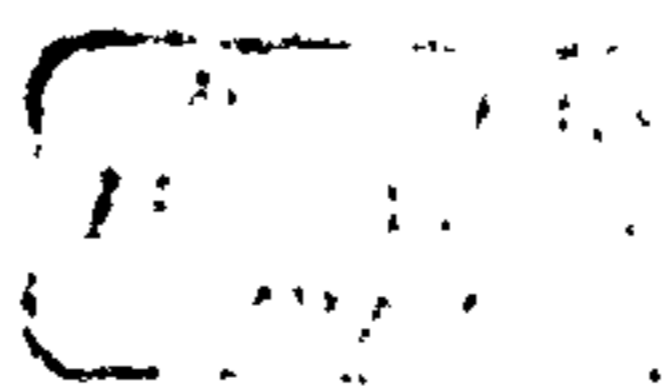


**An Analysis of the Sunni Islamic Concept of
Ritual Pollution
in Light of Previous Research into Pollution Ideas**

By Richard Gauvain

A Ph.D. Thesis

Submitted to the Divinity Faculty of the University of Glasgow, March 2002



Para Soraya

¿Cómo me has aguantado!?

With love and thanks to Christopher and Elizabeth,

Lloyd, Peter, Ian, and Professor Robert Carroll

(and you won't find a greater confusion of categories than that!)

CONTENTS

Introduction.....3

Part I A Different Kind of Pollution System

1. The Problems with Ritual Pollution.....22

2. The Problems with *Najāsah*..... 32

3. A Survey of Past Approaches.....48

4. An Overview of Sunni Islam's Pollution System.....71

5. A Different Kind of Pollution System.....106

VOL. II Part II The Rules for *Najāsah* SUNNI ISLAM'S RITUAL POLLUTION LAWS

6. *Khabath* Impurity.....129

6.1. *Carrion*.....131

6.2. *Animal Kingdom*.....139

6.3. *Blood*.....153

6.4. *Urine and Excrement*.....155

6.5. *Semen*.....162

6.6. "*Khamr*".....165

Excursus A *Tahārah* and the Fear of Death.....169

7. *Hadath* Impurity.....172

7.1. Minor *Hadath*.....172

7.1.A. *The Emission of Impure Bodily Emissions*..... 173

Excursus B

The Difference Between the Schools on the Purposes of the Purifications.....182

7.1.B. *Sleep*..... 185

Excursus C The Loss of Physical Control as a Factor in *Tahārah*.....187

7.1.C. *Touching Women*.....190

7.1.D. *Touching the Genitals*.....193

7.1.E. *Laughter During Prayer*..... 196

7.2. Major *Hadath*.....198

7.2.A. *Sexual Impurity*.....198

7.2.A.i. *Entry into the Mosque*.....199

7.2.A.ii. *The Causes of *Janābah**.....200

7.2.B. *Menstruation/Post-Partum impurity and Prolonged Vaginal
Bleeding/Leuchorrhoea*.....205

7.3 Conclusions.....209

Part III The Functions of *Najasah*

8. Non-Muslims.....215

9. Women.....232

10. Towards a Religio-Moral Interpretation of *Najāсах*.....253

Conclusion.....268

Bibliography.....281

INTRODUCTION

“Shallow are the souls who have forgotten how to shudder” Leon Kass¹

This thesis is intended to introduce readers who are more familiar with the study of Islam than social anthropology to the scholarly debate on “ritual pollution”.² Indeed, it is only after thoroughly describing past attitudes and approaches to this subject, that anything is said about Sunni Islam’s ritual pollution laws. The background is important; an outline of these laws is no small task, and long overdue, but it is only when they are placed in the context of past research into pollution ideas that we may fully appreciate how unusual they are. As ritual pollution and purity are relatively unknown concepts to most people in Europe and America today, and were rejected by traditional Christian authorities at an early stage,³ I should, before going any further, quickly define what is meant by these terms.

Depending upon where he or she lives, their gender, beliefs, and social status, a person may become ritually impure through any number of biological acts, behaviours or transgressions. Hindus, Jains, numerous African, South American, Native American, and Eskimo tribes, Zoroastrians, Jews, and Muslims, all avoid certain things (excreta, animals, plants, organisms, even words⁴) and/or people they consider impure, and also see themselves – at various moments of their day or lives – to have been rendered impure. In particular, impurity is attached to bodily emissions (urine, excrement, blood, menstrual blood, sweat, saliva, and so

¹ *New Republic* 1997:15 (cited in *Philosophy Now*, 29 (2000), 31)

² During the first part of this study, I have used two terms – “impurity” and “pollution” – interchangeably. Although its meaning is problematic to define (J. Goody “Religion and Ritual: The Definitional Problem in the *British Journal of Sociology* 12 (1961) 142-164), I have normally prefaced either term with “ritual” (e.g. “ritual impurity”, “ritual pollution”), so as to differentiate between actions of pollution avoidance that follow a strict (i.e. ritual) pattern, such as we find in Muslim cultures, and less defined actions of pollution avoidance, such as characterise secular cultures today.

³ Although one finds plenty of related ideas in Christian history, see fn.56.

⁴ In sixteenth century Augsburg, “the tanners were so honourable and touchy that they refused even to speak the word ‘skinner’”, K. Stuart *Defiled Trades and Social Outcasts* (1999, Cambridge, Cambridge University Press) p.46.

on), and the acts of emitting them. An impure person believes him or herself to have been affected or possessed by a malevolent and invasive force. In Zoroastrian and countless tribal cultures, this force is demonic.⁵ Jacob Milgrom describes Biblical impurity as “an aerial miasma”, or “gaseous substance”, which enters a believer’s body through sexual intercourse and other physical acts.⁶ For Hindus, ritual impurity is both spiritual and bodily. When it is spiritual, evil (“*dosha*” or “*papa*”) “a morbid and sticky substance” is introduced into the body of the believer.⁷ Bodily pollution, in contrast, is created by a variety of prosaic physical acts. During these, “foul vapours” accumulate in the mouth rendering saliva polluting and needing several rinses to dispel. As the quantity of vapour depends upon the type of act, the number of rinses varies and may be anywhere from four (following urination) to twenty-four (following a funeral).⁸

When impure, an individual changes state.⁹ Impurity has been added to his system; thus, he is now different from (and often thought dangerous to) anyone else he comes into contact with. In particular, he should avoid close contact with religious places (where impurity must not be allowed to enter), and religious personnel who enjoy regular access to such places. To introduce impurity into a sacred area will aggravate and even harm the deity or deities dwelling therein. In Biblical religion, Yahweh resides within the Temple, and the Biblical pollution code is constructed to protect its sanctity. If it is polluted, Yahweh will depart leading to catastrophic consequences for Israel.¹⁰ In Zoroastrianism the earth itself is seen as

⁵ See J. Choksy Purity and Pollution in Zoroastrianism: Triumph Over Evil (1989, Austin, University of Texas Press) Introduction, and ch. 1.3.

⁶ J. Milgrom “Israel’s Sanctuary: The Priestly Picture of Dorian Gray” in *RB*, 83 (1976) 390-399.

⁷ The five main sources of sin pollution being: 1) to kill a Brahmin 2) abortion 3) drinking alcohol 4) stealing, and 5) adultery, but there are many others. See under “Sin” in Benjamin Walker’s Hindu World (1968, London, George Allen & Unwin) p.400.

⁸ B. Walker 1968:“Impurity”, p.258-9.

⁹ A.K. Reinhardt “Impurity/No Danger” in *History of Religions* 30/1 (1990) 1-24, (p. 22).

¹⁰ J. Milgrom 1976.

a sacred space, and is protected by a beneficent immortal.¹¹ In Hinduism, each temple houses the gods of the community. High caste gods are permanently situated in the temples of the high caste, and viceversa for the low caste gods and temples. In both cases, the temple is “a place of protection or shelter, a place from which much that goes on in the world must be excluded”; by bringing impurity into it, one displeases the resident deity and must pay the price.¹² In the Durkheimian sense, ritual pollution practices thus serve to keep the sacred from being invaded by the profane.¹³ But ritual impurity also has immediate effects away from the sacred. For to be impure is normally to be capable of contaminating others and, therefore, of jeopardising their ability to participate fully in the life of the community. This contamination may require direct contact, but it may also be airborne (the Zoroastrian menstruant is capable of contaminating someone by looking at them;¹⁴ in Judaism, “corpse-contamination” is transmitted via its shadow, Numbers 19:14). Accordingly, rites designed to protect the community at large govern personal and communal activities, the deity or deities and the individuals themselves from the impurity they harbour.

To disregard these restrictions and introduce impurity somewhere it is not permitted will result in punishment, whether by supernatural power or earthly authority. In the Bible, the impure Uzzah is killed by accidentally touching the ark (2 Sam. 6:6-7); and, if a priest touches the sacred objects or enters the sancta in a state of impurity, not only he but the whole community will be punished (Lev. 4:3, 10:6; Num. 18:5). A Zoroastrian priest is defiled by the gaze of anyone that harbours impurity (while comitantly purifying them) and,

¹¹ In cases of strong pollution, the purification must take place at a desolate spot, where an individual will be “isolated within furrows drawn to confine impurity and prevent it spreading to the priest and the community” (Choksy 1989:67).

¹² L. A. Babb The Divine Hierarchy: Popular Hinduism in Central India (1975, New York, Columbia University Press) pp.184-185.

¹³ On this, see Choksy 1989:xxv.

¹⁴ Choksy 1989:91.

if he does not purify himself, faces the death penalty.¹⁵ By forgetting to purify oneself before entering a temple, Hindus may contract anything from a mild skin disease to severe illness, or even madness.¹⁶ And, in tribal cultures, the dangers of ritual pollution are numerous and varied.¹⁷ Yet while ritual impurity typically carries these dangers, members of a community can normally remove their pollution comparatively easily. It is only the outsider who cannot purify himself, or must undergo difficult purifications.

The opposite of ritual pollution is ritual purity. In settings where pollution ideas are upheld, to enter sacred spaces (thus to approach the deity) and to practise religious acts, or perhaps only to be in the company of one's neighbours, an impure individual must regain his purity. To do so, he undergoes special purifications (normally, but not always, with water) through which his impurity is removed. In some cultures (e.g. among Hindus and Jains), these purifications remove personal sins, in others (among Zoroastrian, Jews, and Muslims) this link does not exist.¹⁸ Because a state of ritual impurity involves an external force, a state of purity refers to its absence. In this absence, an individual is free from demons/evil spirits, permitted to interact with others in the community (or peer group at least), welcome to participate in ritual acts, and enter the sacred sphere. Purity is normally not an absolute; it differs according to one's social status, bloodline, profession, and/or gender. In light of such factors, it dictates how a particular person, or group of people, should live in both sacred and secular spheres. A greater degree of purity is normally required to practice more important religious or social tasks: Havik Brahmins, Jewish, Jain and Zoroastrian priests, the witch doctor in Nuer society, the warrior in the Trobriands, are born into, and expected to remain in,

¹⁵ Ibid.

¹⁶ Babb 1975:199 ff.

¹⁷ See e.g. M. Douglas Purity and Danger: An Analysis of the Concepts of Pollution and Taboo (1966, London, Routledge) p.33.

¹⁸ Choksy 1989:xxvii.

a higher state of purity than their fellows because they are considered more socially and religiously important.

As we shall see, the idea of ritual pollution envisaged by Sunni Islamic law (*fiqh*) differs markedly from the above description because it does not perceive human beings as changing states, nor of transmitting their impurity, nor even imbue ritual pollution with any independent power to cause damage to people or places. Nevertheless, and bearing in mind that all such beliefs and practices differ remarkably according to setting, this description accurately represents the basic *workings* of such ideas in many cultures (including Muslim ones¹⁹). As I started by saying, however, very little of our sketch (except in certain immigrant or gypsy communities) holds true for the modern European. These practices remain a mystery to the rest of us. Not, it must be added, because we have been denied the chance to find out about them, but because they have long been regarded unworthy as subjects of interest. This prejudice goes deep. Indeed, my friends and family have deemed such subject material more than a little strange. Like the majority of Europe's public, they consider ritual pollution beliefs and practices entirely irrelevant to life in the twenty-first century. Put bluntly, this is because these phenomena continue to be seen as proof of a "primitive" mind. To be primitive, of course, is to be childlike, or just irrational; either way, it is to think differently from us through an inherent failure to grasp the way the world *really* works. As such, ritual pollution marks a boundary line between "them" and "us". Having explored this area in detail, it strikes me that the minds behind Islam's purity laws could

¹⁹ Thus, while the Sunni jurists do a good job of removing the demonic threat from its pollution system (ch. 4.3), on a popular level this threat has probably never gone away, see p.28. Likewise, while there is no suggestion in Sunni law that Allah literally dwells within mosques, when a Sudanese Christian recently urinated on the steps of a mosque there was immediate and violent retaliation by Muslims on the grounds that "Allah was being disrespected and would have been offended" (*El Pais* 25th November 2001). See pp.87-88 for Muhammad's more restrained response to a Bedouin who does far worse.

never justifiably be described as primitive and, if he does not already, I hope the reader comes to share this conviction in the course of this study.

This thesis has two aims: firstly, to describe and investigate the variety of opinions on impurity (*najāsah*) within Sunni Islamic law; and, secondly, to consider these opinions in light of Western attitudes towards, and previous research into the phenomenon of ritual pollution beliefs and practices. In particular, I wish to review the Sunni Islamic data against recent theories concerning the social and theological functions of such beliefs. Both tasks presented significant challenges. The portion of Islamic law dedicated to covering matters of purity (*tahārah*) and impurity (*najāsah*) is vast and, since I started this thesis with no knowledge of Arabic, the complications that ensued in simply trying to describe the law are not difficult to imagine. That it has been possible at all is due to an excellent translation of Ibn Rushd's *Bidāyat al-Mujtahid* by Imran Ahsan Khan Nyazee, and the extensive translations of the seminal law texts in Ze'ev Maghen's recent doctorate.²⁰ By comparing these authors' translations with the original texts, I was able to gain a feeling for the Arabic and build up a reasonable picture of the scope of *taharah* law. In many ways, devising a format that would permit me to pay serious attention both to the jurists' opinions, *and* to the theories of recent anthropologists and scholars of religion proved more testing still. After toying with an integrated approach (where each major legal opinion led to a discussion of that subject in light of relevant material drawn from comparative studies), I decided against this because it would force the reader to jump repeatedly between the very specific and the very general. This is a typical hindrance to comparative approaches when they aim to go into

²⁰ The *Bidāyat* has been translated as *The Distinguished Jurist's Primer* (1994, Reading, Garnet). Alongside Nyazee's translation, I used the Arabic version of the *Bidāyat* published in 1997 by Dar al-Kotob al-Imiyah (Beirut). Maghen's thesis is entitled *Tahārah Shatir al-Imān* and was completed in 1997 at Columbia University. I am particularly indebted to Maghen for his translations of Malik's *Mudawwanah* (Beirut, dar al-kutub al-Ilmiyah), the *Kitāb al-'Asl* by Al-Shaybani (1990, Beirut, Ilm al-Khutub), and *Kitāb al-'Umm* by

depth concerning a specific culture, and one that I wished to avoid. To do so, I divided this thesis into three parts; on the whole, this has enabled me to keep its general and specific goals separate. The aims and content of each part are as follows:

*** Part I traces the development of Western attitudes to ritual pollution, thus permitting the reader to gain a general knowledge of what has been said on the subject outside of Islam, and why Sunni Islamic ritual pollution ideas do not fit the general description.** It begins with an investigation into why ritual pollution has proven such an unpopular subject of research for religious studies. For, as indicated above, there was a consensus until very recently that pollution ideas were symbols *par excellence* of the primitive and irrational mind and, as such, throwbacks to a time when man had not learnt how to think logically. The general reasons behind this idea are explored in Chapter 1. In Chapter 2, I pose the same question of Islamic studies, where there are additional causes for our subject's neglect. Alternatively, when pollution ideas *have* been mentioned, it seems that scholars have always felt the need to explain their existence according to some overarching theory or other. In chapter 3, I review four types of approach – “materialist”, “psychological”, “socio-symbolic”, and “religio-moral” – that offer contrasting explanations for why pollution practices occur and what purposes they might serve. During the course of this study each of these approaches (to varying degrees) will be compared with, and tested against the Sunni Islamic data. The contribution of Biblical scholars receives special mention. Firstly, because the Biblical pollution laws are the only such *laws* to have been thoroughly investigated; and, secondly, because of the influence they are said to have had on the formation of the Muslim code.²¹ Of particular interest is the work of cultural anthropologist Mary Douglas; by far the most influential name in this field, Douglas' writings have provided the foundation for many

Shafi'i (n.d., Beirut, Dar al-Fikr). Mention must also be made of Aisha Abdurrahman Bewley's translation of

scholars' research, including to a large degree the present one, and they are given full consideration here. In chapter 4, the Sunni *taharah* "system" is outlined. This outline is, for the most part, very general and limited to the aspects of the system on which the jurists agree. Nevertheless, it enables me to introduce Islamic ritual pollution beliefs into the wider context of religious and anthropological studies, while also preparing the reader for a more detailed examination of the jurists' discussions in Part II, and thus serves as a bridge between the general and specific aims of this thesis. In chapter 5, we take stock. Although still a long way from understanding the complexities of the *tahārah* system, some fundamentally important observations may be made about its character in light of past research into purity and pollution. In particular, it shall be shown that, while Islam's ritual pollution beliefs resemble many such beliefs throughout the world, they do not share their usual political uses. Instead, *pace* the unanimous claims of anthropologists (especially Douglas), Sunni Islam's ritual pollution laws rarely reflect, and are certainly not designed to uphold, any vision of religio-social status. I shall argue that this strategy was well planned.

* Part II immerses the reader in the jurists' discussions, with limited "intrusions" from sources outside Islam. Sunni Islam's ritual pollution system is described point by point. In chapter 6, I present the law regarding polluted *things*; and in chapter 7, the law on acts which "pollute" *people*.²² Although this area is vast, I have done my best to cover the scope of early opinions from within the Maliki, Hanafi, and Shafi'i law schools.²³ At the end of Part II, a few modest observations will be made on the difference in approaches between these schools.

Malik's *Muwatta* which also proved extremely useful.

²¹ This theory is discussed, and debunked, in chapter 2.2.

²² Whether or not it is accurate to describe Muslims, or indeed anyone, as polluted is first discussed in ch.4.4.

²³ The Hanbalis, Zahiris, and others, also receive mention.

From the outset, my intentions must be clear. While the two most discernible trends in recent Islamic studies have focused on the historical evolution of the jurists' opinions (in particular, the Goldziher/Schacht debate on its origins), and/or the degree to which external influences shaped the formation of the law, neither coincides with my own. Indeed, although general theories on the psychological origin of pollution behaviour are discussed (ch.3.2. c.f. Part II Exc. A and C), very little is said about the *historical origins* of Islam's pollution ideas. The interminable problem of when and how Islamic law developed, on this or any subject, is not addressed in any depth. And I do not go into detail regarding whether Muhammad and the early Muslims were swayed by foreign practices and traditions.²⁴ Hence, for instance, while Malik's opinion on the purity of dogs is given, the question of whether this is really Malik's voice is not raised (although, personally, I see less reason for scepticism than many), and neither is the question of foreign influence on this opinion.²⁵ Nor, finally, is this an anthropological inquiry in the proper sense. The reader must be aware that, as in every case of ritual action, purity and pollution practices extend beyond the constraints of the law, and hence will differ from time to time, and from place to place. Several things now regarded as polluting by a Moroccan man or woman are probably different from the things his or her ancestors shied away from; just as his or her counterparts in Egypt, Malaysia, or Palestine, will surely disagree upon aspects of ritual practice (regardless of what the law has to say about such matters). In short, this is an inquiry into the nature of bodily pollution ideas as they are *enshrined* in Islamic law: what the laws say, and what functions they might serve.

* **Part III** returns to the function of ritual pollution. After Part I, we know that Sunni Islam's ritual pollution ideas do not work well as enforcers of social status. Having now

²⁴ For what there is on these matters, see pp.40-44.

²⁵ For this type of explanation, see, for instance, Ignaz Goldziher's "Islamisme et Parsisme" in *Revue de l'Histoire des Religions*, 43 (1901) 18. Goldziher attributes Islam's dog impurity to the negative influence of Zoroastrianism on the development of Muslim law.

covered the main features of *taharah* law, we are in a good position to test this theory against its two “problem” cases. Hence, in chapter 8, we look at *tahārah*’s treatment of non-Muslims; and, in chapter 9, its treatment of women. In Chapter 10, we investigate how Sunni Islam’s pollution laws might be seen to serve a religio-moral purpose. For, while it is still true that Western scholars generally fail to see any religious (by which they normally mean ethical) merit in these kind of ideas, Muslims have always found religious meaning in their ritual pollution beliefs. Indeed, such beliefs are what Victor Turner called “multi-vocal symbols”, metaphors that work on a variety of different levels by exploiting the participants’ fundamental religious beliefs.²⁶ After surveying the system, it will be seen that Sunni Islam’s unique vision of ritual purity and pollution may serve a very simple purpose: specifically, to act as symbolic reminders to Muslims that their belief is in need of constant renewal.

With this plan in mind, an acknowledgment needs to be made: ritual pollution and purity concepts are vitally important to Muslim law, and life. Infinite care was taken in laying out precisely the measures by which Muslims must avoid and remove pollution. Legal manuals traditionally begin with a lengthy chapter on purity;²⁷ and *tahārah* law is grounded both in the Qur’an and the *hadith* texts (where it is normally the second book, between the Book of Faith [*Kitāb al-Imān*] and the Book of Prayer [*Kitāb al-Ṣalāt*]). Certainly, the Muslim jurists (*fuqahā*) were as interested in matters of purity and pollution as they were in other areas of the law. In fact, their thoroughness here may have been a source of special pride simply because others (in particular Christians) thought these things too crude to burden a ‘real’ religion with. This seems to be the feeling behind a tradition in which, having been accused by a Bedouin of “not even knowing how to defecate”, one of the Companions boasts “Yeah

²⁶ Victor Turner *Forest of Symbols: Aspects of Ndembu Ritual* (1967, Ithaca, Cornell University Press).

²⁷ Sometimes this chapter is titled “Ablution”, “*Wudu*”.

by your father beards, I do, I am a past master at it!”²⁸ For the Sunni jurists, even defecation assumes the importance of a religious “artform”.

In all matters, the jurists’ example is Muhammad. In contrast to Christian tradition, where (prior to Grunewald’s cross at least) Jesus was rarely depicted as prone to human frailties, Muhammad, the Seal of the Prophets and Perfect Man, is described in all manner of very human and often uncomfortable situations in the *ḥadīth* collections. Accordingly, Muslims know precisely which sites the Prophet deemed acceptable to relieve himself at, and how he purified himself after doing so. Likewise, we are told how ‘A’isha washed the bed sheets after having intercourse, and purified herself after menstruating. The graphic nature of these *ahādīth* have probably always shocked the squeamish, but *fiqh* was and is interested in precision, and the wealth of information available to Islamic tradition about Muhammad’s life has no equivalent in Christianity.

From long discussions with a number of patient people, it seems to me that ritual pollution and purity beliefs and practices remain an essential part of being Muslim. Certainly, purification is a public spectacle: the sight of Muslims washing their forearms, and dousing their heads before prayers is nearly as ubiquitous in media representations of Islamic life as the awe-inspiring spectacle of the *hajj*. The most famous site for purification is the *hammam* (public bath) which continues to be a staple feature of Muslim cities.²⁹ The categories of ‘*adab* (etiquette) and *tahārah* are, moreover, closely related in Muslim law and life, and the lines between the two are often blurred. Purity is a religious responsibility, but the correct

²⁸ This is included in the *Ihya Ulum al-Din* which is translated and edited by Nabih A. Faris as “The Mysteries of Purity” (1996, Lahore, Sh. Muhammad Ashraf) p.33. The Companion was Salman and the boast apparently included him “squatting like a deer” and raising his “posterior like an ostrich”!

²⁹ For the vital role of *hammam* in Muslim society, see A. Boudhiba’s *La Sexualité en Islam*, translated by Alan Sheridan as *Sexuality in Islam* (1998, London, Saqi Books) pp. 160-174. See also “*Hamam*” in *The Encyclopedia of Islam*” first and second editions (hereafter referred to as *E.LI/II*).

'*adab* is only slightly less important and often a cultural necessity. Hence, in addition to the usual purifications before prayer, the law books recommend a variety of other well considered practices: cutting one's fingernails and toenails, clipping the moustache, plucking the nostrils and underarms, dying one's hair, and dying one's hands and feet (only married women), are all considered *sunna* (highly recommended) by *fiqh*.³⁰ Not to conform is probably to risk accusations of dirtiness, or slobbishness, if not that of technical impurity. On this matter, circumcision (*khitan*) is often called "purification" (*tahārah*) and is obligatory for men, and some say, meritorious for women (not cliterectomy, but removing the prepuce of the clitoris).³¹ Not circumcising one's children – thus never 'purifying' them – is a serious matter and can, among some communities, result in ostracism for the parents.³²

Despite the major part pollution ideas and rituals play within Islam, and the quantity of legal material on this subject, there is virtually nothing written about purity or pollution in any of the European or North-American treatises on Islamic law (the two exceptions being Ignaz Goldziher's Die Zahiriten, and, notably, Norman Calder's Studies in Early Muslim Jurisprudence³³). Indeed, were one to look for references to Islamic purity law in most Western University libraries, he could be forgiven for thinking that no such subject exists.³⁴

³⁰ For a basic summary of '*adab* requirements, see *'Umdat al-Sālik* trans. and ed. by Nuh Ha Mim Keller as Reliance of a Traveller (1994, Maryland, Amana Publications) pp.58-59. For a more in-depth treatment, see the *Ihyā* (Faris) pp.56-96. An interesting translation of Bukhari's *Al-'Adab al Mufrād* by Yusuf Talal DeLorenzo has recently been published as "Bukhari's Book of Muslim Morals and Manners" (1997, Alexandria, Al-Sadawi Publications).

³¹ See e.g. *Ihyā*, p.83.

³² See A.Tayob's Islam a Short Introduction (1999, Oxford, Oneworld) p.47. Note also that, in the Maliki school of law, uncircumcised men are not permitted to lead prayers. For the continued cultural importance of circumcision for women in some places, and a painful account of her own operation, see Nawal el-Saadawi's The Hidden Face of Eve: Women in the Arab World (1982, London, Beacon Press). In the Egypt of Saadawi's youth, "it was said that a girl who did not undergo this operation was liable to be talked about by people, her behaviour would become bad, and she would start running after men" (1982:60).

³³ Goldziher's book has been translated and edited by Wolfgang Behn as The Zahirites (1971, Leiden, E.J.Brill) see especially pp.59-64. Calder's book (1993, Oxford, Clarendon Press), an analysis of Islam's early legal development essentially from a Schachtian viewpoint, is largely based on arguments regarding all manner of purity matters in the formative texts of the different law schools.

³⁴ See e.g. A. Abdur Rahman A. Institutes of Musulman Law (1907, Calcutta, [n. pub.]); Ali's Mahommedan Law (1912, Calcutta, [n. pub.]); S. Vesey-Fitzgerald Muhammedan Law: An Abridgement (1931, London,

Rather, these works divide Muslim law into categories of marriage, finance, criminal law and punishments, inheritance and property, *jihad*, and so on (each one further divided into many sub-categories which may or may not agree with the jurists' own methods of division). Ritual purity and pollution (indeed any sort of ritual), however, is rarely considered worthy of mention. If, as Philip K. Hitti maintained, the aphorism "purity is half the faith" (*taharah shatir al-iman*) "is still on every lip in Muslim lands", Western academics have turned a deaf ear for far too long.³⁵

Not surprisingly, this state of affairs did not prove helpful as I began a Ph.D. into Islam's pollution ideas. I well remember my feelings of bewilderment (and escalating panic) when setting out to explore this topic in the Islamic Law section of Glasgow University Library. After a fruitless afternoon, I returned home with a scrap of paper full of oblique references, all of which confirmed that Sunni Islam's purity law, in its entirety, had been "borrowed" from a Jewish origin. As Ze'ev Maghen observes (one scholar who has attempted to rectify matters), it seems that, within Islamic studies, *tahārah* is still "*nājis*" (impure/polluting)!³⁶

It is worth noting what *has* been written on the subject. To my knowledge, and notwithstanding relevant Encyclopaedia entries,³⁷ there exist a grand total of five articles dealing specifically with *fiqh*'s treatment of purity and pollution. Written in 1913 and 1914, the earliest belong to Jan Arendt Wensinck, who cites the superficial similarities between the

Oxford University Press); K.P. Saksena Muslim Law (1963, Delhi, [n. pub.]); A. Fyazee Outlines of Muhammadan Law (1974, Delhi, Oxford University Press); A.R. Doi Shari'ah: The Islamic Law (1984, London, Ta Ha Publishers).

³⁵ Philip K.Hitti History of the Arabs (1970, London, MacMillan Press), p.338. This saying is commonly attributed to Abu Malik al-Harith ibn Asim al-'Ashari. See e.g. An-Nawawi Forty Hadith translation by Ezzedin Ibrahim and Denys Johnson-Davies (1997, Cambridge, Islamic Texts Society) p.79

³⁶ Maghen 1997:36.

³⁷ The first, second and new editions of The Encyclopaedia of Islam are a good place to start. Check under headings "*ghusl*", "*hadāth*", "*ḥayḍ*", "*khamr*", "*mā*", "*maytā*", "*najāsah*", "*tahārah*", "*tayammum*", "*wuḍū*". Although, as Maghen notes, one has to wonder at a situation where the article "*najāsah/nadjis*", written by

Jewish and Islamic purity codes as proof of the latter's dependence on Jewish law, and then attributes both to a common animistic source.³⁸ Aside from the dubious ideology underpinning it, there are fundamental problems with Wensinck's argument, which we shall come to in chapter 2. There was not a more in-depth discussion, nor any admission of the differences between law schools, until G.H. Bousquet's article in 1950, in which the author provides a survey of our field (mainly from a Maliki perspective),³⁹ given its brevity and the scope of area under survey, however, it is no surprise that significant details are glossed over.⁴⁰ More recently, an article by Julie Marcus, an anthropologist who bases her research on Turkish society, gives an overview of the laws (from a Hanafi perspective), before concentrating on the way they reflect gender roles in Muslim communities.⁴¹ Marcus' article impressed A. Kevin Reinhardt, the first Islamicist to pay significant attention to the laws of ritual pollution.⁴² In his article, Reinhardt provides another fairly rudimentary sketch of Islam's *taharah* system, but suggests an underlying rationale by which it may be understood. Citing Mary Douglas as his major source of inspiration, Reinhardt's paper "is an attempt to connect Islamicists to the conversation that has developed around Douglas' work in the last twenty years",⁴³ and thus anticipates this study, where his ideas will be considered at various stages.

Wensinck in 1927 for E.I.I. was simply reprinted verbatim sixty-six years later in the second edition! (Maghen 1997:34).

³⁸ See Wensinck's "Animismus und Damonenglaube im Untergrunde des judischen und islamischen rituellen Gebets" in *Der Islam*, 4 (1913) 219-235. He repeats many of his arguments in "Die Entstehung der muslimischen Reinheitsgesetzgebung" in *Der Islam*, 5 (1914) 62-80.

³⁹ G.H. Bousquet "La Purete Rituelle en Islam" in *Revue de l'Histoire des religions*, 138 (1950) 53-71.

⁴⁰ The occasional mistake is also made. For instance, contra Bousquet (1950:55), normal vaginal secretion is not impure. Equally, while it is true that sperm is considered impure by many jurists, for the Shafi'is and Hanbalis it is pure and this should be noted (*ibid*, see ch.6.5.). He makes another mistake in his Encyclopaedia entry on "*hadāth*" (I.E:II); for a minor impurity (*ḥadāth*) is not incurred simply through contact with an impure substance. Although some jurists argue that the *emission* of an impure substance is a cause for *hadath*; indeed, this was a focal point for disagreement among the schools, see Part II Exc. B.

⁴¹ "Islam, Women and Pollution in Turkey" in *Journal of the Anthropological Association of Oxford*, 15 (1984) 204-218. See chapter 9 for discussion of Marcus' ideas.

⁴² Reinhardt 1990.

⁴³ Reinhardt 1990:3.

In addition to these articles, there is a very interesting chapter in La Sexualité en Islam, by Abdelwahab Boudhiba, on the place of ritual purity and pollution in Islamic attitudes towards sex and the human body.⁴⁴ Contrary to popular Western opinion, Boudhiba portrays Islamic views on sexuality as well balanced (even “radically legitimate”), and Islam’s sexual ideology as tolerant. In his view, ritual pollution beliefs serve to show that Muslims are “permanently aware of the functioning of the physiological life”.⁴⁵ Lastly and more generally, Frederick Denny (1994) and Abdulkader Tayob (1999) both write sensibly on this topic in their introductions to Islam.⁴⁶

Only one major study of *taharah* law exists: an unpublished Ph.D. thesis by William Ze’ev Maghen (1997).⁴⁷ Not bothering with many of the usual proponents of the “Islamic law emerged from Jewish law” school of thought (e.g. Torrey, Cutler Smith, Wegner *et al*), whose reasoning is transparently circular, Maghen singles out several major names from the last hundred years (including Goldziher, Coulson, Crone and Cook), with perhaps less obvious political agendas, to show how ingrained this attitude really is. His main grudge is with Joseph Schacht. For, contrary to the latter’s thesis which, as is well known, assumes Islamic law not to have appeared until a secondary stage (no earlier than the turn of the first Muslim century [ca. 720 C.E.]), and to be the result of a mixture of foreign traditions and previous customs, Maghen argues for the Qur’anic origin and uniqueness of Islamic purity law.⁴⁸ This he does, first, by emphasising the links between Scripture, the formative *ahadith* and legal sources, and established *taharah* norms, and, second, by showing the clear dissimilarities between Islamic and Rabbinic purity codes. Although Maghen is not a Muslim,

⁴⁴ Boudhiba 1998:43-57.

⁴⁵ Boudhiba 1998:55.

⁴⁶ See Denny An Introduction to Islam (1994, Canada, MacMillan) pp.113-118; Tayob 1999:31-57. Like Bousquet, however, Tayob makes an odd mistake: the jurists do not require believers to perform the minor ablution (*wudu*) following contact with pigs or the saliva of dogs (p.32).

⁴⁷ Details in fn. 20 above.

his argument upholds the claims of Muslim tradition against those of recent Western scholarship. Using Islam's purity laws as his test case, he asserts that these laws must not be seen as *isolated* cases of genuine Qur'anic influence over the early Muslims, but as merely one example from many where Islamic law developed directly from the Qur'an and *hadith* and emerged *sui generis*:

(Because) *taharah* in the view of Western scholarship, is among the clearest instances of direct appropriation on Islam's part of the norms of foreign systems, then it stands to reason *a minori ad majus* that the examination and critique of the prevalent theses concerning Islamic purity's origins will have significant implications – in terms of the borrowing concept – for the remaining areas of *fiqh*.⁴⁹

Whether or not we agree with him as regards the development of Muslim law, Maghen is surely correct in insisting that scholars stop trying to explain the “essence” of rituals and beliefs according to how much they may have inherited from previous and/or foreign cultures, and, more specifically, in making a sharp distinction between Islamic and Jewish pollution rules. His arguments are summarised in chapter 2. As already stated, his work has been immensely helpful to me. Despite my indebtedness to Maghen, however, our starting points are very different. For, he begins with the premise that, because Western scholars have ignored or misrepresented Islam's purity laws – something I have no argument with – there is nothing in Mary Douglas' or anyone else's theories that warrant their application to Islam. In contrast, I freely admit that the shape of this thesis grew from an awareness of secondary source material. Moreover, as Douglas has persistently contended regarding the study of religion, I see little point in making a detailed description of a specific subject (be it ritual act or law) without putting my findings within the wider context of academic debate. Indeed, not doing this in the past may account for some of what Reinhardt calls “the desiccating lack

⁴⁸ For a summary of Schacht's general theory, see fn. 91 below.

⁴⁹ Maghen 1997:77.

of interest and general ignorance among Islamicists as regards the fields of anthropology, religionwissenschaft, and ritual studies”.⁵⁰

As introductions are the best place for personal asides, I wish to finish this one by saying a little more about my own experiences studying this topic. For, if it had not been already, the conviction that ritual pollution *remains* a symbol of cultural inferiority was recently made abundantly clear to me at a preview of Amos Gitai’s film “*Kadosh*”, at the Glasgow Film Theater. It is a controversial study of two sisters raised in modern day Jerusalem as Orthodox Jews. From the outset, the younger sister rails against the traditional view that her role in society must be to marry an Orthodox man and bear his children. Ultimately, having weathered all manner of humiliations, at the end of the film she chooses to leave the city and begin life anew, and the viewer’s sympathies go with her. In contrast, her elder sister begins Gitai’s film happily married. However, her marriage has not been blessed with children and, because Orthodox *halakhah* requires remarriage after ten years if a union is barren, her husband, despite their enduring love for each other, asks for a divorce. We pass the remainder of the film watching her crumple under the weight of patriarchal expectation. Unlike her sister, she is unable to escape and, rather than continue her life estranged from her husband, she eventually commits suicide. Given the negative light in which *Kadosh* portrays Orthodox Judaism, it was not surprising that several Jewish members of the audience – men and women alike – objected to much in its message. But on this particular night, the director Gitai was present to answer questions at the end of his film, and the ensuing discussion was especially lively. It reached its liveliest, by which time the cinema staff had begun to look genuinely unnerved, when one outspoken woman vilified the Jewish “habit of keeping women in their place with those ridiculous purity ideas”. She was referring to a scene in

⁵⁰ Reinhardt 1990:23-24.

which the elder sister is told by her Jewish midwife that her barrenness might have resulted from an inadequate observation of the purification laws for menstruation. When pressed on why she thought such ideas ridiculous, she replied: “aside from the most primitive societies, everybody understands that there is nothing dirty about menstruation”. At which point all further discussion was pointless, a line had been drawn and no-one was prepared to listen any further even, sadly, to Gitai himself. As I have already said, the key word here is *primitive*. The conviction that we have grown out of pollution beliefs and that, consequently, they are beneath serious discussion is held by many more than amateur film critics, and goes back a long time.

PART I

A DIFFERENT KIND OF POLLUTION SYSTEM

CHAPTER 1

THE PROBLEMS WITH RITUAL POLLUTION

“Of what interest can such subjects be except to the anthropologist? What can all this have to do with religion?” (Nathaniel Micklem⁵¹)

In 1956 Micklem expressed what had long been a general scholarly distaste for ritual pollution laws. His attitude was not only representative of Biblical scholars but, until comparatively recently, of anthropologists and experts in other religions too. The turning point came in 1966 with the publication of Mary Douglas’ Purity and Danger, where she interpreted the Biblical ritual pollution ideas according to popular anthropological theories and, in doing so, managed to stimulate a great deal of interest among anthropologists and Biblical scholars alike. Since then, her theories have regularly been tested, refuted, and added to within these fields (see chapter 3).

In Purity and Danger, Douglas claimed that the general neglect of our subject was the fault of the nineteenth century “Evolutionists”, E.B.Tylor, W. Robertson Smith and, in particular, James G. Frazer.⁵² She identified three assumptions – the ideas that ritual pollution beliefs are *unscientific*, *unethical*, and *animistic* – which had subsequently led to a general conviction that they were beneath serious academic inquiry. Although I am not suggesting that Islamic studies remain in the nineteenth century, it is reasonable to say (Maghen and Reinhardt excluded) that research into Islamic ritual pollution beliefs *is* still at a pre-Douglas stage. Let us begin Part I, then, with a brief recapitulation of Douglas’ criticisms of the Evolutionists. A few comments – and an extra argument – of my own will be added.

⁵¹ Taken from Micklem’s The Interpreter’s Bible (n.p.), cited in Douglas 1966:47.

⁵² For the following points, see Douglas 1966, Chapter 1. As is well known, Frazer divided human history into three stages: magical, religious, and scientific. He conceived of ritual pollution beliefs as magical, and thus restricted them to mankind’s intellectual and spiritual infancy. The best summary of his theory is to be found in the last chapter of The Golden Bough (1995, London, Papermac).

1.1. RITUAL POLLUTION IS UNSCIENTIFIC

For the Evolutionists, ritual pollution beliefs belonged in man's magical and primitive past. Indeed, for Frazer, they epitomise the irrational way in which primitives conceive their magic to work (i.e. through contagion⁵³). Yet, well before Frazer's time the existence of microorganisms had been discovered, an event that has, for the Westerner, defined the concepts of purity and impurity once and for all in terms of germs and hygiene. In light of that discovery, such rituals and beliefs appeared outmoded; and nineteenth century scholars were divided as to what their purpose might originally have been. For many, like Frazer and the other Evolutionists Douglas singled out, ritual pollution beliefs were proof of primitive man's confusion and tendency to dramatise, and thus unworthy of further investigation. For others, however, such beliefs demonstrated man's intuitive, if undeveloped understanding of the importance of hygiene, and were researched and explained accordingly (this type of argument is summarised in ch. 3.1.).

Both attitudes are fundamentally flawed, as any attempt to understand ritual pollution behaviour through modern ideas of hygiene misses the point: all ritual pollution beliefs and practices are primarily *religious*, rather than scientific, phenomena. As Douglas noted, it is often true that these practices bear a correspondence to the avoidance of contagion and, therefore, it is tempting to explain them as primitive experiments in hygiene. In fact, in Purity and Danger, she admits to having no problem with this approach, as long as it does not exclude others. But, by then remarking that a high caste Hindu deems himself severely polluted by touching a rope at the same time as his low caste servant, Douglas does a fine job

⁵³ For contagious magic, see Frazer 1995:37-44. According to Frazer, primitive man's other type of magic works "sympathetically"; for instance, when Russian peasants pour water through a screen in time of drought, they imagine that because the filtered falling water looks like a thundershower, sprinkling of this sort will force rain to come (Frazer 1995:62).

of showing this correspondence to be incidental.⁵⁴ Indeed, Hindus and Zoroastrians recommend using the urine of cows and bulls as purifying agents; and Islam and Judaism tell believers to purify themselves with earth if no water is handy. Despite the ingenious attempts of certain scholars, such provisions indicate no interest in hygiene in the modern sense.

1.2. RITUAL POLLUTION IS “PRE-ETHICAL”

Frazer and Robertson Smith assumed that ritual pollution beliefs are only to be found in societies that have not developed a sufficiently strong ethical code.⁵⁵ According to this assumption, an advanced (therefore, ethical) religion should be concerned with our emotions, hearts and souls. In contrast, ritual pollution ideas inevitably focus on the workings of the human body (our blood, guts and sweat) and are thus, by definition, less evolved. Both scholars expect such ideas to be dropped when a society reaches intellectual and spiritual maturity.⁵⁶

⁵⁴ Douglas 1966:31-34.

⁵⁵ See, for instance, Frazer's comments about the ritual pollution practices of the Natchez Indians (1995:213); for Robertson Smith's argument, see below.

⁵⁶ Christian tradition did not simply drop the concept of pollution, however. It interpreted it metaphorically, normally as lasciviousness and/or greed, see especially Ricoeur *Finitude et Culpabilité* (1960, Paris [n. pub.]), and T. Shaw's *The Burden of the Flesh* (1998, Minneapolis, Fortress Press). The origins of this lie in Judaism, see Neusner's *The Idea of Purity in Ancient Judaism* (1973, Leiden, Brill) p.12 ff. Traditionally, however, Christendom has traced its rejection of Jewish ritual pollution and dietary codes to Mark 7:1-15 where, after being chastened for not paying sufficient attention to his forefathers' ritual demands, Jesus rebukes the Pharisees on the grounds that "*There is nothing from without a man, that entering into him can defile him: but the things which come out him, those are they that defile a man*" (c.f. Matt. 15:1-5, 19-20). Yet, despite the Gospel's unequivocal rejection of ritual pollution beliefs, the notion of "bodily" pollution has never really disappeared from Christian tradition. For instance, the fact that metaphorical interpretations have been attached to baptism and "churching" (the practice of denying women access to churches for up to sixty days after they have given birth) should not distract from their reality as *physical* purifications – the washing away of contamination. For more stereotypical examples of ritual pollution notions surviving within Christian tradition, see D. Brakke "The Problematization of Nocturnal Emissions in Early Christian Syria, Egypt, and Gaul" in *Journal of Early Christian Studies*, 3:4 (1995) 419-460.

This attitude is based on the conviction that ritual action is always expressed *prior* (and is therefore inferior) to theological belief.⁵⁷ As Douglas notes, it also reflects a fundamentally negative assessment of the role of the human body in God's plan.⁵⁸ These factors led to a general bias against *any* form of ritual practice among scholars of religion who artificially separated these practices from the sphere of theological beliefs.⁵⁹ This was especially true concerning ritual pollution, where Robertson Smith's theory on the Old Testament's pollution laws (the only ones demanding any attention because they are included in the Bible) sufficed until Douglas provoked debate on the nature of these laws nearly a century later. According to Robertson Smith, the complex ritual purity regulations of the ancient Israelites are nothing more than "the remains of a primitive superstition". They "have nothing in common with the spirit of Hebrew religion", but were included in the Bible only because they were so embedded in popular culture they could not be left out - an idea which presents ritual pollution as not only out of date in Jesus' time, but even when the Priests compiled their laws.⁶⁰

Over the years, Douglas has counter-attacked Robertson Smith's and Fraser's underlying assumptions in two ways. Firstly, she has shown how ritual pollution ideas are as much a part of modern Western societies as primitive ones (albeit that in the West they are not normally expressed "formally"). Secondly, in partnership with scholars like Victor Turner, Clifford Geertz and others, she has persuasively argued for ritual to be studied as an integral part of social and religious experience - the two being inseparable in her view (see ch. 3.3.

⁵⁷ See W. Robertson Smith Lectures on the Religions of the Semites (1972, New York, Schocken Books) p.16 ff. For the most effective challenge to this idea, see Fontenrose's The Ritual Theory of Myth (1966, Los Angeles, University of California).

⁵⁸ Douglas 1966: 14-16.

⁵⁹ On this, c.f. Douglas Natural Symbols (1970, Harmondsworth, Penguin) ch.1, and F. Gorman The Ideology of Ritual: Space, Time and Status in the Priestly Theology (1990, Sheffield, Sheffield Academic Press) pp.7-11.

⁶⁰ Robertson Smith 1972: 447. Robertson Smith explains Islamic rituals in the same way. Hence, he argues that the wearing of special *ihrām* garments for the *hajj* is only a relic from pre-Islamic Arab practices that found its way into Islam through popular custom (1972:146).

and 3.4). Most significantly, throughout her work, she has placed special importance on the role of the human body as a medium for expressing this experience.

1.3. RITUAL POLLUTION IS ANIMISTIC

Frazer was among the first to note that ritual pollution behaviour is generally associated with demonic possession, and ritual purification signifies the warding off, or exorcism, of demons. On the basis of this, he portrayed the life of anyone who practices ritual pollution beliefs as a terrifying and perpetual muddle. In fact, to Frazer's mind, the primitive is so confused by his predicament – “demons dog his footsteps, dazzle his senses, enter into him, harass and deceive him and torment him in a thousand freakish and mischievous ways!”⁶¹ - he cannot distinguish between things that are sacred, and those that are taboo. Consequently, he prohibits taboo things (off limits because they are sacred), and polluting things and places (off limits because they are impure), for the same reason: both harbour demons.⁶² For some time after Frazer, an apparent inability to distinguish between sacredness and impurity was considered a criterion by which scholars could tell apart the mentality of modern and primitive cultures.⁶³

Frazer's demon theory has been confirmed in many contexts.⁶⁴ Significantly for our purposes, scholars have noted the connection between demons and Sunni Islam's ritual pollution beliefs

⁶¹ Frazer 1995:539-540.

⁶² He bases this theory on a difference of opinion regarding why pig meat is prohibited in Syrian and Jewish cultures. Within both, some attributed the law to the fact that pigs were impure, while others claimed that it arose because pigs were sacred (Frazer 1995:466).

⁶³ Douglas 1966:11.

⁶⁴ See J. Choksy 1989: Introduction, and J. Milgrom *Leviticus* (1991, New York, The Anchor Bible) p. 976 ff.. Evidence of demonic presence has even been said to lie behind the Biblical pollution laws, where the Biblical priests would appear to have removed all trace of demonic presence see e.g. K. Elliger *Leviticus* (1966, Tübingen, J.C.B. Mohr), and, particularly, B. Levine *In the Presence of the Lord* (1974, Leiden, Brill). For the necessary criticism, see J. Milgrom 1991:260ff. As noted above (p.4), Milgrom prefers to think of Biblical impurity as an “aerial miasma possessing magnetic attraction to the sacred” (1976, 1991:977).

(see ch. 4.3.B).⁶⁵ However, while its association with dark forces often ensures ritual pollution is a source of fear, Frazer was mistaken in supposing that this is *always* the case. Indeed, according to Douglas, it is just as common to find it treated as an annoyance, something to be free from, but not necessarily a major problem.⁶⁶ And, Frazer's theory that the fear of demons leads people to confuse sacred and impure is also clearly mistaken in most contexts. There is no chance that a Hindu, Jew, or Muslim will confuse what he believes to be sacred, with what is impure. Moreover, as Douglas has demonstrated, even in settings where impure and sacred things are occasionally swapped, this has been shown to happen quite consciously. For, by using things that are normally deemed polluting in a controlled ritual setting, people may - through a sort of metaphysical catharsis - confront life's darkest themes.⁶⁷

Yet, the main problem does not lie with Frazer's observation itself. In many cultures, ritual pollution *does* involve mischievous (and even dangerous) spirits or demons. The problem is that, rather than this knowledge leading to any useful research, scholars have simply assumed it proves such things to be "primitive nonsense", and left it at that. For instance, when Arendt Wensinck claims that the origins of both Jewish and Islamic rituals (particularly their pollution rituals) lay in a desire to ward off demons, he does not try and ascertain how Islamic law perceives demon impurity *to affect* Muslims. Such a task would have been far more interesting than simply noting the existence of a connection between the purifications and demons. Instead, Wensinck concludes his article by saying that it is only on the "lowest

⁶⁵ It is probably misleading in the context of Sunni law.

⁶⁶ She cites Evans Pritchard's field notes of the Azande who, despite being extremely pollution conscious, are among "the most happy and carefree of the Sudan" (Douglas 1966:1).

⁶⁷ For instance, the Nyakyusa and Lele tribes both turn their usual ritual pollution beliefs on their head during times of mourning. The former sweep filth onto mourners during burials, the Lele eat the dreaded Pangolin. According to Douglas, rather than confusing matters altogether, by willfully touching substances they know to be dangerous, they show a profound ability to accept their mortality (Douglas 1966:160-180).

level of religions” that a belief in either bodily pollution or demons will survive.⁶⁸ Less generous still in his assessment of “Animistic Islam”, the missionary Samuel Zwemer observes:

most unhappy must be a people always living in a thousand – a hundred thousand – fears of invisible beings which surround the path of life with dangers on every hand, at every moment... we conclude that if it is the will of God that man shall have a religion in order to be happy and to have an assurance of deliverance from fear Animistic Islam is not that religion.⁶⁹

To quote a friend, Zwemer “epitomises the things which gets a Muslim’s goat up!” But his ideas persist. In fact, there is now a site on the Internet dedicated to “the renowned missionary (Zwemer)”, which presents us with “A Day in the life of Hassan”. Like millions of other Muslims, Hassan performs his ablutions five times a day but, according to the Missionaries, he only:

Considers these ablutions a means of removing demonic pollution, rather than a symbol of having cleansed his heart before approaching God. And so it goes on. He gives alms, as all good Muslims do, but not as a heartfelt demonstration of God’s compassion for the needy. Rather he fears the evil eye if he doesn’t give... In short, beneath the veneer of ritual observances which identifies him as a Muslim, Hassan lives in a world not far removed from the idolatry and superstition that Muhammad condemned.⁷⁰

This could have been written by Zwemer. It is not objectionable because it is untrue – Hassan may well fear the consequences of not purifying himself for prayer, just as Roman Catholics fear the consequences of missing their weekly confession – but because it suggests that the existence of such rituals signify a lesser religion.

⁶⁸ Wensinck 1913:228.

⁶⁹ Zwemer The Influence of Animism in Islam (1920, London, Macmillan Co.) p.244. The worst thing was that Zwemer is actually quoting from another Missionary, De Groot, who was writing about the Chinese; it did not worry Zwemer that (in almost every conceivable way) their religions and rituals differ from Islam’s.

1.4. THE “YUCK FACTOR”

There was another cause behind the general and prolonged absence of interest in ritual pollution among scholars of religion. The Evolutionists cannot be held responsible for this, and it has not been mentioned by Douglas. It is connected with our second reason, but nevertheless deserves a category of its own. One we may describe by coining a term recently used in an article on the rights and wrongs of cloning, as “the yuck factor”.⁷¹ After all, this is as good a label as any to pin on the squeamishness and/or prudishness which, because ritual pollution is commonly attached to most types of waste product and sexual fluids, has persuaded academics that such things should be left alone altogether in the interests of “good taste”. Not surprisingly, this has characterised the observations of scholars of religion, rather than anthropologists. Witness, for instance, Micklem’s candid assessment of the place he believed the Jewish pollution rules to hold in serious Biblical scholarship:

Chapters 11-15 (of Leviticus) are perhaps the least attractive in the whole Bible. To the modern reader there is much in them that is meaningless or repulsive. They are concerned with ritual “uncleanness” in respect of animals (11) of “childbirth” (12), skin diseases (14), of leprosy and various issues or secretions from the human body (15). Of what interest can such subjects be except to the anthropologist? What can all this have to do with religion?⁷²

This feeling lingers even now. In fact, Ernst Gellner shows himself to be surprisingly prudish when he describes an in-depth treatise on purity regulations by Khomeini as a work of:

⁷⁰ See The Christian Mission Home Page, <http://www.sim.org/Islam/day.html>.

⁷¹ Apparently unaware of Douglas’ or anyone else’s work on impurity, Charles Fethe struggles to define what it is about yucky things that make us shudder:

it is not easy to define or delimit yuckiness, but the sure sign that yuck is in the offing is that we are dealing with some kind of strange situation that only living biological creatures are involved in: adultery is wrong, but is not yucky. Marrying someone thirty years older than you may or may not be wrong, but those who disapprove of it would certainly find it yucky. Stealing food is not yucky, but eating worms and cockroaches is. Making a robot dog is not yucky, adding a second ear to a real dog is yucky. *Philosophy Now*, 29 (2000) 30-33.

Regarding these examples, the apparently arbitrary and “yucky” response most people feel Douglas would explain as a straightforward and inherent revulsion to the confusion of biological and social categories (ch.3.2.B)

⁷² Douglas 1966:47.

theo-porn and coarse savagery (and its author as one) who gives... loving thought to the varieties of sweat, excrement, and penetration.⁷³

Once more, the best example of this type of thinking is to be found on the Internet. In his article on the benefits of a religion-free existence, Bernard Goldberg has the following to say about Islam's ritual pollution ideas:

Rather than inflicting on my reader any more of this unimaginably dull filth, I think we can adequately sum up the whole of the Muslim obsession with blood, pus, and every other liquid that squidges out of the human body in terms of a rather pathetic psychosis... it makes me want to retch when I think how much time and effort has been wasted thinking about it!⁷⁴

Without labouring the point, many more examples of the yuck factor may easily be found. For up until recently, on the few occasions Western scholars of religion did summon up the energy to talk about ritual pollution, they did so rather gingerly. Western society associates good hygiene with medical advance and social refinement – but it does not necessarily like to talk about such things. When, in Ana Karenina, Baroness Shilton pardons herself for making a premature exit after coffee has been spilt at a party, by exclaiming: “Well now, I’ll say good-bye, or you will never get washed and I shall have on my conscience the worst sin – uncleanness – a well bred person can commit”, she makes this point very well.⁷⁵

These four factors - that they are unscientific, unethical, animistic, and/or simply too vulgar and unpleasant to discuss - ensured that, despite their ubiquity, ritual pollution beliefs

⁷³ E. Gellner “The Mind of a Mullah”, *New Republic* 190, pp.27-34 June 1984. Gellner was reviewing Khomeini's “A Clarification of Questions” (trans. J. Borujerdi), and is cited in Reinhardt 1990:1.

⁷⁴ Goldberg “Religion, why bother? at <http://www.rel.htm/science>”. Presumably, Goldberg is talking about the time and effort of the Muslim jurists, rather than learned scholars like himself.

⁷⁵ Leo Tolstoy Ana Karenina trans. Rosemary Edmonds (1954, Harmondsworth, Penguin Classics) p.130.

remained untouched by scholars of religion until not long ago. Behind three of these assumptions lies the influence of a theory popular in Frazer's time. Yet, Evolutionism's appeal has long since waned, and ritual analysis has been at the forefront of anthropological inquiry for more than thirty years. In large part thanks to Douglas, Old and New Testament scholars have shown an increasing amount of interest in the Bible's ritual texts. It is now no secret that rituals – even rituals of purity and pollution – can and do express valid social and religious meanings. The fact that Islamicists have neither significantly participated in this process, nor grasped the importance of ritual as a component of religious experience is worrying. In addition to those we have just mentioned, however, there are other reasons for this.

CHAPTER 2

PREVIOUS INVESTIGATION INTO ISLAMIC RITUAL POLLUTION

LAWS

“In the less legally orientated sub-field of Muslim “religious practice”, where volumes are devoted to issues such as prayer, pilgrimage, fasting, feasting, burial, etc. the subject of ritual purity is (still) apparently considered najis” (Ze’ev Maghen)⁷⁶

If we acknowledge that, for reasons of deeply rooted prejudice, ritual pollution beliefs and practices were ignored by scholars of religion until late in the twentieth century, we are in the right place to consider the sorry state of research into Islam’s ritual pollution laws. This said, I concede that, with the exception of the aforementioned articles by Wensinck, it is very difficult to find these laws discussed, or rather dismissed, along Evolutionist lines. But, this is simply because they have scarcely been mentioned at all. To say, as Ze’ev Maghen has done, that this amounts to a conspiracy may not be too far off the mark. In this chapter, we will explore three additional reasons why Sunni Islam’s ritual pollution beliefs and laws have been ignored. In our discussion of the first two, we are following Maghen’s lead.

2.1. “RENDER TO CAESAR WHAT IS CAESAR’S...”

There has always been an aversion to legalism among Western scholars. From the moment Jesus discriminated between those, merely financial, perks his Jewish brethren owed Caesar, and their real (i.e. non-material) obligations to God,⁷⁷ Christendom (in theory at least) has recognised two separate and isolated authorities on earth: the political-legal, versus the religious. Given this, when Christian tradition has been familiar with legalism, it has only, as Maghen eloquently observes:

⁷⁶ Maghen 1997:36.

(been) familiar with Caesar's legalism, acceptable since by virtue of this division of labour it does not contaminate the Religion of Love.⁷⁸

Islam is, of course, very different. Here, no such division between religion and law exists. Indeed, Islam is often defined as a "legal religion", as if its categories of law and religious doctrine are one and the same thing; and, while this description is perhaps not entirely accurate – as it overlooks Islam's categories of philosophy, ethics, and mysticism, to which *Shari'ah* is sometimes only tangentially related – there are reasons for agreeing in broad principle. After all, there is very little behaviour the *fuqaha'* do not express an opinion on. Moreover, these opinions carried (and continue to carry) the full weight of the faith's moral judgement – the preserve of the clergy in Christian countries. As Coulson writes (although note the inevitable mistake concerning the hygienic nature of Islam's pollution laws):

the Shari'a has, in fact, a much wider scope and purpose than a simple legal system in the Western sense of the term. Jurisprudence (*fiqh*) not only regulates in meticulous detail the ritual practices of the faith and matters which could be classified as *medical hygiene or social etiquette*⁷⁹ – legal treatises, indeed, invariably deal with these topics first; it is also a composite science of law and morality, whose exponents (*fuqaha'*) are the guardians of the Islamic conscience.⁸⁰

Unfortunately, however, Western scholars have often vilified this meticulous detail as hair splitting pulpistry. Maghen cites Goldziher, who (despite writing authoritatively on a wide range of Jewish and Islamic legal matters) bemoans the Muslim lawyers' "spirit of casuistry and their pedantic juggling of words", which "proved detrimental to the inwardness of religion".⁸¹ But he could have singled out many others with an identical view.

⁷⁷ Mtt. 22:21.

⁷⁸ Maghen 1997:42.

⁷⁹ The *tahārah* and *'adab* codes.

⁸⁰ Coulson *A History of Islamic Law* (1964, Edinburgh, Edinburgh University Press) p.83.

⁸¹ Goldziher *Introduction to Islamic Law* trans. by Andras and Hamori (1981, Princeton, Princeton University Press) p.63, cited by Maghen 1997:42.

Indeed, a distaste of legalism is apparent in the writings of many of the earlier Islamicists. In their view, Islam's initial spirit of religious inquiry was defeated by its early legal scholars; later jurists then compounded the error by willfully choosing not to think for themselves, and merely copying the opinions of their predecessors (through the process known as *taqlid*). Subsequently, the "gate to *ijtihād*" ("exertion") was closed, all intellectual activity in Islam was stifled, and philosophical development driven underground, or into Sufi abstraction.⁸² According to this view, a blinkered adherence to legal minutiae was held responsible for the unsympathetic (read different) nature of Muslim societies. Given such a negative appraisal, it is hardly surprising that the contents of *fiqh* did not receive the same attention from Western quarters as Islam's philosophical movements, historical (sectarian) feuds, or Sufi brotherhoods.

To what degree such criticism is warranted is irrelevant to this study, and any further mention of the matter is guaranteed to lead us away from our subject.⁸³ More to the point, there have always been other scholars who (in contrast to those for whom legal argument signals the death of spirituality) are thrilled by the mental gymnastics involved in reading and comprehending *fiqh*.⁸⁴ Clearly for these, an aversion to the law cannot explain why, while most other fields of Islamic jurisprudence have now received their fair share of attention, ritual pollution remains, as Maghen observes, thoroughly *nājis*.

⁸² For this sort of argument, see e.g. Duncan B. Macdonald's Development of Muslim Jurisprudence (1903, London, Routledge). The same attitude is also to be found towards Jewish law, see R.H. Pfeiffer's unkind words on the Priestly contribution to the O.T. Books of the Old Testament (1957, [n.p., n.pub.]), cited in Douglas 1966:47.

⁸³ It remains only to say that recent scholars have questioned whether *ijtihād* ever ceased to be practised, see e.g. Hallaq "Was the Gate of *Ijtihād* Closed" in his Law and Legal Theory in Classical and Medieval Islam (1994 Aldershot, Variorum) pp.3-41. It should also be noted that there have always been voices from within Islam calling for *ijtihād* to remain open. In particular, the Sufi polemic against unthinking observance of the law, which renders ritual practice merely formulaic, is well known, see e.g. Ghazali's thoughts on "The importance of observing the inward aspects of the law", distilled from the *Ihyā* by Muhatar Holland in the Inner Dimensions of Islamic Worship (1983, London, Islamic Foundation) pp.80-83.

2.2. ISLAMIC “BORROWING”

Probably the most significant reason behind the absence of investigation into Islamic ritual pollution ideas is that scholars have persistently attributed the existence and content of Islam’s rituals to a *Jewish origin*. Wensinck, for instance, unambiguously claims that “the Muslim laws of purification are connected, as is probably known, with the Jewish ones”.⁸⁵

More recently, Patricia Crone confirms the apparently self-evident nature of the connection:

While in a subject such as ritual purity there is virtual identity of both overall category and substantive provisions, it evidently was not by parthogenesis that the similarity arose; and it takes little knowledge of Jewish law to see its influence in the most diverse provisions of Islamic law.⁸⁶

In Maghen’s view, there is no doubt this attitude explains why Islamic ritual pollution beliefs have not been more thoroughly researched. His case is a sound one. Crone is only one of a large number of scholars for whom the formation of Islam was (and is) best explained as an amalgamation of traditions, laws, and rituals borrowed from other, older cultures. In what may be seen as a conscious attempt to deny Islam any spark of originality or inspiration, scholars have accounted for its legal system as being Roman, its theology Jewish and/or Christian, and its rituals pre-Islamic Arabic, Jewish, Christian, or Zoroastrian.⁸⁷ In his thesis, Maghen set out to disprove “the borrowing argument” in the context of Islam’s ritual pollution texts.

⁸⁴ Despite his protestations Goldziher is probably foremost among them!

⁸⁵ Wensinck 1914:62.

⁸⁶ Crone Roman, Provincial and Islamic Law (1987, Cambridge, Cambridge University Press) p.3, cited in Maghen 1997:82. In identical fashion, Rosenthal writes: “in principle, the laws governing *taharah* are the same as (those of) Judaism”, Judaism and Islam (1961 London, Thomas Yasehoff) p. 20 (cited in Maghen 1997:81).

⁸⁷ On this general tendency, see Islamic Law and Legal Theory (especially Ian Edge’s Introduction, p.xxv, and the different perspectives of Schacht, Vesey-Fitzgerald, Wegner, and Crone, in Part I). Although the same claim is made regarding Islam’s theological doctrine, ritual practice is the prime suspect for foreign intrusion. On this, see Graham “Islam in the Mirror of Ritual” in Islam’s Understanding of Itself, The Eighth Giorgio Levi della Vida Biennial Conference, ed. R. Hovanissian and S. Vryonis (1983, Malibu, Undena) pp. 54-56.

This argument runs thus: Islamic purity and pollution laws were lifted, more or less in their entirety, from Jewish practices and, due to the faith's widespread early process of concession (*ruḥḳsa*), incorporated into Islam in a weaker guise.⁸⁸ According to Maghen, more culpable than Crone, or any of the scholars to ignore Islamic pollution beliefs, was Joseph Schacht. This is not because Schacht had much to say about ritual pollution. He did not. It is simply that his ideas have proven so influential in the study of Islamic law (a role comparable to Wellhausen's among Biblical scholars), that his cursory treatment of the law's ritual practices has had catastrophic consequences. For, when Schacht offhandedly attributed a Jewish origin to the Qur'an's main passages on purity (Suras 5:8-9, and 4:46, see ch. 4.1) - just as he did to "all matters of (Islamic) ritual and worship"⁸⁹ - he unfortunately also lent his stamp of approval to the borrowing argument in this context:

The regulation in Sura V v.8 of the late Medinan period already betrays Jewish influence... Muslim regulations for purity based on this passage and the next verse (in part identical with IV.46) developed in *all details* under the influence of the corresponding regulations of Judaism.⁹⁰

As already noted, Maghen's main case is with the Schachtian theory on the development of Islamic law (a theory which, he believes, faces a strong challenge in this context).⁹¹ This is a minefield I am extremely wary of entering. For this study, the salient point is whether

⁸⁸ Maghen 1997:85.

⁸⁹ Schacht "*Fiqh*" in E.I.II p.887.

⁹⁰ Schacht "*Law*" in Unity and Variety in Muslim Civilisation ed. G.E. Grunebaum (1955, Chicago, University of Chicago Press) p.71 (cited in Maghen 1997:79-80), my emphasis.

⁹¹ In contrast to Muslim tradition which attributes the origins of Islamic jurisprudence to the Prophet (and first judge), his Companions, and the four Caliphs, Schacht argues that the earliest origins of Islamic law lie towards the end of the 7th century among groups of pious persons who were, on the whole, disconnected from the Arabic political structure, and often opposed to it. Subsequently, at the turn of the first Muslim century, these early jurists grouped together to form the ancient schools. These adapted, modified and rejected the early legal rulings of the Umayyad qadis who had brought previous customs and foreign influences into the sphere of Islamic law, a task which continued with the development of "personal" schools in Madinah, Kufa and elsewhere (i.e. the schools of Malik, Abu Hanifa etc.) For a summary of the Schachtian view, see his article in "*fiqh*" in E.I.II and the chapter on "Law and Justice" in Cambridge History of Islam (1970, Cambridge, Cambridge University Press).

Islamic pollution rules are identical to Jewish ones, as Schacht and many others seem to have presupposed.

Of course, if they were, Maghen would have had no thesis, and the reader could be directed to the works of Jacob Milgrom and E.P. Sanders. Needless to say, however, the Jewish and Islamic ritual pollution systems are thoroughly different, and Wensinck, Schacht and Crone were mistaken. Whatever the degree of appropriation of Jewish ideas and practices within other legal areas of early Islam, such assumptions cannot be proven as regards Islam's purity and pollution texts. What is surprising is that, although this observation had been made previously by J. Ryckmans (1973), I.K.A. Howard (1978) and, more forcefully, by Lazarus Yaseh (1984) and Norman Calder (1993), Maghen is the only scholar to have worked through the differences between the Jewish and Islamic ritual pollution codes in depth.⁹² An outline of Sunni Islam's ritual pollution code must wait until chapter 4, but the bulk of these differences may be summed up as follows⁹³:

⁹² The first two authors prefer to see pre-Islamic pagan Arab traits shaping Islamic ritual (for bibliographical data see p.42 fn. 108). Lazarus-Yaseh's article is entitled "Some differences between Jewish and Islamic Ritual" in *Religion*, 14 (1984) 175-191, and merely describes these differences. Norman Calder, however, astutely observes that: "in the end, the most remarkable feature of the Muslim (pollution) system in relation to the Jewish one is its capacity to resist influence" (1993: 212) (parenthesis added).

⁹³ Not all of the following are noted by Maghen.

JUDAISM (with Biblical references)	SUNNI ISLAM
Human beings can become contagiously impure (i.e. from sex, menstruation, leprosy, corpse-contact, etc.)	No human being is contagiously impure
Human corpses are impure (Num. 19)	Human corpses are not impure.
Lepers are impure; unusually for Jewish impurity rules, their saliva is also polluting (Lev. 13-14) ⁹⁴	Lepers are not impure; human saliva is never polluting. ⁹⁵
Purification from leprosy (<i>sarait</i>), and chronic genital discharges require purificatory sacrifices (Lev. 14)	Islam does not require sacrifices for ritual purification.
Semen is impure (Lev. 15)	The law schools are divided on whether semen is impure.
Blood is not impure, except when it is menstrual (Lev. 15)	Nearly all types of blood are impure.
Persons with genital discharges (<i>zav/a</i>) are not permitted to enter the temple (Lev. 15)	Persons with genital discharges are not restricted in any way.
Urine, excrement, vomit, and pus, are not impure.	Most types of urine and excrement, vomit, and pus, are impure.
Live animals are never impure. Some (possibly all) unslaughtered animal carcasses are impure (Lev. 11). ⁹⁶ According to the Bible, Israel's prohibited animals are also impure.	Depending upon the law school, pigs and/or dogs are impure when alive (in addition to most unslaughtered carcasses being impure). For most jurists, Islam's dietary and ritual pollution codes do not directly coincide.

