

The Dual Strategy of Rabbinic Purity Legislation*

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Abstract

An examination of Tannaic sources uncovers a dual strategy regarding the bounds of non-priestly purity. On the one hand, it was common during the period of the Second Temple and thereafter to exercise extreme caution in keeping impurity away even from the profane. On the other hand, however, the sages acted overtly to maintain a clear distinction between the theoretical-biblical concept of ritual impurity, which was steadily limited to the sacred, and the much more stringent customs they lived by. The article argues that, contrary to what has been accepted in the literature, there never existed any disagreement on this issue in the rabbinic world.

Keywords

purity, impurity, Rabbinics, halakhah, midrash, Second Temple, exegesis

The Bible reflects two opposing conceptions of the boundaries of ritual impurity. One, restrictive, trend limits the requirement of purity to the sacred sphere; the other, expansive, trend, seeks to apply purity to the secular sphere as well. This article reconsiders the rabbinic stance on this issue. A seminal treatment of this question is Gedalyahu Alon's article "The Bounds of the Laws of Levitical Cleanness."¹ Nonetheless, several of the widely accepted assumptions in this and later articles merit reconsideration.²

*) Translated from the Hebrew by Dena Ordan.

¹) Gedalyahu Alon, "The Bounds of the Laws of Levitical Cleanness," in *Jews, Judaism and the Classical World: Studies in Jewish History in the Times of the Second Temple and Talmud* (trans. Israel Abrahams; Jerusalem: Magnes, 1977), 190-234.

²) The critique of aspects of Alon's article is not new, as will be shown in the survey of the

I argue that the research has overlooked what I view as a fundamental, and exceptional, feature of the tannaitic worldview on this question. Also, in the absence of a full exploration of this phenomenon, neither have the correct questions been posed. This article seeks to redefine the anomalous nature of the Tannaitic, and most likely the preceding Pharisaic, approach to purity and impurity. It explores the limits of biblical impurity in rabbinic thought; the scope the rabbis granted purity and impurity in everyday life; and their perception of the interrelationship between biblical theory and daily praxis. These questions impact on such fundamental issues as the origins of rabbinic traditions and the rabbinic association of tradition and biblical legislation.

The Biblical Boundaries of Impurity

Consideration of the plain meaning of the scriptural verses relating to impurity contravenes the notion that impurity is always regarded as a forbidden state *ab initio*. After all, bodily impurities, including corpse-contamination,³ are an inescapable component of daily life.⁴ Scripture recommends no apotropaic precautions for approaching impurity, neither for childbirth nor for burial, for example; nor does it condemn voluntarily contracted impurity, as through marital relations.⁵ Indeed, the few verses warning against impurity, or stating a punishment for its incurrance,⁶ are

state of the research. Nonetheless, this critique has not focused on the question examined here: the relationship between the Bible and the observance of purity in the secular sphere as found in tannaitic doctrine.

³ Even priests are required to bury their close relatives (Lev 21:1-3).

⁴ For example, semen impurity (Lev 15:16-18), menstrual impurity (Lev 15:19-24), and impurity after childbirth (Lev 12).

⁵ As early and late biblical scholars note. For a useful, up-to-date survey, see Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000), 24-25. For a compilation of the earlier literature on biblical purity and impurity, see Aharon Oppenheimer, *The Am Ha-aretz: A Study in the Social History of the Jewish People in the Hellenistic-Roman Period* (Leiden: Brill, 1977), 52 n. 99. David P. Wright suggests terming this class of impurities "tolerated impurities" ("The Spectrum of Priestly Impurity," in *Priesthood and Cult in Ancient Israel* [ed. Gary A. Anderson and Saul M. Olyan; Sheffield: JSOT Press, 1991], 152).

⁶ As opposed to the long pericopes treating the definition of various impurities and purification from them (for example, Lev 11-15, Num 19). But these passages usually do not clarify the circumstances for which impurity is forbidden and purification obligatory.

primarily directed at preventing contact between impurity and consecrated persons, objects, or places,⁷ and not against contracting or prolonging impurity in the secular sphere. In other words, in the absence of sanctity, impurity has virtually no meaning or existence.⁸ Such a definition leaves room for impurity as an unavoidable component of the secular sphere. This is also the notion reflected in the formal stance of rabbinic halakhah.

However, the above picture is by no means monolithic. Biblical purity regulations also contain directives ostensibly outlawing impurity per se, without reference to the sanctuary or sacred objects, and distancing certain impurities from daily life and not just from the sacral sphere. These regulations belong to three categories:

1. Laws forbidding Israelites to become defiled *ab initio*: the prohibition against touching a carcass (Lev 11:8, Deut 14:8); the avoidance of defiling utensils and their smashing if defiled (Lev 11:33, 35; 14:36; 15:12); and a general warning against impurity, whose very presence pollutes the sanctuary even from afar (Lev 15:31);⁹

⁷ Scripture warns against defilement *ab initio* for priests and nazirites (Lev 21:1-12, 22:1-7; Num 6:6-7), and against proximity to the sanctuary and to sacrificial offerings in particular while impure. See Lev 7:19-21, 10:19, 12:4, 21:1-12; 22:1-9; Num 6:6-7, 9:6-13; Deut 26:14.

⁸ According to Yehezkel Kaufmann, the biblical viewpoint regarding the harmless nature of impurity, and the restriction of its prohibition to the sacred sphere alone, should not be seen simply as a technical matter emerging from the needs of daily life, but as a central tenet of the unique early Israelite faith and its message (*The Religion of Israel* [trans. and abridged by Moshe Greenberg; Chicago: University of Chicago Press, 1960]. For a focused treatment of the concept of impurity, see *ibid.*, 103-15. In his monumental commentary to Leviticus, Jacob Milgrom continues the main thread of the “monotheistic revolution” drawn by Kaufmann, with some alterations, providing a profound, sophisticated interpretation of all the details of Leviticus’ ritual constitution. See Jacob Milgrom, *Leviticus: A New Translation with Introduction and Commentary* (AB 3-3b; New York: Doubleday, 1991-2001), 42-45, 258-61, 310-13, 976-85, 1002-3. For a critique of various elements of his approach, see the literature cited in Klawans, *Impurity and Sin*, 168 n. 77.

⁹ On Lev 11:8 and Deut 14:8, see Menahem I. Kahana, *Sifre Zuta on Deuteronomy: Citations from a New Tannaitic Midrash* (Jerusalem: Magnes, 2002), 202 n. 14 [Hebrew]. See also Hanoah Albeck, “Tum’at ha-guf ve-ha-yadayim ve-tum’at okhalim,” *Torah she-be-al peh* 6 (1964): 24. On the verses treating utensils, see Alon, “Laws of Levitical Cleanness,” 190-91 n. 3, 232 n. 109; Yochanan Breuer, “Issur tum’ah ba-Torah,” *Megadim* 2 (1987): 45-53; Ed P. Sanders, *Jewish Law from Jesus to the Mishnah: Five Studies* (London: SCM Press, 1990), 148. On the general warning against impurity, whose very existence defiles the sanctuary (Lev 15:31, as opposed to the rabbinic exegesis of this verse), see below. This verse is interpreted thus, according to its plain meaning, in the *Temple Scroll* 51:5-10

2. Laws requiring purification and forbidding prolongation of impurity, whose transgression requires excision (כרת) if deliberate, and a sacrifice, if accidental: the prohibition against prolonging corpse-impurity in the profane sphere (Num 19:13, 20); the requirement to bring a sacrifice for failing to notice impurity and to undergo purification (Lev 5:2-3, 5-6); and failure to undergo purification after consumption of a carcass or torn meat (Lev 17:15-16);¹⁰
3. Laws excluding impure persons from the camp of the Israelites: the *mešora* (Lev 13:46, 14:3, 8; Num 12:14-15; 2 Kgs 7, 15:5, among others); the *zab*, the *mešora*, and the corpse-contaminated person (Num 5:2-3); and the corpse-contaminated and seminally impure from the war camp (Num 31:19, 24; Deut 23:11-12).¹¹

It is an open question as to whether these passages actually reflect an alternative biblical viewpoint that demands purity in the camp of the Israelites, and in daily life and affairs. Nor is it clear how they interface with the liberal approach to impurity found elsewhere in the Pentateuch. Scholars are divided on this issue.¹² My concern, however, is the rabbinic treatment of this duality.

(Elisha Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* [Judean Desert Studies; Beer Sheva: Ben-Gurion University of the Negev Press, 1996], 75). See the conclusion of this article. For an alternative reading of this verse, see Sanders, *Jewish Law*, 146.

¹⁰ On the prohibition against allowing corpse-impurity to remain in the profane sphere, see below (as opposed to rabbinic doctrine, and cf. Nahmanides' commentary to Num 19:20). See also Adolf Büchler, *Studies in Sin and Atonement in the Rabbinic Literature of the First Century* (Jews' College Publications 11; London: Oxford University Press, 1928), 265; Israel Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Minneapolis: Fortress, 1995), 93; Wright, "Priestly Impurity," 159, 166n.; Baruch A. Levine, *Numbers: A New Translation with Introduction and Commentary* (AB 4a; New York: Doubleday, 1993-2000), 457, 469; Klawans, *Impurity and Sin*, 25; Kahana, *Sifre Zuta on Deuteronomy*, 201, and the opinions of Milgrom and Licht cited in the following note. See also Breuer, "Issur tum'ah," 47-48. For a different interpretation, see Ed P. Sanders, *Judaism: Practice and Belief, 63 BCE-66 CE* (London: SCM Press, 1992), 218-21.

¹¹ The Pentateuch preserves two voices regarding the sending of the corpse-contaminated person out of the camp. According to Num 5 (and Num 31:19, 24) he is to be sent out of the camp. But Num 19 clearly shows that he remains in the camp. See Milgrom, *Leviticus*, 276-77; Jacob Licht, *A Commentary on the Book of Numbers* (Publications of the Perry Foundation for Biblical Research in the Hebrew University of Jerusalem; Jerusalem: Magnes, 1985), 1:58 [Hebrew].

¹² Some scholars argue that the verses exhibiting stringency with respect to impurity in the

Purity among Pharisaic Circles and in Rabbinic Literature: The State of the Research

The precincts, and socio-religious implications, of purity in Second Temple period Jewish society have always occupied historians of that period and of the origins of Christianity. The discovery of Qumran halakhah and its supererogatory nature sparked a fresh wave of studies of the observance, and boundaries, of purity among the various Jewish circles. Attention was largely directed at uncovering the social history of the age and the nature of the *realia* underlying the sources for this period. The lively historical debate concerning Pharisaic and later rabbinic halakhah addressed such questions as the level of adherence to stringent purity regulations among the Second Temple period Pharisees, as reflected in some, primarily Tannaitic, sources; the social scope of its practice; and the motivation for this meticulousness (was this trend grounded in an aspiration to resemble the

secular sphere treat only deliberately prolonged impurity, which becomes a moral sin. See Büchler, *Studies*, 264-69; Wright, "Priestly Impurity," 165; Breuer, "Issur tum'ah." Milgrom (*Leviticus*, 275, 310-13), and Wright ("Priestly Impurity," 159, 165-66 n. 2, and see also Levine's opinion cited and rejected there) take a similar stance. For a harmonistic approach, see Licht, *Numbers*, 1:58, 2:173, 179-80. See also Tikva Frymer-Kensky, "Pollution, Purification and Purgation in Biblical Israel," in *The Word of the Lord Shall Go Forth: Essays in Honor of David Noel Freedman in Celebration of His Sixtieth Birthday* (ed. Carol L. Meyers and M. O'Connor; Winona Lake, Ind.: Eisenbrauns, 1983), 399. For a critical approach that distinguishes between the two biblical trends, see Alon, "Laws of Levitical Cleanness," 190 and n. 3, 232 and n. 109, and the discussion of his approach below. Albeck differs sharply with Alon and tries to interpret all the biblical passages in line with the official rabbinic approach allowing impurity in secular life ("Tum'at ha-guf," 25 n. 3). Milgrom presents a unique mixture of the harmonistic and evolutionary viewpoints. According to his method, all the verses originating in P, namely, most of the above-mentioned verses, display a single approach, which focuses on the sanctity of the temple and not on sanctity in the profane sphere. For Milgrom, the call for sanctity in the profane sphere, demanded throughout the land for all its inhabitants, is found only in verses deriving from H. In any event, Milgrom accepts the premise that the above verses indeed forbid impurity in the profane sphere, albeit for fear of its influence on the sanctuary from afar. Milgrom also admits that the impurity and its related prohibitions found in Lev 11 are completely divorced from the sanctuary and the sacred things. In addition, he recognizes the existence of two biblical voices with respect to dispatching impure persons from the camp, which he explains in evolutionary terms. See Jacob Milgrom, "The Scriptural Foundations and Deviations in the Laws of Purity of the *Temple Scroll*," in *Archaeology and History in the Dead Sea Scrolls* (JSPSup 8; JSOT/ASOR Monographs 2; Sheffield: JSOT Press, 1990), 83-89; idem, *Leviticus*, 43-45, 276, 976-85. Knohl suggests an opposite development (*Sanctuary of Silence*, 184-86).

priests, and if so, how central was this aspiration to the Pharisaic self-image?).¹³ An important methodological problem frequently raised in these studies relates to how closely late Tannaitic halakhah reflects the Second Temple Pharisaic milieu.¹⁴ But this lively historical debate and its concomitant methodological issues overlook inherent ideological-theoretical

¹³ For groundbreaking studies comparing Pharisaic and sectarian purity laws, see Saul Lieberman, "The Discipline in the So-Called Manual of Discipline," *JBL* 71 (1952): 199-206; Jacob Licht, "Some Terms and Concepts of Ritual Purity in the Qumran Writings," in *Studies in the Bible Presented to Professor M.H. Segal* (ed. J.M. Grintz and J. Liver; Publication of the Israel Society for Biblical Research 17; Jerusalem: Israel Society for Biblical Research, 1964), 300-309 [Hebrew]; and Chaim Rabin, *Qumran Studies* (London: Oxford University Press, 1957), 1-21. See also the bibliography cited by Yigael Yadin, ed., *The Temple Scroll* (Jerusalem: Israel Exploration Society, 1983), 1:327-28 nn. 66-67. On Pharisaic stringency regarding consumption of unconsecrated food in purity and the relationship between the terms "Pharisee" and "*haver*," see E. Rivkin, "Defining the Pharisees: The Tannaitic Sources," *HUCA* 40-41 (1969-70): 238-49; Oppenheimer, *Am Ha-aretz*, 118-19, 131-34; Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. Israel Abrahams; Jerusalem: Magnes, 1975), 1:583-88. See also the bibliographical survey in Sanders, *Jewish Law*, 131, 152-54, 350 nn. 1-5, and his own, opposing view (152-254). For a critique of Sanders, see Martin Hengel and Roland Deines, "E.P. Sanders' 'Common Judaism', Jesus and the Pharisees," *JTS* 46 (1995): 41-51; J.C. Poirier, "Purity Beyond the Temple in the Second Temple Era," *JBL* 122 (2003): 247-65. For a sociological perspective, see Albert L. Baumgarten, *The Flourishing of Jewish Sects in the Maccabean Era: An Interpretation* (Leiden: Brill, 1997). He explains stringent purity observance as a component of deliberate sectarian social separatism. See esp., 7-8, 91-100. For a diachronic survey of the manifestations of purity in the profane sphere during the Second Temple period and an up-to-date bibliography on this topic, see the beginning of Eyal Regev's article, "Pure Individualism: The Idea of Non-Priestly Purity in Ancient Judaism," *JSJ* 31 (2000): 176-202.

