

# Ritual Impurity in Tannaitic Literature: Two Opposing Perspectives\*

Vered Noam (Tel Aviv University)

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## Abstract

This paper examines the rabbinic concept of impurity in terms of the essence of the reality that this term implies. Did the Rabbis consider impurity to be a force of nature, or rather an abstract formalistic structure devoid of any actual existence? A review of rabbinic sources regarding corpse impurity reveals that the essential structures of tannaitic halakhah are grounded in a natural, immanent perception of impurity, which gave rise to an entire system, intricate and coherent, of “natural laws of impurity.”

Layered onto this system, as a secondary stratum of sorts comprising exceptions and “addenda,” is a more subtle halakhic tapestry woven from a diametrically opposed perception. This view subjects the concept of impurity to human awareness and intention, severing it from reality and, in so doing, also stripping it of its “natural” substance.

## “Natural” versus “Abstract” Impurity

Any examination of the concept of impurity, regardless of cultural context, poses a fundamental problem with respect to the essence of the reality that this term implies. The most basic question is whether impurity is seen as an entity that exists – a force of nature, if you will – or as an abstract formalistic structure devoid of actual existence. Are the directives that regulate human behavior with respect to ritual impurity required by elements that exist in nature, or do they represent the imposition of new norms on a reality that does not require them? Resolving this primal question is a prerequisite for a more complex investigation. If we assume that in the culture under discussion, impurity is perceived as a natural entity, we can formulate its actual qualities and the norms by which it operates, and assess it as a force within this culture’s image of the cosmos. Conversely, if we are speaking merely of an abstract construct that does not denote a reality of any sort, we must ask if it carries symbolic meaning; in other words, is it a metaphor for something outside itself, for instance, other forces in the world or in the nature of man? Or could it be nothing more than an arbitrary system lacking content but serving a functional religious or social purpose – a demand for religious obedience, protection of the sacred, or the creation of a social hierarchy? Obviously, these possibilities commonly represent continuous processes that take place over time

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in a particular culture. In general, the assumption is that abstract constructs are simply later manifestations of naturalistic concepts that were stripped of their content over the course of time. These problems have been discussed at length in the anthropological research on diverse models of purity and impurity across cultures.<sup>1</sup>

Questions of this type have arisen, in various formulations, also with respect to the ritual impurity described in the biblical texts,<sup>2</sup> from the commentaries of the Second Temple era and rabbinic literature to the medieval Jewish

- 1 See Mary Douglas's review of earlier research, and her forceful negation of the evolutionary theories that originated in the 19th century. These theories in the fields of anthropology and comparative religion drew a sharp distinction between religion and magic, and between primitive and modern cultures. They saw the concepts of pollution and impurity as mechanical, irrational systems, whose purpose was to protect against supernatural dangers – a perception that characterizes the primitive stage of religious development, before mankind progressed to the inner and the spiritual. By contrast, Douglas argues that meaning and ethics are not absent from primitive ritual, just as ceremonial-symbolic concepts of defilement are not absent from modern cultural codes. Stated otherwise, the distinction between impurity as a manifestation of reality, and impurity as a symbol of abstract values, is not analogous to the distinction between primitive and modern, nor does it represent distinct stages in the evolution of religion. M. Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (New York: Praeger, 1966), primarily 7–28. For the theory pioneered by Douglas herself, which defines impurity as an expression of anomaly, a crossing of boundaries, a breaching of accepted categories, see *ibid.*, mainly 34–40 and throughout this work; and see further below.
- 2 Biblical criticism was also influenced from the outset, at least in part, by contemporary anthropological theory. On the “confused nineteenth century dialogue between anthropology and theology”, see Douglas, *Purity and Danger*, 11–19. Regarding the reluctance to apply anthropological theories to the Bible and to Judaism in general, its causes, and the breaching of this barrier in the latter half of the 20th century, see the comprehensive overview of H. Eilberg-Schwartz, *The Savage in Judaism: An Anthropology of Israelite Religion and Ancient Judaism* (Bloomington: Indiana University Press, 1990), 1–86. The most significant encounter between biblical criticism and anthropology took place in the final third of the 20th century, with the publication of Douglas's book (*Purity and Danger*), which revolutionized the scholarly discourse on ritual impurity in general, and biblical impurity in particular. Douglas attempted to apply anthropological insights to the biblical system of purity and impurity, in particular the dietary laws in the Book of Leviticus. See the impassioned response of E. P. Sanders, *Jewish Law from Jesus to the Mishna: Five Studies* (London: SCM Press, 1990), 349–50, n. 16. Frequently basing himself on Douglas, Eilberg-Schwartz expanded the latter's system in various directions (Eilberg-Schwartz, *ibid.*, 186, 195, 192–204). For summaries and assessments of Douglas's work, see J. Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000), 165, n. 23. For critical reviews of her work, see *ibid.*, 166, n. 33. See also the introduction to the Hebrew edition of *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (trans. Y. Sela; Tel Aviv: Resling, 2004) by A. Levy, pp. 18–22, and the critical retrospective review by Douglas herself in the “Author's Introduction” to this edition, pp. 10–13. During the 1990s, Douglas revisited many of her conclusions in *Purity and Danger*. Her later articles were compiled in two volumes, on the Books of Leviticus and Numbers, respectively: M. Douglas, *Leviticus as Literature* (Oxford / New York: Oxford University Press, 1999); *eadem*, *In the Wilderness: The Doctrine of Defilement in the Book of Numbers* (Oxford: Oxford University Press, 2001). It is fascinating to see how, from the all-encompassing perspective of *Purity and Danger*, which saw the Bible as one example among many of ritual impurity, Douglas ultimately came to the opposite con-

commentators and thinkers, and still later, to the modern literature of biblical study. From Philo of Alexandria to contemporary scholars, a multitude of approaches to understanding the formative concept of purity and impurity in biblical writings have been proposed, with the numerous explanations reflecting the prevailing circumstances, the accepted norms, and the sentiments of their authors no less than they do the world of the Bible.<sup>3</sup> These approaches can be classified according to their underlying perception of impurity, with regard to the question posed at the beginning of this paper. Some of them derive from the naturalistic perception of impurity as an entity, explaining it variously as a reflection of demonic worlds,<sup>4</sup> an expression of death with

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clusion, namely, that biblical Israelite impurity represented a unique, detailed, and rational body of religious legislation that conflicted with other systems of impurity.

- 3 For discussions in antiquity, see for example: *Letter of Aristeas*, ss. 142–69; Philo, VII, *Spec. Laws, Books I–III* (Colson, LCL), 1:259–69; 3:205–09. On discussions in the Middle Ages concerning the rationale for impurity, see for example: R. Judah Halevi, *The Kuzari* (trans. N.D. Korobkin; Northvale, N.J.: Jason Aronson, 1998), 2:60–61; and Maimonides, *The Guide for the Perplexed* (trans. M. Friedländer; New York: Dover Publications, 1956), part III, chap. 47, 366–70. The following is a brief selection of discussions and reviews of modern literature on the subject of biblical impurity, its characteristics and its rationale: D.Z. Hoffmann, *Leviticus with a Commentary by David Hoffman* (trans. Z. Har Shefer and A. Lieberman; Jerusalem: Mossad Harav Kook, 1953–54), 1:212–15 (Hebrew), which contains a review of earlier literature, p. 223; A. Oppenheimer, *The 'Am Ha-arets: A Study in the Social History of the Jewish People in the Hellenistic-Roman Period* (Leiden: Brill, 1977), 52, n. 99; J. Neusner, *The Idea of Purity in Ancient Judaism* (SJLA 1; Leiden: Brill, 1973), 18–27. For earlier literature, see: *ibid.*, 18, n. 1; T. 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* (eds. C. L. Meyers and M. O’Connor; Winona Lake, Ind.: Eisenbrauns, 1983), 399–404; Sanders, *Jewish Law*, 134–51. See also the exhaustive survey by J. Milgrom, *Leviticus: A New Translation with Introduction and Commentary* (AB 3; New York: Doubleday, 1991), 766–68, 1000–04, and the extensive literature summarized there. See further, D.P. Wright, “The Spectrum of Priestly Impurity,” in *Priesthood and Cult in Ancient Israel* (eds. G.A. Anderson and S.M. Olyan; JSOTSup 125; Sheffield: JSOT Press, 1991), 150–81; H.K. Harrington, *The Impurity Systems of Qumran and the Rabbis: Biblical Foundations* (SBL Dissertation Series 143; Atlanta: Scholars Press, 1993), the Introduction and comments before each chapter. For a useful current review, see also Klawans, *Impurity and Sin*, 24–25. A comprehensive listing of works on the subjects of purity and impurity in Judaism in general is presented in his notes: *ibid.*, 163, n. 1; 164, n. 6; 166–67, n. 53.
- 4 The origin of impurity in various primitive cultures from the demonic perspective has been described extensively in anthropological research and documented in the study of the ancient Near East. For a partial review, see Douglas, *Purity and Danger*, 27–28, 33–53, and her critique of this approach later in the same work. For examples of demonic impurity in the ancient Near East, see Y. Kaufmann, *Toldot ha-Emunah ha-Yisre’elit Mimei Kedem ‘ad Sof Bayit Sheni* (4<sup>th</sup> ed.; Jerusalem and Tel Aviv: Mossad Bialik/Dvir, 1960), 1:403–08 (Hebrew). For an abridged English translation, see *idem*, *The Religion of Israel: From its Beginnings to the Babylonian Exile* (trans. and abr. M. Greenberg; Chicago: University of Chicago Press, 1960), 55–57. See also Milgrom, *Leviticus*, 256–59, 976, 979. B.A. Levine surveyed the cult of the dead in the ancient Near East, and what he interprets as vestiges of it in Scripture itself; see B.A. Levine, *Numbers: A New Translation with Introduction and Commentary* (AB 4; Garden City: Doubleday, 1993–2000), 472–79. The assumption that the laws of impurity originated in magic and the demonic was a key element in Kaufmann’s understanding of biblical impurity. Kaufmann (*Toldot ha-*

all that it entails,<sup>5</sup> or a “side effect” of transition states and human crises.<sup>6</sup> A second approach, meanwhile, proposes a symbolic interpretation that views ritual impurity as a reflection of moral values of sin and expiation.<sup>7</sup> And yet

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*Emunah*, 468–77, 537–51; *Religion of Israel*, 80–81, 103–08) following W. Robertson Smith, saw in the details of biblical ritual, including the laws of purity and impurity, ancient vestiges of primitive magic that had been usurped by the new religious idea of the Scripture. Since the latter argued that the world was ruled by one God, it renounced the world of demons and stripped the cult of any mythological-magical foundation. Scriptural legislation accepted (according to its perspective) the existence of impurity as an actual essence that is present in objects, but neutralized any danger that it might pose to God or even man, transforming it from a force into a condition. In contrast to this approach, Levine argues that magical practices were still a part of the ancient Israelite cult, and that the state of impurity is the embodiment of the forces of darkness and a source of genuine danger in Scripture as well. See B. A. Levine, *In the Presence of the Lord: A Study of Cult and Some Cultic Terms in Ancient Israel* (SJLA 5; Leiden: Brill, 1974), 77–91. See also Neusner, *Idea of Purity*, 8–11. For a similar perspective, see now I. Knohl, *Biblical Beliefs: Limits of the Scriptural Revolution* (Jerusalem: Magnes Press, 2007) (Hebrew). Milgrom has taken the basic outlines of the “monotheistic revolution” posited by Kaufmann a step further, with certain changes, offering a thorough and sophisticated interpretation of cultic law in Leviticus. In his view, impurity indeed ceased to embody external metaphysical forces, instead becoming an expression of human existential weakness and moral transgression. Severed from the demonic, it was reinterpreted as a symbolic system focused on affirmation of life and rejection of death (see in particular Milgrom, *Leviticus*, 42–45, 258–61, 276–78, 310–13, 976–85, 1002–03). For a critique of various aspects of his approach, see the literature cited in Klawans, *Impurity and Sin*, 168, n. 77.

- 5 Numerous commentators and scholars have identified impurity cognitively with the opposition between life and death. An argument of this nature is already offered by Philo as a pretext for corpse impurity (Philo, *Laws*, 3:207). See also R. Judah Halevi, *Kuzari*. For this approach as presented in modern scholarship, see the views cited by Hoffmann (*Leviticus*, 217) and his own counterarguments. A wealth of literature in this vein from the fields of both biblical criticism and anthropology can be found in Milgrom, *Leviticus*, 766–68, 1000–04. Milgrom’s own position is not far from this. Although in his view the Jewish faith dissociated the fear of demons and the aspect of danger from impurity, he nonetheless holds that impurity also represents man’s physical weakness. The loss of blood and seed (representing the life force), like the presence of disease and death, constitute the opposite of the God of Israel, who is the source of life. See also J. Neusner, *Purity in Rabbinic Judaism, a Systemic Account: The Sources, Media, Effects, and Removal of Uncleanness* (SFSHJ 95; Atlanta: Scholars Press, 1994), 34; Eilberg-Schwartz, *Savage in Judaism*, 182–86; and Frymer-Kensky, “Pollution,” 400–01, though her perspective is somewhat different, in that she merges the argument for impurity as representing the extremes of life (birth and death) with Douglas’s early theory of bodily boundaries. Douglas herself, in her later work, drew closer to the life/death interpretation of impurity (Douglas, *In the Wilderness*, 24).
- 6 See Henninger’s position, cited by Milgrom (*Leviticus*, 768), and his own arguments against his approach. For a similar view of impurity as characteristic of transition states, see also Sanders, *Jewish Law*, 146.
- 7 See as early as the *Letter of Aristeas*, and Philo. Among the dominant proponents of this approach in modern Jewish interpretation is R. David Zvi Hoffmann, in the wake of R. Samson Raphael Hirsch. Hoffmann proposed a detailed system of parallels between the various categories of ritual impurity and the different categories of sin that they symbolize (Hoffmann, *Leviticus*, 217–23). See also Neusner, *Idea of Purity*, 7–28. D. P. Wright formulated an interesting parallel between the schema of ritual impurity in its different phases and the ranking of moral transgressions and their ramifications (Wright, “Spectrum”). Klawan’s work *Impurity and Sin* (21–42) is a monograph devoted to the relationship between moral impurity

a third approach, at the opposite end of the spectrum, represents an absolute reduction of biblical impurity, interpreting it instrumentally as a system that lacks actual existence or inner content but that serves certain social needs, whether religious or secular, such as hygiene,<sup>8</sup> esthetics,<sup>9</sup> reinforcing the sacredness of the Temple<sup>10</sup> or the distinctiveness of the Jewish people,<sup>11</sup> strengthening the status of the priesthood, or disputing pagan concepts of holiness.<sup>12</sup>

In shaping the halakhah, the sages obviously grappled with the same theological-philosophical question, as they sought to interpret and apply the biblical laws of purity and impurity. Such an interpretation, if only at the practical level, necessarily reflected the views of its proponents with respect to the nature and meaning of these concepts. Rulings regarding the nature of impurity presumably had major implications, both for those who decided and those who upheld the halakhah. A detailed depiction of actual, immanent impurity was liable to create dangerous breaches in the religious world, opening the way to a demonic, semi-pagan, universe;<sup>13</sup> yet the choice of reduction, symbolization or dilution of the concept of impurity could strip the intricate and demanding system of laws of ritual purity, which had dominated religious life for centuries, of all spiritual or religious meaning.<sup>14</sup> This article will attempt to

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and ritual impurity in Scripture and in ancient Jewish literature. The author argues that there is a clear biblical distinction between these two types of impurity. For a detailed survey of the approaches of various scholars regarding the connection between ritual impurity and sin, see *ibid.*, 4–20.