When the codes are juxtaposed like this, it is remarkable that, at least in the context of *taharah*, the borrowing argument was ever considered seriously. Even when there are similarities, as in the case of the menstruant, or person with sex impurity (whom both systems describe as "impure") provisions within them vary substantially.⁹⁷ Moreover, although Maghen does not explicitly say this, these systems' bias is fundamentally different: Jewish restrictions are aimed at protecting the purity of places (particularly of the temple/synagogue, and the table), while Islamic purity laws are less concerned with locations *per se*. Hence, although people with impurities are not supposed to enter the mosque, it appears to pose no great problem if they do.⁹⁸ Instead, in Sunni Islam, the restrictions work on a personal level, stopping a Muslim from participating in worship *wherever* s/he may be.

⁹⁴ Biblical "leprosy" (*sara'at*) probably included any number of skin lesions (the most common being psoriasis), see Milgrom 1991:774-776, for definition of the term.

⁹⁵ Unless it contains alcohol, see ch.6.6.

⁹⁶ The Biblical texts are confusing. In one verse (Lev. 11:39) it states that even the carcasses of creatures permitted to eat are defiling, but according to the passage immediately preceding this (Lev. 11:24-38) only the carcasses of the prohibited creatures are said to defile. On this, see W. Houston *Purity and Monotheism* (1993, Sheffield, Sheffield Academic Press pp.51-53. Ultimately, the Rabbis ruled that all carcasses defile, H. Harrington *The Impurity Systems of Qumran and the Rabbis* (1993, Atlanta, Scholars Press) p.95 ff.

⁹⁷ In general, Biblical impurity is more restrictive. It renders someone contagious, and lasts until the evening even after he/she has washed (e.g. Lev. 15:6). In all cases, it requires a minimum of one day's sequestration from the Holy Sphere. Such is not the case in Islam (ch. 4.2).

⁹⁸ See chs. 8 and 9.

As I have said, Maghen spies a conspiracy in all this. For, it is not simply the case that these scholars have attributed a foreign origin to Islamic ritual, but that Islamic ritual texts *in general* (i.e. the ‘*ibādat*’ portion of *fiqh* manuals) were passed over by the early Islamicists. To a large degree, this probably stemmed from the aforementioned disinterest (and even antagonism) felt by nineteenth and early twentieth century scholars towards ritual practices, but Maghen also attributes this complete absence of interest to the political reality of their day:

most early digests of Muslim law... compiled and edited by a crop of European experts, were motivated by and addressed to the issues of most concern to the Western powers controlling or seeking to control Islamic regions... The ‘*ibadat*’ were quite irrelevant for their purposes, and so they consequently became for the Western reader – at least as far as the field of law was concerned.⁹⁹

If we agree with Maghen (and, given the paucity of ‘*ibādat*’ works to have been translated even now, there is no reason not to), it is easy to see why he finds the apparent nonchalance with which scholars like Crone accept a Jewish origin for Islamic rituals so galling. For it is true that, in the above citation, Crone seems merely to be making an aside. She *presumes* that “the virtual identity of overall category and substantive provisions” between Jewish and Islamic purity laws requires no further attention from her, or the reader. Yet clearly, it does! In fact, it should have been especially important to Crone, because she supposes that the mimicry of Jewish rituals by Muslims puts her main argument – that Islamic *civilization* is “what was left after antiquity has been ground through a rabbinic mill”! - beyond doubt.¹⁰⁰ In contrast, Maghen does no more than state the obvious: simply because Islam originated in an area that was home to many Jews, and both Judaism and Islam advocate ritual pollution

⁹⁹ Maghen 1997:52.

¹⁰⁰ This is taken from another publication, her collaboration with Michael Cook entitled Hagarism: The Making of the Islamic World (1977, Cambridge, Cambridge University Press) p.104.

practices, it does not follow that the Islamic versions are merely offshoots of older Jewish rituals. While all pollution practices may look the same (i.e. equally alien) to us, *within* the respective Jewish and Islamic traditions every tiny difference of opinion regarding these practices has been put under the microscope and hotly debated. In light of that, how very different the two pollution systems must have seemed (and continue to seem) to those from the other faith.

Maghen's thesis is well argued, and has come at a time (i.e. post-Edward Said) when claims of foreign influence over Islam need to be re-examined carefully. It is even more compelling because of the almost complete absence of textual evidence showing that the early Muslims were in the least bit interested in (or even knew about) other people's ritual pollution behaviour. Indeed, there is nothing in the Qur'an, very little in the *ahādīth* (although see next page), and a conspicuous silence among the jurists regarding foreign pollution practices. On this basis, it is tempting to agree with Maghen when he asserts that there is no trace of external influence anywhere in *tahārah* law. I do not think we should go quite this far, however.

The historical origins of *tahārah* are not a major concern of this study, in response to Maghen's thesis, however, this topic does warrant a small digression here. For, while I wholeheartedly argue that Sunni Islam's *tahārah* code *developed* free from external influence, there are some reasons to think that, *originally*, Jewish influence – followed shortly after by an aversion to Jewish influence - was present. Maghen, on the other hand, while acknowledging that in some fields, there was “Jewish or other foreign influences at work in the formative stages of Islam”,¹⁰¹ admits no possibility of this regarding *tahārah*. Instead, in

¹⁰¹ Maghen 1997:328.

his view, the Jewish and Muslim pollution systems are, and always were, as different “as night and day”, or “complete non-sequiters”.¹⁰² He neglects to mention, however, that there are a few major similarities between the two; for instance, Islam’s practices of *tayammum* (the “dry ablution”) and *niyyah* (the “intention”) – both highly unusual in pollution systems – have parallels in Judaism.¹⁰³ Moreover, the origins of Islam’s dietary laws clearly were influenced by Jewish behaviour. This time, however, the influence runs the other way. For, the Qur’an tells Muslims that it was “in recompense for their (the Jews’) disobedience” that Allah instructed the Jews to avoid numerous foods (Q.146). Thereafter, the Muslim dietary code is revealed to be less strict than the Jewish one (Q.145). In light of this, we may at least ask why if Judaism had an important (albeit antithetical) influence on Muslim dietary law, it did not, to some degree, also have an impact upon its pollution laws?¹⁰⁴ Further, while Maghen is right to note that, in general, there are very few traditions evincing any knowledge of ritual pollution behaviour in other cultures, there is at least one. It is intended as a comment on the Qur’an’s verse on menstruation, and clearly indicates that the early Muslims knew about Jewish attitudes to menstrual impurity, and did not wish to emulate them:

Thabit narrated it from Anas: Among the Jews, when a woman menstruated they did not dine with her, nor did they live with her, nor did they live with them in their houses;¹⁰⁵ so the Companions of the Prophet asked the Prophet, and Allah, the Exalted revealed: “And they ask you about menstruation; say it is “a

¹⁰² Maghen 1997: 86.

¹⁰³ For the permission to use sand instead of water for ablutions, see Talmud (Berakot, fol 15.a) cited in Wensinck’s article “*tayammum*” in E.I.I. The similarities between the two faiths on the matter of “intention” (which, unlike *tayammum*, is not found in the Qur’an) is more pronounced. Indeed, Denny observes that “*niyyah* is an exact analogue to the Jewish *kavanna*, even to the point of including the sense of spontaneity and freshness” (1994:118). For *niyyah*, see p.81.

¹⁰⁴ The Qur’anic law that one must leave unslaughtered animals, blood, and idol food (Q.145) was important in various Semitic settings, and may have been seen as an ancient litmus test for monotheism. Its earliest context is Leviticus 17, but the same commandment was momentarily important to the early Christians (Acts 15:29). According to Ibn Ishaq, before he became Muslim Zayd ibn Amr was still a natural monotheist (*hanif*) because he “abstained from idols, animals that died, blood and things offered to idols”, cited in F.E. Peters Muhammad and the Origins of Islam (1994 A, New York, State University of New York) p. 123. On the Jewish influence upon Islam’s dietary laws see Michael Cook’s detailed investigation “Early Islamic Dietary Law” in Jerusalem Studies in Arabic and Islam, 7 (1987) 217-77.

¹⁰⁵ On the Rabbinic seclusion of menstruants, see Y. Dinari “Customs Relating to the Impurity of the Menstruant” in Tarbiz 49 (1979-80) 302-324.

harm/illness” (“*adhan*”),¹⁰⁶ so keep away from woman during menstruation to the end” (Q.2:222). (But then) The Messenger of Allah said: “do everything except intercourse.”¹⁰⁷

Again, if this verse was revealed in response to *what the Jews did*, then perhaps other aspects of Sunni Islam’s pollution were also initially influenced. Indeed, going back to the first generations of Muslims, to a time when the Qur’an was being shaped (or shaping itself), it is unlikely – despite the lack of extant evidence – that our subject was not initially considered *in light of* the practices of pre-existing pagan Arabs, Jews, Zoroastrians and possibly others. For, while lacking details, we know that ritual pollution beliefs existed among the pre-Islamic Arab and Sabeian cultures, and that Jews and Zoroastrians who both possess ancient purity codes resided among the earliest Muslims. Muhammad and his Companions must, then, have been aware of – and very possibly already practiced – some form of ritual pollution avoidances prior to the advent of Islam.¹⁰⁸

The problem is how to explain why, in some cases, *tahārah* was positively influenced by (and hence adopted) Jewish practices (such as in its provisions for *niyyah* and *tayammum*) whereas, in others, (such as dietary laws and rules for menstrual purity) the early Muslims

¹⁰⁶ For the different readings of this term, see ch.9.

¹⁰⁷ *Muslim* “*Hayd*”:592 (Maghen must have been aware of this tradition, but does not refer to it).

¹⁰⁸ All our information about pre-Islamic Arabic attitudes to ritual pollution is restricted to their treatment of menstruants. According to al-Kalbi’s *Kitab al-Asnam*, in pre-Islamic Arabia menstruants were sequestered from the community and temporarily not permitted to visit holy places or idols, see Faris’ translation *Book of Idols* (1952, Princeton, Princeton University Press) pp. 25, 27. This is not to say that other ritual pollution behaviour did not exist. It certainly did in Southern Arabia, where a fairly complex ritual pollution system imposed graded penalties upon those flouting the law. In particular, unlike later *tahārah* law, both menstruants and sexually impure individuals were considered contagiously defiling, capable of causing others harm, and faced strong penalties if they were not careful, see J. Ryckmans “Les inscriptions anciennes de L’Arabe de Sud: Points de vue et problemes actuels” in *Oosters Genootschap in Nederland*, I (1973) 11-32 (p.25). For a summary of pre-Islamic approaches to various rituals including a brief mention of ritual pollution, c.f. I.K.A. Howard *Some Aspects of the Pagan Arab Background To Islamic Ritual* in *Bulletin of the British Association of Orientalists*, 10 (1978) 41-48. Evidence of contact between Jews and Muslims is manifold, and Choksy supposes that, as a result of trade routes from the Yemen that passed through the Hijaz to Iran, there there would also have been a high degree of interaction between the early Muslims and Zoroastrians (1989:60-62). The by now familiar criticism that Maghen could justifiably level at each of these investigations, however, is that they try to explain Islamic ritual via its roots in other traditions.

chose to reject Jewish influences. In approaching this problem, I find William A. Graham's description of early Islamic attitudes to ritual as "reformational" very helpful.¹⁰⁹ By this, Graham means that (after an initial period during which many practices belonging to other monotheists were perhaps sampled), the first generation of Muslims embarked on a quest to distinguish their faith and practices from that of other communities and to recast, or "reform" them in an Islamic mold. Or, as he puts it:

As an historical reality, Islam began as an avowed reformation of previous monotheism and pagan polytheism and has continued to cultivate ever since this reformational spirit at a very fundamental level. Its ritual action and symbolism are systematically set over against those of previous and contemporaneous religious traditions, especially paganism on the one hand, and Judaic and Christian tradition on the other.¹¹⁰

This reformational thrust is epitomised by the Qur'an's decision to change the direction of the Qibla (the point to which the worshipper should face during prayer) from Syria (i.e. Jerusalem) to Makka and the Ka'ba.¹¹¹ If this is generally true of Islamic ritual, it makes sense that the same thrust initially lay behind the early Muslims' first ritual pollution behaviour.¹¹² Accordingly, while it may well have been true that, originally, a few practices from Judaism, and/or other cultures, found their way into Sunni Islam's *tahārah* code, this code soon began to look very different. Indeed, it may also be argued that the same reformational trend - the search for Islamic self-identity - gathered momentum with the

¹⁰⁹ Graham 1983:69

¹¹⁰ Graham 1983:69-70.

¹¹¹ On this, c.f. Peters 1994 A.:207-210. Peters describes the islamisation of the Hajj in similar terms, see F.E. Peters The Hajj: The Muslim Pilgrimage to Mecca and the Holy Places (1994 B, Princeton, Princeton University Press).

¹¹² In this respect, it is perhaps significant that the only time the Qur'an speaks in detail about a practice relating to ritual pollution concerns the "minor ablution" ("*wuḍū'*", see pp.81-82 for its description). For, despite claims to the contrary (see e.g. Howard 1978:45), *wuḍū'* had no direct equivalent in Judaism (on Talmudic/Rabbinic purifications, which involve immersion or washing one's hands before eating, see Harrington 1993:113-140, 267-281). It is, it should be noted, relatively similar to the Zoroastrian purification of *padyab* (Choksy 1989:61). Significantly, however, the latter requires the unconsecrated urine of bulls. The Qur'anic provisions may, therefore, indicate an early attempt to express the differences between Muslims and their neighbours through ritual.

coming of the jurists who, as Maghen correctly points out, generally show no interest in the behaviour of Jews or anyone else. Hence, if were to hazard a guess at the chronology of Sunni Islam's *tahārah* rules (and bearing in mind that our digression is starting to gather momentum itself), it seems plausible that the first Muslims adapted, and then turned their backs on some previous ritual pollution practices. And, following this self-conscious renouncement of past practices, the jurists seized the opportunity to construct their own (uniquely Islamic) vision of a ritual pollution system.

Thus, while Schacht, Crone, and others, obviously go too far in describing *tahārah* law as borrowed from Judaism, the case is not proven that some aspects of it do not originally owe something to an awareness of – and increasing aversion towards – previous Jewish and/or foreign practices. Indeed, following Graham, considering the finished *tahārah* code(s) as the last step in a long march away from previous custom makes good sense of its eventually unique nature. This qualification made, I do not wish to detract from Maghen's main points, with which I am in complete agreement: Islam's ritual pollution code is 1) heavily influenced by the Qur'an (see ch.4.1.), 2) ultimately, *sui generis*, and 3) the investigation of ritual should not start and finish in the search for origins.

2.3. NO DOUGLAS, NO POLLUTION STUDIES

In my opinion, a third reason why Islamic ritual pollution laws have not been paid enough attention is that, in contrast to her inexhaustible supply of enthusiasm regarding the Biblical code, Mary Douglas has hardly mentioned Islamic rules or practices at all.¹¹³ Bearing in mind Douglas' general influence in this subject (as we shall see, regardless of whether

¹¹³ In *Purity and Danger*, she tentatively alludes to the phenomenon of *baraka* in Somalia and Morocco (1966: 60, 110-112), but draws no general conclusions concerning Islam. Vouchsafing any knowledge of these matters, she relies upon Gellner to tell her about them.

scholars support or contest her theories, they often pick up where she leaves off), this oversight has had regrettable consequences.

Unfortunately, Douglas' minimal impact on Islamic studies reflects the general paucity of interaction between cultural anthropologists, and Islamicists.¹¹⁴ The fault lies with both parties. Normally so intrepid, anthropologists are stumped by the language and nature of the legal texts. This is hardly surprising, and their caution is entirely justified: the Arabic is complex, and the range of opinions never ending. Any investigation into Islamic law from an anthropological perspective, therefore, runs one of two risks: either, in an attempt to avoid mistakes and not have to worry about the nuances of the legal language, it may easily become so general as to say nothing; or, when a genuine (and valiant) attempt is made to get to grips with the minutiae of the law, the potential for bungling over the language increases greatly, as does the probability that various opinions will be omitted through lack of space. Given these pitfalls, the number of anthropologists able to engage seriously with Islamic ritual through the law is small to begin with. Unfortunately, when a candidate has emerged with ideal qualifications (for instance, Ernest Gellner), ritual pollution seems not to have been a matter of priority.

This is not to say that there has been no anthropological research into Sunni Islamic ritual. Spanning the twentieth century, Edward Westermarck, Clifford Geertz, and M.E. Combs-Schilling have written perceptively about ritual practice in small Muslim societies in Morocco, and Victor Turner has done some work specifically on the Hajj.¹¹⁵ Regarding

¹¹⁴ On this see especially Graham 1983.

¹¹⁵ Westermarck Ritual and Belief in Morocco (2 vols, 1926, London, Macmillan); Geertz Islam Observed: Religious Development in Morocco and Indonesia (1968, New Haven and London, Yale University Press); M.E. Combs-Schilling Sacred Performances (1989, New York, Columbia University Press); V. Turner "Pilgrimage as a social process" in Dramas, Fields, and Metaphor: Symbolic Action in Human Society (1974, New York, Cornell University Press) pp.82-104.

pollution, there are, in addition to the aforementioned work by Julie Marcus, several studies on the menstrual “taboo” in Muslim communities (see chapter 9). Yet, as Richard Antoun notes, rather than concentrating on general modes of Islamic ritual, anthropologists have been drawn “to the unique, esoteric, and exotic”.¹¹⁶ In contrast, the law is dry, and anthropologists have not shown much interest. In fact, taking their lead from scholars of religion, they have also assumed that Islam’s ritual laws were merely borrowed from Jewish origins, and been satisfied to leave it at that.¹¹⁷

Islamicists have traditionally been more circumspect than anthropologists. Unlike the Biblicists, recent scholars of Islam have rarely attempted to combine anthropological theories and Islamic texts, preferring instead (as Maghen tells us) to confine their research to what they presume to be the original sources of Muslim ritual. As a result, there is very little written about (the peculiarities of) any aspect of Islamic ritual on its own terms. From what does exist, the most impressive attempt to place Islamic ritual in the wider context of ritual studies – of particular interest to us because, like Reinhardt, he discusses Douglas – is the aforementioned article by W. Graham (pp. 42-43 above), who observes that “the problem of taking Muslim ritual seriously as a central and ultimately intelligible expression of Muslim faith has hardly been posed, let alone solved”.¹¹⁸

¹¹⁶ “Anthropology” in The Study of the Middle East: Research and Scholarship in the Humanities and the Social Sciences (1976, New York, John Wiley and Sons) p.165.

¹¹⁷ Hence, when a selection of experts reviewed Diener and Robkin’s article on the origins of Islamic pig impurity - which claims that economic and political factors influenced the construction of Islam’s ritual laws and is critiqued in ch. 5.1 - many of them criticised the authors for glossing over the historical debt Islamic ritual owes to Judaism. In particular, see the comments by E.N. Anderson, H. Barclay, K.L. Brown, and Ashraf Ghani in Diener and Robkin “Ecology, Evolution and the Search for Cultural Origins: the Question of Islamic Pig Prohibition” in *Cultural Anthropology* 19 (1978) 493-509.

¹¹⁸ Graham 1983:59. For further mention of Graham’s analysis, see pp.269-275. The other notable exceptions include Reinhardt (1990), Denny, (1994, c.f. his chapter on “Islamic Ritual” in Martin 1985), and J. Chelhod “A Contribution to the Problem of the Pre-Eminence of the Right, Based upon Arabic Evidence” in Right and Left: Essays on Dual Symbolic Classification ed. Rodney Needham (1973, Chicago, University of Chicago Press pp. 239-262).

It is a pity, then, that Maghen banishes Mary Douglas to a few lines and a large footnote.¹¹⁹ For, while Sunni Islamic pollution ideas do not comply with Douglas' theories – and thus, from one perspective, Maghen is right to say that she “has little to teach us about Islamic purity regulations”¹²⁰ – there is a potentially large audience of anthropologists, social scientists, and scholars of comparative religions, who presumably would be interested in finding out *how and why* this is the case. Indeed, in light of Mary Douglas's importance in promoting interest in ritual (among both scholars of religion and anthropologists) and, in particular, ritual pollution beliefs, Maghen risks being found guilty of the sort of exclusivism that led to the neglect of Islamic ritual in the first place.

From our first two chapters, it emerges that owing to a combination of factors - the general unpopularity of the subject material due to the influence of the Evolutionists, a Western distaste for law, political prejudice, a lazy tendency to attribute the content of Islamic ritual to an external (often Jewish) origin, and the absence of a Douglas figure - Sunni Islamic ritual pollution beliefs and practices have been damned on a variety of fronts, and doubtless remain neglected for these reasons. We will come to the laws themselves in chapter 4, before doing so, we shall summarise the types of approach to ritual pollution beliefs that have been taken by scholars of comparative religions and anthropology.

¹¹⁹ Maghen 1997:89 fn. 187. Maghen is justified to fault Douglas for her confusion between the Biblical purity and dietary codes, and her supposition that blood is an impurity. For criticisms of Douglas' theories, see p. 61 (esp. fn.166).

¹²⁰ Ibid.

CHAPTER 3

A SURVEY OF PAST APPROACHES

“This is why an understanding of the rules of purity is a sound entry to comparative religion”

(Mary Douglas Purity and Danger p.6)

“Y’know, my boy, there’s no better way to find out about someone than by sifting through their rubbish!” (Billy Boswell in Carla Lane’s *“Bread”*)

It took a long time for anything to be said about ritual pollution. For the interested reader, however, a considerable amount of material is now available (albeit that very little of this concerns Islam). In a variety of ways, recent scholars have tried to find meaning in (or, conceivably, to give meaning to) the strange beliefs and practices that so baffled their predecessors. Specifically, they have wanted to know why such things came into being, and what role, or function, they play in the way people live. In the present chapter, we will discuss and critique four different types of approach to the function of ritual pollution beliefs. I have labeled these “materialist”, “psychological”, “socio-symbolic”, and “religio-moral”. Refreshingly, all of the authors responsible for these theories believe pollution ideas and the rituals built around them to be important – not necessarily because of what they involve (i.e. the actions taking place), but because they serve as conduits via which something more important about the human condition is said.¹²¹

3.1. MATERIALIST THEORIES

This type of approach explains ritual restrictions (such as pollution beliefs and dietary prohibitions) according to the medical, economic, or political benefits they may bring.

¹²¹ To varying degrees, these scholars are all peering in from *outside* the belief systems they describe. In contrast, Frazer’s and Wensinck’s theory that bodily pollution practices stem from a fear of demons will not be

Probably the most popular materialist explanation, which Mary Douglas referred to as “medical materialism”,¹²² is that these acts have a sound hygienic basis. Indeed, this type of argument has an ancient pedigree. Maimonides, for instance, insists that pork is prohibited from the Jewish diet because it leads to disease (“the fat of the intestines makes us full, interrupts our digestion, and produces cold and thick blood”).¹²³ As noted in chapter 1, it was after the discovery of bacteria that medical materialism proved most appealing to scholars. Subsequently, according to a multitude of Jewish and Muslim doctors, the purity and dietary codes of both faiths may be explained as ritualised medical precautions: pork was declared legally impure/inedible because it harbours *trichinella spiralis* in its muscles¹²⁴; the daily baths recommended by various religions were known from the beginning to kill germs¹²⁵; and the seclusion of menstruants was necessary because menstrual blood carries toxins.¹²⁶ Yet, although medicinal benefits may well have played a small part in the formation of many ritual pollution codes,¹²⁷ the failings of this approach are easy to detect and have already been mentioned (ch. 1.1.).

The most prolific modern exponent of materialist anthropology is Marvin Harris, who created his own school of “cultural materialism”. Harris seeks to explain religious prohibitions and rituals as pragmatic attempts to endorse the *ecological* lifestyle a community needs to prosper. Thus, for instance, he attributes the suspicion generally felt towards pigs in Semitic countries

discussed again, because that does not lay claim to being knowledge of a privileged sort – it is merely how people explain their pollution and purity behaviour to themselves.

¹²² Douglas 1966:30-36

¹²³ Maimonides Guide for the Perplexed 3.48 (cited in Houston 1993:69-70).

¹²⁴ Ibid.

¹²⁵ For a colourful, if dated explanation of Hindu purifications along these lines, see Dubois’ Hindu Manners, Customs, and Ceremonies, trans. by Henry Beauchamp (1897, Oxford, Clarendon Press) p.178 ff.

¹²⁶ This theory was first proposed by Bela Schick in 1920, but was developed by the anthropologist Ashley Montague. It has not been accepted by the vast majority of scientists, nor does it explain why many peoples attribute menstrual blood positive qualities; see Buckley and Gottlieb Blood Magic: The Anthropology of Menstruation (1988, Berkeley, University of California Press) pp. 19-22.

to the fact that they are naturally ill equipped to survive in arid climates. To keep them, Harris suggests, would have threatened “the integrity of the basic cultural and natural ecosystems of the Middle East”.¹²⁸ For Harris, such concerns explain the pig’s impure status in both Jewish and Muslim cultures. Paul Diener and Eugene E. Robkin, however, have pointed out the flaws in Harris’ argument. Specifically, that pigs have been an important part of the food chain (providing lard, “garbage disposal”, and soil fertility) in areas less suited to their farming than the Middle East.¹²⁹

In fact, while the sort of materialist explanations favoured by Harris and others often sound very convincing, their shortcomings are well known, and may be summarised as follows. Such theories are inevitably piecemeal and static; hence they do not explain more than a few elements in any ritual pollution system, never the whole pattern. They fail to show why, once the original material conditions change, religious beliefs and practices remain the same (granted farming pigs may once have been counterproductive, this does not explain why Jews and Muslims throughout the world have continued to avoid swine). Thus, they do not take into account the power of religious faith or ideology to enforce, or even influence behaviour that does not benefit its followers in a material sense. They presume that religious rituals and beliefs always work *positively* towards the material prosperity of mankind (be it in a medical, ecological, economic/political sense), while man’s history does not necessarily bear this out. Finally, it is hard not to detect a kind of reverse patronage underlying all the materialist theories, which is surely just as mistaken as the condescension shown by Frazer. For, while

¹²⁷ And certainly contribute to a more hygienic lifestyle; it is no coincidence that Jews suffered fewer losses during the Medieval outbreaks of Bubonic plague, see P. Ziesler The Black Death (1997, London, The Folio Society) pp.79-88.

¹²⁸ See Harris Cows, Pigs, Wars, Witches: The Riddles of Culture (1974, New York, Random House Books) p.40-42.

¹²⁹ Diener and Robkin 1978. For these scholars’ alternative, see ch. 5.1.

that scholar misjudged the primitive as a credulous fool, in this view he is attributed an extraordinary level of apparently intuitive (and certainly unverifiable) scientific knowledge.

3.2. PSYCHOLOGICAL THEORIES

Bataille thought that “the horror” human beings feel at the sight of our bodies’ waste products is universal. In fact, he was wrong, but the idea that these substances are both repulsive and dangerous *is* very widespread.¹³⁰ There have been several attempts to find one fundamental psychological reason for why this should be the case. Like the materialistic approaches, it is the nature of psychological theories only to explain isolated types of ritual pollution behaviour – specifically some bodily emissions and sources of putrefaction – rather than whole systems, which may include various unrelated actions and substances.

An early attempt of this sort was made by Sigmund Freud. Noting that, whereas adults do their best to keep quiet about what goes on in the toilet, young children often appear to enjoy excreting and display a fascination with excrement, Freud assumed that man’s primal, and suppressed, erotic desire is to excrement in public. In his view, it follows that guilt over this urge is the reason people attach ritual pollution ideas to excrement, and the act of defecating itself.¹³¹ The obvious objection to Freud’s supposition, which Douglas had no trouble making, is that neither excrement, nor urine, blood, or any of the bodily emissions so often described as polluting in primitive (and many far from primitive) societies are ever treated

¹³⁰ See G. Bataille “L’Erotisme” translated as “Eroticism” by M. Dalwood (1962, London, John Calder) pp. 45-46. Even menstrual blood and excrement are not universally seen as repulsive; instead, both are known as sources of blessing in some societies (see e.g. Buckley and Gottlieb 1988:12).

¹³¹ S. Freud Totem and Taboo (1950, London, Routledge) p.21. This was an aside rather than a theory; the scatological “obsessions” of primitives being a well known theme in 19th and 20th century scholarship, see e.g. John Gregory Bourke’s Scatological Rites of all Nations (1891, Washington D.C. Lowdermilk), Freud took such things for granted. Indeed, finding most “ceremonial prohibitions (i.e. those without an obvious medical or social function) incomprehensible, senseless and silly” (1950:21), he did not think ritual behaviour of any kind warranted much attention.

with any relish, sexual gratification, or guilt.¹³² Another of Freud's asides (in this case it was one footnote) is also worth mentioning. This regards notions of menstrual pollution, which he attributed to the "the organic repression" of sexual attraction felt by men toward women during their periods.¹³³ Some later scholars have been influenced by this idea. For instance, William Stephens hypothesizes that men's castration anxiety is responsible for his fear of the menstruant and her blood (thus developing the Freudian viewpoint in one direction); Bruno Bettelheim, in contrast, argues that menstrual taboos stem from "vaginal envy" (thus going in the other).¹³⁴ Yet, as they fail to hide a strongly biased understanding of pre-industrial societies, and a somewhat exaggerated respect for the universality of Freud's ideas, both theories are similarly flawed.¹³⁵

Despite the fact that none of the following were put forward by psychologists or psychoanalysts, there are three other arguments (each more convincing than anything suggested by Freud, Stephens or Bettelheim) that, for obvious reasons, must also be termed "psychological".

3.2.A. Pollution and the Fear of Death

One theory that has won support from scholars in a variety of fields is that ritual pollution practices are directly linked to man's fear of death. This argument has been particularly emphasised and developed regarding the Biblical pollution code, where it appears convincing.¹³⁶ For, as a general rule, it is very important that its priests avoid contact with

¹³² Douglas 1966:119-123.

¹³³ See S. Freud Civilisation and Its Discontents (1963, London, Hogarth Press) p.36.

¹³⁴ W. Stephens The Oedipus Complex: Cross Cultural Evidence (1962, New York, Free Press) p.119; and B. Bettelheim Symbolic Wounds: Puberty Rites and the Envious Male (1954, New York, Free Press) p.75.

¹³⁵ For criticism, see Buckley and Gottlieb 1988:15-18.

¹³⁶ See, for example, W. Paschen Rein und Unrein: Untersuchung zur biblischen Wortgeschichte (1970, Munich, Sant) pp.55-65; E. Feldman Biblical and Post-Biblical Mourning (1977, New York, Ktav) pp.34-37; and Milgrom 1991:1000-1004.

death (Num. 5:2-3, 19:11, 31:13-24); and this is especially true for the high priest, who is not even permitted to bury his parents (Lev.21: 4). The impurity contracted from touching a corpse (lasting seven days) would also have been the strongest the layman was every likely to face (Num. 19:11, 16, 18); and its purification ceremonies are more elaborate than usual (Num.19:1-10). Indeed, according to the Biblical system, a person entering a tent which “overhangs” a corpse automatically contracts a seven day impurity, even if he does not touch the dead (Num. 19:14).¹³⁷ Other impurities are symbolically included under the same rubric: the leper is described as “one of the dead”, whose “flesh is half-eaten” (Num.12:12), thus his impurity is said to participate in death impurity; the loss of blood is described as “the loss of life” (Lev.17:14) which, according to some scholars, explains why menstrual and lochial blood are impure;¹³⁸ the emission of semen has also been said to signify the loss of potential life;¹³⁹ and many of the Bible’s inedible and impure animals are carnivores – thus in order to live they must take life.¹⁴⁰

In support of the Biblicists, Culpepper and Boyce reach comparable conclusions about Zoroastrian practices, where “all sickness and bodily excretions are understood to participate in death-impurity”.¹⁴¹ As Boyce notes, cut hair and nails are also “dead things” shed from the body, which may explain their inclusion in numerous pollution systems.¹⁴² Likewise, Burton perceives a fear of death behind the Nuer’s pollution practices.¹⁴³ It is true that some scholars push this logic too far (ejaculation of semen may sometimes represent “the loss of the forces

¹³⁷ Only the leper and corpse were capable of this sort of contamination. Corpse contamination was made even stronger by the Rabbis (Harrington p.143).

¹³⁸ Milgrom 1991:1002.

¹³⁹ G.J.Wenham “Why Does Sexual Intercourse Defile (Lev.15:18)?” in *Zaw*, 95 (1983) 432-434.

¹⁴⁰ See M.P. Carroll “One More Time Leviticus Revisited” in *Anthropological Approaches to the Old Testament* ed. B. Lang (1985, Leiden, Brill) pp.177-208.

¹⁴¹ Citation from E. Culpepper “Zoroastrian Menstrual Taboos” in *Women and Religion* ed. J.Plaskow (1974 Missoula, Mont. Scholars Press) pp.199-210 (p.205); c.f. M. Boyce “A History of Zoroastrianism” vol. 1 (1975, Leiden, Brill) p.306.

¹⁴² Ibid. Ironically, this is the reason the Sunni jurists give for them being pure (see Part II, Exc.A).

¹⁴³ Richard Burton “Some Nuer Notions of Purity and Danger” *Anthropological Studies*, 69 (1974) 517-536.

of life”, but it is not clear why it should during sexual intercourse [Lev.17:14]); nevertheless, this is perhaps the most satisfying general theory of a psychological cause for ritual pollution behaviour.

3.2.B. Impurity and Anomaly

By far the most influential hypothesis of this kind is Mary Douglas’ suggestion that all pollution ideas stem from a fear of anomaly, which she first put forward in Purity and Danger. At that time heavily influenced by the Structuralist ideas of Claude Levi Strauss, Douglas accepted that scholar’s premise that mankind classifies everything he sees according to a series of binary oppositions.¹⁴⁴ As her proof, she chose to investigate the themes of purity and impurity. Her starting point, a healthy reaction against Frazer’s snobbery, was that *all* human beings and not just those living in pre-industrial societies dislike “dirt”. But dirt, Douglas was careful to point out, is not limited to things carrying bacteria. Rather, it is all “matter out of place”:

shoes are not dirty in themselves, but it is dirty to place them on the dining-table; food is not dirty in itself, but it is dirty to leave cooking utensils in the bedroom, or food bespattered on clothing; similarly, bathroom equipment in the drawing room; clothing lying on chairs; outdoor things indoors; upstairs things downstairs; underclothing appearing where over-clothing should be, and so on. In short our pollution behaviour is the reaction which condemns any object or idea likely to confuse or contradict cherished classifications.¹⁴⁵

Thus, whereas Levi-Strauss had described the classification process itself, Douglas was more interested by what happens when this process short-circuits. Her theory is that, as a species,

¹⁴⁴ For the best representations of Levi-Strauss’ theories, see e.g. The Savage Mind trans. by J. Weightman (1966, New York, Atheneum) and The Raw and the Cooked trans. by J. and D. Weightman (1970, London, Jonathon Cape).

¹⁴⁵ Douglas 1966:37. It should be noted that Edmund Leach had said something very similar just previously, when looking at the way certain *anomalous* creatures often prove effective as symbols of dirty or vulgar behaviour. See “Animal Categories and Verbal Abuse” in New Directions in the Study of Language ed. E.H. Lenneberg (1964, Cambridge, MIT Press) pp.28-63.

we are challenged by (and normally do not like) anything which finds the chinks in our logic by proving difficult to classify. Our gut reaction is to view such things as dirty and/or dangerous.¹⁴⁶ This reaction applies in both physical and mental domains. Just as we do not like “upstairs things downstairs”, so certain types of behaviour (for instance, homosexual sex) also appear to confuse many of society’s cherished classifications and are, therefore, typically described as “dirty”.

Simple as it sounds, Douglas’ theory of anomaly produced an uproar when, in Purity and Danger, she applied it to that “hoary old puzzle”, the Biblical dietary rules. There she argued that the Priests’ fundamental process of classification had been a creature’s mode of *locomotion*; thus, certain creatures were declared impure and inedible solely because the Priests believed that by *moving* in the wrong way they defied this process.¹⁴⁷ Douglas also sought to explain the other Biblical impurities (Lev. 11-15) by an extension of the same logic. Hence, she claimed that, because the human mind craves order, the bodily emissions – saliva, blood, pus, excreta, semen and so on – also confused the Priests’ classification processes merely by crossing the body’s boundary lines, and becoming “matter out of place”.¹⁴⁸

The anomaly theory depends to a large extent on Douglas’ use of the Biblical texts, where it has not been proven whether anomaly really was a factor in the priests’ thinking. Indeed, both anthropologists and Biblical scholars have subjected this theory to searching criticism.¹⁴⁹

¹⁴⁶ The old wives’ tale that bears await children who step on the cracks in the pavement has a profounder meaning than we might have thought!

¹⁴⁷ See Douglas 1966: ch.3. For instance, ruminants that do not walk upon cloven hooves, and vice versa (Lev. 11:6-9), and fish without both fins and scales (vv.10-12). Douglas has never rejected her original theory, but has added to it in later essays. See, for instance, “Deciphering a Meal” in Implicit Meanings (1975, New York, Routledge) pp. 249-276, where she includes eating flesh as an extra criteria of anomalous behaviour for the impure/inedible creatures.

¹⁴⁸ Douglas 1966:125. Unfortunately, as has been pointed out on numerous occasions, the only one of these emissions considered impure by the Bible or the Rabbis is semen! (e.g. Milgrom 1991:721).

¹⁴⁹ Typically, anthropologists have focused, firstly, on the fact that social boundaries are inevitably blurred, thus it is very difficult to pinpoint exactly who or what can be called anomalous and, secondly, on the fact that in any

The debate will continue, but the real value of Douglas' theory of anomaly lay firstly, in showing people that a response to bodily or ritual pollution is not restricted to primitive settings; and, secondly, in drawing attention to the Bible's ritual pollution texts, which up until then had been gathering dust (prompting a number of intriguing hypotheses concerning its dietary code¹⁵⁰).

3.2.C. Ritual Pollution and Bodily Control

Two scholars have recently proposed the theory that ritual pollution behaviour stems from anxiety over a loss of bodily control. One is Howard Eilberg-Schwartz, who bases his observation on the Biblical texts; the other is A. Kevin Reinhardt, an Islamicist.¹⁵¹ In the Biblical context, this argument is persuasive because it accounts for why certain emissions are deemed *more* impure than others, something no other psychological theory manages. Thus, Eilberg-Schwartz points out that when an individual is able to exert control over the emission of a substance, this substance will not be polluting, or only weakly so. Urine is not a source of impurity in the Biblical code because it is "a fluid over which men and women possess a great deal of control"; by the same token, the ejaculation of semen only causes a weak form of impurity, lasting one day, because normally orgasm occurs on purpose (Lev. 15:6). If, however, an emission occurs without an individual intending it to, as in the case of

symbolic system there are many classificatory anomalies that are entirely innocuous (why, for instance, as R. Alter asked, did the priests not also proclaim the chicken and duck impure, as neither meets Leviticus' criteria for pure birds). For a summary of these and other criticisms, see W. Houston Purity and Monotheism (1993, Sheffield, Sheffield Academic Press) pp.100-113. Although some still support the anomaly idea (e.g. D. Bryan Cosmos, Chaos and Kosher Mentality 1995 Sheffield, Sheffield Academic Press), Biblical scholars have pointed out Douglas' carelessness with the text; Milgrom, for instance, notes the occurrence of seven basic errors in three pages of "Deciphering a Meal" pp.73-75 (Milgrom 1991:721).

¹⁵⁰ For instance, see Firmage "The Biblical Dietary Laws and the Concept of Holiness" in J.A. Emerton Studies in the Pentateuch (1990, Leiden, VTSup 41) pp.177-208; and M.P. Carroll (1985). Perhaps the most fruitful discussion of the anomaly theory is by Douglas' student Susan Meigs. She has redefined the original argument by claiming that impurity will only be attached to substances perceived as decaying (thereby, connecting impurity and death once more), and in contexts where those substances, their carriers, or symbols are "threatening to gain access to the body when that access is not desired". See Meigs "A Papuan Perspective of Pollution" Man, 13 (1978) 309-316 (p.313).

¹⁵¹ See Eilberg-Schwartz The Savage in Judaism (1990, Bloomington, Indiana University Press) pp.171ff; and Reinhardt 1990:19-20.

non-seminal discharges and menstrual blood, it causes a more severe impurity of seven days. Lochial bleeding (Lev. 12), leprosy (Lev. 13), and death (Lev. 10:4-5; Num. 5:2-3; 19; 31:13-24) are increasingly difficult to prevent, therefore they carry an increasing degree of pollution.¹⁵² As we shall see, Sunni Islam's pollution code measures impurity quite differently, but, as Reinhardt shows, there is a strong case for the lack of bodily control also being an influential – if not the most influential – factor there too (Part II, Exc.C).

3.3. THE SOCIO-SYMBOLIC THEORY

Most recent anthropological inquiries and various publications by scholars of religions presuppose that ritual pollution beliefs are cultural “symbols” upholding and enforcing religio-social hierarchies. This idea can be traced directly to Mary Douglas. For, despite all the attention her anomaly theory received (and continues to receive), Douglas' main intention in Purity and Danger had been to show that, through ritual pollution behaviour, “people are simply mirroring (on their bodies) designs of hierarchy or symmetry which apply in the larger social system”.¹⁵³ This insight, rather than a theory of psychological causes, is more in keeping with the rest of her work. Referring to a variety of her publications, we will now summarise her ideas on the hierarchical functions of ritual pollution beliefs.¹⁵⁴

Basing her research on data drawn from a variety of cultural settings, past and present, Douglas expects ritual pollution beliefs and practices to reflect and enforce social hierarchies

¹⁵² However, to put Eilberg-Schwartz's theory beyond doubt, there would have to be a higher level of impurity attached to nocturnal emissions than normal seminal emissions, as well as to other uncontrolled effluents (e.g. what about incontinence, or the inevitable tears from slicing up onions!).

¹⁵³ Douglas 1966:6. This is “social structuralism” rather than the pure structuralism of Levi Strauss which disconnects ideas from social structure. The former has been called “the dominant trend within (recent) anthropology”, see B. Morris Anthropological Studies of Religion (1987, Cambridge, Cambridge University Press) p.234. Although her methods were more sophisticated than anything either scholar would have imagined, in identifying social structure and values as the primary function of religious rituals, Douglas' most obvious influences are Emile Durkheim, and especially her teacher Franz Steiner, see Steiner's Taboo, Truth, and Religion (1999, New York, Bergahn Books) which includes a eulogy to Steiner penned by Douglas.

on both practical and symbolic levels. On the practical level, predominant notions of hierarchy are made explicit. In general, her best examples are from Indian cultures; for instance, in the caste system of the Coorgs (a group of Indian Hindus) status is intricately defined in terms of purity and pollution. Inherently more impure, the low castes are responsible for (literally) doing the dirty work – washing clothes, cutting hair, dressing corpses – thereby enabling the higher castes to maintain their greater purity and social standing.¹⁵⁵ In particular, Douglas shows how, within these settings, when the dividing line between social categories is in danger of being blurred, ritual pollution ideas are often brought in to remind people of their differences. Thus, when a particular group causes tensions, moral outrage is mustered, the potential troublemakers are isolated (sequestered, or attributed a greater power to defile than others), and pressured to remain in their rightful place in the social order. Pollution, Douglas claims, is shown to be “the enemy of change, of ambiguity and compromise”,¹⁵⁶ and these ideas will be more forcefully expressed in settings where these threatening qualities are to be found. In this respect, Douglas has drawn attention to the way women are often the targets for accusations of ritual pollution in many societies because they are regularly causes of social tension. By attributing them a greater potential to defile, or be defiled, ritual pollution beliefs are used to reduce women’s potential to cause disruption.¹⁵⁷ Thus, rather than finding them nonsensical as Frazer and Robertson Smith had done, Douglas argues that ritual pollution beliefs serve a very useful function: the timely accusation of pollution alleviates potential for social discord. We will return to this insight in Chapters 8 and 9, where its application will be tested in an early Islamic context.

¹⁵⁴ In particular, *Purity and Danger* 1966, *Natural Symbols* 1970, and three essays in *Implicit Meanings*, see “Pollution”, “Deciphering a Meal”, and “Self-Evidence” (1975, New York, Routledge, Kegan and Paul).

¹⁵⁵ Douglas 1966:123.

¹⁵⁶ Douglas 1966:116.

¹⁵⁷ The experience of women in the Lele tribe is a good example. In a society where “all male rivalries are expressed in the competition for wives”, and the unfortunate man with no wife is “below the bottom rung of the status ladder”, women “are the most desirable objects their culture has to offer”. This degree of power makes Lele men uneasy. Consequently, in Lele society, the sexes are kept apart by a plethora of pollution beliefs emphasising how dangerous a woman can be (Douglas 1966:150-151).

Such strategies appear obvious. Yet, for Douglas, they barely scratch the surface of the way these ideas work on a deeper, symbolic level. Her basic premise is that, rather than ritual pollution practices simply being tools of social control (via which stability is maintained), they form “systems” of meaning that are logically and organically related to (or woven into) a culture’s total pattern of religious beliefs and social identity. To understand this, we must accept her argument that, within all of us, there is an innate urge “to create consonance between the perception of social and physiological levels of experience”.¹⁵⁸ It is due to this urge, Douglas argues, that the physical body will always be “constrained” by the structure and form of the social body it inhabits.¹⁵⁹ The human body, is “a symbol of society”, a canvass upon which “the powers and dangers credited to social structure” are reproduced.¹⁶⁰ Indeed, following Douglas’ logic, we need only look at its general attitude towards the physical body to understand the way a community perceives its social structure, and the sort of religious ideology it is likely to express. Societies in which the physical body is the focus of strict control will possess strong ideas of traditional authority and well-defined social hierarchies. Here, there will be also be a high level of social cohesion, and the individual will have a clear idea of his place within the wider society. These social conditions will produce religious beliefs wherein ideas of sin and virtue are also clearly defined, and ritual “efficacy” (i.e faith in the immediate effectiveness of external/ritual actions) will be strongly emphasised. Conversely, and by the same logic, societies in which lax attitudes towards the body predominate will possess undefined hierarchies, and there will be poor social cohesion.

¹⁵⁸ Douglas 1970: 99.

¹⁵⁹ Douglas 1970:93 ff.

¹⁶⁰ Douglas 1966:116. Both Victor Turner (1967) and Peter Brown have made good use of this insight. The latter scholar, in particular, describes with precision how male Christian authors used the female body (particularly the body of the virgin) as the symbolic locus for reflection on the social and religious integrity of the early church’s boundary lines, see Brown The Body and Society: Men, Women, and Sexual Renunciation in Early Christianity (1988, New York, Columbia University Press) esp. pp.341-365. Brown’s work is developed further by Virginia Burrus “Word and Flesh: The Bodies and Sexuality of Ascetic Women in Christian Antiquity” in *JSFR* 10 (1994) 27-51.

Here, social status is often fluid, individual autonomy will be stressed, and people can move up and down the social ladder relatively easily. In these settings, religious feeling will tend to be internalised, sin and virtue described as “states of mind” rather than objective realities and, in general, ritual action will lose its efficacy, be distrusted or denigrated as nothing more than “outward show”.¹⁶¹

Douglas develops the symbiotic relationship between social and human bodies by suggesting that it is *only* when a community believes that danger resides in its geographical and social boundary lines (internal and external) that it will attribute danger, via the use of ritual pollution ideas, to the physical body’s boundaries.¹⁶² The dangers attached to bodily emissions in Coorg, Lele, and many other societies, symbolise the perils these societies associate with any act of social boundary crossing. Such dangers grow stronger as one ascends the social scale because there is an increasing level of anxiety over maintaining the integrity of social categories the higher up this scale one goes.

Put these two conditions together and, according to Douglas, the most rigorously developed notions of ritual pollution will flourish in societies with strict, traditional forms of authority and social control (replicated in firm attitudes to the human body and emphasis on ritual efficacy) that also attribute danger to the margins of their society.¹⁶³ Although she has

¹⁶¹ On this evidence, we do not over-simplify her theories too much by saying that Douglas identifies only two types of religion – “ritualist”, and “non”- or “anti-ritualist”; each of which she perceives as fundamentally determined by societal factors. She goes into great detail defining the main characteristics of both, but the key to her distinction lies in the contrasting religious symbolism she expects each to employ. In ritual settings (i.e. those with strong forms of authority and general social cohesion), Douglas claims there will be a natural sensitivity to “condensed symbols”. In contrast, in non-ritual settings (i.e. those where undefined and social cohesion has broken down), the symbolism will be “diffuse”. On what these terms mean, and why they do not correlate well with Sunni Islamic ritual, see p.270 ff.

¹⁶² Douglas 1970:60-64. This corrects the impression given in *Purity and Danger* that all bodily emissions are always impure regardless of social context.

¹⁶³ These are what Douglas calls strong “group/strong grid” contexts (group being the degree to which an individual internalises the given pattern of values belonging to the community at large; and grid being the degree to which an overall culture’s symbolic system is ordered so as to constitute a coherent world view). In

recently reconsidered this (see the conclusion to Part I), Douglas originally believed that the social reality behind the Biblical pollution system ideally fitted this description. By investigating its themes of pure/impure, blemished/holy, priest/Israelite, and Israelite/gentile, she ingeniously showed how the priests' world-view is hierarchically structured through their use of ritual pollution and dietary laws.¹⁶⁴ In her early studies, Douglas was especially concerned with what the priests thought of the non-Jew. Correctly noting that, after a long history of captivity and foreign rule, it was syncretism rather than invasion which most scared the Israelites, she took the Biblical ritual pollution and dietary laws to express the priests' fears of exogamy and social exchange of any sort: "the high walls they built around Mount Sion and the strong guard they set upon their mouths and bodies were the symbolic ramparts of their commitment to their religion".¹⁶⁵

Ritual analysis has developed considerably in the last thirty years. Scholarly awareness of how rituals work - the inter-relationship between individuals, social structure and ritual performance - has increased enormously; and Douglas' views (wherein ritual serves as the means by which individual perception and behaviour are socially appropriated or conditioned) have been trenchantly criticised.¹⁶⁶ Yet, despite these criticisms, Purity and Danger remains

Natural Symbols, Douglas speculates that only four variations of grid and group (and therefore only four variations of culture) are possible. For criticism of this typology, see Wuthnow *et al* Cultural Analysis (1984, London, Routledge).

¹⁶⁴ See especially Douglas 1975 "Deciphering".

¹⁶⁵ Douglas 1970:64.

¹⁶⁶ This has focused on her assumption that the relationship between social structure and the human body is merely reflective and unproblematic, something that remains far from proven (especially when we consider her theory in light of the Sunni Islamic data, see pp.121-122 below); and the generalisations she makes when speaking of culture. For a good critical summary of Douglas' ideas, see Morris 1987:203-218, 226-234, and Bell Ritual Theory, Ritual Practice (1992, Oxford, Oxford University Press) pp.177-181. Other criticisms not mentioned there should include the fact that she unquestioningly accepts the Durkheimian idea that ritual action creates solidarity (see e.g. Douglas 1970:79), whereas rituals, and ritual pollution beliefs in particular, have often been the cause for dispute (Houston 1993:260; c.f. fn.223.). And that she makes no distinction between ritual, religious, and social realities, each sliding into the other during her analyses. This has led her repeatedly into giving the impression she was speaking about social reality, rather than textual ideology, in her treatment of the Biblical texts. With such criticisms in mind, scholars of religion need to be careful when applying Douglas' ideas to their own work. This has not always been the case. Perhaps dazzled by the array of facts at her fingertips and the scope of her research, there has been a tendency to rely too heavily on Douglas' theories, or

the seminal work on ritual pollution, and Douglas' theories there and elsewhere have had a dramatic effect in shaping subsequent research across the academic spectrum. As I began this section by saying, there is a virtual consensus of opinion that ritual pollution beliefs symbolically express and uphold religio-social status. In Southeastern Asian, Melanesian, and Polynesian societies, and most dramatically with regards to women, anthropologists have forcefully developed Douglas' arguments.¹⁶⁷ They have tested and confirmed her insight that ritual pollution is most emphasised in contexts where there is social tension.¹⁶⁸ Several Biblical scholars have also utilised Douglas' insights skillfully. For instance, Jacob Milgrom, Frank Gorman, Peter Jenson, and Howard Eilberg Schwartz have developed her original ideas on the Bible's ritual system as a reflection of its priest's religio-social ideology.¹⁶⁹

even accept them without question (on this, see Harrington 1993:23-25). The worst offenders are Bruce Malina, and William Countryman. Without really citing her, Malina repeats Douglas' theories word for word, but forces their implications too far. Even though Jeremias might be able to find 14 separate social categories in early Palestine, it is misleading to claim that the differences between these categories are upheld through Biblical purity ideas; see The New Testament World (1981, Atlanta, John Knox Press) pp.132-134. Countryman makes grander mistakes. Using Douglas' theories to support his highly individual reading of New Testament approaches to sexuality, he consistently misunderstands the nature of Biblical impurity; see Dirt, Greed and Sex (1988, Philadelphia, Fortress) esp. pp.25-27. In addition, Douglas' research has been misused in some feminist exaggerations of Biblical pollution restrictions, see e.g. M. Selvidge Woman, Cult and Miracle Recital (1990, Lewisburg, Bucknell University Press). For a list of both Countryman and Selvidge's mistakes, see Harrington 1993:15-21.

¹⁶⁷ For a general picture of anthropological approaches to the phenomenon of menstrual impurity, see e.g. S. Lindenbaum "Sorcerers, Ghosts and Polluting Women: An Analysis of Religious Belief and Population Control" in *Ethnology*, 11:3 (1972) 241-253, and Kuru Society: Disease and Danger in New Guinea Highlands (1979, California, Mayfield Publishing); Jeffrey and Karen Paige The Politics of Reproductive Ritual (1981, Los Angeles, University of California Press); J. Krygier "Caste and Female Pollution", and V. Kondos "The Triple Goddess and the Processual Approach to the World: The Parbatya Case" both in Women in India and Nepal eds. M. Allen and S.N. Mukherjee (1982, Canberra, Australia National University Press); and F.A. Hanson "Female Pollution in Polynesia" in *Journal of the Polynesian Society*, 91:3 (1982) 335-338.

¹⁶⁸ In particular, see Jeffrey and Karen Paige's analysis of menstrual taboos, and accompanying notions of pollution in tribal societies (1981). Following Douglas' logic, the Paiges argue that pollution themes restrict and control the menstruant in societies where there is an unstable economy, because men wish to symbolise their disinterest with mere family matters in order to demonstrate their greater allegiance to the society and economy as a whole. For comparable approaches, see Sherry Ortner and Harriet Whitehead's Sexual Meanings: The Cultural Construction of Gender and Sexuality (1981, Cambridge, Cambridge University Press) esp. pp.20-21, and Marjorie Balzer "Rituals of Gender Identity" in *American Anthropologist* 87 (1981) 121-142 (pp.128-130). Another very interesting application of this theory is to be found in Kathy Stuart's investigation into the concepts of ritual pollution and honour in Late Medieval and Early Modern Germany. Stuart shows how when anyone belonging to a traditionally dishonorable profession like skinnners or executioners tried to break down class suspicions, they were soon villified through the accusation of pollution for confusing time honoured status rules (Stuart 1999:258).

¹⁶⁹ See Jacob Milgrom 1991:721 ff.; Gorman 1990; P. Jenson Graded Holiness: A Key the Priestly Conception of the World (1992, Sheffield, Sheffield Academic Press); H. Eilberg Schwartz The Savage in Judaism (1990, Bloomington, University of Indiana Press).

Indeed, the last scholar has convincingly shown how gender hierarchy underpins the priests' use of ritual pollution themes, something that had escaped Douglas herself.¹⁷⁰

I have described Douglas' theories at length because of their lasting influence, and because too few involved in the studies of religion have read them critically. My main reason for thoroughness, however, was that, contrary to everything Douglas described in the works I have cited, and nearly every other anthropological investigation I have encountered, Sunni Islamic law does *not* appear to enforce, uphold, or perhaps even to envisage a specific social order through its ritual pollution system. This observation will be developed in chapter 5.3.

3.4. RELIGIO-MORAL THEORIES

This approach links ritual pollution practices to specific theological doctrines and/or a feature or features of the dominant moral code. After the prolonged and general lack of interest of Western scholars of religions in any form of ritual action on the grounds that such action signifies a previous and lesser stage of religion than belief (a prejudice we traced to Frazer and Robertson Smith), there has been a growing realisation that a community's rituals cannot be studied as if they exist unconnected to its religious doctrines. This owes much to the input of cultural anthropologists like Clifford Geertz who have persuasively shown the power of rituals "to embody symbols that reflect religious beliefs".¹⁷¹ According to Geertz:

it is (primarily) in ritual that a conviction that religious conceptions are veridical and that religious directives are sound is somehow generated... in a ritual, the

¹⁷⁰ Eilberg-Schwartz concentrates on the symbolic role of blood in Priestly theology: male blood signifies covenant, while "female blood is symbolic of violent bloodshed and God's revulsion" (1990:180-181).

¹⁷¹ Geertz represents a different approach to anthropology than Douglas. Unlike her, he often describes religion as if it were detached from social and economic factors. Rather, like Weber and Jung, he perceives religious experience – as it is mediated through ritual – to possess its own distinctive function. As Combs-Schilling puts it, in the Geertzian approach: "the physical movement of the ritual is a way of bringing the population into the denomination of the abstract symbolic structure, not a means of creating it", M.E. Combs Schilling 1989:33.

world as lived and the world as imagined, fused under the agency of a single set of symbolic forms, turn out to be the same world.¹⁷²

In many cases, the process by which ritual action embodies religious conceptions is easy to see – for instance, through the words and acts of the Eucharist, the doctrine of everlasting life through Christ's death is plainly commemorated.¹⁷³ Moreover, in Hinduism, ritual pollution is brought about by sins such as cursing the deities, murder, adultery, lying, and so on, as well as physical acts, and purification requires both ritual bathing and the intoning of mantras in repentance.¹⁷⁴ Thus, in Hindu settings, ritual pollution ideas are inseparable from the faith's general ethical and religious principles. However, while many scholars of religions (especially Biblicists) show an unprecedented level of interest in ritual texts as valid expressions of religious "truths", in the monotheistic traditions and elsewhere, ritual purity and pollution practices are not directly connected to specific religious doctrines or beliefs. Therefore attempts to make this link often appear speculative.

Nevertheless, several theories of this kind, both ancient and modern, do exist. When he cannot defend the Jewish dietary and purity norms rationally (see p. 49 above), Maimonides, for instance, assures his readers that every one of them must serve to inculcate "some truth, or remove some erroneous religious opinion".¹⁷⁵ The Sufi scholar Ibn al-'Arabī is more imaginative; for him, Islam's whole pollution system can be explained metaphorically as a warning against the dangers of disbelief (an insight we shall return to in chapter 10). In some critics' hands (Maimonides and al-'Arabī would have to be counted among them), this approach has clearly lost all objectivity, and the data twisted to extract unrelated theological

¹⁷² C. Geertz *The Interpretation of Culture* (1993, London, Fontana Press) pp. 112-113. Parentheses added.

¹⁷³ For a very good analysis of the way the Eucharist confirms Christianity's central religious truths by generating a contrast between higher (spiritual) and lower (mundane) realities, see C. Bell "Ritual, Change and Changing Rituals" in *Worship*, 63 (1981) 31-41.

¹⁷⁴ Although the two types of pollution differ, p.4 above.

and moral values.¹⁷⁶ However, there have also been a handful of recent scholars claiming objectivity who manage to find lofty spiritual messages encoded within ritual pollution practices.

It is no surprise that Mary Douglas is one of these. For, although in the final analysis she ascribes all aspects of religious expression to the prevailing form of social structure, she also believes that ritual action is so interwoven into the fabric of a culture's social and religious identity, that it will inevitably co-exist harmoniously with religious doctrines whether this connection is explicit or not. Hence, in Purity and Danger, she claimed that, while the Biblical ritual pollution and dietary codes are primarily means by which the social body expresses itself, they also serve as symbolic reminders of the *unity* of God. This is because, while anomaly refers to things that defy classification, the Biblical definition of "holiness" "involves correct definition, discrimination and order".¹⁷⁷ And so the Levitical texts stipulate that it is only "whole" men and creatures (i.e. physically intact, perfectly formed) that are capable of serving as priests, and are permitted for sacrifices. In contrast, those with physical imperfections (i.e. blind, lame, mutilated faces, or long limbs etc. Lev.21:17) signify a confusion in the classification process, and are impure and unfit to serve any purpose in the sacred sphere. This ritual strategy, Douglas argued, concentrates the participants' attention on the "oneness, purity and completeness of God".¹⁷⁸ Unfortunately, however, as the Biblicists rushed to point out, Douglas' theory is flawed because it assumes that Biblical ideas of Holiness and purity are the same thing. This is not the case; people and creatures

¹⁷⁵ Although he then adds that he is not altogether sure how, see Guide for the Perplexed 3.31, p.332, cited in Houston 1993:74.

¹⁷⁶ See e.g. Stein's application of Philo's allegorical interpretations of Biblical ritual, in Douglas 1966:48-49.

¹⁷⁷ Douglas 1966:54.

¹⁷⁸ Douglas 1966:58.

with blemishes, who are not Holy, are still pure and are therefore permitted to enter the sanctuary (Lev.21:16, 22:25).¹⁷⁹

A more successful attempt to show the link between ritual pollution acts and a specific theological doctrine is made by Jamshid Choksy, who writes about Zoroastrianism. Choksy is clearly influenced by recent anthropological approaches to ritual (especially those of Douglas and Geertz). Echoing Geertz, he observes that it is:

Through ritual actions, religious concepts are disseminated beyond their specific contexts and serve to provide a general framework of beliefs and practices.¹⁸⁰

Choksy acknowledges that Zoroastrian purity and pollution practices serve hierarchical purposes; however, rather than concentrating on those, he wishes to show how these practices are symbolically connected to the doctrine of divine judgement, and thus convey a profound theological message. In his view, a single foundational myth – which tells of the last battle between good and evil; when Ahura Mazda will triumph over the Corpse Demoness (the incarnation of death and pollution in the world) – explains their performance. He shows how every time a Zoroastrian purifies himself:

the beneficent immortals, the seven sacred creations, and numerous other aspects of the religious universe are symbolically present and involved... just as they are in the final renovation of the universe.¹⁸¹

He further observes that, through regular purifications, Zoroastrians “confine evil and pollution within the finite space and time of a ritual”,¹⁸² where they are eventually

¹⁷⁹ For this point, see Milgrom 1991:721. Unfortunately, many scholars have followed Douglas in this mistake. See e.g. J. Soler “The Dietary Prohibitions of the Hebrews” in *New York Review of Books*, (June 1979) 24-30, Countryman 1988:25-27, and F. Denny “Islamic Ritual” in Martin 1985:63-78, who all presume that to be impure is, in some way or other, merely to be lacking wholeness.

¹⁸⁰ Choksy 1989:xxiii.

¹⁸¹ Choksy 1989:135.

vanquished. Thus, for Choksy, the Zoroastrian ritual pollution system employs metaphors of eschatology (symbolically connected via ritual to corporeal life) “to create order, temporary perfection, and, specifically, the hope of eventual transcendence”.¹⁸³

Two Biblical scholars, Jacob Milgrom and David Wright, have also suggested religio-moral interpretations of the Old Testament’s pollution laws.¹⁸⁴ The former scholar argues that the priests intended both their pollution and dietary laws to teach reverence for life. He bases this on the aforementioned idea that ritual impurity stems, psychologically, from man’s terror of death (ch. 3.2.A.). In light of this connection, Milgrom argues that purity must symbolise the forces of life. According to him, this is why, unusually for pollution codes, the Bible does not attribute impurity to excrement or urine – “for the elimination of waste has nothing to do with death”.¹⁸⁵

David Wright’s theory is very different. Its strength lies in the fact that it unites Leviticus’ ritual impurities, what he calls its “permitted impurities” (i.e. contact from menstruation, sexual intercourse, leprosy, etc., Num. 5, 19, Lev. 11-16), and its list of crimes, or “prohibited impurities” (i.e. sexual wickedness, idolatry, and murder, see Lev. 18-21), in the same theological system. This is significant because, up until now, no one has been able to explain why the writers of Leviticus include two very different concepts of pollution in the same

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ See J. Milgrom “The Biblical Laws as an Ethical System” in *Interpretation*, 17 (1963) 288-301; and D.P. Wright “The Spectrum of Priestly Impurity” in *Priesthood and Cult in Ancient Israel* ed. G. Anderson and S. Olyan (1991, Sheffield, Sheffield Academic Press) pp.150-181.

¹⁸⁵ Milgrom 1963:293. He sees three complimentary aims in the Bible’s dietary laws: to reduce man’s choice of flesh to a few animals; to limit the slaughter of even these few animals to the most humane way possible; and to prohibit the consumption of blood, as acknowledgment that bringing death to living things is a concession to God’s grace and not a privilege of man’s whim. Yet, as Edwin Firmage points out, Milgrom’s theory cannot explain why, if the priests intended to inculcate respect for life, they call the forbidden species “abhorrent”, and “abominable”. Firmage “The Biblical Dietary Laws and the Concept of Holiness” in *Studies in the Pentateuch* ed. J.A. Emerton (1990, Leiden, VTSup 41) p.195 fn.24. Note, however, that Lois A.S. Giffen argues that the Islamic sacrificial prescriptions be read in the same way, see “Another Perspective on Ethics in Islamic Law and

book, using the same term (*tame*). Like most other scholars, Wright believes that the permitted impurities are relics from a previous stage of Yahwism. But he speculates that the reason they were incorporated into Leviticus (and the core of Priestly theology) was to teach, by practice, *the idea of purity's ethical relation to the holy*. In this view, “experiencing the lesser impurities would signal the potential for prohibited impure conditions and steer one away from them”.¹⁸⁶ Thus, the temporary ostracism following a state of ritual permitted impurity – non-contact with the holy (through exclusion from the sanctuary area, and in the major cases, exclusion from the camp) mirrors the ostracism of someone who transgresses the prohibited impurities and who must be “cut off” from the community altogether. The first type of minor separation from God (ended by immersion or a sacrifice) would draw people’s attention to the far greater separation following the contraction of prohibited impurity:

The tolerated (permitted) impurities, as part of a spectrum with prohibited impurities, created an aura of factuality around the prohibited impurities by symbolically imitating or teaching that the serious impurities are to be loathed and that their consequences are certain.¹⁸⁷

While Wright admits his theory is “midrashic”, it is nevertheless praiseworthy. The idea that ritual pollution functions through its capacity to stimulate feelings of isolation and estrangement has not been sufficiently looked into.¹⁸⁸ Yet there is something about an accusation of ritual pollution, its visceral quality, that provides the perfect vehicle for emphasising reverence through fear, an idea we shall return to in chapter 10.

Ritual” in *Religion and Law: Biblical-Judaic and Islamic Perspectives* eds. E. Firmage, B. Weiss, J. Welch (1994, Winona Lake, Eisenbrauns) pp. 211-220.

¹⁸⁶ Wright 1991:172.

¹⁸⁷ Wright 1991:177.

¹⁸⁸ Douglas and other anthropologists have always been more interested in the action of the aggressors, and the charge of pollution itself, than in how the recipients of the charge might feel.

Although far from exhausting the topic, several types of theory on the origin and function of ritual pollution practices have been discussed. After years of scholarly neglect on the basis that they appear irrational and meaningless, various possible functions have been suggested. Regrettably, scholars have very often chosen to concentrate on only one of these approaches, and exclude others, in their research.¹⁸⁹ In the course of the present study, however, the applicability of each of the above approaches will – to varying degrees - be considered in the context of Sunni Islam’s ritual pollution laws.

Before turning to these laws, one characteristic shared by many past investigations into ritual pollution needs to be noted (in particular, the psychological and socio-symbolic theories, but often materialist and religio-moral ones as well). Specifically, this is the assumption that the origins and design of pollution behaviour are ritualised, but essentially *unconscious* responses to certain overwhelming factors. In other words, the motives for this behaviour are depicted as innate to the human condition, but beyond the ability of the rituals’ participants to understand. Rather, these participants and, presumably, the ritual creators themselves are assumed to be *obliviously* manifesting some deeply embedded psychological need or, in Douglas’ view, reflecting the way society at large thinks. Ritual actions, as Edward Leach puts it, are “symbolic statements” which can be “read by the observer”, but (only) “intuitively lived” by those involved.¹⁹⁰ As we shall see, this assumption does not sit comfortably with the degree of control patently evinced by the Sunni jurists as they drew up Islam’s ritual pollution code. Indeed, several existing assumptions regarding the way ritual pollution ideas

¹⁸⁹ This tendency is criticised by Eugene Hunn, see “The Abominations of Leviticus Revisited” in Classifications in their Social Context eds. R.F. Ellen and D. Reasons (1979, New York, Academic Press) pp. 103-114.

¹⁹⁰ Leach Political Systems of Highland Burma: A Study of Kachin Social Structure (1954, Boston, Beacon Press) pp.10-16. Recent Marxist scholars push this assumption a stage further by arguing that the design of rituals is *intended* to obscure their real purpose. Maurice Bloch argues this case eloquently. In his view, rituals naturally – and without anyone’s conscious intent - mask the actualities of economic and political power so that traditional forms of authority remain unquestioned, see Bloch “Symbol, Song, Dance, and Features of

work will need to be challenged in light of their creation. That cannot be done, however, until we have a more than reasonable grasp of *tahārah* law.

CHAPTER 4

AN OVERVIEW OF SUNNI ISLAM'S POLLUTION SYSTEM

“God does not want to place a burden on you, but He wants to purify you and would perfect His Grace upon you that you may give thanks” (Qur'an 5:6).