¹⁴ For a view rejecting the conception of continuity between Pharisaic halakhah and the post-destruction tannaitic-rabbinic world, see Morton Smith, "Palestinian Judaism in the First Century," in *Israel: Its Role in Civilization* (ed. Moshe Davis; New York: Seminary Israel Institute of the Jewish Theological Seminary of America, 1956), 67-81; idem, "The Dead Sea Sect in Relation to Ancient Judaism," *NTS* 7 (1960-61): 347-60; Jacob Neusner, *Early Rabbinic Judaism* (Leiden: Brill, 1975), 50-70; idem, *Eliezer ben Hyrcanus: The Tradition and the Man* (SJLA 3-4; Leiden: Brill, 1973), 2:298-307; David Goodblatt, "The Place of the Pharisees in First Century Judaism: The State of the Debate," *JSJ* 20 (1989): 12-30, who provides an extensive bibliography on the various positions. For the contrary argument, see, for example, Yaakov Sussman, "The History of *Halakha* and the Dead Sea Scrolls: Preliminary Observations on *Miqṣat Ma'ase Ha-Torah* (4QMMT)," *Tarbiz* 59 (1989-90): 63-64 and n. 203, 27 n. 71, 73 n. 238 [Hebrew]; Daniel R. Schwartz, "Josephus and Nicolaus on the Pharisees," *JSJ* 14 (1983): 157-71; Vered Noam, "Beit Shammai and the Sectarian Halakha," *Jewish Studies* 41 (2002) 45-67 [Hebrew]. See also the survey by Shaye J.D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism," *HUCA* 55 (1984): 36-42 and the literature cited in n. 18 there.

aspects of the Tannaitic world, as well as the manner in which it defined purity and impurity and their *sitz-im-leben*, in its own terms.¹⁵

A number of cardinal research directions were set by Gedalyahu Alon's influential article mentioned above. Written a decade before the initial discovery of the Dead Sea Scrolls, this article was groundbreaking for its identification of the centrality of purity to Second Temple life and sectarian dispute. Heightened by the discovery of Qumran halakhah, this insight became axiomatic in the research. Briefly, Alon's article established several key principles. It determined that alongside the "normative" stance curtailing the concepts of purity and impurity to the sacred sphere, rabbinic literature (and the Second Temple literature available when the article was written) abundantly witnesses another, expansive halakhic approach to the realm of purity. As described by Alon, this latter approach seeks to extend the purity of the consecrated to the unconsecrated sphere. Alon identified three features of this expansive tendency: (a) the extension of purity to sacred rituals and objects like phylacteries, prayer, and the study of Torah, (b) the extension of the requirement of purity to consumption of ordinary, unconsecrated food, and (c) a global prohibition of impurity alongside the requirement of purity in everyday life. Alon showed that these were widespread phenomena during the Second Temple period and not late Tannaitic innovations, as Adolf Büchler had argued earlier.¹⁶ Moreover, Alon surmised that the Pharisees viewed the amplification of purity in everyday life as mandatory halakhah for the entire people and not just as voluntary stringency by select individuals. Alon's expertise enabled him to paint a broad picture, but its findings are ambivalent. Some of the sources frame stringent adherence to purity as an assumed, individual obligation for *haverim* only. Others juxtapose purity of unconsecrated food to the requirement of purity for the *terumah* and holy offerings, as an obligation addressed to all. Finally, one of Alon's most significant conclusions remains

¹⁵ Milgrom is an exception in devoting minor attention to the rabbinic method and attitude toward Scripture in his discussion of biblical and Qumranic purity regulations ("Scriptural Foundations"). See notes above and below. The present article's approach differs, however, from Milgrom's.

¹⁶ As Adolf Büchler argued earlier (*Der galiläische 'Am-ha'Areš des zweiten Jahrhunderts* [XIII. Jahresbericht der Israelitisch-Theologischen Lehranstalt; Vienna: Verlag der Israel.-Theol. Lehranstalt, 1906], 138-57. Büchler held that stringency regarding the consumption of unconsecrated food in purity was not actually practiced and interpreted all the literary evidence as applying to *terumah* and the priests. Alon rejected this viewpoint, which has been negated by the later Qumranic and archeological finds as well.

his singling out of the tension between the maximalist and minimalist views on purity as a central feature of Second Temple sectarian debate.

Subsequent research has accepted, substantiated, and developed some of Alon's discoveries. Thus, Qumran literature definitively corroborates a proclivity on the part of certain Second Temple period Jewish circles to apply the holiness of the sacred sphere to everyday life. Qumran halakhah also illumines the centrality of purity and its bounds to sectarian debate, opening the way for the comparison of the *ḥavurot* described in Tannaitic sources and the Qumranic *yahad*.¹⁷ Jacob Neusner notes the dominance of purity for unconsecrated food in the early Tannaitic stratum and even designates the Pharisees a "table-fellowship sect."¹⁸

But neither Alon's historical reconstruction nor his methodology, in particular, is a matter of consensus. A common criticism relates to Alon's failure to discriminate between sources from different periods, and to his utilization of sources connected to *ḥaverim* and *ḥavurot* that ate food in purity, whose identity, scope, and relationship to the Pharisees are uncertain.¹⁹ Another contention is that abstract Tannaitic halakhot cannot be

¹⁷ See preceding notes.

¹⁸ This conclusion appears in many of his works. See, for example, Jacob Neusner, *The Rabbinic Traditions about the Pharisees before 70* (3 vols.; Leiden: Brill, 1971), in particular the chapter summarizing the topics of early halakhah and the summation, 3:286-300, 301-19. See also idem, "The Fellowship in the Second Jewish Commonwealth," *HTR* 53 (1960): 125-42. For a critique of Neusner, see Sanders, *Jewish Law*, 166-84, 240-42; Milgrom, *Leviticus*, 1004-9; Hengel and Deines, "Sanders' 'Common Judaism,'" 42-44.

¹⁹ On Pharisees and *ḥaverim*, see the literature cited in the preceding notes. Sanders (*Jewish Law*, 184, 192) and Regev ("Non-Priestly Purity," 186-88) disagree with Alon's description of the tendency to expand Temple and priestly sanctity to the secular sphere and to the entire people. They suggest that the trend toward stringency in purity was grounded in an inherent aspiration to purity, not in a desire to resemble the priests or to widen Temple sanctity. Even though Poirier ("Purity Beyond the Temple") attacks this position, in essence he takes a similar stance that purity in the secular sphere in the Bible and in the Second Temple period does not represent expansion of Temple sanctity but rather a separate, principled view. See also the alternate motivations proposed by each scholar for expansion of purity to the profane sphere (see also Hengel and Deines, "E.P. Sanders' 'Common Judaism,'" 45-47). Regev assumes that the origins of stringency regarding purity in the secular sphere lie in stricter demands regarding religious activities such as prayer and the Torah reading. This conjecture appears doubtful. As we have seen, the purity of unconsecrated things and of non-priestly Israelites has biblical roots, and prayer and fixed Torah study appear nowhere in the Torah. Moreover, this sphere of purity for religious rituals differs in several respects from the purity for the profane in daily life and at meals. Note that immersion for prayer and for recitation of the Shema apply to minor semen impurity and not to

interpreted as authentic reflections of Pharisaic reality during the Second Temple period. Ed P. Sanders attacks Alon's reconstruction from the perspective of *realia*, finding it unlikely that the Pharisees ate unconsecrated food in purity. Hannah K. Harrington takes the opposite view. Using Tannaitic witnesses, she attempts to prove that such stringency was not only possible, but was actually practiced in daily life.²⁰

In my view, the recent scholarly discussion of Alon's theory overlooks one of its more fundamental aspects: his explanation for the coexistence of two conflicting views in the rabbinic world. Alon argues that the maximalist tendency seeking to apply purity to the secular realm did not develop from the normative halakhic tradition, which limited purity and impurity to sacred things. Nor did it mirror the expansion of individual stringency into general practice; this tendency was rather "the expression of another view, which was opposed to it from the outset."²¹ For Alon, duality with regard to purity issues during the Second Temple and Tannaitic periods, was an outgrowth of this quality in biblical legislation: "These two traditions are to be regarded, in the first place, as two contrary methods of exegesis, that differ on the interpretation of Scriptures. But, in truth, this dispute has its origin in a certain duality that is already found in the Torah itself, and is only a sequel to the variant approaches that find expression in conflicting verses."²² Alon describes and stresses the "Halakhic struggle" and the collision of "two conflicting trends" in the Pharisaic world: a minimalist bent, grounded in the same biblical tendency, which sought to adapt halakhah to the needs of everyday life, and a maximalist trend, which sought to enhance holiness, also an extension of the corresponding pentateuchal tendency.²³

all impurities. Nor does it apply to other sacred activities or times, such as laying phylacteries and the sanctity of the Sabbath and holidays (Alon's efforts to prove the opposite are not convincing ["Laws of Levitical Cleanness," 197-205]). What emerges from this discussion is that the obligation for immersion after semen impurity, for prayer and Shema only, is of limited application, and differs in its source, scope, and perhaps date, from the observance of purity for *ḥullin* in general.

²⁰ Sanders, *Jewish Law*, 152-254; Hannah K. Harrington, "Did the Pharisees Eat Ordinary Food in a State of Ritual Purity?" *JSJ* 26 (1995): 42-54. For further scholarly discourse on this question, see the bibliography in Regev, "Non-Priestly Purity," 177-78 n. 5.

²¹ Alon, "Laws of Levitical Cleanness," 191 n. 4.

²² *Ibid.*, 232.

²³ *Ibid.*, 233.

Alon attributes the vague reflection of the “maximalist” trend in the sources to this reconstructed dispute from the Pharisaic-rabbinic world.²⁴ Aware that many of the sources he compiled present strict adherence to purity in everyday life as obscure early customs practiced on the sidelines,²⁵ and that many others ascribe stringent purity only to a minority of pietists and *haverim*, Alon links this phenomenon to the above-mentioned internal debate: “But the Halakha as such, which calls for Levitical purity when eating unconsecrated food, was undecided from the outset, for *others* [emphasis mine—V.N.] ruled that uncleanness applied to the Sanctuary and to holy things... Hence the [maximalist—V.N.] Halakha could not be firmly established and applied to all things, but remained for many ‘a precept of piety [literally, ‘abstinence’]’ and succeeded in being firmly applied in given cases only.”²⁶ He also notes “that... there were *other scholars* who did not refrain from expounding and ruling that halakhically only holy things and heave-offerings required Levitical cleanness, and consequently the [maximalist—V.N.] law was in suspense.”²⁷ This description has won favor among Alon’s critics.²⁸ The scholarly literature uses this point to describe the Pharisaic attitude toward impurity as a disputed, or dual matter, or as “dancing to two tunes.” But as we shall see below, this is one of the weak points of Alon’s thesis. It overlooks a unique feature of the rabbinic laws of purity.

²⁴ Alon’s article blurs the distinction between Pharisees and rabbis, and tannaitic, amoraic, and even gaonic literature are used to reconstruct the situation during the Second Temple period.

²⁵ See, for example, Alon, “Laws of Levitical Cleanness,” 197-98, and n. 25, where he mentions the customs found in the *Baraita of Tractate Nidda*, of uncertain date and origin, which certainly cannot be taken as representing a mainstream trend among the Second Temple Pharisees. This is also the case for the early custom of purification before the Sabbath and festivals (*ibid.*, 203-5), which never achieved the status of actual halakhah. The proofs offered by Alon for the rabbinic tendency to distance the Amidah and the Shema from corpse-impurity (199) actually counter his intent, as there are no restrictions on carrying out these activities in a state of corpse-impurity.

²⁶ Alon, “Laws of Levitical Cleanness,” 223.

²⁷ *Ibid.*, 207 (emphases mine, V.N.). I have also changed the wording of the translation from *certain scholars* to *other scholars* in accordance with the Hebrew original.

