparate sources:

1. Damascus Document: **וכל תעצים ותאבנים ותקעל** (and all the wood, stones and soil);
2. Targum Pseudo-Jonathan: **מכל דבמשכנא ואפילו קרקעיה ואבנוי וקיסווי וננוי** (everything in the tent, and even its ground, stones, wood, and vessels);
3. Tannaitic halakhaic midrash: **שומע אני אף רקש: וכל אשר באהל: על האהל ועל והחיות ותעצים ותאבנים ותאדמה במשכנא ת"ל... על האהל ועל כל הכלים ועל כל הנפשות** (*Whatever is in the tent* [Num. 19:14]: Do I hear that even the straw and the twigs, the wood, the stones and the soil are included?)

<sup>80</sup> Yadin, *Temple Scroll*, I: 328.

<sup>81</sup> See Ginzberg, *Unknown Jewish Sect*, 81; Yadin, *Temple Scroll*, I: 328; Schiffman, "Impurity," 143. The frequently eccentric halakhot in Targum Jonathan have been the subject of critical study ever since Geiger's *Urschrift und Übersetzungen der Bibel* (1857). However, there does not seem to be a consensus concerning the date and source of these halakhaic "deviations." For an informed survey of scholarship on Targum Jonathan and its history, see A. Shim'an, *The Embroidered Targum* (Jerusalem: Magnes, 1992) 35-43 [Hebrew], with generous bibliography. On the halakha in Targum Jonathan see E. Itzhaky, "The Halakha in Targum Yerushalmi I (Pseudo-Jonathan ben Uziel)" (M. A. thesis, Bar Ilan University, Ramat Gan, 1979) [Hebrew]. The halakha under discussion is mentioned there at 44. However, the author was not yet aware of Qumranic halakha, which for the most part had not yet been published. See also the summary article of Y. Maori, "The Relationship of Targum Pseudo-Jonathan to Halakhaic Sources," in *Studies in Talmudic Literature, in Post-Biblical Hebrew and in Biblical Exegesis* (Tel'uda 3; ed. M. A. Friedmann, A. Tal, and G. Brin; Tel Aviv: Tel Aviv University, 1983), 235-250 [Hebrew]. For further bibliography see Shim'an, *Embroidered Targum*, 44 note 155. Joseph Baumgarten appears to be the only scholar to have devoted a study (J. M. Baumgarten, "Qumran and the Halakha in the Aramaic Targumim," in *Proceedings of the Ninth World Congress of Jewish Studies, Panel Sessions—Bible Studies* [ed. M. Goshen-Gottstein; Jerusalem: Magnes, 1988], 45-57, especially 55) expressly to the question of the relation of the halakha in the targumim and that of Qumran, and he too refrains from firm conclusions.

Scripture teaches: *on the tent and on all the vessels and people* (Num 19:18). (*Sifre Numbers* 126).<sup>82</sup>

In these three sources the voice of an ancient halakha is heard, one that listed the three items—wood, stones and soil—as receiving impurity. Presumably this halakha was derived from the words of the verse, “*whatever is in the tent*.” This is particularly clear in the view rejected by the tannaitic source, “*whatever is in the tent*: Do I hear etc.” In Targum Pseudo-Jonathan the list is also an amplification of the words, “*whatever is in the tent*.” Finally, the ancient homily has echoes in the language of the Damascus Document, “and all the wood, stones and soil.” It is a reasonable conclusion that this ancient halakha formulation—enumerating wood, stones, and soil, and attached to the generalization in the verse “*whatever is in the tent shall be unclean for seven days*”—was intended to *apply* impurity to the wood, stones, and soil of the house where a corpse is found, and not to *exempt* them. The tannaitic homily, rejecting this rule, turns the tables on the ear-lier homily by stressing the itemization found in that same verse, “on all the vessels and people”—only these and *not* wood, stone and soil. All three sources, then, made use of a common halakhaic text whose formulation preceded the Damascus Document. This halakhaic text, known also to the authors of the tannaitic midrash who were impelled to dispute it, contained the instruction that the materials which com-posed the house itself—wood, stones, soil—were subject to corpse impurity. Clearly, then, the rule of the Qumran sect, by which the components of a house are subject to corpse impurity, preceded the rabbinic halakha which exempted them from impurity.