The time has come to look at Islamic ideas of ritual pollution. The aim of this chapter is to present a clear picture of the basic rules and components of Sunni Islam's *tahārah* system, and explore some of its more unusual features, without becoming too bogged down in details.

As we are now talking about a set of laws, rather than the beliefs and behaviours of one particular culture, a brief introduction to the subject of Sunni Islamic law is justified at this point. It is generally acknowledged that this law, and the legal theory attached to it, developed from early in the Muslim Caliphate (the first texts, utilising norms and techniques already in existence, appearing ca. 750 CE) until the early tenth century CE, when – to follow the party line - its scholars united in submission to Scripture and *Sunna*.¹⁹¹ During this period, a series of schools (*madhāhib*) emerged from a handful of renowned centres of learning; these were centred primarily in the Hijaz, Iraq, Syria, but later extended across the Muslim world. By the tenth century CE, four of these schools, each named after its founder, had - as Montgomery Watt puts it - attained “a fairly definite shape”.¹⁹² Ever since, the Hanafis (originating in Kufa and Baghdad), Malikis (Madinah), Shafi'is (Baghdad and Cairo), and Hanbalis (Baghdad), have represented Sunni legal orthodoxy. Despite the tendency of Western critics to attribute the texture and content of Islamic law to other civilisations, it is - certainly on the basis of *tahārah* law - probably fairer to say, as Norman Calder does, that

(1974) 55-81.

¹⁹¹ See e.g. Coulson 1964:75-86. This is not to say that individual opinions were not regularly expressed after that time (see fn. 83 above).

¹⁹² Watt *Islamic Philosophy and Theology* (1985, Edinburgh, Edinburgh University Press) p.57.

these “are a product not of externally directed polemical activity but of internally oriented reflection, and structure-building”.¹⁹³

As any glance at the *ahādīth* and seminal law works tell us, matters of pollution and purity were of enormous importance to the early jurists. This is not surprising. Given that its subject material, which mostly concerns bodily functions and excreta, is unavoidable, there is every reason to believe that *tahārah* law had to develop faster than other legal areas in response to practical needs. Regardless of where they were first posed, the questions set and answered by these early jurists were quite similar – I have bled on my shirt before prayer, what do I do? I forgot that I bled on my shirt and prayed, what happens now? And so on. Their responses, and the opinions of the law schools that bear their names however, often differ. Indeed, anyone venturing into *tahārah* law for the first time will soon find himself buried under a multitude of legal opinions regarding every possible eventuality (and more than the occasional impossible one). In gathering these often-conflicting ideas into an overview, it is hard not to become sidetracked. To safeguard against this, I set myself some simple, relevant questions, and tried to answer them. Four came to mind; we will begin where the jurists themselves claim to, with the Qur’an.

4.1. WHAT DOES THE QUR’AN SAY ABOUT PURITY AND POLLUTION?

When they can, the Muslim jurists claim the Qur’an as their starting point for any ruling. This is also true for purity and pollution matters. Before looking at the individual passages, it should be noted that when the Qur’an speaks of “purity”, it uses two terms: “*zakāh*” and “*tahārah*”. This alerts us to the fact that Islam’s theological and ritual conceptions of purity

¹⁹³ Calder 1991:217. The question of how much other cultures *initially* influenced the subject material is, of course, another matter. As stated already (pp. 43-44) my position is that Islam’s approach to ritual began as a response to the practices of contemporary cultures, and the jurists’ “internally oriented reflection” is best understood as a continuation of this early and fundamental spirit of independence.

and pollution were, from the beginning, intended to go hand in hand. In the former sense, their meanings are the same, connoting a metaphorical and spiritual purification which, come the Last Day, will only be given to the faithful (compare Q. 2:174 with Q. 5:41). Ritually, however, their Qur'anic (and subsequently legal) meanings are quite different: *zakāh* is associated with (purification from) giving alms (e.g. Q. 2:43, 177; 5:12); whereas *tahārah* describes the purification warranted by certain bodily states (see verses cited immediately below). It is only the latter sense of purity that concerns us here.

We find most of what the Qur'an says on bodily purity and pollution in two, very similar verses: Q. 4:43, and 5:6. Throughout this study these verses will often be returned to, so we shall begin by citing both in full here:¹⁹⁴

O you who believe! Approach not prayers in a state of intoxication (*sukaray*), until you can understand all that you say, nor in a state of sexual impurity (*junūban*) except when you are passing by/journeying on the road (*abiri sabīl*),¹⁹⁵ until after washing your whole body (*taghtasilsu*). If you are ill (*marīd*), or on a journey, or come from the toilet (*al-ghai'it*), or you have touched women and you cannot find water, then take for yourself (*fa-tayammamu*) good sand/earth (*sa'id tayib*) and rub your faces and hands, For Allah blots out sins and forgives again and again (4:43).

O you who believe! For prayer, wash your faces, and your hands to the elbows, rub your heads and legs to the ankles. If you are in a state of sexual impurity, wash your whole body (*faṭṭahharu*). If you are ill, or on a journey, or one of you comes from the toilet, or you have touched women, and you do not find water, then take for yourself good sand/earth and rub your faces and hands with it. God does not want to place a burden on you but he wants to purify you (*yutahhirakum*) and to complete his favour to you, that you may be grateful (5:6).

¹⁹⁴ These and most Qur'anic citations follow Yusuf Ali's The Holy Qur'an (King Fahd Holy Qur'an Printing Complex).

¹⁹⁵ For the jurists' contrasting interpretations of "*abiri sabīl*", see p.199-200.

Contra Bousquet's observation that the jurists developed their "*théorie de l'impureté, comme les autres... sur une très petite base historique*",¹⁹⁶ it is clear that the Qur'an provided Islam's early lawyers with a very solid base on which to build. For a start, it includes a number of things that prohibit a believer from praying until he is purified: intoxication, sexual acts, coming from the toilet, and "touching" women.¹⁹⁷ Subsequently, *fiqh* agrees that all such acts nullify a believer's purity for prayer.¹⁹⁸ In both these verses, the Qur'an also appears to distinguish between a major wash (involving the whole body) following *janabah* (interpreted as "sexual impurity" by the jurists¹⁹⁹), and lesser washes for the rest of these actions.²⁰⁰ In the case of the lesser wash, it prescribes a sequence to be followed (faces, hands to the elbows, heads and legs to the ankles). Once again, these stipulations provide the basis for the jurists' regulations.

Most importantly, in Q. 5:6 we find stated what should be described as the *leitmotif* of all *tahārah* law: the idea that "God does not want to place a burden on you". It follows the concession of "*tayammum*" ("pulveral lustration"²⁰¹) which permits a believer to purify himself with good sand/earth if he is ill, traveling, or cannot find water. Besides testifying to Allah's generosity, the Qur'an's intention is clear: although all of the named conditions are serious enough to prevent a Muslim praying, he has no excuse to let it come to that. Purification is not to be a bother, and under certain conditions a different and easier means of removing impurity is permitted.

¹⁹⁶ Bousquet 1950:54.

¹⁹⁷ On the conflicting interpretations of "touching", see ch. 7.1.C.

¹⁹⁸ Although intoxication is included within the general category of sleeping/loss of senses, see ch.7.1.B.

¹⁹⁹ According to the *Arabic-English Lexicon*, *janābah* literally means "to avert", or "ward off" (cited in Reinhardt 1990:13), but covers a variety of sexual acts, see ch. 7.2.A.i

²⁰⁰ Actually, the Qur'an gives the impression that washing before prayer is mandatory regardless of whether a Muslim is impure (5:6), but the jurists only make purification obligatory in the event of impurity, see ch.4.2.A.

If we define pollution language as that which aims to create/reinforce a physical separation between pure things or people, and impure ones, the Qur'an uses such language on five other occasions. Firstly, in a verse we have already mentioned concerning menstruants:

They question thee concerning women's menstruation. Say: "it is a harm/illness" (*adhan*), so let women alone at such times and do not approach them until they are purified (2:222).

Secondly, to prohibit a number of immoral acts:

O you who believe! Intoxicants and gambling, sacrificing to stones, and (divination by) arrows are an "abomination" (*rijusūn*) of Satan's handwork: Eschew such (abomination) that you may prosper (5:90).

Thirdly, to describe pig meat in identical terms:

I find not in the Message received by me any meat forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth, or the flesh of swine – for it is an abomination (*rijus*) (6:145).

Fourthly, to keep the non-believer away from the Makkan mosque:

O ye who believe! Only the idolaters/polytheists (*mushrikūn*) are impure (*najasūn*). So let them not come near the Holy Sanctuary (*Al-Masjid al-Haram*) (9:28).

Fifthly, in what is supposed to be the Qur'an's earliest verse, to encourage Muslims to look after their attire (although the *tafsirs* explain this in different ways, see fn.241):

²⁰¹ "*Tayammum*" means something like "to betake", "to appropriate", or "to adapt" (Arabic-English Lexicon, Reinhardt 1990:17). Permission for *tayammum* was given when an expedition was held up so long looking for a necklace of 'A'isha's that they ran out of water (see Wensinck "*tayammum*" in E:I:I).

Purify thy garments (*wa thiyabaka fatahir*) and shun pollution/idolatry (*wa-l-rujaz fa-hjur*) (74.4).

As shall become plain, these verses also had a crucial influence on the development of *tahārah* law. Having noted the significance of Scripture on the *tahārah* system, however, there is no indication that the Qur'an knows anything about the way *tahārah* law really works (specifically its distinction between two forms of impurity, see below ch. 4.2.A.), and it does not go into enough detail for us to speculate on the issue.²⁰²

4.2. WHAT ARE THE GENERAL FEATURES OF *TAHARAH* LAW?

In the course of early legal development, there were discussions on a wide variety of purity related topics. Keeping in mind that our focus is impurity, some of these are either of tangential importance, or fall outside the confines of this study altogether; it is unnecessary, for instance, to go into depth on the jurists' long arguments over the precise methods of purification. Further, by (more or less) limiting this section to what the jurists *agree upon*, the present task – whilst never attaining the status of light reading! – is made far more manageable. Countless minor opinions may be omitted, and even significant variations between the law schools on some matters will only be footnoted.

As noted in the introduction, Ibn Rushd's *Bidāyat al-Mujtahid* has proven invaluable for locating the normative viewpoints of Sunni Islam's law schools, and the range of juristic opinions within them. As it plays such an important part in this study, a little should now be said about this work. It was completed towards the end of the twelfth century CE/ sixth

²⁰² Rather, the terms used by the Qur'an - "*rijus*", and "*rujaz*" translated as "abomination" and "pollution/idolatry" by Ali – are not normally adopted by the Sunni jurists, who prefer the term "*najāsah*". Moreover, on the only occasion when the Qur'an uses "*najas*", to describe the *mushrikūn*, the jurists prefer a to interpret the verse metaphorically (see ch.8).

century AH (taking its author over twenty years to write) and has long been recognised as one of the great contributions to Islam's library of "*ikhtilāf*" ("disagreement") literature.²⁰³ Such works were written with the intention of "expounding the differences of opinion within a school or between different schools".²⁰⁴ Within this genre, the *Bidāyat* is special. Other authors considered the divergence of opinions between only a few jurists, or between doctrines hailing from different areas, and they normally promoted the rulings (*akḥam*) of one school in particular.²⁰⁵ In contrast, the *Bidāyat*'s scope is vast, thoroughly covering the rulings of the Hanafi, Maliki, and Shafi'i law schools (as was the norm, it attributes most to their founders' opinion), while also often including the opinions of the Hanbalis, Zahiris, and other individual jurists. Furthermore, although a Maliki, Ibn Rushd is not interested in championing the role of that *madhhab* over the others. As Asudullah Yate observes, he has fairer, more ambitious, intentions:

In the *Bidayat* it is the *ikhtilāf per se* which is of overriding interest to the author... Exposition of the *ikhtilāf* is geared towards uncovering the mechanisms which give rise to differences, rather than out of any consideration for a particular school; the association of the differences with their respective causes is thus made to demonstrate the variety of reasoning, and the validity of a particular doctrine is (usually) not in question.²⁰⁶

Like most manuals of Sunni *fiqh*, the first chapter of the *Bidāyat* (some 95 pages in translation) addresses the topics of ritual purity and pollution. In Part II, it will help us navigate our way through the complexities of the *tahārah* system. In this chapter, the *Bidāyat* provides the general features of that system. Ibn Rushd normally confines himself to citing Canonical *ahadith*, and only deems them to be established when they are recorded by either Bukhari or Muslim, and preferably both (*Bid* p.48), where possible I footnote the

²⁰³ For the importance of the *Bidāyat* among other *ikhtilāf* works, see Abdullah Yates' unpublished Ph.D. thesis *Ibn Rushd as Jurist* (1991 King's College) pp. 19 ff.; and Nyazee's introduction to the *Bid*.

²⁰⁴ See J. Shacht "*Ikhtilāf*" in *E.I.II*.

²⁰⁵ This was achieved either through polemic, or simply leaving out the opinions of others, see Yate 1991:20-21.

relevant locations of these references.²⁰⁷ Because of how often the *Bidayat* is cited, I have included the page numbers of Nyazee's translation in my text, rather than footnoting them.²⁰⁸

4.2.A. The Main Principles of *Taharah*

According to the *Bidayat*, the main principle in Sunni Islam's pollution system, upon which all the jurists (came to) agree, is that there are *two* distinct types, or species (*asnaf*), of "impurity" ("*najāsah*" pl. "*najāsāt*") (*Bid* p.1). One type of impurity is called *ḥadath*,²⁰⁹ and the other is called *khābath*.²¹⁰ Each of these is described in other ways. Specifically, *ḥadath* impurity is said to be of a "legal/technical" ("*ḥukmiyah*"), or "abstract" ("*ma'nāwiyah*") kind.²¹¹ In contrast, *khābath* impurity, which is more often referred to simply as *najāsah*, is described as a "physical" (*ḥissiyah*) or "actual/tangible" ("*ḥaqiqiyah*") impurity.²¹² The logic behind these labels should soon become clear.

²⁰⁶ Yate 1991:21.

²⁰⁷ Translations are available in both cases, see Muslim *Sahih al-Muslim "Taharah"* trans. Abdul Hamid Siddiqi (1993, Lahore, Muhammad Ashraf) and Bukhari "*Sahih al-Bukhari*" trans. by M. Muhsin Khan as *The Translation of the Meanings of Sahih al-Bukhari* (1979, Lahore, Kazi Publications). Other *hadith* references are usually found in Siddiqi's translation of al-Tabrizi's *Mishkat-ul-Masabih* (1990, New Delhi, Kitab Bhaven).

²⁰⁸ Other translated works of law to have been of use include the Hanafi manuals: Abu Bakr Effendi's *Bayan al-Din* (translated by Mia Brandel Syrier as *The Religious Duties of Islam as Taught and Explained by Abu Bakr Effendi* (1971, Leiden, E.J. Brill), and an exhaustively detailed Persian manual translated into English by K.H. Isik as *Endless Bliss* which is available at http://207.159.82.201/Endless_Bliss. *Endless Bliss* and referred to throughout as *E.B.*; the Shafi'i works: Al-Misri's *'Umdat al-Salik* translated by Nuh Ha Mim Keller as *Reliance of the Traveler* (1994, Maryland, Amana), Nawawi's *al-Maqasid* also translated by Keller (1994, London, Islamic Texts Society), and *Minhaj et Talibin* translated as *A Manual of Muhammadan Law According to the School of Shafi'i* by E.C. Howard (1914, London, W. Thacker & Co.); and a single Hanbali manual by Ibn Qudamah entitled *Kitab al-'Umda fi ahkam al-fiqh* and translated into French as *Le Précis de Droit d'Ibn Qudamah* (1951, [n. ?], [n. pub.]). I lack a comparable source for Maliki rulings (although, not surprisingly and certainly not through favouritism, Ibn Rushd probably goes into more detail concerning Malik's opinions than others). Furthermore, Sayid Sabiq's *Fiqh al-Sunnah: At-Taharah & As-Salah* (1992, Indianapolis, American Trust Publications), which is a comprehensive survey of the subject, appears to be coming from a Maliki direction.

²⁰⁹ From the verb *hadatha*, "to occur", or "to take place recently", see H. Wehr's *Dictionary of Modern Written Arabic* (1980, London, Macdonald & Evans Ltd.).

²¹⁰ From the verb *khābutha*, "to be bad, wicked, or vicious" (Wehr).

²¹¹ It is misleading to translate *ḥadath* as "legal impurity" because purification from both forms of impurity is legally required by all authorities.

²¹² For these definitions, see Nyazee *Bidayat* p.1 fn.23, and Maghen 1997:87. Although the early jurists differentiate between the two forms of impurity, this nomenclature is not used in the formative texts (such as the '*Asl*, *Mudawwanah*, or '*Umm*); exactly when and how it came into being is not certain.

It is vital that the differences between the two species of impurity are understood correctly. I will, therefore, follow the jurists' lead and discuss the *najāsāt* under separate headings: in the following two sections, we survey the general forms of either impurity, what restrictions are involved, and what purifications are necessary for each. To reiterate my intentions, in this chapter I do not wish go into detail, and will leave all mention of the jurists' arguments concerning the individual *najāsāt* until Part II.

4.2.A.i) *Ḥadath* Impurity

Ḥadath impurity is described as an intangible, *non-contagious* condition that stops human beings performing certain religious acts. It is caused by a variety of physical acts, and applies only to man. Depending on the type of act, the jurists distinguish between “minor” and “major” forms of *ahḍāth* (“*al-ahḍāth al-asghar*” versus “*al-ahḍāth al-akbar*”). A Muslim who has contracted a *ḥadath* is known as a *muhḍith* (or *muhḍath*).

- Minor *Ḥadath*. The jurists agree on five acts that cause a minor *ḥadath*. These are: urinating, excreting, breaking wind, and emitting “*madhi/qadhi*” (male and female prostatic humor: a “thin, sticky white fluid”) and “*wady*” (“a thick white fluid that exits after urinating”) when they occur in a state of health (*Bid* pp.32-40).²¹³ Other possible candidates, about which there is some disagreement, include bleeding, vomiting, sleeping, physical contact between people of the opposite sex, touching the genitals, and laughter; each of which will be discussed in Part II.²¹⁴

²¹³ For the importance of health in the jurists' assessments of *ḥadath*, see pp.177-178. The descriptions of these substances are to be found in '*Umdat* p.80.

²¹⁴ Although rarely included in the *fiqh* manuals, apostasy is also considered a cause of minor *ḥadath* by some, see p.85 below.

On the basis of the aforementioned Qur'anic verses (5:6, 4:43), a Muslim with a minor *hadath* is not to perform the daily prayer (*ṣalāt*); and there is a stern *hadīth* to the same effect:

Allah does not accept prayer (from the *muhdith*) without purification nor charity from misappropriated proceeds (*Bid* p.3, 40).²¹⁵

According to most authorities and on the basis of the same tradition, the *muhdith* is also prohibited from prostrating – the essence of prayer – when reciting the Qur'an (during those verses when it is *sunna* to do so). On the basis of the Qur'an's description of itself as “a Book well guarded which none may touch save the purified” (*al-muṭahharīn*) (56:78-9), he is not to touch or carry the Qur'an (*Bid* p.41).²¹⁶ Nor, according to the Shafi'is and Malikis, may he circumambulate (*tawāf*) the Ka'ba during *Hajj* (*Bid* pp.42-3).²¹⁷ If the believer incurs a minor *hadath* during prayer, his purity is broken and most jurists agree he is to stop his prayers and repeat his ablutions (*Bid* p.201).²¹⁸ Likewise, if after praying he remembers that something had previously broken his purity, he must perform both a new purification and repeat his prayer (*Ibid*).²¹⁹

To purify, or “to lift a minor *hadath*” (*rafa'a-l hadath asghar*), a Muslim must perform the minor ablution. This act is called “*wuḍū'*”, and is legally incumbent

²¹⁵ Muslim “*Tahārah*”:435. Note the continuation of the Qur'an's link between the concepts of purification through *zakāh* and *ṭahārah*.

²¹⁶ He is also prohibited from touching things with Qur'anic verses inscribed upon them, for example gold coins, see e.g. *Bayān*, p.16. Just as they do in several respects, the Zahiris deviate from the majority and, on the basis that this verse relates to angels and not humans, will permit the *muhdith* to come into contact with the Qur'an (*Bid* p.41).

²¹⁷ Apparently, Abu Hanifa permits this on the basis that circumambulation does not resemble prayer sufficiently (*Bid* p.43).

²¹⁸ Although they disagree about whether he should start again at the place he left off, or from the beginning (*Bid* pp. 201-202).

upon any sane *muhdith* above the age of puberty (*bulūgh*) (*Bid* p.2).²²⁰ Before beginning *wuḍū'*, the majority insist that a believer must profess his "intention" to be pure ("*niyyah*") (*Bid* p.3). This only requires saying to oneself (although it is better to pronounce it out loud): "In the name of Allah". But, it is also Sunnah to say beforehand, "I take refuge in Allah from the accursed Shaytan", and to add after it, "Praise to Allah for Islam and its blessings. Praise to Allah who made water purifying and Islam a light. My Lord I take refuge in You from the whisperings of devils".²²¹ According to Ibn Rushd, the obligation to profess *niyyah* is based upon the Qur'anic verse 98:5: "And they are ordered naught else than to serve Allah, keeping religion pure for him", and upon the Prophetic *ḥadīth* in which Muhammad claimed that "the value of acts depends upon accompanying intentions" (*Bid* p.3). The saying of *niyyah* only precedes the purification from *ḥadath* and is the major doctrinal distinction between lifting *ḥadath* and removing *khabath*.²²²

Regarding the ritual of *wudu'* itself, the law schools broadly agree that it is to follow the Qur'an's stipulations (i.e. the order found in Q.5:6).²²³ Thus, believers are to wash (or wipe) their heads, their hands up to their elbows, and feet up to the ankles with "absolute water" (*mā' mutlaq*); that is, water which is both "pure and

²¹⁹ See p.196 for disagreements about this.

²²⁰ Semantically, *wuḍū'* is linked to *wadhah*, which means "beauty" (Boudhiba 1998:45).

²²¹ The question of whether *wuḍū'* is intended to drive demons away is dealt with shortly. The *niyyah* formula is taken from '*Umdat* p.62.

²²² Although, for reasons discussed in Part II Exc. B, the Hanafis do not insist upon it (*Bid* p.3).

²²³ However, there is debate concerning whether it is necessary to wash one's hands, include all the beard in washing, wipe or wash one's feet, and whether it is always necessary to remove one's footwear before prayer. Indeed, this last point is a very good example of a ritual practice that does not, contrary to the expectations of many anthropologists (and, I will argue, the *tahārah* system in general), create harmony; for it divided the Kharijis and Shi'is (who insist that it is always necessary to remove one's shoes), from the Sunnis (most of whom, for a limited period, permit Muslims to wipe over their boots [*mash 'ala 'l-khauffain*] instead of removing them) at a very early stage. The *Bidāyat* goes into considerable detail on the matter (pp. 14-20); for further discussion, c.f. Schacht's article on "*wuḍū'*" in *E.I.* I.

purifying” (*tāhir wa ṭahūr*”²²⁴) (*Bid* p.20). They also recommend gargling (*madmadah*) and snuffing water up the nose (*istinshāq*) (*Bid* p.5).²²⁵ Water was (and is) vital to the religious life of Muslims, and the purity of water sources must be zealously maintained. Any kind of unadulterated water is legally purifying, and intended by Allah for this purpose (Q.8:11).²²⁶ It is permissible for Muslims to share ablution water from the same container (*Bid* p.29). However, water that has already been used to lift the *ḥadath* of someone else (*mā’ musta’mal*, literally “used water”) is not permitted for re-use; it is pure (and, therefore, drinkable), but not purifying (*Bid* pp. 25-29).²²⁷ Similarly, water that has been mixed with pure substances (such as soap or leaves) is also pure, but not purifying (*Bid* pp. 24-25).²²⁸ “Defiled water” (described either as *mā’ mutanājjas*, or *mā’ nājis*) loses all ability to purify, and should not be drunk.²²⁹ The jurists agree that water becomes impure when its taste, colour, and/or smell have been altered by the introduction of tangible impurity like urine, or blood (i.e a *khābath*) (*Bid* pp.21-24).²³⁰

Besides *wuḍū’*, there is another way to lift a minor *ḥadath*. As the Qur’an states, when traveling or ill (in which case, using water might aggravate the illness), or

²²⁴ For what this category of water includes, see immediately below.

²²⁵ According to the majority, these acts are not, as Reinhardt says, obligatory (Reinhardt 1990:16)

²²⁶ *Mā’ mutlaq* is normally said to include rainwater, snow, hail, and seawater (Sabiq 1990:2). Originally, however, there was some question over seawater (*Bid* p.20).

²²⁷ For the Malikis, to perform *wuḍū’* with *mā’ musta’mal* is permissible, but disliked (*makruh*); for the Zahiris, there is no change in the water and it may be used without recrimination (*Bid* p.25).

²²⁸ Abu Hanafi permits it as long as the change in its attributes is not achieved through heating (*Bid* p.24).

²²⁹ It is questionable whether it is ever really accurate to call water “defiled”, see ch. 4.4.B.

²³⁰ Some jurists are more cautious than others about the purity of water that is *known* to contain *khābath*, but has not manifested any change. The final opinions of the different *madhāhib* read as follows:

- The Malikis claim that, regardless of the quantity of water, it only becomes defiled if a change of state in its colour, taste, or smell occurs.
- The Hanafis stipulate that a quantity of water cannot be defiled if it is large enough that a ripple of water started one side does not reach the other. If the source is smaller, it is defiled by the introduction of any *khābath*, regardless of whether this changes the water.
- On the basis of a *ḥadīth* to the effect, the Shafi’is and Hanbalis are more precise, claiming that any quantity of water greater than 2 *qullah* (*qullatayn*), approximately 216 litres, is incapable of being defiled; any

incapable of finding water, a believer may lift his *ḥadath* by performing *tayammum*. This mirrors the performance of *wuḍū'* and involves making the intention, striking the earth (once or twice), and rubbing the face and hands with clean soil. The power of soil to lift *ḥadath* is confirmed in another *ḥadīth*, where Muhammad is reported to say, “the earth has been deemed a mosque for me, and a means of purity” (*Bid* p.69). According to another, if a drought were to last ten seasons, a *tayammum* would suffice in place of *wuḍū'* (*Bid* p.31).²³¹

- Major *Hadath*. A major *ḥadath* is incurred by menstruation (*ḥayḍ*), lochial bleeding (*nifās*), most forms of sexual congress (*janābah*²³²), and by dying (the corpse is to be washed). There is no disagreement among the jurists on these causes. In addition to the restrictions for a minor *ḥadath*, according to most authorities, a person with a major *ḥadath* is not permitted to enter (or pass through) a mosque, or even recite the Qur'an (*Bid* pp. 41-43).²³³ Finally, the menstruant (*ḥa'id*) and the woman with lochial impurity (*nāfsa'*) are also prohibited from fasting (*ṣawm*), and sexual intercourse (*jimā'*) for the duration of their bleeding (*Bid* pp.331; 62-63).

quantity less than this is defiled by the immersion of any *khabath*; and if the source is exactly 216 litres then it is only defiled if the water shows a change (for these opinions, see the *Bid* pp.21-4).

²³¹ Connected questions include, among others, whether *niyyah* is required (most say it is), and what ingredients the Qur'an means by “good soil” (*sa'id tayib*)

²³² *Janābah* literally means “to avert”, or “ward off” (Arabic Lexicon cited in Reinhardt 1990:13), but covers a variety of sexual acts, see ch. 7.2.A.ii.

²³³ For the differences between the jurists on whether Muslims are permitted to pass through a mosque or must remain outside, see ch. 7.2.A.i; for the unusual nature of the *muhḍith*'s exclusion from the mosque, see chs. 8 and 9. As far as recitation is concerned, Ibn Rushd notes a *ḥadīth* in which Muhammad claims that the only thing stopping him from reciting the Qur'an is *janābah* (*Bid* p.50). The jurists generally include the menstruant and women with lochial bleeding under the same rubric as the *junūb*, but many permit women more leeway in this matter, see below pp.241-242. For an explicit prohibition of *both* menstruant and *junūb* from pronouncing the words of the Qur'an, however, see a tradition in the *Mishkat* “*Tahārah*”:461.

To lift a major *ḥadath*, a Muslim is to perform “*ghusl*”, which also requires pure and purifying water. Unlike its treatment of *wuḍūʿ*, the Qur’an does not specify how *ghusl* is to be performed; hence, there are more extensive differences between the *madhāhib* on this matter.²³⁴ The main conclusion reached is that water should *flow* over the surface of the entire body (*Bid* pp.44-45, although most jurists turn a blind eye if a few spots go untouched). The majority also permit a major *ḥadath* to be lifted through *tayammum* (*Bid* p.69).

These are the basic regulations concerning *ḥadath* impurity, its restrictions, and purifications. There is, however, one last and very important point upon which there is general agreement. Namely, that this type of impurity is – with one notable exception – contracted solely through acts of a morally *neutral* value. Being *muhḍith* is not a sin, and does not, of itself, warrant blame. This may be demonstrated in two ways. Firstly, when an individual incurs a *ḥadath* as a result of committing a sin, the potency of his/her impurity remains unaffected. Thus, if a man has sexual intercourse with his spouse he will incur the same type and strength of major *ḥadath* - and be obligated to lift it in exactly the same way - as if he had engaged in extramarital relations (“*zinā*”). Secondly, believers do not *have to* purify themselves from *ḥadath* until the time of prayer. Outside of prayer, there is no legal obligation to lift a *ḥadath* immediately. In fact, the wisdom of *delaying* one’s purification until prayer time (and hence

²³⁴ Most base their stipulations on a number of traditions attributed to ‘A’isha and Maymuna. Typically, one of these describes how:

When the Messenger of Allah took a bath after sexual engagement, he would first wash hands (to remove impurity). He then poured water from his right hand over to the left hand with which he washed his genitals. Then he performed a minor ablution, like he did for his regular daily prayers (thus according to many, he would have performed *maḍmadah* and *istinshāq*). Thereafter, taking up water he would insert his fingers down to the roots of his hair and pour three handfuls of water over his head. Finally he would let water flow over his entire body (*Bid* p.44, parentheses added).

Connected questions include: whether *ghusl* simply involves letting water run over the body, or massaging the skin with one’s right hand (*Bid* p.45); whether *wuḍūʿ* be performed prior to beginning *ghusl* (most say no, although c.f. a tradition in Muslim “*Ḥayā*”:616); whether *maḍmadah* and/or *istinshāq* is necessary; whether the sequence of washing is important. For these, see *Bid* pp.44-46.

not running the risk of needing to repeat it) is clearly implied by the following *hadith* attributed to Ibn Abbas:

We were at the Prophet's house, and he returned from the toilet, and food was put before him. (Those around him) reminded him of *wuḍū'*, whereupon he responded: (Why!) Am I going to pray that I should perform *wuḍū'*? (*Bid* p.42).²³⁵

The only *sin* that, according to some, directly incurs a *ḥadath* is apostasy (*riddah*). According to all the jurists, this is the active step of abandoning Islam for another religion ("the apostate must be seen to do so before the accusation of apostasy can be levelled at him"²³⁶). For some, apostasy is constituted by the repeated and wilful missing of prayers.²³⁷ It is difficult to know how many jurists consider apostasy to be a cause of *hadath*, for it is normally not mentioned in the standard *taharah* texts, nor even in the *Bidayat*.²³⁸ A lapse we may put down to the jurists' general lack of interest in regulating for anyone who flees the faith in terms of ritual.²³⁹ Nevertheless, this single, anomalous ruling is important to my understanding of the way Islam's pollution system functions and we will return to it in chapter 10.

²³⁵ Muslim "*Ḥayḍ*":725-728. Plainly, this *hadith* is also intended to refute the early practice of performing *wudu'* for meals (although originally this seems to have been required after, rather than before eating, c.f. pp.120-121).

²³⁶ Ibn Hazm *Al-Muhalla* (1972 Cairo, Vol.11) p.118.

²³⁷ Normally, only the Hanbalis go this far. The Malikis and Shafi'is, in contrast, maintain that someone who does not pray out of laziness is not an apostate, but should nevertheless be punished by death as a rebel, see Shihab ad-Din al-Qalyubi's exposition on Nawawi's *Manāḥij at-Talibīn* Vol. I ([n.d.], Cairo, [no pub.]) p.319. Here the Hanafis are the most lenient; they only impose a discretionary punishment (*ta'zir*), see Ibn Hubairah, *al-Idah wa at-Tabyyin* (a manuscript, no. 8). For references pertaining to apostasy, see Samuel Hussayn's Ph.D. thesis "Apostasy in Early Islam" submitted to Glasgow University January 2002.

²³⁸ It may belong only to the Hanbalis (*Umda* p.11). However, Bousquet assumes that it is generally accepted as a cause of "*ḥadath*". See under *ḥadath* in *E.I.I. & II.*

4.2.A.ii) *Khabath Impurity*

A *khabath* is tangibly, fundamentally impure, and – in a limited way – defiling (see ch. 4.4.B). While, in Sunni law, everyone is regularly prone to *ḥadath* impurity, *no human being alive or dead is ever khabith*. Instead, according to Ibn Rushd, the jurists agree on four types of *khaba'ith*: the urine (*bawl*) and excrement (*raji'*) of human beings; carrion of warm blooded animals not living in water (*mayta al-ḥayawān dhay al-dam laysa bi mā'*); pig's flesh (*lahm al-khinzīr*), whatever its cause of death; and flowing blood (*dam masufuham*) of an animal that does not live in water (*Bid* p.81). In addition to these four, however, there seems to be no disagreement on the impurity of vomit (*qay'*), pus (*qayh*), *madhīlqadī*, and *wadī*.²⁴⁰ Other substances that are often believed to be impure include some animal's excreta and saliva (particularly pigs and dogs), wine, and semen. In contrast, human saliva, sweat, tears, and vaginal fluid are pure.

A Muslim who *knows* he has come into contact with a *khabath* – if he is not sure, purification is unnecessary, see pp. 172-173 - should not pray until he removes all trace of it; the validity of his prayer depends upon this being done.²⁴¹ He has been rendered “*mutanajjas*” (as opposed to being *najis*), normally translated as “ritually defiled” (although it is problematic to do so,

²³⁹ After which, the matter is Allah's to decide. Ibn Rushd tells us there were arguments over whether Islam is a condition for the obligation of removing *ḥadath*. But he describes the matter as “an issue that is of little benefit in *fiqh*, as it relates to the *ḥukm* of the hereafter” (*Bid* p.2).

²⁴⁰ See e.g. ‘*Umdat* p.95, E.B: “*Tahārat from Najāsāt*” pp. 1-3. The fact that Ibn Rushd does not mention these in his section on the *khaba'ith* is perplexing.

²⁴¹ This is presupposed rather than explained by the *Bidāyat*. However, it is strongly implied by a *ḥadith* in which Muhammad removes his sandals during prayer “because Jibril informed me there was filth (*qadar*, a synonym for *khabath*) on them” (*Bid* p.80). Note that some Malikis claim that the removal of *khabath* does not affect the validity of one's prayers, deeming it only to be *sunnah mu'akkadah* (emphatically recommended). They circumvent the literal meaning of the Qur'an's injunction “to purify your garments” by reading the term “clothes” (“*thiyyab*”) as a metaphor for the heart (*qalb*). In support of the Malikis' position, there is a *ḥadith* which, as we shall see, is an excellent example of the general tendency within *taharah* to prioritise prayer above all purity concerns (see on the *mustahadah*, pp.176-178, and ch.10). This describes how a vindictive group of onlookers wishing to spoil his prayers draped the blood and viscera of a camel on Muhammad's back as he worshipped. Muhammad continues his prayers, however, and from this the Malikis deduce that purity from *khabath* cannot be an obligation (see Bukhari “*wudū'*”:241, cited in *Bid* pp. 80, 128).

see ch. 4.4.B), and is not permitted to enter places of prayer.²⁴² As mentioned above, if *khath* is mixed with water – to the point where its taste, colour, or smell have altered, or any of the other conditions breached, see f.n. 230 – a Muslim should not drink from these sources, nor use such water to lift a *hadath* (*Bid* pp. 21-24). The same rules generally apply to other liquids and food sources - they are also considered defiled if a change in their attributes is noticed (*Bid* p. 565). The difference between food and liquids in this respect is solidity. Hence, if an impurity remains intact within a food mix, one needs only to separate and discard the impurity itself and the area immediately around it (which may have been touched), the remainder is edible; defiled liquids, however, obviously cannot be salvaged in the same manner.²⁴³

Logically, a *khath* should affect whatever it touches; however, the jurists only appear to worry about a few special “targets”. Specifically, a Muslim’s body, clothes, and places of prayer (*Bid* pp. 88-89). The body must remain free of *khath* because of several established *ahādīth* in which the Prophet orders “the washing of *madhī* from the affected parts of the body, and the washing away of impurities (e.g. excreta) from the two outlets (*sabilayni*)” (i.e. anus, and genitals)” (*Ibid*).²⁴⁴ To purify these outlets, a Muslim must perform two distinctive ceremonies: *istibrā’* (after urination) and *istinjā’* (after defecation) (see *Bid* pp. 93-95, and f.n. 249 below). The religious obligation to keep one’s clothes free from all forms of *khath* is based on the Qur’anic injunction “to purify thy garments” (Q. 74:4), and a number of *ahādīth* reporting how Muhammad orders menstrual blood to be washed from clothes (*Bid* 89).²⁴⁵

²⁴² Although prayers are traditionally offered in the mosque, *fiqh* permits them to be given anywhere that is *khath* free. However, see *Bid* pp. 129-130 for a list of exempted places.

²⁴³ If an impurity *melts* in food, the mixture is treated like water. This is based on a *hadith* attributed to Abu Hurayra and Maymuna, in which Muhammad is asked about what happens if a mouse falls into butter. He is supposed to have replied: “If it was in a solid state, throw it (the mouse) out and what was around it, and eat the rest, but if it was melted, spill it or do not touch it” (*Bid* p.565; c.f. Bukhari “*Wudu*”:237). As shall become clear, the issue is really whether or not “the essence” of the foodstuff has been transformed (ch. 4.4. B.)

²⁴⁴ For *madhi*, see Muslim “*Taharah*”:593;

²⁴⁵ See e.g. Muslim “*Taharah*”:575.

The third target, a Muslim's place of prayer (*masjid*), is to be kept free from *khabath* on the basis of the following *hadith*:

Anas. b Malik reported: While we were in the mosque with Allah's Messenger, a Bedouin came and stood up and began to urinate in the mosque. The *ṣaḥābāh* said: "stop, stop", but the Messenger of Allah said: "don't interrupt him; leave him alone". They left him alone, and when he finished urinating, Allah's Messenger called him and said: "*these mosques are not the places for urine and (other) khabath, but are only for the remembrance of Allah, prayer, and the recitation of the Qur'an*", or Allah's Messenger said something like that. He (Malik) then said that he (Muhammed) gave orders to one of the people who brought a bucket of water and poured it over (the urine) (referred to in *Bid* p.79).²⁴⁶

In addition to the three main targets, we know that food and water sources are also to be kept free of *khabath*, and both are plainly perceived – if not actually described - as secondary targets.

Regarding the purification process itself, most jurists agree that to remove the effects of *khabath* impurity a believer must wash the affected spot with water that is pure (and many say purifying), *until the essence ('ayn) of the impurity has been destroyed* (*Bid* pp. 90-91). This process is called *'izālat al-khabath* (or, more usually, *'izālat al-najāsah*), and, judging from the relative immediacy of the Prophet's response in the Bedouin's *ḥadīth*, is necessary at *all times*, not solely in preparation for prayer. When someone knows they have come into contact with an impurity, but it has left no stain, most jurists feel it is enough to run water over the suspected area.²⁴⁷ According to Ibn Rushd, Abu Hanifa stipulates that this type of legal impurity requires three rinses, whereas Ibn Hanbal says seven (*Bid* p.93), the other schools do not specify a number. Compared with the rituals for lifting *ḥadath*, removing *khabath* is a quite straightforward matter. For the vast majority it is palpably not, however,

²⁴⁶ Cited from Muslim "*Taharah*":559 (c.f. Bukhari "*Wudu* ":218-221).

as Reinhardt has claimed an entirely “non-ritual” affair and, merely, “washing in the ordinary sense”.²⁴⁸ After all, there are many cleaning agents besides water that can do the job of removing *khathath* just as well; yet, according to most authorities (Malikis, Shafi‘is, and Hanbalis), they are not legally permissible. Nor can one legally remove *khathath* through rubbing, wiping, or burning; it must be washing, and only with pure/purifying water (*Bid* p.90). Other stipulations for the removal of *khathath* that clearly betray more than an interest in “washing in the ordinary sense” include the aforementioned acts of *istibra’* and *istinja*²⁴⁹; and most jurists’ ruling that to purify a vessel from a dog’s saliva it needs to be washed seven times (on this, see ch. 6.2.).²⁵⁰

²⁴⁷ See e.g. *‘Umdat* p.99. Somewhat confusingly, an invisible *khathath* is often referred to as a “legal impurity” (*najāsah hukmiyyah*).

²⁴⁸ In fact, Reinhardt considers ritual to be *the* distinguishing factor between the two species of impurity. He observes:

Blood and urine (i.e. all the *khathath*) are dangerous since their defiling character is contagious, but their power to affect one’s fitness for ritual activity is limited. If either defiling substance falls on one’s clothing, it is cleansed merely by removing the offending substance and running water over the clothing... It is washing in the ordinary sense that is stipulated; *there is no ritual act connected with removing these substances* (Reinhardt 1990:9, my emphasis).

This comes very close to the way the jurists themselves think about these things - most distinguish *khathath* purification from *rafā’-al-hadhath* on the basis that only the former is a “rational act”, see ch. 4.3.A. - so it is not difficult to see Reinhardt’s point (Nyazee describes lifting *hadath* as a “ritual purification” and, hence, agrees *Bid* p.3). However, the fact anthropologists have argued for years over what precisely constitutes ritual action (Goody 1961) combined with the realisation that Islam does not even have a term for ritual (*ibādah* being the closest it gets, Graham 1983:60) makes expressing the distinctions between the *najāsah* in this way problematic. In fact, putting the differences between purifications into words seems always to have caused difficulties for Western scholars. Note, for instance, in his article on “*Tahārah*”, A.S. Tritton describes *hadath* as “religious impurity”, and *khathath* as “actual impurity”, which sounds worse still because it wrongly implies that the removal of *khathath* is not a religious act (E.I.I).

²⁴⁹ On the grounds that *wudu’* is still required afterwards (to lift the *ahdhath* incurred through urinating and excreting), we must deduce that - like any other performance of *‘izālat al-khathath* - these acts are solely intended to purify a believer’s body from traces of urine and excrement and not connected to the sphere of *hadath*. *Istibrā’* requires that a Muslim male wipes his penis against a wall, stone, or mud, strike the ground with his foot, cough violently, wrap his right foot round his left, descend to the ground and rise again. *Istinjā’* is less complicated, but still requires the anus to be washed with the sides, not the ends of three fingers, the believer to adopt specific types of squatting positions only, and stones to be used when he cleans up afterwards. For these descriptions, see the passages cited from *Al-Fatāwa al-Hindiyya* by Boudhiba 1998:46-47.

²⁵⁰ Before moving on, it should be noted that, while generally incorrect, Reinhardt’s description does seem to fit the Hanafis’ idea of *‘izālat al-khathath* which permits *khathath* to be eliminated through wiping or rubbing with any clean substance, and even to be burnt (*Bid* p.90, E.B. “*Tahārah from Najāsah*” pp.1-2). But the Hanafis’ practicality only serves to highlight the far from perfunctory nature of the other schools’ approaches. Indeed, according to Ibn Rushd, in their insistence that only pure water be used, the non-Hanafis are forced to contend that water contains an extra capacity, or attribute (*khusus*), enabling it to purify unlike any other substance. Their view confuses the non-rational/rational divide that most jurists (although, ironically, not the Hanafis) posit

In part II, the jurists' arguments concerning each specific form of *najāsah* will be described in greater detail, but in answering my second question, the basic principles and features of Sunni Islam's pollution code have been surveyed. After an initial period of intense legal development, these regulations have remained valid for centuries.²⁵¹ Yet, despite having gained an idea of how complex the system is, and how many rules it involves, we are still some way from getting to grips with the fundamentally unusual nature of Sunni Islam's vision of impurity. In posing (and endeavouring to answer) the next two questions, matters should become clearer.

4.3. WHY DO MUSLIMS NEED TO PURIFY THEMSELVES?

What do the *ṭahārah* texts tell us about why a *muḥdith* may not pray, or why washing *khābath* off one's clothes should be a religious obligation? There are two ways to answer these questions. The first is to focus on how a Muslim benefits from purifying himself. The second is to look for where the *danger* in these states lies; that is, to look at what the *muḥdith*, or person with *khābath* on his clothes, might do to himself and/or others, if he does not obey the pollution rules.

4.3.A. The Merits of Purity

The main reason why Muslims should purify themselves is that freeing oneself of *najāsah* (in either form) is considered a meritorious act. Doubtless, to a large degree, this merit is derived from the fact that purification enables and/or prepares the Muslim to pray. Nevertheless, Ibn Rushd describes each form of purification as an act of worship (*‘ibādah*) in its own right. He mentions the contrasting legal, and theological, purposes and rewards of

for the purposes of the purifications (see Part II Exc. B) and, when challenged as to what this extra capacity might be they are left nonplused. For these arguments, see *Bid* pp. 89-92.

these purifications in three places (*Bid* pp. 3-4, 12, 80-81); from these passages, the majority's opinion on these matters may be summarised as follows:

- The purpose of *'izālat al-khabath* may be described as “religio-aesthetic”. The jurists argue that its aim is “cleanliness” (*nazāfah*), or “freedom from filth” (*khaglasī al-najāṣah*). Because most *khabā'ith* evoke feelings of disgust and repulsion, the nature and content of purification from *khabath* is something we can comprehend; therefore, *'izālat al-khabath* is a “rational act of worship” (*'ibādah ma'qūlah*). As such, it is also an “ethical norm” (*muhassan akhlāq*); and its reward “relates to the senses” (*ḥassah*).
- In contrast, the purpose of *wuḍū'*, *ghuṣl*, and *tayammum* is to glorify, or “to attain nearness (*qarūbah*) to Allah”, and these purifications are “intended solely for His pleasure”. According to the majority, their reward is greater, it extends to “the purification of the soul” (*zakāh al-nafs*). As such, these acts are beyond our comprehension, and most consider any performance of *rafā'a-l-ḥadath* to be a “non-rational act of worship” (*'ibādah ḡhayr ma'qūlah*).

The *Bidāyat* does not go into detail explaining why one set of purifications (removing *khabath*) can be explained “rationally”, while the other (lifting *ḥadath*) may not. But to a great extent this is self-explanatory: removing *khabath* is a less elaborate, more perfunctory procedure than lifting *ḥadath*.²⁵² The former impurity is also normally visible and, thus, its purification (obliteration) satisfies the demands of rational inquiry more easily than the

²⁵¹ Modern life has, of course, brought some changes. For instance, in contemporary purity discussions we encounter some confusion over whether a catheter will, or will not, break *wuḍū'* (E.B.; “*Wuḍū'*” p.3) – something obviously unimagined by the ancients. However, the code's basic forms and principles remain unaltered.

purification (lifting) of the latter, invisible and “abstract”, state of impurity. As noted, however, the key to the jurists’ distinction between purifications is that lifting *ḥadath* requires *niyyah*, whereas removing *khābath* does not (see esp. *Bid* pp. 3-4). This somehow ties the performance of *rafā’-al-ḥadath* to Allah (whose name is to be invoked) in a way that *‘izālat al-khābath* does not.

Although this method of distinguishing between *fiqh*’s two impurities and their subsequent purifications is generally accepted, it should be noted that a minority disagrees. They assume that, because there is normally a connection between emitting a substance that is *khābīth* (i.e. urine, blood etc.) and incurring a *ḥadath*, both purifications merely satisfy a rational need (for this discussion, see Part II Exc.B).

4.3.B. *Najasah* and Danger

In Sunni *fiqh*, what dangers are associated with impurity? This is a key question for our study. As noted, *ḥadath* impurity is not capable of being transmitted, and no human being is *khābīth*. We shall explore the ramifications of this concerning the usual political functions of ritual pollution ideas shortly; in the present section it suffices to say that it ensures *no one is capable of inflicting damage on other people, or of preventing them from worshipping through their own impurity.*²⁵³ Noticing this, and the fact that a *ḥadath* does not have to be lifted until the time of prayer, Reinhardt has claimed that Islamic pollution ideas have nothing to do with danger whatsoever.²⁵⁴ Indeed, for Reinhardt, Islam’s pollution code is solely an exercise in formal juristic reasoning – a virtuoso display of logic exalting Islamic ritual

²⁵² Although we should strive to avoid Reinhardt’s mistake: both purifications are “rituals”; and, on several occasions, removing *khābath* is a complicated (and seemingly far from rational) affair (p. 89, and c.f. fn.249).

²⁵³ Short of picking up a *khābath* and putting it on the person of a Muslim, as apparently happened to Muhammad (fn.241 above).

merely for the sake of doing so. In his description, states of purity and pollution are disconnected from any question of morality – a reading that clashes with the jurists’ description of both purifications as forms of *ibādah*. Consequently, and contra the sort of attitude Douglas’ expects to find, the *taharah* system is only “concerned with performance and non-performance, with capacity and incapacity”, “the formal” rather than “the ontological” and, because of this, possesses no bite and even, Reinhardt concludes, “shapes no perspective on life”. In short, he argues, there is nothing wrong nor dangerous about being impure.

Reinhardt is correct when he notes that a *muḥdith* does not imperil people around him, but is surely mistaken to imply that no danger whatsoever is connected to *najāsah*, because, by failing to heed *tahārah* law, one can certainly put *oneself* in danger. According to Wensinck, this danger comes from being possessed by Shaytan, and/or other supernatural forces. Wensinck’s argument has the advantage of agreeing with the way ritual pollution beliefs and practices are normally explained (ch. 1.3) and, on the surface of things, there is proof aplenty that a fear of demonic possession does lie behind the jurists’ elaborate purification ceremonies. To this end, Wensinck cites a number of *aḥādīth* where Shaytan and his hordes are reported to lie in wait for Muslims when they are their most vulnerable (normally, during sleep, excreting, or sexual intercourse).²⁵⁵ He sleeps in the nose,²⁵⁶ and “blows in the buttocks” (hence breaking wind is *ḥadath*). He prefers certain places, and is always to be found lurking in the toilet and the *ḥammām*. Wensinck also thinks that the *jinn* are attracted

²⁵⁴ See Reinhardt 1990:20-23. He might also have pointed out that, while the jurists confine or even impose the death penalty on Muslims refusing to come to prayer (c.f. *Umdat* p.109), they stipulate no earthly penalties for those who flout pollution law. ◊

²⁵⁵ For Wensinck’s references, see 1913:220-223. Reinhardt is aware of an original connection between malevolent *jinn* and the word “*najāsah*”, but implies that this connection is no longer of importance (1990:22 fn.84).

²⁵⁶ Wensinck believes this explains the recommendation that Muslims perform *wuḍūʿ* before going to sleep, and snuff water on waking (*Bid* p.34); for this drives out the demons that may have entered their bodies during the night.

by *najāsah*, and he makes no distinction between the damaging effects of these creatures.²⁵⁷

Boudhiba makes the same point:

From the outset the impure man is exposed to every kind of danger: devils and demons may do a great deal to him and he doesn't even have the ability to pronounce the Qur'anic words that might protect him, precisely because he is impure and the Qur'an may be touched only by the "most pure", *al-muṭahharīm*. His security, his *hasana*, is seriously in question.²⁵⁸

Each of these authors claims to be writing not just about the law, but *Islam* itself. Perhaps they overreach; after all, how vulnerable a Muslim feels to supernatural dangers surely depends upon a variety of cultural and psychological factors quite independent of what the law says.²⁵⁹ It is possible, however, to talk about the degree of danger the Classical law *texts* attribute to *najāsah*. Let us do so from the *Bidāyat* where, contrary to Wensinck's expectations, we find that Ibn Rushd says very little about supernatural danger, and nothing at all about demonic possession. Indeed, this might support Reinhardt's supposition that *najāsah* is not remotely connected to danger, were it not for two references. The more significant of these, cited by the majority of jurists as additional evidence for the obligation of *'izālat al-khabath*, runs as follows:

Ibn Abbas reported: The Messenger of Allah passed by two graves and said: Their occupants are being tormented, but they are not tormented for a serious sin

²⁵⁷ Wensinck oversimplifies matters as far as the *jinn* are concerned. Their relationship towards *tahārah* reflects the ambiguity Islam feels towards the *jinn* in general – some of which are "righteous, and some the contrary" (Q. 72:11). Thus, for instance, according to one tradition, in which Muhammad prohibits *istinjā'* with dung, his explanation has nothing to do with what would happen to one's backside, but is solely "because these things are food for your brothers, the *jinn*" (cited in al-'Arabī's *Asrār al-Tahārah* translated by E. Winkel as *Mysteries of Purity* (1995, Indiana, Cross Cultural Publications) p.27). Likewise, Muhammad's reasons for forbidding Muslims from digging holes in the ground in which to urinate is that they are dwelling places for the *jinn*. And presumably, doing so would not be good for Muslim – *jinn* relations. Indeed, in *One Thousand and One Arabian Nights*, the *jinn* of the ring is first brought out when a despairing Aladdin washes his hands during *wudu'*; it is unlikely, therefore, that the *jinn* have always been perceived as enemies of purity.

²⁵⁸ Boudhiba 1998:44.

²⁵⁹ See Tayob 1999:43-44 for criticism of Reinhardt on this point.

(*kabīran*). One of them spread calumnies (*namīma*) and the other did not purify himself from contamination by urine (cited in *Bid* p.80).²⁶⁰

Elsewhere, Ibn Rushd mentions a group of jurists who cite a tradition in which Muhammad says: “woe to the heels in the fire (i.e. hell)” as proof that one’s heels should be washed, rather than just wiped during *wuḍū’* (*Bid* p.11). Add to these the fact that, on entering the toilet, *fiqh* enjoins Muslims to say: “In the name of Allah, I *take refuge* in you from *khath* and *khathā’ith*”²⁶¹ – which indicates that a certain degree of peril is still attached to these substances and places in some manner or other – and, even more significantly, the recommendation during *niyyah* that Muslims should thank Allah for protecting them from Shaytan and the “whisperings of demons”, and the answer to whether *najāsah* and danger are linked by *fiqh* probably lies somewhere between Wensinck’s idea that the jurists were quaking in fear of demonic possession, and Reinhardt’s claim that they are orbiting in a rarefied atmosphere all of their own.

The significant point, however, is that although failing to purifying oneself is shown to be dangerous (a minor sin on one’s conscience), according to the law, the effects of this danger will only be felt *in the afterlife* and not from Shaytan and/or demons in this one. It is true that the concept of bodily possession by supernatural forces is well known in Islam, and that such ideas remain widespread throughout the Semitic world.²⁶² Moreover, as Wensinck points out, the pre-Islamic Arabs intended their purifications to be exorcisms – an idea that clearly

²⁶⁰ Bukhari “*Taharah*”:346-7; Muslim “*Taharah*”:575. C.f. ‘*Umdat* p.673 where this *hadith* is cited and failing to cleanse oneself from urine is even said to be the *main* reason for torment in the afterlife.

²⁶¹ Nuh ha Mim Keller translates *khath* and *khathā’ith* as “demons, male and female” (‘*Umdat* p.76).

²⁶² As the Christian Homepage tells us about Hassan (p.28 above). In particular, the notion of the Evil Eye is common in various Muslim and other cultures, see e.g. Westermarck *Marriage Ceremonies* (1914, London, MacMillan & Co.) p.101-103. Jinn possession is another matter and is not necessarily viewed as evil; it may be due to sensual desires, capricious whims, or even love, see Abu Philips *The Jinn* (1989, Riyadh, International Islamic Publishing House) pp. 31-43.

persists in the liturgy of the *niyyah*, and the formulae employed during *istibrā’/istinjā’*.²⁶³ However, although it is not impossible that the jurists perceive a *muhdith* to be affected (the term “possessed” surely being too strong) by supernatural forces, there is no suggestion in the law that, even if they do gain entry to their bodies, demons or *jinn* retain any concrete power to damage Muslims through impurity. For, in spite of Boudhiba’s assertion that demons “may do a great deal to him”, if we ask what happens when Muslims do not wash Shaytan out of their nose in the morning, or even neglect to thank Allah for protecting them from “the whisperings of demons” during *niyyah*, the answer, apparently, is nothing. Rather, in contrast to other pollution systems where there are *immediate* consequences for those possessed by evil forces who break ritual pollution rules,²⁶⁴ the Muslim who does not purify himself from urine, and perhaps even those who do not wash their feet properly during *wuḍū’* will both be punished, but their punishment must wait until the day of judgment.²⁶⁵ In fact, I would suggest that *tahārah*’s handling of this topic is a very good example of what Graham means when he describes Islamic ritual as “reformatory” – i.e. that through ritual practices, the early Muslims set out self-consciously to distinguish themselves from “previous and contemporaneous religious traditions”.²⁶⁶ For, although *fiqh* does not sever the pre-existing connection between supernatural danger and impurity as Reinhardt suggests, it tames it by eradicating the demons’ power, and making any transgression of pollution law answerable to Allah alone. In doing so, the theological convictions underpinning the *tahārah* system are shown to be thoroughly monotheistic.²⁶⁷

²⁶³ Wensinck 1913:226. For the argument that *wuḍū’* and *istinjā’* were originally intended to protect believers against demons, see also I.K.A. Howard 1978:44–45.

²⁶⁴ What Douglas calls “ritual efficacy”, see p.270.

²⁶⁵ On the connection between demons and impurity throughout the ancient Middle and Near East, see David Wright *The Disposal of Impurity: Elimination Rites in the Bible and in Hittite and Mesopotamian Literature* (1987 Georgia Scholars Press) pp.248–60.

²⁶⁶ See p.43.

²⁶⁷ Interestingly, there are two traditions in the *Muwatta* showing that the concept of demonic *possession* could easily have worked itself into the *tahārah* system. In these, ‘Amir b. Rabi’a looks at a man when he is bathing and makes remarks about him; this causes the man to become ill. Muhammad orders ‘Amir to perform *ghusl* (to rid himself of the demon that had worked its evil magic through his eyes and voice), and the man recovers. Yet,

4.4. WHAT DOES IT MEAN TO BE IMPURE?

In other cultures, ritual impurity involves a definitive change of state: by becoming impure someone is rendered different, and often dangerous. Normally, as in Zoroastrian, Jain, or countless tribal communities, this is through demonic possession; according to Milgrom Biblical impurity is an aerial miasma, whereas, for Hindus, sin and “foul vapours” are the forces that change one’s essential condition. In all cases, ritual pollution is an addition to the human state, and purity is merely its absence. Although to some extent the connection between demons and *najāsah* remains a part of the *tahārah* system, it seems unlikely that the Sunni jurists consider the *muhdith*, or someone with *khābath* on them, to have fallen prey to evil spirits, or, for that matter, foul vapours. Yet, the jurists still unanimously accept the need for a Muslim “to purify” himself from both *hadath* and *khābath* – thus, it is fair to say, implying his “pollution” in both cases. The question of how he might have changed (or fallen) from a state of purity to one of impurity is not posed in the law texts. It shall be here.

4.4.A. The Essence of *Hadath* Impurity

Proceeding more from silence than any text, we must begin with what a *hadath* does *not* do. Specifically, as has been noted, it never renders a Muslim contagiously impure. According to Sunni law, a *muhdith* is quite simply incapable of transmitting his *hadath* to anyone else. The following interchange between Abu Hurayra and the Prophet makes this plain:

Abu Hurayra reported that he met the Messenger of Allah on one of the paths leading to Madina in a state of *janābah* and he slipped away and took a bath. The Prophet searched for him and when he found him, said: “O Abu Hurayra, where were you?” He (Abū) replied: “Messenger of Allah, you met me when I was in a state of *janābah* and I did not like to sit in your company before taking a bath”.

tellingly, Malik does not place these traditions in his chapter on *tahārah*; instead they are included at the end of the book “as if they are mere curiosities with no real relevance” (Howard 1978:44).

Upon this the Messenger of Allah said: Blessed be God! verily a believer is never impure/polluting (*ṣubḥan Allāh! Inna-l mūmina lā yanjūs* [*Bid* p.60]).²⁶⁸

What, precisely, Abu Hurayra is worried about is not explained.²⁶⁹ But, whatever the reason, he need not have been, Muhammad's readiness for prayer was beyond his ability to ruin involuntarily through physical contact.

Why should this be the case? The jurists' answer permits us some insight into medieval Islamic theories about the human body. For, in *fiqh*, something's fundamental or ontological purity appears to be a biological fact: it depends upon a creature's physical "essence" ("'*ayn*", or "*aslihi*").²⁷⁰ A *khabath* is "essentially impure"; hence, its surface will "contaminate" whatever it touches (on what this means, see below ch. 4.4.B). In contrast, as Abu Hurayra's tradition proves, regardless of whether he is in a state of *hadath*, a Muslim is "essentially pure"; hence, he is incapable of transmitting his impurity to another person. Neither situation will change; because, with the exception of food and liquids (below), *something's biological essence is permanent*. This is the most important single principle in Sunni *fiqh* and something that distinguishes it quite clearly from other pollution codes. For, as just noted, in other religions a state of impurity typically involves a change at a fundamental level through the addition of an evil, or at least anti-sacred, force. Without demons (or, feasibly, with impotent demons) in his body, the Muslim's essential physical condition and purity status remains static – he is forever pure and undefiling.

²⁶⁸ Muslim "*Tahārah*":722.

²⁶⁹ Presumably, he thought that through physical contact (a friendly clap on the back for instance), he could break Muhammad's purity. The alternative, that Abu Hurayra thought his *javābah* impurity was airborne, is perhaps possible in the vicinity of the mosque (thus explaining the *junūb*'s exclusion from it). As we shall see, however, it is unlikely even there (ch.8.).

²⁷⁰ What this essence is does not seem to have been discussed. However, some jurists link it directly to the *hukm* of a creature's flesh (see ch. 6.2)

Unfortunately, rather than explaining such things, Ibn Rushd takes it for granted that his readers know about them. The connection between purity and biological essence receives only a brief mention in the *Bidāyat*, in a passage relating to what the Qur'an says about pigs:

“Swine flesh – for that verily is an abomination (*rijus*)” (Q.6:146), and (only) that which is filthy in its essence (*'ayn*) is impure/polluting (*najas*) (*Bid* p.26).

At this point, our Qadi is discussing the effects on ablution water of certain animals drinking from it. He tells us that most jurists consider water “left over” (*fadl*) from a vessel out of which a pig has drunk to be defiled (*nājis*). This is because of the general and logical assumption that, after drinking, something or someone’s “backwash” (*su'r*) - i.e. the remnants of its saliva (*lu'ab*) - remains in the vessel. The purity of a creature’s backwash is a very large sub-category of *tahārah*, and cannot delay us during this overview (it is explored in greater depth in ch. 6.2). Here, it is enough to note that there is an intrinsic connection between the purity of an organism’s essence and its ability to contaminate through its saliva. Indeed, as Maghen observes, it is clear that saliva acts as a *transmitter* or intensifier of a creature’s essential purity status.²⁷¹ So much so, in fact, that most conversations regarding someone’s or something’s purity only dwell on what happens when their saliva mixes with a pure water source (and hence on whether the resulting *su'r* mixture is usable for purification). The same logic is, nevertheless, extended to include all bodily emissions that, unlike blood, urine, vomit, pus, etc., are not independently impure; thus, an organism’s sweat (*'araq*), phlegm (*balagham*), and tears (*dumu'*) also function as purity transmitters.²⁷² It follows from this that, because his biological essence is pure, these emissions neither transmit the

²⁷¹ Maghen 1997:245-246.

²⁷² Presumably, vaginal fluid, which is pure among human females, is also included under this logic; thus, the vaginal fluids of a sow will contaminate in the same way as her saliva. At this point, it should be noted that human milk (*laban*) is described as pure by the Qur'an (16:66), and on this basis also proclaimed pure. It is discussed in different terms from the other emissions, however, because it is treated as food. Hence, most jurists link the purity of a creature’s milk to the edibility of its flesh (Maghen 1997:174).

muhdith's hadath, nor are they *khabiṭh*. Unthinkable as it would have been, Abu Hurayra could have spat on Muhammad and not affected the Prophet's purity!²⁷³ More surprising still, because we are talking about biology rather than faith, *all human beings* are essentially pure, and Muhammad's purity would not have been affected even if the spitter had been a non-believer!

I have skimmed over an area that was of great interest to the early jurists. My only excuse is, as the following passage from the thirteenth century Shafi'i scholar al-Nawawi shows, that the Sunni law schools reached broad agreement on all the points outlined so far. In particular, note Nawawi's explicit mention of the purity of the *muhdith's* saliva and tears:

Regarding his (Muhammad's) statement "*Subḥan Allāh*, a Muslim never defiles",²⁷⁴ this *hadīth* is a great foundation (*asīl 'azim*) underscoring the pure status of a Muslim alive or dead... As for the living (Muslim), s/he is (essentially) pure according to the consensus of Muslims. Even the foetus, if ejected by its mother while her vaginal fluid²⁷⁵ are still upon her...is pure according to the consensus of the Muslims... As for the infidel (*kāfir*), the law regarding him in the matter of purity and impurity is *the same as that of the Muslim* (*ḥukmuhu fī-l-tahārah wa-l najāsah ḥukm al-Muslim*) – this is our policy as well as that of the vast majority of our predecessors (*hadha madhhabina wa-maddhab al-jamāhir min al-salaf wa-l khalaf*)... And since the pure status of the human being is established, whether Muslim or *kāfir*, then his perspiration and his saliva and his tears are pure, regardless of whether the human being in question is carrying a *hadath* (*muhdithan*) or *junūbun* or menstruating (*ḥa'idan*) or impure through childbirth (*nafsa'*)... and similarly, young children's bodies, their garments, and their saliva are assumed to be pure until and unless the impurity is ascertained. Their garments may be prayed in, and one may eat a liquidy substance (*al-mā'i*) together with them even if they have stuck their hands into it, and the proofs of all the above from the *Sunna* and *ijma'* are well known.²⁷⁶

A stronger affirmation of mankind's essential purity would be difficult to find. Moreover, when we compare Islamic pollution ideas with others, man's incapacity to transmit impurity

²⁷³ Just as the Prophet is said to have spat on his own clothes without defiling them, *Mishkat "Tahārah":513*.

²⁷⁴ Nawawi is referring to Abu Hurayra's *hadīth* (p.97).

²⁷⁵ Nawawi probably means lochial blood.

²⁷⁶ Nawawi *Sharh Sahih Muslim* (1994, Beirut, Dar al-Khayr vol.2 p.51) cited in Maghen 1997:285.

is of outstanding importance (see ch. 5.3). Nawawi's summary reflects *established* Sunni doctrine, however; the jurists did not reach agreement on these things overnight, and I do not wish to give the impression they did. As shall be shown, there was originally a strongly embedded suspicion among Sunni Muslims that people can become contagiously impure, that this contagion is transmitted through their sweat and saliva, and – not surprisingly given the Qur'an's description of the *mushrik* as *najāsun* (Q. 9.28) - that many non-Muslims were especially so (see ch.8).²⁷⁷

Having shown what does not happen when a Muslim contracts a *hadath*, I should now like to explain what does. Not surprisingly, this is far harder to do. As the jurists' terminology indicates, *hadath* is an *abstract* rather than a tangible condition (*najāsah ma'nāwiyah*). Our problem is how to reconcile the fact that a *muhdith*'s essential purity has not changed (he is unaffected by demons) with the knowledge that he is now, among other things, “unfit” to pray from, or touch his Qur'an, nor, if in a state of major *hadath*, permitted to recite Scripture, or enter a mosque. Something clearly has happened, but no one tells us what. One possibility is that, while a *muhdith* is not contaminating to other Muslims, he is capable somehow of *polluting* sacred spaces, objects, and words. Thus, he should not pray, touch or read from a Qur'an, or enter a mosque, because – for whatever reason - he endangers the powers of the sacred by doing so. Yet, while this is the case in Biblical, Zoroastrian and other pollution codes, in the context of Sunni Islam this idea has to be rejected as we shall see (chs. 8 and 9). Instead, a tentative suggestion, which makes sense because it takes the threat of danger seriously (without attributing it to the powers of supernatural creatures) is that we consider a Muslim's *hadath* only really to exist in so far as Allah removes his blessing. In this reading, it is a momentary and dangerous loneliness when, through no fault of his own, a

²⁷⁷ There is little proof, however, to suggest that this contagiousness was ever linked to the existence of demons

believer is separated from the very things that make him Muslim (his prayers and Qur'an), often banned from the sacred ground and, through these provisions, reminded of the vulnerability of his position should he lose his faith. This idea will be developed in chapter 10.

4.4.B. The Essence of *Khabath* Impurity

Despite Shaytan's predilection for lurking around toilets, there is very little evidence that he dwells within *khabath* so to speak. Nevertheless, it *is possible* to describe *khabath* impurity in typical ritual pollution terms; i.e. as an autonomous force fundamentally opposed to the realm of the sacred and, hence, to be kept away from it. Certainly, the essence of a *khabath* is thoroughly impure. And, after a fashion, it is also correct to describe its surface as "defiling".²⁷⁸ Such terminology is problematic, however; as to say that something has been "defiled" (or, for that matter, "contaminated", or "polluted") in English, signifies that its state has been fundamentally changed, and normally rendered contagious. In Sunni *fiqh*, as we have just explained, an organism's essence is permanent, and its ability to transmit impurity unchanged by contact with *khabath*. Given this, instead of describing the person, garment, or mosque that has been affected by *khabath* as "ritually defiled" (and therefore as being in a different state of purity altogether), it is probably more correct to think of them as merely carrying an impurity *on* them.

