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Stringency in Qumran: A Reassessment

Vered Noam

*Department of Hebrew Culture Studies, Tel Aviv University,
PO Box 39040, Tel Aviv 69978, Israel
veredn@post.tau.ac.il*

Abstract

The attribution of stringency to the Qumranites is prevalent in scholarly research. Indeed it is indisputable that the Sect generally adopts stringent positions, compared to rabbinic halakah. However, closer examination indicates that Qumranic law reflects simple, necessary inferences from Scriptures itself, whereas the Tannaitic leniency represents a surprisingly revolutionary divergence from the plain meaning of Scripture.

The paper surveys several cases in which the bold and exceptional nature of Tannaitic legislation cannot serve as a criterion for evaluating the stringency of Sectarian law. It goes on to review other instances, where the very same traditions formed the basis of Qumranic as well as rabbinic regulation, except that the latter restricted their scope.

The third group of examples shows that it was precisely the unrefined, simple character of Qumranic law, in comparison with the conceptual sophistication of Tannaitic halakah, that occasionally led to the opposite result, in which the Tannaitic halakah was strict, and the Sectarian law lenient.

In sum, the strictness of Qumranic law is not “objective” but relative. The understanding that sectarian law reflects a series of inductions not altogether removed from the simple sense of Scripture facilitates a more accurate appreciation of the depth of Tannaitic halakah’s groundbreaking leniency.

Keywords

Qumran, rabbis, legislation, halakah, stringency, leniency

In an article in which he first presented the contents of *Miqsat Ma’asê Ha-Torah*, Yaakov Sussmann characterized its rulings as being first and foremost:

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invariably stringent... This stringency is extremely prominent... as the members of the sect are invariably consistent in their stringent rulings: what is forbidden is always forbidden, and what is unclean is absolutely unclean.¹

Sussmann mentioned that this feature of Sadducean and Sectarian Law had been already pointed out by early scholars, among them Abraham Geiger and Zacharia Frankel, nearly a century prior to the discovery of the Dead Sea Scrolls.² Shortly after the publication of the first scrolls, Saul Lieberman also ascribed some Qumranic laws to “Ultra-pious extremists.”³ The attribution of stringency to the Qumranites is prevalent in modern scholarly research too.⁴

Indeed it is indisputable that the Sect generally adopts stringent positions, compared to Pharisaic-Rabbinic halakha, a point repeatedly noted by Yadin throughout his discussion of the *Temple Scroll*.⁵ Nor is it dis-

¹ Yaakov Sussmann, “Appendix 1: The History of the Halakha and the Dead Sea Scrolls,” in *Qumran Cave 4.V: Miqṣat Ma’asê Ha-Torah* (ed. Elisha Qimron; DJD 10; Oxford: Clarendon, 1994), 179-200 at 187. See also p. 190 and throughout the whole article. For the original Hebrew full version see idem, “The History of *Halakha* and the Dead Sea Scrolls—A Preliminary to the Publication of 4QMMT,” *Tarbiz* 59 (1989-90): 11-76 (quotation on p. 27).

² Sussmann, “History,” 27, n. 61.

³ Sussmann, “Appendix,” 187, n. 29.

⁴ See, for example, Joseph M. Baumgarten, “The Pharisaic-Sadducean Controversies about Purity and the Qumran Texts,” *JJS* 31 (1980): 157-70, esp. 165; Elisha Qimron, “The Halakha,” in *Qumran Cave 4.V: Miqṣat Ma’asê Ha-Torah* (eds. Elisha Qimron and John Strugnell; DJD 10; Oxford: Clarendon, 1994), 123-77 at 132: “the sect’s pronounced tendency toward strictness”; Schiffman’s description of “the sect’s rigorous rules and strict *halakhah*” is found in Lawrence H. Schiffman, “The Dead Sea Scrolls and Rabbinic *Halakhah*,” in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity: Papers from an International Conference at St. Andrews in 2001* (ed. James R. Davila; STDJ 46; Leiden: Brill, 2003), 3-24, esp. 21; Eyal Regev, *The Sadducees and their Halakhah* (Jerusalem: Yad Ben-Zvi Press, 2005), 203-46 [Hebrew]. Regev distinguished Qumranic law from Sadducean law, but asserted that both developed from a single early, stringent, priestly system. The current author also used this widespread characteristic of Qumranic ruling as evidence of the similarity between the halakha in the DSS and that of Beit Shammai; see Vered Noam, “Beit Shammai and Sectarian Halakha,” *Jewish Studies* 41 (2001-2): 45-67 [Hebrew]. The common scholarly opinion regarding Qumranic stringency was recently described by Hillel Newman, *Proximity to Power and Jewish Sectarian Groups of the Ancient Period* (Leiden: Brill, 2007), 201-3. Newman criticized the vagueness and inaccuracy of this description. I thank Prof. Charlotte Hempel for this reference.