- 8 For an enumeration of the literature in all these areas, see Milgrom's review, *Leviticus*, 766. Regarding the hygienic-health explanation, see also Douglas's survey – and her derisive response – in *Purity and Danger*, 55–58.
- 9 Maimonides was not at all uncomfortable using this reductive rationale for impurity: “All these cases of uncleanness, viz., running issue of males or females, menstruations, leprosy, dead bodies of human beings, carcasses of beasts and creeping things, and issue of semen, are sources of dirt and filth” (*Guide*, Friedländer trans., 368).
- 10 This explanation was also emphasized by Maimonides: *ibid.*, 367–68.
- 11 See for example Neusner, *Purity in Rabbinic Judaism*, 33–34. See also Douglas, *Purity and Danger*, 73–74.
- 12 For the view that biblical impurity represents not a reduction of pagan impurity but a negation of pagan sanctity, see in particular Levine, *Numbers*, 468–79. For similar perspectives, see Neusner, *Idea of Purity*, 24; J. Licht, *Commentary on the Book of Numbers 2 [11–21]* (Jerusalem: Magnes Press, 1991), 176 (Hebrew); Frymer-Kensky, “Pollution,” 400, quoting D. Wold.
- 13 In the aggada cited in the following section, this fear is openly expressed. The dissociation of impurity from its internal meaning by R. Yohanan ben Zakkai is presented as the opposite of the gentile's accusation, which sees purity and impurity as acts of magic.
- 14 On the antiquity of the laws of impurity, and their predominance in the early layers of the Mishnah, see for example G. 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. I. Abraham; Jerusalem: Magnes Press, 1977), 190–234; Y. Sussmann, “The History of Halakha and the Dead Sea Scrolls: Preliminary Observations on Miqsat Ma'ase Ha-Torah (4QMMT),” *Tarbiz* 59 (1990): 11–76 (Hebrew); V. Noam, “The Dual Strategy of Rabbinic Purity Legislation” *JSJ* 39 (2008): 471–512; J. Neusner, *The Rabbinic Traditions About the Pharisees Before 70* (vols. 1–3; Leiden: Brill, 1971), 286–300, 301–

explore the rabbinic stance with regard to our original question, and to offer an overview of corpse impurity – the central and most stringent of the forms of ritual impurity – as it emerges from key aspects of tannaitic halakhah.

### “The Corpse Does Not Defile”

In an article devoted to the philosophy of halakhah, Yochanan Silman proposed a distinction between two basic trends in halakhah – nominalism and realism:

[The nominalist trend favors] reducing ... the significance of the forms [i. e., the halakhic characterizations of certain objects in reality – VN] to the normative-legalistic level, in other words, focusing the halakic definitions on the plane where the human factor constitutes a formative element. Accordingly, the application of the form [the halakhic definition – VN] to the structure [the reality to which it is applied – VN], like the connection between form and structure in the concrete model, derives its basic meaning from man’s relation to what is “proper,” to norms of behavior – that is, positive and negative injunctions whose focus is human actions.

Whereas, according to the realist trend:

The fundamental meaning of the forms is not based specifically on the presence of a human polarity. Their meaning is anchored in the plane of existence, in the sense of the qualities directly attributed to the structures, that is, concrete objects in the world.<sup>15</sup>

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- 19; *idem*, “The Fellowship in the Second Jewish Commonwealth,” *HTR* 53 (1960): 125–42; M. Hengel and R. Deines, “E. P. Sanders’ ‘Common Judaism,’ Jesus and the Pharisees,” *JTS* 46 (1995): 47–51; E. Regev, “Non-Priestly Purity and its Religious Aspects According to Historical Sources and Archaeological Findings,” in *Purity and Holiness: The Heritage of Leviticus* (eds. M. Poorthuis and J. Schwartz; JCPs 2; Leiden: Brill, 2000), 223–44.
- 15 Y. Silman, “Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations,” *Diné Yisrael* 12 (1984/1985): 249–66 (Hebrew); quotation, 250. See also M. Silber’s remarks, cited by Silman, in *ibid.*, 251–52. Silman proposed additional distinctions not unlike this one, between an “existential trend” and a “directive trend” (Silman, “Commandments and Transgressions: Matters of Obedience or Intrinsic Quality,” *Diné Yisrael* 16 [1991/1992]: 183–201) (Hebrew), and between an ontological and a deontological position (*idem*, “The Significance of the Relation between Intention and Behavior in Halakha,” in *Studies in Jewish Law and Halakha* [eds. A. Enker and S. Deutsch; Ramat Gan: Bar Ilan University, 1999], 263–77) (Hebrew). More recently, he has drawn a distinction between a “directive approach” and an “instructive approach” – a distinction somewhat different from the one under discussion, yet applicable to both approaches to understanding the text of the red heifer. See below: *idem*, “Source of the Validity of Halakhic Directives: A Meta-Halakhic Study,” in *New Streams in the Philosophy of Halakha* (eds. A. Ravitzky and A. Rosenak; Jerusalem: Magnes Press, 2008), 3–25 (Hebrew). An early dichotomous theory with similarities to the distinction between nominalism and realism is already posited by Kaufmann (*Toldot ha-Emunah*, 537; *Religion of Israel*, 103), who distinguishes between a “decree” and an “inner significance.” For both these approaches as reflected in the context of unintentional sin (שגגה) and its punishment, see A. Adrei, “‘If Anyone Shall Sin through Error’: On the Culpability of the Unwilling Transgressor in Biblical and Rabbinic Literature,” *Hebrew Annual of Jewish Law* 24 (2006/2007): 1–62 (Hebrew).

The question posed above, concerning the nature of the concept of impurity, belongs unequivocally to the debate between the realistic and the nominalistic,<sup>16</sup> the terms that we will be using in our discussion below.<sup>17</sup>

There is a common tendency in the scholarly literature to ascribe to the tannaim a bold reduction of impurity that divests this biblical concept of all meaning, subjects it to human considerations, and portrays it as an abstract construct, fashioned solely by virtue of a set of directives.<sup>18</sup> This perception is influenced by the ostensibly rational nature of rabbinic halakhah,<sup>19</sup> by its tendency to minimize the practical ramifications of impurity,<sup>20</sup> and by a number of decidedly nominalistic elements woven into the tannaitic laws of purity.<sup>21</sup> It is quite possible that this accepted wisdom is unwittingly influenced by medieval thinkers as well, in particular Maimonides.<sup>22</sup> But the central source on

16 The source dealing with corpse impurity and the red heifer purification ritual, which will be cited below, is used by Silman to illustrate the nominalistic approach.

17 Though other terms, such as “immanent,” “natural,” “ontic,” and the like will also be mentioned.

18 As suggested in E. E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. I. Abrahams; Cambridge: Harvard University Press, 1987), 98–100. See also *ibid.*, 377–81). Neusner emphasized the development of the notion of human intent and action in the Mishnah as a formative element of the laws of purity, associating it with the generation of Yavneh (as we will see below, this element is prominent in much earlier layers of halakhah). See J. Neusner, *The Mishnaic System of Uncleaness: Its Context and History* (vol. 22 of *A History of the Mishnaic Law of Purities*; Leiden: Brill, 1974–77), 182, 186–89. It appears that Milgrom, too (*Leviticus*, 1006), did not question Neusner’s conclusion that in the rabbinic approach, “the mysterious, supernatural force of contamination . . . is subjected to human manipulation” (Neusner, *ibid.*, 186); but according to Milgrom, this distinction held also with regard to biblical impurity (Milgrom, *ibid.*, 1006). Sanders (*Jewish Law*, 317) derided Neusner’s impassioned argument regarding the centrality of intent, remarking that human intent and action are central to any legal system. Eilberg-Schwartz as well (*Savage in Judaism*, 196–216) attributed the major differences between biblical impurity and post-biblical impurity in various Jewish circles (Qumran, tannaim, early Christians) specifically to this element. According to him, biblical impurity involves objective states where human control is absent, whereas later impurity is dependent on human intent and will. In his view, the transition from legislation by priests in a society based on lineage, to guidance by leaders and sages in a society founded on personal achievement, led to a new, volitional type of impurity. An important debate between D. R. Schwartz and J. L. Rubenstein on the centrality of the nominalist trend in tannaitic as compared with Qumranic halakhah will be addressed in detail toward the end of this paper.

19 See Y. Sussmann, “The Scholarly Oeuvre of Professor Ephraim Elimelech Urbach,” in *Ephraim Elimelech Urbach: A Bio-bibliography* (ed. D. Assaf; Jerusalem: World Union of Jewish Studies, 1993), 106, n. 248 (Hebrew) on “the presentation of talmudic-rabbinic Judaism in a rationalistic, extreme, distorted light” by both G. Scholem and E. E. Urbach, from two opposing academic perspectives. See also *ibid.*, 73–74, n. 148; 77–78, n. 151.

20 There is a consensus among scholars regarding this tendency. See for example Alon, “Levitical Cleanness.” For a fresh discussion and review of the research, see now my article “Dual Strategy.”

21 These elements will be discussed in detail below.

22 On Maimonides’ supremely rationalistic method of explaining impurity, see nn. 9–10 above. For the way in which his influential philosophy led to a mistaken and anachronistic interpretation of rabbinic opinions in other areas, see Y. Sussmann, “Taking the Concept of ‘Oral Torah’ Literally – The Power of the Jot and Tittle,” *Mehqerei Talmud* III (eds. Y. Suss-

which this distinction rests is the well-known aggadic midrash on the mysterious nature of the red heifer:

And a non-Jew asked R. Yohanan ben Zakkai saying to him: “These things that you do seem like witchcraft. You bring a cow and you slaughter it and you burn it and you crush it and you take its ash, and if one of you becomes impure from a corpse, you sprinkle on him two or three drops [of the ash mixed with water] and say to him: ‘Ah, now you are pure.’”

So R. Yohanan said to him: “Has the spirit of madness never entered you?” and he answered: “No, never.” “And have you never seen anyone else who has had the spirit of madness enter into him?” And he said: “Yes.” And he said to him: “And what do you do?” And he said: “Roots are brought, they are burned to smoke beneath him, and water is sprinkled on the spirit until it flees.” And he said to him: “Do your ears not hear what your mouth is saying? This spirit is the spirit of impurity, as it is written, *I will cause [false] prophets and the spirit of impurity to flee from the Land*” (Zech 13:2).

Once the person had left, his disciples said to him: “Master, you pushed him off with a mere reed [a weak answer]. What explanation will you offer us?” R. Yohanan replied: “By your life! The corpse does not defile nor does the water purify. It is simply a decree of the Holy One, blessed be He. Said the Holy One, blessed be He: ‘I have ordained a statute, I have issued a decree, and you may not transgress My decree. *This is the statute of the Torah* (Num 19:2).”<sup>23</sup>

In the words of E. E. Urbach, this homily teaches us that “a corpse defiles, for this is the halakhic rule, but this uncleanness is not an independent power, nor has the water any magical force; however, it is a precept, and by virtue of the precept, the corpse defiles and the water purifies.”<sup>24</sup> The assumption that purity and impurity have an actual existence is classified as an inferior position befitting only a non-Jew. Note that the homily rejects two versions that lend substance to impurity. Not only is the argumentative position of the non-Jew (which defines impurity and the red heifer ritual as magic) rejected, but the view expressed by R. Yohanan ben Zakkai to the non-Jew (which interprets purity and impurity as a type of illness and remedy, in other words, as a representation of forces in reality) is similarly rebuffed. Stated otherwise, the homily also rejects a “natural,” rational explanation for impurity. The narrator believes that any concretization of the system of purity and impurity – not only in its magical form but even in a refined, pseudo-scientific version – fails to grasp the religious truth.<sup>25</sup>

mann and D. Rosenthal; Jerusalem: Magnes Press, 2005), 1.231–36 and n. 30a (Hebrew); Y. Lorberbaum, *In the Image of God: Halakha and Aggada* (Jerusalem: n. p., 2004), 27–82, in particular 77–78 (Hebrew).

- 23 *Pesiqta de-Rav Kahana*, 4:7. In *Pesiqta de-Rab Kahana* (trans. W. G. Braude and I. J. Kapstein; Philadelphia: Jewish Publication Society, 1975) 82–83, trans. revised.
- 24 Urbach, *The Sages*, 99. G. Scholem as well (*On the Kabbalah and Its Symbolism* [trans. R. Manheim; New York: Schocken, 1977], 95) considered this homily a classic example of the severing of rabbinic halakhah from its emotional roots and from the mythical sphere. For a view of this midrash as the distillation of the rabbinic attitude toward impurity as a whole, see Neusner, *Idea of Purity*, 115.
- 25 Y. Baer, in his *Israel Among the Nations: History of the Second Temple and Mishnaic Periods, and Foundations of Jewish Law and Faith* (Jerusalem: Bialik Institute, 1955), 110–12 (He-

This homily, however, though it centers around R. Yohanan ben Zakkai, is found only in later sources.<sup>26</sup> It has no tannaitic parallel.<sup>27</sup> Another aggada in a similar vein, also apparently amoraic in origin, enumerates several paradoxical laws of impurity regarding, *inter alia*, corpse impurity and the red heifer, explaining their unusual nature with the statement: “Who has done so? Who has commanded so? Who has decreed so? Is it not the One? Is it not the Unique One of the world? ... For the Holy One blessed be He said: I have ordained a statute, I have issued a decree, and you may not transgress My decree.”<sup>28</sup> We will attempt to clarify below the position of tannaitic literature on this point, specifically from within halakhah as opposed to aggada.<sup>29</sup>

### Realistic Impurity in Tannaitic Teaching

A groundbreaking aspect of Neusner’s work on the mishnaic order of *Tohorot* was the recognition that the ostensibly technical question of how impurity spreads between people and objects, and from one space to another, is key to identifying basic ontological and theological perspectives of the tannaim with

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brew) utterly rejected this conclusion. In his view, “the second answer, too, was an evasive one, intended solely to silence those who were knowledgeable [in mysticism]” (*ibid.*, 111). In his view, R. Yohanan ben Zakkai, who was a “mystic and pneumatic ... in personality and belief,” also knew several mythical-mystical reasons for the law of burning the red heifer, but did not wish to explain them.

26 In most of the parallel versions, the midrash is not attributed to a particular sage; only a single source ascribes it to a Palestinian amora. See Urbach, *Sages*, 849, n. 31.