The performance of *'izālat al-khabath* should help clarify the matter. As noted, its purpose is the straightforward (albeit, *pace* Reinhardt, ritualised) elimination of a *khabath*'s essence. When the sleeve of a garment is stained with vomit, it must be washed until no trace of the stain remains; the rest of the garment, however, does not require washing. When the Bedouin

(although c.f. fn. 267).

urinated in the mosque, water was poured over the impurity, and the mosque floor was as good as new (see p.88 above). Hence, it seems that a *khath* “pollutes” these targets only in so much as it *temporarily resides on them*. Underneath the vomit and urine, the clothes and mosque remain pure, and unaffected.²⁷⁹

In contrast, *khath* clearly *does* have the power to defile the essential purity of its secondary targets, water and food sources.²⁸⁰ Even there, however, its effects are obviously limited. For, although unfit to consume (and in water’s case unusable for ablutions), neither affected substance becomes defiling in itself. This explains why there are no rules to purify/destroy affected food vessels.²⁸¹ Similarly, while it is best to throw defiled food and water away, the ground beneath them, unlike when urine is thrown away,²⁸² does not need to be washed. Nevertheless, in these special cases, *khath* pollution is far from superficial. In fact, the opposite is true; because the surfaces of water and (many) foods are permeable and therefore absorb the *khath*, they are polluted *absolutely* by it. By which we mean that sources into which *khath* have been introduced are “impure” because they are now fundamentally, biologically (and, in most cases, irreversibly) *different* from before. In short, through contact with *khath*, their essences have changed. For this reason, as Maghen has recently observed, it is debatable whether the concept of “defiled water” even exists in *fiqh*.²⁸³ After all, although the schools diverge over the moment at which water becomes *najis* (fn.230), they all

²⁷⁸ This is normally done without any mention of the problems entailed (e.g. Bousquet 1950:54; Reinhardt 1990:7).

²⁷⁹ One Hanafi opinion I have found might oppose this. According to this, when a shirt sleeve that has absorbed filthy water (to the point where drops appear when squeezed) comes into contact with another pure garment, the latter needs to be washed (e.g. *Bayan* p.38). From this, it could be inferred that garments are rendered secondarily impure by very filthy water. However, on the basis that purification is unnecessary if the originally impure garment is dry, it is reasonable to assume that it only becomes “polluting” because it is capable of leaking remnants of the original *khath* (i.e. through the affected water) onto other things.

²⁸⁰ As noted, while the jurists only mention water in the *taharah* manuals, logically the same principles should apply to any other liquid.

²⁸¹ With the one exception of water defiled by dog *su'r*, see ch. 6.2.

²⁸² E.g. *Umdat* p. 99

²⁸³ Maghen 1997:248.

agree that the matter is settled if one or more of its attributes has changed. Now, if an attribute has changed, it is not quibbling over semantics to say that the new mixture is no longer water, for it has (literally) become a diluted version of the original *khath*.²⁸⁴

In light of this, if we return to the question of how *khath* pollutes, the answer appears to be, in the case of its primary targets (bodies, clothes, and mosques), that it does not pollute at all, or, as in the cases of its secondary targets (water and food), that it pollutes absolutely. Once more, we must be clear that this transformation has nothing to do with the interference of Shaytan - we find no evidence that water is ever polluted by him entering it, nor, in any sense, does he live within the *khath* substances – rather it is a chemical transformation, a biological and exact process. Significantly, and perhaps ironically, their rules regarding food and water sources serve to illustrate how firmly the jurists wished to keep their categories of pure and impure separate from each other. The integrity of these categories is prized very highly: a pure thing remains pure until the point of biological metamorphosis. As this is not possible for a human being, we cannot but remain forever pure.

²⁸⁴ In fact, this is the only way to explain the meaning of an otherwise paradoxical *hadith* attributed to Abu Sa'id Khudri. There, Muhammad is asked whether the water from a well at Buda'a can still be used for purification after dog flesh, menstrual clothes and other *najis* substances have been cast into it. Despite the unequivocally impure status of the garbage – doubtless chosen to emphasise the point – Muhammad replies that purification is still valid with the well's water; for, he continues: "nothing defiles pure water" ("*al-mā' tahūr lā yanjisuhu shay'*") (*Bid* p.22). Later jurists would perhaps not permit purification under the same circumstances (it would depend upon the quantity of impurity vis a vis water, see fn.230 above for the jurists' views), however, Muhammad's response makes (a sort of) sense according to the logic we propose. Accordingly, this response could be amended to read: "nothing renders water defiled/defiling *because*, through a change in its purity status, water stops being water". While this may seem improvisational, two other rules plainly employ the same logic. First, although not *najis*, water that has been mixed with pure things, such as soap, is said to lose its power to lift *hadath* if one of its attributes is altered (*Bid* pp. 24-25). Second, arguing in reverse, most jurists agree that even a *khath* becomes pure when radically changed; hence, for instance, skins of carcasses may be purified through tanning, and wine becomes pure if turned to vinegar (*Bid* p.84, 576, see ch. 6.1). Logically enough, chemical transformation is aided by heating, hence the jurists are especially suspicious of substances which have been heated with *khath* (*Bayan* p.35). In each case, these things do not change purity categories so much as undergo an ontological transformation.

In this chapter, a general (and undeniably simplified) picture of Sunni Islam's pollution system has been built up. Specifically, we have seen how *fiqh* derives its pollution laws from the Qur'an; but, how the jurists subsequently made an important distinction between two types of impurity (*ḥadath* and *khath*); how purifying oneself from each type of impurity brings a different religious merit, but how neglecting these laws also carries a measure of danger from divine judgement (if not from demons); how the Sunni jurists define *najāsah* scientifically, as a matter of one's *permanent* biological essence; and how they consider saliva and other clear fluids to act as indicators for this essence. We have also posed the tricky question of how, and more importantly *why*, if a Muslim "is never impure" s/he still requires a purification ceremony. We shall leave further investigation of this particular problem until the end of this thesis.

A lot more can (and will be) said about the way Sunni Islam's *tahārah* system works; the present chapter must serve as an introduction to Part II where the scope of opinions within Sunni law regarding each of the various forms of *najāsah* will be explored. But, it has also provided us with a lot of material – the reader may be forgiven for thinking too much! - with which to consider this system in light of some of the general theories on the function of pollution ideas mentioned in chapter 3; a task that shall now be attempted.

CHAPTER 5

A DIFFERENT KIND OF POLLUTION SYSTEM

“There seems to be no intrinsic reason why the history of religions and the sociology and anthropology of religions should not be treated as a single investigatory exercise”
(Ninian Smart)²⁸⁵

The above conviction underpins this thesis. Unfortunately, it is one thing to acknowledge the academic benefits of an interdisciplinary approach, and quite another to accomplish one successfully! More to the point, and at the risk of repeating myself, Islamic law makes such ventures especially difficult. The density of the texts and complexities of the language explain why anthropologists like Douglas, who base their theories upon the behaviour of living cultures (albeit then applying them to dead ones), have always given them a wide berth. We must never forget we are talking about ancient legal texts. Although *tahārah* law evolved in response to real life situations, and thus reflects the practical necessities of the time of the early jurists, it cannot be mistaken for field research.

This is common sense. Moreover, it has not stopped Biblical scholars (in particular) making careful, but creative use of anthropological theories.²⁸⁶ In this chapter, I do not wish to propose new theories, but only to see whether previous explanations make sense in a Sunni Islamic context. Thus, while interdisciplinary, my task is more straightforward than that of Douglas or Reinhardt. Let us conclude Part I with a brief consideration of *najāsah* in light of three of the approaches – materialist, psychological, and socio-symbolic – discussed in ch.3. Rather than attempting to exhaust what can be said about these subjects, we are only taking

²⁸⁵ Smart “The Scientific Study of Religions in its Plurality” in Contemporary Approaches to Religion ed. Frank Whaling vol. 1 (1984, The Hague, Mouton) p.372.

²⁸⁶ This extends far beyond their treatment of ritual pollution; for an introduction to recent investigations from a variety of academic vantage-points, see J. Rogerson “Anthropology and the Old Testament” in The World of Ancient Israel: Sociological, Anthropological and Political Perspectives ed. R.E. Clements (1989, Cambridge, Cambridge University Press) pp.17-38.

stock. Note, that I have left all mention of the fourth approach, the religio-moral interpretation of ritual pollution, until the end of this thesis.²⁸⁷

5.1. MATERIALIST INTERPRETATIONS OF NAJASAH

There is no evidence in the *ḥadīth* material or law texts that the *creation* of the *tahārah* code had anything to do with medical, economic, or ecological reasons. Of course, there are practical benefits to some of these laws. We already know the likely view of medical materialists: pigs are *khabiṭh* because their flesh harbours trichinosis; urine and excrement are *khabiṭh* because they carry germs, and so on.²⁸⁸ In fact, like his fellow Spaniard Maimonides, Ibn Rushd shows himself to be another early medical materialist. He explains the jurists' decision that a dog bowl must be washed seven times (mentioned above p.89, see ch. 6.2 for discussion) as a precaution in case the dog is rabid.²⁸⁹ Yet, as Ibn Rushd is well aware, this is obviously not the general reason for purification from *khabiṭh*. As is clear from the *Bidāyat*, purification from either *najāsah* has nothing directly to do with good health: lifting *ḥadath* is a way of glorifying Allah, whereas the aim of removing *khabiṭh* is merely "cleanliness".²⁹⁰

One recent approach to *tahārah* rules from the materialist party is, nevertheless, worthy of note. Refuting Marvin Harris' theories, "functional ecologists" Paul Diener and Eugene E. Robkin have claimed that the reasons pigs are *khabiṭh* is because of the damage pig farming was doing to Muhammad's early campaigns. In their theory, pig farming fitted "so ideally

²⁸⁷ See chs.9 and esp.10.

²⁸⁸ For a medical materialist's reading of *tahārah*, see W. Popper's article "purification" in *Muslim Encyclopedia of Religion and Ethics* vol.10 pp.496-300.

²⁸⁹ Actually it's his grandfather's theory, but Ibn Rushd finds it most praiseworthy, "an outstanding view conforming with the method of the Malikis" (*Bid* p.29).

²⁹⁰ Rather than the purpose of the latter being hygiene in a modern sense (which *would* connote a medical interest), its performance was described as religio-aesthetic. Someone who willfully remains *mutanājjas* is defying man's natural, or rational, instinct to look after his physical appearance. He is putting himself in danger of punishment in the afterlife, he probably smells, but there is nothing to suggest his anti-social behaviour poses a threat to his or anyone else's health.

into local systems that it rendered peasant villages dangerously rich and autonomous”.²⁹¹ Hence, it allowed Arabia’s pig farmers, its peasants and Bedouins nomads, to retain their independence from the new Islamic “state”. Worse still, these farmers were feeding grain to their pigs, when the threat of famine was present. For Muhammad this was indeed “defiling behaviour”, and it drove him to pronounce pigs impure and inedible. Diener and Robkin explain the impurity of dogs, blood, and animal milk in a similar way: each of these had to be outlawed because it is a source of protein, and therefore empowered the nomads and villagers to remain too independent. Lastly, because it was imported from Syria, and the goal had been set for northward expansion (this has not been proven, but D. & R. take it for read) grape wine was declared impure because “wine drinking would imply what amounted to trading with the enemy”.²⁹²

Thus, according to Diener and Robkin, several things became *khābiṭh* because of Muhammad’s “concerted efforts to destroy existing autonomous agrarian and nomadic communities, and construct a vast trading state”.²⁹³ This explanation is resourceful. It is less reductionist than Harris’ approach because it shows how religious ideas can emerge in opposition to prevailing economic and ecological circumstances, rather than simply as a result of them. And, unlike other theories of this kind, it attributes a great deal of importance to historical fact. Unfortunately, these authors’ knowledge of early Islam is fairly weak and, consequently, so is their argument. They make basic mistakes (the milk of edible/pure creatures, is not impure); and their claims do not find any direct textual support in the Qur’an, *hadīth*, or *fiqh*.²⁹⁴

²⁹¹ Diener & Robkin 1978:501.

²⁹² Diener & Robkin 1978:504. For wine impurity, see ch.6.6.

²⁹³ Ibid.

²⁹⁴ Hence, although famine may well have been a problem for the early Muslims, there are no references to a shortage of grain in early Islamic sources. There are other significant criticisms. They do not mention that Watt finishes by saying that it is more likely the prohibition of wine resulted from its perceived connection with

It should be admitted that these criticisms do not conclusively refute Diener and Robkin's main theory.²⁹⁵ Yet, the scarcity of relevant information in the Islamic texts renders their type of explanation even more speculative than usual. And, if we combine that fact with what we have already seen of the general weaknesses of materialist approaches (pp.50-51), there is no convincing reason to consider Islam's pollution laws any further from this perspective.

5.2. PSYCHOLOGICAL INTERPRETATIONS OF *NAJASAH*

Three main theories on the psychological origins of ritual pollution behaviour were mentioned. As shall be shown, two of these, a fear of death and the loss of bodily control, are singled out by the jurists themselves as influential factors in some debates. Neither matter is straightforward, however, and we will wait until Part II to explore the relevance of these theories to *tahārah* (see Exc. A, and Exc. C). The third theory, ritual pollution's connection with anomaly, sheds no light on Islam's dietary code, but makes a great deal of sense in the context of *tahārah* and deserves an immediate mention.²⁹⁶ For, Douglas' belief that human beings dislike their classifications to be confused is affirmed by the Sunni jurists who do everything in their power to prevent an overlap between their categories of pure and impure. Indeed, their solution to how a pure believer can also be "impure" was to invent another

pagan practices, than due to trading concerns, see Muhammad at Medina (1956 Oxford, Clarendon Press) p.229. Inexplicably, the origin of the pork prohibition (i.e. the fact that it gave farmers too much independence) is attributed to Frazer, who never said anything of the sort! In a different vein, the fact that no distinction is drawn between "Muhammad saying things in the Qur'an", and "Muhammad saying things in the *ḥadīth*" is problematic. As is nowhere finding any acknowledgment that Prophetic *ahādīth* are not necessarily from the time of the Prophet. In fact, by clinging so firmly to the lifetime and environment of Muhammad, the authors show themselves unaware that most of the mental exertion behind Islamic law belonged to its early lawyers. What, then, of *their* economic/political situation – how did Malik's Madinah differ from Abu Hanifa's Kufa? Why do the rules for animal impurity differ according to each law school (in particular Malik's opinion on dogs, see ch. 6.2).

²⁹⁵ The impossibility of proving this case one way, or other, is really what makes such approaches so sterile.

²⁹⁶ There are doubtless many factors behind *fiqh*'s dietary laws, but no reason I can find (taxonomic or otherwise) why any of the creatures selected would have defied a classification process.

category, *hadath* impurity, by which the classification process may be tricked. In this state, the Muslim is impure, but only in the “abstract”. Because purity is a matter of biology, his essential purity has not been compromised, and he remains utterly different to the *khabā’ith*. Only liquids and food are capable of changing (or confusing) categories, and this renders them utterly unusable.

This emphasis on the integrity of conceptual boundary lines may help to explain why so many of the body’s emissions are *khabīth* according to the jurists. As noted, in Sunni law, blood, pus, urine, vomit, excreta are impure and, in Douglas’ terms, “matter out of place”. Although the biological essences of these emissions have not been transformed, their situation is comparable to defiled water or food sources, as something equally radical has happened to them. Indeed, Al-Ghazalī’s explanation for the impurity of these emissions appears to confirm Douglas’ theory explicitly. They are impure, Ghazalī claims, because they “have exited from one’s interior”; tears, sweat, saliva and mucus, on the other hand, are pure because these liquids have “no delimited location” (Reinhardt) or “fixed seat” (Faris), and thus cannot be out of place.²⁹⁷ Although we would hope that, for most people, saliva and mucus remain on the inside, Ghazalī is (arguably) right that the emission of these substances does not breach the body’s boundary lines in the same way as, for instance, bleeding does.²⁹⁸ Whether or not we follow his argument, had Douglas known about Ghazalī’s observations when writing Purity and Danger, she would have had every reason to celebrate. Unfortunately, *fiqh*’s particular spin on the “matter out of place” theory is that,

²⁹⁷ *Ihyā* p.16. We are using Reinhardt’s translation. (1990:16). Faris interprets Ghazalī to include saliva and mucus as impurities (1966:16) but, according to Reinhardt, has misread the Arabic.

²⁹⁸ This is not, however, the watertight defense of Douglas’ theory that Reinhardt assumes it to be. After all, even bearing in mind that nostrils are always open and mouths and eyes are opened far more regularly than genital orifices, their liquids/substances surely have what must be described as delimited locations. In fact, Douglas argues for the impurity of saliva in numerous cultures on the basis that, like excreta, it too crosses the body’s boundaries (e.g. 1966:124-125). Furthermore, vaginal fluid and, according to many, semen (ch.6.5) are also not *khabīth*, and there is no doubt that these substances are propelled from a fixed interior point to an exterior one just as much as the other *khabīth* excreta.

with one or two exceptions to be noted shortly, everybody's emissions are *equally* impure - this conflicts with Douglas' expectations, and brings us to the third type of rationale.

5.3. SOCIO-SYMBOLIC INTERPRETATIONS OF NAJASAH

The absence of *tahārah* rules that reflect or enforce any vision of religio-social hierarchy was noted in chapter 3, and should have become more conspicuous during chapter 4's overview. In the present, longer section, the ways in which the Sunni jurists avoid the usual methods by which social stratification may occur through the charge of ritual pollution will be explored, with some added references to the early law texts.

Before beginning, two mild exceptions to the general rule should be noted. For, it has been claimed that Sunni Islam disadvantages non-Muslims and, especially, women through its pollution rules. This is not surprising, since Sunni *fiqh* firmly classifies each group as socially inferior to free male Muslims. In the context of purity and pollution, however, this observation is normally based on the restrictions placed upon either group gaining access to mosques (according to some jurists a *mushrik* is denied access altogether; and a Muslim woman faces a monthly "ostracism" because of her menstrual cycle). Both, it must be said, are fairly (if not remarkably) weak strategies of domination – and, as regards women in particular, the degree to which this regulation enforces social hierarchy has been exaggerated by scholars. Nevertheless, as shall now be shown, any suggestion of hierarchy runs directly counter to the general thrust of *tahārah* law. The jurists' discussions (and Western considerations of them) regarding non-Muslims and women require a fuller investigation than is possible here; hence, each group receives separate treatment in Part III. For the time being, these mild restrictions are unimportant because, even when we include them, Sunni Islam's ritual pollution system is uniquely egalitarian. In fact, I would suggest the whole system was

designed to avoid social stratification occurring through the charge of pollution. This was achieved in the following ways:

1. *In Sunni Islam no one is born with a higher status of purity.* In reality, Muslim societies, like nearly all others, are socially stratified. The type of stratification may be complex and will depend upon historical, political and, more often than not, racial factors.²⁹⁹ We are, however, talking about the law - a (often theoretical) construct in which the religio-social stratification is not complex. In fact, Sunni *fiqh* appears only to envisage three basic social categories: free Muslims, slaves, and non-Muslims. Within each category, there are sub-divisions. In the primary group, free male Muslims are superior to free females;³⁰⁰ and, because they are not permitted to marry Arab women, it may be argued that non-Arab Muslim “clients” (*mawālī*, i.e. non-Arab converts and freedmen) are inferior to Arabs.³⁰¹ In the two inferior categories: Muslim male slaves are superior to Muslim female slaves; both are obviously superior to non-Muslim slaves.³⁰² And, in the category of non-Muslims, “the *dhimmī*” (i.e. the adherent of a monotheistic religion with a revealed scripture living within the Islamic state, who must pay the “poll tax” [“*jizya*”] and, to some extent, comply with Islamic law), is elevated above the “polytheist” (*mushrik*), (who does not adhere to a revealed religion, is not

²⁹⁹ Detailed historical research into social stratification in Muslim communities is difficult to find, Niewenhuijze’s *Social Stratification and the Middle East* (1965, Leiden, Brill) is a notable exception. Tellingly, however, purity ideas are not mentioned anywhere in it. For a fascinating analysis of various Muslim communities, from the “modern” to the “feudal”, several of which contain complex hierarchies, see also Gellner’s *Muslim Society* (1981, Cambridge, Cambridge University Press).

³⁰⁰ See ch.9.

³⁰¹ For a useful summary of the social and legal position of the *mawālī* in Sunni tradition, see P. Crone’s article on “*Mawla*” in *E:I:II*, (also see ch.8).

³⁰² On the legal and social status of slaves, see B. Lewis’ *Race and Slavery in the Middle East: An Historical Enquiry* (1990, Oxford, Oxford University Press) ch. 1.

permitted to pay the *jizya*, and must be fought).³⁰³ Aside from these basic social categories, various ranks, posts, and professions have always been regarded as especially high on the social ladder (see point 2). Very little of which, it has to be said, matters to *tahārah*. Even the *mawla* (non-Arab “client”), to whom the fall of the Umayyad Caliphate is often attributed, is not sidelined through *tahārah* regulations. He is forbidden by all except for the Maliki jurists from marrying Arab women, which clearly indicates that the early Arab conquerers perceived him as a threat to the purity of Arab bloodlines. But this threat did not have any impact upon the law’s assessment of his legal purity status - something which is not too surprising when one considers the influence of *mawālī* like Abu Hanifa on the development of Islamic law.³⁰⁴ Instead, because all human beings share the same biology, a Caliph and a pauper (even the non-Arab *mushrik* pauper slave) start life on an equal footing as far as their legal purity status is concerned. Although this is a statement of the obvious for anyone acquainted with *tahārah*, it is unheard of in other societies with ritual pollution beliefs.

2. *There are no special jobs or roles demanding greater legal purity, and no “priesthood” into which the upkeep of the mosque is entrusted.* In addition to the basic divisions within Sunni society (free Muslims/slaves/non-believers), there has always been an elite. The history of Islam’s religio-political “aristocracy” (and, for that matter, its slaves too) includes Caliphs, viziers, Sultans, Shayks, military and court personnel and administrative officials. Alongside these have sat Sunni Islam’s legal experts. Traditionally, the relationship between its rulers

³⁰³ The status of *dhimmī* is granted to Jews, Christians, Zoroastrians, Samaritans and Sabians, “and those who adhere to the religion of Abraham or one of the Prophets” (*Umdat* p.607). For a history of Muslim/*dhimmī* relations, see C.L. Cahens’ article “*dhimma*” in *E.I. II*.

³⁰⁴ See Crone “*mawla*” (*E.I.II*).

and lawmen has often been strained, but – generalisation that it is – those speaking for the law have always been a vital part of Islamic society.³⁰⁵ Moreover, as *tahārah* law was fashioned by these legal experts, the socio-symbolic approach dictates that it should be their social status and interests that are primarily reflected therein. This being the case, a thorough investigation would normally demand a detailed knowledge of who the early jurists were, and what social conditions they lived in. Unfortunately, however, this task is beyond the limits of our essay. For, while anthropologists focus on specific communities with fixed geographical boundary lines, Islamic law developed over a period of time in a variety of social contexts, and – although probably sharing a great overall uniformity of purpose – the social circumstances of the early jurists must have differed considerably from place to place. Indeed, in various respects, prevailing social conditions and class-consciousness must have played a part in influencing some aspects of early jurisprudence.³⁰⁶ Examining the political and social status of particular groups (i.e. wealth, influence, and relationship to the dominant political powers) would be exhausting. Thankfully for us, this type of investigation is also unnecessary because, no matter where they originated, none of the Sunni schools (or jurists) make any attempt to bolster their religio-social status through ritual purity. In fact, as no *faqih*, Caliph (often considered a legal expert by dint of his position³⁰⁷), chief qadi, qadi, Mufti, or *muhtasib* (the official

³⁰⁵ In a fundamental way, the authority of legal specialists lies in their learning: people always need *to go to them* to ask their opinion. They hold the keys to how a good Muslim life should be lived, which is an enormously powerful situation to be in. As Goldziher puts it: in Islam “The qadi is the man who matters” (Goldziher 1981:47). Given this, it is not surprising that legal specialists have often played a very important role on the wider political scene. Schacht notes that qadis have been made military commanders, political leaders, placed in charge of various administrative posts, and even become “heads of principalities and founders of small dynasties” (1970:558).

³⁰⁶ It is natural, for instance, to attribute the differences between the Malikis and Hanafis regarding the status of slaves, and the topic of marriage law, to contrasting and ingrained social conditions in Madinah and Iraq. On slaves, see Coulson 1964:50, 176-177, on marriage law, 1964:49, and below fn.311.

³⁰⁷ Schacht 1970:557.

in charge of “the collective obligations of enforcing Islamic morals”³⁰⁸) is ever described as purer than anyone else, there is no evidence that status factors ever impinged upon the sphere of *tahārah* debates. Furthermore, and perhaps surprisingly (especially in light of point 5, see below), neither *mutawallī* (mosque guardian), prayer leader, nor Muezzin (“*mu’adhdhin*” the caller to *ṣalāt*) is required to enter, or maintain a higher status of purity than his peers, and his purifications are the same as theirs’.³⁰⁹ Thus, unlike his counterpart in Jain, Hindu, Jewish, or Zoroastrian traditions, the status of a Muslim religio-legal leader is never upheld through ritual pollution strategies.

On a lower social scale and away from the mosque, Muslim society has customarily held various non religio-legal professions in higher regard than others. As it developed in an urban environment, the merchant has, for instance, enjoyed a much higher status than the farmer and labourer.³¹⁰ Despite this, however, and in keeping with the above, we do not find the accusation of ritual pollution – as it is understood by *tahārah* law - used as a criteria via which one type of job may be elevated above others.³¹¹

³⁰⁸ Ibid. For a summary of the *muhtasib*’s duties, see *Al-Ahkām As-Sultāniyyah* translated as *The Laws of Islamic Governance* by Asadullah Yate (1996, London, Ta Ha Publishers) pp. 337-362.

³⁰⁹ It is true that the prayer leader has added responsibilities; indeed, if he forgets to purify himself, the prayers of those he leads are invalidated (*Bid* p.159). But, his forgetfulness carries no further penalties (he does not “pollute” the congregation), and his privileged position is not buttressed in any other way.

³¹⁰ Schacht 1970:563.

³¹¹ In contrast, see e.g. Stuart 1999. Admittedly, there is one possible exception within Sunni Islam to this rule. It occurs thanks to the Hanafi practice of *kafāh* (“equality”), which is the only attempt of any sophistication by the jurists to describe social status in legal terms. This originated in early Iraq where there was a far greater mix of cultures than elsewhere in the early Muslim Caliphate, and owed something to the pre-existing tradition of social stratification there (Coulson 1964: 49). *Kafāh* demands a husband be the equal of his wife and, according to the seventeenth century *Fatāwa ‘Alāmgīrī*, includes a variety of criteria by which he is to be measured: lineage, Islam (how long someone’s family has been Muslim), freedom, property, piety, and profession, see M. Siddiqui “Law and the Desire for Social Control: An Insight into the Concept of *Kafāh* in Islamic Law” in *Feminism and Islam*, ed. M. Yamani (1996, London, Ithaca Press). As regards this last criterion, Mona Siddiqui notes that, for some jurists, manual labour has been deemed “intrinsically low”, and “perhaps even impure” and thus a negative factor in marriage arrangements. However, to repeat the above, if Sunni Islam really does possess the concept of an impure job, it does not appear in the *tahārah* manuals and is not directly

3. *All human impurities (over a certain amount) are the same strength.*³¹² It makes no difference whether the blood on one's clothes is from one's own cut finger, an Imam, a menstruant, or even from a *kāfir*, the "defilement" and manner of purification is the same. Likewise, although there is a distinction between major and minor *ḥadath*, this is also unrelated to status. In particular, everyone's *janābah* is the same strength regardless of one's partner; thus, sexual impurity cannot be used to elevate or preserve the status of different classes or groups³¹³
4. *No human being is contagiously impure.* As we know this is based upon Muhammad's gentle rebuke to Abu Hurayra, after the latter – being *junūb* - had excused himself from the Prophet's company (p.97 above). According to Nawawi, the same logic includes non-Muslims on the basis that purity is a biological fact (p.100). Because in other pollution codes it is normally the presence of demons/evil spirits within him/her that render a person contagiously defiling, it is also possible that *tahārah*'s indifference to demonic power was an early factor in the decision that the *muhdith* is not contagious. But this would be difficult to prove, and is also contradicted by Shi'i legal practice which views the non-Muslim as contagiously impure (see ch. 8), but does not to my knowledge attribute his impurity to demons. Putting the matter of demons to one side, we may reasonably assume that declaring human being non-defiling was a sensible

connected to, or phrased in terms of *najāsah*. Even people working in jobs where contact with *khath* is unavoidable (e.g. bath attendants, cuppers, tanners, cleaners, farmers, etc.) are not more impure. In fact, they may become judges – as long as they pay strict attention to personal cleanliness, on this see Ibn Al-Ukhuwwa's *Ma'alim al-Qurba*, ed. and transl. by Reuben Levy (1938, London, Cambridge University Press) p.86.

³¹² The one exception is the urine of a male infant (ch. 6.4). For the jurists' discussions on whether quantity is a factor (ch. 6.3).

³¹³ An unusual opinion in the *Muwatta* suggests that such ideas may once have been known. There, Malik permits a man to have sex with two slave girls consecutively without performing *ghusl*, but not to do the same

step for two very practical reasons. Firstly, it made life easier for believers – a move perfectly in harmony with the Qur’an’s concession over *tayammum*. The alternative – that a *hadath*, of any sort, did render someone contagiously defiling – would make the ablutions tediously frequent. Secondly, if *hadath* impurity were contagious, Muslims would be far more suspicious of those around them. Their purity status would depend upon people telling the truth about their own. The *junūb* who brushed shoulders with his peers while praying would, without them even knowing, ruin their prayers too. Such worries are made irrelevant by Sunni *fiqh*.

It is very probable that such practical motives lie behind the origin of this doctrine. However, from a different perspective, the same decision also removed the possibility that social status would enter into *tahārah*. After all, had believers been able to contaminate one another, it is quite possible that certain persons, tribes, classes, races, ages, or professions would soon have been considered *more* prone to transmitting impure, or transmitting a stronger form of impurity, than others.

With that in mind, it is significant that this doctrine took some time to be accepted by the Sunnis. We know this for the simple reason that, had the *junūb* not been considered defiling by many, there would have been no need for Abu Hurayra’s tradition. Clearly, the same suspicions explain the inclusion of sixteen traditions demonstrating that a menstruant’s impurity is non-contagious in Muslim’s

with a free woman (*Muwatta* “*Tahārah*”:22.90). Thus, the free woman’s purity would appear to be worth more than that of the slaves.

Sahih.³¹⁴ In one of these, Muhammad lays his head upon ‘A’isha’s lap and recites the Qur’an, in another she combs his hair out of the mosque’s window during *I’tikāf*. Even the potent combinations of impurity and liquid are shown not have troubled him, as the careful choice of acts in the following tradition proves:

I would drink when I was menstruating, then I would hand it (the vessel) to the Apostle and he would put his mouth where mine had been, and drink, and I would eat flesh from a bone when I was menstruating, then hand it over the Apostle and he would put his mouth where mine had been.³¹⁵

Muhammad could not have helped but come into contact with a tiny residue of ‘A’isha’s saliva, yet her *ḥadath* is not capable of affecting him. Thus the menstruant’s incapacity to transmit her impurity is proven beyond doubt.

As I have said, the purpose of these *ahādīth* was surely more than anecdotal; the belief that human beings could transmit *ḥadath* impurity must have existed in early Sunni circles in order to have warranted a rebuttal.³¹⁶ Three opinions from the early Hanafi and Maliki law texts show that this was the case. In the *‘Asl*, Abu Hanifa orders the entire contents of a well into which the *junub* jumps to be emptied; and, in the *Mudawwanah*, Malik prohibits *wuḍū’* from being performed with water containing the *su’r* of a Christian – whom the jurists unanimously assume to be in a state of major *ḥadath* as well as probably carrying *khathath* (see ch.8) – and from praying in garments of Christians if they have sweated in them.³¹⁷ It should be noted that both opinions are at odds with the general attitudes

³¹⁴ Muslim “*Kitāb al-Ḥayḍ*”: 577-592. C.f. Bukhārī “*Ḥayḍ*”: 294-300.

³¹⁵ Muslim “*Ḥayḍ*”: 590. See nos-577-592.

³¹⁶ Just as it had done previously in Jewish and pre-Islamic Arab circles, see fn.108 above.

³¹⁷ See *‘Asl* p.54, and *Mudawwanah* p.122. Once again, the key aspect here is the capacity for (or susceptibility of) liquids, rather than solids, to transmit defilement. It is possible that Abu Hanifa’s opinion might be attributed to the *junub* “defiling” the water by introducing semen (a *khathath* according to the Hanafis) into it. However,

of these texts.³¹⁸ Yet, the matter was still important enough for Al-Shafi'i, writing slightly later, to defend the purity of sweat belonging to the menstruant and *junūb* against an anonymous interrogator. He does so on the basis of the *Sunna* and his own logic:

The Prophet commanded the menstruant to wash off any menstrual blood that had adhered to her garment. Note that he did not command her to wash the entire garment (but only the spot defiled by blood). Now, the garment which would be soiled by menstrual blood is clearly the '*izar* (waist wrapper³¹⁹), and there is no doubt about the heavy amount of sweat that goes on in that garment! (but the Prophet did not direct the menstruant to wash this sweat off). Furthermore, it is reported by Ibn Abbas and Ibn Umar that they used to sweat profusely in their clothing while they were both *junūb*, and they used to pray in those same garments without washing them.³²⁰

It is evident that, even in Shafi'i's time, the sweat of certain individuals – the menstruant, *junūb*, and, though not mentioned here, especially the non-Muslim³²¹ - was considered defiling by some Muslims. By the time of Nawawi, however, the matter was all but settled for the Sunni schools. It could have been very different. Had the majority sided with this early tendency of attributing the *muhdith* the power to transmit his or her impurity, it is very feasible that ritual pollution ideas

this meaning is not suggested by the text (cited by Maghen 1997:249) - in fact, a person does not even need to ejaculate to incur *janābah* (see ch. 7.2.A.ii).

³¹⁸ In another opinion on the same page, Malik defends the purity of sweat belonging to anyone with a major *ḥadath* (*Mudawwanah* p.122). And Abu Hanifa permits Muslims to perform *wudu* with the leftover water of a menstruant or *junūb* (*ʿAsl* p.47).

³¹⁹ It is obligatory for the menstruant to wear the '*izar* if she wishes to embrace her husband (see Muslim "*Ḥayḍ*":577).

³²⁰ '*Umm* p.33, Maghen's translation 1997:244. In passing we should note that all the basic components of Sunni Islam's *tahārah* system are present and correct in Shafi'i's opinion. The menstruant, presumably, 'A'isha, only needed to wash the spot of blood (i.e. the '*ayn al-khabath*) from her '*izar*, thus indicating:

- the impurity of (menstrual) blood;
- the purity of sweat (the '*izar* being known as a particularly sweaty garment);
- the essential purity of the woman, which is transmitted via the body's neutral emissions (i.e. sweat, saliva, and tears).

This indicates Shafi'i's influence over the construction of the *tahārah* system, an argument that shall be elaborated upon in Part II.

would have emerged reflecting general perceptions of social status, which in turn, could have led to the *enforcement* of social hierarchy.

5. *Purity is only necessary for the sacred sphere.* The fact that an obligation to be pure solely applies during acts of worship, and/or to enter mosques, may be seen as part of the same strategy.³²² For, as any community typically consists of interconnecting sub-communities, it is common to find each group replicating, within its own context, the general social concern over thresholds. Hence, as Douglas has shown, in societies where social and spatial boundaries are emphasised, purity laws often protect entry into the dining room, women's quarters, house, workplace, warrior's camp, temple, royal palace, and so on.³²³ In these settings, access to any of these areas often requires a person to enter a higher, or at least different, state of purity. Thus, mini purity systems attached to a single context, operate in harmony (as small cogs in a large machine) with a general concern for purity and social status.

Once more, none of this applies to Sunni Islam. And, yet again, matters could have been different. Originally, there were other places and times when *wudu'* was necessary. These included: after eating food cooked on a fire (*Bid* p.39),³²⁴ after bathing or carrying a corpse (*Bid* p.40), and before going to sleep, or eating or drinking in a state of *janābah* (*Bid* p.42).³²⁵ Ibn Rushd tells us that these opinions

³²¹ Shafi'i confirms the essential purity of the non-Muslim's saliva (and implicitly his sweat) by stating that "there is no problem with performing *wudu'* with the water of a *mushrik*", Maghen 1997:282 (citation from *Umm*, pg. no. not given), and see ch.8.

³²² The one exception is sex with a menstruant.

³²³ Douglas 1966:74-94.

³²⁴ For the obligation of performing *wudu'* after eating cooked food, see Muslim "*Taharah*":686; for its abrogation, see Muslim "*Taharah*": 689-699.

³²⁵ Note that, on the basis of several traditions, some Hanbalis continue to insist that *wudu'* is necessary after eating camel meat (*Bid* p.39).

were rejected because “of the lack of (legal) compatibility with all these things” (*Bid* p.42). According to him, “purification (*tahārah*) has (only) been described in the law for solemn occasions like prayer” (*Ibid*). It is very likely that by dropping these early requirements, the marking (and exploitation) of social differences was avoided. In particular, while the unusual early opinions calling for purification from *janābah* outside of formal ‘*ibādat*’ show that (as in virtually all pollution conscious societies) the sexual act causes an especially powerful impurity, by restricting its obligation to the sacred sphere, the importance of sex is bound exclusively to God, letting Him judge whether a particular sexual act is right or wrong, and rendering status factors irrelevant.³²⁶

If we combine these five points – each unique to Sunni Islam - we see that, over a period of time, the Sunni jurists created a ritual pollution system which prevents most forms of internal, or even external hierarchisation occurring along ritual pollution lines. To put it bluntly, this completely contradicts Douglas’ arguments in Purity and Danger and Natural Symbols (and the resulting academic consensus), where she assumes that ritual pollution ideas will practically and symbolically enforce a specific vision of religio-social hierarchy.

Sunni Islam provides another stumbling block for Douglas’ theories. For, we recall that she expects ritual pollution and dietary codes only to be expressed formally in settings where 1) there are strict forms of traditional authority, good communal bonding, and social control, and 2) geographical margins are under threat - the attention to the boundaries of the physical body replicating the concerns of the social body over its boundary lines (see pp.59-61 above).

³²⁶ Following Douglas, the fact that purification from eating cooked food was dropped may also be important. For, traditionally, this is another way of symbolically enforcing social structure: “food is produced by the combined efforts of several castes of varying degrees of purity: the blacksmith, carpenter, ropemaker, the

Regarding the first factor, Sunni Islam agrees: it is a generalisation but nevertheless true that, from the beginning, respect for traditional forms of authority, an emphasis on communal bonding and firm social controls were part and parcel of Muslim identity.³²⁷ Regarding the second (and, according to her logic, more important) factor, however, Sunni Islam offers the definitive challenge to Douglas' theories. For, in the early days of Islam, Muslims quickly broke free from the constraints of the Arabian Peninsula to become the major power in the Middle East (see Ch.8).³²⁸ As part of this process, the first generation of believers, although doubtless still very aware of their geographical and religious boundaries, were constantly overrunning them – in other words, *they* were the threat! According to Douglas' logic, this should have resulted in Sunni Islam paying very little attention to ritual pollution and dietary rules.³²⁹ Yet, exactly the opposite happened: the Sunni jurists developed complex and (as we shall see) eminently practical ritual pollution regulations clearly upholding the integrity of the physical boundary lines, but betraying little connection with social status or form. As a consequence, Douglas' main thesis on the symbiotic connection between the physical and social bodies cannot stand in the context of early Sunni Islam.

If we *are* to speak of the socio-symbolic function of *tahārah* regulations, Maghen is surely right in observing that their primary intent is to fulfill the role of “social glue”.³³⁰ For, while the capacity of ritual practice to unite a community is something of an academic cliché (and

peasant. If this is to be admitted to the body, a symbolic break (through purification) must be made to express the foods' separation from necessary but impure contacts” (1966:127-128, parenthesis added).

³²⁷ On this, see Graham 1983:65.

³²⁸ This period of history is well known, see e.g. Laura Veccia Vaglieri “The Patriarchal and Umayyad Caliphates in The Cambridge History of Islam (1970) pp.57-104. It should not go un-remarked, however, that some scholars see the Islamic expansion in much less military terms than Veccia Vaglieri. Norman Calder and Colin Imber, for example, have argued that, instead of conquering other cultures, Islam spread with a minimum of conflict. However, while this is an interesting theory, it does not detract from the basic point being made here. For, regardless of how much bloodshed was involved, the early Muslims could not have failed to be aware that they were crossing geographical and social boundaries.

³²⁹ See e.g. Douglas 1970:98-99: “If there is no concern to preserve social boundaries (the context dictates she means “from attack”), I would not expect to find concern with bodily boundaries”.

³³⁰ Maghen 1997:30.

not always accurate³³¹), Islam's pre-*ṣalāt* purification rituals are extremely good examples of this (in *potentia* at least). Minor differences of opinion exist on any point, of course, but the broad details of *wuḍū'*, *ghuṣl*, *tayammum* are the same across the spectrum of Islamic law schools and sects. The effects of this in enhancing what Victor Turner calls "*communitas*" – the idealisation of social order through ritual actions where "concrete, ideosyncratic individuals who, though differing in physical and mental endowment, are nevertheless regarded as equal in terms of shared humanity" – are self-evident.³³² In practical terms, it ensures that, regardless of his or her religious or political affiliations, a votary – be s/he Sunni, Shi'i, Khariji/Ibadi – is going to purify themselves for prayer in more or less the same way. More than this, the overall genius of the system lies in tracing everything back to Muhammad himself. For by doing so, the purification rituals (like all Islamic ritual) permit Muslims – regardless of class, origin or race – to practice their faith as the Prophet once did, and thus serve as powerful strategies through which believers may show their knowledge of, and conformity to Islamic tradition.³³³

5.5. PART I: CONCLUSIONS

In Part I, the present dearth of investigation into *ṭahārah* law was attributed to a general and persistent dislike of the subject, stemming from the long lasting influences of Evolutionist thinkers like Frazer, and to the reluctance of Islamicists to investigate *ṭahārah* for different, but not unconnected reasons. Outside of Islamic studies, four main approaches to the origins and functions of ritual pollution were identified and reviewed. After summarising the

³³¹ See the aforementioned disagreements between Sunnis and Shi'is on the subject of removing footwear/washing feet (fn.223).

³³² Turner *The Ritual Process* (1974, Harmondsworth, Penguin Books) p.166.

³³³ In fact, the levelling effects of Islamic ritual are well known and most conspicuous at the beginning of the Hajj, where all Muslims are obligated to don the same *iḥrām* clothing (although male and female costumes differ), see e.g. S.A.Husain *A Guide to Hajj* (1972, Lahore, Sh. Muhammad Ashraf) p.20. A fitting indication of how highly Islamic ritual prizes the notion of equality is that it is an offense for the Imam's place to be higher or lower than his congregation during prayer ('*Umdat* p.185).

contents and logic of the *tahārah* system, the materialist explanations were, on the whole, shown to be unhelpful, whereas psychological and religio-moral theories are more interesting, and remain to be applied to Sunni Islam. The socio-symbolic theory was discussed at much greater length because it remains the most influential of the four, and because it is most misleading in the context of Sunni Islam.

What have we seen? If one puts *tahārah* in the context of other ritual pollution codes, it does not immediately stand out. As in a hundred other, less complicated systems, human excreta and dead things are polluting, sexual intercourse makes people impure, flouting the purity laws carries dangers, impurity is to be kept out of sacred places, and so on. There are anomalies, however: for Sunni Muslims, ritual impurity does not involve a change of state, no external force alters a believer's essential purity condition, and he is not rendered contagiously defiling. Regarding the functions of ritual impurity, such anomalies lead to at least one very significant difference. Specifically, in Sunni Islam, *there is no villain*. As a result, its function must deviate entirely from what Douglas, or anyone influenced by her, would expect. This has wide implications for us. For up until now, anthropologists have usually researched ritual pollution themes in Indian, African, and Far Eastern communities; and Biblicists and scholars of comparative religions have then tested these theories on their texts. In this case, however, an anthropological axiom drawn from these contexts is clearly less compatible with Middle Eastern ideas.

This observation has recently gained support from the unlikeliest quarter; namely, Mary Douglas! For, Douglas has now changed her mind concerning the nature of the Biblical ritual pollution laws. In direct contrast to the claims of her earlier works, she now argues that, *because no class of people is seriously disadvantaged by them*, Israel's ritual pollution rules

are quite “unlike any in the anthropological record”! It is, she says, only a “so called-purity code” superficially resembling these codes in other parts of the world, but “with none of the usual political uses”:

(while) “ritual contagion (is) usually a punishing accusation (it) has been defanged, its claws are drawn, it is rendered helpless for defense or attack.”³³⁴

Given the importance of her studies in provoking academic interest in the Bible’s religio-social hierarchy (as it is encoded in its ritual texts), Douglas’ change of opinion is nothing short of remarkable (despite the fact that few Biblical scholars have taken note). More than thirty years after she first started to explore the Old Testament’s ritual pollution system, Douglas has come to see it as unique, the exception which proves the rule. Up to a point, she is right; it is true that status concerns are harder to find in Biblical ritual than in the ritual pollution systems of the African, or Hindu tribes she based her original theories on. Nevertheless, as scholars like Milgrom and Eilberg-Schwartz have shown (building upon Douglas’ own theories), status is still a factor in the Bible’s priestly texts. The Biblical purity laws elevate the priest above the lay man, he above the woman, she above the leper, and all of them above the non-Jew. There may be other meanings to these laws (Douglas’ suggests a religio-moral theory similar to Jacob Milgrom’s³³⁵), but religio-social stratification remains an integral part of them.

Douglas now champions the uniqueness of the Biblical purity laws, she would have been far closer to the mark had she done so from the Sunni *tahārah* texts. She has always been interested in the process of accusation – who accuses whom and why – in Sunni Islam there is very little leeway to accuse anyone through the charge of pollution. The idea of ritual pollution is still linked to danger, but, in terms of social pressure, it has been “defanged” to a

far greater extent than the Jewish code. We cannot very well criticise Douglas for not knowing about *tahārah* law, as very few anthropologists do (the process of bringing Islam's ritual texts into the general debate on ritual action has only just begun, and is greatly helped by translations like Nyazee's). However, it does point to a serious flaw in her work. For, no matter how forcefully she has argued the contrary, up until now Douglas' approach rarely – if ever – allowed for the impact of ideologies upon symbolic systems. Instead, she has always asserted the primacy of social structure in dictating attitudes to ritual, and even ideology. The same presupposition underpins the work of many anthropologists, who remain too firmly entrenched in the traditions and methods of Robertson Smith and Durkheim to admit the power of religion and ideology *to dictate* (rather than be dictated by) the social order. In contrast, in *tahārah* law, we have a clear example of ritual regulations firmly grounded in every day life, with little interest in social stratification despite having been forged by experts.

This is unlikely to have happened by accident. Indeed, contrary to the general feeling among anthropologists and social scientists that ritual meaning is conveyed without the rituals' creators or participants really knowing what this meaning is, as we continue it shall become increasingly clear that, when they developed their pollution code, the Sunni jurists were fully aware of their power over the concepts of purity and pollution, and consciously manipulated *tahārah*'s rules to suit their purposes. Perhaps the most significant and (borrowing Graham's terminology) the most “reformational” way in which they achieved this was by so effectively “defanging” pollution in the social sphere. It permitted them to design a system that is, at heart, uniquely egalitarian. This sentiment rather than any interest (explicit or implicit) in

³³⁴ Douglas “Sacred Contagion” in Reading Leviticus: A Conversation with Mary Douglas, ed. J. F. Sawyer, (1996, Sheffield, Sheffield Academic Press) p.96.

³³⁵ See e.g. Douglas “The Forbidden Animals in Leviticus” in *JSOT* 59 (1993) 3-23; and “Sacred Contagion”.

social stratification characterises the Sunni *tahārah* code. When Muhammad tells Abu Hurayra that “no Muslim is impure”, he is also stating that all Muslims are equal.³³⁶

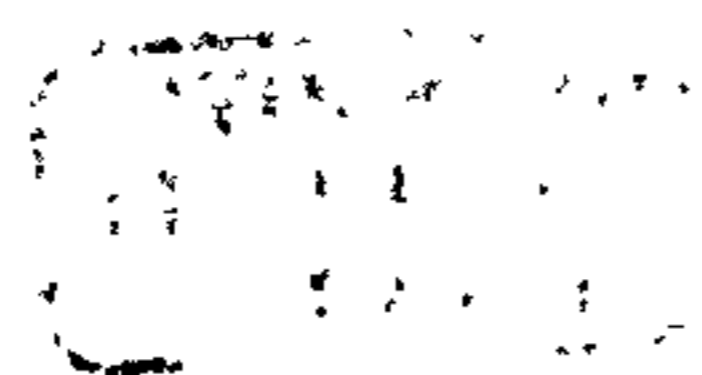
This comment will need to be qualified a little later regarding the treatment of women in *taharah* law; but, before we return to the matter of function, much more needs to be said about the laws themselves.

³³⁶ It must be stressed that, while it is virtually impossible to find an interest in religio-social hierarchy reflected therein, I am not saying social factors did not have any influence on the development of *tahārah* law. As we shall see, they certainly affected the way the non-Muslim is treated (ch.8). In fact, the egalitarianism of which we speak is doubtless linked to - and to a large extent the result of - the social realities of a world recently conquered by Islam. According to the Goldziher/Schacht view, the earliest jurists (groups of pious persons who came to form the ancient schools of law) consciously detached themselves from politics and factors of status, in reaction to the political circumstances and schisms in Umayyad times. While not in open opposition to it, the pious persons stood outside the political structure of the Arab kingdom of the Umayyads, and their political independence (and “cautelary manner”) is to some extent preserved in the *madhāhib* proper (Schacht 1970:549-550). Thus, *tahārah*'s lack of status concerns could be said to reflect a general and characteristic aversion to political factors by the early lawmen. But I do not wish to push this point; suggesting that the minds behind the creation and development of *tahārah* were, *in general*, apolitical is possibly misleading (and not in my power to argue). Besides, as Schacht himself notes, even among the first pious specialists there were those who were very much a part of the political scene (such as Radja and Abu Kilaba), see “*Fiqh*” E.I.II. Suffice it to say that hierarchisation through pollution strategies seems never to have occurred on any level; and that this is remarkable in itself.

RICHARD GAUVAIN

Part II

Sunni Islam's Ritual Pollution Laws



CHAPTER 6

KHABATH IMPURITY

In Chapter 4, the main features of Sunni Islam's *tahārah* system were outlined. In Part II we shall look at this system in greater detail. Our focus changes, and all mention of comparative approaches will be restricted to two excursions.³³⁷ The present aim is to gain a greater understanding of the range of opinions *within* Sunni Islam; and it is now the areas of disagreement between the schools (*ikhtilāf*) that concern us. Drawing attention to the principles underpinning their arguments, and the various factors influencing their decisions, in the next two chapters the major legal debates surrounding both forms of *najāsah* are summarised.

Once again, the *Bidāyat* is our main guide to these debates. Our summary loosely follows its format, and at the heading of every section, I put the corresponding page numbers of Nyazee's translation.³³⁸ There are, it must be said, drawbacks to basing our approach so firmly on his text. Significantly, opinions belonging to the last of the four major *madhāhib*, the Hanbalis, are regularly left out.³³⁹ Moreover, Ibn Rushd's work does not answer all the questions we would like it to. In fact, our author neglects to mention some matters of importance. As already noted, for instance, while the jurists unanimously agree that certain excreta (vomit, pus, *madhī*, *qadī*, *wadī*) are *khābīth*, they are not included in the *Bidāyat*'s section on the *khābā'ith*. While this apparent oversight concerns us, it is not too weighty because there is widespread agreement between the law schools that each of these substances

³³⁷ See Exc. A (pp.169-171), and Exc. C (pp.187-189).

³³⁸ Occasionally, it is necessary to break from his format; for instance, the *Bidāyat*'s section on animal *su'r* (see ch. 6.2. below) is to be found in the section on water purity and not *khābath*.

is an impurity of equal strength.³⁴⁰ More serious are Ibn Rushd's occasional errors (for instance, his report concerning Malik and Shafi'i's attitudes to the impurity of dog saliva, see fns. 372, and 400). For these reasons, it has often been necessary to look outside the *Bidāyat* for a more thorough explanation of some topics. In addition to the various standard legal manuals already mentioned, Ze'ev Maghen's translations of Malik's *Mudawwanah*, Shaybani's *Asl*, and Shafi'i's *Umm*, have allowed me to check the accuracy of Ibn Rushd's data, and flesh it out when necessary.³⁴¹ The present survey differs from Maghen's, however, because that author is more interested in delving into the plethora of early juristic opinions so as to compare these with the Rabbis' established ritual purity and pollution laws. His thesis covers the wide variety of ideas in the earliest law texts to show – as he would have it – the complete absence of any Jewish influence on these texts. Hence, presumably because the condition of *ḥadath* is so different from anything one finds in the Jewish ritual pollution code that the matter does not require further attention, he says much more about the *ḥabā'ith* than the *ahdath*.³⁴² In this study, equal time is spent on both forms of *najāsah*. Moreover, Maghen regularly details contrasting early opinions *within* each law school. In contrast, the following summary has normally (although not always) been limited to the best known opinion of each school. Although fully aware that many of the opinions Ibn Rushd attributes to each Imam are probably derived from other authorities in that school, in reporting these opinions I have followed him in ascribing them directly to the Imam.³⁴³ The danger inherent in this approach is that the reader may emerge with a simplified, if not seriously mistaken

³³⁹ In general, but certainly not always, the Hanbalis seem to follow the Shafi'is' lead; when they do not it is noted. Thanks to Ibn Rushd, we also occasionally include the opinions of Dawud ibn Khalaf al-Zahiri and his school, which, characteristically, often takes an independent line on purity topics.

³⁴⁰ Ibn Rushd probably takes the reader's knowledge of such matters for granted.

³⁴¹ As noted, Malik's *Muwatta* has also been translated by Aisha Abdurrahman Bewley and is often referred to in the following two chapters.

³⁴² Two hundred and twenty two pages compared with thirteen!

³⁴³ On occasion, it will be seen that later Hanafi and Maliki jurists developed away from the original viewpoints of their Imams (and became more lenient, p.154 fns. 407,408). Unfortunately, analysing the process of internal development on any particular topic within one or several of the schools would require close observation of a wide range of texts from different historical periods, and is simply not possible in the present study.

idea of the sheer number of opinions within *tahārah*. This warrants a serious caveat; nevertheless, a more in-depth survey would have been impossible within the framework of the present study.

Although the jurists normally discuss the *khābā'ith* after the *ahḍāth*, for our purposes, it makes better sense to reverse this order and review their discussions concerning the *khābā'ith* first.³⁴⁴ To attempt a lucid survey of a vast area, this chapter is divided into six sections. The first four address issues relating to Ibn Rushd's main categories of *khābāth*. These, we recall, are carrion of warm-blooded animals, pig's flesh whatever its cause of death, blood, and urine and excrement. In sections 5 and 6, the jurists' discussions relating to the purity of two other substances, semen and wine, are reviewed.

6.1. CARRION IMPURITY (*Bid* pp. 81-83)

Bar that of a human being and many sea creatures (ch. 6.3), the carcass of any creature (regardless of whether it is edible or inedible) that has not died through ritual slaughter (*dhabh*, or *nahr*³⁴⁵) is described as *mayta* (carrion); all *mayta* is *khābīth*.³⁴⁶ The jurists disagree about why this is the case. On the one hand, the Malikis and Hanafis suggest that the cause (*'illa*) of *mayta*'s impurity is only the *continued existence of blood* within the carcass. Hence, slaughter only “purifies” it in so much as it drains the creature of blood.³⁴⁷ To support their view, they cite a *ḥadīth* in which Muhammad permits the consumption of food into which a fly has fallen, claiming that this is only permitted because flies are

³⁴⁴ This is because, for many, the question of whether a bodily emission is *khābīth* decides whether it is also a cause of *ḥadāth*.

³⁴⁵ “Emergency slaughter”, performed when the creature is in the process of dying, also exists and is referred to as *dhakāh* or *tadhkiyah*.

³⁴⁶ Qur'an 5:3 appears to envisage several different types of *mayta*, specifically, animals that have been sacrificed for idols, killed by a blow, by a fall, by the horns of another beast, or eaten by predators. If these once did constitute different categories, however, they are not recognised as such by the jurists.

“bloodless”.³⁴⁸ On this basis, they consider all dead insects bloodless, therefore, pure and *halal*.

Shafi‘i disagrees with their deduction. In his school, with the exception of creepy crawlies like worms and other things likely to be discovered in edibles, all carcasses –regardless of whether they are bloodless – are equally impure.³⁴⁹ This is because, in Shafi‘i’s opinion, it is only the *act of dying* which renders a carcass defiled. According to Ibn Rushd, Shafi‘i refutes the Maliki/Hanafī viewpoint on four points. Firstly, he observes that the Qur’an always mentions two separate prohibitions: “forbidden to you is *mayta and blood*” (“*ahṛām alaykum-l-mayta wa-l-dam*”) (Q. 2:173; c.f. 5:3; 6:145) – not, as may have been suggested: “forbidden to you is *mayta because of its blood*”. A true interpretation of this *āya* must, therefore, give each prohibition equal weight. Secondly, he notes that the law stipulates different methods of purification concerning either *khabath*: ritual slaughter for animals (i.e. *dhabr*), and washing for blood (i.e. *‘izālat al-khabath*). Logically, where there are two purifications, there must also be two impurities. Thirdly, he calls the authenticity of the *ḥadīth* about the fly into question. He maintains that, if its meaning is to be accepted, it must be restricted to flies *alone*, whose wings possess a unique quality (as shown by Muhammad’s words: “in one of its wings there is disease, and in one there is a cure”). Fourthly, Shafi‘i points out that, if the sole reason why *mayta* is impure is that it still contains blood, then a carcass will only be pure (and edible) if it contains absolutely *no* blood. As the complete evacuation of blood from a corpse is almost impossible, blood cannot be the sole reason for its initial impurity.³⁵⁰ Thus,

³⁴⁷ Although its nature is very different from *‘izālat al-khabath* or *rafa‘a-l-hadath* (as its success depends upon correctly slitting the victim’s throat and *releasing* an impurity, rather than expunging one), *dhabr* is clearly thought a purification of some sort, and Ibn Rushd describes it as such (*Bid* p.522).

³⁴⁸ Bukhārī “*Dhaba‘ih*”:34. The fact that insects do bleed appears not to have been known to the jurists.

³⁴⁹ Presumably, the reason for their purity is that these things are universally recognised as impossible to avoid. The same logic crops up repeatedly throughout the jurists debates (see e.g. ch. 6.2.C., 6.3, 6.4. A., and especially B.).

³⁵⁰ Shafi‘i maintains that all quantities of blood are *khabīth*, whereas most other *fuqāhā’* overlook blood in small quantities, see ch. 6.3.

in Shafi‘i’s argument, the fact that it is permitted to consume morsels of flesh still containing blood proves that ritual slaughter is a blessing on two levels: primarily, it removes the prohibition/impurity associated with death and, secondarily, it allows contact with, and ingestion of, this residual blood.

This argument teaches us two valuable lessons at an early stage. Specifically, that Shafi‘i is often not content with the logic of the Malikis and Hanafis; and, that he is more likely than the earlier schools to adhere to a principle – in this case, the idea that death without ritual slaughter is the basis for impurity - and not deviate from it. From a practical point of view, we should also note that, here, Shafi‘i’s approach is far stricter; in his school, Muslims need to avoid almost every dead creature.³⁵¹

6.1.A. The Bones, and Hair of *Mayta* (*Bid* pp. 83-84)

The jurists agree that any body part cut from a live animal is *mayta*, and that hair cut from a human, or sheared from any animal,³⁵² is always pure when the host lives. They disagree on whether the bones and hair of dead, impure carcasses are pure. Applying Ibn Rushd, we may summarise the jurists’ opinions on this topic as follows:

- Abu Hanifa argues that the bones and hair of *mayta*, are pure.
- Malik claims that the bones of *mayta* are also *mayta*, whilst hair taken from *mayta* is pure.
- Shafi‘i argues that the bones and hair parted from *mayta* must also be *mayta*.

Their differences arise from confusion over:

³⁵¹ See e.g. *Minhaj* “*Taharah*”:11; c.f. ‘*Umdat* p. 96. However, the Shafi‘is assume locusts to be pure on the basis of a *ḥadīth* to that effect (see e.g. ‘*Umdat* Ibid.).

³⁵² With the possible exception of pigs and dogs according to some jurists.

What activity in the limbs can be assigned the term "life" ("ḥayy"). Those who maintained that the activity of growth (*namā*) and food intake (*taghdiya*) depicts life said that when the activity of growth and food intake is absent from hair (*sha'r*) and bones (*a'zum*), they become *mayta* (i.e. following Shafi'i). Those who maintained that the term "life" is only applied to the senses (*al-hawas*), ruled that as hair and bones do not possess the capacity to sense, they are not *mayta* (following Abu Hanifa). Those who distinguished between the two, assigned to bones the capacity to sense, but not to hair (following Malik). There is a disagreement about the capacity of the bones to sense and the matter is disputed amongst the physicians (*Bid* pp. 83-84).

The loss of life outside of ritual slaughter is enough to render something polluted. But the matter of defining life and death divides the jurists. Just as we might expect (given their emphasis on the biological nature of purity matters) they turn to the physicians and, once again, their subsequent differences of opinion are a window onto the prevailing medical theories of the day. Abu Hanifa restricts the category of things which can live and die (in a way that renders them impure) to those organisms (bar human beings) that can *sense* (i.e. have nerve endings). Because he believes that bones and hair do not possess this criteria, he understands them to be incapable of living and, therefore, pure even when the host dies without slaughter. In contrast, Malik assumes that hair does not have the capacity to sense, but bones do, and therefore judges only the latter to be *mayta*.

Making matters easier, Shafi'i rules that if a carcass is impure, *all* its parts are also impure. But he gauges things differently: in his view, an organism lives - and therefore can die and become impure - if it grows and requires food. Proof of the fact that bones and hair live is that, while the host is alive, they are always in the process of growth, or, at least change (although how it can be said they need food is not clear). When the host dies, the hair and bones also "die" because they stop changing. Ibn Rushd makes the obvious retort to Shafi'i's argument: for if evidence of food intake and growth were *solely* what matters in this

estimation, uprooted vegetation must also be *khabith* (as vegetation grows and needs sustenance too) *Bid* p.83.³⁵³

6.1.B. Skins of *Mayta* (pp. 84-85)

Most jurists agree that, if a creature dies without ritual slaughter, its skin is impure and shall not be used for any purpose, just as its flesh is not to be eaten. However, there are several opinions on whether such skin can *become* pure through tanning:³⁵⁴

- Abu Hanifa rules that all animal skins can become pure through tanning, except those belonging to swine.³⁵⁵
- Al-Shafi'i rules that tanning only purifies the skins of animals that can be ritually slaughtered.
- According to Ibn Rushd, Malik has two opinions: the first is the same as Shafi'i's; the second is that, while tanning does not purify them, using skins is permitted as long as they are not wet.
- A minority of mostly Hanbali jurists argue that tanned skins are impure, and not to be used.³⁵⁶

There are disagreements, firstly, on whether it is possible to purify an impure skin through tanning and, secondly, on which animals' skins resist such purification. Ibn Rushd attributes the varying opinions to a conflict in the meanings of *ahādīth*. Basing their judgment on a sound tradition in which Muhammad says: "tanning makes it (i.e. animal skin in general)

³⁵³ Nor does Shafi'i's theory explain why hair cut from a living creature is unanimously accepted as pure.

³⁵⁴ The process of turning skin into leather by "drying and steeping it in certain vegetable solutions, or mineral salts" (Chambers Twentieth Century Dictionary).

³⁵⁵ See *Bayan* p.19.

³⁵⁶ Ibn Rushd does not mention who these jurists are, but E.B attributes this position to the Hanbalis ("*Tahārah from Najāsāt*" p.6).

pure” (“*dibaghuha tuhuruha*”),³⁵⁷ the majority agrees that tanning can purify the skins of most creatures – bar the pig who is *rijus* - that have died without slaughter.³⁵⁸ Those who take the opposing view claim that this *hadīth* has been abrogated by a later one attributed to Ibn ‘Akim. Reputedly, this dates from only a year before Muhammad’s death, and recalls him saying that neither “a creature’s hide nor its sinews are to be used”.³⁵⁹

Of those who believe that tanning purifies the skins of *mayta*, the respective opinions of Abu Hanifa and Al-Shafi‘i are not what we might expect. For, as we shall see, the Hanafis’ regulations generally maintain a strong connection between Islam’s dietary and purity codes (ch. 6.2.). In contrast, Shafi‘i and his school usually sever this connection. Here, according to Ibn Rushd, it is the other way round. The Hanafis treat the skins of any un-slaughtered creature the same (bar the extra-impure pig), regardless of whether that creature was *halal* or *ḥarām*; whereas Shafi‘i appears to attribute greater impurity to the skins of un-slaughtered *inedible* animals (seeing only them as impervious to purification). It is possible Ibn Rushd is mistaken about Shafi‘i’s opinion. In fact, later Shafi‘i texts, such as al-Misri’s *‘Umdat*, do not mention the host’s edibility but assume that *any* skin of *mayta* (bar pigs and dogs) is purified through tanning (p.97).³⁶⁰

Putting such doubts to one side, the topic of tanning is an interesting one. Firstly, because it is the only regular occasion, besides “the defilement” of water (p.103 above), when something changes essential purity categories. Here, although the logic is the same (tanning does not simply improve the skin, it fundamentally alters its nature and leaves it a different

³⁵⁷ For this tradition, see Muslim “*Tahārah*”:712 (c.f. nos. 794-813).

³⁵⁸ Even the axiom that pig flesh cannot be purified needs to be qualified: following Dawud, some Zahiris assume that a pig’s hide can be purified on the basis of this tradition (*Bid* p.84).

³⁵⁹ *Mishkāt* “*Tahārah*”:508.

entity altogether), the transition goes the other way: from impure to pure. Secondly, it is a very good example of a theme that runs throughout *tahārah* law. Specifically, the conviction that these regulations should never cause hardship. A conviction which, as we know, lies behind the Qur'an's concession over *tayammum* (5:6). In this case, such sentiments lead most (here, the Hanbalis may deserve their reputation as the strictest of the Sunni *madhāhib*) to permit the utilisation of skins – for clothing, shoes, water flasks, etc. - that, otherwise, would be wasted. In fact, one of Malik's opinions even permits the use of skins he thinks are impure, as long as they are not wet (moisture being an excellent conductor of impurity) – which is not much of a deterrent as one can easily wait for them to dry. Ibn Rushd agrees; for him, “utilization is different from purification” and, he continues “it is not (even) necessary that each usable thing is pure” (*Bid* p.85). Most jurists do not go this far, but the simple practicality of the Sunni Islamic pollution code - constructed so as never to inconvenience Muslims – is plain to see.³⁶¹

6.1.C. Marine Creatures (*Bid* p.83)

The bodies of marine creatures are treated differently from other carcasses by Sunni *fiqh*. Most jurists (here we include the Shafi'is) agree the corpses of fish (*samak*) are pure and edible without ritual slaughter.³⁶² There are two reasons for their conclusion. First, the Qur'an makes no mention of slaughter when it entitles Muslims to eat “the catch/hunt of the sea” (*sayd al-bahr*) (5:96). And, second, there is a tradition testifying that (sea) “water is

³⁶⁰ Yet, it is also possible that Shafi'i did say something like this; as just noted, there is a certain symmetry to his logic that is often absent in the views of the other jurists. Making purification through tanning dependent upon whether the skin's host is suitable for slaughter is in keeping with that.

³⁶¹ In this regard, it should be noted that anything impure and/or inedible may be used or eaten when a Muslim is under duress. This leniency is based upon the Qur'anic passage: “He has explained unto you that which is forbidden unto you, unless you are compelled thereto” (6:120). For instance, wine (impure and undrinkable) is permitted in the case of extreme thirst (*Bid* p.577). It is unlikely that being unable to use an impure skin will cause major inconvenience, but if it should most jurists will permit the skin's utilisation regardless of its purity.

³⁶² Although the slaughter of fish is not unheard of in some quarters! See *Bayān* p. 158.

purifying (*tahūr*) and its corpses are permitted for eating” (*hu al-tahūr ma’hu al-hal maytatahu*).³⁶³

While there is almost total unanimity on the purity of dead fish, the jurists disagree over what types of marine creatures the word “*samak*” encompasses. There are two opinions on this:

- Malik and Shafi‘i think *samak* is a general category that includes the bodies of virtually all sea-creatures.³⁶⁴
- Abu Hanifa thinks *samak* only includes fish; moreover, in his view, only the carcasses of fish caught in the net, or washed up on the beach, are pure.

According to Ibn Rushd, Malik, and Shafi‘i take the view that had any species of marine life been impure Muhammad would have said so. They refer to a tradition attributed to Jabir Ibn Abdullah in which Muhammad permits the corpse of a beached (sperm) whale (*‘anbar*) – presumably not considered a fish by these jurists – to be divided amongst the Muslims, and used for food and supplies.³⁶⁵ This, they assume, adequately demonstrates the purity and edibility of all sea creatures.

In contrast, Abu Hanifa and his school think Jabir’s tradition is either an exemption restricted to that time and place, or not established, and so limit the meaning of *samak* to fish alone. Moreover, the Hanafis interpret the Qur’an’s permission to enjoy “the *hunt* (*al-sayd*) of the sea” as applying only to fish known to have died “*through a cause*”, whether in the

³⁶³ *Mishkāt “Tahārah”*: 479. The authenticity of this *ḥadīth* is disputed by some (*Bid* p. 564). Professing that he cannot find any evidence of *ijtihād* on this subject, Maghen makes the logical assumption that fish carcasses are judged pure because, spending their lives in water, fish are in a constant state of re-purification, hence their slaughter is unnecessary (Maghen 1997:109).