⁵ Yigael Yadin, ed., *The Temple Scroll* (Jerusalem: Israel Exploration Society, 1983), 1:98, 115-16, 136, 162-63, 168, 275, 278-79, 291-93, 295, 306-7, 310, 312-15, 318-20, 323,

puted that in all the polemic issues discussed in MMT, the author berated the lenient tendency of his opponents.⁶ This distinction between Qumranic law and Pharisaic law was in fact pointed out by the members of the Sect themselves, who accused their rivals of “choosing the path of lenience”: *כִּי־אֵל בַּחֲרוֹ בַקְלוּת*.⁷

Nonetheless, my recent research on the laws of corpse impurity in Qumranic literature⁸ leaves me somewhat skeptical regarding the sweeping claim that sectarian law invariably tends to stringency, at least with respect to this narrow halakhic area. Evidently, the rabbinic halakah was the subconscious point of this postulation. In many of the cases I examined, sectarian law is definitely strict in comparison with rabbinic halakah. However, closer examination indicates that *it reflects simple, necessary inferences from Scriptures itself, whereas the Tannaitic leniency represents a surprisingly revolutionary divergence from the plain meaning of Scripture.*

Tannaitic Leniency

According to the *Temple Scroll* as well as the Damascus Document, the house of the dead person is defiled, together with its floors and roofs, and all that is attached thereto.⁹ In Tannaitic halakah on the other hand, all of

325, 326, 328-32, 336-38, 338-41, 354-57, 367, 369-70, 372, 374-78, and esp. 400-401. I am relating to the *Temple Scroll* as a representative of a law system which had been either accepted, adopted or created by the Sect, and which greatly resembles other legal texts in Qumranic literature. For the purpose of the current paper there is no need to determine whether it was authored in a sectarian or a pre-sectarian context.

⁶ Qimron, “The Halakha.”

⁷ 4Q171 (4QpPs^a) 1-10 i 27. See Maurya P. Horgan, “Psalm Peshier 1,” in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations. Vol. 6B Pesharim and Related Documents* (ed. James H. Charlesworth et al.; Tübingen: Mohr Siebeck, 2002), 8-9. It seems that the right translation is the one suggested above; see David Flusser, “Perushim, Zaddukim Ve-Issiyim Be-Fesher Nahum,” in *Judaism of the Second Temple Period: Qumran and Apocalypticism*, (ed. Serge Ruzer; Jerusalem: Yad Ben-Zvi, 2002), 212 [Hebrew]; repr. from *In Memory of Gedaliahu Alon: Essays in Jewish History and Philology* (ed. M. Doron, S. Safrai, and M. Stern; Tel Aviv: Hakibutz Hameuchad), 133-68 at 161 [Hebrew].

⁸ Vered Noam, *From Qumran to the Rabbis: Conceptions of Impurity* (Jerusalem: Yad Ben-Zvi, forthcoming).

⁹ 11QT^a 49:5-7, 11-13; 50:10-12 published by Elisha Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* (Beer Sheva: Ben-Gurion University of the Negev Press, 1996), 71, 73; CD 12:15-18 published by Magen Broshi, ed., *The Damascus*

these were entirely exempted from impurity.¹⁰ In this context, Qumranic law is seemingly particularly strict. However, a closer inspection shows that it relies on the plain sense of Scripture—“and sprinkle on the tent” (Num 19:18)—that is to say that the tent which contained the corpse becomes itself impure. The Sect draws a consistent analogy, which was basically common to all of the views—Septuagint, Qumran, Josephus, Philo, and the Sages—between the biblical “tent” and the house, in all matters pertaining to the corpse impurity.¹¹ No wonder, therefore, that the walls of the house, the exact parallel of the tent’s curtains, were considered impure as well. Moreover, Qumranic law regarding contamination of the house dovetails in perfectly with the fundamental and ancient meta-halakhic distinction between the natural world—which is not susceptible to defilement, and the creations of human civilization—which are subject to impurity.¹² The Sages’ lenience in this context is the product of far-reaching conceptual sophistication and an audacious propensity to lenience. They deconstructed the concept of “house” into its component raw materials, which they restored to the natural world in which they

Document Reconsidered (Jerusalem: The Israel Exploration Society, 1992), 33. For translation see F. García Martínez and E. J. C. Tigchelaar, *The Dead Sea Scrolls Study Edition* (Leiden: Brill, 1997), 1:571. For further elaboration on these passages see Vered Noam, “Qumran and the Rabbis on Corpse-Impurity: Common Exegesis—Tacit Polemic,” in *The Dead Sea Scrolls. Texts and Context* (STDJ; ed. Charlotte Hempel; Leiden: Brill, forthcoming).