What lies at the root of this halakhaic dispute? It seems that the issue of “tent” reveals something of the very concept of impurity in the early halakha. The extension of the rule on overshadowing characteristic of the tannaitic halakha arises from the notion that corpse impurity spreads to fill any enclosed space in which it is contained, and ends at the borders of that space (in rabbinic terminology “give passage” and “screen”). This is anchored in the plain meaning of the verse. Later halakha, with its tendency to more abstract categorical definitions, determined that there was no difference between various overhangs—tents, houses, persons, animals, utensils—for this purpose provided

certain basic conditions were met.<sup>83</sup> When it came to the impurity of the tent itself, on the other hand, the rabbis held that the soil and stones of a constructed house were not susceptible to impurity, for this would conflict with another fundamental principle essential to the rabbinic concept of impurity: the intuitive perception that impurity can attach only to the world of human creativity, the world of culture, but not to the raw materials of nature. This perception is grounded in the spirit of the biblical texts. The Torah, in the various passages on impurities, speaks of the impurity attaching to persons and their clothing, to food and drink, to means for riding and bedding, and to various vessels, but stresses that “a spring or cistern in which water is collected” and “seed grain that is to be sown” which has not been watered cannot be defiled.<sup>84</sup> Hence, impurity does not attach to rock and earth, nor to vessels made from them.<sup>85</sup> Hence, too, plants rooted in the ground are not susceptible to impurity until they are severed from the ground; nor are utensils that are not fully “vessels” (e.g. that are still unfinished, that have no cavity, that are not normally moved, that are flawed to the point that they are unusable).<sup>86</sup> In the same vein, the rabbis determined that “what is joined to the undefinable is undefinable,” and that utensils which are normally used when attached to the ground are undefinable as well.<sup>87</sup> It is these basic principles which apparently prevented the application of impurity to buildings. Hence, the restriction on the deflability of the “tent” itself, on the one hand, and the extension of the capacity to “overshadow” on the other.

There may be another factor behind the rabbinic decision to exempt permanent buildings from impurity: the status of the Temple. We noted above the surprising analogy drawn by the midrash between the tent containing a corpse and the Tabernacle in the wilderness. This homily deserves a second look.

Here it is written, *This is the law: When a person dies in a tent* (Num 19:14); and there it is written, *He spread the tent over the Tabernacle* (Exod 40:19); just as there [the covering] of linen is designated ‘tent,’ so here too, [a covering] of linen is designated ‘tent.’ (*B. Shabb.* 28a)<sup>88</sup>

<sup>83</sup> E.g. durability, see *m. Ohal.* 8:5. Exceptions include vessels and foods susceptible to impurity (do not screen). For details see *m. Ohalot* 8.

<sup>84</sup> Lev 11:32–39; 13:47–59; 15:4–12, 20–23, 26–27; Num 19:14–15, 18; 31:20–24.

<sup>85</sup> E.g., *m. Kelim* 10:1; *Sifre* 126, b. *Shabb.* 58a; b. *Yoma* 2a.

<sup>86</sup> E.g., *m. Kelim* 15:1; *Sifre Num.* 158.

<sup>87</sup> See *m. Kelim* 11:2; 12:2.

<sup>88</sup> See also *y. Shabb.* 2:3, 4d.

What is the meaning of the bold nexus between these opposite poles, i.e. the tent of impurity and the tent of holiness, created by the homily? At the root of the analogy is a conception of space common to both. The sanctity of the Tabernacle does not derive from the immanent sanctity of the place on which it stands, for, after all, the Tabernacle is portable and moves from place to place. Its sanctity derives rather from, and only from, the sanctity of the Holy Ark and the other furnishings within the Tabernacle. This sanctity spreads throughout the interior space of the Tabernacle and is limited by its physical borders, which are, as R. Yossi says in the following passage, the tent-sheets.