²⁸ For example, Oppenheimer, *Am Ha-aretz*, 52-55, even though he disagrees with Alon on other points (*ibid.*, 131-34); Milgrom, “Scriptural Foundations,” 86-89; Sanders, *Jewish Law*, 162-63; Regev, “Non-Priestly Purity,” 190.

Rabbinic Exegesis of Biblical Purity Legislation

Alon's above-cited description ignores a surprising phenomenon: Tannaitic sources reflect no internal dispute, "Halakhic struggle," or "clash" with the basic rabbinic stance on purity.²⁹ It is in fact just the opposite! In the systematic, and strikingly unambiguous, *theoretical* rabbinic view, the existence of impurity in the secular realm is neither forbidden nor punishable; the sole prohibition relates to contact between impurity and consecrated things. How then did the Tannaim tackle the biblical verses whose plain meaning forbids impurity and requires purity in daily life and the camp of Israel?

Alon's article opens with a brief consideration of the rabbinic tendency to uproot the plain meaning of these verses, and to attribute them to the sanctuary and the priests. He opposes this to his theory of an opposite, maximalist trend.³⁰ But only close examination of Alon's examples (provided in a note), and of many others, discloses the categorical nature of the restrictive Tannaitic treatment of biblical purity legislation. Without exception, a powerful exegetical trend consistently divorces *all* the "amplificatory" biblical verses, which outlaw impurity *ab initio* and dispatch impure persons from the camp, from their plain meaning and applies them to the sanctuary and to the sacred domain. By limiting the prohibitions against impurity, and the requirement of purity, to the holy sphere, Tannaitic exegesis essentially strips impurity of meaning in the secular sphere. The following discussion outlines the various strategies used to silence the plain meaning of the verses in question. As we shall see, the forced nature of these homilies is at times arresting.

Grafting Sacred Precincts, Time, or Officiants onto the Verse

In every instance where Scripture issues a general prohibition against impurity, or requires a sacrifice or excision for its prolongation, or demands its exclusion from the secular sphere, the midrash introduces a sacred context to the prohibition or the punishment. The prohibition, punishment,

²⁹) Alon, "Laws of Levitical Cleanness," 233.

³⁰) See Alon, "Laws of Levitical Cleanness," 190 and n. 3. See also Kahana, *Sifre Zuta on Deuteronomy*, 201-2 and n. 10 there. Milgrom ("Scriptural Foundations") attempts to harmonize between the reductive rabbinic approach and the above-cited verses, which, in his view, also represent a uniform minimalistic approach. In my opinion, neither the plain meaning of the verses, nor the patently forced nature of the halakhic midrashim cited here, permits such an interpretation.

or exculpatory sacrifice for impurity are consistently attributed either to the “defilement of the sanctuary and its sancta,” or to the festival pilgrimage, or the priests.

One example is the midrashic treatment of corpse impurity. The scriptural injunction implies that the very presence of a corpse-contaminated person who does not undergo purification in the camp defiles the sanctuary and that such a person is, moreover, liable to excision:

But any person who becomes impure, but fails to purify himself—that person shall be cut off from the midst of the congregation, for it is the Sanctuary of the Lord that he has defiled. Water of lustration was not dashed on him: he remains impure. (Num 19:20; trans. slightly revised)³¹

The midrash rejects the global implications of the verse as outlined above:

Should he fail to purify himself on the third day and on the seventh day, he shall not be deemed pure (v. 12): why was this stated? Because it says: *But any person who becomes impure, but fails to purify himself—that person shall be cut off from the midst of the congregation* (v. 20); the verse refers to the punishment of excision for polluting the sanctuary. You say that the verse prescribes excision for polluting the sanctuary; perhaps he is only punished for not undergoing the sprinkling? Scripture states: *Should he fail to purify himself* (v. 12), his punishment is *he shall not be deemed pure* (ibid.) and he is not liable to excision. (*Sifre Num 125*; Horowitz ed., 160; trans. by author)³²

Taking Num 19:12 as its starting point, the midrash first questions why the verse, positively worded in its opening which instructs purgation on the third and seventh days, concludes with negative wording: “Should he fail to purify himself [on the third day and on the seventh day, he shall not be deemed pure]” — *וְאִם לֹא יִתְחַטֵּא ... לֹא יִטְהַר*. The midrash then turns to v. 20, which ostensibly implies that the very presence of an impure person who fails to undergo purification within the camp pollutes the sanctuary and makes that person liable to excision. The exegete rushes to specify,

³¹) Unless otherwise noted, all pentateuchal quotes are cited from the Anchor Bible edition.

³²) The translations from *Sifre Numbers* and *Deuteronomy* are cited according to the text of MS Vatican 32 (*Midrash Leviticus Rabbah; Sifre Numbers Deuteronomy: Codex Vatican 32 [Vat. Ebr. 32]* [facsimile edition; Jerusalem: Makor, 1972]). The homily is duplicated for v. 20 in *Sifre Num.*, parashah 129, p. 167.

however: “the verse prescribes excision for polluting the sanctuary!” Namely, the words “for it is the Sanctuary of the Lord that he has defiled” describe not the *outcome*, but rather the very *action* of the sinner. It is not the very state of impurity but rather entry to the holy precincts in that state for which he is liable to excision.

The homilist next rejects the possibility that the verse attributes the punishment of excision to anyone who *fails to undergo* sprinkling with the ashes of the red heifer at the stated times (without entering the sanctuary), and replies by quoting v. 12, with which the midrash opened: “Should he fail to purify himself [his punishment is] he shall not be deemed pure.” The homily accordingly discards the notion that someone who has not been purified is liable to excision and concludes that the sole consequence of not undergoing purification is that the person remains impure. By this means, the homilist answers the initial question as to the negative wording found at the conclusion of verse 12. This interpretation of Num 19:12 is perhaps grounded in its similarity to Lev 17:16: “But if he does not launder (his clothes) and bathe his body, he shall bear his punishment [ונשא עונו].” This verse’s plain meaning reflects a notion equivalent to the one rejected by the midrash: namely, that a person who fails to purify himself is a sinner. Our midrash concentrates on the parallel verse instead, which concludes with a ritual state of impurity—לא יטהר, not a moral statement—ונשא עונו. Thus, our midrash erects two barriers: one between the sacred and the secular precincts, applying the punishment of excision only to active defilement of the sanctuary, and making impurity permissible in the secular sphere; and another between moral and ritual impurity. An impure person who fails to undergo purification is not a sinner, nor is he liable to excision for this failure unless he infracts the prohibition against defiling the sanctuary. It is not the state of impurity itself, but rather the violation of the prohibition against polluting the sanctuary, that makes him a sinner.

This midrash also uses a two-pronged exegetical strategy: it first grafts the act of entering the sanctuary onto a verse prescribing the punishment of excision for the impure person (Num 19:20). It then transfers a verse (v. 12) grounded in the ritual plane to the moral context: “*his punishment is* that ‘he shall not be deemed pure,’” namely, there is no punishment. By this means, the homilist excludes any moral component from impurity.

Scripture also contains verses requiring a sacrifice for remaining impure unwittingly. The plain meaning of Lev 5:2-3, 6 apparently relates to impurity that was prolonged due to oversight. Nowhere do these verses refer to the sanctuary or its sancta:

Or when a person touches any impure thing—be it the carcass of an impure wild quadruped or the carcass of an impure domesticated quadruped or the carcass of an impure swarming creature—and, though he has become impure, the fact escapes him and (thereafter) he incurs guilt; Or when he touches human impurity—any such impurity whereby one becomes impure—and, though he has known it, the fact escapes him (thereafter) he incurs guilt... When he incurs guilt in any of these matters, he shall confess that wherein he did wrong. And he shall bring as his reparation to the Lord, for the wrong that he committed. (Lev 5:2-3, 6; trans. slightly revised)

But note the restrictive thrust of the following midrashic treatment:

And how do we know that Scripture speaks only concerning imparting impurity to the sanctuary and its Holy Things? Scripture has expressed an admonition and a sanction for [intentional] impurity. And further, one is liable to an offering on account of [unintentional] impurity. Just as the admonition and sanction stated elsewhere on account of impurity refer to [intentionally] polluting the sanctuary and its Holy Things, so the offering to which one is liable on account of impurity, of which the present passage speaks, refers to [unintentionally] polluting the sanctuary and its Holy Things. (*Sifra, Dibura Deḥobah*, parashah 8, pereg 12:10; Finkelstein ed., 176-77; Neusner trans., 1:290-91; revised)³³

Here the midrash extrapolates the circumstances requiring a sacrifice for inadvertent impurity from the ones pertaining to an intentional impurity-related infraction. But nowhere does the midrash back its premise that the punishments and warnings applicable to deliberate impurity all relate to the pollution of the sanctuary and not simply to prolongation of impurity. The homilist refrains from specifying which biblical verses prove that the prohibition applies *ab initio* just to the sanctuary and its holy things.³⁴

Elsewhere, this process is reversed. Using elliptical reasoning, a homily ascribes the circumstances of inadvertent impurity to those of the prohibition against impurity. Again, this homily explicates a verse whose prohibition against impurity *ab initio* contains no reference to the sanctuary or its sacra. Lev 17:15-16 states:

³³) Klawans (*Impurity and Sin*, 97) views this homily as manifesting the tannaitic tendency to distinguish between impurity and sin.

³⁴) In his commentary to the talmudic parallel of this homily Rashi suggests two verses of prohibition which relate specifically to the holy sphere (Rashi, *Shev.* 6b, lemma טומאה הזדון הואיל (על וענש והזדון הואיל). In his edition of *Sifra*, 176-77, Finkelstein suggests other verses.

Any person, whether citizen or stranger, who eats what has died or has been torn by beasts shall launder his clothes, bathe in water, and remain impure until evening; then he shall be pure. But if he does not launder [his clothes] and bathe his body, he shall bear his punishment.

The midrash applies these verses, which assign a penalty to anyone who does not purify himself from minor carcass-impurity in daily life, to the sanctuary:

How do we know that [in the present context, Scripture] speaks only of one's polluting the sanctuary and its holy things [by eating carrion or "torn" meat and then entering the sanctuary]? The admonition and the penalty come about through [intentional] impurity, and one is liable to an offering for [unintentional] impurity. Just as in the case of the offering, to which, elsewhere, one is liable for polluting the sanctuary and its holy things, so too the penalty and admonition stated here are on account of polluting the sanctuary and its holy things. (*Sifra, Aḥarei mot*, parashah 8, perek 12; Weiss ed., 85c; Neusner trans., 3:70-71, revised)³⁵

This midrash restricts the prohibition against deliberate impurity (Lev 17) to pollution of the sanctuary. The homilist finds backing for this restriction in the circumstances of inadvertent impurity (Lev 5). But as we saw, the very circumstances of the unintentional impurity (which require a sacrifice) were derived in the previous midrash from the limitation of the prohibition against deliberate impurity! Thus, these two interdependent homilies insert the pollution of the sanctuary into two different biblical contexts totally devoid of this notion.

Taking a similar path, additional midrashim restrict the interpretation of the "camp" from which the various impure persons are sent to either the "camp of the Shekhinah"—the Temple—or the "levitical camp"—the Temple Mount (see *Sifre Num.* 1, p. 1-2; *Sifre Zuta* 5:2, p. 229; *Sifre Deut.*, piska 255, Finkelstein ed., p. 281). Other midrashim assign the pentateuchal prohibition against impurity to the time of the festival pilgrimage

³⁵ All translations from *Sifra* are according to the text of MS Vatican 66 (*Sifra or Torat Kohanim according to Codex Assemani LXVI*, ed. Louis Finkelstein [New York: Jewish Theological Seminary of America, 1956]). See Rashi's commentary to Lev 17:16: "Then shall he bear his iniquity—For the omission to lave his body *before entering the Sanctuary or before eating sacred food* he is liable to excision as for all other impurities" (Silberman trans., *Vayikra*, 80).

or the *shelamim* offering (see *Sifra, Shemini*, parashah 2, pereq 4:8-10; Kahana, *Sifre Zuta on Deut.*, 14:8, pp. 198-99). Just as the above homilies limit the prohibition to the *holy precincts*—the Temple alone—the latter ones attribute similar verses to *holy time*. A third strategy applies prohibitions whose plain meaning relates to all the Israelites to the priests, *the sacred servants*, alone (see *Sifre Zuta on Deut.*, 198-99). As noted, the homiletic interpretation even introduces actual entry to the sacred precincts to verses implying that ritual impurity harms the sanctuary from afar. Accordingly, the midrash further specifies that the sacred precinct cannot be defiled except from within (see *Sifra, Tazria*, parashah 1, pereq 12:1-2; Weiss ed., 57c).

Attacking the Prohibition's Applicability

Another restrictive homiletic strategy takes the form of an attack on the general applicability of the anti-impurity prohibition. Regarding the wording of the verse: “The priest shall order the house cleared before the priest enters to examine the infection, so that nothing in the house may become impure; after that the priest shall enter to examine the house” (Lev 14:36), Alon comments that this “clearly shows that it is obligatory to save the articles from defilement.”³⁶ He then refers to the Tannaitic exegeses that view this not as an obligation to avoid impurity, but as advice, as the Torah’s concern for the Israelites’ money:

For what does the Torah show concern? For his clay utensils and his flask... If thus has the Torah shown pity for his despised property, how much the more so for his cherished property! (*Sifra, Mešora*, parashah 5, pereq. 3:12; Weiss ed., 73a; Neusner trans., 2:354, revised)³⁷

Similarly, the Pentateuch mandates the smashing of vessels that have been defiled and cannot be purified:

And if any of those [dead creeping things] falls into any earthen vessel, everything inside it shall be impure and [the vessel] itself you shall break... Everything else on which the carcass of any of them falls shall be impure. An oven or stove shall be smashed; they are impure and impure they shall remain for you (Lev 11:33, 35); An earthen vessel that a man with a discharge touches shall be broken (Lev 15:12).