¹⁰ This fundamental rule derives from several partial statements in Tannaitic literature—*m. Šab.* 2:3; *m. Kel.* 27:1; *Sifre Zuta* 19:13. The rule is stated more clearly in *b. Šab.* 28a; *y. Šab.* 2:3, 4d. See Maimonides, *Mishneh Torah, Hilkhhot Tum’at Met* 5:12, from which it is quoted by Yadin, *Temple Scroll*, 1:326.

¹¹ Philo, *Spec.* 3.206; Josephus, *Ag. Ap.* 2.205; See discussion by Yadin, *Temple Scroll*, 1:325-26. Rabbinic halakah also considered the house to be one of the possible manifestations of the scriptural “tent”, though it extended this concept not merely to houses but to virtually anything that overshadows, see below.

¹² This perception is grounded in the spirit of the biblical texts. The Pentateuch, 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 the undefilability of “spring or cistern in which water is collected,” and “seed grain that is to be sown” on which water has not been put (Lev 11:32-38; 13:47-59; 15:4-12, 20-23, 26-27; Num 19:14-15, 18; 31:20-24). Hence, according to the rabbis, impurity does not attach to rock and earth, nor to vessels made from them (see discussion below). Hence, too, plants rooted in the ground are not susceptible to impurity before they are severed from the ground (*m. ‘Uq.* 3:8); nor are utensils that are not fully “vessels”—that are still unfinished, that have no cavity, that are not normally moved, that are flawed to the point that they are unusable (e.g. *m. Kel.* 15:1; *Sifre Num.* 158).

originated. This process enabled them to exempt the house from being susceptible to impurity. The chronological precedence of the Qumranic law, as opposed to the rabbinic law on this subject, may be proved by the antiquity of an exegesis that supports it, to which the rabbis reacted, as I have shown elsewhere.¹³

A very similar phenomenon is discernible in the halakhic distinctions regarding the laws of stone vessels. The *Temple Scroll* subjected them to impurity,¹⁴ whereas the Sages exempted them.¹⁵ But can this really be referred to as “Qumranic stringency”? While stone vessels are not mentioned in Scriptures as receiving impurity, there is however a long list of tools and vessels designed for human use, that *are* subject to uncleanness. Stone vessels are classic examples of tools for human use, and their addition to the list of things that become impure is imminently reasonable. However, the Sages reclassified primitive tools, such as stoneware and earthenware and vessels made out of animal defecations,¹⁶ in terms of their natural source. This enabled them to remove the primitive tools from the category of compound, “cultured,” objects that receive impurity. This is clearly an innovation.

Similarly, we tend to wonder regarding the Qumranic directive that banished the severely impure from *all* of the Israeli cities,¹⁷ given that according to the Sages, the most extreme form of exclusion goes no further than Jerusalem (and in some of the sources, also from walled cities).¹⁸

¹³ Noam, “Qumran and the Rabbis.”

¹⁴ 11QT^a 49:14, cf. Qimron, *The Temple Scroll*, 71. See Yadin, *Temple Scroll*, 1:330; 2:216. For a review and bibliography on the problem of stone vessels in Qumran and in other archaeological sites cf. Hanan Eshel, “CD 12:15-17 and the Stone Vessels Found at Qumran,” in *The Damascus Document: A Centennial of Discovery. Proceeding of the Third International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 4-8 February 1998* (ed. Joseph M. Baumgarten, Esther G. Chazon, and Avital Pinnick; Leiden: Brill, 2000), 45-52, though I doubt some of his conclusions regarding the passage in CD.

¹⁵ E.g. *m. Kel.* 10:1; *m. 'Ohal.* 5:5; *Sifre Num* 126; *b. Šab.* 58a; *b. Yoma* 2a.

¹⁶ See esp. *m. Kel.* 10:1.

¹⁷ 11QT^a 48:14—17, cf. Qimron, *Temple Scroll*, 70, with regard to lepers, people with discharge, menstruants, and parturients. By contrast, those defiled by a corpse, seminal emissions, or conjugal relations, as well as the blind, are excluded only from the Temple City, 45:7-10, *ibid.*, 63-64.

¹⁸ See, for example, *m. Kel.* 1:6-9; *t. Kel.-B. Qam.* 1:12; *Sifre Num* 1; *Sifre Zuta Num* 5:2; *b. Pesah.* 67a. For a comparison of the sectarian and the rabbinic halakah in this regard, see Yadin, *Temple Scroll*, 1:277-94; Jacob Milgrom, “Studies in the Temple Scroll,” *Journal of Biblical Literature* 97 (1978): 512-18; Lawrence H. Schiffman, “Exclusion from the

Other settlements of Israel are not subject to any restrictions regarding the banishment of the impure.