³⁶⁴ Some jurists even extend this to include the carcasses of sea birds (see Schacht’s article on “*samak*” in *E.I.II*)

³⁶⁵ Bukhārī “*Maghazī*”:65, cited in *Bid* pp. 83, 564.

fisherman's net, or when the sea "has grown tired of it" (*hasara 'anhu*).³⁶⁶ Only in these cases do they judge a fish sufficiently "hunted" (whether by man or nature).³⁶⁷ Alternatively, if a fish has simply floated to the surface, dying of its own accord (i.e. *ghayr sabib min kharif*), the Hanafis suppose it not to have been hunted, and its corpse to be impure and inedible.

These are the major issues surrounding the jurists' discussions on *mayta*, our first category of *khabath*. Any creature that can bleed and/or sense, other than a human being or fish, can become *khabīth*. But, according to the vast majority, the law can reclaim dead things when it proves necessary to do so. Once the hides of carrion are tanned, they become pure. Some creatures, however, are excluded entirely from the pure world, and it is to these we now turn.

6.2. THE ANIMAL KINGDOM (*al-Hayawān*) (*Bid* pp. 25-29)

While Ibn Rushd tells us that pig flesh is unanimously believed to be impure whatever its cause of death, there are many other animals regarded with suspicion within *tahārah* discussions even when they are alive. As noted, this suspicion normally concerns the purity of water sources; for, in early Muslim settings, water was obviously a communal asset, shared by livestock and believers alike - a reality which led to some of the most complicated arguments within *tahārah* jurisprudence.

As has been observed, the matter hinges on the purity of something's saliva. If an organism is pure then its saliva (as well as its sweat and other clear fluids) is also pure; however, if something is essentially impure then, according to *tahārah*'s logic, it will transmit this impurity through its saliva into the water, thus creating the mixture known as *su'r* (backwash).

³⁶⁶ For this expression, see *Bayān* p.158.

The three main views regarding which animals are capable of defiling may be summarised as follows:

- Malik has two opinions attributed to him: in one, he considers all creatures pure and incapable of transmitting defilement, in the other, he makes an exception for pigs. However, he thinks the saliva of predators renders water unusable for ritual purification (but not impure).
- Abu Hanifa considers the saliva of pigs and dogs (*kilāb*), and most inedible (*ḥarām*) creatures capable of transmitting defilement to varying degrees.
- Shafi'i only considers pigs and dogs defiling.

These are the general views. In this section, I will treat each of them in turn, supplementing the *Bidāyat*'s information throughout with Maghen's translations of the early texts. We will start with Malik. According to Ibn Rushd, he upholds the general principle that "if death without slaughter is legally the cause of impurity...then, via analogy, life must be the basis for the purity of the body of the animal" (*Bid* p. 26) - an argument we have already seen in the context of the hair and bones of *mayta*.³⁶⁸ On the basis of this principle, Malik proclaims every living creature pure and incapable of defilement; and in so doing, makes matters a great deal easier as far as maintaining the purity of water sources is concerned. Because of the Qur'an's description of swine as "*riḥus*" (6:45), he may qualify this in the case of pig *su'r*, however.³⁶⁹

³⁶⁷ This may not have been the original Hanafi view. According to one source, Abu Hanifa himself was not so strict and, at the very least, permitted eating crabs, and frogs, see Maghen 1997:109.

³⁶⁸ The observant reader will spot a contradiction here. For Ibn Rushd has told us that Malik and Abu Hanifa consider the *remaining quantity of blood* left in the animal, rather than its natural death, to be the main factor in triggering impurity (see ch. 6.1.A: above). Thankfully, as I have said, incompatibilities like this are relatively uncommon in the *Bidāyat*.

³⁶⁹ If he did, the extensive dislike of pigs throughout ancient Semitic culture was no doubt a factor in his thinking; for this subject, see R. de Vaux "The Sacrifice of Pigs in Palestine and in the Ancient Near East" in *The Bible and the Ancient Near East*, ed. J. Rogerson (1972, London, J.K. Publishers) p. 66. Note, however, that some jurists assume Malik's main view is that swine are pure, see e.g. '*Umdat* p.98 (c.f. Bousquet who also cites it as the only Maliki view, 1950:55).

Significantly, this would be his only qualification. For, unlike the rest of the jurists, Malik sees no threat posed by dogs to the purity of water sources. The others attribute the dog's impurity to a sound tradition reported by Abu Hurayra, in which Muhammad tells his Companions that any vessel licked by a dog needs to be washed seven times:

When a dog licks a utensil belonging to any one of you, it (the water) should be thrown away and then (the vessel) washed seven times (*falyaghsilhu sab 'a*).³⁷⁰

Given its unusual nature, it is not surprising that the jurists' responses to this tradition differ.³⁷¹ As I have said, Malik chooses to reject it. The *Bidāyat* cites Malik's opinion correctly, but does not go into detail on his reasoning.³⁷² This is a matter of some importance to early purity law so let us go back to the *Mudawwanah* to explore Malik's ideas. There, Malik puts his case plainly:

(Ibn al-Qasim said to Malik) regarding a vessel in which there is water and a dog laps at it (*yalaghu fiḥu*), may a man perform the ablution with (this water)? And Malik said: if he did perform *wuḍū'* with it and then prayed, it suffices (*'ajza 'hu*).³⁷³

So, water from which a dog has drunk (and thus which contains its saliva) is not only pure, but purifying according to Malik. Regarding Abu's Hurayra's tradition, Malik admits that it exists, but concedes, "I do not know whether it is true" (*wa mā 'adriyu mā ḥaqīqatihu*). In the (unlikely) event that it is, Malik allows Muslims to perform the seven washings if they feel

³⁷⁰ Muslim "*Tahārah*":546. In other reports of the same incident, Muhammad stipulates that the vessel should be washed with sand the first time (no.549), and/or dust (*turāb*) for an eighth (no.551). As noted above (ch. 4.4 B.), this tradition provides the one case of secondary contamination in Sunni law – the dog's saliva contaminates the water, this defiled water then passes its impurity to the vessel, which needs seven washes.

³⁷¹ Recall that Ibn Rushd explains it as a precaution against rabies (p. 107).

³⁷² In fact, Ibn Rushd says Malik describes the washing of the dog bowl as an "act of non-rational worship" (like the acts of *rafa'a-l-ḥadath*), a view which is not to be found in the *Mudawwanah*, but corresponds to Shafi'i's (see pp. 150-151 below).

³⁷³ *Mudawwanah* p.115-116 (Maghen 1997:217), the following quotes are all from the same passage.

compelled to do so. However, his own inclination is clearly not to bother; in fact, in the same passage, he describes throwing away any milk (“a portion of God’s sustenance”, “*rizq Allah*”) remaining in a vessel after a dog has drunk from it as “a terrible calamity” (*‘aziman*). Malik’s support for his argument that dogs cannot be impure is twofold. Firstly, he sensibly points out that, were a dog’s saliva really defiling, the Qur’an would not have instructed believers to “eat of what they (birds and beasts of prey) catch for you” (5:4).³⁷⁴ Secondly, he claims that dogs cannot be impure because they are “members of the household” (*ahl al-bayt*):

(Ibn al-Qasim) said: it appears that Malik was of the opinion that the dog is, as it were, a *member of the household* and thus *unlike other predators (min ahl bayt wa laysa kaghayrihu min al-siba)*.³⁷⁵

Malik’s defense of the dog touches on two factors that were clearly important in the early jurists’ regarding the purity of water sources. To be a “member of the household” was obviously considered a positive factor. In contrast, it is implied that eating flesh is a negative one – a reason for a creature’s *su’r* to be thought of as impure (thus prompting Malik to protest that dogs are *unlike* other predators). In fact, although Malik does not say they are essentially impure, in the *Mudawwanah* he attributes all predatory animals (bar the dog) a degree of danger by ruling their *su’r* drinkable, but unusable for *wuḍū’*:

if an animal which eats the cadavers (*al-jifa*) of other animals, whether bird or (land) predator, drinks from a vessel, one should not use (the contents) for ablution.

³⁷⁴ This is picked up on in the *Bid*, see p 27.

³⁷⁵ By Ibn Rushd’s time, the Malikis defend the purity of the dog against the implications of Abu Hurayra’s *ḥadīth* with a *ḥadīth* of their own (it is also credited to Abu Hurayra):

During the lifetime of Allah’s Apostle the dogs used to urinate, and pass through the mosque, nevertheless they never used to sprinkle water on it (the urine) (Bukhari “*Wuḍū’*”:174, cited in *Bid* p. 27).

If a dog’s urine is not polluting, then the reasonable assumption is that the dog itself is pure (and even *halal* according to the usual Maliki ruling! See ch. 6.4.B.). Yet, if Malik knows of this tradition, he does not use it in the *Mudawwanah*.

Moving on from Malik, the threat posed by predators to the purity of water is far more severe in the Hanafi school. For, Abu Hanifa rules that all predators – including dogs - transmit their essential pollution through their saliva. In his view, the reason for this is simple: the purity of a creature’s “leftovers is dependent on the (*hukm of the*) flesh of the animal” (*Bid* p.27). Thus, in the Hanafi school (although not in the others), the biological essence of which we have spoken is directly connected to whether or not a creature is legally edible (*halāl*).³⁷⁶ Hence, predators join a large number of other creatures viewed with suspicion in terms of their purity, because they are forbidden as food (*harām*).³⁷⁷ This would suggest, of course, that the saliva of anything forbidden to eat is also defiling.

Things are not so simple, however. For the Hanafis very often judge an inedible creature’s *su’r* as neither totally pure, nor impure, but somewhere in between. Several factors play a part in their decisions; we have just seen two of these – whether a creature lives in close proximity to humans (and thus is a “member of the household”), and/or whether it is predatory (and, consequently, unlikely to live near humans) – mentioned by Malik. But the Hanafis also take into account eating and living habits; hence, if it is one of the “*jallalah*”, those known to consume filth, its *su’r* is also more than likely to be impure.³⁷⁸ Bearing in mind these factors, the Hanafis outline four categories of *su’r*. Ibn Rushd does not help us on the matter, and so we will follow Maghen in briefly summarising the contents of these categories.³⁷⁹

³⁷⁶ There are occasional exceptions: to eat the flesh of a horse (an “adornment” according to Q.16:8) and humans is prohibited, but both their *su’r* is pure, see *Bayān* p.19.

³⁷⁷ What constitutes a predator is, however, disputed: the Shafi’is claim that “those that attack humans are predators”, while the Hanafis say that “anything that eats meat is a predator”, and both views are expressed by different Malikis, who consider eating predators merely *makruh* (*Bid* pp. 567-569).

³⁷⁸ The *jallalah* are declared *harām* on the basis of Q.7:157, see *Bid* p.565 for discussion.

6.2.A. *Su'r* that is pure and purifying (*tahir wa tahur*)

Water that is drunk by edible herbivores (sheep, goats, cows etc.) that do not regularly eat, or come into contact with *khathath*, is permitted to drink and use for purification purposes.³⁸⁰

6.2.B. *Su'r* that is pure, but disliked (*makruh*) for purification purposes when water from the first category is available

This category is comprised of water licked by a cat (*al-hirra*), and comparable household animals (*sawākin al-buyūt*), predatory birds (*jawāriḥ al-tayr*), dung-eating cattle (*baqr al-jalalah*), and the chicken fed via a bag to its head (*al-dajājah al-mukhlah*).³⁸¹ As far as the Hanafis are concerned, every type of creature here either comes from an impure genus, but holds some mitigating feature, or a pure genus, but with some limitation. The first description fits the domestic cat. It is a predator, but like the dog in Malik's opinion, it is also a frequent visitor inside a Muslim's house. Indeed, on the basis of the following *hadith*, a cat's domesticity is proof of its purity for most other jurists:

Once Abu Qatada was visiting her (Kabsha) and she poured out some water for him to perform *wuḍū'* with. Just then a cat came to drink from it, so he tilted the vessel toward the creature to let it drink. (Kabsha continues) he saw me looking at him and said "Are you surprised, daughter of my brother?" I said "Yes". He replied that the Messenger of Allah said "Indeed she (the cat) is not impure (*laysa bi'l najas*); for she is among those who hangs around your dwellings" (*innaha min al-tawāfūn 'alaykum aw al-tawāfāt*).³⁸²

The Hanafis do not grant the cat a complete reprieve, in their opinion it is still impure to some degree. However, instead of proclaiming its *su'r* irredeemably polluting (as they might

³⁷⁹ For this material, see Maghen 1997:224-233.

³⁸⁰ The mystery is why, given that cows and deer vomit their food up in order to eat it, and vomit from any source is unequivocally seen as impure, the *su'r* of these creatures is not considered defiling by all the *fuqaha'*. This problem is unlikely to have escaped the phenomenally quizzical minds of the jurists, but I have never found the question posed let alone answered.

³⁸¹ Maghen 1997:224, who cites *'Asl* p.49.

have given their method of linking dietary and purity laws), the Hanafis declare it “disliked” (“*makruh*”) for purification purposes, but not *khābiṭh* as such. The *su’r* of a host of other insalubrious and *ḥarām* house-dwellers is presumably judged pure for the same reason. Hence, water from sources known to provide lizards, snakes, mice, and rats with refreshments is, although reprehensible for use in *wudu’*, drinkable and *tahur*, if no other is available because these creatures also hang around a Muslim’s dwellings.³⁸³

The *su’r* of chickens (*dawājīn*) is treated similarly, although for different reasons. Its purity is suspect because chickens consume filth (making them *istikhbāth*), hence (an ingenious suggestion to prevent contamination of water sources) chickens must wear beak-bags. However, chicken *su’r* is not irredeemably polluting, because chicken flesh is *ḥalāl*.

The Hanafis also place the *su’r* of predatory birds (*jawāriḥ al-tayr*) in this category. They should be defiling because they consume flesh and are forbidden to eat, yet – on the basis that (like hair and bones) they do not possess the attribute of sensation – their *beaks* are understood to neutralise *khābiṭh*, and their *su’r* can therefore also be judged pure.

6.2.C. *Su’r* that is doubtfully purifying (*mashkuk fī tahūriyātihī*)

This category includes water that is still drinkable, but to which *tayammum* is preferred for purification. It contains the saliva of creatures, such as the donkey (*al-ḥimār*) and mule (*al-baḡhl*), whose flesh is only doubtfully permitted for consumption.³⁸⁴ If these animals met the same criterion of domesticity that is applied to cats (and by the Malikis to dogs), then perhaps their purity status would be better. But, although in constant use, donkeys and/or mules are

³⁸² *Muwatta’ Tahārah* 3:14. Cited in *Bid* p. 27. However, Ibn Rushd notes the existence of at least one well-known *ḥadīth* stating that a vessel drunk from by a cat needs to be washed once or even twice.

³⁸³ See e.g. *Bayan* p. 19.

unlikely ever to enter believers' houses. Hence, they are not analogous to pets, and their *su'r* is not pure.

To categorise the *su'r* of donkeys and mules as only doubtfully purifying, the Hanafis must explain a number of *ahādīth* which, we might think, explicitly refute their view. For instance, one tradition often cited against them describes how Muhammad and his followers prayed in clothes that had absorbed the sweat from their donkeys' backs.³⁸⁵ Given this, the majority conclude that, if being covered in donkey-sweat is permissible during prayer (and sweat has the same purity *ḥukm* as saliva), performing the ablutions should be allowed with water that has traces of a donkey's saliva. This is a strong argument, but the Hanafi's riposte is to insist that, while saliva and sweat are *normally* analogous, it is wrong to make this connection here. For although both substances are in reality contaminating, riding is an *inevitable*, everyday occurrence during which it is very difficult to avoid the sweat from one's steed. To rule that, on dismounting, believers must immediately wash their riding clothes would cause considerable inconvenience; hence, it would run counter to the jurists' general principles. Rather than cause burden, the Hanafis conclude that Muhammad only allowed his Companions to pray in a *khathath*-affected state as a concession, because to rule otherwise would have caused them (and Muslims in the future) too many problems. Of course, these jurists continue, because the *su'r* of a donkey or mule is nothing like as difficult to avoid, then this substance must be treated with greater caution than their sweat. Ultimately, they compromise, and rule that the impurity of the donkey and mule *su'r* is only "light" (*najāsah mukhaffifah*).³⁸⁶

³⁸⁴ While the majority hold that both donkey and mule are *ḥarām*, there were early disagreements on this, and Ibn Abbas among others considered eating them permissible (*Bid* pp. 569-570).

³⁸⁵ For this tradition, see Maghen 1997:228.

³⁸⁶ On the distinction between heavy and light forms of *khathath*, see below ch. 6.4.B.

6.2.D. *Su'r* that is *najis*

This final category includes the *su'r* of all predatory land animals (*siba' al-bahā'im*), as well as pigs and dogs. As far as predatory animals are concerned, there are *ahadith* to support the Hanafis' ruling; one is attributed to the father of 'Ubayd Allah b. 'Abd Allah b. Umar, who we are told:

reported that the Prophet was asking about a water source located in the desert (*falaq*) of the land, and the riding animals (*al-dawāb*) and predatory beasts (*al-siba'*) that frequent it. He replied: if the amount of water was two jugs worth (*qullatayn*), then it is not contaminated (*nājis*).³⁸⁷

Apparently, the Shafi'is use the same *hadīth* to argue that predatory beasts and riding animals do *not* contaminate water.³⁸⁸ Here, the Hanafī theory is undeniably better supported. For, what would be the point of ruling such water pure when *over* two *qullahs* – exactly the maximum quantity of water deemed susceptible to defilement by Shafi'i, see above fn. 230- were the *su'r* “of riding animals and *siba'*” not capable of defiling any *lesser* amount? Nonetheless, the Hanafis' opponents have no shortage of other *ahadith* to which to appeal. For instance:

Ibn 'Umar reported that the Messenger of God went out on one of his excursions at night, and the party passed a man sitting by a pool of water which he owned. 'Umar asked “Have any beasts of prey licked at this pool of yours tonight?” Whereupon, the Prophet interrupted and said to him “Oh owner of the pool do not tell him! For we frequent (the water sources) of the predatory animals and they frequent ours.”³⁸⁹

³⁸⁷ Ibn Maja “*Tahārah*”:75 (Maghen 1997:231).

³⁸⁸ See *Mughnī* p.49 (Maghen 1997:231).

³⁸⁹ Cited in Maghen 1997:232 (taken from Ibn Maja, but no reference included). C.f another *hadīth* attributed to Jabir, in which Allah's Messenger was asked: “Should we perform *wudū'* with water left over by asses?” He (Muhammad) said: “Yes, and with all (i.e. other food and liquids) that the predators leave (*bi ma'afdalati al-siba'*)” (*Mishkāt “Tahārah*”:484)

Impressively, the Hanafis manage a variety of responses to this tradition. Some contest that the water supply was very large (large enough for a ripple not to reach both sides) and, therefore, incapable of contamination. Others insist that Muhammad responds as he does, not because the water is pure (it is not), but because the question itself is forbidden. His intentions may therefore be paraphrased: “Oh owner of the pool do not tell Umar, because he is foolish even to ask”, presumably, because a truthful response would have left the Prophet and his Companions without water for their morning *wudu*'. Some Hanafis, perhaps as a last resort, even declare that if Muhammad had believed that the water was pure, this story occurred in a time before the flesh of predatory animals was forbidden to Muslims. Since that time, however, their *su'r* has no longer been valid for purification.

In addition to the other predators, the Hanafis also classify dog *su'r* as impure.³⁹⁰ But, their attitude towards washing the dog's vessel is more straightforward than the other schools; for, according to Ibn Rushd:

Abu Hanifa did not deem the number to be a condition for the purification of the vessel licked by the dog, as this is opposed, in his view, by analogy arising from the purification of impure things, that is the point under consideration is the removal of impurity alone (i.e. *'izalat al-khabath*) (*Bid* p.28)

In other words, Abu Hanifa does not see why, if dog *su'r* is impure like the other *khabā'ith*, it should not also be removed like any other form of *khabath*. Regarding Abu Hurayra's tradition, the Imam claims that it only reflects that Companion's opinion rather than the Prophet's. This, Ibn Rushd continues (sounding like he disapproves), “is in keeping with his practice of rejecting individual narrations when they are opposed to his principles” (*Ibid*).

³⁹⁰ At least, this is true of most Hanafis. Maghen notes that Shafi'i bitingly counter attacks the claims of some jurists (Maghen logically presumes them to be Hanafis), who claim that it is only when water is licked by dogs *outside of the town* that it becomes impure (*'Umm* p.33, Maghen 1997:287). This would appear to be the Hanafi principle that something's impurity depends upon how difficult it is to avoid taken to extremes, on this, see pp.160-161 below.

The above section is only a brief synopsis of a vast area. A connection between Islam's dietary and purity codes was plainly felt by many jurists to exist. This connection is at its strongest in the Hanafi regulations, where various other factors – most notably predatory behaviour – are inter-linked. As we have seen, Malik does not directly connect the dietary and purity codes in the same way, yet still attributes a degree of danger to the *siba'*, ruling their *su'r* unusable for *wuḍū'*, although not impure. The link between Islam's purity and dietary laws is finally (all but) severed by Shafi'i, however.³⁹¹ In his view, only pigs and dogs transmit defilement through their *su'r* – and this has nothing to do with whether their flesh is prohibited. In the following passage taken from the '*Umm*, Shafi'i summarises his views on *khath* impurity and the animal kingdom. He obviously knows of the other jurists' practice of connecting a creature's purity and dietary status through its *su'r*, and gives a unique explanation of why, in his opinion, it is wrong to do so:

There is no defilement in any of the living creatures coming into contact with water through drinking or putting one of its limbs into it, except for the dog and the pig... the difference between the dog and the pig (on the one hand) and the other animals whose flesh may not be eaten (on the other) lies in the fact that one may keep the latter domestically as long as there is *no purpose* in doing so (*laysa minhā shay' ḥarām an yattakhadh 'illa li-m'ana*), whereas the dog may be kept domestically only if there is a *purpose* ('*illa*) in doing so, and the good deeds of one who keeps a dog for no purpose is diminished by a *qirat* or two daily.³⁹² Furthermore, the dog is distinguished by the fact that the angels do not enter a house where (a dog) is found.³⁹³ Moreover, the leftovers (*fadl*) of all creatures edible or inedible, are permitted (*ḥalāl*) save that of the dog and pig.³⁹⁴

³⁹¹ Although see above p.136 for Shafi'i's rather incongruous ruling over the skins of *mayta* (see ch. 6.1.B.).

³⁹² There is a *ḥadīth* to this effect, which runs as follows:

Malik related from Yazid b. Khusayfa that he heard Sufyan... say... I heard the Messenger of Allah say: "if anyone acquires a dog and does not use him as a sheep dog or for hunting, a *qirat* will be deducted from the reward of his good deeds each day (*Muwatta* reference data lost. In the next *ḥadīth*, which is attributed to Nafi, Muhammad makes the price two *qirats*).

³⁹³ Likewise, see Bukhārī "*al-Harth wa-l-Muzara'a*":3.

³⁹⁴ '*Umm* p.20 (Maghen 1997:214, his parenthesis)

There are several very interesting aspects to Shafi'i's argument. For one thing, although restricting the number of defiling creatures to two, Shafi'i imagines that pigs and dogs transmit their defilement into water via *their limbs*, as well as their *su'r*. In contrast, the Hanafis and Malikis appear to limit the defiling capacities of a creature to its impure fluids (normally saliva and sweat).³⁹⁵ Shafi'i's concession on keeping dogs – they are permitted if they serve “a purpose” – is remarkable (although I cannot pretend to understand the logic behind it). It is granted a little grudgingly: it seems plain that, in his view, most Muslims can live without a dog, and so they should. As Shafi'i notes, the leftovers of dogs are polluted and dogs even deter angels from visiting a house. However, when dogs are a necessary part of a Muslim's working environment, Shafi'i admits that there is no harm in keeping them.³⁹⁶ Nevertheless, given that he reckons owning dogs unnecessarily is a *sin* (hence, unlike other *haram* creatures, they must benefit their owners in order to justify this ownership), it may be said that the dog is essentially and even ultra impure for Shafi'i.

It follows for Shafi'i that the unique nature of canine impurity precipitated Muhammad's stipulation to purify dogs' vessels with seven washes. In contrast, all other instances of removing *khathath*, Shafi'i claims, are directly based upon a *hadith* reported by Hisham b. Urwa, in which Asma' asks Muhammad what she should do to purify her clothes from a spot of menstrual blood. The Prophet's reply, “rub it, scrape it, then sprinkle water on it and pray”, is his proof that *'izalat al-khathath* is possible with an unspecified number of washings, and

³⁹⁵ See e.g. *'Umdat* p.98. In the Shafi'i school, this leads some scholars to say that even the *dry* touch of a pig or dog requires to be brushed off, if not actually washed. The *'Umdat* does not say if this brushing off is a formal act of purification. It is unlikely to be for, as we know, in Shafi'i law any form of *'izalat al-khathath* must be with purifying water (the *'Umdat* is a standard Shafi'i text and accepts that rule). It may, therefore, merely be a precaution – the strength of pig and dog impurity being such that special vigilance is required.

³⁹⁶ Dogs have traditionally been tolerated if used for hunting, as recorded by Ibn Mughaffal's *hadith*:
The Messenger of Allah ordered killing of the dogs, and then said: “What about them, i.e. about other (hunting) dogs?” – then he granted a concession (*ruhksa* – to keep) the dog for hunting and for (the security) of the herd, but said: “When the dog licks the utensil, wash it seven times, and rub it with earth the eighth” (Muslim “*Taharah*”:551).

that the dog's purification must, therefore, be of an entirely different order to the usual instances of removing *khathath*.³⁹⁷ Shafi'i explains all this as follows:

Now all the various sources of contamination (*anjās*) are analogised to menstrual blood, as they correspond in terms of washing and purification to the latter as (so long as the essence is destroyed), they may be removed by one washing according to both the *Qur'an* (i.e. 74:4) and reason (*fil kitāb wal-m 'aqūl*), but we do not analogise from (menstrual blood) to the (*su'r*) of dogs, because (its purification must be) an *inscrutable religious obligation* (*ta'abbud*). (For) Do you not see that the term "washing" (*ghusl*) applies to one washing as it does to even more than seven? And that the vessel becomes pure (from the *khathath*) with the first washing and with less washings than seven, and that the contact of the water (*mumasat al-mā'*) with the vessel (achieves the same purificatory end) with less than seven washings?³⁹⁸

Thus, Shafi'i describes the sevenfold washing not as a rational act of purification (like removing menstrual blood), but as "*ta'abbud*" – which, following Maghen's translation, means "an inscrutable religious obligation", akin, we presume, to *wudū'*/*ghusl* and *tayammum* (which Ibn Rushd describes as "non-rational"), yet without lifting a *hadath*. Logically, Shafi'i's answer is unsatisfactory because it confuses the purposes of the purifications and merges the two definitions of *najāsah* - something he generally strives to avoid, see Exc. B. – yet, it is easy to understand why Shafi'i is driven to this conclusion. For, unlike Malik and Abu Hanifa, he does not wish to reject the meaning of an established *hadith*, but cannot make this meaning agree with *tahārah*'s usual principles. His solution is to create a separate category of dog-impurity - in which washing a dog's bowl seven times is "an act of worship"! What is most significant is that his use of *ta'abbud* seals Abu Hurayra's unusual *hadith* off so that it does not influence other aspects of the *tahārah* debate.³⁹⁹

³⁹⁷ For Asma's tradition, see Muslim "*Tahārah*":573.

³⁹⁸ '*Umm* pp.19-20 (cited in Maghen 1997:213 parenthesis added).

³⁹⁹ This function of Shafi'i's use of *ta'abbud* is noticed by Calder (1993:81). The alternative (that Shafi'i is trying to avoid) is to make all acts of removing *khathath* require seven washes (and, according to Ibn Rushd, Ibn Hanbal does think this way, *Bid* p.93; other Hanbalis do not go so far, but still insist that any act of '*izālat al-khathath* requires three washes, '*Umda* p.4.).

Shafi'i is quite prepared, nevertheless, to apply the same rule to vessels defiled by pigs, as he does to those licked by dogs. This is on the grounds that:

The status of the pig, if no worse than that of the dog, is no better, and therefore we rule on the latter by analogy to the former (*fa-qullna b-hi qiyasan alayhi*).⁴⁰⁰

Thus, the pig joins the dog in Shafi'i's extra category of *khabath* defilement. Shafi'i does not say whether he thinks purification from pig *su'r* is also *ta'abbud*, but, on the basis that pigs and dogs are to be thought of analogously, we may presume that he does. The result of Shafi'i's decision is that, in his school, *anything* a pig or dog touches (normally when either object or creature is wet) needs to be washed seven times (one of which is to be with earth [*turāb*]).⁴⁰¹

This concludes our survey of the three main approaches to *al-hayawān*.⁴⁰² We have seen how predatory creatures were initially considered a substantial threat in the vicinity of purifying water. This concern prevails in the Hanafi *madhhab*. In that school, a creature's purity and dietary status remain intertwined. In contrast, Malik and Shafi'i disconnect Islam's dietary and purity systems by making something's purity status dependent simply upon whether it lives. The purity of dogs - defiling according to Shafi'i and Abu Hanifa, but not Malik - was a particularly thorny problem for the jurists. In fact, because of its love/hate status within the

⁴⁰⁰ 'Umm p.20. Regarding Shafi'i's opinion, Ibn Rushd correctly tells us that Shafi'i "excludes the dog from all living animals, maintaining the literal meaning of the tradition implying the impurity of its leftover (*faḍl*).” But then tells us that: “He (Shafi'i) held, I think, that the impurity lies in its saliva and not in the dog itself” (*Bid* p. 27). This is confusing for, as has been explained, saliva is normally judged to be a neutral reflector of the host creature's purity status. It is also clashes with Shafi'i's intention to rule analogously for pigs and dogs. There is no doubt Shafi'i felt swine impurity to lie deeper than its saliva, thus it is probable he felt the same about dogs.

⁴⁰¹ See e.g. 'Umdat p. 98.

⁴⁰² The Hanbalis agree with the Shafi'is in these matters, see 'Umda p.2.

faith, Bousquet observes that the dog “meriterait les honneurs d’une monographie”.⁴⁰³ Such a treatment would have to pay special attention to Shafi‘i’s view, which, by attempting to reconcile Abu Hurayra’s *ḥadīth* with the general *tahārah* rules regarding *‘izālat al-khabath* (and thus attributing pigs and dogs a separate category, wherein the sevenfold purifications reflect the exceptional status of both creatures), is perhaps the most interesting of the jurists’ approaches.

6.3. BLOOD (*Bid* pp. 85-6, c.f. 566-67)

Ibn Rushd’s third category of *khabath* is blood. The jurists agree that *flowing* blood from any source, except the blood of fish is impure.⁴⁰⁴ If human blood flows, whether from cupping, a wound, menstruation, lochia, or prolonged vaginal bleeding (*istihadah*), it is *khabith* and must be washed off a person’s clothes, person, and place of prayer immediately.⁴⁰⁵ Martyrs (*shahīd*), however, possess a unique status in Islamic law, for not only is their blood pure, and thus not to be washed off their bodies before burial, but *ghusl* is not even to be performed upon them (*Bid* p.261). We will return to their example at the end of this chapter. For the time being, the jurists’ disagreements are what concern us, and in the present matter these focus on the purity of blood when it does *not flow*. There are two opinions on this:

- Malik and Abu Hanifa rule that small quantities of blood, or the blood that remains in the veins of carrion, is pure.
- Shafi‘i rules that blood always defiles, regardless of its quantity or consistency.⁴⁰⁶

⁴⁰³ Bousquet 1950:56. It should also be noted that the dog’s impurity may be explained according to Douglas’ logic. It is an anomaly – a predator that lives in the house – and, on one level, such an explanation is not inaccurate. However, this approach does not tell us why the dog, of all the household predators, is singled out as being especially impure.

⁴⁰⁴ Fish blood is presumably *tahūr* because the corpse of a fish is pure without its blood being drained (ch. 6.1.C.). According to one of Malik’s opinions, however, even this kind of blood is impure “on the basis of the (general) rule of blood” (*Bid* p.85). Also note that, on the basis of a *ḥadīth* (deemed weak by Ibn Rushd), a minority claim that the blood from the liver and spleen of *halal* animals is pure (cited in *Bid* p.567).

⁴⁰⁵ E.g. Muslim “*Tahārah*” 573, 574; Bukhari “*Wuḍū‘*”:227, 228.

⁴⁰⁶ Shafi‘i’s opinion is not given by Ibn Rushd, and it must be deduced from what the latter says of Shafi‘i’s general ruling on small quantities of impurity (see the section on negligible impurity, *Bid* p.87).

This dispute may be traced to the apparent conflict of meanings between two Qur'anic passages, one of which, 6.145, was cited above (p.75) and instructs Muhammad to say:

I find not in the Message received by me by inspiration any meat forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth (*dam masufuhan*) (6:145).

Here, only blood that gushes, or “pours forth” (from *safaha*), is prohibited from consumption.

In another Qur'anic passage, however, there is an outright prohibition of blood, without any mention of whether or not it flows:

Forbidden to you are dead meat, blood, the flesh of swine, and that on which have been invoked the name of Allah (5:3).

The Hanafis and Malikis believe the former verse qualifies the meaning of the latter, therefore, these jurists discount as negligible any quantity of blood too-small to flow. For Malik this is unusual. In fact, according to Ibn Rushd, it is only in his assessment of *dam* that Malik alters his approach (*Bid* p.87).⁴⁰⁷

The Hanafis, however, apply this rule to all forms of impurity, and blood is no different. For them, a *small* amount of *khathath* (*khathath qatl*) will not adversely affect a Muslim's purity status when attached to his/her body or clothes.⁴⁰⁸ Hence, according to the Hanafis, even if

⁴⁰⁷ According to the *Mudawwanah*, Malik holds conflicting views on the defiling properties of small quantities of blood (pp.140-142). Contrary to Ibn Rushd's report, in most of these any amount of any type of blood is described as thoroughly impure by the Maliki Imam. However, one tradition reported in the *Mudawwanah* supports Ibn Rushd's assessment; in this, Malik describes how, when he felt a nosebleed was coming, Salim b. Abd Allah would put his finger in his nose to make sure the amount of blood was small and continue to pray if it was, thus showing the negligibility of human blood in small quantities. On the basis of the *Bidayat*, it would appear that later Malikis chose to adopt the implications of this, more lenient stance on blood impurity. On the related question of whether bleeding breaks *wudu'*, see ch.7 1.A.

⁴⁰⁸ See e.g. *Bayan* p.37. It is unclear whether Abu Hanifa himself accepted this distinction as far as heavily impure matter was concerned. Indeed, in one opinion, he is said to have ruled that even the tiniest drop of blood, excreta, or wine, will rule out water for purification purposes (*'Asl* p.50). However, like the Malikis (see fn. directly above), it would seem that later Hanafis were more willing to adopt the most lenient views left to them. Accordingly, small quantities of any form of *khathath* are deemed negligible by standard Hanafi texts.

during prayers a believer discovers a speck of blood, semen, urine, excrement, or vomit, on his/her person, his prayers will stand. Their concession applies to quantities of *khath* less than a *dirham*, which we are told is roughly “the size of the outlet” (i.e. anus); and it is based on the fact that, after defecating, a believer need only perform *istinjā'* and *wuḍū'* to pray, despite the fact that neither form of purification – *istinjā'* requires the use of stones (*'Umdat* p.78, cf. p.89 above), *wuḍū'* does not involve the anus at all – guarantees the *complete* removal of excrement. From this, the Hanafis conclude that any kind of residual impurity up to the size of the anus (a *dirham*) is not capable of transmitting impurity.⁴⁰⁹

In contrast, Shafi'i prefers to apply the meaning of Q.5:3 generally, ruling that *all* quantities of blood defile.⁴¹⁰ His argument is that, while Q.6:145 prohibits flowing blood, this does not conflict with the stricter prohibition (and impure status) of blood. He rejects the notion of a legal distinction between negligible and significant quantities of *khath*, arguing that what is true for *istinjā'* cannot serve for further analogy (*Bid* p.87). Hence, in Shafi'i's view, a *khath* does not cease to be defiling when there is only a little of it. It either is impure, or it is not.⁴¹¹

6.4. URINE AND EXCREMENT (*Bid* p.86)

The jurists treat urine and excrement as one category. Not every form of excreta is equally polluting; and that belonging to some animals is even regarded as pure. In the case of human urine, there are also some differences to be noted. Accordingly, the following section is divided between the excreta of humans, and animals.

⁴⁰⁹ “The size of a finger nail” is another way of saying the same thing (*Bayān* p.37).

⁴¹⁰ See *'Umm* p.4.

⁴¹¹ Or, as Ibn Rushd puts it: “a thing which is impure in its essence (*nājis fī-l 'ayni*) cannot be pure in its constituent parts” (*Bid* p.86).

6.4.A. Excreta of humans

The urine and excrement of *adult* humans is unequivocally impure: the purification rituals following defecation (*istinjā'*) and urination (*istibrā'*) show the need for each substance's immediate removal, as does the *ḥadīth* concerning the Bedouin in the mosque (p.87). The jurists disagree, however, as to whether the urine of male infants is defiling. Their disagreements stem from a tradition in which Muhammad reputedly only sprinkles his garments with water – rather than thoroughly washing them – after they are wetted by a young boy:

From Lubabah bint al-Harith who said: Hussein b. 'Ali was sitting in the Messenger of God's lap, and he urinated on him. I (Lubabah) said: Go change into another garment, and give me your *'izār* and I will wash it. He replied: washing is only required for the urine of an (infant) female, whereas one need only sprinkle (*nadaḥa*) water on the urine of an infant male.⁴¹²

This leads the Malikis and Shafi'is to permit purification from the urine of an infant male through sprinkling the affected area or garment – signifying that, while still impure, it is less defiling than the urine of adults, or even girls of the same age (whose urine needs to be thoroughly washed).⁴¹³

In contrast to these scholars, the Hanafis (who, ironically, pioneer the idea that *khabath* impurity does possess a weaker form, see next section), reject the above *ḥadīth*, denying that there is anything in the substance of urine passed by a young boy to distinguish it from other types of human urine (just as they argue that there is nothing in the saliva of dogs to

⁴¹² Abu Dawud "*Tahārah*":102 (cited in Maghen 1997: 134). Muslim "*Tahārah*":563 (c.f.560-565). Other *ahadīth* suggest that it is the urine of *unweaned* male infants that only requires a sprinkling. For example:

Umm Qais daughter of Mihsan reported that she came to the Messenger of Allah with her child, who was not yet weaned, and she placed him in his lap; and he urinated in his lap. He (Muhammad) did nothing more than spray water over it (*Mishkāt "Tahārah*":502).

⁴¹³ For Malik's opinion, see *Muwatta "Tahārah*" 30:111-112. For one version of Shafi'i's personal opinion on this, see p.239, and, for his school's general view, see '*Umdat* p.98.

distinguish that from other types of impure saliva). In their view, all urine is unequivocally *khabīth* and contact with it necessitates immediate purification.⁴¹⁴ In fact, in a passage in the *‘Asl*, Abu Hanifa’s opinion is that, if a child of either sex urinates into a well, then the entire well must be emptied – a far stricter rule than later *fuqahā*’ express.⁴¹⁵

Within *taharah*, the purity status of a child’s urine is not a major focus of debate (witness the *Bidāyat*’s one line); the subject gains significance for us, however, because it is the one occasion in Sunni *tahārah* law where ritual pollution ideas may be said to reflect social hierarchy explicitly. Indeed, it has been argued - on very little evidence aside from this - that the whole *tahārah* system functions as an exercise in gender hierarchisation (for this argument, and criticism of it, see chapter 9).

6.4.B. Excreta of animals

Once more, the jurists classify urine and dung together, but there are far greater disagreements on this topic than the last. While they acknowledge that purification from animal excreta needs to be (relatively) easy - no surprise when we think how difficult it would have been to avoid animal dung in the ancient Middle East - this acknowledgment is the one unifying factor in a variety of different juristic approaches. Once more applying Ibn Rushd, their views may be narrowed down to three:

- Malik argues that the excreta of *ḥalāl* animals is pure, and that of *ḥarām* animals impure.
- Abu Hanifa and Al-Shafi‘i agree that the excrement and urine of *all* animals, to varying degrees, is impure.

⁴¹⁴ See e.g. *Bayān* p.37.

⁴¹⁵ See *‘Asl* p.52.

- A few jurists claim that the excreta of all creatures is pure.⁴¹⁶

Ibn Rushd informs us of two reasons for the conflict of opinions:

The first is their (the jurists) dispute over the significance of the ordained permissibility of praying in the sheepfolds (*marābiḍ al-ghanam*)... (the second is) the permission granted by the Prophet to the ‘Urniyin to drink the urine and milk of camels (*Bid* p.86).

In the second instance, Ibn Rushd is referring to a *ḥadīth* recorded by Bukhari, in which Muhammad tells some travelers who have fallen ill to drink the milk and urine of camels to help them recover.⁴¹⁷ On the basis of the Prophet’s permission, Malik claims that the excreta of *edible domestic* animals must, therefore, be pure. This remains a fairly weak argument as any substance – even if the believer is normally forbidden to consume it – is generally permitted on principle *if it can assist recovery from illness* (*Bid* p.86).⁴¹⁸ The first tradition Ibn Rushd refers to provides stronger evidence for Malik’s case; for, contact with all kinds of excreta in such settings is unavoidable, and it seems unlikely Muhammad would have granted Muslims the right to pray in sheepfolds, had this excreta the power to negate worship.

The opposing view – that all urine and excrement, including that belonging to *ḥalāl* animals, is impure – is supported by the following *ḥadīth* (which Ibn Rushd includes in his description of the jurists’ discussions on substances capable of removing *khathath*):

⁴¹⁶ This may have been a very early opinion; citing Ibn Taimiyyah, Sabiq claims that: none of the companions held that it (urine and excrement) was impure. In fact, the statement that it is impure is of more recent origin and not from the early generations of the Companions (1991:12).

⁴¹⁷ Bukhārī “*Wuḍū’*”:234. The main theme of this story is retribution and has nothing to do with purity. The same travelers flee Madinah after repaying Muhammad’s kindness by killing the camel’s shepherd. Muhammad gives chase and leaves them without hands, feet, or eyes, and buried up to their necks in the desert!

⁴¹⁸ The Qur’anic permission to use prohibited things under duress has been noted, fn. 361 above.

The Messenger of Allah went to answer the call of nature. He asked ‘Abdullah ibn Mas’ud to bring three stones (for *istinjā*). ‘Abdullah reported: “I found two stones and searched for the third but could not find it. So I took a dried piece of dung (*rawth*) and brought it to him. He took the two stones and threw away the dung saying that it is disgusting (*hadha riksun*)” (*Bid* p.91).⁴¹⁹

Underpinning their choice from these contrasting *ahādīth*, Ibn Rushd claims the jurists hold fundamentally different attitudes to the natural properties of *rawth* and *bawl*. For Malik, the excreta of man is: “repulsive by nature, while that of animals is not” (*Bid* p.86). For Shafi‘i and his school, excreta of any kind (bar perhaps a boy’s urine) is essentially and unequivocally defiling, because it is *all* repulsive by nature.⁴²⁰ To explain why a Muslim is permitted to pray in the sheepfolds (which he allows), Shafi‘i and those agreeing with him are compelled to argue that this is a concession belonging to “the category of higher analogy” (“*bāb qiyās al-awlā*”).⁴²¹ Hence, they do:

(n)ot consider the permissibility of praying in the resting places of animals as implying the purity of their urine and dung, but (rather) consider it to be a *hukm* resting upon a revelatory non-rational source (*Bid* p.86).⁴²²

While we do not know if this is Shafi‘i’s argument (it is not found in the ‘*Umm*), he certainly sets the precedent for this explanation by describing the sevenfold purification of the dog’s bowl as *ta‘abbud*. For, here is another matter that cannot be explained “rationally”. As in the case of Abu Huraya’s *ḥadīth* and dogs, the Shafi‘i argument upholds the validity of a Prophetic tradition, but permits no further analogy from it. Muhammad’s permission to pray in the resting places of animals does not, therefore, indicate that these premises were free of

⁴¹⁹ Bukhārī “*Wuḍū*”:158. Clearly “*riks*” is another synonym for *nājis/khabīth*.

⁴²⁰ Thus, Shafi‘i rules that water into which the urine and droppings of edible birds is mixed is polluted, see ‘*Umm* p.4.

⁴²¹ The Shafi‘is divide *qiyas* into three forms: *al-awlā* (superior), *al-musāwī* (equal), *al-adna* (inferior), M. Kamali *Principles of Islamic Jurisprudence* (1991, Cambridge, Islamic Texts Societies) pp. 214-216. As *qiyās al-awlā* is the strongest and most evident form of analogy, these scholars clearly presume that, when it comes to visiting the toilet, the similarities between man and animal are self-explanatory.

⁴²² *Ibid*.

defilement and, in all likelihood, they were not. It is simply that – for reasons known only to Allah – the strict purity of these, particular surroundings are no longer required for a Muslim’s prayers to be valid. The modern reader, however, may be forgiven for interpreting this particular revelation as another instance of juristic lenience.

Despite his policy of linking the purity status of its *su’r* with the *hukm* of a creature’s flesh, the Hanafis agree with the Shafi‘is that any sort of animal urine and excrement is *khābith* – regardless of whether a creature’s flesh is *ḥarām*. Beyond this, however, their two approaches diverge markedly. The major difference is that, unlike Shafi‘i, Abu Hanifa distinguishes between “heavy” (*ghalīz/maghallazah*) and “light” (*khafīf/mukhaffafah*) forms of impurity in the case of animals’ excreta:

In the case of heavy impurity, the amount of exemption (i.e. how much a Muslim can have on his/her person and still be permitted to pray) is limited to the size of a *dirham*, while light filth is exempted up to the extent of a fourth of the garment (*Bid* p.87).

According to Ibn Rushd, this idea is “excellent” (*Bid* p.88). Once more, it shows the jurists’ desire to avoid causing Muslims’ undue hardship through their regulations. For, in the Hanafi school, a Muslim needs to be drenched in *khābath khafīf* to be barred from prayers. The *Mabsūt*, a compendium of opinions cited by Maghen, explains that the significant variable in the Hanafis’ decision regarding whether an impurity is light or heavy is how likely a Muslim is to encounter it during his/her working day. Plainly wishing to be as lenient as possible, they rule that:

The more widespread the difficulty (in avoidance), the lighter its position (of something's impurity) (*ma 'ammāt baliyatahu khaffat qadiyatahu*).⁴²³

This principle permits a number of concessions. Regarding the present topic: dung belonging to beasts of burden, and the droppings of most birds, are classified by the Hanafis as only lightly impure.⁴²⁴ Indeed, because mosques provide near ideal roosting areas for birds, and are likely to be covered in droppings of every kind (pigeons are normally singled out as the main culprits), some of these jurists even consider excreta of edible birds *tahīr*.⁴²⁵ All are practical measures, brought about by the realisation that, for many, contact with such excreta is unavoidable. Moreover, this principle brings other concessions too, underpinning the Hanafi's decision to "downgrade" the impurity of donkey-sweat (see above ch. 6.2.C), and – doubtless to the great relief of parents everywhere – the vomit of children.⁴²⁶

Having summarised the discussions pertaining to Ibn Rushd's main categories of *khābath*, we now turn our attention to two other categories of substance described by many jurists as polluting.

⁴²³ *Mabsūt* p.60 (cited by Maghen 1997:163). Some Hanafis also take other factors into account when estimating a substance's purity status. Maghen notes, however, that there were early disagreements over what these should be. According to him, Abu Hanifa, on the one hand, bases his assessment on whether there is unequivocal proof in the *ahādīth* concerning a specific impurity. Those substances about which the *ahādīth* agree (i.e. blood, *mayta*, most types of urine and excrement) are all heavily impure; whereas if sound *ahādīth* conflict about a particular substance's purity, Abu Hanifa classifies it as *khābath khaffīf*. Hence, for instance, in the present matter, Abu Hanifa considers all excrement heavily impure on the basis of Ibn Mas'ud's *ḥadīth* (he does not know, or refuses to consider as valid, the tradition permitting prayer in the sheepfolds) (*ʿAsl* pp. 76-77). In contrast, his disciples, Yusuf and Shaybani (and most later Hanafis), rely less on the agreement of *ḥadīth* in their estimation of a substance's impurity but, rather, on whether there is disagreement amongst the *fuqahā'* concerning it. For them, if the purity status of a *khābath* provokes *ikhtilāf*, things are resolved by ruling it light (*Mabsūt* p.56). Here, because of the disagreements in *ahādīth* and contradictory juristic opinions, they are left in no doubt that the urine and excrement of edible animals are only *khābath khaffīf*. However, while their methods may differ, and on this occasion even result in different *ahkām*, regarding most kinds of impurity the early Hanafis concur. For where *ahādīth* tend to disagree, so too do the *fuqahā'*, and vice versa. For Maghen's review of this topic, see 1997:162-164.

⁴²⁴ *Bayān* p. 21.

⁴²⁵ E.g. E.B. "*Najāsāt*":3.

⁴²⁶ *Ibid*

6.5. SEMEN (*Bid* p.88)

Male semen (*mani*) is described as “a thick, viscous, white fluid”. Its smell is, when moist, “like that of the spath of a palm tree”, or “bread dough”, and when dry, “like egg-white”.

Women are also known to emit “sperm” (*mā' al-mar'ah*). This is a fine, “yellowish, seminal fluid, that smells strongly”.⁴²⁷ Male and female sperms are treated identically in the *taharah* material. However, while everyone agrees that seminal emission always incurs a major *hadath* (ch. 7.2.A.ii), the Imams and their schools are evenly divided regarding whether semen (in both its male and female forms) is *khabith*:

- Malik and Abu Hanifa consider semen heavily impure.
- Al-Shafi'i, Ibn Hanbal, and Abu Dawud consider it pure.

One factor in their disagreement is a conflict in the *ahādīth* over the Prophet's preferred method of removing semen stains from his garments. According to one set of traditions, Muhammad or, more usually, 'A'isha used *to wash* these stains out:

Ibn Abu Za'ida narrated as was transmitted from Ibn Bishr that the Messenger of Allah washed semen, and in the *hadīth* transmitted on the authority of Ibn Mubarak and Abdul Wahid the words are: “She ('A'isha) reported: I used to wash it (semen) off the garments of the Messenger of Allah” (*Bid* p.88).⁴²⁸

From this evidence, the Malikis and Hanafis argue that semen must be impure, for why else would it require washing? In other traditions, however, 'A'isha is reported as merely *scraping* (*faraka*) these stains off.

⁴²⁷ For these descriptions, see *Maqāsid* p.19. See Thauban's *hadīth* in Muslim *Ḥayḍ*: 614 for an extended cogitation on the nature of male (“thick and white”) and female sperm (“thin and yellow”). Also see *Muwatta'ah* “*Tahārah*”21.86, where we find the idea that family resemblance is due to the combined action of male and female sperm (and c.f. *Mishkāt* “*Tahārah*”:441). Here, it is obvious that Galen's idea (or a Middle Eastern version of it) of seminal emission occurring in both men and women was well known by the early jurists.

⁴²⁸ Muslim “*Tahārah*”: 571.

Al-Aswad and Hammam reported ‘A’isha as saying: I used to scrape off the semen from the clothes of the Messenger of Allah.⁴²⁹

By preferring the scraping over the washing traditions, Shafi‘i, Ibn Hanbal, Dawud and their schools argue that semen is pure. For, in their opinion, washing (with pure water) is the sole method of *‘izālat al-khabath*, and ‘A’isha could not have legally purified Muhammad’s garments by merely scraping the supposedly impure substance off.⁴³⁰ Indeed, the fact that semen is removed (by whatever means) from them only demonstrates the Prophet and his wife’s good grooming – their developed sense of *‘adab* – rather than their concern for legal purity. In the *‘Umm*, Shafi‘i explains this idea as follows:

manī is not *nājis*, and if someone were to ask: “if not, then why bother rubbing or wiping (*yamsah*) it off?” We would answer him: “just as one rubs off mucus or sputum or clay or bits of food which have stuck to his clothes, these substances being non-defiling, and if he prayed in this garment before rubbing or wiping them off, there is no problem. And semen does not render either water or anything else *nājis*.”⁴³¹

Scholars from the earlier *madhāhib* respond differently to the idea that scraping may legally remove semen. The Malikis dismiss the scraping traditions outright. However, because in their more pragmatic approach water is not the only purifying agent, the Hanafis perceive no conflict between the two sets of *ahādīth*, as both show that semen needs to be removed.⁴³² Instead, they account for the different practices by adding that semen may only be scraped off when it is dry (the preferred custom being to rub it between one’s fingers until it flakes off), whereas, when wet, it is preferable the affected spot is washed.⁴³³

⁴²⁹ Muslim “*Tahārah*”: 567.

⁴³⁰ See above p. 89.

⁴³¹ *‘Umm* p.72 (cited in Maghen 1997:187).

⁴³² The Hanafis attitude is noted above (fn.250). They permit *khabath* to be removed by most means with any pure substance, including fire (*Bid* p.89).

⁴³³ See E.B. “*Tahārat from Najāsāt*”:2, 7.

Another factor in this debate is the “vacillation of semen between resembling the impure bodily excretions and resembling other pure secretions like milk” (*Bid* p.88). Semen, being neither clear and odourless like the neutral fluids, nor as mirky or pungent as the other impure discharges (e.g. excrement, urine, vomit, or blood) presents the jurists with a dilemma. Their respective positions suggest that Malik, Abu Hanifa and both their schools consider semen to bear a greater physical resemblance to the body’s impure secretions, than it does to its pure ones. Conversely, Shafi’i, Ibn Hanbal, and Dawud presume that semen’s resemblance to milk ensures its purity.

Returning to the ‘*Umm*, we also find Shafi’i defending the purity of semen on grander premises. In the following, remarkable, passage, he insists that this substance – even more than the other neutral emissions – is legally pure because it *reflects man's essential purity*:

Shafi’i said: In the beginning, Allah the Mighty and Majestic created the human being from water and clay, combining these two substances in purity. And he began the creation of human offspring with water (i.e. semen) that pours forth (*ma’ dafiq*). And the fact that He began the creation of the human being with these two pure substances (water and clay) which (produce) a pure (entity), constitutes proof that He would not begin the creation of other (human beings) except from a pure (substance) and not an impure one (*min tahīr wa lā min nājis*).⁴³⁴

Plainly, for Shafi’i, it is impossible that semen - because it creates life, perhaps *the* determining factor in something’s purity – can be impure. In fact, by tying its purity to Allah’s initial act of creation he implies, firstly, that semen shares something of this miracle, and, secondly, that anyone who declares semen impure is suggesting that Allah was content to use faulty ingredients during this act of creation.

⁴³⁴ See ‘*Umm* p.72 (cited in Maghen 1997:187).

6.6. *KHAMR* (*Bid* pp. 572-577)

Ibn Rushd only mentions this topic briefly in the *Bidāyat's kitāb al-tahārah* - telling us that most jurists agree on its impurity (*Bid* p.81), but a connected discussion is to be found later in his book on food and drink.⁴³⁵ *Khamr* is normally translated as “wine”, and is *tahārah's* most unusual category of impurity. It is an unusual addition (shared only with the Hindu pollution code) to an otherwise standard list, and something that most jurists agree is forbidden to drink or touch on the basis of this Qur'anic verse:

O ye who believe! *khamr* and gambling, sacrificing to stones, and (divination by) arrows are abominations (*rijusun*) of Satan's handiwork. Eschew such (abominations) that you may prosper (5:90).

The question of why *khamr* is declared legally *khābith* when the other pastimes mentioned by the Qur'an are not is interesting, but will take us outside the confines of the present survey.⁴³⁶

Once again, our focus is the disagreement between law schools; and this stems directly from an inability to decide what kind of substance “*khamr*” is. There are two views:

- Most jurists, including Malik and Shafi'i, agree that *khamr* applies to *all* intoxicating beverages.
- The Hanafis claim that it applies only to wine fermented from grapes.

⁴³⁵ In the *tahārah* reference, Ibn Rushd states that the only disagreement on this subject occurs between some of the traditionists. As is shown, however, the major disagreement is between the Maliki/Shafi'i and Hanafi viewpoints.

⁴³⁶ Montgomery Watt's theories that drinking wine would have implied trading with the Syrian enemy, and that drinking was closely connected with pagan practices has been mentioned (ch. 5.1), and there may well be some truth to this claim. It is also well known (and confirmed in a large body of poetry), however, that the pre-Islamic Arabs drank alcohol and that, initially, Muhammad's cause had been hindered by this (See Q.4:43; Goldziher *Muslim Studies* I:27-38). Therefore, if we are looking for a material cause, it is not difficult to see the need for an early ban on intoxicants. Likewise, but from a different perspective, drunkenness stimulates a lack of bodily control, and the degree of control a believer exercises over his body will be shown to play a part in the overall logic of *tahārah* (see Exc. C). Also note that crystallised in the Qur'an's increasingly negative attitudes to alcohol is the general “reformatory” trend of which Graham speaks (p.43). Originally, it is accepted (and even mentioned as one of the delights of Paradise, Q.47:15), but the Qur'an acknowledges its evil effects (2:219) and, finally, bans it (5:90). The jurists take this ban a stage further by declaring (most forms of) alcohol *khābith* and, thus, firmly setting themselves apart from all of their neighbours.

The real issue here concerns the moral question of whether drinking alcohol should be permitted. Logically, however, those who permit the drinking of certain intoxicants must also consider these liquids pure (and vice versa in the case of their opponents). In support of Shafi'i and Malik's argument, there is a sound *ḥadīth* stating that: "every intoxicant is *khamr*, and each *khamr* is *ḥarām*" (and therefore impure) (*Bid* p.572). Furthermore, as Ibn Rushd explains, because the term *khamr* is etymologically linked to the verb "to veil" (*khamara*), it follows that it may be applied "to *everything* that befuddles (i.e. veils) the intellect" (*Bid* p.572). Ignoring these arguments, the Hanafis claim that *khamr* does not necessarily include all intoxicants – such as *sakar* (an extract from the juice of fresh dates), *naqī* (infusion of raisins), or *nabīdh* ("date wine", or mead) which they consider either lightly *khabīth*, or pure – on the basis of another Qur'anic verse that describes the drinking of *sakar* as "good nourishment" (*rizukan*) (Q.16:67). In response to that, their opponents reply that this verse was revealed in Makka before the prohibition – and presumably the pollution – of alcohol was known about.

The ensuing argumentation is complex, and exploring it in further detail is unnecessary.⁴³⁷ In practical terms, however, it should be noted that drinking *khamr* leads to the one occasion when a person is capable of *transmitting* defilement. For most jurists agree that taking alcohol and then proceeding to a water vessel *without* swallowing properly, renders the water in the vessel *nājis*. Indeed, the majority assume that, even if the drinker has swallowed the wine, the left-over water is still *makruh* (although not forbidden) for *wudu'*.⁴³⁸ Of course, rather than this signifying a change in the essential purity status of the wine-drinker (through

⁴³⁷ For a good summary of early legal disputes on the permissibility, and/or immorality, of drinking, see Goldziher's *Muslim Studies* (ref. fn.436 above), and 1981:59-62.

⁴³⁸ See Maghen 1997:312-313, he refers to the '*Asl*' pp. 86-87. Ibn Rushd mentions this opinion and attributes it to Ibn al-Qasim (*Bid* p.26).

which he has become contagiously impure), it is another (and perhaps the best) example of *khathath* “contamination” through a change of location by an original impurity: the wine proceeding from the vessel into someone’s mouth, mixing with his saliva, and then being transferred onto a secondary target (the water vessel).

On the same subject, there is a final point of interest that should not go without remark. For, among the traditions the Hanafis use to support the purity of non-grape intoxicants is the following one attributed to Ibn Abbas:

Ibn Mas‘ud went out with the Messenger of Allah on the night of the *jinn* and the Messenger of Allah asked him, “Do you have any water. He said “I have *nabīdh* in my container”. (To which) (t)he Messenger of Allah asked said, “Pour out some”. He (Muhammad) performed ablution with it saying “It is a beverage and a purifying element” (*Bid* p.31).

Against all the rules, this leads Abu Hanifa to permit the use of *nabīdh* for *wuḍū’* instead of *tayammum*. Not surprisingly, his opinion is opposed by most other jurists, and even Abu Yusuf.⁴³⁹

6.7 CONCLUSIONS:

We have covered, or at least alluded to, most of the significant discussions relating to *khathath* within Sunni *fiqh*. Shared themes of influence include: whether something has died outside the sanctifying aegis of ritual slaughter, whether something was, or is, capable of sensation, whether a substance is liquid or dry, small or great, flowing or still. Contrary interpretations abound, and each case must be dealt with on its own terms. A connection

⁴³⁹ See *Bayān* p. 24. At first glance, this may appear like the sort of behaviour Douglas observes in the Nyakele and Lele tribes, where the controlled use of something normally considered polluting within a special ritual setting allows the ritual’s participants to show their mastery over the forces of impurity (see p.27 above). However, given that there is nothing even vaguely similar to that idea in the rest of *tahārah* law, this is not very convincing.

between the dietary and purity laws remains, particularly in the approaches of the earlier *madhāhib*. Hence, for the Hanafis, inedible creatures transmit defilement through their *su'r*, while, according to the Malikis, the urine and excrement of *ḥarām* creatures is *khabith*, and their *su'r* is not to be used for ablution.

There is overwhelming evidence that, from very early in its development, a shared acknowledgment existed that, if *tahārah* law was going to cause problems for believers, then this law should be altered to accommodate the practicalities of Muslim life. The Maliki and Hanafi scholars, in particular, devise ingenious methods to avoid causing a burden by distinguishing between small and large quantities, and light and heavy forms, of *khabith*. Moreover, according to both authorities, blood needs to flow in order for it to defile; hence, small quantities of it are considered negligible.

Doubtless Shafi'i understands the need for tolerance, but, on the basis of what we have seen so far, is less willing to permit concessions. Indeed, his insistence on the absolute impurity of blood and excreta make a close inspection of one's body and garments before prayer a necessity. For Shafi'i, when something is impure, it defiles regardless of quantity or fluidity. These opinions suggest his interest lies in systematising what is a very complicated area of the law, rather than merely granting more concessions. Yet, he goes some way towards both goals by disconnecting Islam's purity ideas from its dietary system. As far as his method goes, it is no surprise (given Shafi'i's general emphasis on the importance of *ḥadīth* to the legal system⁴⁴⁰) that he is reluctant to reject well-known *ahādīth* in his decision making. But, as in Abu Hurayra's tradition on the sevenfold washing of the dog bowl, this loyalty occasionally forces him into problems. His response (which his school follows in their

⁴⁴⁰ See e.g Coulson 1964:90.

interpretation of the concession to pray in the sheepfolds) is to describe it as *ta'abbud* – inscrutable religious obligation and thus beyond rational explanation.

This leads directly into the next chapter's summary of *tahārah*'s other branch of *najāsah*, the *ahdāth*, whose purification is quite beyond our ability to comprehend according to most jurists. Before moving on, and as a final thought on the *khābath*, the theory that ritual pollution behaviour stems from man's universal fear of death is worth mentioning in light of what we have now seen.

Excursus A. *Tahārah* and the fear of death

In Chapter 3.2.A., it was noted that scholars from a variety of different backgrounds have found a psychological connection between ideas of ritual pollution and man's fear of death. It is now plain that, on a certain level, the association of death with impurity and, conversely, life with purity, also plays a part in *tahārah* law. This is clear from the following factors:

- death without slaughter results in *mayta* impurity; conversely, life is described explicitly as the root of purity (see ch. 6.1).
- bones and hair of *mayta* are judged impure only if they are believed capable of dying (ch.6.1). The same criteria explains the Hanafi opinion that the *su'r* of predatory birds is not irredeemably defiling (ch. 6.2. B.). For, like hair and bones in the Hanafi school, their beaks are seen as incapable of sensation (therefore, of dying), and, hence, purify the saliva within the birds' mouths.
- predatory animals - i.e. those that kill - contaminate through their *su'r* according to the Hanafis and, to a lesser extent, the Malikis (ch. 6.2.).

- Shafi'i defends the purity of semen on the basis that it is life-giving (ch. 6.5.), thus implying that a connection exists between the forces of death and impurity.

As far as the animal kingdom is concerned, it is probably correct to say that it is not death itself that pollutes a carcass, but the process of losing life (connected by many with the outpouring of its blood). Thus, within *tahārah*, the transition from conscious living awareness to death is what matters, whereas simply being dead (as nails and hair are) is not a cause of impurity *per se*, as it is in other systems. Further, whatever influence the fear of dying may have exerted over the development of *tahārah* regulations, it is considerably weaker that may be found, for instance, in the Biblical pollution laws where this theory has been argued at length. The two codes, it must be said, have the matter of ritual slaughter in common; in each, all one has to do is pronounce the name of God over the dying beast to take the sting out of its death. Both rituals illustrate God's victory over the forces of death, and allow man to show his gratitude for the gift of the creature's flesh and skin.⁴⁴¹ Beyond this point, however, *tahārah* law is plainly less perturbed by death/dying than the Biblical scholars and Rabbis. For, while the impurity of a human corpse is the strongest form of pollution known to Judaism, no human corpse (even that of the unbeliever) is *khablth* in Sunni Islam – a fact that is traced to the Qur'an's statement that Allah has "honoured the sons of Adam" (17:70).⁴⁴²

Sunni Islam's treatment of martyrs shows the difference between the Jewish and Biblical systems most clearly. In the Bible, blood is not impure and bleeding is not a cause of impurity, but human corpses are *always* defiling regardless of the manner of death; in Sunni Islam, on the other hand, blood is (nearly) always impure, and corpses incur a *hadath*. Yet, in the case of a martyr's death, no *ghusl* is necessary and the blood need not be washed off his

⁴⁴¹ See Giffen (in Firmage 1990) p.220.

body. According to the normal rules, this would mean that he is to be buried while affected by both *ḥadath* and *khābath* impurities. But the martyr is different; it is said that he is to be admitted to heaven without examination of his earthly deeds.⁴⁴³ And there is a *ḥadīth* stating that a martyr's wound will reappear on the day of resurrection just as it was at the time of infliction; only this time his blood will smell like musk.⁴⁴⁴ Thus, it makes sense that the martyr's impurity is waived, just as his sins are waived. By doing so, the *ṭahārah* system utilises its ritual pollution ideas to show a greater disdain for the powers of death – or a greater confidence in Allah's sovereignty over them - than is apparent in the Bible's pollution code or, possibly, any other such code.⁴⁴⁵

⁴⁴² See e.g. *Bayān* p.19 fn.3.

⁴⁴³ See L. Ridgeon *Crescents on the Cross* (1999 Glasgow, Trinity St. Mungo Press) p.97.

⁴⁴⁴ Bukhārī "*Wudū*":238.

CHAPTER 7

HADATH IMPURITY

Our summary of the jurists' arguments continues in this chapter, where we look at the events via which a Muslim contracts *ḥadath* impurity. The two strengths of *ḥadath* will be treated in different sections, and the chapter concludes with a consideration of the jurists' general approaches to the subject of *najāsah*.

7.1 THE MINOR *AHDATH*

The jurists agree that a minor *ḥadath* is incurred through five acts: urination, defecation, breaking wind, emitting *madhī/qadī*, and emitting *wadī* (ch.4.2.A). In addition to these five, a Muslim will also be aware of a number of other acts that may, depending upon the school to which he belongs, jeopardise his purity for prayer. Before taking a look at what they are, Ibn Rushd's assertion that *wuḍū'* will always be nullified by breaking wind requires qualification (although Ibn Rushd does nothing of the sort). For, on the basis of the Prophet's advice that no one should "leave his prayers unless he hears a sound, or perceives a smell", the jurists distinguish between doing so silently (*fasw'*) and noisily (*ḍarḥ*); and it is only when a believer farts audibly, and/or malodorously, that he incurs a *ḥadath*. From this is derived the general principle that "a state (of purity) whose existence one is certain about (*yastayaqan*) does not cease through a state (of impurity) one is uncertain about".⁴⁴⁵ The same is true of *ḥabath*; if someone is not sure that he has come into contact with an impurity, he is not legally required to wash himself.⁴⁴⁷ In the *ṭahārah* system, therefore, a Muslim's purity is directly linked to the witness of his or her conscience, and it is only when someone *knows* he has been affected

⁴⁴⁵ It might even be suggested that the martyr's blood sanctifies his corpse (if Sunni Islam possesses this concept).

⁴⁴⁶ This *ḥadith* is from Bukhari "*Wuḍu'*":139, and the general principle noted in '*Umdat* p.73.

that he is legally obliged to do something about it. Although it cannot detain us here, this is a very important point. For, it prioritises a Muslim's *intention* above the autonomous effect of the impurity. Hence, if a believer can honestly say that he is not convinced one way or other whether his purity has been broken, he may give himself the benefit of the doubt even if everyone else in the room is positive he is wrong. We shall return to the question of a believer's moral intention in chapter 10 when exploring one possible religio-moral interpretation of the *tahārah* system. This highly significant tenet noted, we now move on to the various other events that may, or may not, cause a minor *hadath*.

7.1.A. THE EMISSION OF IMPURE BODILY EXCRETA (*Bid* pp. 32-34)

While the jurists agree that, with the exception of the clear fluids (saliva, mucus, tears, sweat), semen and vaginal fluid, every bodily emission is impure, they are divided into three camps regarding which types of emission incur a minor *hadath* (*Bid* P.32-34):

- Abu Hanifa and his school, al-Thawri, and Ahmad Ibn Hanbal assume that all *impure* emissions (such as blood, urine, excrement, etc.) incur a *hadath*.
- Malik and the majority of his school assume that most impure emissions incur *hadath*, but that this will also depend upon other factors.
- Shafi'i and his school, and the Maliki scholar Muhammad ibn 'Abd al-Hakam, assume that only substances (pure or impure) emitted from the anus or genitals incur *hadath*.

Each of these opinions reflects a different understanding of the relationship between the manufacturing of *khathath*, and the contraction of *hadath*. Let us begin with Abu Hanifa's view, in which, according to the *Bidayat*:

⁴⁴⁷ *Ibid.*

each impurity (*najāsah*) flowing from the body or excreted from it necessitates ablution, like blood (*dam*), (and blood from) excessive nose-bleeding (*al-ru'āfī al-kathīrī*), drawing of blood (*al-fasd*), cupping (*ḥajamah*), and vomiting (*qay'*), except for phlegm (*balaghām*) (*Bid* p.32).