³⁶ Alon, “Laws of Levitical Cleanness,” 190-91 n. 3. See also Breuer, “Issur tum’ah,” 46.

³⁷ Cf. *m. Neg.* 12:5. And unlike Milgrom, “Scriptural Foundations,” 84.

The midrashic treatment undermines the plain meaning of these statements:

[the vessel] itself you shall break: Might one maintain that one must break the utensil? Scripture says with reference to someone suffering from a genital discharge [the Zab], *An earthen vessel that a man with a discharge touches shall be broken* (Lev. 15:12). Might one maintain that one must break the utensil? Scripture says, *and you shall break it* [וְאַתָּה תִּשְׁבְּרוּ], meaning, it [the utensil affected by the dead creeping thing] is what you must break, and you do not have to break a clay utensil affected by a Zab. [Using an argument] *a minori ad maius*, [we can show the following]: If a utensil that touches a Zab, who is a severe source of impurity, does not have to be broken, a utensil that touches a dead creeping thing, which is a minor source of impurity, surely should not require breaking. If so, why is it said, *and you shall break it*: What this teaches is that the only way of purifying such a utensil is by breaking it [but there is no ban on allowing it remain impure or on its use in that condition]. (*Sifra*, *Shemini*, parashah 7, pereq 8:13; Weiss ed., 54a-b; Neusner trans., 2:198-99, revised)

This homily is outstanding for its daring, elliptical nature. From the reversal of the normal word order, which marks אַתָּה תִּשְׁבְּרוּ as the topic—“you shall break it”—the midrash concludes that only a vessel defiled by a dead creeping thing requires breaking and not a clay vessel touched by a *zab* (notwithstanding an explicit statement to the contrary). This paves the way for an argument *a minori ad maius*: if a vessel defiled by a severe impurity (*zab*) does not require breaking, certainly one defiled by a minor impurity (a creeping thing) need not be smashed. Through this sleight of hand the midrash erases the obligation to break vessels from two biblical contexts that explicitly mandate their smashing. By means of the force and topicalization of the first directive, the second is erased; the elimination of the second leads to the erasure of the first in turn. From this point on the directive אַתָּה תִּשְׁבְּרוּ has no obligatory cast; namely, if you wish to purify the vessel, break it, but no defect attaches to leaving the vessel whole and impure.

Identifying Allusions to Positive Statements “permitting” Impurity

Other radical midrashim seek out positive biblical statements that “permit” impurity, ironically identifying them in explicit pentateuchal prohibitions of impurity. Note the following bold midrashic treatment of the verse containing a general prohibition against becoming impure by touching

a carcass: “You shall not eat of their flesh or touch their carcasses: they are impure for you” (Lev 11:8):

You shall not... touch their carcasses—Perhaps if someone touches carrion, he is punished with forty stripes? Scripture states, *And you shall make yourselves impure with the following [whoever touches their carcasses shall be impure until evening, and whoever carries any part of their carcasses shall wash his clothes and be impure until evening]* (Lev. 11:24). Perhaps if one sees carrion, he should go and deliberately contract impurity from it? Scripture says, *you shall not... touch their carcasses*. How so? One should say that it is an optional matter. (*Sifra, Shemini*, parashah 2, pereq 4:8-10; Weiss ed., 49a; Neusner trans., p. 161, revised)³⁸

The midrash opposes the prohibition in our verse to the statement found in Lev 11:24: “And you shall make yourselves impure with the following [לאלה תטמאן].” By lifting this phrase, actually a heading for a list of impure animals, out of context and interpreting it as a positive command or a sweeping license for impurity (!), the homily eradicates the prohibition found in our verse.³⁹ Still faced with the question of why our verse contains an ostensibly meaningless prohibition, the homilist returns to v. 24, whose language seemingly indicates that becoming impure is either obligatory or at least desirable. The prohibition in v. 8 comes to correct this mistaken impression. Since each verse restricts the other’s message, the midrash concludes that impurity is neither prohibited nor permitted, but is rather an optional matter—רשות.

For all of its forced nature, this homily comprises a distilled version of the rabbinic stance on impurity in the secular sphere: while perhaps not desirable *ab initio*, impurity in the secular sphere is the frequent, neutral, and normal state of affairs; it is volitional and occasions no sin or punishment. Note the proximity between this halakhic midrash’s conclusion and modern scholarship’s terminology of “tolerated impurities” for ritual impurity.⁴⁰

Regarding the verse mandating “an oven or stove shall be smashed; they are impure and impure they shall remain for you” (Lev 11:35), the midrash inquires as to whether this is mandatory:

³⁸) On this homily, see also Kahana, *Sifre Zuta on Deuteronomy*, 201-2.

³⁹) Milgrom’s attempt to see this rabbinic interpretation as a direct outcome of the plain meaning of the verse is not convincing (“Scriptural Foundations,” 83-84).

⁴⁰) As Wright suggests (“Spectrum of Priestly Impurity”). See the beginning of this article.

... *an oven or stove shall be smashed*: Might one suppose that one must assuredly smash them? Scripture says, *and impure they shall remain* [טמאים יהיו לכם], meaning, one may keep them in a state of impurity. (*Sifra, Shemini*, parashah 8, pereq 10; Weiss ed., 55d; Neusner trans., 2:210, revised)

Similar to the previous homily's explication of ולאֵלֶּה תטמאוּ, the verse's strong statement טמאים יהיו לכם ("and they shall be impure") is here interpreted as sweeping license of impurity, in complete opposition to the verse's plain meaning.

I conclude by noting the homilies' employment of a variety of rabbinic hermeneutical principles, including argument from analogy (*gezerah shavah*; see the above-cited *Sifra, Dibura Deḥobah*, parashah 8, pereq 12:10; *Sifra, Aḥarei mot*, parashah 8, pereq 12:14 and the circular reasoning there), exclusion (*mi'ut*; *Sifra Dibura Deḥobah*, parashah 9, pereq 17: 1-3), and a topical analogy that applies a specific stipulation found in only one of a group of related biblical passages to all (a type of *binyan av*; see *Sifra, Tazria*, parashah 1, pereq 12:1-2). Through these and the above-noted means the midrash consistently uproots the plain meaning of the pentateuchal verses that broadly apply impurity to the secular realm.

Internal Controversy or Consensual "Dual Strategy": The Expansion of Purity in Rabbinic Doctrine

It is noteworthy that all of the above-cited midrashim, whether taken from works belonging to the distinct schools of Rabbi Akiba (*Sifra, Sifre Zuta*, and *Sifre Deuteronomy*) or of Rabbi Ishmael (*Sifre Numbers*), speak with one voice. No hint of dispute or of opposing homilies is in evidence. Notwithstanding their varied exegetical strategies, all the homilies, without exception, teach a single fundamental principle: there is no prohibition against impurity per se and only a person who enters the restricted precincts of the temple or comes into contact with its accoutrements while impure is liable to punishment. This approach limits the very meaning of the prohibition of impurity to the holy sphere alone, making room for a secular sphere in which impurity exists permissibly. Moreover, no dissenting homilies, or opinions, ascribe the prohibition against impurity in the secular sphere or among the Israelites to pentateuchal sources.

But purity observance was certainly on the rise both during and after the Second Temple period, and was stringently practiced by the *ḥaverim*, whatever their identity and scope. Although often cited as an anonymous,

widely binding halakhah, in no instance do we find any attempt to ascribe the maximalist trend to the biblical verses that support it!⁴¹ Tannaitic literature never links the requirement to consume unconsecrated food in purity to such verses as: “You shall set apart the Israelites from impurity” or “You shall not . . . touch their carcasses.” Nor is purity of vessels associated with: “[the vessel] itself you shall break” or “an oven or a stove shall be smashed.”⁴² Also missing are any views dissenting from the restriction of these and similar verses to the festival pilgrimage, to the holy precincts, or to good advice.⁴³

⁴¹ The only claimants to a pentateuchal source for certain purity laws in secular life are Josephus and Philo (see Alon, “Laws of Levitical Cleanness,” 225-28). Note, however, that neither makes a distinction between rabbinic regulations and pentateuchal commandments or prohibitions, and that both consistently attribute the entire spectrum of Jewish practice to Mosaic law. For other aspects of the problematic nature of reliance on Josephus and Philo’s testimony, see Sanders, *Jewish Law*, 157, 161, 164, 264-71. On Josephan halakhah, see the recent doctoral dissertation by David Nakman, “The Halakhah in the Writings of Josephus” (Ph.D. diss., Bar-Ilan University, 2004) [Hebrew]. On Josephus’ attitude toward purity laws, see *ibid.*, 170-254. Regev (“Non-Priestly Purity,” 190) identifies in *m. Par.* 11:4 a dispute as to whether or not there is a pentateuchal basis for the purity of unconsecrated things. This mishnah, however, relates to the impurity of *hullin* in general, but not to the problem of its origins. Moreover, the dispute in the mishnah does not refer to the impurity of *hullin*, but rather to the degree of impurity of *qodesh*. A sole exception is a homily in *Seder Eliyahu Rabbah* 16, where non-priestly purity is ascribed to Lev. 11:44, but this seems to be a post rabbinic source.

⁴² Note that in Mark 7 hand-washing before consuming bread is considered *παράδοσιν τῶν πρεσβυτέρων* (3, 5) and not *ἐντολήν τοῦ θεοῦ* (8, 9). I thank Yonatan Adler for this remark.

⁴³ On occasion, specific stringencies in the sphere of purity regulations without any biblical basis are assigned prooftexts, as demonstrated in the following section. For their uniqueness, see below. Another example of an attempt to ground stringency in purity in the Bible relates to the prohibitions regarding prayer, Torah study, and recitation of the Shema by those with semen-impurity. But these homilies both rely strongly on *asmakhta* (a supporting hint, but not proof, identified in the biblical verse), and also use verses related to the giving of the Torah and not the biblical laws treating impurity (see the sources cited by Alon, “Laws of Levitical Cleanness,” 191-97 and the discussion there). This is certainly not a stringency emerging from direct pentateuchal exegesis, or a tradition dating back to the biblical period, as the realia of Torah study, recitation of the Shema, and of the statutory prayers are not pentateuchal. Indeed, most sources attribute this halakhah to Ezra or to moral rationales (see *ibid.*, 192-93, 197-98) and do not frame it as a biblical prohibition. It even has opponents in the tannaitic world. Moreover, as compared to other purity regulations, this halakhah is exceptional. First of all, it relates to minor semen-impurity, and not to other, even severe impurities (see *ibid.*, 197-99. Alon’s attempt to show “the relationship of other forms of uncleanness to the words of the Torah” is not convincing). Secondly, the

On the other hand, neither do the authors of the above-cited exclusionary homilies object to the practice of consuming unconsecrated food in purity. Indeed, no rabbinic source reflects a broad, principled dispute regarding the maintenance of purity in secular life.⁴⁴ Put differently, we find a dual picture: on the one hand, widespread, uncontested theoretical restriction of the *pentateuchal* definitions of purity and impurity to the sacred sphere; on the other, no explicit objection to the practical application of purity regulations to the secular sphere. Not only do these trends coexist in rabbinic thought, but, moreover, they are *never* opposed.

If a “Halakhic struggle” on this issue ever existed in the rabbinic world, as Alon asserts,⁴⁵ and if indeed, “*others* ruled that uncleanness applies only to the Sanctuary and to holy things,”⁴⁶ and “the tendency towards limitation was the stronger,”⁴⁷ where is the attestation to fierce disputes between maximalists and minimalists? Alon himself admitted the lack of evidence for such a dispute in rabbinic literature: “Nor does the *absence*, according to tradition, of *any difference of opinion* (!) concerning a given Halakha indicate that it [=the minimalistic halakhah] was never challenged, because many early laws were completely forgotten and replaced by the later Halakha.”⁴⁸ But this claim is not convincing. After all, the application of purity

expansion of impurity restrictions to sacred rituals (prayer, etc.) specifically does not definitively represent the tendency to widen them to the *secular sphere*, as Alon himself notes (230).

⁴⁴ Regev (“Non-Priestly Purity,” 191 n. 48) notes that only for two rabbis do we find explicit statements that they did not adhere to purity for unconsecrated food. Regarding the first, Simeon ben Netanel ha-Kohen (*t. ‘Abod. Zar.* 3:10; Zuckerman ed., 464), we know only that he did not adhere to the strict regulations, but we are nowhere told that he denied them. It is also possible that he adhered to the level of purity for *terumah* and not to the higher level of *qodesh*, as Saul Lieberman suggests in his commentary (*Tosefeth Rishonim: A Commentary* [New York: Jewish Theological Seminary of America, 1999], part 2, 190-91). The recognition of a broad spectrum of levels of strictness regarding purity among the rabbis is not new (*ibid.*). The other figure, Eliezer ben Hanan (according to MS Kaufmann before its correction) “cast doubt on [the sages’ ruling about] the cleanness of hands” (*m. ‘Ed.* 5:6). One possibility is that he disputed the specific halakhah regarding *tohorat yadayim*; another is that he was more stringent, holding that washing one’s hands was insufficient; total immersion was necessary (see Sussman, “*Halakha* and the Dead Sea Scrolls,” 66 n. 211). In any event, neither of these instances represents a principled rejection of purity in the secular realm.

⁴⁵ Alon, “Laws of Levitical Cleanness,” 233, and *passim*.

⁴⁶ *Ibid.*, 223.

⁴⁷ *Ibid.*, 233.

⁴⁸ Alon, “Laws of Levitical Cleanness,” 232.

to secular life is by no means some rejected or silenced halakhah. The opposite is the case. This body of halakhah has numerous practical and explicit manifestations in the Mishnah and other tannaitic sources. The assumption that the maximalistic halakhah's biblical prooftexts and polemical expressions—if they ever existed—were totally and deliberately erased, is problematic. This leads inevitably to the conclusion that the two viewpoints coexisted in the thought of the very same rabbis,⁴⁹ but on two separate planes: a stubbornly consistent theoretical standpoint which limited biblical impurity to the holy sphere alone, alongside the practical expansion of purity laws to the secular sphere in daily life.