R. Yossi says, It is not the place that honors the man, but it is the man who honors the place. As long as the *Shekhinah* was present on Mount [Sinai, whoever] ascended to the top was liable to the death penalty. When the *Shekhinah* departed, those with running issue or blemishes were permitted to ascend there. As long as the Tent of Meeting was pitched, whoever entered it was liable to the death penalty. When the Tent of Meeting was removed, those who were impure or with blemishes were [permitted to enter]. (*Mekhilta of Rabbi Shimeon Ben Yohai* 19:13)<sup>89</sup>

In the parallel in the Babylonian Talmud the last part is phrased: "Once the curtains were rolled up, those with a running issue and the lepers were permitted to enter there." (*b. Ta'an.* 21b). The interior space of the tent with a corpse is impure only because of the presence of an impure object in it, and here too the special status, impurity in this case, spreads throughout that interior space delimited by the tent-sheets. The impurity of the tent with a corpse is a sort of symmetric mirror image of the sanctity of the Tent of Meeting; both are based on the same principle. If the association with the *Tabernacle* resonates in the discussion of the impurity of the tent with a corpse, it is possible that the association of the *Temple* resonates in the discussion of a house with a corpse. That this nexus was perceived is shown in the following homily:

An inference from the less to the greater: If with respect to the Temple, which is not subject to sprinkling (since it cannot become impure), an impure person entering it is liable to be punished by being cut off, all the more so with respect to the Tabernacle, which is subject to sprinkling

<sup>89</sup> J. N. Epstein and E. Z. Melamed (eds.), *Mekhilta D'Rabbi Sim'on b. Johai* (Jerusalem: Sumpitius Hillel, 1955), p. 141. Cf. *Mekhilta of Rabbi Ishmael*, Yitro, Balqodesh, 3 (p. 123).

(since it can become impure), an impure person entering it should be liable to be punished by being cut off. (*Sifre Zuta* 19:13)

The homily considers the notion that the Tabernacle and the Temple would themselves become a "tent with a corpse;" and it presupposes that only the tent-sheets of the Tabernacle could contract impurity and require purification, but not the walls of the Temple, a permanently constructed building. In light of this, it may be that the rule exempting permanent structures, rather than tents, from impurity developed from the contrasting images of the Tabernacle and Temple. The rule exempting all permanent structures from impurity thus turned the Temple itself impervious to impurity.<sup>90</sup>

Did the Qumran sect dispute the fundamental principle limiting impurity to persons and man-made objects? Did it not accept the exemption of natural, raw materials from impurity? We can hardly suppose that the sect ascribed impurity to land, or to plants growing on it. Yet impurity was ascribed to the soil and rocks of a building, no doubt for the simple and sensible reason that a building is an eminent product of adaptation and conversion of raw materials to human use. There is hardly a more outstanding product of "culture" than human habitation.<sup>91</sup> It is reasonable to conjecture that the early halakha did indeed exempt raw nature from impurity, but made an exception for the constituent materials of a building containing a corpse because of the change in the nature of these materials once they became part of a man-made structure. This early, sensible concept could be supported by the scriptural text which declares "everything" in the tent impure. This rule may be reflected in the language used by Josephus, "the house and its inmates must be purified."<sup>92</sup>

The complete exemption granted by the rabbis of all permanent buildings from impurity thus emerges as a radical departure from

<sup>90</sup> We refer, of course, to the potential impurity of the structure itself, not to the interior space or to the contents of the building. These may always contract impurity. The extreme concern over the impurity of the Temple or the Temple Court is reflected in many sources, e.g. *m. So'eh* 3:4; *t. Ed.* 3:3; *b. Yoma* 23a.

<sup>91</sup> It is interesting to note that the eighteenth-century French abbot and writer on principles of nature, considered walls not to be part of a building by nature, and there-fore nothing more than a "licence," cf. H.-W. Kraff, *A History of Architectural Theory: From Vitruvius to the Present* (London/New York: Zwemmer/Princeton Architectural Press, 1994), 152. My thanks to Moulvi Vidas for directing me to this matter.