27 Regarding the absence of an explicit tannaitic position echoing this homily, see Urbach, *ibid.*, 377–78. Urbach suggests that the narrative was attributed to R. Yohanan ben Zakkai in light of tannaitic sources associating him with the laws of the red heifer; however, he does not negate the possibility that the account was composed in the time of R. Yohanan ben Zakkai, or that the words indeed issued from him directly (*ibid.*, and also p. 100). Milgrom as well (*Leviticus*, 271) attributes the homily to “early Jewish scholars,” while Scholem (*On Kabbalah*) calls it a “talmudic fable.” Neusner (*Idea of Purity*, 105–07) stresses the lateness of the source, identifying the content of the account with the latest conception of impurity in tannaitic literature. At the same time, he refers, with some hesitation, to a similarity between the functional manner in which R. Yohanan ben Zakkai interpreted the decree regarding impurity of the hands (*m. Yad*. 4:6) and the reductive interpretation of the red heifer ritual. He also alludes to the possibility that the attribution to R. Yohanan ben Zakkai is nonetheless correct, and that the unique personality of this sage produced an exceptional worldview, which was well ahead of his time. Rubenstein reiterates the lateness of this text and the absence of tannaitic parallels; see J. L. Rubenstein, “Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment,” *DSD* 6 (1999): 183.

28 *Pesiqta de Rav Kahana*, piska 4, trans. Braude and Kapstein, 59–60.

29 Regarding the necessity of studying tannaitic thought from within halakhah as well, and the affinity between aggada and halakhah, see Urbach, *The Sages*, 3. For a detailed description of this approach, see also Sussmann, “Oeuvre of Urbach,” 64, 75, 88, 91–92. For a thorough review of the history of the research on the nexus between halakhah and aggada, and the application of both to the study of rabbinic thought, see recently Lorberbaum, *Image of God*, 105–45.

regard to the essence of impurity.<sup>30</sup> We will be following this approach, though our conclusion will be somewhat different, especially with regard to the chronology of the different strata of rabbinic legislation.

Is the notion of impurity that arises from the halakhic system nothing more than an abstraction formulated on the basis of given rules, and hence not a reflection of reality? As we will see below, the opposite is true: An unambiguous portrait of impurity as a real phenomenon emerges from tannaitic halakhah. What is more, I would submit that the guiding principle of the laws of *Ohalot* is actually the persistent attempt to formulate a coherent set of “natural laws of impurity,” at times in direct opposition to the simple meaning of Scripture. Tannaitic halakhah sees impurity as an entity in nature with quasi-physical characteristics of movement, dissemination, flow, and so forth. We will be attempting below to present a broad outline of impurity as implied in the strictures set down by the sages regarding its modes of influence.

### Definition of “Tent”

The scriptural text indicates that corpse impurity is transmitted through direct contact or as the result of proximity with the deceased in a “tent” (Num 19:14–16, 18, 22). But this leaves many questions unanswered: What constitutes a tent? How do we explain the phenomenon of impurity being conveyed through the air without contact? How does it contaminate? And why is it delimited by the covered space within which it occurs? Under what conditions does it extend beyond these boundaries? The answers to these questions are derived from the perception of the very essence of corpse impurity.

Tannaitic halakhah applies the status of “tent” not only to houses but to virtually anything that shelters or overhangs. This phenomenon has been described briefly by J. Neusner<sup>31</sup> and at length by J. L. Rubenstein.<sup>32</sup> It is stated expressly in the halakhic midrashim: “How do you know to make all things that overhang equivalent to a ‘tent’?”<sup>33</sup> “For it says (Num 19:14): תורה, the law of – the law of the ‘tent’: everything that overhangs.”<sup>34</sup> Thus the definition of

30 J. Neusner, *Ohalot: Commentary* (vol. 4 of *A History of the Mishnaic Law of Purities*; Leiden: Brill, 1977); and *idem*, *The Mishnaic System of Uncleaness* (vol. 22 of *ibid.*).

31 In several places. See, for example, J. Neusner, *Judaism: The Evidence of the Mishnah* (Atlanta: Scholars Press, 1988), 103–05.

32 J. L. Rubenstein, “On Some Abstract Concepts in Rabbinic Literature,” *JSQ* 4 (1997): 33–73, esp. 34–40. See also my paper “Qumran and the Rabbis on Corpse-Impurity: Common Exegesis – Tacit Polemic,” in *The Dead Sea Scrolls: Texts and Context* (ed. C. Hempel; STDJ; Leiden: Brill, forthcoming).

33 *Sifre Num*, 126 (Horowitz ed., 161).

34 *Sifre Zuta*, 19:14 (Horowitz ed., 310). For the Geniza fragment of this midrash, see M. I. Kahana, *The Geniza Fragments of the Halakhic Midrashim*, part 1 (Jerusalem: Magnes Press, 2005) 216–17, 219 (Hebrew). *Sifre Zuta* derives a long list of overhanging things from the word תורה (in the biblical text: זאת התורה [Num 19:14]; a possible alternative reading in the

“tent” is expanded to include persons and utensils,<sup>35</sup> “houses, cisterns, crevices, and caves,”<sup>36</sup> boxes, chests, cupboards; water tanks on ships; sheets and mats; domesticated and undomesticated animals; plants and certain foods, pigeon coops, rocks, overhanging trees, and much more.<sup>37</sup> Overhanging items that do *not* convey impurity are the exception, and that is only because they do not meet certain basic conditions: they are not enduring, are not stationary, etc.<sup>38</sup>

The biblical principle of tent impurity has been expanded in another manner as well: The Torah describes the contamination of persons and utensils in the proximity of a corpse when they are under a common overhanging “tent.” The tannaim, however, held that the corpse defiles people and utensils, whether it is overhanging them or they are overhanging it, without any additional object extending over them. Stated otherwise, the defiler and the defiled have now themselves become “tents.”<sup>39</sup> In sum, whereas various Second Temple-era Jewish sources confined themselves to a predictable expansion of the circumstances of the scriptural command from tent and desert to house and city,<sup>40</sup> tannaitic halakhah *broadened the scriptural “tent” to the point of an absolute halakhic abstraction*. In the process, it severed “tent” from its definition as a dwelling place, movable or permanent, transforming it *from an object to a state* that applied, depending on circumstances, to people, animals, animate or inanimate objects – in short, anything overhanging a corpse with a thickness of at least one handbreadth (*tefah*).<sup>41</sup>

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midrash is: “תורה – תורה והאהל”; see Horowitz ed., *ibid.*), and excludes others based on the word זאה (in the same verse). The interpretations of *Sifre* and *Sifre Zuta* here are characteristic of their exegetical methods as a whole: *Sifre*, a product of the school of R. Yishmael, employs an *a fortiori* argument (קל וחומר), extrapolating from the “leper”; *Sifre Zuta*, a product of the school of R. Akiva, uses extension and limitation (רבינו ומינוט) of the present verse.

35 “Persons and utensils can serve as ‘tents’ in the transmission of impurity ...” (*m. Ohal.* 6:1).

36 *Sifre Zuta*, *ibid.*

37 See *m. Ohalot*, chap. 8. See also Maimonides, *Mishneh Torah*, *Hilkhot Tum’at Met*, chap. 13. For additional overhanging objects and the laws governing them, see in particular, *m. Ohal.*, chaps. 6, 9; *Sifre Zuta* 19:14 (Kahana ed., 219–20; Horowitz ed., 310).

38 See *m. Ohal.* 8:4, 5.

39 See for example: *m. Ohal.* 3:1; 15:10. And in *Sifre Zuta*: “It tells us only that a person overhanging a corpse becomes impure. How do you know to extend this to the corpse overhanging the person? Scripture teaches *shall be impure for seven days* (Num 19:16)” (*Sifre Zuta* 19:16, Kahana ed., 221; Horowitz ed., 311). See H. Maccoby, *Ritual and Morality: The Ritual Purity System and Its Place in Judaism* (Cambridge, Cambridge University Press, 1999), 14, 16–18.

40 The Septuagint rendered all instances of אהל in Numbers 19 as οἶκος, house. The *Temple Scroll* as well extended the biblical text from a “tent” to a “house” found in “your cities” (11QT<sup>a</sup> 49:5–17; 50:10–19); see E. Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* (JDS; Beersheba and Jerusalem: Ben Gurion University Press and Israel Exploration Society, 1996), 71, 73. See the discussion in Y. Yadin, ed., *The Temple Scroll* (3 vols.; Jerusalem: Israel Exploration Society, 1983), 1:325–26. Both Josephus (*Ag. Ap.* 2:205) and Philo (*Laws* 3:206) place impurity of a house under the general rubric of tent impurity.

41 On the stringent and exceptional halakhah regarding the transmission of impurity even when the overhanging object measures less than one handbreadth, i. e., “the thickness of a shepherd’s staff,” see below.

This far-reaching conceptual amplification is also reflected linguistically: Abraham Goldberg proposed that the form אָהַל (characteristic of the vocalized manuscripts of the Mishnah, as in מַטְמֵא/מַטְמִין בְּאֹהֶל<sup>42</sup>), from which the plural אֹהֵלוֹת is derived, is not a variant form of the noun אֹהֶל but rather a “concept of action analogous to the phrase מִנֵּעַ וּמִשָּׂא, contact and carrying.” In its grammatical form it is a verb in the present tense of the *kal* conjugation, אָהַל corresponding to אֹהֶל (here, denoting the *act* of overhanging).<sup>43</sup> In other words, the name of the collective laws of corpse impurity,<sup>44</sup> and of the tractate that addresses them, אֹהֵלוֹת/אֹהֵלוֹת, is derived from a verbal noun – אֹהֵלָה, the act of overhanging – that originated in a fundamental expansion of the definition of corpse impurity. This expansion was seen as the primary feature of this body of laws, hence the name of the tractate.

What is the rationale for this sweeping conceptual expansion, which vastly augments the incidence of corpse impurity and the rapidity of its dissemination? The position attributed to R. Yohanan ben Zakkai in the aggada cited above would have no trouble asserting that corpse impurity is transmitted specifically in a tent but not under a treetop, since “the corpse does not defile nor does the water purify. It is simply a decree of the Holy One blessed be He.” But a perspective that sees impurity as an extant entity subject to laws of some sort is not satisfied with mere statements on the part of the text. Of necessity, it must apply the principles that arise from the narrow, casuistic description in the biblical verses to reality as a whole. If corpse impurity spreads under the covering of a tent, it must similarly spread under a sheet or mat, domesticated and undomesticated animals, plants and foodstuffs, pigeon coops or rocks. It is the need to define principles of diffusion of impurity that will apply in all physical circumstances that meet the criteria for a tent which leads to the surprising extension of the scriptural “tent” to an abstract halakhic set of terms. Stated otherwise, *the immanence of impurity is at the basis of the abstraction of the “tent.”* The underlying foundation of this process is the view of impurity as a living reality as opposed to an arbitrary fiction.<sup>45</sup>

42 See for example *m. Ed.* 3:1; *m. Ohal.* 1:8; 2:1, 3–4; and many others.

43 A. Goldberg, *Ohalot: Critical Edition with Commentary and Introduction* (Jerusalem: Magnes Press, 1955), 2 (Hebrew). According to Goldberg’s perception, the name of the tractate should have been spelled *Ahilot* rather than *Ohalot*, but accepted conventions are used here.

44 See *b. Pesah.* 50a; *b. Hag.* 11a; 14a; and others.

45 Neusner (*Mishnaic System*, 74) proposed a different reason for the expansion of the concept of “tent.” He focused solely on the minimum dimensions of a tent as determined by halakhah – a cubic handbreadth (see below) – explaining that this measure is based on the assumption that the tent acts “as a surrogate for the body”; in other words, it serves as a receptacle for the invisible entity emanating from the corpse that can be compressed into the limited space of a handbreadth. This depiction suggests a surprising congruence between “soul” and “impurity,” though Neusner states that he avoided positing such an explicit equivalence. He suggests that the tent containing the impurity restores the order that has been broken by death, which cut off and dispersed the life force of the deceased. This assumption is not consistent with the fact that the tent serves as a means of transmitting

## A Tent and a Grave: The Differences

This immanent perception of impurity, which seeks to define natural modes of dissemination, encounters severe difficulties posed by the simple meaning of the biblical text. The description of “tent” impurity in the scripture indicates that it did not extend beyond the bounds of the tent, for only *anyone who is in the tent shall be unclean* (Num 19:14), whereas *in the open*, direct contact is required for impurity to be disseminated (Num 19:16). We learn from this that a person standing outside the tent of a corpse does not become impure; in fact, the tannaim ruled that even one who touches the “tent” from the outside is not defiled.<sup>46</sup> By contrast, Scripture teaches that one who touches a grave from without becomes defiled (Num 19:16). Here too, there is no apparent problem for those who hold that “the corpse does not defile ... it is simply a decree of the Holy One blessed be He.” The assertion of the scriptural text that a grave, unlike a tent or a house, defiles from without is sufficient for them, in the sense of “I have issued a decree.” But the immanent view of impurity cannot be satisfied with the functional distinction between a tent containing a corpse and a grave containing a corpse, in that both are covered structures housing a human body. Why, then, does impurity remain confined within the former but extend beyond the bounds of the latter? The realistic-naturalistic approach to impurity requires that we expand the definition of both tent and grave beyond their individual essence and establish a “natural,” physical distinction between a structure/overhang that contains impurity within (as in the case of a “tent”) and a structure/overhang in which impurity traverses its walls, so to speak, “breaking through” to the outside and defiling even those who touch it from without (as in the case of a “grave”). Here the sages clearly take the second, immanent path and offer an all-encompassing distinction that applies to anything that covers or overhangs, thereby outlining the principles of the spread and flow of impurity.

The most obvious and fundamental technical distinction between dwelling places and burial structures is the presence of an opening. A house by nature is open, whereas a grave is normally closed. Indeed, this is the basic distinction of the tannaim between the legal status of a “tent,” that is, a structure that retains impurity within its confines while its external sides remain pure, and the status of a “grave,” wherein impurity passes through to its outer walls:

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impurity and not as a purifying ritual. Neusner also ignores the spectrum of overhanging objects, most of them not at all similar to a small, closed receptacle that contains and seals off impurity. Countering this approach, see also Milgrom, *Leviticus*, 1008.

46 See the midrash cited below. The exclusion of the “sides” from corpse impurity means that the impurity does not pass through the walls to the outside, as it does in the case of a grave; hence, being under door- or wall-projections (פְּרִיזוֹת) from a tent or house, or even having actual contact with the walls of the house from the outside, does not render a person or object impure. In the case of a tent made of tent-cloths and the like, direct contact from the outside conveys impurity, but for a different reason: the tent cloths themselves absorb impurity and therefore defile those who touch them. See *m. Ohal.* 1:4, and the following notes.

*Whoever enters the tent* (Num 19:14) through its doorway, it [the tent] defiles, but it does not defile from any of its sides if it is open. From here we learn [*a fortiori*] the law of the grave: if a tent – which absorbs impurity – does not defile from any of its sides when it is open, all the more so a grave – which does *not* absorb impurity – does not contaminate from any of its sides if it is open. (*Sifre Num.* 126)<sup>47</sup>

The midrash employs an *a fortiori* argument (קל וחומר) from tent to grave. A tent, made of cloth, is considered a “vessel.” It absorbs impurity and demands the sprinkling of the purification water.<sup>48</sup> A grave, by contrast, is considered “soil,” which is not susceptible to impurity. Hence, once it is evacuated, it does not need sprinkling. From the scriptural phrase *whoever enters the “tent,”* the midrash infers that a person who enters the tent contracts seven-day impurity only by entering through the doorway and not by touching the sides of the tent from the outside.<sup>49</sup> Stated otherwise, if a house has a doorway, the opening confers impurity by overhanging, but its walls do not convey impurity from the outside. The midrash applies the same law to a grave.