This is an exceptional phenomenon. Tannaitic doctrine is characterized by a dual transmission in all halakhic realms: abstract transmission of halakhot in the Mishnah and the Tosefta alongside their derivation from Scripture in halakhic midrash. This also applies to disputed matters; we frequently find the differing opinions cited autonomously and again in conjunction with a close reading of the biblical text. Even late regulations are assigned biblical prooftexts in some sources.

How, then, should we approach the surprising phenomenon of a halakhic practice that exists solely on the theoretical plane, one which, moreover, carefully avoids any contact with Scripture, even though Scripture itself contains a large number of verses whose *peshat* voices the same halakhah? No less surprising is the tendentious biblical exegesis that not only disregards the *peshat* but also ignores a widespread halakhic practice with socio-religious implications. What motivated the homilists to “say” to the biblical verses: “Be silent until I shall expound your meaning,”⁵⁰ even when their halakhic tradition in many instances agrees with the *peshat*? Finally, if the Tannaim chose to sidestep what appear to be natural prooftexts for their own everyday halakhah, and even gave these verses a contrary interpretation, why do we find no explicit dispute between the oppositional worldviews reflected in halakhic practice, on the one hand, or in midrashic exegesis, on the other?

Also surprising is this dual strategy's panoptic nature. From the absence of debate regarding either its exclusionary biblical exegesis or its inclusive praxis, I construe that its status as an early, principled, axiomatic decision predates its preservation in Tannaitic literature. This conjecture is discussed

⁴⁹) And not “other scholars.” See the above-cited citation from Alon, “Laws of Levitical Cleanness,” and n. xxix above.

⁵⁰) See *Sifra*, *Negaim*, *Tazria* parashah 5, pereq 13; Neusner, 2:312.

below. But, before attempting to discover the roots of this phenomenon, I first survey its manifestation in two spheres of halakhah

The “Dual Strategy” in Two Halakhic Spheres

As noted, the rabbis generally refrained from linking purity in the secular realm to the biblical verses whose plain meaning assumes its existence. A slightly different picture emerges from the details of the purity-related halakhot without a biblical basis. Sometimes provided with biblical backing through homily, these homilies exhibit three unique features: (1) they do not extend the general principle of purity to unconsecrated vessels or food, or to daily life, but rather treat isolated halakhic details; (2) they never draw upon the biblical laws whose *peshat* reflects an inclusive view of impurity, but upon other verses; and (3) many are charged homilies that draw either excessive denigration or praise,⁵¹ or reflect indecision and dis-sension. At times, a superimposed Tannaitic stratum restricts the initial homily’s scope. The following two examples—the distancing of burials from settlements and the impurity of liquids—exemplify these points.

Distancing Burials

The purity-linked issue of distancing burials from towns fits the “dual strategy” model outlined above. A survey of rabbinic sources exhibits stringent praxis, alongside a lenient exegetical approach limiting the prohibition to Levitical cities. The springboard for our discussion is a prohibition from the *Temple Scroll*:

And you shall not defile your land. And you shall not do as the nations do: everywhere they bury their dead, even within their houses they bury. For you

⁵¹ See, for example, Rabbi Akiba’s homily regarding impurity imparted by bread at the third remove (*m. Sotah* 5:2), seen by his contemporaries as a noteworthy innovation. For a recent, comprehensive treatment, see Ishay Rosen-Zvi, “‘Who will uncover the dust from your eyes?’ Mishnah *Sotah* 5 and R. Akiva’s Midrash,” *Tarbiz* 75 (2006): 96-101 [Hebrew]. He concludes: “It appears that . . . the loaf that imparts impurity at third remove is a metonym for the nonbiblical halakhot of transmission of impurity in general. Rabbi Akiba appears here as the first sage mediating between this early, but extrabiblical tradition and Scripture” (trans. by author; see 99-100). See also his assumption that Rabbi Yohanan ben Zakkai was not seeking a homily to support this halakhah but simply commenting on the lack of a pentateuchal source for its existence (101).

shall set apart places within your land (in) which you shall bury your dead; between four cities you shall allot a place to bury in them. (48:10-14)

Yadin argues for a sectarian-rabbinic polemic on this issue. He attempts to demonstrate that Pharisaic-Tannaitic law contains no prohibition against burial in towns: "It is perfectly plain that people used to bury anywhere and everywhere, even inside houses in settled areas. The author of the scroll particularly releases his wrath on burial inside houses."⁵² Yadin backs his argument for rabbinic leniency on the fact that Tannaitic halakhah proscribes burial only in "cities surrounded by a wall,"⁵³ and Levitical cities, considered holier than other cities.

The cities surrounded by a wall are more holy than it [the land]. For they send from them the *mešora'im*, and they carry around in their midst a corpse so long as they like.⁵⁴ [But once] it has gone forth, they do not bring it back. (*m. Kelim* 1:7; Neusner trans., slightly revised)⁵⁵

According to the Tosefta, the following burial regulations are practiced in Jerusalem alone:

⁵² Yadin, *Temple Scroll*, 1:323. Yadin cites Rabbi Moses Isserles (!) to back his contention that burial took place within houses during the Second Temple period. See below. Lawrence H. Schiffman accepted Yadin's position on the Tannaitic halakhah ("The Impurity of the Dead in the *Temple Scroll*," in *Archaeology and History in the Dead Sea Scrolls: The New York University Conference in Memory of Yigael Yadin* [JSPSup 8; JSOT/ASOR Monographs 2; Sheffield: JSOT Press, 1990], 137-38).

⁵³ The halakhic term "walled city" refers to cities surrounded by a wall during the period of Joshua ben Nun, to which several special halakhot apply. See Maimonides, *Code: Book of Agriculture*, "Sabbatical Year and Jubilee," 12:15.

⁵⁴ Maimonides interprets this statement not as referring to the funeral and the eulogy but as license to bury (in line with the wishes of the townspeople). See his commentary to the mishnah (ad loc.) and his *Code: The Book of Temple Service*, "The Temple," 7:13, and see Rabad and *Kesef Mishneh* ad loc., as well as Alon's proposal as to Maimonides' version of the mishnah ("Hashkava," in *Studies in Jewish History in the Times of the Second Temple, the Mishna and the Talmud*, vol. 2 [Tel-Aviv: Hakibutz Hameuchad, 1958], 108-9 [Hebrew]). For a different interpretation of this phrase, not according to its plain meaning, see Hanoch Albeck, *Shishah Sidrei Mishnah: Seder Teharot* (Jerusalem: Bialik Institute, 1959), 508. [Hebrew] (See also Lieberman, *Tosefeth Rishonim*, 3:190.).

⁵⁵ See also *t. Kelim: B. Qam.* 1:14; cf. *Sifre Zuta*, 5:2 (Horowitz ed., 228). Some argue that in rabbinic language "walled cities" is an archaism for Jerusalem. See Samuel Krauss, *Qadmoniyot ha-Talmud*, vol. 1, pt. 1 (Berlin-Vienna: Benjamin Harz, n.d.), 93. See also below.

They do not keep the corpse in it overnight, and they do not carry the bones of a man through it... And they do not set up graves in it, except for the graves of the house of David and the grave of Hulda the prophetess, which were there from the days of the former prophets. (*t. Neg.* 6:2; Zuckerman ed., 625; Neusner trans.)⁵⁶

Moreover, the homily of Rabbi Abbahu, found in both Talmuds, teaches that burial is prohibited only in Levitical towns:

And how do we know from Scripture that they do not bury the dead in the Levites' towns? R. Abbahu in the name of R. Yosé bar Haninah: *The cities shall be theirs to dwell in, and their pasture lands shall be for their cattle and for their livestock and for all their beasts* (Num 35:3). [*For their livestock—*] for that which is alive [have the towns and their pasture lands been given over], and not for burial of the dead. (*y. Erub.* 5:2, 22d = *y. Mak.* 2:6, 32a; trans. cited from Neusner, *Makkot*, 438; slightly revised)⁵⁷

Yadin cites the following Tosefta in support of his opinion that, in the rabbinic system, burial was forbidden only in walled and Levitical cities, arguing that "in every other instance, however, rabbinic law did, in fact, permit graves to be within city limits, albeit with some restrictions":⁵⁸

A grave which a town surrounded—whether on all four sides, or on three sides, or on two sides—one opposite the other—[if] it is more than fifty

⁵⁶ On the stringency against leaving a dead body in Jerusalem overnight and the meaning of the prohibition against carrying bones in this city, see Lieberman, *Tosefeth Rishonim*, 3:190-91. In the early twentieth century Krauss and Büchler were divided on the question of the list of Jerusalem's unique qualities (see *t. Neg.* 6:1-2; *b. B. Qam.* 82b; 'Abot R. Nat., Version A, 35 (Schechter ed., Vienna, 1887), 104; Version B, *ibid.*, 39, p. 107) including the prohibitions against leaving a corpse overnight and burial. Krauss thought they were simply theoretical halakhah, whereas Büchler asserted they were actually practiced. They were also divided as to whether they were grounded in purity and impurity regulations (Büchler) or in municipal regulations related to hygiene (Krauss). See Krauss, *Qadmoniyot*, 92-113; Adolf Büchler, "La pureté lévitique de Jérusalem et les tombeaux des Prophètes," *REJ* 62 (1911): 201-15; 63 (1912): 30-50. See also Louis Finkelstein "The *Halakboth* Applied to Jerusalem," in *Alexander Marx Jubilee Volume* (New York: Jewish Theological Seminary of American, 1950), 351-69 [Hebrew section]; Alexander Guttmann, "Jerusalem in Tannaitic Law," *HUCA* 40-41 (1969-70), 251-75; Tuvia Kahana "Le-havanat ha-baraita al hilkhote Yerushalayim," *Beth Mikra* 21 (1976): 182-92.

⁵⁷ See *b. Mak.* 12a.

⁵⁸ Yadin, *Temple Scroll*, 1:323.

cubits [away from the town] on this side, and fifty cubits [away from the town] on that side, they do not empty out the grave [and move the contents]. [If] the distance is less than this, they do empty out the grave. All graves are subject to removal except for the grave of a king and the grave of a prophet. R. 'Aqiba says, "Also the grave of a king and the grave of a prophet are subject to removal." They said to him, "Now were not the graves of the house of David and the grave of Hulda the prophetess in Jerusalem, and no one ever laid a hand [to move them]." He said to them, "What proof is there from this? In point of fact they had underground channels, and it would remove impurity to the Qidron Brook" (*t. B. Bat.* 1:11; Lieberman ed., 131; Neusner trans., 149, slightly revised)⁵⁹

I suggest that the deliberately ambivalent rabbinic strategy regarding impurity in the secular sphere misled Yadin. With respect to explicit prohibitions, especially scripturally derived ones, the impression conveyed is one of broad leeway in allowing corpse-contamination in the secular sphere. However, the prevailing halakhic praxis was extremely stringent in keeping corpses out the city.

Indeed, the Tosefta cited by Yadin in support of his position backs the opposite conclusion:⁶⁰ that they did *not* bury inside the city *ab initio*, as mishnaic halakhah states: "They put carrion, graves, and tanneries at least fifty cubits away from a town" (*m. B. Bat.* 2:9).⁶¹ Although, when built,

⁵⁹) For full and partial parallels, some according to Rabbi Akiba's doctrine, and others according to the rabbis, see Saul Lieberman, *Tosefta ki-fshuta* (New York: Jewish Theological Seminary of America, 1955-88), 10:338-39; Ben-Zion Luria, "Zmano shel 'Ziyyun Uzziah," *Beth Mikra* 13 (1968): 4-5; Magen Broshi, Gabriel Barkai, and Shimon Gibson, "Two Iron Age Tombs below the Western City Wall: Jerusalem and the Talmudic Law of Purity," *Cathedra* 28 (1983): 31 n. 27 [Hebrew]. Missing from their discussion is an important halakhah found in *Mekilta Deuteronomy*, which applies the prohibition: "You shall not move your countryman's landmarks, set up by previous generations" (Deut 19:14) to someone who changes the burial place of a king or a prophet, similar to the rabbinic view here. See Lieberman, *Tosefta ki-fshutah*, 10:339, lemma וּבַמְדַרְשׁ תְּנַאִים; Jacob Nahum Epstein, "To the Epitaph of Uzziah," *Tarbiz* 2 (1931): 293-94 [Hebrew]; Luria, "Uzziah," 9.

⁶⁰) Yadin's reference to the halakhah regarding "a field containing a lost grave" in which a house may be built (*m. 'Ohal.* 17:5) in no way indicates that "people buried anywhere and everywhere" (*Temple Scroll*, 1:323).