However, an inspection of Scripture indicates that Scriptural references to the sending away of the impure invariably relate exclusively to two domains: exclusion from the “Tabernacle” or the “Sanctuary” including related matters, such as sacrifices;¹⁹ and exclusion from “the camp,” which in the plain sense means the physical living precincts of Israel in the desert.²⁰ Accordingly, the distinction of two domains for sending—the City of the Temple on the one hand, and “your cities” on the other, as depicted in the Sect’s literature, is quite close to the plain meaning of the verses.

The radical innovation was actually the complex and revolutionary system formulated by the Sages. This ruling compressed all of the Scriptural domains compelling exclusion, including the domain of the everyday life, into the area of Jerusalem, and exempted all Jewish settlements outside Jerusalem from the obligations of purity. The terms “Camp of Divine Presence,” “Camp of Levites,” and “Camp of Israel,” used by the Sages to indicate the Temple, the Temple Mount and Jerusalem respectively,²¹ as the areas requiring banishment, create an illusion of a scriptural source for the Tannaitic system with regard to the exclusion of the impure. But in reality, these terms are all based on the biblical description of the Israelites’ camping order in the desert,²² and have nothing to do with the biblical directive to send away the impure. There is no explicit Scriptural basis for sending a person away from the Levite camp and permitting him to stay in the Israelite camp, or for an impure person being sent away from

Sanctuary and the City of the Sanctuary in the Temple Scroll,” *Hebrew Annual Review* 9 (1985): 301-20; Qimron, “The Halakha,” 142-47; David Henshke, “The Sanctity of Jerusalem: The Sages and Sectarian *Halakhab*,” *Tarbiz* 66 (1997): 5-28 [Hebrew]; Menahem Kister, “Studies in Miqṣat Ma’asê Ha-Torah and Related Texts: Law, Theology, Language and Calendar,” *Tarbiz* 68 (1999): 335-39 [Hebrew]; Hannan Birenboim, “The Halakhic Status of Jerusalem According to 4QMMT, *1Enoch*, and Tannaitic Literature,” *Meghillot* 7 (2009): 3-17. See also Vered Noam, “Creative Interpretation and Integrative Interpretation in Qumran,” *Proceedings of the Conference The Dead Sea Scrolls and Contemporary Culture: Celebrating 60 Years of Discovery* (Leiden: Brill, forthcoming). On the distancing of burials from regular cities in Qumranic and rabbinic legislation see idem, “The Dual Strategy of Rabbinic Purity Legislation,” *JSJ* 39 (2008): 493-500.

¹⁹⁾ See, for instance, Lev 7:19-21, 12:4, 21:1-12, 22:1-9; Num 9:6-13, 19: 13, 20.

²⁰⁾ Lev 13:46, 14:3, 8; Num 5:1-4, 12:14-15 (see also 2 Kgs 7:3, 15:5); on exclusion from the war-camp see Num 31:19-20, 24; Deut 23:11-12.

²¹⁾ See esp. *t. Kel.-B. Qam.* 1:12; *Sifre Num* 1.

²²⁾ Num 1:53, 3:23, 29, 35.

the Tabernacle and being allowed in the Camp of the Levites. In fact, no mention is ever made of the camping place of the Levites in the context of sending away the impure. Summing up, the contraction of the purity-demanding domain, as well as its division into three realms, is a sheer rabbinic invention.

The lenient rulings of the Sages are even more far reaching in the context of corpse impurity. This impurity seems to be the most severe in the Torah itself, being capable of spreading throughout a tent and polluting its contents without direct contact, and demanding the complex, mysterious rite of the red heifer for purification.²³ Indeed, *Mishnah Kelim* explicitly states that corpse impurity is the most severe of all forms of impurity,²⁴ and mandates the corpse's exclusion from Jerusalem and every "walled city" as well.²⁵ Particular severity attached to the removal of corpses from all places of settlement in the *Temple Scroll* and in Josephus as well.²⁶

However, rabbinic halakah allowed corpse contaminees into the Temple Mount,²⁷ whereas the most lenient one-day impurity, namely a person with an issue, was forbidden by the same halakah to go there,²⁸ and in full contrast with sectarian law, which sent the corpse contaminee away from the Temple City.²⁹ But the most astounding development is found in a later rabbinic source in the Tosefta, where we discover that it was even permitted to bring the corpse itself into the Temple Mount!³⁰ These far-reaching permits are ground breaking in terms of their implications for the hierarchy of biblical impurity, and even for the rabbinic initial hierarchy of impurity.³¹ An inquiry into the reasons of this surprising halakhic revolution is out of the scope of the current discussion. However, it indisputably reflects a later development in the world of the Sages. The bold

²³) Num 19.