Here, the tangible impurity of the *substance* (i.e. the *khābath*) triggers a non-tangible state of impurity (i.e. a *ḥadath*). Indeed, in the Hanafī school it is unusual to find any *ḥadath* not stemming from the emission of impure substances.⁴⁴⁸ These jurists consider vomiting, and any type of bleeding (including nosebleeds [*ru'āfī*]) – two very common and much discussed mishaps – to break *wuḍū'*, for blood and vomit are irrefutably *khābīth*.⁴⁴⁹ In support of this, they cite two traditions: firstly, a *ḥadīth* related from Abdullah Ibn 'Umar which affirms the obligation of ablution due to a nosebleed and, secondly, a *ḥadīth* attributed to Thawban, which reports how “the messenger of Allah vomited and then performed ablution”.⁴⁵⁰ While on the second of these subjects, it should be noted that, despite Ibn Rushd hardly mentioning it, *qay'* is a major sub-category of *ṭahārah* law for the Hanafis. Primarily because of their principle of linking *ḥadath* with *khābath*, these jurists are drawn into lengthy discussions to determine precisely – based on its amount, form, and consistency – the stage at which regurgitation becomes vomit. Considerations of space mean that we cannot review their discussion in detail, but the following passage, from the Persian manual *Endless Bliss*, summarises their approach and should suffice here:

The second group of things breaking *namāz* (i.e. *wuḍū'*) consists of those impure things coming out of the mouth. Of these vomit and thick blood, blood, food and

⁴⁴⁸ The two exceptions are laughing during prayer (ch. 7.1.E), and penetration without seminal emission (ch. 7.2.A.ii). Indeed, the fact that *coitus interruptus* is a cause of *ḥadath* is explained by some Hanafis along the same lines: “*janābah* is incurred from the moment the genital fluid is *secreted*, not from the moment it emerges from the body” (*Bayan* p.14). Thus, it is the impure, but still hidden, discharge that brings about *janābah* (rather than “any non-rational” cause).

⁴⁴⁹ See e.g. *Bayan* p.9 / E.B. “*Wuḍū'*”, p.7.

⁴⁵⁰ For the tradition on nose bleeds, see *Muwatta* “*Ṭahārah*”, 10:48; for the tradition relating to vomit, see Tirmidhi “*Ṭahārah*”:64, both are cited in *Bid* p.33.

water coming out of the stomach break *namaz* when they amount to more than a mouthful and their appearance has clearly changed.⁴⁵¹ They are all heavy impurities (*najāsāt ghalizat*)... Vomiting phlegm (*balaghām*) will not break *namaz*. Vomiting thin blood does not break *namaz* if it is less than spittle... after coming out of the mouth, if the blood is more than spittle it breaks *namāz*... if the blood issuing from the stomach or from the lungs is thin it breaks *namāz* even if it is less than a spittle, according to *Shaikhayn* (Abu Hanifa and Abu Yusuf). If any oil dropped into the ear goes out through the ear or the nose it does not break *namāz*. But if it goes out through the mouth it breaks *namāz*. If something sniffed into the nose comes back, even after many days it does not break *namāz*.⁴⁵²

For those who consider vomiting a cause of *ḥadath*, certain principles apply. It is only if food or blood is vomited *from the stomach* that it is heavily defiling (*khabath ghalīz*, and breaks *wuḍūʿ*. If food is immediately brought back up, a believer's ablution remains intact. However, even if it does reach the stomach before repeating, if what appears *still resembles* the original meal, *wuḍūʿ* is not broken. Applying the same criteria here as they do in their treatment of *khabath*, the Hanafis stipulate that a believer's *wuḍūʿ* is not broken if the impure discharge amounts to "less than a mouthful" of vomit or blood (i.e. less than a *dirham*, which explains why Ibn Rushd says that ablution is only broken when blood *flows* and nose bleeds are excessive). Phlegm is discussed in different terms from vomit; it remains *tahīr* because it still resembles saliva, and only breaks ablution if there are food particles in it. On the evidence of the above passage, the key factor for the Hanafis in establishing the impurity of these substances (and hence their capacity to break a believer's ablution) is whether or not a substance has passed through the digestive system. Because our ears and noses have no link

⁴⁵¹ Whereas vomit is called *qayʿ* (or *qiʿ*), if the regurgitated substance amounts to less than a mouthful, it is described as *qils / qals*. If an individual gags more than once and the cumulative total of his expectorant is more than a mouthful (i.e. it adds up to *qayʿ* or more) then *wuḍūʿ* is said to be broken (Maghen 1997:205 ff.).

⁴⁵² E.B. "Wuḍūʿ" p. 7 (my emphasis). The content of this passage directly follows Abu Hanifa's views, see 'Asl pp. 78-79 (in Maghen 1997:206).

with digestion, most things that come out of them (whilst likely to be mucky) have not been transformed and, therefore, are neither *khābiṭh*, nor necessitating re-ablution.⁴⁵³

Malik's view on the relationship between impure bodily emissions and *ḥadath* appears to be slightly different. While, according to Ibn Rūshd, he also thinks emitting a substance *known to be khābiṭh* will generally break a Muslim's ablution, he makes a concession in the case of bleeding. This is upheld by several graphic traditions in the *Muwatta* (most of which deal with nose-bleeds). There, we learn, for instance, that Sa'id ibn al-Musayyab continued to pray "with blood pouring out of his nose, so that his fingers were red with it"; and how, on the night he was stabbed, 'Umar performed his prayers "with blood pouring from his wound".⁴⁵⁴ As far as the usual logic of *tahārah* is concerned, this clearly goes too far (even if bleeding is not a cause of *ḥadath*, blood itself is *khābiṭh* – albeit that according to the Malikis less than a certain amount of it is negligible [p.154] - and should be washed off in order to pray). The purpose of these traditions, however, just like the similarly dramatic report of Muhammad praying with entrails on his back (see above fn. 241), is to show that prayer is more important than *najāsah* (of any sort).⁴⁵⁵ This is a feeling that is found throughout the *ḥadīth* material and, doubtless, informs *tahārah* law on a fundamental level.⁴⁵⁶ In the context of the present debate, it also serves to show that, for Malik, *ḥadath* is not always triggered by

⁴⁵³ The other jurists apply the same criteria when judging whether or not a regurgitated substance is *khābiṭh* (see e.g. *Umdat* p.96 which states "that anything coming out of the mouth of a sleeping person is *najis* if it comes from the stomach, but pure if from the saliva ducts").

⁴⁵⁴ *Muwatta* "*Tahārah*" 12:51-54. On other other occasions, Malik shows himself to be less lenient, however, for the view that *ru'af* does break *wudū*', see *Muwatta* "*Tahārah*" 10:48-50 and *Mudawannah* p.140

⁴⁵⁵ The *Muwatta* contains another very unusual tradition attributed to Yahya ibn Sa'id in the same vein. In that, Sa'id ibn al-Musayyab – who seems rather prone to misfortune and, on this evidence, might even have qualified for a concession because of it! (See on *mustahadah* immediately below) - is questioned on what he would do if he discovered evidence of *madhī* on his person during prayer. Sa'id replies: "Even if it were to flow on my leg I would not leave until I had finished the prayer" ("*Tahārah*" 14:58). No law school upholds this – *madhī* is unanimously considered impure and always a cause of *ḥadath* but, as is about to be noted, Sa'id's opinion epitomises a theme that runs throughout *tahārah*.

⁴⁵⁶ See ch.10.

khābath; for, if that were the case, Sa'id and 'Umar would have stopped their prayers and repeated *wuḍū'*.⁴⁵⁷

According to Ibn Rushd, an important principle in Malik's decision about which bodily emissions do cause *ḥadath* (in addition to whether or not the substance is impure) is his conviction that this depends upon a believer's *state of health*. Following their Imam, in the Maliki school, the emission of any *khābith* substance (be it urine, faeces, *madhi*, *wadi*, semen, or wind) "only breaks *wuḍū'* when passed in a condition of health" (*'idha kāna khurujūhu ala wajuhu-l-sahati fihu yanqadu-l-wuḍū'*) (*Bid* p.32). Conversely, chronic discharges of normal substances, or abnormal substances emitted as a result of illness (such as stones, pus, or worms), will not break *wuḍū'*, because the usual connection between *khābith* and *ḥadath* is severed on both occasions by a Muslim's ill health. Malik bases his principle on the advice Muhammad gives to Fatima who, when suffering from prolonged vaginal bleeding (*istihādah*), was ordered to wash off her blood, but then permitted to pray *without wuḍū'*:

'A'isha reported: Fatimah b. Abu Hubaysh came to Allah's Messenger and said: I am a woman whose blood keeps flowing. I am never pure (*fala 'atuhuru*); should I therefore abandon prayer? Thereupon, he (Muhammad) said: No, for that is only a vein (*irqun*) and is not menstruation. So when you begin menstruating, abandon the prayer and when it (menses) is over, then wash the blood from yourself and observe prayer.⁴⁵⁸

For the Malikis, the fact that Fatima may perform her prayers without *wuḍū'* indicates she had no *ḥadath* to lift – her illness having canceled it out. In contrast, the other jurists prefer another version of Fatima's *ḥadīth*, in which a command to perform *wuḍū'* before each

⁴⁵⁷ Note that, according to the *Muwatta*, Malik also seems to have discounted vomiting as a reason to repeat *wuḍū'*. His evidence is that he saw Rabi'a ibn Abd al-Rahman "vomit several times when he was in the mosque and not leave, nor perform *wuḍū'* before he prayed" (*Muwatta* "Ṭahārah" 4:17). Ibn Rushd does not mention Malik's opinion, which may indicate that vomiting is a cause of *ḥadath* for later Malikis (but this is admittedly hypothetical).

prayer has been added.⁴⁵⁹ In this account, Fatima was in a state of minor *hadath* but, as a concession, Muhammad permitted her to fulfill her religious obligations nevertheless. Hence, for the Hanafis and Shafi'is, a *mustahadah*'s impurity is only temporarily suspended during prayers. As soon as prayers finish, she becomes a *muhdith* once more. This being the case, the majority rules that before every prayer a *mustahadah* must "wash her affected parts, apply something absorbent to them and a dressing, and then perform *wudu'*"⁴⁶⁰

The Sunni jurists' regulations for the *mustahadah* point to a general principle of great significance. Namely, if a physical condition that is normally considered to break *hadath* is unavoidable, the law turns a blind eye to it. For, despite the difference of opinion between the Malikis and the other jurists on the degree to which illness affects the contraction of *hadath*, it is accepted by all that, if chronic discharges do incur a *hadath*, it is a seriously weakened form of it. Thus, individuals suffering from diarrhea, or incontinence (*salas*), chronic nocturnal emissions, or with festering wounds from which pus or blood seep, are permitted to touch and recite from the Qur'an, and perform superogatory prayers, without having to make a fresh ablution, as long as they have first washed the impure substance off themselves and taken sufficient precautions to bind the source of impurity.⁴⁶¹ As, according to all authorities other than Malik and his school, they are technically impure (and consistently contracting new impurity), they must perform *wudu'* – although, as they are not lifting *hadath*, the saying of *niyyah* is unnecessary⁴⁶² - before each prayer, but no one is ever excluded from worship. Indeed, the jurists firmly insist that, unless propriety dictates otherwise, no chronic illness is a sufficient reason even to delay prayers (in case someone

⁴⁵⁸ Muslim "*Hayd*":652. Judging when a *mustahadah*'s menstruation is over is a tricky business, however, see ch.7.2.B.

⁴⁵⁹ See *Mishkāt "Tahārah"*:560. Ibn Rushd tells us that this addition is disputed, but is declared *sahih* by Abu 'Umar ibn 'Abd al-Barr (*Bid* p. 34). For the Hanafis, see *Bayān* p. 34; for the Shafi'is, see *'Umdat* pp.94-95.

⁴⁶⁰ E.g. *Maqāsid* p.25.

⁴⁶¹ The *Bidāyat* does not list the concessions, but see E.B. "*Masah*" pp.4-5, and *'Umdat* pp.94-95.

thinks that this type of complaint might allow him to slack off). This is another fundamentally important point: other ritual pollution codes are never this flexible in their definition of impurity (nor perhaps this strict in their expectation that religious duty must always be fulfilled).⁴⁶³

Returning to the matter at hand, Shafi'i has a different opinion regarding which bodily emissions incur a *ḥadath*. In his view and that of his *madhhab*, the fact that an emission breaks *wuḍū'* has *nothing to do* with whether this emission is *khabith*. Instead, ablution is only broken when a substance (irrespective of amount) is passed through the *genitals or anus*. These are referred to as *al-sabīlayni* (the two passages/roads), or *al-makhrijayni* (the two outlets) in the legal texts and, rather than attaching any importance to the *'ayn al-khabath*, in Shafi'i's view it is only these *passages*, and not the substance, that causes *ḥadath*:

Shafi'i (solely) took into account the passages through which the excretion occurs as factors affecting the nullification of ablution (*lā yanqid ila al-khārij min 'ahaid-l-sabīlayni*) and limited these to the penis (*al-dhakar*) and anus (*al-dubur*), by saying that *anything* excreted from these two passages invalidates ablution, whatever its nature whether blood (*dam*), or stone (*hasah*), or phlegm (*balaghum*). (*Bid* p.32).

Indeed, this principle – that “*wuḍū'* is broken by whatever is excreted from the two roads/passages” (*intiqād al-wuḍū' mima yakhruj min aḥad al-sabīlayni*) – is upheld upon by all.⁴⁶⁴ Uniquely, however, Shafi'i makes it the *only* reason for a bodily emission to incur a

⁴⁶² See e.g. *'Umdat* p.61.

⁴⁶³ The above approach may have taken some time to be generally accepted, however; for an indication of the early confusion regarding the legal status of people with chronic emissions, see Mujahid's *ḥadīth* cited by Sabiq (1991:50).

⁴⁶⁴ Although for different reasons: for the Hanafis, emissions from *al-sabīlayni* trigger a *ḥadath* simply because all substances originating there are *already* defiling.

hadath. They are polluting areas, so to speak, that, when breached, separate a believer from prayer.⁴⁶⁵

Doubtless, Shafi'i knew of Malik's traditions indicating that bleeding (and vomiting, see f.n. 457) did not compel the Prophet and his Companions to repeat their ablutions, and there are other traditions supporting this view.⁴⁶⁶ But Ibn Rushd merely tells us that Shafi'i argues this case on logical grounds. Apparently, the Imam claims that, unless the connection of bodily emissions to *hadath* depends on the outlet (and not the emission), there is no reason why *wudu'* should be necessary after breaking wind, and not after belching, given that "both winds (*riyah*) are of the same category (*dhāt*)" (*Bid* p.33). That particular argument, as Ibn Rushd says, is not a strong one, as most jurists do not believe these categories to be remotely similar.⁴⁶⁷

⁴⁶⁵ The idea that greater impurity resides beneath the waist than above it is shown to great effect in this passage from Nawawi's *Minhaj*:

As to matter from a wound, a fistula, an incision or any other opening in the proximity of the stomach... when either passage is obstructed and *the opening is below the stomach*, any issue – even if it is accidental... – negates the purity of the body... when either passage is obstructed and the opening is above the stomach... the purity of the body is unaffected (p.3).

Here, the combination of factors – a blocked genital orifice, and the proximity of the wound to the genitals – is all important. It is as if any effluent will be tainted because genital impurity might find a way out via this new opening.

⁴⁶⁶ For instance, the following selection of opinions in Bukhārī conclusively demonstrates that any type of bleeding (outside of the *sabīlayni*) will not break *wudu'*. Following Shafi'i, Bukhārī instructs Muslims not to repeat *wudu'*:

except if something is discharged from either outlet (*min-l makhrijayn*)... (for) Jabir stated: the Prophet was in the battle of *Dhāt-l-Ruqa* and a person was shot with an arrow and he bled profusely (*fanazafahu-l-dam*), but he bowed and prostrated and continued his prayer. Al-Hasan said: The Muslims used to pray regularly in their wounds. Tawus, Muhammad bin 'Ali, Ata' and the people of Hijaz say: Bleeding does not necessitate the repetition of ablution. Ibn Umar squeezed out one of his pimples and blood came out, but he did not repeat his ablution. Ibn Abi Aufa spat out blood but he carried on his prayer. Ibn Umar and al-Hasan said: If anyone lets his blood out (through cupping) then it is necessary for him to wash the cut area only (and not perform *wudu'*) (Bukhārī "*Wudu'*": ch.35).

⁴⁶⁷ *Bid* p.33. In fact, the other jurists (quite understandably) claim that these "two kinds of winds are different with respect to characteristics and odour" (*al-rihayni makhtilafani fi-l saffahi wa-l ra'ihati*) (*Ibid*). On a connected point, most Hanafis do not consider ablution broken by wind from male or female genitals, because it is unlikely to be foul (see e.g. *Bayān* p.9); whereas, in the Shafi'i school, genital wind breaks ablution because the orifice itself is *hadath*-prone ('*Umdat* p.71).

These are the basic differences between the jurists on the category of bodily emissions that break *wuḍūʿ*. Although each school has its own logic, we see once again that behind all the opinions is a clear interest in fashioning a lenient and workable set of rules. Thus, while a direct connection between emitting a *khābath* and contracting *ḥadath* persists in the Hanafi view, according to this school, a Muslim does not have to repeat his ablutions unless the quantity of discharge is a *dirham* or more. Reducing the need for added re-ablution yet further, Malik claims that bleeding (and maybe vomiting) does not incur a *ḥadath*. Moreover, in his school, *ḥadath* impurity is compassionately linked to the state of a believer's health, and it ceases to exist altogether if a Muslim is unwell. Although disagreeing with that, Shafi'i continues in the direction taken by Malik by restricting this category of *ḥadath* to bodily emissions from the genitals and anus (and thus erasing the need for the sort of debates on bile, and bleeding that the Hanafis engage in).

Before moving on, a little should be said about Shafi'i's importance in establishing the overall logic of Sunni Islam's *tahārah* system; and it is in the present matter that his influence is most noticeable. For, the relationship between the emission of an impure substance and the contraction of *ḥadath* clearly gave the early jurists problems when trying to define how the two purifications differ. In chapter 4.3.A., the majority's view on the separate aims of the purifications was noted (removing *khābath* brings cleanliness and is regarded as a rational, or ethical, form of worship; whereas, lifting *ḥadath* glorifies God, and is a non-rational form of worship). This simple formula, however, was not immediately accepted.

Excursus B: The differences between the schools on the purposes of the purifications:

The Hanafis' approach blurs the dividing line between the two forms of *najāsah*, and their respective purifications. For, in Abu Hanifa's view, a *ḥadath* normally only follows the

emission of *khathath*, which implies that the acts of *rafa'a-l-hadath* are merely glorified removals of *khathath*. Indeed, this is exactly how Ibn Rushd describes Abu Hanifa's view:

Abu Hanifa argued that the factor of annulment is the impure excrement, because of the (adverse) effect of (tangible) *najāsah* on *taharah*, and although this kind of purification is legal (*tahārah hukmiyyah*) it resembles the actual purification that is purity from filth (*tahārah najāsah*)” (*Bid* p.33) (We are following Nyazee's translation. However, for “actual purification”, the text stipulates “*taharah ma'nawiyah*”, which, confusingly, is the same as *taharah hukmiyyah*. Although Nyazee should have noted the error, the context dictates that he has diagnosed Ibn Rushd's intentions correctly).

Abu Hanifa's habit of linking the nature of the impurities, and the purpose of the purifications leads to confusion on a number of occasions. Never more so than in his attempt to establish when it becomes legally permissible to sleep with a woman who has recently ceased menstruating. For, unlike Malik, Shafi'i, and the majority of the jurists – for whom the Qur'an's injunction to wait until “they (menstruants) have purified themselves, and then go unto them” (Q.2:222) indicates that the menstruant must perform *ghusl* before she can have sex – Abu Hanifa and his school permit her to have sex without *ghusl*, as long as she has passed beyond the maximum duration for menstruation (which in their view is ten days, see p.205 below), on the basis that her *hadath* lifts itself when the *khathath* (i.e. the menstrual blood) is no longer present (*Bid* p.60).⁴⁶⁸ The same thinking explains these jurists' solitary opinion that *niyyah* is not obligatory before acts of *rafa'a l-hadath* (although it is still recommended⁴⁶⁹). For, if the purpose of *wudu'* and *ghusl* is only the removal of *khathath* then these acts are like any other form of 'izālat-al-khathath, which, the jurists agree, does not require the performance of *niyyah* (*Bid* pp. 3-4).⁴⁷⁰

⁴⁶⁸ Other jurists, for instance Al-Awzai and ibn Hazm, observe an even stronger connection between removing *khathath* and lifting *hadath*, by ruling that a man may even have sex with a menstruant as long as she has washed the blood off – for she “becomes free from *hadath* once she purifies herself (from the blood)” (*Bid* p.60).

⁴⁶⁹ *Bayān* p.5.

⁴⁷⁰ This explains why Abu Hanifa rules that, if a *jumūb* were to fall unexpectedly into a well (and has no time to say *niyyah*), his *hadath* is lifted and the water itself becomes *musta'mal* (used), just as if he had performed *ghusl* in the normal fashion (*Bayān* p.18).

Abu Hanafi's opinion disturbs Shafi'i, for whom a clear distinction between the two forms of *najāsah* is obviously important. Indeed, in the '*Umm*, Shafi'i points out the error of Abu Hanifa's view on several occasions, one of which concerns the question of whether touching the genitals is a cause of *ḥadath* (see ch. 7.1.C.). Shafi'i thinks that it is, and argues his case as follows:

If the Prophet ordered with respect to (the removal of) menstrual blood that it should be washed by hand, and did not order *wudū'* after that,⁴⁷¹ then, given that blood is more polluting (*anjās*) than the penis (we would expect touching the penis, not to cause *ḥadath*, but this is not so)? By *qiyās* on this ruling, the *nājis* thing that is touched does not necessitate *wudū'*. If this is true of (something that is) *nājis*, then what is not *nājis* in itself (i.e. the penis) ought, still more, not to entail *wudū'*, unless there is a specific *ḥadīth* to this effect.⁴⁷²

Thus, contra Abu Hanafi's argument, Shafi'i demonstrates that *ḥadath* impurity cannot be explained by the existence of *khābath*; for if it could, then a *ḥadath* would be caused by the contact of the hand with menstrual blood. Rather, the reason a *ḥadath* is incurred by touching one's private parts (or presumably from any other cause) is only that there is a specific *ḥadīth* in support of this.⁴⁷³

Shafi'i's reasoning elevates the purpose of lifting *ḥadath* into something more than the mere removal of tangible impurity. In another extract (ostensibly dedicated to defending semen's

⁴⁷¹ See e.g. Muslim "*Tahārah*":575, and c.f. p.87 above.

⁴⁷² '*Umm* p.19-20 (cited in Maghen 1997:187). According to Shafi'i, there are two other instances where a *ḥadath* is incurred without the existence of *khābath*: touching a person of the opposite sex (7.1.C.), and *janābah* through penetration without seminal emission (7.2.A.ii). Regarding the second of these causes, Shafi'i employs the same logic:

What is the ruling in the case of a man who "makes his penis disappear" (*ghayyaba dhikrah*) in the vagina of a permitted woman, and no semen is emitted by him? (the answer is that) He is obligated to perform *ghusl*, even though there is no *najāsah* in her vagina. However, if he puts his penis into the blood of a pig or into wine or into human excrement – all these being *nājis* substances – must he perform *ghusl*? (*Ibid*).

The answer, obviously, is "no"!

⁴⁷³ It is attributed to Busrah, and cited below (ch. 7.1.D.)

purity by citing the well known obligation to perform *ghusl* even when seminal emission has not occurred, see ch. 7.2.A.ii), Shafi‘i gives his opinion on the purpose of the major ablution.

And if someone were to claim: (how can you say that semen is not *najas*? After all) we are commanded to perform *ghusl* from it! We answer him: *ghusl* is not (performed as a result of) the *najāsah* which has been excreted. Rather *ghusl* is an *inexplicable way* that Allah the Mighty and Majestic is worshipped by his creatures (*innama al-ghusl shay ta‘abbud Allaha bihi al-khalq ‘izz wa-jall*).⁴⁷⁴

Previously Maghen had translated Shafi‘i’s use of *ta‘abbud* as an “inscrutable religious obligation” (p 151⁴⁷⁵), here he prefers “an inexplicable way” of worshipping Allah. For our purposes, the difference is immaterial as both translations directly recall Ibn Rushd’s description of the purpose of *rafa‘a-l hadath* as “*ghayr ma‘qul*”, “not subject to rationalisation”, and designed so as to permit the believer to attain “nearness” (*qarūbah*) to Allah” (*Bid* p.3, cf. p.91 above). Of course, we do not know if Shafi‘i was the first to use this expression (it is very possible he was not); nevertheless, it is accurate to say that, through criticising Abu Hanifa’s logic, the above (Shafi‘i) argument employs (or perhaps even creates) the terminology via which the purposes of the purifications are contrasted by the majority of later jurists.

7.1.B. SLEEP/LOSS OF CONSCIOUSNESS/INSANITY/INTOXICATION (*Bid* pp. 34-36)

There are three opinions on whether a Muslim needs to repeat his/her *wuḍū’* after having slept:

- A minority of jurists maintains that any form of sleep (*naum*) always breaks *wuḍū’*.

⁴⁷⁴ *‘Umm* p.72 (cited in Maghen 1997:187).

⁴⁷⁵ Although on that occasion it concerned the less exalted practice of washing a dog’s bowl.

- The majority (Hanafis, Malikis, and Shafi'is) holds that heavy sleep breaks *wudu'*, although drowsiness (*nu'as*) does not.⁴⁷⁶
- Some others claim that sleep does not break *wudu'*, unless it can be proven that a *hadāth* was incurred by the sleeper.

The legal obligation to perform *wudu'* after sleeping is attributed to Q.5:6: "O ye who believe! When you rise up for prayer (*ikḥa qumtuma 'il-l salāwhi*), wash your faces, and your hands up to the elbows." For, most jurists argue that, in this context, "rising up" (from *qāma*) implies doing so after a night's sleep (lying down). This is supported by traditions in which Muhammad tells his Companions to perform *wudu'* as soon as they wake.⁴⁷⁷ It is further strengthened by one report (used in the wiping over/taking off footwear debate) in which Muhammad instructs them not to remove their boots because of "urination, excretion, or sleep" (*Bid* p.35).⁴⁷⁸ It follows for a minority of jurists that sleep must be a cause of *hadath* in its own right, comparable to urinating and defecating. Hence, any type of slumber, even drowsiness (*nu'as*) negates ablution.

In contrast, other traditions describe Muhammad arising and praying without *wudu'* and, on their basis, a few (claiming that the Qur'an is not literally addressing those who have slept) drop the obligation to perform *wudu'* after sleep altogether.⁴⁷⁹ Yet, due to the apparent conflict in the meanings of the *aḥādīth*, most jurists compromise, ruling that *wudu'* is broken by sleeping, but only when it is sound (*nawm khafīf*). The reason they give is that this sort of sleep is legally identical to "losing one's senses" (*zawālī al-'aql*), either by fainting (*qibālī ighmā'in*), insanity (*junūn*), or intoxication (*sukrun*); and in all these states, there is an

⁴⁷⁶ A typical sign of drowsiness is that a person may continue to speak. If this is the case, even if his words are gibberish, his *wudu'* is not broken (*Umdat* p. 71).

⁴⁷⁷ See *Mishkāt "Ṭahārah"*:315, 316, 318.

⁴⁷⁸ Cited in *Bid* p.35.

increased risk of incurring a *ḥadath* because physical control has been (temporarily) lost, and a believer might break wind, or touch his genitals (*Bid* p.40). Hence, for the majority, *wuḍū'* should be performed after sleeping, not because this act constitutes a *ḥadath* in itself, but because while asleep one cannot be sure that *ḥadath* has been avoided.⁴⁸⁰

The fact that purification after sleep is to safeguard against any lapse of control is confirmed when we consider Muhammad's own behaviour (and not simply the advice he gives his followers). For, according to one tradition, Muhammad explains that he does not need to perform *wuḍū'* when he wakes on the basis that, while "my eyes sleep, my mind (*qalbī*) does not: if I had committed a *ḥadath* (*aḥḍathtu*) I would have known it".⁴⁸¹ In the same tradition, the Prophet is quoted as saying: "the eyes are the drawstring of the anus: when they sleep, the string is loosed".⁴⁸² The message is clear: a slack, loose body is more prone to impurity, whereas a firm, controlled body (such as the Prophet's) is less prone to it. This observation leads us to make a brief detour and ask how much, in general, the same factor influences the jurists' discussions in *tahārah* legislation.

Excursus C. The loss of physical control as a factor in *tahārah*

In chapter 3.2.C., we mentioned Howard Eilberg-Schwartz's theory that the Biblical idea of impurity depends to a large degree on the level of bodily control an individual exerts over a polluting act. In the context of Islam, Kevin Reinhardt makes a similar observation.⁴⁸³

⁴⁷⁹ For this view, see *Mishkāt "Tahārah"*:317.

⁴⁸⁰ While generally agreeing on this point, the jurists quibble over which sleeping positions are most likely to facilitate a *ḥadath*. Here, fairly lenient, the Hanafis do not impose re-ablution unless a believer sleeps on his/her side (*nama' mudtaji'an*) as, according to a *marfu* tradition (one whose chain reaches back to Muhammad), this was the Prophet's view. Malik assumes that, no matter what type or length of sleep a believer enjoys, if he is in a position known to facilitate the escape of a *ḥadath* – e.g. lying on the back or side – then *wuḍū'* is broken. However, when sleeping in other positions, re-ablution depends upon how long one sleeps. The Shafi'i are stricter still and rule that *any* sleeping position, except sitting down, breaks *wuḍū'*.

⁴⁸¹ Cited in Reinhardt 1990:11.

⁴⁸² Ibid.

⁴⁸³ Reinhardt 1990.

Indeed, Reinhardt suggests that a fear of losing control is so deeply ingrained in the jurists' minds that it fundamentally underpins their approach(es) to all matters of *ḥadath*. This, he claims, is apparent from the nature of the purification rituals:

Contact with the impurities (that come from) inside the body (i.e. *ḥabā'ith*) requires one practical kind of cleaning (i.e. washing) if touched; but *allowing them to escape* requires another and completely different response, a ritual one.⁴⁸⁴ What is it that differentiates the substances themselves from the act of releasing them? What is it that separates the defiling substances from the otherwise benign world? Only I would suggest, self control, the human will... in this domain the will cannot control the body. Humans otherwise sovereign in their ritual and practical lives, are unable to avoid releasing defiling substances, however hard they may try... (thus) I would argue that these rituals (i.e. *wuḍū' / ghusl / tayammum*) do indeed counteract the events that negate them, but what they undo is not a specific act – not urination, not defecation – but the more general “failing” – the loss of control... the acts that lead to *ḥadath* are betrayals of the will by the body. Hearty laughter, coughing, and intemperate speech are milder forms of the same loss of control.⁴⁸⁵ On the other hand the acts that lead to preclusion (i.e. the major *ahḍath*) are rarer and so more powerful in their force; they require a more complete reappropriation of the body... With the *janābah* not only the cardinal points but everything in between as well is covered, coated with water or, in pantomime, with sand, not so much to clean as to reconsecrate, rededicate the body to the obedience of the will.⁴⁸⁶

The symbolism of covering one's body with water or sand (in pantomime) as a way of “reconsecrating”, or “rededicating” it, after it has lapsed, has been noted before and is a useful insight into *ṭahārah*.⁴⁸⁷ In light of the Prophet's explanation as to why, for most people if not himself, sleep is tantamount to a *ḥadath*, it is also very plausible that, to some degree, a fear of losing control over the body lies behind the jurists' development of the concept of impurity. Indeed, as we shall see, physical control is said to be a factor in some jurists' decision that touching a person of the opposite sex is a cause of *ḥadath* (ch.7.1.C.).

⁴⁸⁴ Reinhardt's policy of distinguishing between the purifications on the basis of “ritual” – and the problems associated with it – have already been noted (p.88 fn.248).

⁴⁸⁵ Laughing heartily breaks *wuḍū'* for a minority and *only* during prayer, see ch. 7.I.E; coughing, however, is not a cause of *ḥadath* as far as I know (Reinhardt cites al-Shirazi who recommends *wuḍū'* after coughing for the same reason as after sleep - a real *ḥadath* might have escaped without one's knowledge); intemperate speech (lying) is seen as a *ḥadath* by a minority of (mostly Khariji) scholars, see ch.10.

⁴⁸⁶ Reinhardt 1990:19-20 (parenthesis added).

Theoretically, given its obvious capacity to loosen people up, the same factor may well have influenced Islam's classification of wine as impure. And there are even traditions (very much in the pattern of the one just cited relating to sleep) praising Muhammad's ability to drink without becoming inebriated.⁴⁸⁸ Furthermore, although Reinhardt does not mention it, the notion of *hilm* (self-restraint) was of great social and theological importance to early Muslim society. And Muhammad's virtuosity in this field serves both to emphasise the value of physical control, and to remind believers of their own inadequacies.⁴⁸⁹

It is questionable, however, whether a distrust of bodily weakness should be described as the sole (or even main) ingredient in Sunni *fiqh*'s eventual understanding of *hadath*. For, unlike the Biblical rules where various bodily emissions and acts possess different strengths of impurity (depending upon the degree of control influenced over them), bar the Hanafis' distinction between heavy and light impurity, the urine of a male infant, and the basic division between a major and minor *hadath* (none of which have anything to do with losing bodily control) most jurists do not attach different strengths to either of Islam's *najāsāt*.⁴⁹⁰ Instead, what seems to be more important than the correlation between control and purity is that Muslims in a state of impurity are only kept away from prayer for the minimum duration. At times, this principle leads to the exact opposite of what we would expect from Reinhardt's theory. The *mustahadah* is the best example of what I mean. For, whereas in the Biblical system a woman suffering from extended bleeding, or the man from nocturnal emissions are

⁴⁸⁷ C.f. Marcus 1984:207.

⁴⁸⁸ Goldziher 1981:60.

⁴⁸⁹ *Hilm* is not solely a physical trait. It is a virtue of the whole person: "a positive and active power of the soul that is strong enough to curb her own impetuosity that may drive the man headlong to folly, and calm it down to patience and forbearance", T. Izutsu God and Man in the Koran: Semantics of the Koranic Weltanschauung (1964, Tokyo, The Keio Institute of Cultural and Linguistic Studies) p.198.

⁴⁹⁰ Reinhardt's claim that major *hadath* are more powerful because they are connected to rarer acts than the minor *hadath* is not always the case. Is menstruation rarer than vomiting, or pus seeping from a wound?

more, not less impure (Lev.15⁴⁹¹), in Sunni Islam, the *mustahadah* (or anyone else with chronic medical problems) is exempted from the constraints of *taharah* law. She may recite and touch the Qur'an whenever she wishes, attend prayers in the mosque, perform *hajj* and, according to the majority, even have sexual intercourse! (*Bid* p.66) Indeed, her treatment is a very good example of the jurists' thorough, lenient, yet often paradoxical approach; for she is entitled to do all these things, despite the fact that her body is constantly manufacturing *khabath*, and will probably be (depending upon the school) in a perpetual state of *hadath*. Such clemency is at variance with Reinhardt's theory; for, illness is surely the *greatest* betrayal of the will by the body, and yet it is recognised as a condition of a *mustahadah*'s purity by the Malikis (and at least a reason to treat her as if she were pure by the remainder of the jurists). Hence, *pace* Reinhardt, it is when we lose all control over our bodies' functions – and therefore by his logic should be most “impure” – that *fiqh* reverses its rules and decides to include us.⁴⁹²

7.1.C. TOUCHING WOMEN (*Bid* pp.36-38)

In its concession for *tayammum*, the Qur'an tells Muslims, “if you are ill, or on a journey, or come from the toilet, or have *touched women* (*lamastumu-l nisa'a*), and you find no water, then take clean sand or earth...” (Q. 5:6). Consequently, many jurists believe that when a man physically touches a woman (it is normally envisaged this way, and not vice versa) he breaks both his and her *wudu'*. As usual, however, this issue provokes much discussion, with three main opinions resulting:

- Abu Hanifa does not think touching anyone breaks either person's *wudu'*.
- Malik thinks touching a licit person of the opposite sex *lustfully* breaks *wudu'*.

⁴⁹¹ Unlike the usual purification from emissions, sacrifices are required and no quarter given if the conditions persist.

⁴⁹² The same point might be said to include the Hanafi decision to rule any form of *khabath* that one *cannot* avoid coming into contact with as only weakly defiling (ch. 6.4.B.).

- Al-Shafi‘i thinks touching a licit person of the opposite sex breaks *wudu’*, regardless of whether or not the touch is lustful.

The main reason for these disagreements lies in the jurists’ contrasting interpretations of the word “*lamasa*” (“touching”) in the context of the above verse. Abu Hanifa and his school interpret it metaphorically (*majāzī*) to mean sexual intercourse (*al-jima’*). And, while preferring a metaphorical over a literal reading of the Qur’an is problematic, they can point to several traditions – in which Muhammad caresses his wives while they prostrate, and even kisses them before going to pray – in support of doing so here.⁴⁹³ On the basis of these, and because the human condition is known to be essentially pure and non-contagious, these jurists see no reason why touching someone of the opposite sex should result in any form of impurity.⁴⁹⁴

Malik and Shafi‘i disagree. While their overall positions differ, both jurists think that *lamasa* must be interpreted literally, to mean touching by hand (*bi-l yad*). Malik, however, looks to reconcile the messages of the Qur’an and the Sunna, by arguing that, in this verse, *lamasa* possesses a sexual connotation, but does not imply full coition. Hence, touching someone of the opposite sex *may* invalidate the ablutions of both, but this will only be the case if this touch is accompanied by lust (*shahwah*), or is intended to arouse.⁴⁹⁵ This reading explains how Muhammad – whose concerns were, first and foremost, with his *ṣalāt* – did not break his

⁴⁹³ See e.g. *Mishkāt “Tahārah”*:323.

⁴⁹⁴ See *Bid* p.36. Rather against type (he normally prefers a literal interpretation whenever possible, see p.217 on Ibn-Rushd’s ^{the} purity status of the *mushrik*) Ibn Rushd agrees with the Hanafis:

What I believe is that the word “touching”, though it is equally expressive of both meanings, or almost equal, is more vivid in my view, for denoting intercourse though it is a metaphor, as Allah has used the terms *mubashara*, “contact”, and *mas*, “touching”, for copulation and they (also) denote the meaning of touching (*Bid* p.37).

⁴⁹⁵ For Malik’s opinion, see *Muwatta’ “Tahārah”* 16:66-68. Ibn Rushd does not mention if it matters whether this touch is with the finger-tips and palms (both are factors in the Maliki’s *ḥukm* on touching one’s own genitals, see ch. 7.1.D.). Apparently, in the case of kissing, the Malikis do not stipulate the accompaniment of pleasure as a factor in its breaking of *wudu’* (perhaps because it is presupposed?) (*Bid* p. 36).

wuḍū' even when he kissed his wives prior to prayer. For here, as when Muhammad wakes and prays without *wuḍū'*, Islamic tradition portrays the Prophet as the unquestioned master of his physical (especially sexual) urges and, therefore, less prone than the rest of us to *hadath* impurity.⁴⁹⁶ Most other *fuqahā'*, however, remain unconvinced by Malik's theory. And, whereas Ibn Rushd thinks that both the Hanafi and Shafi'i views were held by "predecessors from among Companions", he does not think Malik's was (*Bid* p.36).

Stricter than the earlier *fuqahā'*, in the '*Umm* Shafi'i states that *wudu'* is broken by any kind of touch from someone of the opposite sex, "with or without lust" (*bishahwah aw bighayr shahwah*). For, as far as the contraction of *hadath* goes:

Lust (*shahwah*) has no meaning (*lā ma'nī*) (in these matters) because it (lust) is of the heart (*fi-l qalb*), yet the meaning (here) is in the action (*fi-l al-fi'l*).⁴⁹⁷

Although doubtless not what he would have wished, Shafi'i expresses no need for either partner to repeat *wuḍū'* if, before prayer, a man "lasciviously fondles his wife over her garments, touches her hair, or lusts after her from a distance".⁴⁹⁸ Now, as has been noted (pp. 172-173), a Muslim's moral intention is an influential factor in *tahārah*; if a believer suspects that he has broken wind, but smells and hears nothing, he does not need to repeat his ablutions as long as he is honestly in doubt. In other words, in order for it to be wrong, he has to know he is doing wrong by continuing. By linking *hadath* to sexual desire, however, Malik takes the connection between interior motives and *hadath* a stage further. Indeed, if

⁴⁹⁶ According to one tradition, Muhammad would fondle 'A'isha during her menses as long as she covered herself with a waist-wrapper. This might have been risky had passions risen and the Prophet been tempted to have sex with 'A'isha. This was never going to happen, however, for as 'A'isha puts it: "none of you can master sexual desires like the Prophet" (Bukhārī "*Ḥayḍ*":299).

⁴⁹⁷ '*Umm* p.30 (my translation).

⁴⁹⁸ *Ibid.* Also note that, for the Shafi'is, touching does not include contact with teeth, hair, nails, or a severed limb (e.g. '*Umdat* p.72). Presumably, this is because each example is "dead" (i.e. incapable of feeling), and therefore pure.

more of the jurists had followed Malik's example, the *tahārah* code might have looked quite different because sooner or later impurity would probably have been linked to sin. Here, then, Shafi'i seeks to draw a clear line separating those things which belong to the sphere of formal *tahārah*, from interior and moral concerns "of the heart" and, thus, to prevent morality from playing an overt part in *tahārah* logic. Instead, while he considers the purpose of lifting *hadath* to be beyond rational explanation, the factors involved in creating a *hadath* are, for Shafi'i, mundane and biological: "the meaning" lies solely in the action of skin brushing against skin.

Before moving on, it is acknowledged that, in this matter, the opinions of the Malikis and Shafi'is cast doubt on our previous assumption that human beings are incapable of *transmitting* impurity. Yet we remain confident that, even here, a *hadath* is not transmitted as such, but rather *created* through the act of (lustful) touching. For it never matters whether a person is carrying a *hadath* themselves – touching a woman when she is *tahīr* negates a man's purity in exactly the same way as touching a menstruant. It simply seems that (perhaps for Shafi'i more than the other *fuqahā'*) there is something inappropriate about a man and a woman being close enough to brush skins *before prayer*, and this law reflects an interest in maintaining a "respectable" distance between the genders in the context of worship.⁴⁹⁹

7.1.D. TOUCHING THE GENTALS (AND ANUS) (*Bid* pp. 38-39)

Touching one's own genitals and/or anus (*massa-l-dhakar/farj wa-l-sharaj*) is another cause of minor *hadath* for some jurists. There are three main views:

- The Hanafis do not think touching any part of one's own body breaks *wudū'*.

⁴⁹⁹ This function of *tahārah* law will be explored in greater detail in ch.9.

- The Malikis think a man breaks *wudu'* by touching his penis, if this touch causes pleasure.
- Al-Shafi'i, Ahmad Ibn Hanbal, and Dawud think *wudu'* is broken when a man or woman touches their own genitals, or anus.

On this point, the Qur'an is silent, and the jurists' differences stem from their choices between conflicting *ahādīth*. The Maliki and Shafi'i approaches are both based on a tradition attributed to Busrah:

She heard the Messenger of Allah saying: When one of you touches his penis he should perform *wuḍū'* (*Bid* p.38).⁵⁰⁰

For Shafi'i, as we have seen, this settles matters.⁵⁰¹ Following him, the Shafi'is, Hanbalis, and Zahiris all agree that ablution is obligatory if any Muslim touches his or her genital "whatever the nature of the touch" (*fiqa kayfma massahi*), i.e. with or without lust (*Bid* p.38).⁵⁰² Furthermore, these jurists also think that touching the anus nullifies *wuḍū'* in the same manner and, by so ruling, make *al-sabīlayni* a considerable hindrance to a Muslim's purity.⁵⁰³

According to Ibn Rushd, the Malikis agree that by touching his penis a Muslim breaks *wuḍū'*. However, within the school there are two opinions: some Malikis only make ablution necessary if the touch stimulates sexual pleasure; whereas another group make ablution necessary if the touch is with the palm of the hand. In Ibn Rushd's opinion, however, both

⁵⁰⁰ Muwatta "Tahārah" 15:60.

⁵⁰¹ It is also his proof that all forms of *hadath* impurity are unconnected to *khābath*, see Exc. B.

⁵⁰² Maghen notes that the Shafi'is even rule that touching "the private parts of a corpse, an under age child, a eunuch, and a mutilated person!" – doubtless, all chosen because they are extremely unlikely objects of *shahwah* – will still break a Muslim's *wuḍū'* (1997:321).

⁵⁰³ See '*Umdat* p.73, *al-'Umda* p.11.

opinions amount to the same thing. For, those who stipulate that it is the part of the hand that matters only do so because they consider “the inner part of the hand to refer to the derivation of pleasure” (*Bid* p.38). In other words, it is more likely that touching the penis with the palms and tips of the fingers will lead to arousal, than with a less sensitive part of the hand or body.⁵⁰⁴ Malik’s actual opinion is to be found in the *Mudawwanah*, where he does specify that a minor *ḥadath* is caused by touching the penis with the palm or the finger tips of the hand (both touches being of the same category). Yet, in that passage, Malik also limits this *ḥadath* to the act of touching the *male* genitalia (which Ibn Rushd does not tell us).⁵⁰⁵ In his view, no one breaks *wuḍū’* by touching the anus (*sharaj*), and a woman does not incur a *ḥadath* by touching her vagina (*farj*) (unless stimulating an orgasm (*laddah*), 7.2.A.ii). Malik does not give a reason for the latter ruling, although two possibilities spring to mind: either he assumes the penis is more “impure” than the vagina, or (in light of the aforementioned Maliki idea that lust is an independent cause of *ḥadath*, the more probable suggestion), that a man is more likely to be sexually aroused by touching his genitals than a woman is by touching hers.⁵⁰⁶

In contrast to Malik and Shafi‘i, the Hanafis see no reason why touching the genitals should trigger *ḥadath*. As far as the reliability of Busrah’s tradition is concerned, they are scathing (on the grounds that it is reported by a woman), and prefer another related by Talq ibn Ali:

Talq b. ‘Ali reported: Allah’s messenger was asked about a man touching his penis after performing *wuḍū’*, whereupon he said, “Is it not a part of you”? (*wa hal huwa ‘illa badu’atum minhu?*) (*Bid* p.39).⁵⁰⁷

⁵⁰⁴ Other jurists have problems with this idea. For instance, Shaybani asks:

How is the inside of the hand to be distinguished from the back? If *wuḍū’* is canceled by touching with the inside of the hand, (then surely) it would be canceled too by touching it with the back of the hand (*Hujja* pp. 59-60, cited in Calder 1993:58).

⁵⁰⁵ See *Mudawwanah* p.118.

⁵⁰⁶ *Ibid.* A previous opinion attributed to Malik, mentioned by Shaybani, is that a man could incur a *ḥadath* by touching his penis with any body part he washes during *wuḍū’* (see *Kitāb al-Hujja* p.59 cited by Calder 1993:58). This ruling would appear to stem from the early belief that *ḥadath* impurity was contagious. Since it was soon established that this was not the case, the Malikis modified their view.

⁵⁰⁷ For the full tradition, see *Mishkāt “Tahārah”*:320. On the subject of Busrah’s *ḥadīth*, Shaybani writes:

Thus, in the Hanafi school, touching any part of one's own anatomy (or even someone else's) will not preclude a Muslim from prayer. These jurists' tendency to link the cause of a *ḥadath* to the discharge of *khabath* may well explain their aversion to Busrah's *ḥadīth*. After all, if a *ḥadath* really is the result of tangible pollution, to suggest that it occurs through touching someone else, let alone one's own genitals, would imply that this person, and bodily area, is tangibly filthy. In contrast, the majority of other jurists enforce a clearer distinction between the two spheres of *najāsah*. Hence, it does not trouble them to attribute the contraction of *ḥadath* to a situation involving another person or part of the body, and still maintain that these subjects are not tangibly defiled, or defiling, in any manner.

On this topic, one last area of *ikhtilāf* deserves to be mentioned. For, although the majority rules that if, after the event, a Muslim remembers that he had touched his genitalia (or incurred any other sort of *ḥadath*) before praying, he is to repeat both his ablution and prayers, a minority of (Maliki and Zahiri) jurists consider absentmindedness (*nisyan*) to be a valid excuse for having to repeat neither (*Bid* p.38).⁵⁰⁸ The obvious implication of this concession is that (at least this type of) *ḥadath* impurity ceases to exist altogether if forgotten about.

We have now mentioned most acts classified as causes of minor *ḥadath*. A final *ḥadath*, not corresponding to any pattern seen so far, remains to be discussed.

There is no *ikhtilāf* amongst us on the fact that 'Ali ibn Ali Talib, 'Abdullah ibn Mas'ud, 'Ammar ibn Yasir, Hudhayfā ibn al-Yaman, and Imanan ibn Hsin did not consider that touching the penis occasioned *wuḍū'*. And who is Busra bint Safwan compared with them? How can the *ahādīth* of these, all of them, be abandoned for the *ḥadīth* of Busra bint Safwan a woman unaccompanied by any male (to support her transmission), knowing how weak women are in transmission? For Fatima bint Qays informed 'Umar ibn al-Khattab that her husband had divorced her three times and the Prophet had not allotted to her lodgings or expenses. But 'Umar refused to accept her word, saying: We do not consider a woman's view permissible in (establishing) our *dīn*. The same is true of Buswa bint Safwan, we do not consider her view permissible, especially in view of the Companions who oppose her. (*Hujja* p.59 in Calder 1993:58).

⁵⁰⁸ They support this with two *ahādīth*, see Muslim "*Tahārah*":702-703.

7.1.E. LAUGHTER DURING PRAYER (*Bid* pp. 39-40)

In one of only two instances where Abu Hanifa and his school attribute *hadath* impurity to an act not involving the emission of *khathath* (penetration without ejaculation is the second), the Hanafi Imam expresses a “deviant opinion” that laughter *during prayer* (*dhahikun fī-l ṣalāt*) breaks *wudū*. He supports this opinion with a tradition attributed to Al-Hasan Al-Basri who reported:

that he (the Prophet) was once in the middle of the prayer service, when a blind man entered and turned to the *qiblah*, intended to perform the *ṣalāt* – and the people were praying the dawn prayer – and he (the blind man) fell into a mud hole (*zabiyah*), and this made the people laugh uproariously (*istadhaka al-qawm hatta qahqaha*). When the Messenger of God finished his prayer, he said: Whoever amongst you burst out laughing must repeat his ablution.⁵⁰⁹

Despite Reinhardt’s assertion that laughing uproariously is another example of the polluting effects of losing bodily control,⁵¹⁰ the real cause of this regulation appears to be the Prophet’s sympathy for the blind man. Whatever the explanation, later Hanafis make a distinction between smiling and laughter and, perhaps in the hope that prayers never become an entirely joyless experience, rule that only the latter breaks the ablution.⁵¹¹ Heedless of that distinction, however, the other *madhāhib* firmly reject the notion that a show of mirth affects a believer’s purity status. They do so on two grounds: firstly, because Hasan’s tradition “is a *mursal*”⁵¹² and, secondly, because such a ruling “is opposed to the principles, as it makes something the cause of invalidating ablution during prayer, but not when one is praying” (*Bid* p.41). In other

⁵⁰⁹ Cited in *Mabsūt* p.77 (Maghen’s translation 1977:320-321). Ibn Rushd refers to this tradition, but attributes it to Abu al-‘Aliyah (*Bid* pp. 39-40). It is a curious point that only the participants’ ablution was invalidated, and not their prayers.

⁵¹⁰ Reinhardt 1990:20.

⁵¹¹ Laughter is understood not to break *wudū* on the basis of a tradition in which Jariri ‘Abd-Allah al-Balijji reports that every time Muhammad saw him at prayer he would smile (cited in *Mabsūt* p.77, see Maghen 1997:320).

words, why would something cause a *ḥadath* during prayer when it does not break ablution at any other time?

Having covered the jurists' main categories of minor *ḥadath*, we will move on to their disputes concerning the stronger form of this impurity.

7.2. THE MAJOR *AḤDĀTH* (*AL-AḤDĀTH AL-AKBAR*)

The jurists agree that four types of act incur a major *ḥadath*: certain sexual ones (*janābah*), menstrual bleeding (*ḥayd*), postpartum bleeding (*nifas*), and dying. In the following two sections we focus on the jurists' discussions concerning *janābah*, and *ḥayd/nifas* (these last two conditions are deemed analogous).⁵¹³ Here, because they are united on the identity of the acts themselves, there is little major conflict in the jurists' general approaches. Instead, they concentrate their efforts on explaining the restrictions Muslims with a major *ḥadath* face, in particular his/her restriction from the mosque, and defining the boundaries between these states of major *ḥadath*, and purity. In both tasks (especially the latter), they disagree on many points. We include the main legal variations in what follows. In the first section, we review the jurists' different opinions regarding *janābah*; in the second, we turn to the distinctions they draw between *ḥayd/nifas* and *istihādah*.

7.2.A. SEXUAL IMPURITY (*JANĀBAH*) (*Bid* pp. 47-50)

The term "*janābah*" is mentioned in the Qur'an as necessitating a more thorough washing (hence signifying a stronger form of impurity) than results from minor *ḥadath*:

⁵¹² A *mursal ḥadīth* is one in which the name of the Companion, who is supposed to be the immediate narrator of it, is missing from the *isnad*. In such case, the *ḥadīth* is attributed directly to Muhammad from a narrator among the *tābi'ūn*.

O you who believe! Do not draw near to prayers... in a state of *janābah* except when you are passing by/journeying on the road (*abiri sabīl*), until after washing your whole body (Q.4:43).

Thus, Scripture advises the *junūb* not to pray if he cannot first perform *ghusl*, unless he is “passing by”, or “journeying on the road”, which, as we are about to see, causes problems of interpretation.⁵¹⁴ This verse does not mention the mosque, despite this, however, the *junub* and the menstruant who are *treated analogously* in this matter, are (in addition to their other restrictions) prohibited from entering a mosque according to the majority (*Bid* p.50). This is the only imposition about which there is widespread disagreement between the main law schools, thus, it deserves our attention.

7.2.A.i. Entry into the mosque:

Ibn Rushd tells us of three opinions on this:

- The Malikis prohibit Muslims with a major *ḥadath* access to mosques, unless it cannot be avoided.⁵¹⁵
- Al-Shafi‘i prohibits Muslims with a major *ḥadath* from staying in the mosque (unless, once again, it is unavoidable), but permits them to pass through.
- Dawud and the Zahiris permit the *junūb* and menstruant unlimited access to all mosques.

Our Qadi summarises the reasons for this dispute as follows:

⁵¹³ For details on ritual washing of the corpse, see *Bid* pp.260-267. There is no dispute over the fundamental purity of a human corpse, nor the obligation to perform *ghusl* upon it (as long as the deceased was not martyred).

⁵¹⁴ Yusuf Ali’s translates *abiri sabīl* as “passing by”; Pickthall translates it as “journeying on the road”.

⁵¹⁵ The schools agree that if a Muslim is in danger and finds protection in a mosque then he is free to enter regardless of his purity status (see e.g. ‘*Umdat* p.184). This indicates the invulnerability of mosques to *ḥadath*, or any impurity, a theme we shall return to below, see chs 8 and 9.

The reason for disagreement between al-Shafi'i and the Zahiris is based on the vacillation of the words of the Exalted... "when passing by" ... between two meanings. Is the use of the word metaphorical, so that an implied "place" is to be assumed inserted, that is to read "Draw near unto *the place* of prayer (i.e. the mosque)", and that the exemption for the traveler relates to the prohibition of staying in the place of prayer (Shafi'i's opinion), or, is no word is to be assumed implied and the verse to be read as it is, where the traveler is in a state of *janābah* who lacks water (and can therefore perform *tayammum* and pray, the Zahiri view)? (As for Malik's view) I do not know of any evidence for those who prohibited the *junūb* to pass through the mosque, except the literal meaning of what is related from the Prophet who said "(entry into) the mosque is not permitted to a *junūb* nor to one menstruating" (*Ibid* pp. 49-50).⁵¹⁶

In this debate, Shafi'i's argument is out of character, as he does not normally add things to the Qur'an. Yet, here, by reading "*abiri sabīl*" not as "journeying on the road" as other authorities do, but as "moving through (an interpolated mosque)", he does exactly that. The Zahiris, however, stick rigidly to what the Qur'an says; their interpretation of this verse is simply that a *junūb* is not permitted to pray, *unless* he is traveling (when there is no reason not to perform *tayammum* and pray as he should). The Malikis (and, although Ibn Rushd does not mention them, the Hanafis too⁵¹⁷) do not permit a *junūb* to enter mosques at all; therefore (against the Shafi'i's), they do not believe that the verse is missing a word, but assume (against the Zahiris) that it leaves out the prohibition altogether. It remains unclear why they should deny the *muhdith* access to mosques and, aside from one *ḥadith* in support of it, Ibn Rushd admits to being baffled by their view. As we shall see, when the jurists do attempt to explain this prohibition, many argue that it stems from a practical desire to keep impure substances (i.e. the *khābā'ith* themselves) out of the holy sanctuary. Indeed, the exclusion of the menstruant and the non-Muslim may be explained along these lines (i.e. to avoid blood or other impurities dripping onto the mosque floor); it is very difficult, however,

⁵¹⁶ For this *hadith*, see *Mishkāt "Ṭahārah"*:462; according to Ibn Rushd, it is not established according to the traditionists (*Ibid*).

⁵¹⁷ See e.g. *Bayān* p.16.

to account for the prohibition of the *junūb* in this way.⁵¹⁸ The exclusion of Muslims from the mosque will be discussed in more detail in chapter 9.

7.2.A.ii. The causes of *janābah*

Fiqh recognises two causes for *janābah*. First, it is said to result from any “normal” emission of semen, and this is upheld in a number of *aḥādīth*.⁵¹⁹ Accordingly, it is ruled that a man incurs (the same strength of) *janabah* if he ejaculates during foreplay (*mula'abah*), sexual intercourse (*jima'*, *wati'a*), masturbation (*istimnā'*), or is convinced of a nocturnal emission (*iḥtilām*) – each act being judged sufficiently normal.⁵²⁰ As we know, a woman is also described as emitting semen and this renders her *junūb* too, even when this occurs during her sleep (*Bid* p.47).⁵²¹ As has also been noted, however, the ejaculation of semen is not assumed to necessitate *ghusl* when it occurs “abnormally” or in illness, when the *junub* is treated like the *mustahādah*.⁵²² Another abnormal situation is envisaged by some, mostly Malki jurists who argue that ejaculation will not break *ghusl* even when caused by sexual interaction, if it is not accompanied by sexual pleasure (*laddah*). While in most cases this is a foregone conclusion, when it is not, such as when a man prevents himself from ejaculating during sex only to do so later “after the pleasure has subsided”, these Malikis rule that he is

⁵¹⁸ On this, see pp. 244-245 below.

⁵¹⁹ For instance:

Sa'id al-Khudri reported: The Apostle of Allah observed: *ghusl* is obligatory in case of seminal emission (Muslim “*Tahārah*”:679).

⁵²⁰ As always, Muslims must be convinced of its existence in order for it to be legally incumbent upon them to lift a *ḥadath*. If semen is *not seen* – i.e. if, after masturbating, a man prevents his semen from leaving its source, or a woman cannot find any evidence of a nocturnal emission – *ghusl* is not mandatory (Sabiq 1991:50).

⁵²¹ This is confirmed by a well know *ḥadīth*, in which Umm Salama asks Muhammad: O Messenger of Allah! If a woman sees in her sleep what a man sees, does she have to take a bath (i.e. perform *ghusl*)? He replied: Yes if she sees moisture (Bukhārī *Ghusl*:80 cited in *Bid* p.47). Note that, in another version of this *ḥadīth*, Muhammad asks Umm Salama whether or not she felt pleasure in the dream. She says “yes”, thus confirming the principle taken into account by Malik’s school, cited in *Bayān* pp. 13-14. On this subject, there are some complications when a woman’s emissions might not be hers, but her partner’s. In fact, this is an area of much dispute, but the majority agree that if a man’s semen leaves a woman after she has prayed, she needs only perform a new *wuḍū'* and not to repeat her prayers (Maghen 1997:184). Further, when a woman is raped, and sperm leaves her vagina after she has performed *ghusl*, most jurists do not require her purification to be repeated at all (see e.g. *Umdat* p.80).

not liable to perform *ghusl* at all. Apparently, he is also judged analogous to the *mustahadah* (*Bid* p.49). As in the cases of touching the genitals, touching women, or the negation of *hadath* through forgetfulness, this is another example of the Maliki tendency to see moral intention (and especially lust) play a determining role in the contraction of *hadath*, but few are swayed by it.

The second cause of *janābah* is intromission. Although this law took longer to be established, all the schools eventually accept it.⁵²³ Its validity is affirmed in numerous *hadīth*, for instance:

Abu Hurayra reported: The Apostle of Allah said: “when anyone sits between the four parts (*julus bayn shu'abihi al-arba'a*) of a woman's body and then makes effort, bathing becomes obligatory (referred to in *Bid* p.48).⁵²⁴

⁵²² Thus the jurists rule that the afflicted Muslim needs only to wash him/herself, and perform *wuḍū'* to pray, and Malik (seeing no *hadath* at all) merely recommends that he wash the semen off himself (p.178).

⁵²³ Note that this is one of the few subjects within *tahārah* where the jurists chose to increase the strictness of a rule. For, Muslim tells us *janābah* was originally believed *solely* to follow the emission of semen. Hence, in the case of *coitus interruptus*, a man had merely needed to wash his penis, and perform *wuḍū'* (presumably, this was also required from his partner, see *Bid* p.48). This early ruling was based on a *hadīth* in which Muhammad is reported to have said:

When you are in haste, or semen is not emitted, *ghusl* is not mandatory, but *wuḍū'* is (Muslim “*Tahārah*”:676. Muslim mentions that in another *hadīth* [from Matar] the words: “even if there is no orgasm” are added).

While this precept was amended in the Prophet's lifetime, Muhammad's stricter opinion was rejected by some of the *Ansar*. According to the following *hadīth* attributed to Abu Musa, this argument was settled, once and for all, by 'A'isha:

There cropped up a difference of opinion between a group of Muhajirs and a group of Ansars, because the Ansar said: “*ghusl* only becomes obligatory when a man ejaculates”. But the Muhajirs said: “When a man has sexual intercourse, a bath becomes obligatory” (no matter whether or not seminal emission occurs). Abu Musa said: “well I (will) satisfy you on this issue”. He got up (and went) to 'A'isha and asked for her permission and it was granted, and said to her: “O mother of the Faithful, I want to ask you about a matter on which I feel shy”. She said: “Don't feel shy of asking me about a thing which you can ask your mother... for I am your mother too”. Upon this he said: “what makes a bath (*ghusl*) obligatory for a person?”. She replied: “you have come across one well informed!” The Messenger of Allah said: “When anyone sits amidst four parts and the circumcised parts touch each other a bath becomes obligatory” (Muslim “*Tahārah*”:684; c.f. 676).

Apparently, this did satisfy almost everybody; as it stands, only the Zahiris refute the idea the penetration causes *janabah* (*Bid* p.47).

⁵²⁴ Muslim “*Tahārah*”:682.

On the basis of such reports, it is said that, when the tip of a man's penis "intrudes as far as the point of female circumcision in the vagina" (a process known as "*iltiqā' al-khitanan*", "the meeting of the two circumcisions"), or, to a similar degree into the anus, *ghusl* is incumbent upon both partners. However, if the penis does not penetrate this far – for instance, when only inserted between the outer labia – then *ghusl* is not necessary for either partner.⁵²⁵

As far as normal sexual relations are concerned, the jurists agree on most matters. However, they are quite willing to discuss many other "abnormal" scenarios by which *janābah* can be contracted and, when the sexual act is of the rarer variety, we soon see opinions diverge. Often impressive, their scholasticism is admittedly also bewildering, and even leads to the (surely hypothetical) contemplation of what kind of purification must follow carnal relations with a fish!⁵²⁶ Unfortunately, Ibn Rushd does not go into detail on the jurists' view but Maghen locates a comprehensive survey of views on *janābah* within *Kitāb al-Fiqh alal-Madhāhib al-Arba'a*, and we shall follow that.⁵²⁷ The different rulings can be briefly summarised accordingly:

- According to the Hanafis, a man's *ghusl* is broken by penetrating a woman's vagina or anus, and a man's and hermaphrodite's anus. It is not broken, however, if he wears a barrier (*hājiz*) over his penis, and thus prevents "warming". Neither is broken by penetrating the vagina of an animal, or a cadaver, or the "dubious" orifice (*qubl*) of a hermaphrodite (as long as he does not ejaculate). When a woman is penetrated by anything other than an adult male's penis (child's penis, animal's penis, dead man's penis!, etc.), *ghusl* is not mandatory for her, as long as she is not aroused by it. A hermaphrodite's *ghusl* is not broken when (s)he uses

⁵²⁵ See Boudhiba 1998:50.

⁵²⁶ See Bousquet 1950:59. Bousquet does not mention what the disagreement was – there might be some question over whether semen leaving the corpse of a fish is transformed into a pure substance due to the ultra purity of the fish's corpse (although I admit to an unhealthy level of speculation). Equally interesting and just as bemusing is the opinion that *ghusl* is not necessary if a woman orgasms thanks to the interference of a *jinn* (Boudhiba 1998:50).

his/her organ to penetrate any orifice of either sex. Finally, if when still a minor, a boy penetrates a woman who has reached the age of majority, she alone technically incurs *janābah*.

- The Malikis agree with the Hanafis that, if a man performs any kind of normal sexual act wearing a barrier over his penis, his *ghusl* is not broken. However, unlike the Hanafi *madhhab*, they rule that it is broken by penetrating the vagina or anus of a dead person or beast. Further, they argue that if the actor is male and a minor, then *ghusl* is neither obligatory for him, *nor* his partner. If, however, the actor is of majority age, then *ghusl* is obligatory for him/her, although not for the acted on, unless he/she is also of majority age.
- The Shafi'is agree with the earlier *madhāhib* on most major details. However, they insist that if the tip of a man's penis is "absent" (*ghaba*) in either a man or woman's anus, or her vagina, then *no matter what he covers it with, ghusl* is mandatory for him and his partner. Further, according to these jurists, a minor, regardless of whether (s)he is the actor, or the acted upon, must still perform *ghusl*, and their guardian should make sure they do so (if [s]he does not perform *ghusl* at the time, then it must be done as soon as the age of majority is reached).
- Like the Malikis and Hanafis, the Hanbalis claim that *ghusl* is not necessary when a man covers his penis. Moreover, in this school, *ghusl* is not incumbent upon either partner (nor does it become so) if the actor is a minor. Unusually, they hold that if a hermaphrodite inserts his or her organ into the vagina or anus of another, then *ghusl* is mandatory. It is not mandatory if a Muslim penetrates the genitalia of a hermaphrodite (although it is if they penetrate the anus).

⁵²⁷ 'Abd al-Rahman al-Jaziri (nd., Beirut, Dar Ihya' al-Turath al-'Arabi) p. 98, cited in Maghen 1997:181-197.

The logic behind each tortuously argued point (for instance, why sex with a hermaphrodite does, or does not, incur *janābah*) is peculiar to each school. A thesis waits to be written solely on the subject of *janābah*, but entering further into the argument is neither possible, nor feasible here. One matter is, however, of specific interest. For the different opinions on the purity status of a man who wears a barrier over the tip of his penis during penetration clearly hinge on whether *shahwah* can, of itself, be said to influence the contraction of a *ḥadath*.⁵²⁸ And here, for the first time, most jurists (including Hanafis and Hanbalis) concur with the Malikis' usual assumption that it does. Hence, when penetration takes place through a covering – therefore, hindering sexual enjoyment – these jurists rule that *janabah* is not incurred. Only the Shafi'is – who impose their *aḥkām* on adults and minors alike – stick to their principles, by rejecting the influence of *shahwah* entirely.

The *fuqahā*'s discussions on *janābah* constitute a vast, complex area of jurisprudence. The important thing for the reader to grasp is that, for the majority, it is not simply a state that results from the physical “events” of ejaculation and/or penetration, nor entirely from the psychological power of lust, but rather as a result of both (with individual jurists sparring over the relative importance of either factor). Hence, physical proximity, and pleasurable orgasm are interconnected, but independent factors in *fiqh*'s determination of *janābah*.

⁵²⁸ Boudhiba translates the following from the *Fatawa Hindiyya*:

In the case of a man who surround his penis with a rag and practises intromission without ejaculation, there is a divergence of opinion... The safest course is that if the rag is fine enough

7.2.B. MENSTRUATION/POST-PARTUM BLEEDING (*HAYD/NIFAS*) AND PROLONGED VAGINAL BLEEDING (*ISTIḤĀDAH*) (*Bid* pp.51-67)

The Qur'an describes menstruation as an "*adhan*", which has usually, although not always, been translated into English as "a harm" or "an illness" (2:222).⁵²⁹ In the same verse, men are warned to "(k)eeep away from women during menstruation and do not approach them (*lā taqrubuhunna*) until they are pure (*hatta yathurnak*)". With this warning in mind, the jurists restrict menstruating women and the *nafsā'* from participating in their religious obligations, and prohibit them from having sex. Whether these restrictions represent or enforce a woman's social inferiority (as some scholars have claimed), will be discussed in Chapter 9. For the time being, we are only interested in how the jurists identify the condition of *hayd* and *nifās*. In this regard, they are at great pains to distinguish between the vaginal emissions that incur a major *hadath*, and those which do not (her *istiḥādah*, and other forms of impure vaginal secretions such as leucorrhoea (*kudr*)).⁵³⁰

The fundamental legal difference between the two sets of conditions is that, on the one hand, menstruation and lochia "flow in a state of health" (*fī ṣaḥih*), whilst, on the other, *istiḥādah* (the blood from a vein) and leucorrhoea "flow in a state of illness" (*fī marīd*) (*Bid* p.51). However, there is nothing specific in the Qur'an, and little in the *aḥādīth*, to provide the jurists with any information on how to distinguish between these fluxes. Rather, as Ibn Rushd admits:

(T)he basis (for each woman) is experience (*khibrah*) and what each believed to be the usual occurrence (for herself). Thus each one of them (the *fuqahā'*) said

for one to feel the warmth of the partner's penis and *derive pleasure from it*, one (i.e. both partners) should wash, otherwise not (Boudhiba 1998:50).