This halakhah is further elucidated in a *baraita* cited in the Babylonian Talmud, which teaches that a “sealed house” does contaminate via the sides:

If a house is sealed, it does not render unclean all the space around it, but if the doorframe has been taken down, it *does* render unclean all the space around it.<sup>50</sup>

In other words, a house that has a doorway but that doorway is sealed still has the status of a house with an opening,<sup>51</sup> and in fact conveys impurity directly facing the doorway. But if its doorframe has been broken (that is, the doorposts, the lintel, and the threshold have been removed), it is considered a house without an opening, and hence has the status of a grave, conveying impurity on all sides. Combining the halakhic midrash with the *baraita*, we

47 *Sifre, ibid.* Later in the midrash, the homileticist considers the opposite possibility (או חילוקי): Should *אוי בקבר* in the biblical verse be interpreted as referring also to an open grave, which conveys impurity through contact with any of its sides? And if so, would a tent (whose laws are more stringent) then transmit impurity from its sides? The author ultimately rejects this “alternative,” and returns to the opening passage cited here.

48 See Num 19:18; *Sifre Numbers* 129 (Horowitz ed., 166).

49 The commentators on the *Sifre* pondered this contradiction between doorway and wall, for one who enters the doorway is defiled via an overhanging object, whereas with the outside walls of the house, impurity is imparted through contact. A medieval commentary attributed to R. Abraham ben David of Posquières states that the reference is to being sheltered by the doorway as compared to being sheltered by projections jutting from the walls, or alternatively, to touching the doorway as opposed to touching the walls. R. David Pardo specifies that with regard to an actual tent (the subject of the present midrash) made of linen or leather, for example, which absorb impurity, the intent of the midrash is not to exempt from impurity one who touches the sides, since touching any part of the tent renders one impure, but to exclude one who is under projections from the sides, which do not convey seven-day impurity, as opposed to being under the overhang of the doorway.

50 See *b. B. Bat.* 12a (= *Shab.* 146b).

51 Not only with regard to impurity. See *Baba Batra, ibid.*, where the context is the laws of neighborly relations.

see that for a house that has a doorway, the outer sides are free of impurity, whereas if a house is completely walled off, the sides convey impurity.<sup>52</sup>

As elaborated above, the aforementioned midrash from *Sifre Numbers* employs an *a fortiori* argument (קל וחומר) from tent to grave: even a grave, if it has an opening, does not contaminate whoever touches it from the outside (as opposed to what is implied in v. 16: *And in the open, anyone who touches ... a grave!*). This halakhah is formulated explicitly in the Tosefta:

A grave whose opening has been sealed does not convey impurity on any side. If its doorframe has been taken down and resealed, it contaminates on all sides. If an opening of four handbreadths was broken through it, whether above or below, only the space directly opposite the breach is impure ...<sup>53</sup>

A grave that has an opening or a breach does not contaminate the surrounding area except opposite the opening; this is the case even if it has an opening that was sealed but its doorposts and lintel were not dismantled. However, if the grave is completely sealed, or if the doorframe was disassembled and the entrance walled up, then the grave contaminates from all sides, as set forth in Scripture.

What emerges is that tannaitic halakhah *abandons the biblical distinction* between tent and grave, reshaping it into a new distinction between an open structure and a sealed one. This definition is no longer bound by the original nature of the structure, whether tent/house or grave. With regard to any totally sealed structure – even a house – that contains a corpse, the outer walls transmit impurity, as with a “grave.” By contrast, if we take any structure – even a grave – that has a doorway, its walls are considered pure, as with a “tent.” In other words, the *nominalistic distinction* in the scriptural text between “grave” and “tent,” which centers on the human designation of the structure, is transformed by the tannaim into a *realistic distinction*, whose focus is its external properties. This shift stems expressly from a *realistic perception of impurity*.

## Internal Contradiction in Definition of the Scriptural Tent

The immanent perception of impurity creates further contradictions in our understanding of the verses, which in turn give rise to halakhic constraints. If we view impurity as a substantive entity governed by the laws of nature, this requires us to assume that when the “tent” is a vessel susceptible to impurity,

52 This halakhah also emerges from the Targum Pseudo-Jonathan on Num 19:14, and similarly in *Sifre Zuta* 19:14 (Kahana, *Geniza Fragments*, 219, lines 20–22; Horowitz ed., 309).

53 See *t. Ohal.* 16:14. From *Tosefta: Tohorot* (trans. J. Neusner; New York: Ktav, 1977), 125, revised. See too *Sifre Zuta*, *ibid.*: “Just as with a sealed tent, one who touches any of its sides is rendered impure, so with a (sealed) grave, one who touches any of its sides [is rendered impure]”; in other words, the grave conveys impurity from its sides only if it is totally sealed, with no doorframe at all; this is not the case if it has a sealed doorway.

the impurity of the corpse beneath it attaches to the vessel/“tent” itself and is transferred to the outside; in other words, a “tent” of this type no longer acts as a screen, separating the impurity from its environment and preventing its spread.<sup>54</sup> Indeed, the common feature of all the “tents” enumerated in the Mishnah as screening against impurity is that they do not take on impurity themselves, for example: chests, boxes, and cupboards, which do not absorb impurity by virtue of their size (able to hold a volume of 40 *se’ah*) and form (having a flat base); closely packed cattle; and foods that are not susceptible to impurity.<sup>55</sup> By contrast, the list of “tents” that do not screen against impurity, recorded in the same chapter of the Mishnah, corresponds to the earlier enumeration, with one important difference: everything on this list absorbs impurity.<sup>56</sup> Hence, we see enumerated, *inter alia*, chests, boxes, and cupboards, which absorb impurity due to their size and form (they hold less than 40 *se’ah* and do not have a flat base), along with the carcasses of domesticated or undomesticated animals (impure because they were not ritually slaughtered), and foods that are susceptible to impurity.

This approach produces a conflict between the definition of a “tent” as retaining impurity within, and the ability of the tent itself to absorb impurity. According to the naturalistic approach, a “full” tent, which contains the impurity within its confines and prevents it from spreading outward, cannot be at all susceptible to impurity; for if it were, the impurity would penetrate and pass through it to the outside. The problem is that this naturalistic-realistic conceptual evolution clashes head-on with the scriptural definition of the “tent,” which, according to the simple meaning of the text, both absorbs (Num 19:18) and blocks (Num 19:14–16) impurity! Thus, the Rabbis were forced to exempt the biblical tent composed of tent-cloths from the principle that they themselves had formulated, and to admit that it screened against impurity despite the fact that the tent itself absorbed impurity. This explains a strange anomaly in the laws governing tents: the various types of tent-cloths absorb impurity, and consequently, are listed among the “tents” that do not screen against it:

These give passage to impurity and do not serve as a screen against it: ... a tent-sheet, and a leathern apron, a leathern bed-undercover, a sheet, and matting or a mat that are not laid out tentwise.<sup>57</sup>

54 The same principle is stated expressly in the Mishnah, in the context of a window measuring one handbreadth square which allows the passage of impurity: “This is the general principle: what is pure serves to decrease [the size of the opening], and what is impure does not decrease [it]” (*m. Ohal.* 13:6). Stated otherwise, the impurity, which seeks to “escape” through the window, adheres to the object which is susceptible to impurity and passes, by means of the object, to the other side; but it cannot traverse a pure object, which is like a barrier that reduces the minimum opening through which the impurity can pass.

55 See *m. Ohal.* 8:1.

56 *Ibid.*, 8:3. See Maimonides’ formulation of the principle, paraphrasing *m. Ed.* 1:14 (the subject there is a vessel and not necessarily a tent): “An impure object does not screen [against impurity]” (*Mishneh Torah, Hilkhhot Tum’at Met* 13:4; 15:5; 22:8).

57 See *m. Ohal.* 8:3.

But the moment these tent-cloths are made into a tent, though they continue to absorb impurity (as stated explicitly in the scriptural text), they block impurity from spreading beyond their borders, in stark contrast to all the other objects that absorb impurity:

These give passage to impurity and serve as a screen against it: ... a tent-sheet, and a leathern apron, a leathern bed-undercover, a sheet, and matting or a mat that are laid out tentwise.<sup>58</sup>

What we have before us, then, is a further display of the selfsame phenomenon. Tannaitic halakhah strives persistently for a system of “laws of nature” that formalizes the principles of impurity, even at the price of forced interpretations and halakhic anomalies.

### Principles Governing the Spread of Impurity

Tannaitic halakhah posits distinctly concrete principles with regard to the flow, movement, and spread of impurity.<sup>59</sup> Central aspects of this phenomenon have been briefly described by Neusner, who dated them to the primordial strand of mishnaic halakhah, during the Second Temple period.<sup>60</sup> We will be presenting a brief overview of these principles:

[A space] one handbreadth square and one handbreadth high, in the form of a cube, serves both to give passage to impurity and to act as a screen against impurity.<sup>61</sup>

That is, a space of one cubic handbreadth serves to contain the impurity and block its spread, as in the case of a “tent.” However, in a space that is more confined than one cubic handbreadth, the “impurity breaks through, upward and downward” (טומאה בוקעת ועולה ובוקעת ויורדת);<sup>62</sup> namely, it breaches the upper and lower boundaries partitioning the space and spreads up and down without restraint, rendering everything above and below it unclean, whereas everything to the sides of the space containing the impurity is considered pure.<sup>63</sup>

58 *Ibid.*, 8:1. All the remaining “tents” in this Mishnah that both transmit and screen against impurity do not themselves absorb impurity.

59 According to Maccoby (*Ritual and Morality*, 13–29, esp. 19–20), the Rabbis did not imagine any corporeal impurity; rather, their rulings stemmed from an expansion of the biblical descriptions. In my opinion, however, this was not the case, as I will attempt to demonstrate below. On the almost-tangible nature of corpse impurity in the Torah itself, see below.

60 Neusner, *Mishnaic System*. See the following notes.

61 See *m. Ohal.* 3:7. The rule set forth here underlies a great many laws, as stated by Maimonides: “This is a basic principle regarding the impurity of the dead” (*Hilkhot Tum’at Met* 7:5). See for example the continuation of the present Mishnah; *m. Ohal.* 6:7; 7:1; 12:6–7; 15:1. For Neusner’s explanation of this concept, see n. 45 above.

62 See *m. Ohal.* 6:6 and numerous other examples.

63 See, for example, *ibid.*, 7:2; 15:7.

The portrait of impurity that emerges is of an entity that exists in reality and that requires a certain volume to contain it. Interestingly, this volume does not vary in accordance with the size of the corpse. Any amount that defiles within the tent, be it a portion of a corpse (equivalent in size to an olive's bulk) or an entire corpse, creates a "quantity" of impurity that requires this same minimum space. In the event that the space is smaller, the compressed impurity bursts forth. According to tannaitic halakhah, then, corpse impurity is a mobile, expanding entity whose spread is blocked by the boundaries of the space in which it is contained, as in the scriptural "tent." The ability of these borders to halt the spread of impurity arises, too, from the tendency of impurity to emerge specifically from openings, as we will be describing below.

At the same time, the Rabbis apparently held that a certain degree of compression of corpse impurity created sufficient pressure to push the boundaries of the structure or utensil outward. The image underlying this view can perhaps be reconstructed from the use of the verb *בוקעת*, meaning "to split open" or "burst through." This verb appears in tannaitic literature in the *kal* conjugation (more typical of scriptural language<sup>64</sup>) mostly in the feminine form, and notably, in a phrase that recurs dozens of times: *בוקעת ועולה ויורדת*, "it breaks through, upward and downward." This collocation refers in every instance, without exception, to corpse impurity in the aforementioned circumstances and is found in tannaitic literature only in the Mishnah and Tosefta of *Ohalot*. Hence, it would seem that we are speaking of an ancient, fixed formulation.<sup>65</sup>

This depiction of impurity as "bursting out" also alludes to the typical direction of its movement: when corpse impurity bursts forth from a narrow space, the movement is actually vertical and infinite – down to the uttermost depths (*תהום*), and up to the sky (*רקיע*).<sup>66</sup> Note that this movement is not char-

64 For the tendency of rabbinic language to employ the "heavy" conjugations, see Z. Ben-Hayyim, "Samaritan Tradition and its Links with the Linguistic Tradition of the Dead Sea Scrolls and Tannaitic Language," in *Collected Articles on Tannaitic Language* (ed. M. Bar-Asher; Jerusalem: Hebrew University of Jerusalem, 1972), 1:49–55 (Hebrew). In tannaitic literature, the root *בקע* in the heavy conjugations denotes the splitting of trees (*m. B. Qam.* 3:7; *m. Me'il.* 5:1; *t. Me'il.* 2:2; *t. Kelim Metz'a* 11:2; *Sifre Deuteronomy* 183) or water penetrating the earth (*Mek. on Deut* 32:2). The root *בקע* is found frequently in Scripture, in all conjugations, and denotes a forceful splitting or bursting apart of earth, mountains, rocks, oceans and springs, trees, persons, and so forth (see for example: Gen 7:11; Judg 15:19; Isa 58:8; Amos 1:13; Zech 14:4; Job 26:8).

65 On the phenomenon of ancient, fixed halakhic collocations, see E. Qimron, "Halakhic Terms in the Dead Sea Scrolls and Their Importance to the Study of the History of Halakha," in *The Scrolls of the Judaean Desert: Forty Years of Research* (eds. M. Broshi, S. Japhet, D. Schwarz, and S. Talmon; Jerusalem: The Bialik Institute and The Israel Exploration Society, 1992), 128–38 (Hebrew). Another intriguing occurrence in tannaitic literature of *בקע* in the *kal* conjugation together with the verb *ירד* (descend) can be found in the description of the *shamir*, a legendary creature said to split rocks and iron (see *t. Sotah* 15:1 [Lieberman ed. 3–4, 238]). This resemblance may hint at vestiges of mythological conceptions underlying the penetrative quality of tannaitic impurity.

66 For examples of impurity that ascends "up to the sky" and descends "down to the uttermost depths," see: *m. Ohal.* 9:3–4, 7–8, 12, 14, and others. Regarding the infinitude embodied

acteristic of corpse impurity in other circumstances. When impurity is present in a “tent,” it spreads in all directions; and when it exits through an opening, it is transmitted to the space opposite, as will be described below. The forceful movement upward and downward occurs only in a situation where impurity erupts from a constricted space. This too is a patently “physical” aspect of impurity.