²⁴) *m. Kel.* 1:4.

²⁵) *m. Kel.* 1:7-8. See also *y. Erub.* 5:2, 22d = *y. Mak.* 2:6, 32a.

²⁶) 11QT^a 48:11-14, cf. Qimron, *Temple Scroll*, 70; Josephus, *A.J.* 3.264. For discussion and bibliography cf. Louis H. Feldman, *Judean Antiquities 1-4 (Flavius Josephus: Translation and Commentary 3)*; Leiden: Brill, 2000), 308-9.

²⁷) *m. Kel.* 1:8.

²⁸) *Sifre Deut* 255 (Finkelstein ed., 280-81); *b. Pesah.* 67b-68a.

²⁹) 11QT^a 45:17, cf. Qimron, *Temple Scroll*, 63.

³⁰) *t. Kel.—B. Qam.* 1:8.

³¹) Compare the permission to bring the corpse into the Temple Mount in the Tosefta with the ban on its admission into every walled city in *m. Kel.* 1:7. The law in the Tosefta contradicts also the degree of severity ascribed to corpse impurity in a list included in the very same chapter in the Tosefta (*t. Kel.—B. Qam.* 1:1-4).

and exceptional nature of this occurrence surely cannot serve as a criterion for evaluating the stringency of Sectarian law.

The *Temple Scroll* ascribes ostensibly extreme impurity to the pregnant woman carrying a dead embryo inside her.³² This preliminary impression however results from the total absence of this kind of severity in rabbinic halakah.³³ But in fact there is no scriptural mention of the law applying to the pregnant woman, and as such there is no *objective* reason for assuming that there are grounds for leniency in that respect. Furthermore, there is a circumstantial similarity between the grave in which a corpse is located, and the impurity of which is stressed by the Torah,³⁴ and the woman carrying a dead body inside her. This similarity, implied in the Bible itself³⁵ and evidenced by Tannaitic terminology as well,³⁶ provides a convenient basis for the Qumranic halakah. The primacy of the Qumranic halakah in comparison with rabbinic halakah may be proven from the antiquity of the midrash that supports it.³⁷ In other words, what we see here is a rabbinic secondary leniency, rather than a sectarian strictness.

Early Traditions

In certain cases we do encounter Qumranic law with severe rulings that appear to lack any scriptural basis. However, upon comparison with Tannaitic halakah it transpires that the very same traditions also formed the basis of the rabbinic halakah, except that the latter restricted their scope. For example, the ancient halakah that excluded all graves from the cities is recorded in the *Temple Scroll*,³⁸ in Josephus,³⁹ in archeological findings,⁴⁰

³² 11QT^a 50:10-19, cf. Qimron, *Temple Scroll*, 73.

³³ See *m. Hul.* 4:3; *m. 'Ohal.* 7:4; *t. Yev.* 9:5; *Sifre Num* 127 (Horovitz ed., 164); *Sifre Zuta* 19:16; *b. Hul.* 72a. For discussion, see Yadin, *Temple Scroll*, 1:336-38; Noam, "Qumran and the Rabbis."

³⁴ Num 19:16, 18.

³⁵ "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.

³⁶ The term "grave" as a metaphor for a womb is quite common throughout rabbinic literature. See e.g. *m. 'Ohal.* 7:4; *t. 'Ohal.* 8:8.

³⁷ Noam, "Qumran and the Rabbis"; "Creative Midrash."

³⁸ 11QT^a 48:11-4, published in Qimron, *Temple Scroll*, 70.

³⁹ Josephus, *A.J.* 3.264; 18.38.

⁴⁰ See Noam, "Dual Strategy", 497-98.

and even in the practices of fourth-century talmudic Sages.⁴¹ The biblical pericope which served as evidence for this halakah was similarly preserved in Sectarian as well as rabbinic literature. Nonetheless, the Sages restricted the scope of the formal prohibition exclusively to the areas of the Levite cities, while the sectarians applied it to every city.⁴² In other words, the duty of removing graves from all of the permanent settlements is not a stringent Qumranic ruling, but rather an ancient halakah that underwent a change at the hands of the Sages.