⁶¹) In the context of the mishnah the prohibition indeed stems from hygienic and not from ritual rationales. See the discussion in Krauss, *Qadmoniyot ha-Talmud*, 94-95. Gedalyahu Alon uses this to explain the difference between walled and unwallled cities. See below. See also Amos Kloner, "The Necropolis of Jerusalem in the Second Temple Period" (Ph.D. diss., Hebrew University, Jerusalem, 1980), 284 n. 112 [Hebrew]; Amos Kloner and Boaz

cities were deliberately distanced from graves,⁶² with their expansion the gravesites were eventually “surrounded.” And when a grave was in proximity to a city after the fact, the need to distance impurity overrode the principle of respect for the dead, making moving the grave permissible.⁶³ Note that the last-mentioned sources do not relate to walled cities alone but to cities in general, and that, moreover, this law applies to all graves, making them subject to removal. According to Rabbi Akiba, even the graves of the house of David may be moved. The existence of graves within a city was permitted only *ex post facto*, and then, only if at a distance of fifty cubits from the city’s houses on each side. The law even applied to aborted fetuses, which were buried outside the city and by the roadside.⁶⁴ Impurity was ascribed to Gentile homes and Cuthean bathhouses because of the fear that they either discarded, or buried their aborted fetuses in their homes.⁶⁵

That Jews kept graves at a distance from towns is documented for the Second Temple period. Josephus notes how the fact that “this settlement was contrary to the law and tradition of the Jews because Tiberias was built on the site of tombs” (*Ant.* 18.38) deterred Jews from settling there upon its founding. Indeed, Alon attributes this phenomenon to the expansion of the scope of purity laws.⁶⁶ Furthermore, archeological evidence for the actual evacuation of graves shows that this was not the rejected halakhah of a dissenting sect. Yadin’s claim that people used to bury anywhere and everywhere, even inside houses in settled areas, is divorced from the historical reality. The findings of Amos Kloner’s survey of burial practices in Second Temple period Jerusalem “unequivocally overturn the assumption that burial was permitted within the city limits. Moreover, it appears that both First and Second Temple graves were excavated when encountered during the expansion of the city.”⁶⁷ Magen Broshi, Gabriel Barkai, and

Zissu, *The Necropolis of Jerusalem in the Second Temple Period* (Jerusalem: Yad Izhak Ben-Zvi, 2003), 4-5 [Hebrew].

⁶² See *t. B. Bat.* 1:10 (Lieberman ed., 131).

⁶³ For a prohibition against uprooting a tomb, see *Sifre Deut.*, piska 188 (Finkelstein ed., 176), but its language and meaning are difficult. See Lieberman, *Tosefia ki-fshutab*, 5:1337-38.

⁶⁴ *T. ’Ohal.* 16:1 (Zuckermandel ed., 613).

⁶⁵ *M. ’Ohal.* 18:7; *m. Nid.* 7:4; *t. Nid.* 6:15. Cf. to the accusation made in the *Temple Scroll* 48:10-14, cited earlier.

⁶⁶ Alon, “Laws of Levitical Cleanness,” 227-29. But Alon does not note the other sources’ “restrictive tendency.”

⁶⁷ Kloner, “Necropolis,” 150, 284. See also Kloner and Zissu, *Necropolis of Jerusalem*, 4-5. Zissu and Kloner also note the existence of burial systems that apparently served to store

Shimon Gibson place the deliberate emptying of two First Temple period burial tombs in Jerusalem during the Hasmonean era in the context of a “religiously motivated act—cleansing the city of tombs.”⁶⁸

There may even be evidence for removal of a “royal tomb” in a later period, perhaps the Tannaitic one. The inscription of the Judean king Uzziah relates that his bones were moved from their original burial site. It is possible that this removal was related to the rationale of distancing impurity from the city, in line with Rabbi Akiba’s later statement: “Also the grave of a king and the grave of a prophet are subject to removal.” And, even though Akiba admitted that no one had ever laid a hand on the graves of the house of David, Uzziah was not buried in their tomb.⁶⁹

A tradition preserved in rabbinic literature in a number of variants relates Simeon bar Yoḥai’s cleansing Tiberias of corpse-contamination at

the contents of graves excavated when Jerusalem expanded. See Boaz Zissu and Amos Kloner, “The Caves of ‘Simon the Just’ and ‘The Little Synhedrin’: Two Burial Systems from the Second Temple Period,” *Judea and Samaria Research Studies* 9 (2000): 95-111 [Hebrew]. Their findings overturn Krauss’ much earlier assumptions (*Qadmoniyot ha-Talmud*, 113 n. 2) as well as Guttmann’s supposition that there was never any mass removal of graves from Jerusalem (“Jerusalem in Tannaitic Law,” 260).

⁶⁸ Broshi, Barkai, and Gibson, “Iron Age Tombs,” 29.

⁶⁹ See 2 Chr 26:23; *t. Kelim: B. Qam.* 1:14 (Zuckerman ed., 570); Eliezer L. Sukenik, “An Epitaph of Uzziahu King of Judah,” *Tarbiz* 2 (1931): 291 [Hebrew]. Epstein suggests that the actual removal of Uzziah’s bones sparked the dispute between Rabbi Akiba and the rabbis, and that the warning in *Mek. Deut.* (see n. 59 above) against moving the grave of a king or a prophet was also in response to this act (“Epitaph of Uzziahu”). This testimony is less decisive because the tomb’s original location and the place to which it was moved, as well as the date and circumstances of its removal, remain unknown. For the view that the epitaph testifies to purity as underlying factor for removal of graves, see Sukenik, “An Epitaph of Uzziahu King of Judah”; Epstein, “Epitaph of Uzziah”; Luria, “Zmano shel ‘Ziyyun Uzziah’”; Guttmann, “Jerusalem in Tannaitic Law,” 260 and n. 15; Lieberman, *Tosefia kishbutah*, 10:339 n. 52. Sukenik dates the epitaph to the late Hasmonean period. Luria assigns the removal of the bones to the reign of John Hyrcanus. For their part, Broshi, Barkai, and Gibson accept Avigad’s later, paleographically based date (“Iron Age Tombs,” n. 35) and assume that Uzziah’s tomb was moved later than the other tombs, and for different reasons. See also Gabriel Barkay and Amos Kloner, “Jerusalem Tombs from the Days of the First Temple,” *BAR* 12/2 (1986): 22-39. In my opinion, this conclusion is not inevitable. Even if the epitaph dates to the first c. C.E., as Avigad proposes (and Broshi, Barkai, and Gibson accept), this constitutes evidence of removal of graves due to impurity during the tannaitic age, a possibility supported by the Tannaitic sources surveyed here. Accordingly, removal of graves from cities was a widespread ancient practice from the Hasmonean era until the period of Rabbi Akiba and his coterie. Evidently, it was still practiced in Amoraic Palestine, as seen below.

the height of the Tannaitic period. According to the testimony from this tradition at least, stringency in distancing the dead was practiced until the generation of Rabbi Akiba's students, namely, until close to the end of the mishnaic period.⁷⁰

The sugya in *y. Naz.* 9:3, 57d treating the conflict between tombs and the needs of daily life cites a halakhah resembling the one from *t. B. Bat.* 1:11, discussed above. This sugya demonstrates that the Amoraim as well prohibited burial within the city limits, and even removed graves after the fact. It teaches, in addition, that if a city flanked a tomb on two sides, if the tomb was within the substantial distance of seventy cubits and a bit this sufficed to require its removal, and, if the city was shaped like the Greek letter *gamma*, the grave had to be removed even if at a greater distance.

Again it is necessary to seek an explanation for the gap between exegesis and praxis: on the one hand, an explicit rabbinic restriction of the prohibition against burials in cities to walled ones; on the other, the widespread practice of keeping graves out of any city, and their removal after the fact. Based on several Tannaitic sources, Alon concludes that the practice was to refrain from burial in all cities, not just walled ones. He ascribes the prohibition against burial in all cities to sanitary and esthetic reasons, and to impurity only in the case of walled cities.⁷¹

A more likely explanation is that this constitutes yet another example of the above-noted rabbinic duality. "Official halakhah" restricted the scope of purity laws, in this case, prohibiting burial only in Levitical towns. But the prevailing praxis, which the rabbis refrained from stating as the main halakhic stance and to which they did not assign biblical grounding, was broader and more stringent. *M. Kelim*, which ranks the foundations of the scale of impurities, distances corpses only from walled cities and sacred precincts. Even the halakhic midrashim on this subject restrict the formal

⁷⁰ For variants of this tradition, its proposed date, and historical kernel, see Lee Levine, "R. Simeon b. Yoḥai and the Purification of Tiberias: History and Tradition," *HUCA* 49 (1978): 143-85.

⁷¹ Alon, "Hashkava," 109 n. 20. But the prohibition against burial in any city also arises from the Tosefta discussed above: "A grave which a town surrounded..." (*t. B. Bat.* 1:11). The end of this Tosefta indicates that the rationale rests in impurity and not hygiene: "they had underground channels, and it would remove impurity to the Qidron Brook." It is very difficult to determine the obscure beginnings of the rooted, ancient practice of distancing the dead, and to distinguish between the underlying hygienic, mystical, or halakhic reasons for its inculcation. See also Alon, "Laws of Levitical Cleanness," 228-29.

halakhah to Levitical cities. But in practice, the public exercised stringency and kept graves out of all settlements.

It may even be possible to reconstruct the process underlying this halakhah's restriction. The requirement to set aside burial sites in the Temple Scroll uses the following language: מקומות תבדילו בתוך ארצכמה ("you shall set apart places within your land") after Deut. 19:2's שלוש ערים תבדיל לך ("you shall set aside three cities").⁷² Yadin notes that both the *Temple Scroll* and Rabbi Abbahu's above-cited homily link the prohibition against burial in the cities with the verses dealing with Levitical cities. This affinity places the roots of Rabbi Abbahu's homily centuries prior to the destruction of the Temple, and much before his own day. Secondly, in the *Temple Scroll* the biblical pericopes of the Levitical cities underlie an overall prohibition against burial in settlements, and not just in the Levitical cities. Accordingly, I postulate that an earlier homily extrapolating from the Levitical cities to an overall prohibition against burial of the dead within the city limits formed the basis for both the *Temple Scroll* and Rabbi Abbahu's later homily. The rabbis subsequently applied this homily to Levitical cities alone. Because this biblical concept lacked meaning in their day, this robbed the prohibition of content, formally making burial permissible in all cities and settlements, with the exception, perhaps, of Jerusalem.

Support for this conjecture comes from the use of the Levitical cities as a building block in ancient halakhah. They serve as the basis for Sabbath boundaries in all the cities of Israel, in both sectarian and rabbinic halakhah; nowhere do we find this law restricted to Levitical cities alone.⁷³ The postulated limiting of an early homily that applied to all cities to Levitical cities only, further exemplifies the theoretical rabbinic restriction of all pentateuchal directives (in this case, pseudo-pentateuchal) concerning impurity to the holy sphere,⁷⁴ even if, in actuality, ancient stringent praxis remained in effect.

⁷² Yadin, *Temple Scroll*, 1:190-92, 2:181-205.

⁷³ See CD 10:21, 11:5-6; *m. Soṭah* 5:3; the discussion by Lawrence H. Schiffman, *The Halakhah at Qumran* (SJLA 16; Leiden: Brill, 1975), 91-98; and the recent treatment by Rosen-Zvi, "Who will uncover the dust from your eyes?" 101-4. See also *y. Erub.* 5:3, 22d: "Did they not derive the rule for the Sabbath limit from the boundaries of the towns of the Levites?"

⁷⁴ In this case, levitical cities.

Impurity of Liquids

Another contrastive example of an exclusionary exegetical trend as opposed to intensified halakhic praxis comes from the complex realm of the impurity of liquids. The greater impurity conveyed by liquids is familiar from both sectarian and Tannaitic law.⁷⁵ Sectarian law bars a candidate for admission into the sect from touching the communal pure-food for a year, but he “must not touch the drink of the Many until he has completed a second year among the men of the Community” (1QS 6:16-17, 20-21).⁷⁶ The *Temple Scroll* (49:11-13) requires the cleansing of any “defiling smirch” of liquid—oil, wine, or water—found in the house where someone has died,⁷⁷ and an identical law, using similar terminology, appears in CD 12:15-17.⁷⁸

In Tannaitic halakhah, when a liquid enters the descending chain transmitted from a generative cause of impurity (אב טומאה), it functions as a replicator of impurity. Not only does it reactivate the strength of the “first degree of impurity” (ראשון לטומאה), but it also defiles vessels (a characteristic that in other cases applies only to the original generative causes

⁷⁵ Yitzhak D. Gilat, *R. Eliezer ben Hyrcanus: A Scholar Outcast* (Bar-Ilan Studies in Near Eastern Languages and Culture; Ramat-Gan: Bar-Ilan University Press, 1984), 108-9; Lieberman, “Discipline”; Sussman, “Halakha and the Dead Sea Scrolls,” 29 nn. 76-77, 66 n. 216; Joseph M. Baumgarten, “The Essene Avoidance of Oil and the Laws of Purity,” *RevQ* 6/22 (1967): 183-92; idem, “Liquids and Susceptibility to Defilement in New 4Q Texts,” *JQR* 85 (1994/95): 91-100. See also the following note.

⁷⁶ Elisha Qimron and James H. Charlesworth, “The Rule of the Community,” in vol. 1 of *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations* (The Princeton Theological Seminary Dead Sea Scrolls Project; Tübingen: J.C.B. Mohr, 1994), 29. See the discussion in Jacob Licht, *The Rule Scroll: A Scroll from the Wilderness of Judaea, 1QS, 1QSa, 1QSB: Text, Introduction and Commentary* (Jerusalem: Bialik Institute, 1965), 147-48, 294-303 [Hebrew]; and idem, “Ritual Purity in Qumran Writings.”

⁷⁷ Yadin, *Temple Scroll*, 2:214-15.