The picturesque definition that the sages attached to this notion of “constriction” is worthy of comment. In the medieval commentaries and codes as well as in current halakhic discourse, the term used to denote corpse impurity in a space too small to contain it (i. e., less than one cubic handbreadth) is *טרימאה רצוצה*, literally “shattered impurity.”<sup>67</sup> However, this term occurs in only two places in all of rabbinic literature, both in *b. Hullin*.<sup>68</sup> It seems that in fact the original term was *רוצצה*, as used in the tannaitic language of Tosefta *Ohalot*. Thus, impurity in a space measuring less than one cubic handbreadth, for example, under the leg of a type of cupboard (*מגדל*) made of wood, or between the leg and the wooden board beneath it,<sup>69</sup> or underneath a pillar in a house, is depicted as *רוצצה*.<sup>70</sup>

The rare occurrences of this term in the Mishnah indicate that it does not denote “shattered” (the standard meaning of the *רוצץ* root) but rather compactness and pressure:

If a person deposited vessels with an *am ha'aretz* ... R. Yosé says: If he gave into his keeping a chest full of clothes – if the chest is tightly packed (*רוצצה*), they [the clothes] become impure with *midras*-impurity; if it was not tightly packed (*רוצצה*), they become impure with *madaf*-impurity ...<sup>71</sup>

The term *רוצצה* refers to a chest with tightly packed clothes that touch the underside of the lid. Thus, when the menstruating wife of the *am ha'aretz* sits on the chest's lid, she presses down on the clothes, rendering them impure via *midras*-impurity (*midras*, lit. “place of pressure,” applies to any article that can be used for sitting or leaning, cf. Lev 15:4–6, 20–23). If the clothes do not touch the lid, however, the impurity transmitted is the less stringent *madaf*-impurity, since the woman did not press on the clothes themselves (the term *madaf* denotes slight or indirect contact, generally when impurity is conveyed

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in the terms “depths” and “sky,” compare: “[If he said,] ‘Lo, I am a Nazir from here to the depths, from the ground to the sky, he is a lifelong Nazir” (*t. Nezirut* 1:4). From *The Tosefta: Nashim* (trans. Neusner; New York: Ktav, 1979), 124, revised.

67 See for example Rashi, *b. Ber.* 19b, s. v. *איני חוצץ*; *b. Sukkah* 4a, s. v., *הכי נרטיין*, and others; Tosafot, *Naz.* 53b, s. v. *חרב הרי*, and others; *Hiddushei Haramban* on *b. B. Bat.* 20a, s. v. *יש לומר*, and others; Maimonides, *Hilkhot Tum'at Met* 7:4, and many others; commentary of R. Ovadia Bartenura on *m. Ed.* 3:1; *m. Ohal.* 3:1, and many others; R. Moshe Feinstein, *Iggerot Moshe, Yoreh Deah* 2, siman 167 s. v. *וברבר אהל*.

68 See *b. Hullin* 71a (in this source the word *רוצצה* is absent in most of the manuscripts), 125b.

69 See S. Lieberman, *Tosefet Rishonim* (4 vol.; Jerusalem: n. p., 1937–39), 3:106 (Hebrew).

70 See *t. Ohal.* 5:5 (Zuckerman ed., 602). For other occurrences, see: *ibid.*, 6:2–3; 7:12, etc. For another description of impurity under a pillar, see *m. Ohal.* 6:6.

71 See *m. Tehar.* 8:2, see also *ibid.* 8.

to objects positioned above the menstruant or others with emissions). Hence it would appear that impurity in a space of less than one cubic handbreadth is depicted by the sages as “cramped” – a compressed and compacted substance of sorts, akin to clothing packed tightly into a chest.<sup>72</sup>

The strangeness of this description is readily apparent, given the original depiction of impurity in Scripture. As we saw earlier, the contrasts between biblical and tannaitic impurity can be identified in virtually every instance where we encounter an unexplained departure from the coherent rabbinic system. In this case, we found that impurity remains contained within any space that measures at least one cubic handbreadth, and that it breaches these boundaries only in spaces smaller than this size and, surprisingly enough, always in a vertical direction. But we learned in the previous section that impurity contained in a completely closed space without a doorway spreads beyond its confines even if the space is much larger than a handbreadth.<sup>73</sup> Moreover, the impurity passes outward to the surroundings, contaminating on all sides, and in fact does not spread in a vertical direction. This anomaly is dictated by the simple meaning of the scriptural passage concerning the external impurity of the *grave*; consequently, it does not comply with the rules of containment and dissemination described above, which the Rabbis formulated on the basis of the laws of *tent* impurity. Stated otherwise, the biblical text in its literal meaning does not allow for a coherent depiction of “natural” impurity. It was the sages who articulated this description, imposed it on the biblical system, and were then compelled to deviate from it so as to reconcile it with certain aspects of its scriptural foundation.

## Impurity and Openings

The concrete nature ascribed to impurity is also apparent in the laws governing its movement between spaces and through openings. The Mishnah states that “to give passage to impurity, an opening of one handbreadth [square suffices].”<sup>74</sup> Hence, a hole of one handbreadth by one handbreadth in a wall between two houses, or between a house and an upper room allows the impu-

72 This was indeed Rashi’s interpretation (in *b. Hul.* 125b s.v. רַיְצִיָּה): “Anything that does not have ample space is termed “cramped” (רַיְצִיָּה). The Arukh (R. Natan ben Yehiel of Rome) also interpreted רַיְצִיָּה in *m. Teharot* as “pressing.” See: A. Kohut, *Arukh Hashalem* (9 vol.; Vienna: Menorah, 1926), 7.296 (Hebrew). See also E. Ben Yehudah, *Complete Dictionary of Ancient and Modern Hebrew* (8 vol.; Jerusalem: T. Yoseloff, 1960), 14.6721, n. 2 (Hebrew), who interpreted the mishnaic term as “pushing, pressing.”

73 See *m. Ohal.* 7:1. Accordingly, whatever overhangs the sealed structure or vessel that contains the impurity, and whoever touches it from outside, becomes impure, as with a grave. And if this structure/vessel is within a house or an outer “tent,” the space of that house or “tent” is defiled.

74 See *m. Ohal.* 3:6. See also *m. Ohal.* chapter 13, though other sizes of openings are also mentioned in this chapter; see below.

urity to pass from one side to another. This statement completes the picture depicted in the previous section. Impurity residing in a sufficiently large space, that is, one cubic handbreadth or more, remains confined within it and does not break its bounds; but if there is an opening, it exits and spreads outward through it.<sup>75</sup> However, it does not pass between spaces via an opening of less than one handbreadth. This description reflects a highly “tangible” conception of impurity: It moves through space, seeks to disseminate itself, and is blocked by barriers. Moreover, it is not scant, fluid, or fast-moving enough to penetrate via a small space.<sup>76</sup>

It should be noted already at this juncture that the laws governing openings also contain distinctly nominalistic elements that sever impurity from any form of “natural” existence and make it contingent on human subjectivity. These laws will be enumerated below, in the section devoted to the abstract aspects of impurity.

Another principle that illustrates the corporeal nature of impurity is as follows: “it is the nature of impurity to exit and not to enter.” This generally refers to a “tent” within a larger “tent,” such as a *מגדל* (a wooden cupboard or cabinet) standing inside a house. In such a case, “if there is impurity within it [i. e., the cupboard], the house also becomes impure; but if there is impurity in the house, what is inside it [the cupboard] remains pure, since it is the nature of impurity to exit and not to enter.”<sup>77</sup> According to this approach, impurity always seeks to spread outward to a larger space, and never presses its way into an inner or lateral space that is smaller in size. Hence, an inner “tent” protects what is inside it from contracting impurity from the outer “tent,” since impurity does not push its way in. But the impurity in the inner tent spreads to the outer tent, even if the inner tent is completely closed. This too is an unquestionably “physical” principle. As we saw above, impurity is normally contained within certain confines; it does not breach these boundaries unless it is “cramped,” that is, too compressed within the space where it resides. But in the case in question, it seems that the tendency of impurity to spread beyond a given space (even if that space is quite big) to a still larger space is strong enough to breach the barriers of the inner “enclosure.”

75 See also the law of a gutter underneath a house, whose opening “drains” the impurity, leaving the house above it pure, *m. Ohal.* 3:7.

76 Neusner (*History*, vol. 22, 72) describes the impurity underlying this halakhah as a “viscous gas.” Milgrom (*Leviticus*, 1008) has commented that this definition is an oxymoron. Rubenstein (“Nominalism,” 171, n. 43) concludes from these halakhic principles that impurity was perceived by the tannaim as bubbles or invisible particles no larger than one cubic handbreadth. Maccoby (*Ritual*, 18–21) compared the movement of impurity to radiation.

77 See *m. Ohal.* 4:1. The same principle is also reflected in *ibid.*, 4:2; 9:9; *t. Ohal.* 10:2–4. The principle that “it is the nature of impurity to exit” is cited in the Tosefta also with reference to the passage of the impurity of a dead fetus from the mother’s womb to the outside; see *t. Ohal.* 8:8 and *m. Ohal.* 7:4. In the printed editions and some textual witnesses, this principle is found in *m. Ohal.* 3:7 as well, but this appears to be a later addition based on Maimonides’ commentary on the Mishnah. See Goldberg, *Ohalot: Critical Edition*, 31–32.

This principle applies also when there are two different paths through which the impurity can pass: from the inner “tent” standing in the doorway of a house to the surrounding house, or from the inner tent via its open door directly to the outside. In this case, the assumption is that the impurity will choose to exit to the outside, which is the larger, more external space, while the house will remain pure, since “it is the nature of impurity to exit and not to enter.” Also in this case, the cupboard does not protect its contents from the impurity in the house, since the impurity seeks to exit the house via the doorway, and in so doing, “penetrates” the cupboard and passes out through it.<sup>78</sup> Here too, we find ourselves face to face with the sheer power of impurity’s impulse toward dissemination, which breaches the bounds of the inner structure that is ordinarily protected against impurity.

### Nominalistic Impurity in Tannaitic Teachings

Alongside the realistic perspective, which was so predominant in shaping the laws of corpse impurity, we also find diametrically opposed halakhic aspects. These do not stem from any reflection of reality; rather, they are the product of subjective human determinations that impose on impurity a “code of conduct,” so to speak. The most notable example of this is the law regarding openings in a house containing a human corpse:

If a corpse lies in a house to which there are many entrances, they are all impure; if one entrance is opened, it alone is impure and all the others are pure. If there was an intention to take out the corpse through [a specific] one of them, or through a window measuring four handbreadths square, this affords protection to all other entrances. The School of Shammai say: “The intention must have been formed before the dying person is dead. The School of Hillel say: [It suffices] even after the person is dead. If an entrance had been blocked up and it was decided to open it, the School of Shammai say: “[It affords protection to all other entrances only] after it has been opened as much as four handbreadths square. The School of Hillel say: [Protection is afforded] as soon as they begin to open it. But they agree that if an opening is made for the first time, the opening must be at least four handbreadths square [before it can afford protection].<sup>79</sup>

The impurity of openings described in this Mishnah applies to persons and vessels located beneath the lintel of the doorway,<sup>80</sup> even when the door is

<sup>78</sup> See *m. Ohal.* 4:3. Compare with the law regarding a beehive situated in a doorway, *ibid.*, 9:10 (end of Mishnah). *t. Ohal.* 5:5 (Zuckerman ed., 602) cites the same laws as *m. Ohal.* chap. 4, but in the case of *m. Ohal.* 4:3, it differs from the ruling in the Mishnah: “[If the cupboard] was standing in the middle of the doorway, opening outward ... [if] impurity is in the house, what is inside it [the cupboard] remains *pure*” (as opposed to the statement of the Mishnah: “... [if] impurity is in the house, what is inside it [the cupboard] is rendered *impure*”). See Lieberman, *Tosefet Rishonim*, 107.

<sup>79</sup> *m. Ohal.* 7:3 (Goldberg ed., 57).

<sup>80</sup> Or any object overhanging the doorway.

closed<sup>81</sup> and the vessels are in fact outside the house. All of the doorways are impure (כולן טמאין), according to Rashi (and subsequently, most of the commentators) “since we do not know through which doorway the corpse will be taken out, and the doorway through which the corpse will eventually be removed is immediately rendered impure.”<sup>82</sup> This assertion – that the movement of impurity in the present is determined by the potential movement of the corpse in the future – is quite astounding, for what is the connection between the spread of the impurity already residing in the house and the path of the corpse’s removal? And even if we assume the existence of such a linkage, how does a future action, or the potential for such an action, affect the course of impurity in the present? Indeed, Rashi included in this selfsame commentary: “There is no reason [for the ruling of this Mishnah]; rather, the laws of impurity were thus transmitted!”<sup>83</sup> The continuation of the Mishnah is even more surprising: The opening of one of the doorways, and even the intention of the living person to remove the dead person through it, is sufficient to cause the impurity to “flow” to this doorway specifically, leaving the others pure from that point on. In other words, not only does a potential future action affect the movement of impurity but man’s subjective intention does so as well, even before any change has taken place in reality. True, the Schools of Shammai and Hillel differed over the power of intention vis-à-vis the flow of impurity: Is intention sufficient to remove impurity that has already contaminated the doorways following the death of the deceased, or does it serve only to prevent the contamination of the doorways *ab initio*, prior to his death?<sup>84</sup> But according to both schools, thoughts have the power to channel impurity, at least initially, and an action that attests to man’s intent, such as the opening of a window, can uproot impurity from one place and steer it to another, even after the fact.<sup>85</sup>

81 According to Rashi’s commentary on *b. Beṣah* 10a, s. v. ולו פתחים הרבה, this refers to a case where all the doorways are open or all are closed. Maimonides (see the following note) understood it as all the entrances being locked.

82 Rashi, *b. Erub.* 68a. See also Rashi, *b. Beṣah* 10a. Maimonides commented that the reason for the impurity is that the house is sealed, hence it has the status of a grave that renders everything surrounding it impure (commentary on the Mishnah there, and *Hilkhot Tum’at Met* 7:2). This commentary is problematic since the Mishnah is dealing with impurity of the doorways specifically and not the surrounding walls. Moreover, the Mishnah goes on to show that purity and impurity are dependent on the doorway through which the corpse is taken out and not on the existence of the doorways per se. Further, a grave with a sealed opening has the status of a house as long as its doorposts have not been dismantled completely. From this, we learn that this house too is not considered like a grave but in fact is akin to a house in which there is impurity directly opposite its doorway while its other sides remain pure.

83 Rashi, *b. Erub.* 68a.

84 For various explanations of the dispute between the School of Hillel and the School of Shammai, see *b. Beṣah* 10a. See also Goldberg’s analysis, *Ohalot*, 56–57.

85 This case represents a departure of sorts from the typical method of the School of Shammai. Research has shown a tendency on the part of that school to delineate halakhic categories in accordance with the status of an actual object or human action, as opposed to the innovative tendency of the School of Hillel to determine halakhic status on the basis of intent.