Several Qumran fragments point to the Sect's ruling that all liquids may make foodstuffs susceptible to impurity.⁴³ This halakhic stance is evidence of an exegetic analogy between two halves of a biblical verse: "All food therein which may be eaten, that on which *water* cometh, shall be unclean; and *all drink (mašqeh)* in every such vessel that may be drunk shall be unclean" (Lev 11:34). The first part of this verse describes how foods may become susceptible to impurity after being moistened with water. It mentions water specifically as the liquid which enables this to occur. The second part of the verse describes the actual impurity of liquids themselves as a result of something impure falling into them. Here the reference is to "all drink." It seems clear that some early exegete expanded the reference to "any liquid" in the second part of the verse to refer to the first half of the verse. Therefore, any liquid may enable the defilement of food. This led to an emphasis on the biblical word מִשְׁקָה *"mašqeh"* in the Qumranic texts which deal with the factors causing susceptibility to impurity.⁴⁴ Traces of such an analogy between the two parts of the verse exist in rabbinic sources as well.⁴⁵ The Sages also understood that liquids other than water may enable foods to become impure. Rabbinic law, however, artificially limited this broadening interpretation of

⁴¹) *y. Naz.* 9:3, 57d.

⁴²) This point is elaborated *ibid.*, 493-500.

⁴³) 4Q274 3 i and 4Q284a 1, 2; J. M. Baumgarten, "274. 4QTohorot A," in *Qumran Cave 4.XXV: Halakhic Texts* (ed. J. M. Baumgarten et al.; DJD 35; Oxford: Clarendon, 1999), 106-7; "284a. 4QHarvesting," *ibid.*, 131-33. See also 11QT^a 49:7-10, Qimron, *Temple Scroll*, 71, with regard to liquids that may themselves become impure.

⁴⁴) 4Q274 3 i 6-7 (cf. Baumgarten, *ibid.*, 106), and 4Q284a 1 i 5 (*ibid.*, 132).

⁴⁵) The *derashot* in *Sifra Shemini* parashah 8, 1 apply the words "*kol mašqeh*" to liquids which cause susceptibility to foodstuffs, rather than to liquids becoming impure themselves. See also *b. Pesah.* 16a, where this interpretation is expressed explicitly: "What does 'it shall become unclean' mean? [It means:] 'It shall make [others, i.e. solid foodstuffs] susceptible [to impurity]'. "

the biblical “water” to seven liquids alone.⁴⁶ However, the common exegetical foundation here points to the precedence of the expansive, stringent concept and to the secondary, arbitrary nature of the rabbinic leniency. It thus emerges that the Qumranic halakah is not “stringent” in this context. Rather, it preserves an ancient tradition, which was similarly preserved by the Sages, except that they found a way of limiting its scope.

According to biblical law, the contents of a sealed vessel situated in a tent with a dead body do not become impure.⁴⁷ On the other hand, both the *Temple Scroll* and Tannaitic halakah record an exception to this rule. Certain drinks and food contract impurity in the dead person’s tent even if situated in a sealed vessel. The *Temple Scroll* applied this stringent ruling to the everyday food and drink of כּוֹל אִישׁ טָהוֹר “every clean man.”⁴⁸ The Sages on the other hand only applied this law at the high level of sanctity of water of purification (*me hata’ot*)⁴⁹ and sacrifices (*qodašim*)⁵⁰ when situated in such a vessel. Here too, it appears that the similarity between the two halakhic systems indicates that the basic severity did not originate in the world of the sect, but rather preceded it and was restricted in Tannaitic halakah.

Leniency in Sectarian Law

Furthermore, in certain cases it was precisely the unrefined, simple character of Qumranic halakah, in comparison with the conceptual sophisti-

⁴⁶ *m. Makš.* 6:4; *m. Ter.* 11:2. The exegetic strategy used by the rabbis to justify this reduction of the list of liquids is related in *Sifra Shemini* 8:1. This exegesis also seems to be a polemical response to the sectarian stance: “might one think [that susceptibility to uncleanness is imparted also by] mulberry juice or fruit juice or juice of a pomegranate and all other sorts of fruit?” This bold rabbinic leniency has evoked opposition from within. On the semi-sectarian approach of R. Eliezer, in this matter as well as in others, see Vered Noam, “Traces of Sectarian Halakha in the Rabbinic World,” in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls, the volume of the 8th Orion International Symposium: Studies in the Texts of the Desert of Judea*, 62 (ed. S. Fraade et al.; Leiden: Brill, 2006), 67-85, esp. 70-73.

⁴⁷ Num 19:15. Both Qumranic and rabbinic law identified this “vessel” as an earthenware vessel, referring to Lev 11:33. See 11QT^a 49:8, 50:17-18, cf. Qimron, *Temple Scroll*, 71, 73; *m. Kel.* 2:1; *Sifre Num* 126.

⁴⁸ 11QT^a 49:8-9, cf. Qimron, *Temple Scroll*, 71.

⁴⁹ *m. Par.* 11:1; *Sifre Num* 124.