⁷⁸ Magen Broshi, ed., *The Damascus Document Reconsidered* (Jerusalem: Israel Exploration Society, 1992), 33. Another fragmentary Qumran document (4Q513 13) mentions oil in conjunction with the root ל”ג, alongside the words טמאתם and משק[ה]. See M. Baillet, “513. Ordonnances,” in *Qumran grotte 4.III* (DJD 7; Oxford: Clarendon, 1982), 292. On the special impurity of oil, see Baumgarten, “The Essene Avoidance of Oil.” For a discussion of all the sources mentioned and of the impurity of oil, see Hanan 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 Associated Literature, 4-8 February 1998* (ed. Joseph M. Baumgarten et al.; STDJ 34; Leiden: Brill, 2000), 45-52.

of impurity—**אב הטומאה**), unconsecrated food, and liquids.⁷⁹ Or as the sages stated: “a liquid which is made impure . . . is always deemed impure in the first remove (**תחילה לעולם**). It imparts impurity to its fellow, and its fellow to its fellow, even though they are one hundred [sequences of contact]” (*t. Ṭ. Yom* 1:3; Zuckerman ed., 684; Neusner trans., p. 337, revised). Thus, each of the liquids in the chain becomes impure in the first degree (*rishon le-tum'ah*), ad infinitum. The following Tosefta summarizes the greater stringency of the rule regarding liquids:

More strict is the rule pertaining to liquid: For liquid [which is made impure] is always deemed to be impure in the first remove of impurity. It imparts impurity in any amount at all. [And there are some [sorts] of them which are made impure as a generative cause of impurity]⁸⁰ so that they impart impurity to people, to clothing, and to food and drink. It imparts impurity to a utensil which may be purified by rinsing (**כלי שטף**), if it touches its outer parts, and to a clay utensil if it comes into its contained air-space, which [rules] do not apply to foods. (*t. Ṭ. Yom* 1:6; Zuckerman ed., 684; Neusner trans., 338, revised)

The status and origins of the impurity of liquids sparked a wide-ranging controversy in the rabbinic world, from the earliest sages to the Amoraic period. A halakhah transmitted in the name of one of the first rabbis known to us by name, Yosé ben Yo'ezer, who lived during the Maccabean revolt, states: “liquid in the slaughterhouse . . . is pure” (*m. 'Ed.* 8:4; trans. revised).⁸¹ Although the Amoraim were divided as to this statement's precise meaning,⁸² it undoubtedly refers to the lenient practice regarding the

⁷⁹) See, for example, *m. Parah* 8:5-7; *m. Kelim* 8:4. In rabbinic doctrine, as opposed to Qumranic law, liquids cannot defile buildings, and certainly not stone ones, not susceptible to impurity in the rabbinic view. If we focus on the inherent ability of liquids to impart impurity (without taking buildings into account), the impurity caused by liquids to soil and walls in sectarian doctrine is comparable to that caused to vessels in the rabbinic one. According to both doctrines, liquids pollute anything defined as susceptible to defilement.

⁸⁰) The witnesses to the Tosefta are corrupt. The translation here is according to the discussion in Lieberman, *Tosefeth Rishonim*, 4:162.

⁸¹) Translated by author. See also *m. Kelim* 15:6.

⁸²) See *b. Pesah.* 16a-17b, 20a; *b. 'Abod. Zar.* 37b. Scholarly research has paid less attention to this statement by Yosé ben Yoezer and more to the obscure testimony in *m. Ed.* 8:4: **אב הטומאה במיתה מסאב**. See the literature cited in Albeck's comments to this mishnah, *Seder Nezikin*, 485; Rosenthal, “Torah she-be-al peh,” 451-52 n. 13. See also the bibliography in Rosen-Zvi, “Who will uncover the dust from your eyes?” 99, n. 18.

purity of blood and water in the Temple slaughterhouse. Based on this and two other lenient rulings attributed to this rabbi, evidently against the background of ancient disputes, he was derogatorily designated “Yosé the indulgent.”⁸³

As noted earlier, an unusual feature of liquids is their ability to defile vessels. In contrast, food imparts impurity only to food, and only generative causes of impurity defile people and vessels. Liquids, however, possess the ability to defile utensils anew even as the offspring of impurity (ולד הטומאה): “No Offspring of Impurity render utensils impure, but liquid [does render utensils impure]” (*m. Parah* 8:5; trans. revised). This intensified ability of liquids to convey impurity lacks any actual scriptural basis. The verse only states: “any liquid that might be drunk (if) in any vessel shall become impure [i.e., if dead creeping things fell into it]” (Lev 11:34; trans. by author).⁸⁴

Among Rabbi Akiba’s students, we find a dispute regarding the impurity of liquids themselves, their augmented ability to defile food and other liquids, and their most stringent quality, the ability to defile vessels:⁸⁵

Any liquid that might be drunk (if) in any vessel shall become impure [Lev 11:34]. “This teaches that liquid imparts impurity to utensils,” the words of R. Judah. R. Yosé says, “Impurity imparted by liquid to utensils derives not from the law of the Torah [e.g., the verse just now cited does not prove that proposition] but only from the teachings of scribes. Said R. Joshua b. Qorha, “I said to Judah, ‘on what account do you not go along with the view of R. Yosé b. Rabbi that impurity imparted by liquids to utensils derives not from the law of the Torah but only from the teachings of scribes? . . . Rabbi says, “you may know that impurity imparted by liquid to utensils derives not from the law of the Torah but only from the teachings of scribes. . . . “If so, what is the sense of the reference to *any liquid that might be drunk (if) in any*

⁸³ See Eyal Regev’s proposal for reconstructing this dispute against the background of an opposing, more stringent law found in the *Temple Scroll* (“Yose ben Yoezer and the Qumran Sectarians on Purity Laws: Agreement and Controversy,” in Baumgarten et al., *The Damascus Document: A Centennial of Discovery*, 99-100).

⁸⁴ Cf. the homily cited in the Talmud concerning food: “[*Any food that might be eaten. . .* (Lev. 11:34)]. It is impure, but it does not render others impure” (*b. Pesah.* 14a, 18b; trans. by author).

⁸⁵ For a brief summation of the tannaitic doctrines concerning liquids, see Maimonides’ introduction to his commentary to *Seder Teharot* (*Mishnah im perush Rabbenu Moshe ben Maimon* [trans. and annotated by David Kapah; Jerusalem: Mossad Harav Kook, 1969], 23-24 [Hebrew], and his comments to *m. Ṭehar.* 4:10 (p. 506).

vessel shall become impure? “This teaches that utensils impart impurity to liquids [should the liquids be pure and the utensils impure]. R. Eleazar⁸⁶ says, “Impurity in no way pertains to liquids [i.e., liquids are not susceptible to impurity at all according to Scripture]. “You may know that that is so, for lo, R. Yosé b. Yoezer of Seridah gave testimony concerning liquid in the slaughterhouse, that it is pure . . . (*Sifra, Shemini*, parashah 8, pereq 9:5; Weiss ed., 55a-b; Neusner trans. 204-5; revised)

According to Rabbi Judah, the ability of liquids to defile vessels derives from Lev 11:34 and is therefore pentateuchal. He interprets the words “Any liquid . . . in any vessel” as implying that impure liquids defile vessels, in opposition to the plain meaning of the verse, which speaks only of liquid found within a vessel and of this liquid itself becoming impure. But Rabbi Yosé, Rabbi Joshua ben Qorha, and Judah the Prince hold that the defilement of utensils by liquids has only a rabbinic, not a pentateuchal, basis. They interpret the words “any liquid that might be drunk (if) in any vessel,” in a contrary fashion: it is the utensil that defiles the liquid. Rabbi Joshua ben Qorha even tries to convince Rabbi Judah to accept Rabbi Yosé’s opinion “that impurity imparted by liquids to utensils derives not from the law of the Torah,” which is the majority opinion. In contrast, Rabbi Eleazar learns from Rabbi Yosé ben Yoezer’s ancient statement that the very susceptibility of liquids to impurity lacks any pentateuchal basis whatsoever.

The BT infers from a baraita dealing with a similar topic that, according to Rabbi Meir, all the ability of liquids to defile “others,” namely food and utensils, is rabbinic. Only the liquids’ own impurity is pentateuchal. But according to R. Akiba,⁸⁷ Rabbi Yosé and Rabbi Simeon, their ability to defile food or other liquids is pentateuchally ordained.⁸⁸ This dispute revolves about the ability of liquids to defile food or liquids. But, according to the views of Rabbi Akiba, Rabbi Meir, Rabbi Yosé, and Rabbi Simeon in the talmudic baraita, as well those of Rabbi Yosé, Rabbi Joshua ben

⁸⁶ Eliezer in the printed editions but Eleazar in MS Vatican 66. In the citation of this baraita in BT, and in another baraita brought in the sugya there (to be discussed below), the versions are divided between Eleazar and Eliezer. See Rashi, *b. Pesah*. 16a, lemma: רי אלעזר גרסינן. Eleazar also appears in the versions in two Geniza fragments, a Yemenite manuscript and MS Munich 6. I will use Eleazar.

⁸⁷ Rabbi Akiba’s opinion is not mentioned in the baraita but is derived by Raba from a different Tannaitic source (*b. Pesah*. 14b).

⁸⁸ *B. Pesah*. 15b-16a. Cf. *m. Ṭehar*. 9:10.

Qorha, and Rabbi Judah the Prince in the above-cited *Sifra*, the facility of liquids to defile utensils is definitively a rabbinic regulation, with no pentateuchal source.⁸⁹ However, the talmudic source, like the above-cited *Sifra*, also testifies that Rabbi Judah, as opposed to all of the other rabbis, tries to ground all impurity of liquids, including the impurity imparted to utensils, in Scripture.⁹⁰

Once again, we confront an ambivalent picture, surprising for its contrasts. The stringent far-reaching halakhah regarding the ability of liquids to defile food and even utensils appears unquestioned and without reservations in tannaitic sources. But note the multifaceted dispute with respect to this halakhah's source, with its strong reductive trend. All of the Tannaim (with the exception of Rabbi Judah) refrain from seeking a scriptural basis for the stringent regulation of impurity imparted by liquids to vessels. Some ascribe only the impurity imparted to food to Scripture, perhaps because the susceptibility of food to impurity through water receives explicit statement there. Others (Rabbi Meir) prefer to define this ruling as a rabbinic regulation, which is how the anonymous Talmud, in both BT and PT, also understands it.⁹¹ The reductive viewpoint's most extreme manifestation is Rabbi Eleazar's surprising opinion: "Uncleanness in no way pertains to liquids."

Yet, Leviticus 11:34 clearly and emphatically states the autonomous impurity of liquids. Rabbi Eleazar denies this explicit statement, even though his praxis, and that of the other sages, with regard to liquids in daily life was certainly far more stringent than the verse's requirements! The sole exception, which seeks to ground all impurity of liquids in Scripture, is Rabbi Judah's opinion, as reported in *Sifra* and the baraita from the BT. Evidently, Rabbi Judah, the transmitter of unusual, ancient halakhic traditions, sometimes from the doctrines of Rabbi Eliezer ben Hyrcanus, here preserves an ancient tradition that was rejected and which disappeared over time.⁹² Also demonstrating the exceptional nature of Rabbi Judah's

⁸⁹) On the contradiction between the baraita and the *Sifra* regarding Rabbi Eleazar's opinion, see the sugya in *b. Pesah.* 16a.

⁹⁰) ר' יהודה אומר: לכל טמא.

⁹¹) Because the Talmuds list "food or utensils which were defiled by a liquid" among the "eighteen rules" decreed by the House of Shammai, this indicates that they consider it a rabbinic regulation (*b. Shab.* 13b; *y. Shab.* 1:4, 3c).

⁹²) On this characteristic of Rabbi Judah's transmissions, see J. N. Epstein, *Introduction to Tannaitic Literature: Mishna, Tosephta and Halakhic Midrashim* (ed. Ezra Zion Melamed; Jerusalem: Magnes, 1957), 106-7 [Hebrew]. On the affinity between the halakhah of Rabbi

opinion is the fact that, according to *Sifra*, Rabbi Joshua ben Qorha went out of his way to cite Rabbi Yosé's opinion in order to persuade Rabbi Judah to retract. Indeed, the Babylonian Amoraim concluded that Rabbi Judah retracted his opinion,⁹³ and elsewhere the anonymous Talmud states:

For in accordance with Pentateuchal law no foodstuff conveys impurity to a vessel and no liquid conveys impurity to a vessel, and it is only the Rabbis that have ordained such impurity as a preventive measure against possible laxity in the case of the fluid of a *zab* or a *zabab*; hence, it is only in the case of liquids, which are prone to contract impurity, that the Rabbis have enacted a preventive measure, but in that of foodstuffs, since they are not prone to contract impurity, the Rabbis enacted no preventive measure. (*b. Nid.* 7b; Soncino trans., revised)⁹⁴

According to this explanation, the special ability of liquids to defile utensils as a generative source of impurity is a rabbinic regulation. Based on the severe impurity of the body fluids of the *zab* and the *zabab*, whose saliva and urine are generative causes of impurity,⁹⁵ a regulation governing all liquids was issued. In addition, liquids receive more stringent treatment because they are more "prone to contract impurity;" namely, as opposed to dry food, they do not require liquid to become susceptible to impurity.

This notion, that the overriding strictness with regard to liquids in general derives from the case of the *zab*'s body fluids, of very limited occurrence, is difficult to accept. Did anyone actually fear that honey and wine could be confused with a *zab*'s saliva? In addition, the talmudic ascription of the regulation regarding the ability of liquids to defile "others" to the House of Shammai⁹⁶ seems unlikely. After all, stringent adherence to impurity of liquids was already practiced in the *Temple Scroll* milieu and in Yosé ben Yoezer's day. This raises the question of when and why this stringent regulation emerged.

Eliezer ben Hyrcanus and sectarian halakhah, see Vered Noam, "Traces of Sectarian Halakhah in the Rabbinic World," in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls* (ed. Steven D. Fraade et al.; Leiden: Brill, 2006), 67-85.

⁹³ *B. Pesah.* 17b.

⁹⁴ See also *b. Shab.* 14b, *b. Bek.* 38a.

⁹⁵ See Lev 15:8. According to this verse's plain meaning, only the person whom the *zab*'s saliva touches is defiled; the rabbis, however, inferred defilement of utensils, food, and liquids from this verse. See *b. Shab.* 14b; Maimonides, *Mishnah im perush Rabbenu Moshe ben Maimon: Seder Teharot* to *m. Zabim* 5:12, p. 699.