A further example of nominalistic elements in the laws of openings relates to an opening that transfers impurity from one space to another. As we have seen, impurity requires a passageway of at least one handbreadth square. But chapter 13 of Mishnah *Ohalot* establishes different criteria for an opening that transfers impurity, in addition to the basic measure of a handbreadth. Various types of openings enumerated in the chapter convey impurity in a minimum space of less than, or greater than, a handbreadth. The criterion for determining the minimum space is the purpose of the opening and the intent of the person who constructed it. This principle is formulated in *Sifre Zuta* as follows: “whatever is open for a [specific] purpose is impure”;<sup>86</sup> in other words, the “purpose” imbues the opening with a special importance that is not dependent on the minimum measure of a handbreadth and is also present even in a smaller space. If a window opening is made to let in light, the minimum size sufficient to convey impurity is that of a “hole made by the large drill that lay in the [Temple] chamber” (כמלוא מקרה גדול של לשכה) that is, roughly the size of a coin, which is smaller than a handbreadth.<sup>87</sup> The “residue of the light-opening” (שירי המאור) that is, that part of a window left unblocked when a person planned to block up but did not manage to finish, must be two fingerbreadths high and one thumb-breadth wide (רום אצבעיים על רוחב הגודל), that is, larger than the drill-hole but smaller than a handbreadth, in order to convey impurity. By contrast, the minimum measure (for transmitting impurity) of a window-opening that is not manmade but occurs naturally is the size of a fist, which is greater than a handbreadth.<sup>88</sup>

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See for example L. Ginzberg, *On Jewish Law and Lore* (Philadelphia: Jewish Publication Society, 1962), 118–23; Y. D. Gilat, “Intent and Act in Tannaitic Teaching,” in *Studies in the Development of Halakha* (Ramat Gan: Bar-Ilan University, 1992), 72–83 (Hebrew); repr. from *Sefer Bar Ilan* 4–5 (1967), 104–16 and earlier literature reviewed there. True, Ginzberg (p. 120–21) cites this Mishnah in particular to illustrate the principle in question, since the School of Shammai repudiated the power of intention to remove existing impurity from the other doorways after the fact. At the same time, however, one cannot deny that the notion of impurity as subject to human thought is accepted, according to this Mishnah, by the School of Shammai as well, with the two schools differing only as to its circumstances. It is actually the opinion of the School of Shammai in our Mishnah that is consistent with the principle in *m. Kelim* 25:9 that impurity is not removed by virtue of intent alone; which means, surprisingly enough, that the halakhic ruling in this case is in accordance with that School. See Goldberg’s explanation (*Ohalot*, 56). In any event, this Mishnah in *Kelim* too is based on the assumption that intention generates impurity.

- 86 *Sifre Zuta* 19:15 (Kahana ed., 220; Horowitz ed., 310–11). This statement preceded the reference to *m. Ohal.* 13:1 in the midrash. The rationale that “this is done for a purpose” is also echoed in the dispute between the School of Shammai and the School of Hillel later in the midrash concerning the size of certain openings.
- 87 See *m. Ohal.* 13:1. Minimum sizes are also enumerated in *m. Kelim* 17:12. The size of the hole made by the large drill that lay in the Temple chamber (see also *m. Ohal.* 2:3) is defined in Mishnah *Kelim* there as “like a Roman *dupondius* [coin] or a Neronian *sela* [coin], or like the hole in a yoke.”
- 88 On the dispute of the tannaim regarding the precise measure of the minimum sizes, and the opinion of R. Shimon in this Mishnah (*Ohal.* 13:1), see the discussion of Goldberg, *Ohalot*, 95–96. Several of these definitions and others with regard to openings were enumerated in *Sifre Zuta*, *ibid.*

These distinctions make the passage of impurity contingent on the purpose and intentions of the one who made the window. In other words, if there is an opening of a certain size in the wall, the Mishnah makes the following assumptions: that the impurity will pass through it if it is manmade, but will not pass through this same opening if it occurred naturally; that it will pass through this opening if it was made to let in light, but not if there was an intent to make use of it, i. e., for storing things; that it will pass through the remaining portion of the opening if it was deliberately blocked up by its owner to the present size, but not if he wished to block it completely and, for some reason, was unable to. In the words of A. Goldberg:

The underlying reason appears to be that the minimum opening of a handbreadth for the passage of impurity is not a fixed measure but a scale of importance, and it was left to the sages to determine the smallest measure through which impurity would exit and enter the tent. [emphasis VN]<sup>89</sup>

Stated otherwise, what determines the “flow” of impurity is not its natural qualities or objective reality but the “importance” ascribed to the situation by man. This leads us to conclude that the properties of impurity are seen in this instance as an agreed-upon convention, subject to the ruling of the Rabbis, and not as an element of nature.<sup>90</sup>

To the preceding examples of nominalism must be added the perplexing tannaitic midrash that straddles the boundary between halakhah and aggada, rationalism and fantasy:<sup>91</sup>

“הנוגע במת”: הנוגע במת טמא, אין עצמו שלמת<sup>92</sup> טמא. הנוגע במת טמא, אין בנה שלשונמות טמא. אמרו, בנה שלש(ונמות)<sup>94</sup> משמת<sup>93</sup> כל שהיה עימו בבית היה טמא טומאת שבעה, וכש(חיה) היה טהור<sup>95</sup> לקודש. חזרו ונגעו בו ושימוהו. הרי זה אי: משמיד לא שימוני, אתה טמאת.

*Whoever touches a corpse* (Num 19:11) Whoever touches a corpse is rendered impure, [but] the corpse itself is not impure. Whoever touches a corpse becomes impure, [but] the son of the Shunammite woman is not impure. The Sages said: When the son of the Sh(unammite woman) died, anything that was with him in the house contracted seven-day impurity, and when he (came to life) he was pure to the degree of eating sacrifices. [However, the objects which had been previously in the house with him when

89 Goldberg, 95.

90 On the law governing windows as typical of the nominalistic approach, see Eilberg-Schwartz, *Savage in Judaism*, 213–14.

91 With thanks to my student, Matania Mali, who devoted an original and enlightening discussion to this passage from the *Sifre Zuta* in a paper that he submitted to me.

92 מת עצמו שלמת – In the Horowitz edition of *Sifre Zuta*, based on the Yalqut and *Midrash Hagadol*, this is rendered as עצמו שלמת.

93 משמת in the Kahana edition of *Sifre Zuta*, Geniza; the first *mem* is marked as uncertain. In the Horowitz edition of *Sifre Zuta*, and according to Epstein’s reading of the Geniza passage (Epstein, “Parah,” 61): כשמת.

94 In the Geniza fragment, this was shortened to שלש.

95 היה טהור (“and when he was pure”), but the correct version is as it appears in the *Yalqut* and the *Midrash Hagadol*, as brought in the Horowitz edition: וכשהיה טהור. See Epstein, “Parah,” 61, note on line 29.

he was dead] and [now, following his revival] touched him a second time, defiled him. It is as if he [the boy] says [to these objects]: What made you impure did not render me impure; it was *you* who made me impure.<sup>96</sup>

The midrash makes a startling assertion here: The corpse is not in itself impure, but only renders others impure. This statement is illustrated through the story of the son of the Shunammite woman who was brought back to life after he had died (2 Kgs 4). The midrash declares that when the boy was dead, everything that was with him in the house was rendered impure by his corpse, but when he came back to life, he himself was pure to the highest degree (that is, “pure to the degree of consuming sacrifices”!) and was only rendered impure as a result of contact with persons or vessels that had been contaminated by him while he was dead. This instance falls under the halakhic category of *במשמך לא טימוני, אהה טמאהני*, that is, cases where an object or person (C) is rendered impure through the secondary impurity of another object or person (B) – though he is immune to the primary source of impurity (A) that originally defiled B. In the case in question, the living boy (C) is immune to his own impurity from when he was dead (A), but is susceptible to the impurity of those who were contaminated by him during that time (B).

Other instances of the principle *במשמך לא טימוני* are enumerated one after another in m. *Parah* 8, and in several other tannaitic sources. The above-cited pericope from the *Sifre Zuta* also lists a series of such cases following the matter of the son of the Shunammite. It should be noted that the other examples brought by the *Sifre Zuta* have tannaitic parallels in the Mishnah and Tosefta, which is not the case with regard to the son of the Shunammite. This ruling, as well as the assertion that “the corpse itself is not impure,” is unique to our midrash and lacks any parallel in tannaitic literature.

The abstract halakhic statement that “the corpse itself is not impure” can be interpreted in two ways:<sup>97</sup>

(a) The midrash wishes to underscore that, according to Scripture, only persons and objects are rendered impure by a corpse. Nothing is said of the corpse itself. Consequently, there is no reason to assume that impurity resides in the corpse itself.<sup>98</sup> This acutely paradoxical interpretation lacks any practical ramifications, and its accuracy is not likely to be tested in reality. The state of the corpse itself is not relevant to anyone, for it lacks any conscious-

96 *Sifre Zuta* 15:11 (Horowitz ed., 305; Geniza ed., 215). Rendered here according to the Geniza version, as reconstructed by the author.

97 Matania Mali proposed a similar thesis in his paper (see preceding notes). He based himself on the commentary of Rabbi A. Z. Weiss in *Minḥat Asher: A Selection of Lectures and Discussions on the Book of Numbers* (Jerusalem: Machon Minḥat Asher, 2005), 2.321 (Hebrew).

98 This approach stands in sharp contrast to the prevailing designation of a corpse as *אבי אבות הטומאה* (carrying the highest degree of impurity). But closer scrutiny indicates that this classification does not exist in the world of the sages and is totally absent from the entire corpus of tannaitic and amoraic literature; nor did the ge'onim use this term. It entered common usage beginning with the literature of the Rishonim, though it should be noted that Maimonides does not make even a single reference to it in the *Mishneh Torah*.

ness, and the living beings around it are in any case preoccupied solely with the impurity caused to them by the corpse and not with any impurity of the corpse itself. This question can be tested on the practical level only by means of a halakhic fiction; in other words, only if the corpse comes back to life is it possible to ascertain whether it carries its own inherent impurity. The midrash makes use of the extraordinary biblical tale of revival of the dead to illustrate an abstract principle: the absence of impurity in the corpse itself.

How, then, are we to understand the assertion of the midrash? Can we assume that a source that conveys such stringent impurity to others would itself be totally lacking this essential quality? The answer is: Yes, on condition that we assume that impurity is not a quality in the first place. Those who contract corpse impurity are not rendered impure by reason of the corpse's inherent essence, since such an essence does not exist. They are contaminated as the result of a divine decree, and not due to any circumstances in nature. If this is indeed the intent of the midrash, what we have here is an extreme, albeit unique, nominalistic statement in tannaitic literature.

(b) Alternatively, the midrash may not intend to purge the corpse of impurity per se but rather to teach us that in the unique circumstance where "self-inflicted" impurity is significant – that is, when a dead person is brought back to life – such impurity cannot exist. The essence of the corpse is not retained when it comes back to life, nor can we say that the living person became impure due to contact with the corpse that he himself previously was. After all, he did not touch his own corpse but rather came into being, so to speak, in its place.<sup>99</sup> This interpretation transforms our midrash from an examination of the essence of impurity into a philosophical exercise centered around the essence of the revival of the dead and the relationship between the identities of the dead and of the living in this process.

A further reference to the impurity of the son of the Shunammite woman is found in a story recounted in the Babylonian Talmud concerning questions posed by the people of Alexandria to R. Yehoshua ben Hanania.<sup>100</sup> The questions are classified into four categories: דברי הנדה, דברי הנהרה, דברי בוריה ודברי דברי חכמה, דברי חכמה, דברי הנדה, דברי הנהרה, דברי בוריה ודברי דברי חכמה – matters of wisdom, issues of Aggada, "matters of ignorance," and issues of conduct. The three "matters of ignorance" are – as seen from the context – foolish questions, to wit: "Does the wife of Lot convey impurity? ... Does the son of the Shunammite convey impurity? ... Do the dead in the

99 This was Lieberman's interpretation (see below). S. Lieberman (*Sifre Zuta* [New York: Jewish Theological Seminary, 1968], 32 [Hebrew]) compared the reasoning behind this argument with the approach of R. Yosé in *m. Kelim* 27:9–10. There, the text speaks of a cloth rendered *midras*-impure that turned into something else or that lost its minimum measure for *midras*-impurity, thereby causing it to lose its impure status. According to R. Yosé, it is also not considered impure due to its contact with the previous impure version of itself. Lieberman suggests that in our case R. Yosé would similarly maintain that the person who returned to life does not contract corpse impurity, for he did not have contact with his previous state but "emerged" in its stead.

100 *b. Nid.* 69b–71a.

World to Come require ritual sprinkling [of water mixed with ashes of the red heifer] on the third day and on the seventh, or not?" To the first two questions, R. Yehoshua responds that a pillar of salt does not convey impurity nor does a living person; and to the third, he responds: "When they will come back to life, we will learn the answer to this question."<sup>101</sup>

The question regarding the son of the Shunammite in this source is not identical with the major concern preoccupying the *Sifre Zuta*. R. Yehoshua was not asked, as in the midrash in question, if the son of the Shunammite himself, after being revived by Elisha, carried corpse impurity as a result of his previous state, but, rather, if he conveyed corpse impurity to others. The commentators were divided as to the intent of the questioners. Some interpreted the question as being whether he conveyed impurity while he was dead, while others saw it as whether he conveyed corpse impurity after Elisha brought him back to life.<sup>102</sup> Lieberman held that they were referring to the impurity that he caused by his death, and that R. Yehoshua responded that the son of the Shunammite did not convey impurity even in death, i. e. he did not really die. In Lieberman's view, the midrash in *Sifre Zuta* was aware of the text concerning R. Yehoshua, but differed from his stance. Accordingly, the midrash declares that, in contrast to R. Yehoshua's opinion, the son of the Shunammite conveyed corpse impurity with his death, just as any other dead person would.<sup>103</sup>

The question that is analogous to the key point of the midrashic statement is actually the one pertaining to the dead who will return to life in the World to Come (namely, whether they contracted corpse impurity from themselves), and it is this subject that is being discussed in our midrash with respect to the son of the Shunammite. Hence, Lieberman concludes that the statement of the midrash that "the corpse itself is not impure" is likewise a response to the question of the Alexandrians, and that the meaning of the midrash is as follows: The dead person himself will not be rendered impure when he comes back to life, and will not require sprinkling for purification, since he did not touch his own corpse while dead but instead took its place, in a manner of speaking.<sup>104</sup>

To summarize, this unusual midrash can be understood in two ways: According to one interpretation, it presents an extreme nominalist position that

101 *Ibid.*, 70b. For the meaning of the term רַבֵּי בִּרְיָהּ, see Lieberman, *Sifre Zuta*, 30–31. These questions may be compared to the derisive question addressed to Jesus in Matt. 22:23–33 and parallels; I thank Prof. Daniel R. Schwartz for this remark.

102 See Lieberman's discussion (*ibid.*, 29–32), and what he proposed with respect to the true intent of the questioners.

103 Lieberman (*ibid.*, 32) implies that inherent in this dispute are matters of theology; he is apparently referring to the allusion of the *Me'iri*, which he cited earlier (*ibid.*, 31 and n. 77). The *Me'iri* seems to be saying that those who believe that the son of the Shunammite did not convey impurity upon his death are denying the notion of the resurrection of the dead, for if not, we would have to say that no corpse conveys impurity since they are all destined to return to life in the future.

104 Lieberman, *ibid.*

already existed in the tannaitic period, which implies that impurity lacks any inherent substance and is nothing more than an arbitrary edict. Based on the second interpretation, however, what we have before us is a limited statement that makes use of corpse impurity to examine the philosophical meaning of the notion of revival of the dead. This second interpretation dissociates this midrash from the subject of the present discussion.