⁵²⁹ See p.233 below for a list of alternatives.

⁵³⁰ As usual, it is only if a woman *sees* menstrual and lochial blood that she is excluded from her religious obligations. When she has not bled strongly enough to leave a stain on her tampon, she is judged not to be menstruating (Boudhiba 1998:51).

what he thought the common experience of women to be (and ruled accordingly) (*Bid* p.52).

Thereafter, depending on each jurist's assessment of feminine physiology, a great deal of mental exertion goes into establishing the minimum and maximum duration for "genuine" menstrual bleeding. Underpinning all this is the shared conviction that a woman should not face restrictions if her bleeding ceases before her minimum point of menstruation is reached, or, continues beyond her maximum point (after which she becomes *mustahādah* and, according to the majority, must perform *ghusl* once, and bind herself⁵³¹). The minimum duration for menses differs according to the *madhāhib*: in Malik's view, there is no minimum period ("it could be a single flow of blood"), Abu Hanifa rules that it is three days, and Shafi'i compromises by stipulating twenty four hours (*Bid* p.52).⁵³² Conversely, while the Hanafis suggest only ten days, most other jurists agree that the longest a woman can menstruate is fifteen days.

Without going into excessive detail, it is clear that, in everybody's opinion menstruation (and its ritual restrictions) is a strictly temporary affair. A woman must be permitted to fulfill her religious duties for at least as long each month (and preferably longer), as she is precluded from them.⁵³³ Hence, the *shortest* duration in any month a *mustahādah* is assumed to be pure is fifteen days (some jurists postulate seventeen); whereas, if the same woman misses her period for months on end, there is no time limit on how long she may continue to be pure.

⁵³¹ See e.g. *Umdat* p.94.

⁵³² *Bid* p.52. Obviously, the minimum specifications are intended for women whose periods are not regular, and who do not know whether they should consider themselves *ḥa'id* or *mustahādah*. If a woman is accustomed to menstruating, she will consider herself in a state of major *ḥadath* from the beginning of her bleeding.

⁵³³ This is stated in a *ḥadith* attributed to 'A'isha:

'A'isha... said: Imm Habiba b. Jahsh who was the spouse of 'Abd al-Rahman 'Auf made a complaint to the Messenger of Allah about blood (in *istihādah*). He said to her: remain away from prayer equal (to the length of time) that your menstruation holds you back. After this bathe yourself. And she washed herself before every prayer (Muslim "*Ḥayḍ*":190).

The *nafsā*'s exclusion tends to last longer than the *ḥa'id*'s, for the obvious reason that lochial bleeding normally persists longer than menstrual bleeding. However, in all other ways, the *nafsā*' finds herself in the same position as the *ḥa'id*, hence, when her bleeding does not stop after a prolonged period, she is likewise admitted to prayer as a *mustahādah*. The *fuqahā*' dispute when this should be. The Hanafis maintain that the longest period of *nifās* is forty days, the Malikis and Shafi'is argue that its maximum duration is sixty days (*Bid* p.54). An interesting, although not widely held, opinion (to which we will return, see p. 241) is that the maximum time limit for *nifās* differs according to the gender of the child. In this *hukm*, when a woman gives birth to a girl, she remains a *nafsā*' for forty days, whereas, if a boy is born, *nifās* lasts for only thirty (*Ibid*).

In these delicate matters, it is plain that the jurists rely on women to get things right for themselves, and they are *obligated* to pay attention to their bodies (in particular, the colour of their blood).⁵³⁴ If she is suitably attentive, a Muslim woman suffering from *istihādah* or leucorrhoea will know exactly when to cease prayers, and when to return. It is her responsibility to make sure her preclusion lasts no longer than it should, as the following *ḥadīth* proves:

'A'isha reported: Umm Habiba b. Jahsh who was the sister in law of the Messenger of Allah and the wife of 'Abd al-Rahman b. Auf, remained *mustahādah* for seven years, and she, therefore asked the verdict of Shari'ah from the Messenger of Allah about it: The Messenger of Allah said: This is not menstruation, but (blood from) a vein: so wash yourself and offer prayer. 'A'isha said: She took a bath in the wash-tub placed in the apartment of her sister Zainab b. Jahsh, till the redness of the blood came over the water. Ibn Shihab said: I narrated it to Abu Bakr b. 'Abd al-Rahman b. Al-Harith b. Hisham about it who

⁵³⁴ Although in the *ahādīth* 'A'isha often steps in and shows other women how and when they should purify themselves (see e.g. *Mishkāt* "Ṭahārah":437), the jurists obviously cannot do this themselves. According to one *ḥadīth*, Muhammad is confronted by a woman who does not know her regular timing, and cannot distinguish between the types of blood, and does not know if she should pray. Betraying more than a little frustration, the Prophets' response is to call menstruation "the gush of the devil!" But then to add: "observe menstruation for six or seven days. Allah knows what number it is, then perform *ghusl*" (*Bid* p.58).

observed: May Allah have mercy on Hinda! Would that she had listened to this verdict. By Allah, she wept for not offering prayer.⁵³⁵

A fascinating, if rather tragic story, this clearly prioritises the significance of prayers above all purity matters. Abu Bakr implies that Umm Habiba has damaged herself spiritually by unnecessarily excluding herself – in comparison, her bleeding is shown to be a paltry matter. Indeed, finishing Part II's survey of the jurists' disagreements with the *mustahādah* serves our purposes admirably. For although her concession causes problems for Reinhardt's theory, it directs our attention to where the jurists themselves are looking: the *ṣalāt*.

7.3. CONCLUSION

We have reached the end of Part II. Most (although certainly not all) major legal discussions surrounding both forms of *najāsah* have been included, and the contrasting principles of the jurists noted. I will conclude with a few modest observations on how each law school's approach to the overall subject matter differs.

On nearly every topic, Ibn Rushd attributes a school's eventual position(s) to an original opinion(s) of its Imam. And, whether or not the historical Malik and Abu Hanifa had anything to do with our present texts of the *Mudawwanah* or '*Asl*, many later Maliki and Hanafi rulings have a precedent in these early works (as we have seen, thanks to Maghen's translations). As Maghen notes, the didactic style of these texts is similar:⁵³⁶ the Imams are presented with prosaic, but problematic and borderline scenarios, and asked for their response. Countless questions are fielded: what happens when a man gets only a little blood, or vomit on his clothes? Must he stop his prayers even after a nose-bleed? If one sees a cat/bird/predator licking from it, may one still use this water for ablution? And so on. Their

⁵³⁵ Muslim "*Ḥayḍ*":655.

responses appear almost *ad hoc*, and the essence of both Maliki and Hanifi purity codes in their mature form retain something of this initial spontaneity.

In both schools, the most important factor, which is also the most significant general principle within *ṭahārah*, is that *no Muslim should undergo hardship* because of his need for purification. This principle existed from the outset. It is plainly derived from the Qur'an's provision for *tayammum*; and it underpins, for instance, the unanimous decision that a believer need never purify himself, unless he is sure that he is in a state of *ḥadath* (pp 172-173). Given the impossibility of avoiding contact with, and the emission of, so many impurities, many more concessions were needed. And, subsequently, in the course of legal development, the Qur'an's original spirit of leniency was applied in a multitude of contexts by the jurists.

In this regard, the Hanafis' methods are the most ingenious. Over and above all other factors, their category of *su'r* is fundamentally shaped by whether or not contact with a creature can be avoided (ch. 6.2). If it cannot be, the impurity of its *su'r* is ruled weaker. Moreover, while these jurists maintain a connection between the contraction of *ḥadath* and the emission of *ḥabath* which the other *madhāhib* reject, rather than this leading (as it should) to an obsessive demand for purifications, by their "excellent" distinction between light and heavy, small and large quantities of *ḥabath*, they manage to elude it (ch. 6.3, 4.B).

In several respects – such as their rule that no creatures may defile water (aside possibly from pigs), or their depiction of the *mustahādah* and those with chronic illnesses as pure – the Malikis are more lenient still. The Malikis' treatment of impurity is also perhaps the most

⁵³⁶ Maghen 1997:78.

interesting; for what may be described as “interior considerations” are not entirely divorced from the domain of legal purity by these jurists. Rather, questions of intention, memory and, in particular, sexual desire and pleasure play a significant part in their understanding of *hadath* (ch.7.3, 4, 7). This strategy is in keeping with the general spirit of Maliki law which, as Coulson observes:

Represents a moralistic approach to legal problems in contrast to the formalistic attitude developed by the Hanafis; for while the Malikis place great emphasis upon the intention of a person as affecting the validity of his conduct, the Hanafis mainly confine their attention to the external conduct itself.⁵³⁷

While few other jurists directly follow his example in these matters, another of Malik’s regulations was to have lasting importance. For, the process by which *fiqh* separates its two types of impurity surely gained momentum with his decision not to classify bleeding (and possibly vomiting, see fn. 457) as causes of *hadath*, despite the tangible impurity of the emitted substance.

Shafi‘i inherits the earlier jurists’ concern for fashioning a lenient and workable pollution system; but he also clearly knows of many competing views on every topic and, therefore, elects to standardise this system by imposing several immutable principles. As a consequence, his regulations do not possess quite the same instinctive feel to them as the Hanafi and Maliki ones. From our analysis, we can see that Shafi‘i succeeds in this task in the following ways:

- By severing the connections between *fiqh*’s dietary and purity codes. Except for pigs and dogs, no creature is capable of defilement. Thus, vast quantities of inter-

⁵³⁷ Coulson 1964:99.

madhhab polemic and debate on the purity status of *su'r* and the animal kingdom simply do not apply.

- By rejecting halfway rules. Substances are either pure or impure: all parts of *mayta* are also *mayta*; all quantities of *khabath* (no matter how small) remain impure.
- By restricting the influence of moral intention and mitigating circumstances on the contraction of *ḥadath*, in favour of firm guidelines. Almost all kinds of sleep break *wuḍū'* (ch. 7.2); regardless of whether a Muslim feels lust when touching a woman (ch. 7.3), or their genitalia (ch. 7.4), and whatever part of the body is involved, their *wudu'* is broken; irrespective of whether a Muslim genuinely forgets his *ḥadath*, if he then prays without *wuḍū'*, his prayers will not stand (ch. 7.4.); and irrespective of whether a man wears a “barrier” over his penis and limits his pleasure, penetration unequivocally results in *janābah* (ch. 7.2.A.ii).
- By ruling analogously. Pigs and dogs defile in the same way, contact with them requires the same method of purification (ch.6.2.).
- By clearly differentiating between the two spheres of *najasah*. Classical *fiqh* distinguishes between the two forms of *najāsah* using terminology that can be traced to Shafi'i (7.1. Exc.B). *Al-sabīlayni*, and the witness of *ḥadīth*, are the only factors in a Muslim's contraction of *ḥadath* impurity.
- By basing *aḥkām* on Prophetic *ḥadīth* when possible. Where the meaning of a *ḥadīth* clashes with Shafi'i's general logic – the purity of fly's wings (p.132), the sevenfold washing of the dog's vessel (pp. 150-151), praying in the sheepfolds (p.159) – it is not rejected but restricted to a specific, rather than general application in *fiqh*; in doing so, Shafi'i and his school minimise the possibility that one tradition will unbalance the logic of the system.

Because of such strategies, the Sunni purity code is at its most coherent in its Shafi'i mold. One ruling, in particular, testifies to Shafi'i's wish to resolve past uncertainty. As has been noted, he stipulates a precise measurement, a *qullatayn* (216 litres approx.), over which a source of water may not be defiled unless one or more of its characteristics have changed.⁵³⁸

An instruction to keep water sources filled up to this level must have proven an arduous task in dry Middle Eastern, African, and Mediterranean climates. Indeed, this particular rule drives Al-Ghazali to distraction – in the *Ihyā* he lists seven reasons why Shafi'i is wrong!⁵³⁹

Yet, despite the commonsense in his objections, Ghazali is missing the point. As I have said, Shafi'i clearly knows of a confusing number of approaches to this and many other problematic issues; his main aim is to settle these matters – normally with the aid of one or more Prophetic *ahādīth*. Previously, the Hanafi and Maliki jurists had been rather vague in their approaches to water pollution. Shafi'i wishes to resolve this matter, and other areas of confusion, with exactitude. By adopting such strategies, the Shafi'is provide Muslims with a clearer idea of where they stand on their suitability for prayer (although not necessarily an easier path to follow).

Despite coming perilously close to having just done so, it is misleading to present the views of the different *madhāhib* as if each has a corresponding (chronological) place in the evolution of *tahārah*, culminating in the Shafi'i version of the law. The Sunni ritual pollution code(s) did not develop smoothly in one direction. Historically, the Hanbalis and Zahiri schools both arrive later than the Shafi'is, yet do not always choose to follow Shafi'i's line on purity and pollution.⁵⁴⁰ My intention was merely to compare the nature of each school's

⁵³⁸ See fn.230.

⁵³⁹ *Ihyā* pp. 17-24.

⁵⁴⁰ Although typically siding with Shafi'i, we have seen that, on the basis that these are opinions are supported by stronger traditions, the Hanbalis prefer the Maliki (e.g. on the purity of edible dung creature' dung), or

approach to purity. From this perspective, it makes sense that Shafi'i's thoughts on purity postdate many major Maliki and Hanafi decisions on the same topics.

In summary, in Part I it was shown that *tahārah* law, in general, is unusual in that it does not reflect ideas of social order. Now that we have reviewed the jurists' arguments concerning the different *najāsāt*, we have some idea of the ideosyncracies of each of the law schools' approaches. Only one principle may be said to unite all the jurists: specifically, the conviction that, while observing the purity laws is of great importance, what really matters is that these laws exclude Muslims from their religious duties as rarely as possible.

Hanafi (e.g. the cause of *hadath* from impure bodily emissions) alternatives. The Zahiris often uphold unique opinions (here as everywhere) – e.g. Muslims with major *hadath* may enter mosques, and intromission does not alone incur *janābah* – and it is pity we have not had the chance to look at their approach in more depth.

PART III

THE FUNCTIONS OF *NAJASAH*

CHAPTER 8

THE NON-MUSLIM

*“America is worse than Britain, Britain is worse than America. The Soviet Union is worse than both of them. They are all worse and more unclean than each other”
(Slogan of the Islamic Republic of Iran⁵⁴¹)*

In Part III we return to the function of ritual pollution. Recall that, in Part I, four contrasting theories on the function of pollution ideas were discussed; all that is going to be said about the first two, the materialist and psychological theories, has now been said. The fourth type of approach, the religio-moral theory, will be considered in Chapter 10.

Before then, we must come back to the third and most influential of these approaches, the socio-symbolic theory, which finds religio-social hierarchies symbolically reflected and practically enforced in ritual pollution behaviour. This theory is concerned with power strategies; it asks who is vilified through the accusation of pollution and why. In general, such an approach has been shown to be misleading in the context of Sunni Islam’s ritual pollution laws, as was the rationale behind it (Mary Douglas’ theory of a symbiotic relationship between the social and physical bodies). However, two possible instances where *najāsah* regulations do serve hierarchical purposes, non-Muslims, and women, were noted, and in chapters 8 and 9, the position of each group will be considered. We shall see that, contrary to what we would expect, non-Muslims are treated very leniently by the *tahārah* system; and it is only women who are in any way disadvantaged by it. Unfortunately, although a great deal could be said about individual jurists’ attitudes to both subjects (after Part II, we know that they rarely agree on details), our investigations must be comparatively

⁵⁴¹ Cited in Lloyd Ridgeon’s Crescents On The Cross: Islamic Visions of Christianity (1999 Glasgow Trinity St. Mungo Press) p. 108.

brief as space is limited. A significant part of them will be spent addressing the difficult topic of why people with a major *hadath* are excluded from mosques. In the next two chapters, I will also tentatively apply Mary Douglas' theory that ritual pollution ideas flourish in situations where social relations are tense, or ambiguous.

Let us begin with the non-Muslim (*kāfir*) – the *ahl al-kitāb/dhimmi* (Jews and Christians/and other payers of poll tax) and *mushrik* (polytheist, non-payers of poll tax)⁵⁴² - who, according to Nawawi, all have *the same status as the Muslim* in matters of legal purity (p.100 above). At first sight, this appears to be in direct contradiction of the Qur'an's description of the *mushrik* (if not the *ahl al-kitāb*):

O you who believe! Truly the *mushrikūn* are impure (*innamā al-mushrikūn najāsun*). Let them not approach the Sacred Mosque (*Al-Masjid al-Harām*) after this year is over (9:28).

A straightforward reading of this verse suggests that, like any other form of *najāsah* – blood, urine, excrement etc. – the *mushrik* is to remain outside the doors of the *al-Harām* because he is essentially impure (i.e. *nājis/khabith*). Moreover, this is how the Shi'i and Zahiri jurists have always interpreted it. In a recent Shi'i law manual, for instance, al-Husaini Seestani places the polytheist between pigs and wine in his list of twelve *najāsāt*. He is reluctant, however, to classify the *ahl al-kitāb* (Christians and Jews) in the same category. In Seestani's opinion:

The *mushrik* is a person who does not believe in Allah and His Oneness... (However) as regards the *ahl-al-kitāb* (Christians and Jews) they are commonly considered *nājis*, but it is not improbable that they are pure... On the basis of the

⁵⁴² The category of *dhimmi* originally included only Jews and Christians, but with the spread of Islam was soon broadened to include many other groups. See Cahen "*dhimma*" in E.I.II; and cf. fn.303 above.

Verse (9:28), the entire body of a *mushrik*, including his hair and nails, and all liquid substances are *nājis* (and thus to be avoided).⁵⁴³

Among the Sunnis, the famous Zahiri scholar Ibn Hazm reiterates much the same argument, but considers *all* non-believers impure and restricts their ability to contaminate to their saliva.⁵⁴⁴ Accordingly, he forbids anyone to use even the *ahl al-kitāb*'s cooking utensils "except in circumstances in which lawful vessels cannot possibly be obtained, and in this case only after they have been washed".⁵⁴⁵ Pace Nawawi, there are even some scholars among the four major *madhāhib* who follow a literal interpretation of the Qur'an. For instance, in his *Ahkām ahl al-Dhimmah*, the Hanbali scholar Ibn Jawziyyah tells us that, while in general the Hanbalis agree with Shafi'i, his personal opinion is that the polytheist and *dhimmī* are each utterly *khābith*, and should be kept out of mosques for that reason.⁵⁴⁶ Indeed, although Ibn Rushd presumably views the *dhimmī* as pure, he describes the polytheist's *su'r* as impure because "it is better to adopt the obvious meanings of the Book, as against analogy" (*Bid* p.28). The political ramifications of describing the *kāfir* as essentially impure are self-evident; like typical pollution strategies the world over, it ensures the physical and hierarchical separation of Muslims from non-Muslims.

As we know, however, in contrast to al-Jawziyyah and Ibn Rushd, the vast majority of the Sunnis do not think that the Qur'an believes anyone to be *nājis* in the usual legal sense. Having passed over this matter in chapter 4, the Sunnis' exegesis of Q. 9:28 will now be discussed.⁵⁴⁷ The majority of scholars within the four schools agree on two points. Firstly,

⁵⁴³ Seestani "*Tauhdhihul Masae'l* translated as "Islamic Laws" by Hamid Mavani available at <http://www.al-islam.org/laws/>.

⁵⁴⁴ Goldziher 1971:59-60. For the argument that all non-Muslims belong to the same category of purity, see next page.

⁵⁴⁵ Al-Qastallani p.206 cited in Goldziher 1971:61.

⁵⁴⁶ Ibn Jawziyyah *Ahkām Ahl al-Dhimmah* (1994, Beirut, dar al-'ilm al-miyin) p.195ff.

⁵⁴⁷ Locating detailed information on the jurists' debates regarding the purity of non-Muslims has proven difficult and, to a large degree, I rely on material drawn from Maghen (1997:272 ff.), and Goldziher (1971:59-64).

unlike Seestani and despite the fundamental difference in legal status between those who pay the poll tax (*dhimmīs*) and those who do not (*mushrikūn*), they classify *all* non-Muslims in a single category of purity.⁵⁴⁸ By doing this, they raise the status of the *mushrikūn* proper (i.e. the polytheists) to that of the *ahl al-kitāb*, and enable the essential purity of the former to be defended on logical grounds. For, while it is debatable that the Qur'an ever intends polytheists to be able to enter the Sacred Mosque, it also seems highly improbable that it considers Christians and Jews essentially impure. After all, it permits intermarriage between Muslim men, and Jewish and Christian women (Q. 5:5), and this permission would hardly have been granted had these individuals been *khabith*. This, plus Muhammad's known interaction between Muslims and Jews and Christians is a popular defense against the Shi'is' position:

The Muslims have been permitted to marry the People of the Book; and they have been allowed to use their utensils provided that they do not contain impurities (i.e. *khabā'ith*)... these facts go to prove that the Holy Prophet never treated them as inherently defiled and polluted person, for had he thought them so, he would never have come into contact with them.⁵⁴⁹

Goldziher notes that the majority of the Sunnis defend the purity of Christians (and by implication all non-Muslims) through two other traditions. In one, Umar performs *wudu'* with water drawn from the vessel of a Christian woman; and in the other, the Prophet gives his permission to eat from the dishes of the *ahl al-kitāb* (if others cannot be found).⁵⁵⁰

⁵⁴⁸ This strategy has some Scriptural support, see 9:29, for instance, where the Qur'an advocates fighting against *all* "who do not believe in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and his Messenger, nor acknowledge the Religion of Truth from among the People of the Book". For, if all non-Muslims are to be fought, then, presumably, everyone shares the same sin and purity status. How the categories of *mushrik* and *ahl al-kitāb/dhimmi* purity were conflated is not our concern. To show that there was (close to) eventual concord on this matter, suffice it to refer to the tenth century Hanafi scholar al-Jassas, who explains that "among the jurists, all disbelief is one religious grouping, even if its forms of doctrine and practice differ", J. D. McAullife "Legal exegesis: Christians as a Case Study" in *Islamic Interpretations of Christianity*, ed. L. Ridgeon (2001 Richmond, Curzon Press) p.63.

⁵⁴⁹ *Nail-l-Awtar* vol.1 pp.20-21 cited in Siddiqui's translation of the *Mishkāt* p.228. (Parenthesis added).

⁵⁵⁰ Goldziher 1971:59-60.

Goldziher also mentions al-Razi's strong argument that the body of a non-believer cannot be essentially impure, because that would imply that, by accepting Islam, his biological essence undergoes a molecular transformation (such as when an impure skin becomes pure through tanning).⁵⁵¹ In other words, as removing essential impurity only occurs through the destruction, or complete transformation of a thing's essence (ch. 4.4.A.), and neither is possible through saying the *Shahadah* and performing *ghusl* (the acts stipulated by al-Razi as the Sunni requirements to embrace the faith), a non-Muslim must be legally pure to begin with. This last point is well illustrated by a *ḥadīth* reported by Sarakhsi in which Muhammad asks Abbas to find some water for him during *hijjat al-wada'*. According to this tradition, Abbas is reluctant to do so because the water sources in the vicinity were likely to have been used by non-Muslims and thus, he presumes, polluted. Muhammad waives aside Abbas' objections and sends him out on his task, explaining that "we are no different from them".⁵⁵²

The second point of general agreement among the Sunnis is that the Qur'an's description of the *mushrikūn* as "*najās*" is intended metaphorically. Hence, rather than referring to a status of essential impurity, it refers to his moral corruption and laxity in terms of personal hygiene. Returning to the same extract that was cited in Chapter 4 (p.100), we find Nawawi continuing:

As for the words of Allah, the Almighty and Majestic: "the polytheists are *najās*, the intent is the impurity of their beliefs and their general filthiness (*al-murād najāsāt al-i'tiqād was-l istiḡdhar*), and not that their limbs are somehow impure in the matter of urine or faeces or the like."⁵⁵³

And echoing Nawawi the best part of a millenium later, Sayyid Sabiq writes:

Although Allah says in the Qur'an: "Verily the *mushrikūn* are *najas*", this is not a reference to their physical state (i.e. their essential purity), but to their false beliefs

⁵⁵¹ Goldziher 1971:62.

⁵⁵² Cited in Maghen 1997:294.

⁵⁵³ Nawawi *Sharh* 2. P.51 (Maghen 1997:51)

and creeds. (Moreover), they may come into contact with dirt or impurity (*khathath*), but this does not mean that their possessions or bodies are impure.⁵⁵⁴

Thus, the Sunni jurists circumvent (what the Shi'is and others read as being) the obvious meaning of the Qur'an's description of the polytheists as *najas* by supposing, firstly, that the *mushrik* inhabits the same purity category as all non-believers, and secondly, that *najas* refers to the immoral beliefs and slobbish behaviour of non-Muslims, rather than their essential impurity.

What the Qur'an really intended is a mystery. Goldziher takes the verse at face value, and assumes that the early Muslim attitude was to consider non-believer's contagiously defiling (at least in the vicinity of mosques); thus, in his view, the Shi'is have remained loyal to the intention of Scripture, while the Sunnis evolved away from it.⁵⁵⁵ For Maghen, the answer lies in the precise political and historical circumstances in which it was revealed (by Tabari's dating this was 9 A.H.), and the Qur'anic context in which it is found (in particular, Q. 9 vv.1-4). In contrast to Goldziher, he concludes that all these verses are:

direct reactions to the political developments in the earliest days of Islam. They are provisions in time as it were... (in 9:28) the Qur'an did not intend to prohibit *mushrikūn* from entering the mosques from that point on in history... but rather solely and context specifically to forbid Meccan polytheists from trespassing on the grounds of the *Haraam*.⁵⁵⁶

⁵⁵⁴ Sabiq 1991:5 (parenthesis added).

⁵⁵⁵ Goldziher 1971:62. Goldziher clearly appreciates their change of heart, applauding it for: its perfectability, its possibility of evolution, and also the ability to adapt its rigid formalism to the requirements of social intercourse by modifying the Koranic tenets of the impurity of unbelievers through its own interpretation, until it reached a point where it abandoned this doctrine (Ibid)

⁵⁵⁶ Maghen 1997:278-279 (parenthesis added).

As the Qur'an does not say anything else on the subject of the non-believer and impurity, nor uses the term *najas* anywhere else, Maghen's is perhaps the more plausible of the two explanations.

The concern of this short analysis, however, is the way the Sunni jurists apply this interpretation in practical terms. How do they exclude, belittle, or subordinate the non-Muslims through the use of ritual pollution strategies? The answer is that most of them do not. The only restriction placed upon a non-Muslim concerns whether or not he may enter mosques (hardly surprisingly given the Qur'an's exclusion of the *mushrik* from *al-Harām*). In practical terms, the Malikis are the strictest; they deny all non-believers entry to any mosque unless it is absolutely necessary. As in the case of Muslims with a major *hadath*, the Shafi'i's and Hanbalis permit them to pass through any mosque other than the *Harām*, as long as they "do not waste this opportunity by eating or sleeping there", and first gain approval from a Muslim before entering. Whereas, by far the most lenient in this regard, the Hanafis permit all non-believers to stay for "reasonable periods" within any mosque, and even to enter "*al-Harām al-Masjid*" ("as long as they do not take up residence there").⁵⁵⁷ Thus, from the four major *madhāhib*, only the Maliki *hukm* uses pollution ideas to restrict the actions of a non-Muslim (and excluding him from the mosque is probably not a great burden in most cases).⁵⁵⁸ It must be also said that their opinion is the only one that makes sense according to the usual *tahārah* rules. For, in spite of the jurists' near universal agreement that

⁵⁵⁷ For these opinions, see al-Mawardi's *Ahkam al-Sultaniyyah*, translated as "The Laws of Islamic Governance" by Asadullah Yate (1996, London, Ta Ha publishers) pp.239-240.

⁵⁵⁸ While in the Maliki *madhhab*, a non-Muslim is still viewed as essentially pure, there is a greater element of suspicion expressed towards mingling with him than in the other schools. For instance, we have already noted Malik's opinion in the *Mudawwanah* (p.122) that the *su'r* of non-Muslims is not to be used for *wudu'* (p. 118 above); likewise, while the other jurists have no problems with this, Malik (although not considering it defiling *per se*) does not permit a Muslim to perform *ghusl* upon, nor bury a non-Muslim corpse (*Bid* p.261). For a good description of the Maliki distrust of non-Muslims and especially Christians in a specific historical context, see M. Speight "The place of Christians in Ninth Century North Africa according to Muslim sources" in *Islamochristiana*, 4 (1978) 47-65.

no *believer* may enter/remain within a mosque in a state of major *ḥadath* (ch. 7.2.A.i),⁵⁵⁹ and their complete agreement that no-one shall enter mosques carrying (above a certain amount of) *khathath*, there appear to be no regulations requiring that a visiting non-Muslim should perform *ghusl*, or even that his clothes be checked for *khathath* before he enters a mosque.⁵⁶⁰ This apparent oversight leads to the surprising conclusion that, despite the damning testimony of the Qur'an itself, the vast majority of jurists deal more leniently with non-believers than with Muslims!

Before exploring why this should be the case, we must first make a small digression into the nature of the relationship between *ḥadath* impurity and the mosque. To do so, let us begin with Maghen's explanation of the present problem. For he also supposes that the purity status of non-Muslim visitors to mosques goes unchecked, but argues that this may be explained quite rationally. As far as the intruder's potential *khathath* defilement is concerned, Maghen assumes that most jurists are prepared to turn a blind eye, as long as no impurity is visible on his person,⁵⁶¹ and he uses the same logic to explain the majority's permission for the non-Muslim *ḥa'id/nafsā'* to enter mosques. This is because for Maghen, a menstruant is only excluded from sacred ground because of the possibility that she might drip menstrual blood onto the floor (see p. 244 below). Thus, he claims, as long as she is suitably wrapped up, her temporary presence in the mosque should not worry anyone (albeit Muslim women should have greater respect for sacred precincts and, presumably, should stay away on that basis). According to Maghen, the *junūb* is another matter. For, as we shall soon see, he argues that *janabah* possesses a unique and abstract capacity to *affect* mosques; in light of this, he is considerably more stretched to explain why there are no provisions for the non-

⁵⁵⁹ Indeed, in the exact reverse of the present topic only the Zahiris permit them to do so.

⁵⁶⁰ Although I concede that this might be implied in the Shafi'i's decision that non-Muslims may only enter mosques if they ask permission.

Muslim *junūb* to perform *ghusl* before entering them. In the end, he is also compelled to attribute this fact to the jurists' tendency to give everyone the benefit of the doubt. Thus, in his view, the non-Muslim *junūb* is permitted to enter mosques by most jurists because:

(He is only) *junūb* by probability: the chances are that s/he has incurred the defilement of *janābah* (but) since there is no way to obtain definite information on this score (short of asking – which is probably considered socially unfeasible...) we would suggest that the non-Muslim is simply given the benefit of the doubt.⁵⁶²

As for Shafi'i's policy of forbidding non-believers access to the *Ḥarām*, Maghen argues that this is because: "when it comes to the *Ka'aba* we (the Shafi'is) do not mess about".⁵⁶³ While what he means is relatively plain (the *Ḥarām* is more important, therefore the existence of any type of *najāsah* therein is less tolerated, and granting the benefit of the doubt less advisable), this rationale carries the unfortunate implication that the Hanafis *are* prepared to mess about! His explanation relies upon the well-attested principle that a *ḥadath* does not exist unless there is prior knowledge of it (p.172 above); however, while this is a firm plank of the *ṭahārah* system, in the present context, Maghen's use of this idea is questionable. For the notion that non-Muslims, and especially Christians (who adhere to no ritual pollution code), are very prone to impurity of all sorts is, as he points out, extremely widespread in early Muslim sources.⁵⁶⁴ Indeed, given that *janābah* is contracted through *any* emission of semen (male or female) and not simply penetration, the likelihood that a (non-castrated) adult has not incurred *janābah* at some time in his or her life is not simply remote, but virtually impossible. Moreover, when a non-Muslim embraces Islam he must (as mentioned above)

⁵⁶¹ He bases this on Shafi'i's permission to use the *mushrik's* water, as long as "one has no express knowledge of the presence of *najāsah* on him" (*Umm* p.21, cited in Maghen 1997:282-283).

⁵⁶² Maghen 1997:298.

⁵⁶³ Maghen 1997:300. (Parenthesis added). It is surprising that Maghen does not appear to consider the Qur'anic verse to be a direct influence on the Shafi'is' *ḥukm*.

⁵⁶⁴ Maghen 1997:297. Examples are manifold, what Ghazali says in his defense of the Maliki doctrine regarding water purity will suffice. He adduces the *ḥadith* in which Umar draws water from the vessel of a Christian woman. This, he claims, proves that water cannot be defiled unless one of its properties changes

perform *ghusl*, which logically indicates that the jurists *do* believe that non-Muslims are in a perpetual state of *janabah*.⁵⁶⁵ In light of these factors, it makes little sense that the majority (the Malikis are obviously more suspicious) are prepared to consider the *mushrik* naturally clean (i.e. free from *khath*), and sexless (i.e. free of *janabah*). Contra Maghen, I suspect that there is more to this than merely giving the non-believers “the benefit of the doubt”. Instead, I would suggest that most jurists’ apparent insouciance regarding whether or not non-Muslims enter mosques stems from the realisation that, in Sunni Islam, *neither the mushrik, nor anyone else in a state of hadath, is really capable of defiling sacred space* – be it a mosque or, for that matter, a Qur’an.

Admittedly, this conclusion is speculative and - in light of the vast effort spent on deciding exactly when, for instance, a woman with extended bleeding is permitted to enter a mosque – it may also sound illogical. After all, pollution systems are *normally* constructed to protect sacred space from the defiling presence of those who harbour impurity.⁵⁶⁶ Indeed, the two closest relations to the *taharah* code, the Zoroastrian and Jewish pollution systems, both concur on this point. In their cases, protection of sacred space from impurity – moral and bodily – is believed to safeguard the entire religious universe.⁵⁶⁷ Nevertheless, given the evidence of the *mushrik*, it is hard to avoid the conclusion that Sunni Islam simply does not envisage any defilement of sacred space. Certainly, if a mosque were capable of being “defiled” by the entry of a *junub*, then the manner in which this could be said to occur defies easy explanation. If demons do reside within the body of the *muhdith*, there is no suggestion in the law that they spring to life to attack sacred areas. And what happens to the *muhdith*

because “*the impurity of the (Christian) woman and that of her vessels are quite evident and very readily discernible*” (*Ihya* p.20). In other words, if a Christian woman does not defile this water then noone will!

⁵⁶⁵ For this rule, see Goldziher 1971:64.

⁵⁶⁶ See above pp.4-5 There is a wealth of material on this, all of which agrees that, within pollution conscious societies (everywhere from ancient Egypt, Israel, to Hindu communities in modern America), the spheres of holy and polluted pose a threat to each other, see e.g. Milgrom 1991: 976 ff.

himself – it was argued that Allah withdraws His Blessing (ch. 4.4.A.) – cannot, we assume, hold true for mosques as well. Furthermore, to my knowledge, a *ḥadath*-defiled mosque is not something envisaged by either the *ḥadīth* material, or the legal texts. If it were, there would surely be some regular purification ceremony designed to lift a mosque's (accumulated) *ḥadath* impurity.⁵⁶⁸ At the end of the following chapter, Maghen's rational explanation of the *ḥa'id/nafsā*'s exclusion from the mosque will be critiqued, and a hypothesis suggested for why *taharah* permits access to the *mushrik* and not the Muslim with a major *ḥadath*. Until then, however, we will leave this matter pending.

The remainder of the present chapter will be restricted to a quick consideration of *why* the jurists are so lenient to the *kāfir*? Why, given the Qur'an's decision to exclude the polytheists (if not Jews and Christians) from *al-Harām*, do most choose to allow him access to mosques when they know him to be prone to impurity (if not essentially impure)? Why is it not even required that he perform *ghusl*? Unlike *tahārah*'s attitude to the Muslim, this surely has nothing to do with egalitarianism. According to the law, the non-believer *is* religiously and socially inferior, and there is no evidence that his admittance to mosques stems from humanitarian interests. From the point of view of commonsense and pragmatism, however, these questions are not difficult to answer. For it is very likely that early Islam simply could not afford to impose an exclusion order on the non-Muslim because, if it had done so, the idea that this exclusion *was* due to a non-believer's essential impurity would have been problematic to refute. Consequently, the idea of an essentially impure believer would have made religious life extremely difficult for countless Muslims, something that *tahārah* strives

⁵⁶⁷ For Zoroastrianism, see Choksy 1989:67; for Judaism, see J. Milgrom 1976.

⁵⁶⁸ Such as we find in the Bible's Day of Atonement rite, in which first the temple (Lev.16:16), and then the Israelites are purified (Lev.16:21). For this process, see Milgrom 1976:396.

to avoid at all costs.⁵⁶⁹ It would also have affected trade, of course, as physical interaction between Muslims and their neighbours would need to have been restricted.⁵⁷⁰ In addition, it would be, as Maghen notes, quite impossible to check whether someone is, or is not, in a state of major *ḥadath* (and to question them about it would break certain rules of propriety). And, if a major *ḥadath* is apparently not a problem, to insist upon checking for *ḥabath* would seem incongruous, as well as time consuming, for the mosque's personnel. As for the differences between the schools, the reason that the Malikis continue to exclude non-Muslims from all mosques, whereas the Hanafis go to the other extreme, probably has much to do with the original locations of these schools. After all, originally, the Malikis (probably) enjoyed the relative seclusion of Madinah and Arabia,⁵⁷¹ whereas Hanafi law took shape in the much more cosmopolitan surroundings of Iraq. Hence, by declaring the presence of non-Muslims in mosques unimportant, the Hanafis were merely demonstrating their usual pragmatism.⁵⁷² Not for the first time, Shafi'i's opinion finds the middle ground, by insisting that a non-Muslim must attain permission to enter a mosque he perhaps also lends proceedings more dignity than the Hanafis, and by restricting them from *al-Ḥarām* he follows the meaning of the Qur'anic verse.⁵⁷³

⁵⁶⁹ Especially if, as some scholars suggest, the early Muslim Caliphate consisted of more non-Muslims than believers up until the Crusades. See D. Sourdel's chapter on the Abbasid Caliphate in *The Cambridge History of Islam*, ed. P Holt *et al* (1970, Cambridge, Cambridge University Press).

⁵⁷⁰ For the difficulties in sharing a marketplace with people who are likely to defile you, or vice versa, see Dubois and Beauchamp 1897:390, and E.G. Browne's *A Year Among the Persians* (1983, London, [no. pub.]) pp.370-372. It seems that Muslims were well aware of the potential problems in losing trade through pollution laws: al-Jawziyyah claims that the reason the *jizya* tax was imposed upon Christians and Jews was because Allah realised the financial drawbacks to prohibiting non-Muslims from the Makkan mosque, and wanted to recompense them (*Ahkām ahl al-Dhimmah* p.198).

⁵⁷¹ Norman Calder's theory that Maliki law developed in Spain is interesting but remains unproven and should not distract us here (see Calder 1993). Moreover, if this were indeed the case, it could be argued that the Maliki's strictness reflected the early conflicts and tension between indigenous Spanish Christians and the newly arrived Muslims.

⁵⁷² Unfortunately, I have not been able to locate the Hanafi arguments for permitting non-Muslims to enter the *Ḥarām*. Maghen does not mention them, and Goldziher notes that they "just about abrogate the validity of the Qur'anic prohibition" without going into more detail (1971:63 fn.1).

⁵⁷³ Yet, ironically, Shafi'i's opinion may also have caused more problems than it solved, as an anecdotal piece of polemic by Ibn al-'Arabi is intended to show:

In Damascus I used to see a strange sight. The large congregational mosque there has two doors, an eastern door, which is the Bab Jayrun, and a western door. People were in the habit of using the mosque as a pathway. Walking through it all day long in their every day affairs. When a

The above reasons must have played a part in Sunni *fiqh*'s pronouncement of the non-believer as essentially pure, and the majority's decision to permit him to enter most mosques. There is, however, an additional way to explain *tahārah*'s apparent leniency towards non-Muslims, and it involves using Mary Douglas' theories in a way that she is unlikely to have envisaged. As we know, one of Douglas' central premises is that ritual pollution beliefs flourish in situations where social relations have become ambiguous or tense, and need to be resolved.⁵⁷⁴ Logically enough, Douglas observes that, when the opposite is true and there is no discernible social tension, ritual pollution themes lose their sting (either dying out or simply become superfluous):

There is a general principle that when the sense of outrage is equipped with practical sanctions in the social order, pollution is not likely to arise. Where, humanly speaking, the outrage is likely to go unpunished, pollution beliefs tend to be called in to supplement the lack of other sanctions.⁵⁷⁵

In response to this insight, it is tempting to suggest that *tahārah* does not need to use pollution ideas to coerce or exert power over non-believers because - to a large extent inheriting a political situation where Umayyad military successes had proven their faith invincible, and in which the *kāfir* was already firmly held in place by the poll tax (*jizya*)⁵⁷⁶ - the jurists developed a law code which is both relatively lenient in the degree to which it permits the non-Muslim to rule himself, and very strict in governing the boundary line

dhimmī wanted to pass through, he would stop at the door until a passing Muslim went by. Then the *dhimmī* would say to him: O Muslim, may I have your permission to go through with you? The Muslim would respond positively so the *dhimmī* would enter with him, all the while wearing the badge (*ghiyār*), the sign of the *ahl al-dhimmah*. If the mosque custodian saw the *dhimmī* he would shout at him, "Go back, go back!" But the Muslim would tell him, "I have given him permission" and so the caretaker would leave him alone, cited in McAullife 2001:69.

⁵⁷⁴ See above p.58.

⁵⁷⁵ Douglas 1966:133. The Walbiris of Central Australia are her example.

between him and believers. As a result, it reflects and endorses a social situation in which non-Muslims are envisaged as incapable of causing outrage (and not worth the effort of describing as impure).⁵⁷⁷ Let us consider the evidence, *fiqh*'s method of separation is very simple: all non-Muslims are distinguished from all Muslims. Once someone converts, s/he is legally entitled to the privileges of Muslim life and does not need to pay the poll tax.⁵⁷⁸ Inside *dār al-Islām*, non-Muslims are (to a reasonable degree) permitted to rule themselves.⁵⁷⁹ In return for being taken under Islam's wing, the *dhimmīs* have to pay the *jizya*; but this is fixed at a lenient amount (according to the '*Umdat*, adult males pay a minimum of one dinar per annum) and is to be "collected with leniency and politeness, as are all debts, and not to be levied on women, children, or the insane".⁵⁸⁰ No *kāfir*, on the other hand, is entitled to live within the Hijaz, and is only allowed to pass through if granted safe conduct (*aman*) by a free male Muslim (*Bid* p.458).⁵⁸¹ Nor is he permitted any share of the booty from a successful battle (*Bid* p.462). Unsurprisingly, intermarriage between non-Muslim females and Muslims males is forbidden because their children will not be Muslims;⁵⁸² and a *kāfir* is not permitted to own a Muslim slave or concubine (if they convert he must free them or sell them to Muslims). Through such regulations, potentially risky interactions with non-Muslims are avoided.

⁵⁷⁶ According to Islamic tradition, all non-Muslims were driven out of Arabia by Umar, see Y. Courbage and P. Fourbes *Christians and Jews Under Islam*, trans. by J. Mabro (1997, London, I.B. Tauris & Co) ch.1. Recent scholars have noted that a few non-Muslim communities managed to remain (Courbage and Fourbes 1997:7)

⁵⁷⁷ On early Muslim policies regarding the *dhimmi*, see Courbage and Fourbes 1997 ch. 1.

⁵⁷⁸ As noted, the non-Arab converts and freedmen (*mawāl*), who soon constituted a major part of the early Caliphate, were often a cause of tension in early Islamic history (p.113). Yet, aside from the rule that he is not permitted to marry Arab women, there are very few legal strategies via which the *mawla* is distinguished from the Arab Muslim, see Crone's article "*mawla*" in *E.I.II*.

⁵⁷⁹ Thus, Schacht observes: "Under the Umayyads, the non-Muslim subject populations retained their own traditional legal institutions, including the ecclesiastical and rabbinical tribunals... (which proved) the basis of the factual legal autonomy of non-Muslims in the Middle Ages and has survived in part down to the present generation" (1970:548 parenthesis mine).

⁵⁸⁰ '*Umdat* p.608.

⁵⁸¹ Even then *aman* only guarantees protection against loss of life, not enslavement (*Bid* p.458).

⁵⁸² Doi 1984:134 ff.

In short, then, Muslim rule, as it is envisaged in *fiqh*, is not a tyranny, but it appears to classify the world into three categories of non-Muslim: those with whom the believer (Arab and non-Arab alike) is friendly (and to whom he grants *aman*), those he may tolerate (the *dhimmīs*), and those he must fight (the inhabitants of *dār al-harb*).⁵⁸³ My suggestion is that, because the lines separating each are clearly defined, pollution ideas are not needed to restrict interaction between them. One of the more remarkable results, as we now know, is that most jurists do not mind if a non-Muslim enters a mosque regardless of his undoubted impurity.⁵⁸⁴

Extending this logic, and in addition to the jurists' relative egalitarianism in the sphere of *ibādat*, we may hypothesise that *the firmness of the law* is another reason why *tahārah* principles ostensibly fail to disadvantage anyone (with the notable, although mild exception of women, see the following chapter). After all, while it cannot be said that *fiqh* is particularly interested in upholding social or class differences, every aspect of a Muslim's interactions within social, financial, and religious spheres – even who may legally accompany who when walking in the market place – is scrupulously regulated by law. *Fiqh* is all embracing, and the jurists classify any act under five values or principles (*al-ahkām al-khamsa*) in a concerted attempt to embrace all aspects of human existence from the legal

⁵⁸³ All non-Muslims who do not pay the *dhimma* are to be fought on the basis of Q.9:29. There are disagreements, however, over what is to be done with them if they are captured. An indication of Sunni Islam's confidence in these matters is that it is legally disallowed for Muslim soldiers to flee from an opposing army, unless it is at least twice the size of its own (*Bid* p.462)!

⁵⁸⁴ I am aware that I have described the jurists as if they were an integral part of the political and military machinery of early Islam. This is potentially misleading. The Goldziher/Schacht view is that the earliest jurists often considered themselves to be "the pious opposition" of the political powers of their day, see Goldziher 1981:47/ Schacht "*fiqh*" in E:I:II. Yet, while this may well have been the case, it is not unlikely that, in common with everybody else, both the early pious persons and later *fuqaha'* shared the pride and optimism of the early Muslims concerning what must – given the spectacular success of the Islamic campaigns – have been perceived as the inevitable military occupation of the entire *dar al-harb*. On this point, the much later practice of one of the greatest of the Ottoman rulers, Mehmet the Conquerer, provides a glorious example of how seriously the threat of pollution by the *kafir* is taken by Sunni Muslims (when everything is going well for them). Apparently, when visiting his Balkan subjects, Mehmet would always meet the Greek patriarch Gennadius at the church door, but would never step upon the holy ground of Christians. Yet this was not, we learn, "for fear of polluting himself by entering an infidel place of worship but, conversely, for fear of consecrating it (i.e. the church): (for) wherever he placed his foot was hallowed ground, and his followers could have seized upon his entry as an

perspective. Even things that are irrelevant or “indifferent” (*mubah/jaiz*) have to be declared as such by a competent legal expert.⁵⁸⁵ This strategy reduces tensions, cuts down ambiguities, and leaves little room for coercion through the kind of strategies that Douglas and other anthropologists expect to find.

This is another possible reason why Islamic law does not reflect the interest in hierarchisation that is normally found in ritual pollution systems. Although, as usual, the Sunni jurists confound Douglas’ expectations because she would not expect to find ritual pollution behaviour attached to a code so thoroughly adept at alleviating social tensions, her way of approaching the matter has produced an interesting hypothesis for *taharah*’s unusual nature. In concluding this short chapter, it does no harm to our general argument to note that, away from Sunni *law*, and in specific social contexts, Douglas’ theories are very useful regarding the present subject material. For a start, the type of siege mentality that she expects to find accompanying strict ritual pollution behaviour may help to explain the Shi’is’ interpretation of Q.9:28; as, throughout their history, the Shi’is have often perceived themselves to be under attack from those outside their sect; and, as the Iranian slogan at the start of this chapter demonstrates, the accusation of pollution is an evocative clarion call to unite true believers against the outsider. In their case, the emphasis placed upon protecting their bodies and sacred spaces from the pollution of the outsider clearly mirrors their interest in protecting the integrity of the social and political boundaries of Shi’i communities.⁵⁸⁶

Sunni history has been less besieged, but pollution ideas have been used in comparable ways. This was true, for instance, during the Crusades when, as Carole Hillenbrandt notes, Muslims

excuse to turn it into a mosque”! Jason Goodwin *Lords of the Horizons A History of the Ottoman Empire* (1999, London, Vintage) p.95. (Parenthesis added).

⁵⁸⁵ On this see Denny “Ethical Dimensions of Islamic Ritual Law” in B. Weis’ ...

⁵⁸⁶ Some Shi’i authorities even go so far as to describe Sunnis as impure (Maghen 1997:273).

were faced with imminent destruction of their lives and property at the hands of Christian warriors (Orthodox and Roman Catholic alike). As a result:

The leitmotif of medieval Muslim writers about Frankish occupation is defilement of sacred space, both public and private, although the main emphasis is on religious buildings... In the Muslim portrayal of the Franks, symbols of pollution and impurity abound. They reflect wellsprings of Muslim religious revulsion at a deep psychological level.⁵⁸⁷

No wonder that on reclaiming Jerusalem, one of Saladin's first actions was to purify the *Aqsā* of "*aqdhār wa anjās*" ("filth and impurity"), that is, from the physical taint of *kufr*.⁵⁸⁸ A millennium later, in the wake of the twin tower bombings of September 11th 2001 and in a different "crusade", pollution language is to be found in the diatribe of both sides.⁵⁸⁹ Thus, in concrete historical settings, when polemic is high and the need to keep the *mushrik* at bay more pressing, Douglas' theories may yet be confirmed in an Islamic context. However, while ideas of pollution and defilement can prove very effective symbols of resistance, the Sunni purity laws themselves speak of no need to defend Islam from the non-Muslim. Indeed, contrary to all expectations, in practical terms, *taharah* deals more strictly with Muslims than it does with non-believers.

⁵⁸⁷ C. Hillenbrandt *The Crusades: Islamic Perspectives* (1994, Edinburgh, Edinburgh University Press) p.284.

⁵⁸⁸ Hillenbrandt 1994:300.

⁵⁸⁹ A spokesman from one of Madrid's Muslim communities inflamed an already problematic situation between the city's North African Muslims and native Madrilenos when he described the day as the beginning of "a world wide purification of *kufr*" on national television! An even uglier example of this sort of usage of pollution language came from an American lorry driver named Phil Beckworth. On the day after the attacks, he went to the main offices of *The Ranger*, an independent newspaper in New York, to place an announcement. In it, Beckworth posed the rhetorical question: what can be done with the Muslims of the world? His answer was that

CHAPTER 9

WOMEN

“She is lovely because we spiritualise her... But she is inherently dirty, her elements are lustful and black, and her menstrual periods diminish her in my eyes. Nevertheless, I revere women, I love them” (Federico Garcia Lorca⁵⁹⁰)

Contrary to the general nature of the *ṭahārah* system, it may be said that Islamic pollution laws reflect – *to a very limited degree* - a Muslim woman’s inferior religio-social status. Aside from the difficulties this causes for our general thesis, there are two reasons why the present chapter must be handled with special care. Firstly, a great deal has recently been written about the lives of Muslim women; much of it has been from a feminist perspective and is often very critical of the law’s standpoint.⁵⁹¹ Secondly, until recently, there has been a consensus of scholarly opinion that the existence of menstrual pollution *automatically* demonstrates women’s lesser role in society. If we combine these viewpoints, a distorted (and anachronistically negative) picture of the jurists’ intentions regarding women will result.

To present a balanced account of this subject, the present chapter is roughly divided into four parts. It starts by listing the three ways in which the menstruant’s restrictions outweigh those imposed on men. Then, I will outline the arguments of two scholars, Julie Marcus and Denise Spellberg, whose approaches have combined Sunni *ṭahārah* material with received wisdom on menstrual “taboos”, in order to show (or, as seems more likely, to exaggerate) the subordination of women in both Islamic law and tradition. Next, I will look at the usual

“we have to find them, kill them, and wrap them in pig skin. That way they’ll never get to heaven!” For both stories, see *El Pais* Sept.15 2001.

⁵⁹⁰ Cited in Leslie Stainton’s *Lorca A Dream of Life* (1998 London, Bloomsbury) p.43.

⁵⁹¹ These studies are both political (see ie. Karam *Women, Islamisms, and the State* 1998 London, MacMillan Press), and sociological (see Haddad and Esposito’s collection of essays *Islam, Gender, and Social Change* 1998 Oxford, Oxford University Press). The interesting thing about many of these works is that they come from Muslim women who, for the first time, are speaking out and criticising their lot in life. See especially Fatima Mernissi’s *Beyond the Veil* (1975 New York, Schenkman), and Fatna Sabbah’s *Woman in the Muslim Unconscious* (trans. by Mary Jo Lakeland 1984 New York, Pergamon Press).

Muslim explanation of a woman's "impurity" which, not surprisingly, sees no such interest in subordinating her. The differences in outlook between the two approaches can be summed up by their contrasting interpretations of the word "*adhan*" in the Qur'anic verse on menstruation: "Say: it is an "*adhan*", so let women alone at such times and do not approach them until they are purified" (2:222). In the standard Qur'anic commentaries, *adhan* is rendered as "a harm", "an illness", "a hurt", "a pollution", or, in Dawood's genteel diction, "an indisposition". The truth, however, is that the precise intended meaning of *adhan* is not known, hence the reason why men are to be wary of menstruants (they are not to be "approached" [*la taqrabuhunna*]) is decided according to the perspective of the commentator. From this state of ambiguity, some Western scholars assume that Sunni Islam perceives the state of the *ḥa'id/nafsā'* to be something that causes harm; Muslim scholars, on the other hand, perceive it to indicate a woman's vulnerability. In the first reading, menstruating women *pose* danger to others, and are restricted because of this; in the second, they are *in* danger, and are restricted from certain acts for their own good. In my view, neither reading satisfactorily explains the menstruant's restrictions in *tahārah*. Instead, this chapter concludes (in its fourth part) by suggesting that an awareness of the risks and dangers accompanying men *and* women's sexual drive and fertility (in both social and religious contexts) lies behind the restrictions for each major *ḥadath*. Hence, rather than portraying Muslim women as simply the victims of the *tahārah* system, we shall see them bearing much of the same responsibility as their male counterparts.

Let us begin by asking what proof exists that women are impeded by *taharah*. The strongest evidence is simply that a man need never be excluded from his religious duties, whereas a woman inevitably is. When a man is travelling (and/or no water is available) he may purify himself through *tayammum*; a woman, however, faces habitual restrictions from worship and

the mosque due to her menstrual and lochial bleeding. That this is a serious impediment to her religious way of life – *although with the exception of sexual intercourse not her life away from it* - is surely the reason why the boundary lines between *ḥayḍ/nifas* and *istihādah* are described with such precision (ch. 7.2.B.). There are also two more subtle strategies of subordination. As we have seen, for instance, Malik, Shafi‘i, and their schools assume that a boy’s urine is less impure than a girl’s of the same age (ch. 6.4.A.). As noted, aside from the obvious implications of gender hierarchy, there is no legal reason for this. Another proof of a somewhat patriarchal subtext to the law (and one that has not been mentioned) is that a *ḥayḍ* or *nafsā’* is expected to make up her fast as *qada’* (delayed performance of worship). This is unusual, for, at any other time, *qada’* is only imposed on a Muslim who misses his or her obligatory duties through traveling, sickness, forgetfulness, or willful disobedience (*Bid* pp. 207-209). The closest *ḥayḍ/nifas* comes to any of these is sickness; however, these conditions are explicitly distinguished from *istihādah* and *kudr* on the basis that they occur in good health, while the latter do not. Thus, it transpires that a woman must make up her religious duties, despite the fact that nothing unusual has happened to her. In this way, while *qada’* performances may allow a woman to increase, or at least regain her piety, they also enforce the lasting impression of her religious inferiority.

This list (prolonged absences from worship, the greater impurity of a female infant’s urine, and the “imposition” of *qada’*) constitutes all the evidence that *ṭahārah* regulations uphold a woman’s lesser religio-social status. Given this, the position of the *ḥā’id/nafsā’* needs to be considered in light of the aforementioned consensus of opinion on the functions of menstrual pollution. For, no matter what discipline scholars have been writing from within – be it anthropology, sociology, psychoanalysis, or medicine – their approaches to menstrual pollution have generally consisted of the following three suppositions:

1) The menstrual taboo is universal... (G)enerally the object of a taboo may be a source of good or evil, but (2) in the case of menstrual blood the ascriptions are universally evil...(T)he menstrual taboo exists as a method of protecting men from danger they are sure is real (the source of which is women), and it is a means of keeping the fear of menstruating women under control... 3) menstrual taboos that often apply to native women throughout their middle years will function as a mechanism for reducing the status of women in contrast to men.⁵⁹²

The academic truism that all societies that practice menstrual pollution beliefs do so in order to reinforce the subjugation of their women is typically supported by the observation that menstrual blood (and hence the menstruant herself) seems always to be more feared, and thought more powerful than other polluting substances.⁵⁹³ We have already mentioned some of the materialist and psychological theories for why this should be the case; these include the ideas that this blood carries toxins, or invokes fears of castration, or vaginal envy (see ch. 3.1, 2). Another theory is that menstruation spells the end of the month's chance for children, and is tabooed for that reason.⁵⁹⁴ We need not go on. It suffices to say that Simone de Beauvoir's assumption that: "the blood does not make women impure; it is rather a sign of *her* impurity"⁵⁹⁵ has been repeated so many times, in so many contexts, that "menstrual theory" is now as universal as menstrual taboos.⁵⁹⁶

⁵⁹² Buckley and Gottlieb 1988:7-9.

⁵⁹³ The "most horrid and dangerous of pollutions", Frazer 1995:597.

⁵⁹⁴ See e.g. Isidor Silberman "A Contribution to the Psychology of Menstruation" in the *International Journal of Psycho-Analysis* 31 (1950) 258-267 (261-2).

⁵⁹⁵ De Beauvoir *The Second Sex* ed. and trans. by H.M. Pousley (1988, London, Pan Books) p.158

⁵⁹⁶ After Michel Foucault, any argument that depicts power relations unilaterally, and does not implicate both dominant and subordinate factions rings false, see e.g. Bell 1992: section III. Yet, arguably more than anywhere else in ritual analyses, this is exactly the way menstrual pollution rules and behaviour have been reported. Douglas must share a little of the blame for this because, although she normally expects to find menstrual pollution beliefs in contexts where women possess too much power, thus are the *cause* of social tension (and not necessarily voiceless recipients of male tyranny), she still envisages menstrual pollution as a tactic for subordination. Her arguments have had enormous influence on recent anthropological research into menstrual pollution, see above fns 167 & 168 for a list of works indebted to them. Buckley and Gottlieb's study (1988) is the definitive guide to the subject of menstrual pollution and, by showing numerous instances where menstrual blood has been accredited with powers to do good (cure illnesses, improve the fecundity of wheat fields etc.),

Marcus and Spellberg present the laws surrounding *hayd/nafsa* as if they are typical strategies of male domination.⁵⁹⁷ Julie Marcus worked in Morocco, and bases her theory on a reasonably detailed explanation of the law.⁵⁹⁸ Anticipating Reinhardt's general rationale, her theory is that while human beings exercise some control over other bodily emissions, menstruation is beyond a woman's ability to control. This forever damns her as "polluted":

Women are polluted because they lack the ability to control their movements (i.e. menstruation and lochia). (In contrast to) a man who can control his risk of major pollution through celibacy; a celibate woman would still be uncontrollably polluted through menstruation.⁵⁹⁹

This, Marcus claims, is not merely an insight into Moroccan society of the late twentieth century, but into the "Islamic mind set" regarding a woman's place in society. In her view, "pollution categories not only establish the structure of Islamic community, they also define Muslim women as uncontrolled and, therefore, inferior".⁶⁰⁰ Indeed, she concludes that, whereas we might be tempted to look at *fiqh*'s family or inheritance laws to gauge the law's influence on Islam's perception of womanhood, it is actually *taharah* law that has the most bearing on it:

and where women use menstrual taboos to work in their favour, offers a healthy critique of the general assumptions regarding menstrual pollution (see esp. Introduction).

⁵⁹⁷ For two other anthropological investigations into the functions of Islam's menstrual pollution ideas that also briefly touch on the law, see Delaney's article "Mortal Flow: Menstruation in Turkish Village Society" (in Buckley and Gottlieb 1988:75-93), and a book by Marjo Buitelaar entitled *Fasting and Feasting in Morocco* (1993 Oxford, Providence R.I.). Both authors also focus on the negative implications of a woman's bleeding. Working in a Turkish village, Delaney observes that menstruation is commonly believed to have been given to women because of Hawwa's (Eve's) act of disobedience against Allah in the Garden (which confirms Spellberg's argument, see pp.238-239). Indeed, her transgression was so great that it was responsible for bringing all impurity (*pislik*) into existence. Buitelaar did her research in Morocco and, like Delaney, draws attention to the feelings of shame that menstruating women are expected to feel (1993:117). This author devotes a small section to pollution law (see pp.103-104). However, because she classifies major impurity as only sexual (i.e. *janābah*), and minor impurity as "the result of contact with traces left after urination or defecation, dust or mud on the roads, blood or pus", rather than the acts by which these substances appear, she (like Abu Hanifa) blends the distinct natures of *hadath* and *khābath* (as well as wrongly describing mud as an impurity).

⁵⁹⁸ See Marcus 1985. She uses two Hanafi translations, *Endless Bliss* and *The Religious Duties of Islam as Taught and Explained by Abu Bakr Effendi*, which have also been used in this study.

⁵⁹⁹ Marcus 1985:216.

⁶⁰⁰ Ibid

The analysis of pollution law suggests that some important concepts about women and their place in society are indeed embedded in Islamic law... (I)t suggests that these are to be found in the laws of purity and pollution and not in family law. Unlike family law, which is constantly subverted in practice and which has the capability to improve the economic status of many Muslim women, pollution law has been relatively unchanging and is incorporated into the daily life of Turkish men and women very much as it is written.⁶⁰¹

Although, as the only anthropologist to have managed to combine field research on pollution behaviour with legal data on *najāsah*, Marcus is to be congratulated, her conclusions regarding the extent to which gender hierarchy is articulated through *tahārah* are surely erroneous. For a start, as should be perfectly obvious by now, in describing the menstruant as “polluted” she misrepresents the intention of the law. She does not mention that *ḥadath* is a morally neutral state, but gives the impression that the jurists intend to shame women. Furthermore, Marcus’ main argument (that women’s religio-social inferiority stems from, and is reflected in, her lack of biological control) runs aground for the same reason as Reinhardt’s. To reiterate what was said regarding that (see Part II, Exc.C): although physical control is a factor in the contraction of *ḥadath*, when a woman loses control of her bleeding completely, and becomes *mustahādah*, the jurists unanimously permit her to participate in prayer. This shows a lenient stance towards women; it does not portray the absence of control associated with vaginal bleeding as a woman’s fault, nor as proof of her greater pollution.

Spellberg’s article is the only other serious attempt to attribute patriarchal interests to *tahārah*’s treatment of the menstruant.⁶⁰² According to that, the figure of Eve (Hawwa) who symbolises all women in early Islamic tradition was gradually but increasingly misrepresented by *ḥadīth*, historical, and legal sources because the Qur’an’s comparatively egalitarian depiction of her proved unpopular. This process occurred because of the

⁶⁰¹ Ibid.

widespread influence of Jewish traditions and stories (*isrā'iliyyat*) on early Islam.⁶⁰³ Thus, in contrast to what we find in Scripture (see Q.20:120-123 for the fall), where she is never “an active player in her dealings with the divine or Satan”, but in keeping with Jewish and Christian fall narratives, Spellberg notes that post-Qur’anic sources (from the middle of the eighth century C.E. onwards) accuse Eve, and Eve alone, for mankind’s Expulsion from the Garden.⁶⁰⁴ According to Spellberg, because the Qur’an’s portrait of her was merely an outline, Muslims had needed to fill it in. Unfortunately, they chose to do so by adopting Judeo-Christian stereotypes - forging “shared symbolic links between the two existing Middle Eastern monotheisms and Islam” in the process⁶⁰⁵ - and, as a result, Muslim tradition has come to think of Eve/woman as deceptive, stupid, and “crooked”.⁶⁰⁶ From among the *hadith* collectors, Spellberg notes that Bukhari only makes one, very negative reference to Eve:

Were it not for Hawwa (Eve), the female would not deceive her husband.⁶⁰⁷

Tabari shares the same views, but also tells us that a woman’s biology (and, in particular, her menstrual cycle) is the physical proof of Eve’s crime:

Were it not for the calamity that afflicted Hawwa, the women of this world would not menstruate, would be wise, and bear their children with ease.⁶⁰⁸

⁶⁰² D. Spellberg “Writing the Unwritten Life of the Islamic Eve: Menstruation and the Demonization of Motherhood” in *International Journal of Middle Eastern Studies* 28 (1996) 305-324.

⁶⁰³ As proof of this influence, Spellberg notes Zayd Ibn Thabit’s familiarity with Jewish sources, and Ibn Ishaq’s inclusion of *isrā'iliyyat* in his *Kitāb al-Mubrada*’ (*The Book of Beginnings*, reconstructed by Gordon Newby), Spellberg 1996:308-309.

⁶⁰⁴ Spellberg 1996:307.

⁶⁰⁵ Spellberg 1996:320.

⁶⁰⁶ The notion that women are crooked (because they are formed from ribs) is found in another of Bukhari’s traditions (see Spellberg 1996:ibid), and has found its way into Muslim gender stereotypes. Hence, the conservative Muslim scholar Shar’rawi defends the idea of a woman’s crookedness because he thinks it is this characteristic, in particular, that enables her to perform her daily tasks, such as “dealing with children who need strong compassion, and sympathy, not rationality”, cited in B. Stowasser’s *Women in the Qur’an, Traditions, and Interpretation* (1994, New York, Oxford University Press) p.37.

⁶⁰⁷ Cited in Spellberg 1996:311.

⁶⁰⁸ Tabari *jamim al-bayam fi tafsir al-Qur'an* I:529, cited in Spellberg 1996:311.

Significantly for us, Spellberg claims that the process via which Eve was vilified was given extra momentum by *tahārah* law. To demonstrate this, she notes that, in Ibn Maja's *hadith* collection, there is only one reference to Eve, which occurs in his section on the diminished impurity of a male infant's urine. In order to explain its meaning, Ibn Maja cites Shafi'i's apparent theory that:

Male infants are composed of water and mud or clay, but their female equivalents are composed of *lahm* and *dam*.⁶⁰⁹

In other words, while Allah created man from pure ingredients (water and mud, *tahārah*'s two purifying elements), woman was created (after him) from his flesh and blood (and blood is *khābith*), which presumably means that they possess an ingrained impurity that men do not. Of course, this runs counter to the jurists' usual definition of our biological essence – which states that all human beings are thoroughly pure. Spellberg does not comment on Shafi'i's perplexing statement, but, from this one passage, deduces that:

Eve's placement in a section dedicated to ritual purity seems to signal implicitly that women are born ritually unclean and that they are made of different substances than men. Blood may also signal menses, which will indeed render the female infant ritually impure in Islamic practice on a monthly basis and link her to the physiological punishments meted out from the specific to the general indictment of all women, enforcing key differences in biology and gender definition.⁶¹⁰

Thus, Spellberg unites Shafi'i with Ibn Maja, Bukhari and Tabari in the early Muslim conspiracy to describe women as weaker, impure, and dangerous to men. By doing so, she traces Islam's misogynist and corrupt view of women to a select group of four: the greatest *hadīth* collectors, historian, and legal scholar, the faith has ever known!

⁶⁰⁹ Ibn Maja *Sunan* 1:174-175 (cited in Spellberg 1996:313).

⁶¹⁰ Spellberg 1996:313.

While Spellberg's general argument seems sound, there are several problems with her use of *tahārah* law. Firstly, despite relying on the Qur'an to show what she assumes to be Islam's earlier, less biased understanding of women, she only briefly mentions the Qur'anic verse on menstruation (cited above p. 233), saying "it enjoins men not to have intercourse at this time". This is true, however, the same verse actually states that men should not even *approach* (*lā taqrabuhunna*) women in their menses. A literal reading, therefore, would result in the complete sequestering of menstruants (such as has been known in Jewish communities⁶¹¹). Instead, the jurists take into account many, more liberal *ahādīth* and permit menstruating women almost complete freedom in their lives. We have referred to some of these already (see p. 118) and we recall that they portray 'A'isha resting her head in the Prophet's lap, or washing his hair, and sharing his ablution vessels. These indicate a very different approach to the position of the *ḥā'id/nafsā'* than the one Spellberg implies is characteristic of the law. Secondly, like Marcus, Spellberg incorrectly presumes that Muslim women are *born* ritually polluted. In light of the explanation Ibn Maja attributes to Shafi'i, it is not difficult to see why she thinks this, but it is wrong all the same. Thirdly, it is not clear what she means by describing the female *infant* as "ritually impure... on a monthly basis". A woman does not incur a major *ḥadath* until she starts to menstruate (when she is obviously no longer an infant); nor is it even obligatory to lift a *ḥadath* until a Muslim reaches adolescence (*bulūgh*). Fourthly, although it is true that many, although not all jurists rule that a baby boy's urine is less *khabiṭh* than that of a baby girl (ch. 6.4.A.), Spellberg does not note the rarity of this *ḥukm* within *tahārah*, but unfairly implies it is typical of the system as a whole. Fifth, and lastly, while Jewish (and Christian) ideas of Eve's culpability in the Garden certainly did influence Islamic textual traditions, Spellberg's conviction that Islam's views on

⁶¹¹ See Silberman 1950.

menstruation were influenced by Jewish ones is misleading. Indeed, we have noted Thabit's tradition, which explains the meaning of the Qur'anic verse (putting the mildest spin possible on it), and permits the Muslim menstruant complete freedom – with the exception of intercourse - in the social sphere.⁶¹² The Biblical purity laws, in contrast, are far better examples of gender hierarchisation, and the *taharah* system is simply not comparable.⁶¹³ In summary, it seems that Spellberg is too keen to show how Islam, in general, has strayed from the Qur'an's gentle message of gender equality to pay due attention to the law itself.