⁹⁶ See n. 91 above.

Perhaps the origins of the stringent viewpoint on liquids lie in their ability to generate susceptibility to impurity in other objects. I postulate that this fostered an argument along the following lines: in consonance with liquids' ability to make other things susceptible to impurity, how much greater must their ability to be defiled and to defile be! This resembles the wording in BT discussed above: "it is only in the case of liquids, which are prone to contract impurity [=which do not need something to prime them for impurity, because they themselves serve as a catalyst] that the Rabbis have enacted a preventive measure." Or perhaps it has natural rather than exegetical roots: the greater diffusibility of liquids as compared to solids may have promoted a profound sense of their impurity. Whatever the case may be, the impurity of liquids was an ancient, widely observed stringency during the time of the Hasmonean revolt (Yosé ben Yo'ezer) and perhaps earlier. Its strict observance emerges clearly from the *Temple Scroll*, the *Damascus Document*, and the *Rule of the Community*, and there is no doubt that it continued undisputed into the Tannaitic era. But, as we have seen, various rabbis tried either to lessen its theoretical importance, or to divorce it from Scripture, or to present its gradated levels as an artificial rabbinic regulation with no scriptural basis, going so far as to uproot the autonomous impurity of liquids from the Pentateuch. The sole attempt to link this stringency as a whole to Scripture aroused strong opposition and was obscured by later generations.

Conclusion

During and after the Second Temple period, a widespread, strict praxis distanced impurity from the everyday sphere. Tannaitic literature perceived it as an expansive, at times, binding tradition grounded either in an early regulation or in the customs of the *haverim*, but not in Scripture. Consideration of the tannaitic sources yielded evidence of a "dual strategy." On the one hand, Tannaitic halakhah straightforwardly details the stringent halakhot that are binding in daily life. On the other, when Tannaitic halakhah comes to define what is permissible or forbidden with respect to impurity *ab initio*, or to interpret Scripture on this topic, it ostensibly denies these stringencies and presents surprisingly moderate halakhic guidelines. No real objections were raised to either the exclusionary exegetical trend or to the expansive praxis, nor were they ever placed in opposition. Accordingly, they do not represent a dispute in the Tannaitic world, and presumably not in the preceding Pharisaic one either.

It is entirely possible that Alon was correct in attributing the historical roots of stringency to the inclusive verses in the Pentateuch itself.⁹⁷ But Tannaitic awareness detached maximalist praxis from the theoretical-biblical concept of impurity, consistently and tenaciously reducing the latter to the sacred sphere. The maximalist approach was never directly associated, nor contested, with Scripture; rather, the two were kept apart. Moreover, where the plain meaning of pentateuchal verses supported application of purity to unconsecrated things, the rabbis went out of their way to interpret them conversely, thereby eradicating the scriptural basis for the purity regulations they themselves taught.

Although sharp differences certainly existed between the various Second Temple sects regarding purity laws, the later Tannaitic literature reflects full agreement with respect to these separate, but coexisting, definitions of the boundaries of impurity: on the conceptual-exegetical plane, grounded in Scripture, and on the practical one, grounded in ancient tradition. Vaguely described in the research as “duality,” as “dancing to two tunes,” or as a strong internal dispute, I argued that we have neither duality nor dispute here, but a deliberate, consistent, and binding manipulation whose origins lie in the mists of Pharisaic homiletics.

I also highlighted two unusual aspects of this phenomenon: the total absence of dispute, both with regard to the exclusionary rabbinic exegetical approach to biblical purity regulations, and the expansive attitude toward the practical application of purity regulations to the daily sphere, as well as the blatant partition between biblical exegesis and prevailing praxis. Against the background of Tannaitic doctrine’s attempt to create a bridge between Scripture and halakhah and to ground all other halakhic fields in Scripture, this is exceptional. To date, scholarly research has yet to offer an adequate explanation for this phenomenon simply because the data have never been presented in full. Moreover, the questions evoked here are not restricted to the realm of purity and impurity, but impact on such fundamental issues as the roots of halakhic development, the relationship between Scripture and halakhah, and between midrash and tradition in general.

With respect to the roots of the phenomenon described here, I can only offer conjecture. Logically, we can perhaps ascribe the rabbinic restriction of impurity to the sacred sphere and the sanctuary to the destruction of the

⁹⁷⁾ See also Sussman, “*Halakha and the Dead Sea Scrolls*,” 69 n. 226; Knohl, *Sanctuary of Silence*, 223-24; and in another variation, Milgrom, “*Scriptural Foundations*.”

Temple,⁹⁸ which blocked access to purification for the needs of daily life. However, as stressed above, the impression gained from the well-rooted, total detachment of purity for unconsecrated things from Scripture is one of an early, principled tradition, independent of specific circumstances. Like the body of Tannaitic law concerning purity in general, this tradition's roots lie in the early strata of the oral law.⁹⁹

However, the argument put forth here, namely, that the *avoidance* of linking the "purity of unconsecrated things" (טהרת חולין) to biblical proof-texts is as early as rabbinic purity legislation itself, requires further substantiation. This contention assumes that halakhic exegesis was already in use in the "early period" under consideration, and that only with respect to the purity of secular realm was homiletic discussion deliberately avoided. Here we enter the sphere of the millennium-long debate regarding the origins of early halakhah, the date of halakhic midrash, and the relationship between tradition and exegesis. The past century has seen many turning points in the scholarly debate concerning these issues.¹⁰⁰ At present, it appears that the balance is tipping in favor of those who date midrashic exegesis later than the study of freestanding halakhic tradition.¹⁰¹ Although their view places halakhic midrash as a revolutionary innovation rooted in the late Second Temple period, even its proponents identify incipient signs of halakhic midrash in rabbinic circles beginning with Hillel's day, and even earlier, in the generation of Shemaiah and Abtalion.¹⁰² The following period

⁹⁸ Milgrom proposes a similar conjecture ("Scriptural Foundations," 87).

⁹⁹ On the antiquity of purity regulations see, for example, Sussman, "Halakha and the Dead Sea Scrolls"; Hengel and Deines, "Sanders' 'Common Judaism,'" 47-51; Regev, "Non-Priestly Purity."

¹⁰⁰ This debate can be traced back to the Middle Ages. It first appeared in gaonic literature and was later renewed in modern research. See, for example, the survey by Epstein, *Introduction to Tannaitic Literature*, 501-15; Hanoah Albeck, *Introduction to the Mishnah* (Jerusalem: Bialik Institute, 1959), 40-62 [Hebrew]; David Weiss Halivni, *Midrash, Mishnah, and Gemara* (Cambridge, Mass.: Harvard University Press, 1986), 18-37.

¹⁰¹ See Ephraim E. Urbach, "The Derashah as a Basis of the Halakha and the Problem of the Soferim," *Tarbiz* 27 (1958): 166-82 [Hebrew]; repr. in *The World of the Sages* (Jerusalem: Magnes, 2002); M. D. Herr, "Continuum in the Chain of Torah Transmission," *Zion* 44 (1979): 43-56 [Hebrew]; Adiel Schremer, "[T]he[y] Did Not Read in the Sealed Book': Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism," in *Historical Perspectives: From the Hasmoneans to Bar Kokhba in Light of the Dead Sea Scrolls* (ed. David Goodblatt et al.; STDJ 37; Leiden: Brill, 2001), 105-26 (and see Halivni's critique of this outlook).

¹⁰² Schremer, "[T]he[y] Did Not Read in the Sealed Book," 126 and n. 63.

overlaps the earliest extant, significant Tannaitic stratum—the period of Beit Hillel and of Beit Shammai—a stratum that precedes most of the tannaitic literature, and certainly its edited form. Moreover, even those who consider halakhic midrash a later innovation do not dispute the existence of an earlier, very simple, embryonic layer of “midrash.” Echoes of this midrashic stratum, which preceded the developed genre of Tannaitic exegesis, are found in Qumran literature, and its fragments have been sparsely preserved in rabbinic literature as well.¹⁰³ Indeed, the presence of homilies linking purity for the unconsecrated sphere to Scripture in the *Temple Scroll* and the *Damascus Document* (see below) suggests that the *avoidance* of such homilies in rabbinic sources must also date from this period.

Whatever the timeframe for the earliest midreshei halakhah, corpora of ancient halakhah, whose assumed origins perhaps lie in ungrounded “ancestral traditions” (*paradosis ton pateron*), have reached us in the edited Tannaitic literature in the form of halakhic midrashim, where they are supported by biblical verses. I argue that the marvelous engineering project of halakhic midrash, which bridged the gap between Scripture and tradition, deliberately skipped over the issue of purity for unconsecrated things. I lean toward the attribution of this intentional omission to the origins of developed halakhic midrash, namely, to about a century prior to the destruction of the Second Temple, at the latest. Perhaps this strategy must be dated even earlier, to the embryonic period of homiletic halakhic midrash, sometime in the second c. B.C.E.

On this basis, my explanations for this phenomenon are grounded in the circumstances of Second Temple period. Perhaps the “dual strategy” represents an attempt by early rabbis to protect the stringency of purity regulations with respect to consecrated things and to clearly distinguish between purity for them as opposed to unconsecrated things, pushing the latter out of Scripture for that reason. Or, perhaps the separation from Scripture was grounded in a desire to highlight Pharisaic uniqueness

¹⁰³ On this phenomenon in rabbinic literature, see, for example, the above-cited works by Epstein, Albeck, and Halivni. On the Qumranic midrashim, see the articles by Menahem Kister, Moshe Bernstein, and others cited by Schremer, “[T]he[y] Did Not Read in the Sealed Book,” 118 nn. 41-44, and the more recent, important article by Aharon Shemesh, “4Q251: *Midrash Mishpatim*,” *DSD* 12 (2005): 280-302. See also the sources and studies compiled by Abraham Rosenthal, “Torah she-be-al peh ve-Torah mi-Sinai: Halakhah u-ma’aseh,” *Mehqerei Talmud: Talmudic Studies Dedicated to the Memory of Professor Eliezer Shimshon Rosenthal* (ed. Moshe Bar-Asher and David Rosenthal; Jerusalem: Magnes, 1993), 2:448-89, esp. 451-52 and n. 13 [Hebrew].

against the background of the supererogatory nature of purity observance among the other sects, and their tendency to ground their stringent regulations in Scripture. The conclusion of the *Damascus Document's* purity regulations, for example, which encompass the extra-pentateuchal contamination of the boards, stones, nails, and pegs of a house by a corpse, clearly echoes Lev 11:47:

The rule of the settlement of the towns in Israel in accordance with these precepts, to separate between the impure and the pure and to make known (the distinction) between the holy and the profane. (CD 12:19-20; Charlesworth ed., 53)

In the *Temple Scroll* the pericope devoted to purity ends with the following festive declaration:

And you shall warn the children of Israel of all the impurity. And they shall not defile themselves with them, which I tell you on this mountain, and they shall not be impure. For I am the Lord, who dwells among the children of Israel; and you shall consecrate (them therefore), and they shall be holy, and let them not make themselves abominable with everything that I have set apart for them to hold impure; and they shall be holy. (51:5-10; Yadin trans., slightly revised)

This pericope masterfully blends several “inclusive verses” that forbid the Israelites to become impure in general, without affinity to consecrated things.¹⁰⁴ Whereas the Tannaitic homily restricts the commandment “You shall set apart the Israelites from impurity” (Lev 15:31) to the Temple alone,¹⁰⁵ the *Temple Scroll* attributes all the purities detailed earlier, with their extrabiblical stringencies, to this verse and its fellows, thereby emphasizing their Sinaitic origins.

Another possibility is that the separation of purity for unconsecrated things from its biblical roots was grounded not in a separatist, but rather in a unifying, inclusive trend.¹⁰⁶ Awareness of the high social price of

¹⁰⁴ For the translation, sources, and their combination in the passage, see Yadin, *Temple Scroll*, 1:342-43; 2: 226-27.

¹⁰⁵ See *Sifra, Tazria*, parashah 1, perek 12:1-2.

¹⁰⁶ See, for example, Sussman's festive concluding declaration regarding the ability of the Pharisees to imbue “the daily life of the masses with holiness and religious faith” and as the “group whose sages were able to unify the various factions, impose religious responsibility

adherence to purity in the profane sphere, and the barriers it created, perhaps prompted the Pharisaic sages to stress this loaded stringency's semi-voluntary nature and lessen its force as a defining feature of religious identity.¹⁰⁷ Whatever the motivation for the principled trend that characterizes purity halakhot, I have only come to describe its inherent nature: a strong, consensual, revolutionary decision to uproot the strict observance of purity in the unconsecrated sphere from its biblical roots.

on the people, renew their hopes and thereby prepare them for the long darkness of exile" ("Appendix 1: The History of the Halakha and the Dead Sea Scrolls," by Y. Sussman, in *Qumran Cave 4.V: Miqṣat Ma'ase Ha-Torah* [ed. Elisha Qimron; *DJD* 10; Clarendon: Oxford, 1994], 199.

¹⁰⁷ On the efforts of the Pharisees and the *ḥaverim* to prevent a schism between them and the ordinary people, see, for example, Oppenheimer, *Am Ha-aretz*, 159-69; Urbach, *Sages*, 1:582-84; Hengel and Deines, "Sanders' 'Common Judaism,'" 43-45. See also Baumgarten's definition of the Pharisees, in the wake of Wilson's sociological terminology, as a reformist sect, which aimed to create overall social change, and not as an introversionist sect, with separatist aims (*Flourishing of Jewish Sects*, 13-15, 96-100, and passim). On the practical distinction between the sectarian exclusionism regarding purity in the profane sphere and the inclusionism of the rabbinic *ḥavurot*, see Aharon Shemesh, "The Origins of the Laws of Separatism," *RevQ* 18/70 (1997): 231-38.