⁵⁰ *b. Hag.* 25a. I wish to thank Yair Furstenberg for this rabbinic reference. See also Maimonides, *Mishneh Torah, Hilkhhot Parah Adummah* 14:4. Yadin, *Temple Scroll*, 1:327-28, 2:214, compared the law in the *Temple Scroll* to a different rabbinic source.

cation of Tannaitic halakah that occasionally led to the opposite result, in which the Tannaitic halakah was strict, and the Sectarian law lenient.

Rabbinic halakah *expanded the scope of scriptural "tent" by conceptualizing it into an absolute abstraction*. They transformed its status from that of an *object*—a dwelling place—to a *condition* in which *any object at all* overshadowing a corpse, be it human, animal, vegetable or mineral, is considered a "tent."⁵¹ This conceptualization brought about the rigidifying of rabbinic halakah in a manner that was inconceivable for the sectarian legislators, for whom it was sufficient to extend the circumstances of the scriptural command from tent and desert, predictably to house and city.⁵²

Tannaitic halakah established a chain of impurity conveyed by contact, spreading outwards from the corpse itself. This sequence could reach up to four "links" of impure people and objects **אדם וכלים** that had successively come into contact with each other.⁵³ This chain of impurity was unknown to Qumranic halakah, which relied exclusively on the scriptural command according to which only one person coming into contact with a corpse-defiled-person was impure until evening.⁵⁴ Moreover, the *Temple Scroll* contains no reference at all to corpse impurity conveyed to vessels by contact. The terms **הנגע** "he who touches," **כל אשר יגע** "whoever touches" and the like⁵⁵ were interpreted as referring to human beings and not to objects.⁵⁶ Similar to Scriptures, the Scroll only refers to the impurity of vessels in the context of tent impurity, which fills the space of the tent.⁵⁷ In both of these aspects, Qumranic halakah is significantly more lenient than the more developed Tannaitic halakah.

In the same way the *Temple Scroll* rejected the ancient, extra-biblical severity regarding the impurity of **מן החי מן אבר** limb of a living person.⁵⁸ In other words, adherence to the simple meaning of Scriptures caused the

⁵¹ *m. 'Ohal.* 6:1, and ch. 8 in its entirety; *Sifre Num* 126; *Sifre Zuta* 19:14. See Jeffrey L. Rubenstein, "On Some Abstract Concepts in Rabbinic Literature," *JSQ* 4 (1997): 34-40; Noam, "Qumran and the Rabbis."

⁵² For references and discussion see Rubenstein.

⁵³ *m. 'Ohal.* 1:1-4; *Sifre Num* 127, 130, 158; *Sifre Zuta* 19:18.

⁵⁴ Num 19:22. See 11QT^a 50:8-9, cf. Qimron, *Temple Scroll*, 73.

⁵⁵ Num 19:11, 13, 16, 18, 22.

⁵⁶ "And every *man*... who touches the bone of a dead man" (50:4-5); "And every *man* who touches him" (i. e. the death defiled, 50:8), Qimron, *Temple Scroll*, 73.

⁵⁷ Num 19:15, 18; See 11QT^a 49:8-9, 14-16, 19; 50:12, 16-19, cf. Qimron, *Temple Scroll*, 71, 73.

⁵⁸ 11QT^a 50:5, cf. Qimron, *Temple Scroll*, 73, see Yadin, *Temple Scroll*, 1:335; Noam, "Qumran and the Rabbis."

author of the *Temple Scroll* to adopt a more lenient approach than that of Tannaitic halakah.

Conclusion

Naturally, there *are* cases in which, objectively, Qumranic law is stringent in relation to Scriptures. Examples of this would be its inclusion of menstruants in the category of those who were banished from the domain of everyday life;⁵⁹ the three days impurity of a person who had an issue;⁶⁰ and the identification of the biblical domain of holiness—the Tabernacle—with Jerusalem in its entirety.⁶¹ Nonetheless, in my view these examples do not justify the characterization of a “tendency to strictness” as the central motivation and defining feature of Sectarian law.

Qumranic legislation is rather conservative by nature, deviating little from either the plain meaning of Scripture or from early traditions. Rabbinic halakah, on the other hand, launched an audacious revolution through its lenient scriptural exegesis and its restriction of the applicability of early traditions. In other words, the strictness of Qumranic law is not “objective” but relative. In certain instances, it is even lenient as compared to rabbinic law, either because of the latter’s sophisticated, abstract character, or due to a stringent extra-biblical tradition that the Qumranic corpus rejected.