<sup>92</sup> *Ag. Ap.* 2:205. For Philo, on the contrary, only persons and vessels in the house become impure, not the house itself (*Spec.* 3:206).

previous halakhic tradition. This departure seems to be a product of a revolution, one of bold and path-breaking conceptualization. The new halakhic construction of corpse-impurity rested on a virtual destruction that turned buildings back into their constituent materials, and defined them as "ground." This new halakha, to paraphrase *b. Shabb.* 34a, approached the building, cast its eyes upon it, and reduced it to a pile of rocks.<sup>93</sup>

What fired this revolution? Was this halakhic change a typical example of the process of abstraction and philosophical refinement which characterized the growth of Pharisaic/tannaitic thought? Or, alternatively, was it a polemical reaction to the obsessive concern of some groups with scraping and scrubbing the walls and floor of a house where a corpse had been, a reaction which brought the Pharisaic halakha, as in other instances, to a deliberately lenient approach? Whatever the case may be, the halakha on the "tent" of a corpse evident in tannaitic sources is the result of two separate developments, one toward leniency, the other toward stringency. Common to both is halakhic boldness and conceptual refinement. The secondary nature of the first development, which exempted the materials of the house from corpse impurity, is manifest from the reconstruction of an ancient midrash.

#### V. Summary

Our examination of Qumranic halakha by means of a comparison with parallels in halakhic midrash yielded a reconstruction of three ancient homilies formulated earlier than our Qumranic source and paraphrased in it. (a) "A bone of a person (19:16): Just as a person is whole, so a bone must be whole;" (b) "Or a grave (19:16): this includes a woman with a dead fetus in utero;" (c) "Whatever is in the tent (19:14): the wood, stones, and soil." That these interpretations are of notably early date is significant for the much-debated question of the origin

<sup>93</sup> For the expression see *b. Ber.* 58a, *Shabb.* 34a, *B. Bat.* 75a. The rabbinic notion that material retains its separate identity even when incorporated in a building is reflected in the principle that a thief remains under the obligation to return stolen building material itself, even at the cost of dismantling a structure built with it, and that special, controversial legislation, מִשְׁבֵּט הַתְּרֵיף, was required to avoid the harsh consequences of the principle. *M. Git.* 5:5; t. B. Q. 10:5; *b. Git.* 55a. My thanks to Prof. Ramon Katzoff for this observation.

and date of halakhic midrash. This question, in turn, has implications for the history of biblical interpretation, for the development of rabbinic halakha, and for the circumstances of the birth of sectarianism in the Second Temple period.<sup>94</sup>

Moreover, several ancient interpretative disputes have come to life before our eyes. The analogy of "human bone" to "corpse" gave rise to opposite interpretations in early Pharisaic halakha and in MMT, and ultimately was given a new interpretation and transferred to another matter altogether in the tannaitic halakhic midrash. The tannaitic exegete disputed the early midrash concerning the impurity of the components of a house; and the impurity of a dead fetus in utero was derived from the very same scriptural verse in three contrary ways. Finally, the uncovering of early midrash often provides us with an opportunity to follow the fascinating development of the halakha, to identify the earlier rules, and to appreciate the revolutionary novelty of