Tannaitic halakhah's complex and contradictory perception of impurity is especially conspicuous in situations where two opposing definitions of impurity are woven into one rule. Such is the case in the halakhah discussed above of "shielding" openings from impurity. The Mishnah teaches:

For an olive's bulk from a corpse, an opening [in a room] of one handbreadth [square], and for a corpse, an opening of four handbreadths [square, suffices] to protect other openings from impurity; but to give passage to the impurity, an opening of one handbreadth [square suffices].<sup>105</sup>

According to the Mishnah, the intention to remove a corpse through a particular opening renders the other openings pure, on condition that the measure of the opening designated for the removal is sufficient for the size of the corpse: four handbreadths for an entire corpse, and one handbreadth for an olive's bulk from a corpse. The Mishnah emphasizes that we are speaking not of an opening large enough for the impurity to "escape" (since an opening of one handbreadth is sufficient for this purpose, whether the impurity originated from an entire corpse or an olive's bulk of a corpse) but of an opening actually suited to the removal of the corpse itself. What we have here is a reflection of the nominal principle discussed above: Although the impurity can spread to all the openings and even exit through them, the presumption is that it will accumulate precisely in that place where the corpse will be taken out, according to the plans of the living person and in keeping with the conditions necessary for the removal of the corpse specifically.

At the same time, the realistic principle is patently obvious here in its simplest, most primeval manifestation. Despite the fact that this entire law is based on intangible principles, and that it assumes the movement of impurity based on an intent to take future action, this intention requires realistic circumstances (the size of the opening) to be effective.

Another remarkable synthesis of the two approaches is apparent in the distinction (discussed above) between closed structures (treated as "graves" whose impurity passes to the outside of their walls), and structures with an opening (considered as "tents" whose outside walls are pure; in such a case, there is no impurity on the outside but only directly opposite the doorway). As we saw earlier, the tendency to formulate architectonic principles of impurity that are uniform for all structures – without a functional distinction between houses and graves – stems from a decidedly realistic approach to impurity. This uni-

105 *M. Ohal.* 3:6 (Goldberg ed., 30).

formity is not only *motivated* by a realistic perception; it also *generates* a new picture rooted in reality: Where there is an opening, impurity “flows” to it, leaving the other sides of the structure pure. Where the walls are sealed off, the impurity traverses all of them equally, residing on their external side as well. But we saw earlier that a structure that has a sealed doorway has the same legal status as an open structure. Only a structure whose doorway – the lintel and both doorposts – has been completely dismantled is considered truly sealed. In one fell swoop, this definition severs the realistic branch on which the law of openings rests. It seems that the distinction between a structure that blocks impurity from exiting and a structure that allows it to do so is contingent on the existence not of an actual doorway but of a notion or concept of it.

To these examples, we may add the law of *ממנעמים את הטמא*: objects that “reduce the size of an opening one handbreadth square [so that impurity is not given passage].”<sup>106</sup> This too is a realistic principle which assumes that what is not itself susceptible to impurity serves as a screen against corpse impurity, since the impurity cannot adhere to it. Hence, when such an object is found in a minimum space of one handbreadth, it “reduces” the space, thereby blocking the passage of impurity. One example of “objects that reduce” is the carcass of a clean bird or the carcass of an unclean bird that is not intended to be eaten.<sup>107</sup> The carcass of a bird does not convey food-impurity if its owners did not designate it for human consumption.<sup>108</sup> But the moment it is intended to be eaten, it is susceptible to impurity, and corpse impurity adheres to it and is transmitted via this same handbreadth.<sup>109</sup> Here too, the transmission of corpse impurity is dependent on the intangible thoughts of a person. And here too, obviously “natural” principles (a width of one handbreadth for the passage of impurity, the screen created by anything not susceptible to impurity) merge with far-reaching nominalistic conceptions (intention alters the status of the bird in a window or other opening; based on man’s thoughts alone, the window is considered opened or blocked for purposes of conveying impurity).

## Relationship Between the Two Approaches in Tannaitic Literature

In an influential article based on Y. Silman’s distinction, D. R. Schwartz proposed characterizing Sadducean and Qumranic law as realistic, and rabbinic halakhah in general as nominalistic. In his opinion, this would explain a

106 *M. Ohal.* 13:5–6.

107 *Ibid.*

108 See *m. Tehar.* 1:1, 3. The carcass of an impure bird must also come into contact with any of seven specific liquids in order to be rendered susceptible to impurity; see *m. Ohal.* and *m. Tehar.*, *ibid.* On the process that brings the carcass to this state as typifying the nominalistic approach, see Eilberg-Schwartz, *Savage in Judaism*, 212–13.

109 See *m. Ohal.* 13:6.

number of differences between the law in Qumranic literature and Pharisaic-rabbinic halakhah.<sup>110</sup> Countering this theory, J. L. Rubenstein argued that rabbinic halakhah too is largely naturalistic (while also encompassing some marginal nominalistic phenomena), and offered other explanations for the aforementioned differences. In addition, Rubenstein emphasized the realistic nature of biblical law, arguing that legal “realism” is a necessary feature of a living law that accurately reflects the perception of reality in the society that it serves, whereas nominalism is typical of societies whose legal system has become obsolete, creating disparities with their present values and life circumstances. Consequently, the nominalistic element of the law always postdates the realistic, expanding with the passage of time and changing circumstances. It is thus understandable, in his view, why rabbinic literature – which is more removed in time from its biblical underpinnings – contains more obviously “nominalistic” features than does Qumranic law.<sup>111</sup> Rubenstein did not examine the tannaitic laws of impurity themselves, but he expected that such an analysis would reveal a similar fusion between a naturalistic foundation and a later, nominalistic layer.<sup>112</sup>

The preceding overview does not support Schwartz’s schema, at least with respect to the laws of corpse impurity. Here, tannaitic halakhah embodies a realistic perception coupled with certain “nominalistic” aspects, as Rubenstein theorized.<sup>113</sup> In certain cases, the two underlying principles on the nature of impurity are tightly interwoven into a single halakhic dictum.

110 D. R. Schwartz, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law,” in *The Dead Sea Scrolls: Forty Years of Research* (eds. D. Dimant and U. Rappaport; Jerusalem and Leiden: Magness Press, Yad Izhak Ben-Zvi and Brill, 1992), 229–40. I too have utilized this distinction to indicate the similarity between the Qumranic worldview and the remnants of early halakhah within the tannaitic oeuvre: V. Noam, “Traces of Sectarian Halakha in the Rabbinic World,” in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls, Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, January 7–9, 2003* (eds. S. D. Fraade, A. Shemesh, and R. A. Clements; STDJ 62; Leiden: Brill, 2006), 67–85, esp. 82–84.

111 Rubenstein (“Nominalism and Realism”) refers to M. Silberg, who identified rabbinic halakhah largely with naturalism, and to Silman, who pointed to the tension within halakhah between the two elements. Silberg, Silman, Schwartz, and Rubenstein treated the classification of rabbinic halakhah as a whole, but did not devote study to the shaping of impurity per se. See M. Silberg, “The Order of Holy Things as a Legal Entity,” *Sinai* 52 (1962): 8–18 (Hebrew).

112 *Ibid.*, 183.

113 Eilberg-Schwartz (*Savage*, 195–216, esp. 212–16) also discusses the complexity of the rabbinic view of impurity, but emphasizes primarily the element of human intention. The realistic nature of tannaitic impurity stems, in his view, from the very presence of biblical sources of impurity within the tannaitic system. On this point, he does not seem to be aware of the tremendous realistic development that tannaitic legislation generated in comparison with Scripture. The tension between these two facets of tannaitic halakhah is ascribed by Eilberg-Schwartz – based on an all-encompassing symbolistic approach – to the tension between two sociological features of the society in question: social standing acquired by birth and bloodlines as opposed to status dependent on achievement. The lack

The evolutionary narrative proposed by Rubenstein is also consistent with the portrait that emerges from the laws of overhanging objects. Accordingly, the natural, immanent conception of impurity is at the foundation of the halakhic system as a whole and determines its basic definitions, among them the dissociation of the concept of “tent” from its literal meaning; the unifying definition of the laws of grave and house; and the principles of containment and dissemination of impurity (“a cubic handbreadth,” “cramped impurity,” “impurity that breaks through,” the passage of impurity through “an opening one handbreadth square,” “the nature of impurity is to exit,” and the like). By contrast, the nominalistic elements, as bold and far-reaching as they are, are much less prevalent and their role in the system is more secondary. They create exceptions, serving as a kind of “footnotes” appended to the fundamental principles of the realistic approach. To illustrate:

- Impurity “flows” to all openings. This is a basic statement of concrete, immanent impurity. True, human intention is likely to divert it to a particular opening, but this is a secondary option grafted onto the “realistic” original situation.
- Impurity passes from one space to another by way of holes that measure at least one handbreadth square. This is a realistic depiction. In certain cases, man’s intentions (designating an opening for a special purpose) can override this minimum measure. Here too, we are speaking of a minor exception to a realism-based rule.
- Objects that are not susceptible to impurity “block” its movement. This is a realistic principle. At the same time, however, certain objects can lose this “immunity” as a result of human intention. This too is a nominalistic secondary layer added onto realistic foundations.
- An opening provides an “outlet” for impurity, leaving the remainder of the outer walls pure. This is a characteristic of realistic-ontological impurity. The inclusion of the walled-off “virtual doorway” in the definition of openings that serve as conduits for impurity is a type of nominalistic “footnote.”

This amalgam of a naturalistic foundation and nominalistic exceptions fulfills the aforementioned “expectation” of Rubenstein. But in other ways, his hypothesis is not substantiated. Rubenstein proposed a model of a manifestly realistic biblical foundation. In his view, both later systems of religious legislation – the priestly and the rabbinic – took on more and more “nominalistic”

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of a distinction in this chapter between moral and ritual impurity, on the one hand, and various types of intention, on the other, is somewhat problematic. Moreover, it should be noted that the sages did not add to the sources of impurity other bodily secretions not referred to in the Torah, such as saliva, tears, or urine. These were considered by the tannaim as purveyors of other forms of impurity alone. Hence one should not draw any conclusion from them regarding a change in definition of the sources of bodily impurity on the part of the tannaim (*ibid.*, 214).

elements the further removed they became from this foundation in their circumstances and perspective.<sup>114</sup>

But our findings diverge from this model in two respects: (a) The “realistic” strand of impurity, too, is a distinctly post-biblical creation; (b) The incremental path from realism to nominalism is not manifest to the same degree in all Jewish corpora in accordance with their historical and cultural distance from the biblical foundation, as Rubenstein posited.

## Biblical Roots of the Two Approaches

Most scholars see the element of thought and intention in the laws of purity as a Pharisaic-rabbinic innovation utterly foreign to the nature of biblical impurity.<sup>115</sup> By contrast, H. K. Harrington sought to demonstrate that rabbinic halakhah as a whole, and the addition of human intent to the realm of impurity in this context, does not constitute a new interpretation but a continuation and expansion of biblical trends.<sup>116</sup> As proof, she cited scriptural texts that distinguish between unintentional and intentional transgressors (Lev 15:27–31); offerings brought for unintentional sins (Lev 4 and elsewhere); and the law regarding one who kills another without intent (Exod 21; Num 35; Deut 19).<sup>117</sup> Countering this argument, we must emphasize the distinction between the concepts of intentional and unintentional sin (which are indeed encountered in Scripture) and neutral human intent that alters the status or essence of an element in reality, or the applicability of a halakhic or legal definition to it (which is the “thought” or “intention” that comes into play in the tannaitic laws of impurity). This type of “thought” does not exist at all in the pentateuchal portions on unintentional killing and the relevant offerings. Granted, Harrington also commented on the fact that, based on the Pentateuch itself, separation of tithes is sufficient to sanctify them (Deut 26:12–14), and dedication of an animal for a sin-offering sanctifies it even before it is slaughtered

114 Compare also with Neusner (*Idea of Purity*, 106), who describes an evolutionary continuum of approaches within tannaitic literature over the generations: from the identification of moral sin as underpinning impurity (or its allegorical interpretation) to the stripping of all meaning from the concept of impurity.

115 Neusner (*History*, 182, 186–89) attributes this innovation to the generation of Yavneh. See also Sanders (*Jewish Law*, 186). Howard Eilberg-Schwartz (*The Human Will in Judaism: The Mishna's Philosophy of Intention* [BJS 103; Atlanta: Scholars Press, 1986], 101–07) emphasizes the novelty of the tannaitic notion that man's definition of an object affects its essential nature. At the same time, he holds that the origins of this concept can be found in the Creation narrative and the naming of the animals by man; see also *idem*, *Savage*, 195–216. For the naturalistic nature of biblical impurity, see: *ibid.*, 204. See also Rubenstein's approach, presented above.

116 Harrington, *Impurity Systems*, 156–59.

117 On unintentional sin in Scripture and tannaitic halakhah, see recently A. Edrei's analysis, “Culpability of the Unwilling Transgressor.”

(Lev 6:18). These last two examples, which are not expressly stated in Scripture but are implied by the text, can indeed be interpreted as the earliest signs of “intent” in the second sense.

To these should be added a more closely related example, cited by Schwartz, from the realm of impurity itself. Scripture commands that an afflicted house be cleared “before the priest enters to examine the affliction so that nothing in the house becomes impure” (Lev 14:36). What this means is that before the priest officially declares the house impure, its contents are not contaminated, despite the fact that the plague is already visible in the house. In other words, it is not the affliction that defiles but the determination of the priest, the moment it is stated.<sup>118</sup> Nonetheless, it should be noted that apart from these vague allusions, we are not aware of any biblical parallel to the far-reaching tannaitic “doctrine of intent,” or any other hint of nominalistic elements in any aspect of the laws of purity and impurity, and certainly not in the context of corpse impurity.

Can we then say that Scripture reflects a “realistic” perception of impurity, in keeping with Rubenstein’s approach? This too is not completely accurate. To be sure, the text implies the existence of an actual entity that spreads through the tent, halts at its borders, enters open vessels, and contaminates on contact; yet understandably absent from the text is the rabbinic effort to establish a coherent system of “natural laws of impurity.” Such an effort would require clear and consistent generalizations that define all overhanging objects that convey impurity to those beneath them in a shared space with a corpse, beyond the casuistic reference to a “tent.” It would also dictate a “natural” as opposed to functional distinction between “tent” and “grave.” The legal status of the biblical tent-cloths, which absorb impurity yet prevent it from “breaking out” of the tent would not be possible within a system of “logical” rules that formalizes the laws of impurity as a natural phenomenon. Indeed, as we have seen, it is these aspects of the scriptural text that create the incongruities and internal contradictions in the tannaitic system. In other words, the “realistic” tannaitic system does *not* stem from the text to a far greater extent than the “nominalistic” rulings do.