The above statements by no means claim that Qumranic law necessarily represents earlier traditions, or that it constitutes *the* background against which the novel rabbinic legislation evolved, or that the revolutionary aspect of the rabbinic sources is always late. Note, for example, the surprisingly early provenance of certain halakhic reforms documented in Tannaitic literature, such as the sophisticated abstraction of the biblical “tent.” Already well known by the time of the two schools of *Beit Hillel*

⁵⁹) 11QT^a 48:16-17, cf. Qimron, *Temple Scroll*, 70. On the menstruant in early halakha see Ed Parish Sanders, *Jewish Law from Jesus to the Mishnah: Five Studies* (London: SCM Press, 1990), 155-61; Hannah K. Harrington, “Did the Pharisees eat ordinary food in a state of ritual purity?” *JSJ* 26 (1995): 42-54; and more recently Eyal Regev, “Al Dam, Tum’ah Ve-Hayakhas La-Guf Ba-Askolot Ha-Hilkhatiot Bimey Bait Sheni, Ha-Mishnah Ve-ha-Talmud,” *AJS Review* 27 (2003): 1-22 [Hebrew section].

⁶⁰) 11QT^a 45: 7-12, cf. Qimron, *Temple Scroll*, 63.

⁶¹) 11QT^a 45, cf. Qimron, *Temple Scroll*, 63; MMT B: 27-33, 58-62, cf. Qimron and Strugnell, *Miqsat Ma’asê Ha-Torah*, 48-50, 52. For scholarly discussion see note 18 above.

and *Beit Shammai*, they disagreed only with regard to its measurements.⁶² Similarly, as MMT rejected some lenient definitions of the biblical “camp,” these must have preceded MMT.⁶³ Another case in point is the above-mentioned reduction of the number of liquids that cause susceptibility to defilement. This evidently preceded the Yavneh generation, because R. Eliezer rejected this determination whereas R. Yehoshua considered it an accepted ruling of “the sages” (חכמים).⁶⁴

In other words, the exegetical-legislative innovativeness reflected by rabbinic literature is presumably rooted in a pharisaic reform that took place during the Second Temple period. Various aspects of Qumranic law may have developed simultaneously, in a parallel, but separate, process. Some sectarian rulings originated in protest to this pharisaic revolution, by way of a return to the plain meaning of the biblical source or to old traditions, and rarely by stating new stringencies. Other sectarian rulings probably preserve ancient layers of Jewish customs. MMT proves that the Qumranites were indeed familiar with basic characteristics and manifestations of the legislative system which would later come to be known as rabbinic.

The sectarians debated their opponents’ rulings, abolished some of their ancient traditions—as, for example, the case of the limb of a living person discussed above—and also established some rules of their own. On the other hand, some far-reaching rabbinic laws were evidently legislated in reaction to the stances taken by other groups; for instance, the rabbinic license to allow the entry of corpses to the Temple Mount. Fundamentally, what we have here are two paths of creation and interpretation, which molded two different religious cultures. Both were grounded in a shared foundation of tradition and exegesis. One expanded this foundation rather temperately, attempting to adhere to the plain meaning of Scripture, tending to “homogenize” different categories,⁶⁵ and striving

⁶² *m. Kel.* 17:8; *m. ’Ohal.* 16:1; *t. Šab.* 1:18; *t. ’Ohal.* 15:12; *y. Šab.* 1:4; *b. Šab.* 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).

⁶³ See note 61 above.

⁶⁴ See note 46 above.

⁶⁵ See Jacob Milgrom, “The Scriptural Foundations and Deviations in the Laws of Purity of the Temple Scroll,” in *Archeology and History in the Dead Sea Scrolls: the New York University Conference in Memory of Yigael Yadin* (ed. L. H. Schiffman; JSPS 8; Sheffield: JSOT Press 1990), 83-99 at 93.

toward the designation of a sacred sphere, dedicated to God, within daily life. The other used this common foundation as a departure point for the development of a novel civilization, which restricted the domain of sanctity and its demands and expanded the scope of the secular sphere in private as well as in public life.⁶⁶ In addition, this trend inclined to sophistication, conceptualization and abstraction. To this end, it developed bold interpretations and far-reaching adaptations of early traditions, alongside formalization of fresh terminology and creation of novel, comprehensive halakhic structures.

In sum, the conventional view of the invariably stringent nature of Qumranic halakah should perhaps be toned down. Not only does it blur the true character of Qumran law, but it also blinds us to the radical and revolutionary nature of Tannaitic halakah. The understanding that sectarian law reflects a series of inductions not altogether removed from the simple sense of Scripture facilitates a more accurate appreciation of the depth of Tannaitic halakah's groundbreaking leniency.

⁶⁶ For some of the vast bibliography concerning sectarian, Pharisaic and rabbinic purity laws see Noam, "Dual Strategy," 476, n. 13.