<sup>94</sup> For the larger questions of the origin and date of the halakhic midrash, the forms of transmission of early halakha, and the relationship between traditional practice and to Tannaitic Literature, 501-15; H. Albeck, *Introduction to the Mishna* (Jerusalem/Tel Aviv: Bialik Institute/Dvir, 1959), 40-62 [Hebrew]; D. Weiss Halivni, *Midrash, Mishnah, and Gemara* (Cambridge MA: Harvard University Press, 1986), 18-37. The current trend seems to favour the view that midrashic form is later than "mishnaic" form. See E. E. Urbach, "The Homily as a Basis of the Halakha and the Problem of the Sages: Collected Studies (Jerusalem: Magnes, 1988), 50-66 [Hebrew]; English abstract in *The Second World Congress of Jewish Studies: Report* (Jerusalem 1957), 9-11; M. D. Hart, "Continuum in the Chain of Torah Transmission," *Zion* 44 (1979): 43-56 at 53-54 [Hebrew]; A. Schremer, "[T]h[e]y Did not Read in the Sealed Book: Qumran in Historical Perspectives: From the Hasmonaens to Bar Kokhba in Light of the Dead Sea Scrolls. Proceedings of the Fourth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 27-31 January, 1999 (STDJ) 37; ed. D. Goodblatt, Avital Pinnick, and D. R. Schwartz, et al.; Leiden: Brill, 2001), 105-126. See the critique of this view by Halivni, above in this note. The latter consider halakhic midrash a revolutionary innovation of the end of the Second Temple period. Even those who give a late date for the development of halakhic midrash do not deny the existence of an earlier tier of midrash, simple and primitive in nature, echoes of which can be found between the lines of Qumran literature, and whose traces are preserved here and there in rabbinic literature. For these very early homilies found in rabbinic literature see, e.g. Epstein, Albeck, and Halivni. On Qumranic midrash see studies by Menahem Kister, Moshe Bernstein, and others, listed in Schremer, 118 notes 41-44. See also the references to sources and studies collected by A. Rosenthal, *Talmudic Studies Dedicated to the Memory of Professor Eliezer Shimson Rosenthal* (ed. M. Bar-Asher and D. Rosenthal; Jerusalem: Magnes, 1993), 448-489, here 451-52 note 13, and recently Shemesh, "4Q251: *Midrash Mishpatim*."

the later rules. In the case of the bone of a dead person it is apparent that the earlier rule is that which is preserved in tannaitic sources, for the earlier homily supports that rule. In MMT we find a later, "reactive" homily. The situation is reversed in the case of "tent"-impurity. There the earliest midrash shows the Qumranic rule to be the first, whereas the tannaitic rules turn out to represent a bold and sophisticated upheaval. In the case of the dead fetus, the Qumran homily seems to be a natural extension of the associative similarity between the grave and the womb. By contrast, the tannaitic reactive homilies are remarkably forced. Therefore, we may assume that in this case as well, the Qumranic homily is an initial interpretation while the tannaitic reaction is a secondary polemic attempt to anchor the opposite stance in the biblical text. Our limited examination of several halakhic details arising from one biblical chapter is indicative of the wealth which awaits the comparative study of Qumranic halakha and tannaitic midrash.

## BETWEEN TWO SECTS: DIFFERENTIATING THE YAHAD AND THE DAMASCUS COVENANT

EYAL REGEV

### I. Introduction

In 2004 I published an article in which I argued that the Yahad and the Damascus Covenant were two separate sects, each with a very different social structure, and at times also different organizational forms. This conclusion was the result of an analysis of the functions of the different officials in the various versions of the Community Rule and the Damascus Document. I also consequently concluded that the Yahad preceded the Damascus Covenant. Later, I revised and expanded this discussion in my book *Sectarianism in Qumran*.<sup>1</sup> In the past few years many new studies have discussed these questions. There is a growing awareness of the complexity of these texts and their transmission, and an increasing number of scholars now acknowledge the ideological and social/structural differences between the Yahad and the Covenant. In this article I would like to restate and revise my initial arguments using the fruitful results of recent studies by other scholars.

The Community Rule and the Damascus Document share many terms and perceptions: In both texts we find the *rabbim*, the *mebager*, the priest, *mishpatim*, cosmic dualism, two messiahs, etc. Nonetheless, almost forty years ago Licht had already distinguished between the two documents based on the different economic systems and the social organization of the Covenant, which was divided into "camps."<sup>2</sup> However, some recent scholars still do not distinguish between the

<sup>1</sup> E. Regev, "The Yahad and the Damascus Covenant: Structure, Organization and Relationship," *RevQ* 21 (2003): 233-262; *idem*, *Sectarianism in Qumran: A Cross-Cultural Perspective* (Religion and Society Series 45; Berlin: de Gruyter, 2007), 45-50, 81-86, 163-196.

<sup>2</sup> J. Licht, *The Rule Scroll: A Scroll from the Wilderness of Judaea, IQS IQSa IQSb. Text, Introduction and Commentary* (Jerusalem: Bialik Institute, 1965), 14-17 [Hebrew]. One of the interpretations that he suggested in order to reconcile these differences is that the two groups allowed members to choose between a lenient or stricter way of life.