## The Chronological Relationship between the Two Perceptions

It would appear, then, that both tannaitic approaches are artificial constructs that do not stem directly from Scripture. Nevertheless, the realistic one is obviously closer to biblical principles, and appears to be the earlier and more basic of the two within the tannaitic structure. Can we thus determine that the realistic strand is a product of earlier generations, while the introduction of intent into the halakhic system of impurity is a late tannaitic

<sup>118</sup> Schwartz, “Law and Truth,” 236–37, n. 22.

development?<sup>119</sup> In addition to the caution that must normally be exercised in any attempt to date tannaitic material, it should be stated at the outset that the major bodies of halakhah that treat corpse impurity are especially hard to segment into clear and distinct layers.<sup>120</sup> The tractate *Ohalot* is replete with unattributed material, in particular with references to basic principles of corpse impurity. The majority of halakhic principles discussed above are embedded in the Mishnah and the Tosefta without citing their source.<sup>121</sup>

- 119 Neusner (*History*, 182, 186–89) dated the appearance of the element of intent as late as the generation of Yavneh. Harrington agreed with him on this point (*Impurity Systems*, 158). Earlier scholars placed the addition of this element during the time of the School of Hillel; see Ginzberg, *Law and Lore*, 36–39; Gilat, “Intent and Act.”
- 120 With regard to *m. Ohal.*, two comprehensive attempts have been made to achieve such a stratification. A. Goldberg defined one of the major goals of his commentary as follows: “To elucidate the ‘layers’ of the Mishnah, inasmuch as this is possible, and to indicate ancient and later *mishnayot* that were placed together. This task is of course very difficult, and easily invites failure ...” (*Ohalot*, introduction, xi). He concluded that “virtually the entire tractate is the teachings of R. Akiva as recorded by one (or more) of his principal students ...” (*ibid.*, xv). Nonetheless, he comments that very ancient materials are embedded in the tractate, “adapted in accordance with the school of R. Akiva, and recorded by his principal students” (*ibid.*, xii; see also ix). J. N. Epstein, in his *Introduction to Tannaitic Literature: Mishna, Tosefta and Halakhic Midrashim* (Jerusalem and Tel Aviv: Magnes and Dvir, 1957), 83 (Hebrew), already pointed to numerous laws attributed to R. Akiva in *m. Ohal.*, though commenting that the majority of the tractate is from the teachings of R. Yosé (*ibid.*, 137–38; see also 89). Goldberg (*Ohalot*, xi) took issue with this attribution, offering a detailed list that ascribed each Mishnah to one of R. Akiva’s students on the basis of other tannaitic sources (*ibid.*, xi–xv). But ultimately, these distinctions do not afford the scholar any clues as to either the source or the earliest appearance of a particular law nor the “stratification,” interrelatedness, or development of halakhic materials in the tractate. The latest attempt is that of Neusner, as part of his overall endeavor to break down the entire Mishnah into distinct layers. Neusner devoted twenty-two volumes to the mishnaic order of *Teharot* as part of his series on the history of mishnaic law. The series offers a translation and interpretation of the Mishnah coupled with an attempt to identify distinct historical layers and to present the “philosophy” of the Mishnah based on its amplification of Scripture (*History of the Mishnaic Law of Purities*). See also Neusner, *Purity in Rabbinic Judaism*; *idem*, *Early Rabbinic Judaism: Historical Studies in Religion, Literature and Art* (SJLA 13; Leiden: Brill, 1975). This ambitious undertaking has aroused fierce criticism on various grounds. The core points of contention have been summed up rather forcefully by Sanders, *Jewish Law*, 309–31; see also his references to earlier, partial critiques. See also S. J. D. Cohen, “Jacob Neusner, Mishnah, and Counter-Rabbinics: A Review Essay,” *Conservative Judaism* 37 (1983): 48–63; S. D. Fraade, “Interpreting Midrash I: Midrash and the History of Judaism,” *Prooftexts* 7 (1987): 179–94. The problematic nature of Neusner’s stratification is illustrated in the present case as well: There is no apparent basis for dating the notion of intention in the laws of *Ohalot* as late as the generation of Yavneh, since it is recorded in the disputes between the Schools of Shammai and Hillel, as we shall see below.
- 121 The entire first chapter of *Mishnah Ohalot*, which includes such basic principles of corpse impurity as the chain of contacts that defile, the definition of death, and the enumeration of human limbs, is unattributed, apart from one mention of an opinion of R. Akiva. The minimum measures of parts of a corpse that are sufficient to convey impurity are also presented without sources (*ibid.*, 2:1, 3, 5). The names of sages of various generations, from the Schools of Hillel and Shammai to the generation of Yavneh and up to R. Akiva and his students, are mentioned in chapters two and three only in the context of disputes around

Even in places where a sage (such as a disciple of R. Akiva) is referred to by name, it is difficult to discern whether the text is an innovation of his or instead ancient principles transmitted by him, and whether the opinion of the *tanna qamma* that precedes his words is the view of contemporary sages or earlier material that this sage is responding to. For this reason, we have refrained until now from attempting to date, in either relative or absolute terms, the halakhic principles enunciated above. Even so, it is possible at times to identify the degree of antiquity of certain halakhic statements, whether on the basis of a parallel Second Temple text,<sup>122</sup> an ancient phrase or wording,<sup>123</sup> or the fact that they were attributed to earlier sages or served as a basis for their words.<sup>124</sup>

As we saw above, the Schools of Shammai and Hillel were divided over the import of intention in the removal of a corpse through a particular opening, specifically whether intent is sufficient to eliminate impurity from the other openings only from the outset or also retroactively. But we learned that according to both schools, intention has the power to channel impurity, at least to begin with, and that an action that attests to human intent, such as opening a window, can uproot impurity from one place and “steer” it to another even after the fact.<sup>125</sup> We saw that the schools also differed over the

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secondary issues arising from these basic principles (the combining of parts of different corpses to form one minimum quantity; the blood of a child that is less than the minimum quantity; the history and state of the corpse, such as how much has decomposed to worms or burnt to ashes; the amount of bone missing from a corpse that is sufficient to exclude it from the status of tent impurity; the minimum amount with regard to a bone that is divided in two or dust from a decomposed corpse that is dispersed, and so forth). The fundamental principle that “[A space] one handbreadth square and one handbreadth high, in the form of a cube, gives passage to impurity,” and the example given to illustrate it, are unattributed (*ibid.*, 3:7). The principle of the flow of impurity (“it is the nature of impurity to exit and not to enter”) is presented anonymously in chapter four, with the exception of the opinion of R. Yosé on one detail (the wooden cupboard). The bulk of chapter eight as well, which deals with the rules of overhanging objects, is unattributed. The first thirteen *mishnayot* of chapter nine, which deal with the laws governing a beehive, are a series of anonymous laws.

- 122 For an examination of the antiquity of tannaitic laws based on parallel or conflicting material in Qumran literature, see for example Noam, “Qumran and the Rabbis”; *eadem*, “Corpse-Blood Impurity: A Lost Biblical Reading?,” *JBL* 128 (2009): 243–51.
- 123 See for example our discussion above on the phrase “impurity breaks through upward and breaks through downward,” n. 62, above.
- 124 For the identification of ancient material in the Mishnah, see for example Epstein, *Introduction to Tannaitic Literature*, 18–58. A discussion of the broader question of the sources of Rabbis’ teachings, and the extent of the ancient materials embedded in them, is beyond the purview of this article. For a review of the research on this subject, see recently I. Rosen-Zvi, *The Rite That Was Not* (Jerusalem: Magnes, 2008), 161–64 (Hebrew).
- 125 In the opinion of several scholars, the two schools were divided over the expressly stated halakhah that preceded them, which is referenced in the unattributed opening section of the Mishnah, since they differed over the interpretation of the verb חָשַׁב (intended) which appears at the beginning of the Mishnah. See Ginzberg, *Law and Lore*, 120, 251–53, nn. 24, 31; Goldberg, *Ohalot*, 56. If this analysis is correct, what we have before us is an undeni-

minimum opening required for a sealed window to protect other openings from defilement. This extreme abstraction of impurity, which divorces it entirely from any laws of nature and ties it to human consciousness, is not a later halakhic development but in fact an ancient guiding principle that preceded the Schools of Shammai and of Hillel! Similarly, the two schools were divided as to whether the minimum size of an opening made in a wall for a rod, a weaver's staff, or a lamp was a handbreadth or a special measure that characterized openings made "for a specific purpose," meaning that impurity would pass through it even if it were smaller.<sup>126</sup>

In addition, both schools addressed the question of whether the holes of a grating or lattice-work (הסריגות והרפפות) covering a window combine to make up the minimum size of a drill-hole (מליא מקרה) through which impurity passes in cases where the window was designated by man for a specific purpose.<sup>127</sup> From this we learn that the "nominalistic" principle, which makes the passage of impurity contingent on the purpose of the holes, preceded the dispute between the two schools and should be seen as an ancient guiding principle from the Second Temple era.

It emerges from all the above that the notion of conditioning impurity on human thought and intent originated at a very early phase of the tannaitic period, at the latest in the final century of the Temple's existence. If we assume that the core "realistic" system – that is, all the rules governing the spread and "sheltering" of impurity – predated this innovation and laid the groundwork for it, then these laws must be attributed to the ancient traditions that served as a springboard for the growth of Second Temple halakhah, during – and perhaps before – the time of the earliest sages known to us. In such a case, we would expect to encounter these "realistic" principles in Second Temple literature as well.

## Nominalism and Realism in Second Temple Literature

Let us now return to the theory of D. R. Schwartz. Is the "realistic" system of impurity in fact typical of Qumranic halakhah? What we find is that just as the "nominalistic" label does not fit rabbinic halakhah in the context of our discussion, so too the "realistic" designation is not suited, in this instance, to Qumranic halakhah. Though the Qumranic texts dealing with corpse impurity also contain innovations in relation to the scriptural text, we have found no attempt to create a well-ordered "economy of impurity" nor to define the spaces that contain impurity or the circumstances of its spread. Apart from

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ably nominalistic perception of impurity, which preceded both schools and should therefore be dated to the period of the *zugot* or shortly thereafter.

126 See *m. Ohal.* 13:4; *Sifre Zuta* 19:15 (Kahana ed., 221; Horowitz ed., 311). On the nature of these objects, see the commentators on the Mishnah *Ohal. op. cit.*

127 See *m. Ohal.* 13:1.

some moderate augmentations, such as the inevitable extrapolation from tent to house and the rule of a woman carrying a dead fetus, Qumran literature retains the scriptural definitions of contact and tent.<sup>128</sup> There is no vestige of such concepts in either Philo or Josephus, and the “nominalistic” rabbinic element of the impact of intent on impurity is obviously not discernible in Second Temple literature.<sup>129</sup> Thus the realistic conceptualization of corpse impurity, like its nominalistic aspects, is characteristic of the tannaitic system alone, and neither of these developmental trends has a known parallel in the Second Temple era. At the same time, there is no basis for portraying these sophisticated halakhic systems as the innovations of later generations of tannaim. On the contrary: as shown above, both developmental trends are documented in the most ancient strata of tannaitic literature.

## Conclusion

We began with the question: Is tannaitic impurity an ontic essence, a realistic force of nature, or an abstract formalistic structure devoid of any real existence? Though we can now offer a clear response to this question, the picture remains complex.

The essential structures of tannaitic halakhah are grounded in a natural, immanent perception of impurity. Moreover, this approach gave rise to an entire system, intricate and coherent, of “natural laws of impurity.” Despite the fact that this attempt at conceptualization was based on elemental biblical characteristics of impurity, the effort to combine these features into a sophisticated, logical, and coherent system of “laws of impurity” ultimately strayed far afield of biblical law, at times even spawning internal contradictions. Yet this tannaitic concretization of impurity lacks any connection with a demonic universe. The tannaitic sources paint a picture of an inorganic, disinterested impurity that functions by virtue of mechanical-physical “laws of nature.” This

128 Corpse impurity is discussed in Qumranic literature, primarily in a rather lengthy section of the *Temple Scroll* (11QT<sup>a</sup> 48:10–14; 49:5–50:19, together with a lone halakhah, 45:17). In addition, several laws are referred to in CD 12:15–18, one law in *MMT* 2:72–74, and a brief reference in the *War Scroll* (1QM 9:7–9) and in a truncated fragment dealing with the ability of oil to cause impurity (4Q513 13 3–6). For the relationship of these laws to the biblical source, see Yadin, *Temple Scroll* 1:321–38; Harrington, *Impurity Systems*; L. H. Schiffman, “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* (ed. L. H. Schiffman; JSPSup 8, JSOT/ASOR Monograph Series 2; Sheffield: JSOT Press, 1990), 135–56; J. Milgrom, “Deviations from Scripture in the Purity Laws of the Temple Scroll,” in *Jewish Civilization in the Hellenistic-Roman Period* (ed. S. Talmon; JSPSup 10; Sheffield: Sheffield Academic Press, 1991), 159–67; Noam, “Qumran and the Rabbis.”

129 Eilberg-Schwartz (*Savage*, 211) attributes to the Qumran sect a perception of impurity as being dependent on human choice. However, his examples relate to sin impurity and not to ritual impurity that applies to a neutral reality on the basis of intent. On the distinction between ritual impurity and moral impurity, see Klawans, *Impurity and Sin*.

impurity is free of any trace of threat or malice, just as these are absent from the laws of gravity, for example. Its presence, though neutral in and of itself, is liable to cause damage in specific contexts, just as the laws of gravity might do under certain circumstances. In this sense, tannaitic culture continued along the same biblical path that many scholars identified with a deliberate reduction of primordial impurity.<sup>130</sup> This synthesis of seemingly contradictory approaches – expansion and immanence of impurity in reality, coupled with total obliteration of its spiritual features – poses a challenge to the traditional anthropological model. That model draws a connection between a naturalistic perception of impurity and threatening metaphysical images of it, associating the eradication of demonic fears with the “symbolification”-to-the-point-of-extinction of impurity.<sup>131</sup> In the case in point, it is actually the manifestations of impurity, which define it as a force of nature subject to fixed laws, that are the most sophisticated means of cleansing it of all threat or mystery.

But this is not the complete picture. Layered onto this system, as a secondary stratum of sorts comprising exceptions and “addenda,” is a more subtle halakhic tapestry woven from a diametrically opposed perception. This view subjects the concept of impurity to human awareness and intention, severing it from reality and, in so doing, also stripping it of its “natural” substance. It emerges that the second of the two layers already predates the Schools of Shammai and Hillel; in other words, we are speaking of an intellectual and legal development of no later than the first century B.C.E. Hence, we find that the complex system that set the contours of corporeal impurity belongs to even earlier inherited material.

Surprisingly, the intense religio-legal creativity that produced this complex construct appears to have taken place solely within a specific circle of Second Temple-era Jewish society. Both facets of this rich yet ambivalent halakhic fabric were ultimately bequeathed to tannaitic literature.

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130 See the bibliography on biblical impurity at the beginning of the present article (nn. 1–4, above). For this line of thought, see primarily the descriptions of Y. Kaufmann, *Toldot ha-Emunah*, and J. Milgrom, *Leviticus*.

131 See Douglas, *Purity and Danger*, 7–28. Despite Douglas’s criticism of the approaches described there, it seems that she does not take issue with this binary picture itself but with the moral judgment applied to both these extremes and with the tendency to depict them in evolutionary terms.