It is important to realise that, while gender concerns may have played a part in the formation of *tahārah* law, the jurists made sure that this was minimal. The following examples show that matters could have been much worse. As we know, for instance, some jurists made the duration of the *nafsā's hadath* dependent upon whether she gives birth to a boy or a girl: in the former instance, she is excluded for thirty days, in the latter forty (*Bid* p.54, see p. 207).⁶¹⁴ In the same vein, a minority rule that men are not to perform *wuḍū'* with water that has been left over by women, although, when the roles are reversed, a woman's *wuḍū'* stands (*Bid* p.29). Others hold that a menstruant's *su'r* renders ablution water invalid (*Ibid*), or that they spoil food by touching it.⁶¹⁵ And the Kharijis insist that women perform *all* their missed prayers as *qada'*, which would leave them forever straining to catch up (*Bid* p.224). If these types of regulations had represented the norm, women would fare far worse due to their menstruation. In fact, many jurists were clearly aware of the unfairness of a woman's prolonged exclusions from *ibādat* due to her menstruation, and were willing to grant her some leeway. Thus, while the *junūb* is not permitted to recite any passages of the Qur'an,

⁶¹² Muslim "*Ḥayḍ*":592. See p.41.

⁶¹³ For the Biblical restrictions on the menstruant, see Milgrom 1991:934-941; for gender hierarchy in the Old Testament, see Eilberg-Schwartz 1990:180ff.

⁶¹⁴ This is not too different from Biblical law, where the birth of a girl renders the mother impure for twice as long as the birth of a boy (Lev.12:2-6).

Malik permits the *ḥā'id/nafsā'* "some recitation because of *istiḥsān* (juristic preference)" (*Bid* p.50), and others permit it as long as she spaces the words out, or does so from memory.⁶¹⁶

Likewise, the Shafi'is allow her to touch a copy of the Qur'an if it is for purposes of learning or teaching.⁶¹⁷ While a certain degree of caution is expressed about these exemptions, through their existence the Sunni jurists show themselves to be sensitive to the nature of a woman's restrictions. Ultimately, as we repeatedly saw throughout Part II, the jurists wish no Muslim to be excluded from worship for longer than is absolutely necessary, and this maxim includes women. Indeed, the *mustahādah*, whom neither Marcus nor Spellberg mentions, is the best example of it.

If Marcus and Spellberg go too far in one direction, other scholars travel equally far in the other by denying that there may be any social function to the menstruant's legal restrictions. Instead, an argument often found in traditional Muslim sources is that these restrictions are intended solely to protect women, because menstruation makes them vulnerable. For example, a recent self-help manual for Muslim women explains that:

In Islam, menstruation is not a curse, but for one's own good certain things may not be done. Sexual intercourse is forbidden because it can cause major illnesses (like severe menorrhagia, perimetric irritation and parametric inflammation). (The) other restrictions are intended to remind you that, during this time, you are more vulnerable, and that you must nurse your body.⁶¹⁸

⁶¹⁵ See Rodinson's article on "*Ghida*" in E.I.II. The same logic explains why a minority forbid consuming the meat of an animal that had been menstruating when killed (*Ibid*).

⁶¹⁶ Boudhiba 1998:53. Those granting a concession to the *ḥā'id/nafsā'* can defend their opinion logically. For, with the exception of *tawāf*, she should participate in all acts during *Hajj*, and is expected to vocalise certain Qur'anic passages while doing so. Likewise, in the Eid prayers, which she is expected to attend, she is not just permitted, but obligated, to say the *takbir*. For these arguments, and a consideration of the general problem, see B. Zara's article "The Requirement of *Tahārah* for Reciting or Touching the Qur'an" (an appendix to a forthcoming book entitled How to Read and Understand the Qur'an) available at <http://www.uh.edu/campus/msa/articles/zara.htm>.

⁶¹⁷ Or, as in the case of Yusuf Ali's translation, when less than fifty per cent of the words are in Arabic, see *The Muslim Woman's Handbook* Huda Khattab (1993, London, Ta Ha Publishers) p.10.

⁶¹⁸ Khattab 1993:12.

For the medical materialist, this is a perfectly logical explanation of the prohibition on sexual intercourse with a woman during her menses; however, it does not explain why the majority of the jurists still have major misgivings about letting the *ha'id/nafsa'* touch, or even read a Qur'an, or enter the mosque. Yet, when it can be done, these constraints are also explained rationally; in particular, a women's prohibition from touching the Qur'an, and exclusion from the mosque are attributed to the fear that she might leak menstrual blood onto these sacred targets. Take, for example, Abdul Siddiqui's comments in his translation of the *Mishkat*:

Mahid (menstruation), which has been described in the Qur'an as an *adhan* is a noun of place (nomina loci). It is, therefore, the female organ that secretes the blood of menstruation that is polluted, and not the whole of the woman's body. If women are not permitted to enter the mosque (or touch the Book) during this period, it is not because they (women) are defiled or polluted, but due to the reason that the drops of blood may fall on the sacred places.⁶¹⁹

Although he is not interested in explaining why she is prohibited from reciting or touching the Qur'an, nor in the political uses of pollution ideas in general, Maghen concurs with Siddiqui's logic as regards the *ḥā'id/nafsā'*'s exclusion from the mosque, which he insists is only because she might drip menstrual blood onto the floor.⁶²⁰ He bases his argument on Muhammad's behaviour towards his wives when they were menstruating:

The Apostle, as depicted in these *ahādīth*, was (solely) interested in avoiding contact with the actual '*ayn al-najāsah*', the menstrual blood. It is only this blood, as an *intrinsically* impure substance, a substance with a *status* of *najāsah*, which can potentially communicate ritual contamination to the spouse or partner.⁶²¹

⁶¹⁹ *Mishkāt* p.271. Uncomfortable with the idea that a menstruant is prohibited from entering the mosque, other scholars suggest that she is, in theory, entitled to do so; but that there is no need for this as she is not permitted to pray, see M. Ali *The Religion of Islam: A Comprehensive Discussion of the Sources, Principles and Practices of Islam* (1936, Lahore, The Ahmadiyya Anjuman Isha'at Islam) p. 394.

⁶²⁰ Maghen's real concern is to show that the menstruant is excluded from sacred places for different reasons than her Jewish counterpart (who is capable of defiling places as well as people).

⁶²¹ *Ibid* (his emphases).

From this, Maghen reasons that what is true for the Muslim male, must also be true for the mosque:

Like the inherently pure beast (who is) rendered temporarily “impure” by virtue of contact with or ingestion of *najāsah*, (and) who can only transmit his contamination onward by emitting the ‘*ayn al-najāsah* itself from a given orifice, such that it touches or mixes with the “target”— so here the problem is most likely the potential dripping of blood from the vagina onto the floor of the mosque.⁶²²

This argument falls short in three significant ways. Firstly, as we have seen, the majority of jurists are not concerned when a non-Muslim enters most mosques; this includes non-Muslim menstruants, whose undergarments are certainly not checked and who, presumably, are just as likely to leak menstrual blood as Muslim women. There is no logical reason why a mosque should be susceptible to the effects of blood belonging to a believer, and not a non-believer; thus, we must conclude that it is not the menstrual blood itself that compels the exclusion. Secondly, despite the obvious meaning of the traditions involving Muhammad and his wives, it is also not proven that the prohibition against sexual intercourse with a menstruant stems solely from a wish to avoid her menstrual blood. Instead, there seems to be more to the matter than this. For most jurists rule that, regardless of whether or not it has blood on it, the *skin* under a woman’s ‘*izar* is not to be touched (*Bid* pp. 59-60). If it is not bloody, her skin is not *mutanajjas* (if men do venture to put a hand there, they do not then have to wash), yet it is still out of bounds, or “fenced off”. It follows that, if the jurists are not solely concerned with making sure that a man does not come into contact with menstrual blood, then perhaps they are not solely concerned with keeping menstrual blood out of the mosque. The third, and most compelling reason why this argument does not convince is that it cannot explain why the *jimūb* is also expelled from the mosque. Maghen is well aware of this, for he admits that:

while the *ḥā'id* might drip menstrual blood onto the floor (as the *nafsā'* might do the same with post partum blood)... it would be hard to argue that the *junūb* poses a similar hazard: semen dries quickly not to mention that most of the *fuqaha'* rule, following a report of 'A'isha that *janābah* is contracted by *julūs bayn shu'abihi al-arba'a* (sitting between her four parts) and *mass al-khitan al-khitan* ("the meeting of the two circumcisions") regardless of whether semen (of any kind) is emitted or not... with this data in mind, we cannot with confidence attribute the prohibition against a *junūb* entering a mosque to the fear of contamination of the place of prayer via contact with *'ayn al-najāṣah*.⁶²³

The above realisation forces him into something of a *volte-face*; his solution is that *janabah* and not *hayd* or *nifas* must somehow:

Constitute a special case, a state which is *polluting* of the mosque in a different fashion than other categories of impurity, a fashion which falls outside of the normal routes of the transmission of defilement in the *tahārah* system. This uniqueness would appear to consist in some special, intangible/spiritual quality of *janābah* which is conceived to be fundamentally at odds with sacred space.⁶²⁴

Maghen does not explain what this special, "intangible/spiritual quality" of impurity might be, or why it is magnetically attracted to places of prayer. We will not be sidetracked into speculating over these things yet. For the moment, what is important is, as I have already argued, that there is nothing to prove that a mosque is capable of being polluted in any way whatsoever (and if *janābah* could do this, we can be sure that all the jurists and not just the Malikis would prohibit non-Muslims from entering mosques). Furthermore, there is also no evidence that the jurists believe that, in *janābah*, they are dealing with a different kind of impurity altogether. In fact, the opposite appears to be true, as most of them rule identically for the *junūb* and *ḥā'id/nafsā'*, on the assumption that their impurity is of equal severity and type.

⁶²² Maghen 1997:264. (Parenthesis added.)

⁶²³ Maghen 1997:295-296.

⁶²⁴ Maghen 1997:297 (my emphasis).

It has been necessary to point out the inconsistencies in Maghen's argument because, by explaining the menstruant's regular exclusions from the mosque as stemming solely from the tangible impurity of her blood, he is in danger of obscuring the fact that this regulation *distances* women (and not just the parts of them that bleed) from the ritual sphere. As we began by noting, because they are never excluded from that sphere, this strategy elevates men above women (to a small degree) there. This point made, I believe that, rather than being weak strategies of gender domination, there is a far clearer message behind the restrictions accompanying major *ḥadath*. Before coming to that, it proves heuristic to ask why – if at all other times the *tahārah* system spurns the use of pollution themes to bolster hierarchies – it is not even more lenient in the case of women.⁶²⁵ To suggest an explanation, let us return once more to Douglas' theory that areas of social tension often attract the use of ritual pollution ideas.⁶²⁶ In particular, this may help to explain why menstrual impurity only limits a woman in her religious obligations, and not - bar sexual intercourse - in her other daily interactions. For, in those interactions, a woman's position, like the *kāfir*'s, is set firmly and unambiguously below a man's because the jurists can rely on specific Qur'anic verses to delineate precisely what constitutes a man and woman's share of money and power. On the basis of these verses, Rippin summarises women's legal position in the following, straightforward terms:

In terms of her legal standing in the Islamic system, women's rank, logically enough reflects the assumptions of the social structure... Thus the Qur'an establishes that the testimony of two women is required to equal one man (2:282).

⁶²⁵ I concede that this question is anachronistic. Expecting the already remarkably lenient jurists to grant menstruating women more leeway still – where throughout the ancient Middle East, and certainly in (Southern) Arabic culture menstrual restrictions were generally far more severe, see f.n. 108, and Milgrom 1991:948 for a list of cross cultural data – is demanding political correctness in the wrong context. However, solely for the point of argumentation, one can ask why the *ḥā'id/nafsū'* is not allowed to pray as long as she wraps herself up like the *mustahādah* (whose blood is also, lest we forget, *khabith*). Or why, if she is permitted *dhikr* as long as she spaces the words out, she cannot recite in a normal fashion, and so on. My hypothesis for the restrictions follows shortly, and may help to explain why they remain important.

⁶²⁶ Regarding menstrual pollution, Douglas' hypothesis is well tried and has proven very successful in numerous contexts, see above fn. 167 for a list of studies influenced by it.

The portion of a woman's inheritance is less than that of a man (4:11). Divorce is allowable upon the woman's instigation only for a set number of reasons (e.g. infidelity, impotence etc., whereas a man need no specific pretext at all... The male rules the house in all matters; the religion of the male is presumed to be the religion of the entire household... A man may marry up to four wives at a time, but a woman may only marry one husband (5:6).⁶²⁷

Add to the above list, the ban on women judges,⁶²⁸ and we see that, in the daily running of socio-economic affairs (i.e. the *mu'āmalāt*), *fiqh* does not need to use pollution ideas to reinforce male dominion over women because, through the above strictures, it envisages little tension between them.

In contrast, however, the Qur'an's teaching on ethical and religious matters (*ibādāt*) promises a Muslim woman absolute equality. Several verses describe how, come the final day, she is to be judged on the same scale of religious merits as men, and that she will enter Paradise as his equal (see e.g. Q. 9:71-72; 16:97, 33:35, 43:70). Thus, it may be argued that there is an inherent tension in the Qur'anic message concerning women that arises from a conflict between its provisions for *mu'āmalat* and *ibādāt*. It follows that, if this tension were to manifest itself at all, it would do so in the sphere of religious worship, rather than in the socio-economic sphere of daily life where a Muslim woman is known to be "a degree" less than her male counterpart (4:34). After all, there is nothing written in the Qur'an to stop women from asserting their ritual equality, or even leading prayers. And, in the earliest times, Stowasser assumes this to have been the case:

Hadīth elaborates on the Qur'anic teachings regarding spiritual equality of women and men, and provides detailed information on women who performed all the religious duties enjoined by Islamic doctrine, thereby proving their full membership to the faith such as prayer, almsgiving, the freeing of a slave, ritual slaughtering of sacrificial animals, and fasting... As for the holy war, its

⁶²⁷ A. Rippin *Muslims their Religious Beliefs and Practices* (1990-93, London, Routledge) p. 119.

⁶²⁸ These days this is a particularly volatile issue, see Karam (1998:144).

equivalent is the blameless pilgrimage. Regarding martyrdom, the woman who dies in childbirth was a martyr. Women also built mosques, and could even act as prayer leaders.⁶²⁹

Like Spellberg, Stowasser may be idealising the status of women among the first Muslims. But, whatever the historical accuracy of her statement, we may be sure that, if ritual performance was once wholly egalitarian between the sexes, its continuation as such is firmly prevented by *fiqh*. For, nearly all the jurists agree that women cannot lead prayers; rather, “they are to remain behind (a man) as Allah has kept them behind” (*Bid* p.161). In light of that, while the *ḥā'id/nafsā'* restrictions may not amount to much – and are certainly not the blunt tools of gender domination that Marcus and Spellberg take them to be – their very existence may reflect the ambiguity of a woman’s status in the early faith.⁶³⁰

Throughout this chapter, I have intended to strike a balance between the external criticisms and internal justifications of a woman’s place within *taharah*. Doubtless, many Muslim women are subordinated via the use of ritual pollution strategies, yet, the prevailing attitude of the jurists as we know is to exclude Muslims from worship for the minimum period possible and, as the example of the *mustahādah* shows, this holds true for women too. Perhaps, then, it may be said that the predominant emphasis in *tahārah* is not on using pollution ideas to marginalise women in any aspect of life – but rather to include them, up to a point.⁶³¹

⁶²⁹ Stowasser 1994:30.

⁶³⁰ The Hanafi’s uncharitable assessment of Busrah’s reliability on the question of whether touching the penis causes a minor *hadāth* betrays more than a little resentment that the testimony of women had the power to decide legal practice (f.n.506).^c Probably, the best textual evidence that menstrual pollution ideas were sometimes used in typical ways to subordinate women is a thoroughly chauvinistic *hadīth* attributed to Sa‘id al-Khudri. In it, Muhammad says to a group of women he passes that they should give alms, “as I have seen that you are the majority of the dwellers of Hell (*uriyitukunna akhtar ahl al-nār*)”! When the women ask him why, Muhammad replies that every woman is deficient in intelligence and religion; her intellectual deficiency is proven by the fact that her witness only counts for half that of men, and her religious deficiency is that, when she menstruates, she may neither pray nor fast (Bukhārī “*Ḥayḍ*”:301).

Rather than describing women as victims of *taharah* law, there is perhaps a better way to interpret the rules surrounding both the major *ahdath*. Namely, to consider them as reminders, or symbols, of *the seriousness with which male and female sexuality, and fertility are taken by Islamic law and ritual*. In this reading, both the *junūb* and the *ḥā'id/nafsā'* are joined under the same rubric because, although neither *hadath* is a sin, they are both personally desacralizing. *Janābah* means “exile”, and the *junūb* is temporarily exiled from his Qur'an, his prayers, and, in perhaps the most effective tactic, from mosques as well; a woman also faces a temporary exile from the sacred sphere when she bleeds through menstruation or after childbirth. Although her bleeding is not connected to lust (in fact, having sex with a menstruant is anathema to the jurists⁶³²), it is sexual in the broader sense because it announces her fertility, her capacity to procreate, or her success in doing so.⁶³³

Thus, excluding the Muslim *junūb* and *ḥā'id/nafsā'* from the mosque draws attention to how seriously Islam takes the body's reproductive capabilities. When Muslims contract a major *hadath* – thus becoming overtly sexualised - an invisible drawbridge is lowered, excluding them from their sacred territory, and from the Qur'an. It is not raised until they have gained Allah's blessing through performing their purifications. Accordingly, the awesome nature of fertility, and the importance of sexuality are brought to the fore through symbolic means. Indeed, when we consider that, for many jurists, touching the genitalia, and (according to the Shafi'i's) even brushing the skin of a person of the opposite sex breaks *wuḍū'*, this logic

⁶³¹ For a very good assessment of a woman's actual status within Islamic ritual, see Tayob 1999:71-79.

⁶³² According to Ibn Hanbal, it is punishable by a fine of one (or one half) dinar (*Bid* p.62).

⁶³³ In an interesting study of the Beng tribe, Gottlieb also argues that menstrual taboos are intricately connected to the symbolic classification of space and fertility. For the Beng, a menstruant's seclusion is not necessarily a means to subordinate her (menstruants often enjoy their time apart), but arise because menstrual blood is seen as a symbol of human fertility, and, therefore, must be kept away from the fields which are symbolic of earth's fertility (Gottlieb 1988:55-75). This is a very different context from the Sunni Islamic texts – mosques are not symbols of earth's fertility – nevertheless, the observation that restrictions focusing on menstrual bleeding are not always perceived negatively, but sometimes as a means of signalling women's sexual (and social) power may prove helpful.

seems to permeate throughout much of the *tahārah* system.⁶³⁴ Pace Maghen, I suggest that a Muslims' exclusion from the mosque is not to protect sacred ground from a uniquely powerful impurity, but to teach believers this lesson. This provides a better explanation, moreover, for why the non-Muslim may enter a mosque without *ghusl* when Muslims may not: specifically, that a *kāfir* is *already* exiled – perhaps irredeemably so – from the sacred. After all, whereas a Muslim's sexuality is a powerful and potentially corruptive force, a fact that believers need to be constantly reminded of, further corruption for a non-Muslim is impossible. For most jurists, the matter of whether he enters a mosque is, therefore, irrelevant because it is a lesson that does not apply to someone until they pronounce the *Shahadah*.

An interesting implication of this hypothesis is that, in order to satisfy a very different purpose from the one we usually find, Sunni Islam has overhauled the notion of sacred space as it is expressed in other religious traditions. For, as noted, Jewish, Zoroastrian, and pre-Islamic Arabic societies also exclude menstruants and sexually impure people from entering sacred territory.⁶³⁵ However, they do so because this territory houses the deity, or deities, and hence – if they are not to be upset – it needs to be protected from the ravages of impurity. As both *khābath* and major *ḥadath* are not permitted within the confines of mosques, Islam retains the idea that sacred space is to be preserved from impurity. Yet, there is no suggestion that, if it does gain access, the mosque is vulnerable to attack from (either form of) *najāsah*. Thus, here, as in the matter of demon-pollution, *tahārah* only superficially conforms to the findings of past research into pollution systems. In both cases, its differences serve to highlight distinctive aspects of Muslim faith. As it stands, the regular exclusion of Muslims

⁶³⁴ This is especially true of the Malikis' reading of *tahārah*, where lust is often an important factor in the contraction of *ḥadath*. However, even though Shafi'i himself is adamant that lust should not affect matters, by ruling that *any* kind of physical contact between men and women breaks *wuḍū'*, his *ḥukm*, ironically, conveys the strictest warning about the potential of sexuality (ch. 7.1.C/D).

from the mosque has nothing to do with their threat to Allah (a concept I have a feeling the jurists would have found laughable), but surely helps to instil in believers a constant awareness of the potential danger and power that accompanies human sexuality.⁶³⁶

With this lesson in mind, the following Qur'anic passages strikes a fitting note on which to end this chapter:

And when you ask (Muhammad's wives) ask them from behind a screen (*hijāb*); that makes for greater purity for your hearts and for theirs (*dhalikum atharu liqūlūbikum wa qulūbihunna*) (Q.33:53).

The *hijāb* is often depicted as a symbol of patriarchy, and proof of Muslim women's unfair treatment, but that is not the intention of this *āya*, which calls for sexual restraint and cooperation to be exercised on the parts of *both* Muslim men and women. I would suggest that a complimentary message lies at the heart of the otherwise paradoxical exclusion from the mosque of only Muslims with a major *ḥadath*.

Recalling the four types of argument by which the function of ritual pollution behaviour is explained, our theory concerning the restrictions placed upon those with a major *ḥadath* has encompassed aspects from both the socio-symbolic and religio-moral approaches. It is socio-symbolic because it grounds a strict (and to a small degree hierarchised) view of social interaction between the sexes in ritual behaviour; it is religio-moral in that it draws attention to how seriously sexuality, and the creation of life is taken within Islam. Thus, it prepares us

⁶³⁵ See above pp. 4-5, and fn.108.

⁶³⁶ It must be admitted that the subject of sacred space in Islam deserves much more attention than we have been able to give it. Hardly any research in this topic exists and that which does looks solely at the Makkan sanctuary and, true to form, tries to decide whether this was a continuation of the pre-Islamic Arabic reality, or if its origins lie in Jewish notions of the Sanctuary, see G.R. Hawting "The Origins of the Muslim Sanctuary at Mecca" in *Studies on the First Century of Islamic Society*, ed. G.H.A. Juynboll (no d., pub. p.) pp. 25-47. Hawting prefers the latter option. Neither possibility should be discounted; however, as has been said more than

for the next chapter in which Sunni Islam's *tahārah* system is considered solely from a religio-moral perspective.

once, it also implies that the major point of interest (the essence of the matter) lies solely in origins, rather than

CHAPTER 10

TOWARDS A RELIGIO-MORAL INTERPRETATION OF *NAJĀSAH*

“Purity is not imposed upon us as though it were a kind of punishment, it is one of those mysterious but obvious conditions of that supernatural knowledge of ourselves in the Divine, which we speak of as faith. Impurity does not destroy this knowledge, it slays our need for it”
(George Bernanos)⁶³⁷

Of our four approaches to ritual pollution, only one, the religio-moral, remains to be considered more fully in the context of *tahārah*. In chapter 3.4 we mentioned four recent attempts in this vein by modern scholars. In contrast to the general and still pervasive tendency among Western scholars to discuss ritual (and especially ritual pollution) as if it has nothing to do with beliefs, each claimed to find a theological message powerfully conveyed through ritual pollution practices. For Choksy, such practices confirm Zoroastrianism’s eschatological promises. For Douglas, the Biblical dietary and pollution systems direct a believer’s attention towards the oneness of God. For Milgrom, the same systems were designed to inculcate respect for life. And, for Wright, Israel’s ritual pollution laws function as symbolic reminders of Leviticus’ numerous moral pollutions. This type of analysis is ambitious. Very often it is also apologetic; indeed, both Milgrom and Choksy are believers and clearly write from that perspective. Yet, while one regularly finds writers declaring their (previously well hidden) allegiances in final chapters, it must be said that this is not my intention. Rather, and not only in the interests of inclusivism, I believe there is a place for this type of approach within the present study. We shall draw it to a close, therefore, by asking what single theological principle is communicated most coherently through Sunni Islam’s manifold *taharah* regulations.

in how pre-existing ideas were re-shaped by the early Muslims.

⁶³⁷ From *The Diary of a Country Priest* (1936 Ch 4).

Before doing so, Reinhardt's apparent supposition that the *tahārah* system is detached from religious feeling must be rejected. As noted, in Reinhardt's view, *tahārah* is an exercise in logical reasoning, a *tour de force* but a system that is characterised by an interest solely in "formal", rather than moral notions of purity.⁶³⁸ This does not convince given the jurists' reliance on the Qur'an and Sunnah – Islam's sacred texts – on every issue. It also ignores the fact that both forms of purifications are described as "*ibādah*" and, in particular, the majority's definition of the pre-*ṣalāh* ablutions as "purifications of the soul", and means "of approaching Allah" (ch. 4.4.A.). Such language may not have been radically new – indeed, as Neusner has shown, metaphorical interpretations of bodily purity and pollution were commonplace in the Middle and Near East by Jesus' time⁶³⁹ – but it shows that, *pace* Reinhardt, *fiqh*'s spheres of legal and moral purity are not completely divorced. Instead, as the following *ḥadīth* (and several others like it) in the *Muwatta* illustrate, when the *taharah* system was still under construction, popular religious themes of spiritual purification were drawn from to show that, while neither form of *najāsah* constitutes sin, lifting a *ḥadath* symbolises the cleansing of sins:

Yahya related to me from Malik... that the Messenger of Allah said: The believing slave does *wuḍū'* and as he rinses his mouth the wrong actions leave it. As he washes his nose, the wrong actions leave it. As he washes his face, the wrong actions leave it, even from underneath his eyelashes. As he washes his hands the wrong actions leave them, even from underneath his fingernails. As he wipes his head the wrong actions leave it, even from his ears. And as he washes his feet the wrong actions leave them, even from underneath the toenails of both his feet.⁶⁴⁰

⁶³⁸ Reinhardt 1990:21, see p.92.

⁶³⁹ J. Neusner 1973:14.

⁶⁴⁰ *Muwatta* "Taharah": 6.31.

Traditions like this occur regularly in the *ḥadīth* collections, they provide the religious sentiment and imagery from which the *tahārah* system was forged.⁶⁴¹ Indeed, even Shafi‘i, who prizes formality and discounts the significance of interior motives in matters of *taharah*, employs spiritual language on occasion (in the case of a dog’s saliva, or the purity of semen for instance, see pp. 150, 164) to support his regulations. In short, although *tahārah* law is a formal discipline as Reinhardt claims, it is also embedded in the theological ideas and values of early Islam.⁶⁴²

If we accept that Sunni Islam’s law and theology are not separate disciplines but, at least in the context of *tahārah*, thoroughly interwoven, looking for a connection between ritual pollution and religious belief is less problematic than Reinhardt would have us suppose. Following the lead of the aforementioned scholars, the challenge is to try and find the *dominant* message – the strongest meeting point between ritual pollution and religious doctrine – as, unlike the Eucharist or even the Zoroastrian purification rituals, there is no direct connection between Sunni Islamic pollution rules and a *specific* religious narrative or doctrine. Hence, while in Yahya’s *ḥadīth*, *wuḍū’* is described as washing away sins, nowhere in that tradition or any similar account does it say what type of iniquities are being (symbolically) cleansed. Instead, as we know, the major Sunni law schools do not associate legal *najāsah* (of either kind) with moral crimes.

This appears to have been a deliberate move, because other early Muslims *were* prepared to fuse moral and legal pollution concepts. In particular, and bearing in mind Ibn Abbas’ *ḥadīth* in which two men are being punished in the after life, one for not purifying himself from urine, and the other for spreading calumnies (cited p.94 above), it seems as if there was an

⁶⁴¹ See e.g. Muslim “*Tahārah*”:438-451.

early tendency to combine *ḥadath* with deception. The examples of the Imami Shi'is and Kharijis demonstrate that this was indeed the case. The former scholars uphold a tradition in which Jaf'ar al-Sadiq remembers Muhammad saying that lying against the Prophets and the Imams is a cause of minor *ḥadath*.⁶⁴³ True to their reputation, the Kharijis take this tendency a stage further, ruling that virtually any act of deceit or impropriety - "bad mouthing, slander, false promises, insults, obscene language, bad or improper thoughts" - breaks *wudū'*.⁶⁴⁴ Through these decisions, both factions imbue legal pollution ideas with a moral flavour that is thoroughly in keeping with their own religious and political views. In the Shi'i version, *najāsah* is recruited to support the doctrine that their Imams are the rightful descendants of Muhammad, the born leaders of all Muslims; the implication being, of course, that to lie against them is as "defiling" as lying against the Prophets of old, and even Muhammad himself.⁶⁴⁵ The Kharijis, on the other hand, link *tahārah* with honesty, straight-dealing, upholding one's end of the bargain, and general moral rectitude. Once again, these are all qualities that were prized very highly by the early sectarians who saw themselves as the moral defendants of a faith that had been corrupted by weakness, dishonesty and vacillation.⁶⁴⁶ In contrast to this, the Sunni majority restricts *ḥadath* impurity almost exclusively to biological functions; and, in doing so, ensures that the connection between religio-moral and legal pollution remains undefined.

Yet, this obviously does not mean that *tahārah* is disconnected from Islam's spiritual sphere.

In fact, its laws may be seen to uphold several powerful religious messages. For a start, on

⁶⁴² One of which, as he himself implies, is *hilm* (self-mastery).

⁶⁴³ Howard 1974:44. On these grounds, it is hard to imagine what sin would constitute a major *ḥadath*.

⁶⁴⁴ Bousquet 1950:58. Bousquet bemoans the Sunni's rejection of this link, observing that "il est regrettable que l'Islam ne se soit pas engagé résolument dans cette voie" (Ibid).

⁶⁴⁵ In light of the fact that, for the Shi'is, dissimulation is not only permitted but recommended in situations where telling the truth will land a Shi'i in trouble (a doctrine known as *taqqiya*), it is not surprising that they do not follow the Khariji line and declare all forms of deception a cause of impurity.

⁶⁴⁶ See Watt 1985:7-13.

what may be termed a “horizontal” plane (i.e. the way in which man relates to his fellow man), it has been shown that *tahārah* encourages egalitarianism and compassion whereas other pollution systems uphold the religio-social status-quo. In the present chapter, however, we shall concentrate on the “vertical” function of the *tahārah* system (i.e. how it defines man’s relationship to God). In this respect, it has already been suggested that, by pronouncing the human corpse essentially pure and by dispensing with the obligation for *ghusl* or even *‘izālat al-khabath* in the case of the martyr, *tahārah* draws attention to Allah’s victory over the forces of death, and conveys the promise of a glorious afterlife to the faithful Muslim (Part II Exc. A). Likewise, in the last chapter, it was argued that the concept of sacred territory has been re-sculpted by *tahārah* to draw attention to the importance of human sexuality and fertility. However, while both observations are hopefully valid, they only address parts of the *tahārah* system; there are numerous rules in it that have no obvious connection with death or sex. What is needed, if this type of approach is to be convincing, is an explanation that manages to encompass all the rules, and the system as a whole.

We have already alluded to what this might be in Chapter 4. To elucidate further, we will borrow David Wright’s theory on the religio-moral function of the Biblical pollution laws.⁶⁴⁷

Wright speculates that an important reason why Leviticus’ permitted impurities (menstruation and lochia, sexual intercourse, touching corpses, leprosy and so on, Lev. 11-15) are incorporated into the Priestly Canon is to act as a constant reminder to the Israelites that their bond to Yahweh is not unbreakable. Rather, he suggests that the minor separation from the ritual sphere following these permitted impurities, symbolically imitates the eternal separation - the cutting off from God (*karet*) – that follows the prohibited ones (sexual wickedness, idolatry, murder, and other sins, Lev.18-21). While, as Maghen has shown, there

⁶⁴⁷ Wright 1991; c.f. ch.3.4.A. above

are many differences between the Biblical/Rabbinic pollution system and Sunni Islam's, it can be argued that Wright's interpretation of the religio-moral function of Biblical ritual pollution is also a very helpful way of understanding Sunni Islam's pollution system.

The difference, of course, as the reader has just been reminded, is that Sunni Islamic *taharah* texts do not possess a separate chapter of moral *najasaḥ*. Thus, we cannot simply juxtapose Islam's lists of ritual (permitted) and moral (prohibited) impurities and argue for the existence of a symbolic connection between the two. What we need to ask is what possible sin exists within Sunni Islam that is capable of *terminally* separating a Muslim from Allah. The answer is that there is only one: disbelief (*kufr*).⁶⁴⁸ In this respect, it is highly significant (and, according to this argument, hardly coincidental) that, for some jurists at least, the one moral act also to incur a *ḥadath* is apostasy – the turning away from Islam by the rejection of Allah (and, for some, the wilful absence from prayer, see p. 85). For, through this *ḥukm* an implied message is made almost explicit.

In fact, theorizing that the religio-moral aim of Sunni Islam's pollution laws is to educate Muslims to consider what would happen if the temporary isolation of the *muhḍith* were to become permanent is appealing for a number of reasons. Specifically, it permits us to move the onus away from what the impure person has done, and focus attention on the demands placed upon him (as on all believers) to renew his faith, to remain within the community of the faithful, and on the willingness of Allah to re-embrace him after each and every show of faith (through purification). This lesson is intended for the Muslim alone; the fact that a non-believer is not *khabith* (as we might expect according to this logic) is irrelevant, because his

⁶⁴⁸ The *'Umdat* mentions twenty acts that entail leaving Islam, but all of them fall within the broad definition of *kufr*. Such acts include idol worship, verbal disrespect of Allah, calling another Muslim an unbeliever (and thus taking Allah's place as judge over him), to deny the existence of angels or *jinn*, or the uncreatedness of the Qur'an and so on (*'Umdat* pp. 596-598).

choice is already made and presumably does not worry him. Instead, it is only the Muslim who, through every *ḥadath*, will *feel* that he has been isolated from his prayers and Qur'an, and thus be compelled to do something about it. Hence, rather than viewing the regulations surrounding the *muhḍith* as law for the sake of law, or baseless acts of divine whimsy, they may be seen as constituting a valuable lesson on the importance of renewing belief. Indeed, reading Qur'an 4.43 from this perspective sheds light on why, despite the fact that the Qur'an does not describe any of the various impurities as sins, the last sentence of this verse praises Allah for blotting out sins and "forgiving again and again". This theory also makes sense of the choice of such mundane and morally neutral *ahḍath*; for, they could not be attached to sins because that would confuse the issue. Instead, in order to make the point, they need only to be *regular* and unavoidable. By linking *ḥadath* to sexual acts, menstruation, breaking wind, going to sleep, and so on, believers are reminded not of specific ethical transgressions – lying, murder, cheating and so on, but of man's *general* predicament: his carnality. *Tahārah*'s obvious sensitivity to sexual behaviour and fertility - its rules for touching the genitals, brushing against a person of the opposite sex, and the increased strength of sexual impurity (in which we included both *janābah* and *ḥayḍ/nifās*) – do not clash with this observation, but confirm it. For, through their sexuality, Muslims are at the most carnal, and perhaps their most distant from God.

Adapting Wright's theory, it is possible to read the *taharah* system as a meditation on the importance of belief. In such a reading, it does not matter whether a Muslim is "alienated" by a *ḥadath* or *khath*, both are merely causes of temporary separation, reminders of what can happen if an individual separates himself from Islam. Conversely, both types of purifications enable him to rejoin the fold. Indeed, as far as the rites designed to lift *ḥadath* are concerned, this aim is strongly implied in the majority's description of them as ways of

“drawing near” to God (*hadath* thus signifying a way of being pushed away from God). The stated purpose of removing *khathath*, on the hand, is only cleanliness (ch.4.3.A.); nevertheless, in practical terms, someone who is *mutanajjas* is sidelined in the same way as the *junūb*: he is not fit to pray, nor enter a mosque. It may be argued, therefore, that both forms of impurity and their purifications share the same symbolic purposes. In either form, *najāsah* draws a line between the believer and Allah, the purifications erase this line and, by so doing, symbolically testify to God’s constant willingness to forgive and readmit the believer who lapses. Seen in this way, the religio-moral function of Sunni Islam’s ritual pollution laws is simple, but effective. Any crime less than apostasy is of no importance, social hegemonies are (at best) a minor consideration. Instead, *tahārah* law applies to *all* Muslims, whose attention, through the legal obligation for bodily purification, is repeatedly drawn to the (infinitely more pressing) need to join in, and to re-affirm their faith. This symbolism is confirmed on a grander scale when we consider that, just as apostasy breaks *wuḍū’*, so the convert must also perform *ghusl*. In this case, the purifications really are portals through which one enters or exits Islam. Thus, while in the previous two chapters we saw that it is very difficult to find any idea of spatial defilement in Sunni Islam, here, it may be suggested that, in the final analysis, all effects of *najāsah* attain an entirely symbolic status: lacking independent power, both forms of impurity act as *symbols* of disbelief – the only thing capable of separating a Muslim from God.

It is interesting that the above religio-moral interpretation is not too far removed from the way Ibn al-‘Arabi describes the concept of impurity in *Asrār al-Tahārah*.⁶⁴⁹ In a highly creative marriage of Sufi reasoning and law, he suggests an inward realm corresponding to every aspect of the *tahārah* system. Al-‘Arabi’s ideas are complex, and we do not have space

⁶⁴⁹ Translated by Eric Winkel as *Mysteries of Purity* 1995 Indiana, Cross Cultural Publications.

to do justice to them, but his basic thesis appears simply to be that *najāsah* symbolises “everything which takes you out of knowledge of Allah”, whereas *tahārah* is the action through which one realises one’s faith.⁶⁵⁰

For the Sufi master, however, this message is reiterated in a different form by every *hukm*; and he subsequently explores each in a variety of ways. He rarely criticises (or even attributes a school to) any view, but seeks only to show what he sees to be the inner meaning behind the jurists’ opinions. Hence, for instance, when discussing the category of bodily emissions to break ablution (c.f. ch. 7.1.A.), he claims that Abu Hanifa attaches a *ḥadath* to the emission of every impure substance because that substance symbolises a statement that contradicts one’s faith. Shafi‘i’s approach, on the other hand, shows that even something good (like the profession of faith) means nothing unless it comes from a pure site (a true and faithful heart), not from the bad sites (the anus and genitals represent hypocrisy and suspicion). In contrast, Malik attaches a *ḥadath* to an impure emission when the believer is healthy, because this symbolises the knowing rejection of Allah; he does not attach a *ḥadath* to an emission when it occurs through sickness, on the other hand, because that symbolises the mistaken obedience to disbelief when one knows no better, and, therefore, is blameless.⁶⁵¹

For al-‘Arabi, those who attach a *ḥadath* to touching women with lust (Malikis) do so because lust is a symbol of *anything* someone wants, knowing that to possess it is to disobey Allah. Whether a man breaks *wuḍū’* by touching his penis (Malikis, Shafi‘is and Hanbalis) depends upon him first realising that Allah holds dominion over all things; if he does, his *wuḍu’* remains intact, if not, it is broken. And those who hold that laughter breaks *wuḍu’* (Hanafis) do so on the basis that a thoughtless expression of mirth symbolises the heedlessness of those who do not believe.

⁶⁵⁰ *Asrār* p.151.

In contrast to *hadath*, al-‘Arabī interprets *khath* as “blameworthy character traits”.⁶⁵² However, instead of singling out specific moral crimes, these traits may once again be summarised as “things that deny the sovereignty of Allah”. Blood is good because it symbolises man’s exalted position; but too much blood (more than a *dirham*) is impure because it symbolises man’s arrogance when he becomes aware of this position.⁶⁵³ To counterbalance the nobility of his blood, impurity of urine and excrement symbolise the badness of his nature, the things that keep him from Allah. The reason that some jurists think semen is impure is that the emission of semen can be so pleasurable that a believer loses his awareness of Allah, “and “becomes annihilated from his lord”.⁶⁵⁴ Conversely, those who consider the blood of marine animals pure do so because the word *bahr* (sea) is etymologically related to *ibārah* which is “an expression for knowledge”, or awareness of Allah. Bloodless *maytah* is pure because without blood a creature is “innocent from pretentious claim”, and is never veiled from Allah.⁶⁵⁵ And so on. Thus, while in al-‘Arabi’s view, each form of inward *tahārah* differs according to the form of metaphorical *najāsah* for which it is prescribed, purity itself seems only to amount to the knowledge that Allah exists and must be praised. *Asrār al-Tahārah* is a far cry from the jurists’ discussions, and I do not wish to suggest that the early *fuqaha*’ had the same flights of creative fantasy in mind when they created the *tahārah* code. But I do think that Ibn al-‘Arabi perceptively plays upon the central religious dichotomy - faith/*tahārah* and disbelief/*najāsah* - to be found within it.

Attempting to discover a hidden religious lesson in a ritual system that is both enormously complex, and capable of tolerating a vast number of conflicting opinions within its

⁶⁵¹ *Asrār* p.153.

⁶⁵² *Asrār* p.246.

⁶⁵³ *Asrār* p.250.

⁶⁵⁴ *Asrār* p.260.

parameters, merits a large caveat: as we observed of the religio-moral approaches in general, any such theory is speculative. The obvious, but nonetheless potent rejoinder to the present one is to ask why if the jurists consciously wished to use ritual purity and pollution ideas in these ways they did not say so openly. And to this, of course, there is no convincing answer. What can be said, however, is that our hypothesis (if not necessarily the far more imaginative ideas of al-‘Arabi) – that *tahārah* regulations train believers to reflect upon their faith by symbolically imitating the isolation they would feel were they permanently separated from God – fits the jurists’ unique vision of ritual pollution. Let us finish then by reconsidering the nature and essential features of this vision.

Purity and pollution are biological facts, and a believer’s fundamental purity status is irreversibly pure. Whereas, in other cultures, impurity is perceived as a concrete (normally demonic) force capable of wreaking damage upon individuals and the sacred, Shaytan and demons are only theatrically linked to *najāsah* and neither Muslims nor their sacred places or objects may be damaged by them. Punishment for transgressing *tahārah* regulations is Allah’s to impose and will not be imposed until a Muslim dies. As far as setting the laws is concerned, however, the jurists made their decisions as lawgivers *for* Allah and, while their logic is far from arbitrary, they plainly understood themselves to be in control over the realities of purity and pollution.

The absence of any immediate and demonic threat to Muslims gave them leeway to create a uniquely lenient and prayer-focussed purity code. To a large degree, this is the work of the Malikis and Hanafis. For, while Shafi‘i does his best to stabilise the still maleable system - and, in doing so, demonstrates his own confidence over its rules and regulations - the

⁶⁵⁵ *Asrar* p.252.

previous jurists had consistently redefined the meaning of impurity to suit their purposes. As a result, *tahārah* avoids causing a burden whenever possible, and the effects of *najasah* are conspicuously weakened, or even cancelled altogether, when they threaten the performance of prayer. Among the two early schools, the list of extenuating circumstances is long: the Hanafis' rules on light and heavy, small and large impurity, and the Malikis classification of the *mustahādah* (and anyone with a chronic illness) as pure, and their rejection of bleeding as a cause of *hadath*, enable countless Muslims who would otherwise be excluded to participate in prayers. Indeed, several concessions remain to be mentioned; for instance, when excrement or any other form of *khābath* attaches itself to the bottom half of a woman's dress, or one's shoes, it may be removed by rubbing with dry herbage rather than water (*Bid* p.92). Shafi'i accepts these concessions, just as he permits praying in the sheepfolds and drinking substances into which flies have fallen. The field of *tahārah* debates must have been so full of extenuating circumstances before he sought to fix the system that, more often than not, Shafi'i can only endorse its leniency.

These concessions convey a very important message. For, by conspicuously prioritising his willingness to pray, they ensure – despite Shafi'i's insistence that it does not play an overt part (p. 191) – a believer's moral *intention* is shown to be of fundamental importance to the workings of *tahārah*. If a *muḥdith* forgets his state and prays, or does not notice that he has trodden in some filth on the way to the mosque, the jurists unanimously agree that his prayers will stand (p. 172). Similarly, if a *junūb* or *ḥā'id/nafsā'* has no other choice, s/he can enter the mosque (p. 198, fn.515). On these occasions, intention determines whether or not an impurity takes effect.⁶⁵⁶ This holds true even when the pollution involved is thoroughly tangible; thus, if a Muslim unknowingly uses water that contains *khābā'ith* to perform *wuḍū'*,

his worship is not affected. And, if a man's spouse knows that he has performed *wudu'* with such water, and she feels it is kinder not to tell him (and, thus, not obligate him to perform the ablutions and prayers afresh), there is no compunction upon her to do so.⁶⁵⁷

Such emphasis on intention is unique to *tahārah*. In other cultures, impurity is perceived as occurring *ex opere operato* (by the act itself), i.e. it is effective regardless of the moral condition of the person involved. Douglas explains:

a polluting person is always in the wrong. He has developed some wrong condition or simply crossed some line which should not have been crossed and this displacement unleashes danger for someone... Pollution can be committed intentionally, but intention is irrelevant to its effect.⁶⁵⁸

In stark contrast, by making the effects of impurity dependent upon whether or not someone knows about his state, or is capable of stopping it - just as lifting *hadath* depends upon first professing one's intention to be pure (*niyyah*) - *tahārah* once again confounds Douglas' expectations.

It is hard to convey how strange the Sunni Muslim code looks when it is compared against other pollution systems. In Sunni Islam, ritual purity is a private negotiation between believer and deity. Coming to prayer, or walking through a mosque in a state of *janabah* presumably displeases Allah, but He does not seem to mind if this occurs without prior intent, or as a result of pressure. Conversely, however, if a Muslim chooses to ignore the pollution

⁶⁵⁶ For the Malikis, intention may even determine whether a *hadath* occurs (e.g. the *mustahādah*, and those who claim that forgetfulness cancels out the existence of a *hadath*, see p.196).

⁶⁵⁷ His continuing state of *hadath* (and possible "defilement" through traces of *khābath* in the impure water) will not, therefore, negate the value of his prayer (see e.g. E.B. "*Tahārah from Najāsāt*" p.3; although honesty on the wife's part is still recommended). Likewise, recall the *hadith* used by the Hanafis to demonstrate the impurity of water lapped from by predatory animals. There, when Ibn 'Umar worriedly asks the owner of a pool of water whether or not it has been polluted by (the *su'r* of) predatory animals, Muhammad instructs the man not to tell him, on the basis that what Muslims do not know will not hurt them (p.148).

⁶⁵⁸ Douglas 1966:114.

rules and consciously attends prayer in a state of impurity, he also consciously disobeys the will of Allah (and the jurists) and his prayers will not be accepted. The isolation is real, but the state of “impurity” is really only a yardstick against which a believer’s commitment to the rules may be judged.

Returning to our theory, it has been argued that a possible, religio-moral function of these laws is to stimulate a Muslim into reflecting upon his commitment to his faith by symbolically imitating the isolation he would feel were he separated from it. This is an idea we find perfectly illustrated in a *ḥadīth* attributed to ‘Umar:

From ‘Umar b. al-Khattab, (who said) that one day he got up and left in the middle of prayers (of which he was the Imam) and when the people concluded the service, they turned around and saw him praying in the last row. (To satisfy their curiosity) he explained: I performed *wuḍū’* (before worship and was about to enter the mosque) when my concubine Rowmiyah passed by me, and I kissed her. And when I began (leading) the prayers, I felt a trickle of pre-seminal fluid (*wajadtu madhan*). I said to myself – ashamed as I was in front of all of you – I’ll just continue with my prayer.” But then I thought: To fear God the Exalted is far better for me than to fear all of you! And I left and performed *wuḍū’* again.⁶⁵⁹

Madhi is *khābiṭh* and not to be brought into a mosque, prayers are not to be said in a state of *ḥadath*. Yet, ‘Umar’s prayers would not have been affected if he had not noticed his lapse. He did, and that seems to be the lesson. In Sunni *ṭahārah* law, the jurists have linked impurity to one’s conscience; hence, only by willfully choosing not to repeat his purification would ‘Umar have angered Allah. Impurity therefore remains a cause of fear, but it is not a separate and demonic force: only a symbol of disobedience and distance. The responsibility for breaking the purity laws is severe (symbolically reflecting the choice of disbelief over faith), but it is left to the believer’s conscience – the judgment being Allah’s alone to impose.

⁶⁵⁹ *Mabsut* p.68, Maghen translation 1997:183. Material in parenthesis his.

In summary, *pace* the general tendency to explain the content of ritual systems as resulting from a series of external factors (political, economic, and/or societal), the jurists plainly understood themselves to be in control over the realities of ritual pollution. Accordingly, they created a pollution code that conforms not just to the logical, but also to the religious principles they thought should shape it. Unlike other such systems, within *tahārah*, pollution points to but does not signify an autonomous force, nor does it involve a fundamental change in a person's condition; instead, it is a yardstick according to which a believer's suitability for prayer, and obedience to his faith, may be judged. Neither form of *najasaḥ* – of its own accord – possesses the ability to hurt Muslims or affect the sacred, albeit that, through God's judgement, there is still danger in breaking the rules. In the knowledge that no external threat to the sacred exists, *tahārah*'s regulations are often extremely lenient and human intention plays a major factor (how major depends upon the law school) in determining impurity.

In light of this, we have suggested a religio-moral function of Sunni Islam's impurity laws via which the temporary exclusion following both the contraction of *ḥadath* impurity, and contact with *khathath*, serves to imitate the exclusion a Muslim faces if he makes a conscious choice to leave Islam. In this theory, through its many rulings, the *tahārah* system may be seen to encourage Muslims never to become complacent about their faith. It uses the extraordinarily powerful ideas of ritual pollution and purity to instil in believers a constant awareness of the need to renew their allegiance to Allah.

CONCLUSION

The primary goals of this research were, firstly, to describe Sunni Islam's ritual pollution system and explore the variety of opinions within it, and, secondly, to consider this system in the wider context of ritual pollution studies. To achieve these goals I examined the topic in three parts. Part I set forth the reasons why Sunni Islam's ritual pollution laws have not been studied, it described and critiqued four types of theory on the function of ritual pollution ideas, outlined the main features of Sunni *ṭahārah* law, and began the task of applying ritual pollution theories to an Islamic context. Part II analysed *ṭahārah* law in greater depth by enumerating and comparing the main opinions of the Sunni law schools concerning each form of impurity, as well as making excursions on the relationship between *najāsah* and two psychological theories of its function. Part III considered the jurists' attitude to non-Muslims, and women, and finished by suggesting a religio-moral function to Sunni Islam's ritual pollution system.

In attempting to reach the first goal, something of the scope of *taharah* law has been shown. Thinking back to when I started collecting material for this study, it now seems remarkable that most secondary sources can condense the jurists' views into a matter of lines. The fact that they can, as we know, is due to the still pervasive belief that Islamic ritual was borrowed from a foreign – normally Jewish – origin. As Maghen argues, it does not require much investigation to see that the Sunni Islamic and Jewish codes are wholly different from each other. These secondary sources' capacity for abridgement is all the more remarkable, however, given that within Sunni *fiqh* there are significant differences of opinion over almost every aspect of *ṭahārah* law. This includes the identity of the impurities themselves. The essential purity of the saliva of predatory animals, dogs (and even pigs), semen, or grape wine depends upon the law school to which a Muslim belongs; likewise, some attach *ḥadath*

impurity to nose bleeds, vomiting, and/or laughing while others do not. Quantity and avoidability are significant factors in the Hanafis' determination of *khathath*, whereas Shafi'i chooses generally to ignore them. The Malikis prioritise a believer's moral intention to a greater degree than the other law schools. And so on. There are even variations in the way the underlying logic of the system is explained: in opposition to the majority, the Hanafis do not consider *hadath* purification a "non-rational" act of worship, and this draws strong criticism from Shafi'i, who appears to have played a special part in systematizing the *taharah* code. Indeed, this study reveals only one principle upon which everyone appears to agree; specifically, that no Muslim should be excluded from worship for longer than is absolutely necessary. And, in the case of men, this means never.

In attempting to achieve the second goal, the Sunni Islamic data was considered against various theories on the function of ritual pollution ideas. To my knowledge, it is the first study of this kind to try and read Islamic ritual in light of a spectrum of different approaches from other fields. In the process of doing so, we have explored the differences between Sunni Islam's ideas and how ritual pollution is generally thought to work. Particular attention has been paid to the arguments of Mary Douglas because of their influence on anthropologists, Biblicists, and scholars of comparative religions alike. This was not the first study to consider Douglas' theories in the context of Islam, however; A. Kevin Reinhardt and Willian Graham had both previously argued that Islamic ritual does not easily fit "the Douglas view".⁶⁶⁰ Whereas Reinhardt's ideas have been considered in various places during this thesis, Graham's analysis provides an ideal vantage point from which to reflect upon our own conclusions and relate *taharah* to the rest of Islamic ritual practices. All mention of it

⁶⁶⁰ By which both mean the views Douglas' expresses in Purity and Danger and Natural Symbols. As noted (pp.124-125), Douglas has changed her mind regarding the Biblical purity laws, but this change has rarely been noticed.

has, therefore, been left until now. The same analysis also requires that we return, for a final time, to the theories of Mary Douglas.

By appealing to Sunni Islamic “Orthopraxy”, Graham counters Douglas’ claims in Natural Symbols about the types of attitude that must accompany ritual performance.⁶⁶¹ There, as has been noted, Douglas divides religious experience into “ritualist” and “non- or anti-ritualist” categories.⁶⁶² She seeks to show that most societies have practiced both in a given period, but that this will always depend upon, and reflect, other social factors and religious values. According to her argument, ritualist settings will possess a high level of social cohesion and strong traditional forms of authority; in such settings, ritual action will be accompanied by a strong belief in its “efficacy”, and a heightened sensitivity to “condensed” symbols. Conversely, Douglas assumes that, where social cohesion and traditional authority is weak or collapsing, a community will be non- or anti-ritualist, and the religious symbolism will be “diffuse”. By ritual efficacy, Douglas means that ritual (i.e. external) actions will be perceived as having powerful and *immediate* effects through which people expect “to make right what is wrong with the world” (appeasing gods, driving away demons, placating one’s ancestors etc). By condensed symbols, she means ideas and symbols that condense an immensely wide range of reference by acting as focal points for a community’s self-identity. Examples of which include the Christian Eucharist and Chrism, Friday abstinence for the Bog Irish, the Jewish idea of “exile” (*galut*), or the Ndembu perception of the colour red, all of which trigger a host of interconnected meanings. Such symbols, Douglas points out, abound in places where social cohesion and authority is strongly felt, their function is to

⁶⁶¹ According to Graham, “Orthopraxy” (a term first coined by Wilfred Cantwell Smith) refers to “the Shari’a tradition of legal and religious interpretation that emerged as early as the second/eighth century and has ever since, in the hands of the *ulamā*’ served as a kind of yardstick for faith and normative practice” (1983:56 fn. 20). He distinguishes between this concept on the one hand and “popular”, “folk”, and Shi’a Islamic practices, on the other. Graham believes that the latter examples correlate much better with Douglas’ arguments (p.65).

⁶⁶² For her argument, see Natural Symbols Chapter 1.

strike the same type of multiple chord in everyone (thus to show the “whole orchestration is on a cosmic scale”), and are invariably connected to a culture’s dominant myth or narrative. Through their inclusion in ritual action, the myth is re-enacted, and the condensed symbols consistently imbued with meaning and relevance. By participating in the ritual one lives out, and replenishes the myth, which remains timeless.⁶⁶³

In contrast, in settings where social cohesion is weak or breaking down, and traditional forms of authority undefined or collapsing, Douglas expects to find “diffuse” symbolism, modern Western examples of which include concepts like “human values” and “social responsibility” or, among tribal peoples, the idea of “joy” in Mbuti society.⁶⁶⁴ In her view, these concepts also generate standard responses, but, because social cohesion is generally lacking, they do not unite with other aspects of the larger symbolic system and, thus, prove very difficult to analyse. As a result, religious feeling will emphasise the votary’s personal relationship to God, and ideas of sin and virtue will be interiorised and seen as states of mind, rather than connected with any external form of action. Here, ritual does not necessarily disappear from religion, but it will gradually become less relevant, more a cause for suspicion and, if it is continued, will eventually attain only a “commemorative” quality.⁶⁶⁵

While Douglas’ typology has been criticised for being too obviously anchored in the historical shift from Roman Catholicism to Protestantism,⁶⁶⁶ it is remarkable how well it has been shown to function in a wide variety of contexts.⁶⁶⁷ In Graham’s view, however, in the case of Islamic Orthoprax tradition, it flounders. For according to Douglas’ logic, there is no

⁶⁶³ Douglas 1970: 99.

⁶⁶⁴ Douglas 1970:29. The Mbuti pygmies are Douglas’ best example of an anti-ritualist society: “their religion is one of internal feeling not of external sign” because their social groupings are fluid and fluctuating (1970:34).

⁶⁶⁵ Douglas 1970:27.

⁶⁶⁶ Morris 1987:233. Indeed, even the term “commemorative” is based on the Protestants’ re-evaluation of the Eucharist’s nature.

social setting that could have produced the attitude to ritual that we find there. Given its clear ideas of sin and virtue, and emphasis on purity and dietary laws, we must assume that the original social context(s) from which Islamic ritual was born correlates with Douglas "ritualist" setting, and thus was governed by strong communal bonding and traditional authority. This sounds very plausible and, in fact, Graham generalises that historically "Islamic tradition has strong communal bonding, strong traditional authorities" and is "at the core strongly ritualist by almost any standard".⁶⁶⁸ Yet, Douglas also requires ritual efficacy, and condensed symbolism from her ritualist attitude, and Graham finds neither embedded in traditional Sunni Islamic Orthoprax interpretations of its key ritual practices. As his main example, Graham explores the *hajj*. Regarding ritual efficacy (in Graham's understanding of Orthopraxy) Muslims do not perform the *hajj* to achieve any concrete "magical" result: there is no "redemptive or absolving power" in its performance, even the stoning rituals at Mina are explained not as acts of defense against pagan powers, but simply "as reminders of Abraham's and Ishmael's faith".⁶⁶⁹ (This should be compared with the obvious type of efficacy expected from Shi'i practices such as *ziyāra*, where the tombs of saints are believed to heal the sick who visit them.⁶⁷⁰) And, in regard to condensed symbolism, Graham finds no parallel to the type of focal symbols mentioned above. Interestingly, the *hajj* does place Muslims within a myth: "the Abraham-Hagar-Ishmael cycle".⁶⁷¹ But, Graham claims that most of the *hajj* remains completely unconnected to the Abraham narrative: "the Arafat and Muzdalifa rites, including the major rite of the entire *hajj*, the *wuqūf* at 'Arafat, have no link with the Abraham story at all".⁶⁷² Rather than the usual bond between myth and ritual, therefore, "there is no sense in the flow of ritual events in *hajj* that one is reenacting a mythic

⁶⁶⁷ For examples, see e.g. Wuthnow *et al* 1984.

⁶⁶⁸ Graham 1983:65.

⁶⁶⁹ Graham 1983:68.

⁶⁷⁰ Graham 1983:65.

⁶⁷¹ Muslims are to run seven times between Safa and Marwa re-enacting Hagar's desperate search for water, and offer the sacrifice at Mina just as Abraham offered Isaac.

paradigm”, and “no statement that the worshipper sees himself or herself as like Hagar or Abraham”.⁶⁷³ Thus, in opposition to Douglas’ theories, Graham suggests that, while Muslim ritual certainly strengthens community bonding (what she sees as the main aim of most rituals), the religious feeling motivated by Islamic ritual is internal, pietistic, moral, and its symbolism is “diffuse” - characteristics that Douglas normally attributes to non-ritual settings.⁶⁷⁴

As the best example of what he means, Graham points to the *wuquf* at ‘Arafat. Here:

(o)ne must at some point during the prescribed hours stand in prayer, meditations, or recitations on or near the Mount of Mercy on the Arafat plain. Symbolically, this act has no precise mythological or theological connotations. Repentance, humility, introspection, awareness of community – these are the themes of the suggested prayers for the *wuquf*, but there is no effort at more condensed symbolic interpretation. Here in the sparseness of ritual action – *being there* is the only requirement.⁶⁷⁵

Instead of the type of feelings and religious mode of expression that Douglas assumes must accompany ritual, Graham concludes that:

(t)here is no *do ut des*, no elaborate symbolic drama at the heart of these rites, only the overwhelming sense of *coming before God* to “worship and serve” in obedience (*ibāda*) and to declare “His oneness” with simplicity and sincerity (*tauhid*).⁶⁷⁶

Graham believes that the unique character of Islamic ritual, and hence its capacity to elude Douglas’ scheme, is due to a very powerful initial desire in the first Muslim generations to distinguish Islamic faith and practice from those of previous and contemporaneous religious

⁶⁷² Graham 1983:68.

⁶⁷³ Graham 1983:68-69.

⁶⁷⁴ On this point, however, Graham seems to give the impression that Douglas never expects to find “internal” or ethical concepts (like *tauhid*) communicated via condensed symbolism; this is not the case. For, as we know, in her original argument, Douglas was quite willing to attribute this type of meaning to the Jewish pollution rituals; she described them “as upholding the oneness of God” (see ch.3.4.). The difference is that Douglas expected this interpretation to interconnect with any number of other social and theological meanings, all emphasising the importance of unbroken boundary lines, and all striking the same coherent chord.

⁶⁷⁵ Graham 1983:70. My emphasis.

traditions (especially that of pre-Islamic paganism and the *ahl al-kitāb*) by designing a ritual system that is “aniconic, “amythical”, and “antisacramentalist”.⁶⁷⁷ In short, to create a system wherein the sole purpose is the remembrance of God – and any hint of a magical quality (Douglas’ “ritual efficacy”) is militated against. Thus, although early Islam (unlike Christianity) did not necessarily reject pre-existing pagan rituals such as purity and dietary ideas, it adapted and Islamicised them to such a degree that any resemblance to previous connected practices were lost. As we know, Graham refers to this trend as “reformational”.⁶⁷⁸

There are a few niggles with Graham’s article. The concept of orthopraxy has been criticised for, on the one hand, implying that Islam consists of nothing more than rules of ethics and conduct, and hence of being “devoid of belief”, and, on the other, for being too general.⁶⁷⁹

More specifically, Graham’s choice of the Hajj as his example of the amythical nature of Islamic rites is a strange decision, as it is the only ritual practice that is explicitly linked to a myth by Islamic tradition. And, while Graham describes this link as incidental, other scholars attach much more importance in it.⁶⁸⁰ Indeed, his assertion that the Hajj’s major rites have nothing to do with the Abrahamic myth is challenged by a *ḥadīth* in which, after Abraham has finished building the Ka’ba, Gabriel guides him through the sevenfold circumambulation and all the ritual acts associated with Safa, Marwa, Mina, Muzdalifa, and

⁶⁷⁶ Graham 1983:69-70. My emphasis.

⁶⁷⁷ Graham 1983:67.

⁶⁷⁸ Early Islam’s self-conscious rejection of ritual efficacy is best illustrated by a famous *ḥadīth* ascribed to ‘Umar ibn al-Khattab. Umar is reported to have said when, during the *hajj*, he kissed the Black Stone, “By God, I know that you are only a Stone, and had I not seen the Apostle of God kiss you, I would not kiss you! (cited in Graham 1983:67).

⁶⁷⁹ See e.g. Nadia Abu-Zahra *The Pure and Powerful: Studies in Contemporary Muslim Society* (1997, Lebanon, Ithaca Press) pp. 37-41.

⁶⁸⁰ According to Peters, the Abrahamic narrative is vital to the meaning of Hajj because it places it (and the Islamic faith) within the history of monotheistic traditions. “Absent the Abrahamic myth”, he observes, “and the Hajj of Muhammad’s Mecca disintegrates into an obscure series of acts centering not on Mecca but on the mountain called Arafat” *The Hajj: Muslim Pilgrimage to Mecca and the Holy Places* (1994 Princeton, Princeton University Press) p.31.

Arafat.⁶⁸¹ Also, to make an obvious point, Graham's observation that "the worshipper does not see himself or herself like Hagar or Abraham"⁶⁸² is probably true for many Muslims, but not for others. Finally, there are one or two Sunni ritual practices that do seem to possess Douglas' characteristic of ritual efficacy (in other words, they are done for a "magical" purpose other than "being before God"). Ritual slaughter, for instance, fends off death defilement and transforms a creature's flesh and skin from a (potential) source of impurity to one of purity and usability, just as *zakāh* purifies a believer's wealth (arguably changing its nature).

Putting such reservations to one side however, I believe that, in general, Graham manages to diagnose the distinctive nature of Sunni ritual more trenchantly than any other scholar. Moreover, as I have said, his arguments provide the ideal background against which to set our conclusions. For a start, his description of Islamic ritual as "reformational" is, as noted in our second chapter, very helpful. For, while the law texts show that the jurists were only really interested in discussing matters between themselves, their treatment of our subject (and all others) was shaped by an awareness of how different Islam was; and because of that the term "reformational" remains thoroughly applicable to it.

But "reformational" may also be applied to *tahārah* in a different way, for it is clear that Sunni Islamic ideas of ritual pollution, to a significant degree, also "reform" the scholarly consensus of opinion on the way these ideas function. We will conclude by considering how. Firstly, and of primary importance, *tahārah* law neither replicates nor enforces social hierarchies in the way Douglas and many scholars since have argued. In fact, Douglas' main thesis that, due to the symbiotic relationship between social and physical bodies, ritual

⁶⁸¹ The authority is al-Azraqi and is cited by Peters 1994 B:7-8. It is strange that Peters notes Graham's article

pollution ideas inevitably replicate pressures from social margins, makes no sense in the context of early Sunni Islamic history which consisted of a series of victories where other peoples boundaries were crossed. Instead, by displaying an egalitarianism that confounds Douglas' expectations, *ṭahārah* reflects the attitude of a gracious winner; and a variety of strategies explicitly rule out the chance of hierarchisation along pollution lines. These include the idea that higher purity is granted to no-one from birth, nor is it necessary for jobs, all impurities are the same strength, human beings contract a non-contagious form of impurity, and lifting *hadath* is only necessary for worship. This is not to say, however, that Douglas' arguments have proven worthless. For a start, her theory of anomaly is better applied to *ṭahārah* than to the Biblical code. Likewise, her observation that ritual pollution beliefs are politically most effective in settings of social tension enabled us to hypothesise why ritual pollution is not necessary for such purposes in Islam: specifically, Sunni law is constructed so as to fix social relations – between insider and outside - and avoid tensions (pp. 227-229). The fact that, in *ṭahārah*, the non-Muslim finds his position firmly nailed in place ensures that his “impurity” carries no real bite. Moreover, it has been suggested that, in the one case where ritual pollution law could be said to disadvantage a section of society, in its provisions for women, this may reflect the ambiguity of a woman's status in early Islam. In this case, Douglas' theories can be applied to a Sunni Islamic context in a more predictable way.

Douglas' approach was only one of several discussed. In contrast, other scholars attribute this behaviour specific material or psychological causes and functions. I would like to suggest that, by considering the *ṭahārah* data against these theories, the same “reformatio-
nals” treatment of themes becomes apparent. For instance, while two of the main psychological

(p.363), but does not remark on this.

explanations for pollution behaviour – a fear of death, and loss of bodily control – are applicable to *tahārah* at a certain level, whereas in other pollution systems they dominate the entire code, in *tahārah* these themes are used strategically to make certain points. Thus, while the fact that human blood is impure, and bleeding (according to the Hanafis, Shafi'is, and Hanbalis, see ch.7.1.A.) is a source of *hadath*, may reflect our instinctual fear that through the loss of blood one draws closer to death, we cannot but notice that the martyr's blood is not impure, nor is his death a cause of major *hadath*. Likewise, while human corpses are generally viewed as very impure in most pollution systems, they are not in *tahārah* because, as the Qur'an says, Allah created mankind to be superior (Q. 17:70). Such strategies show that for Muslims death possesses only limited powers. By the same token, losing bodily control is normally considered (akin to) a cause of *hadath* when it occurs through sleeping or intoxication, and self-control (*hilm*) is a key ethical concept in Islam, but when ritual impurity is chronic as with the *mustahādah*, it ceases to be a cause for concern. This conveys two highly significant lessons: firstly, the greater importance of prayer over impurity; and, secondly, the influence of moral intention in the effect and/or contraction of impurity (and implicitly in the judgement of an action).

Through such reforms, the concept of ritual pollution is brought into line with an Islamic perception of the world. A very important aspect of this process is the connection that remains between impurity and danger. Contrary to the norm, it is - as Graham claims - very difficult to find in Sunni Islam's purifications the usual, and *immediate*, ritual efficacy (e.g. purifying the body of demons/spirits/crimes) that normally explain the performance of these ceremonies. In Sunni Islam, there are benefits to purification (both rational and non-rational, ch.4.3.A) but, while a connection persists between impurity and supernatural forces (in both

⁶⁸² Graham 1963:69.

ahādīth and the liturgy of the *niyyah* and *istinjā*'), the law does not grant these forces the power to hurt Muslims; thus, the purifications' "efficacy" is delayed and the way in which, to use Douglas' expression, purification "makes the world right" is more difficult to pin down. Equally unusual for pollution codes, it is clearly impossible for the sanctity of mosques, holy things or places to be harmed by pollution. This explains why the *mushrik* – who is bound to be *junūb* if not necessarily *mutanajjas* – is judged harmless, and may, according to most jurists, wander through a mosque.

The most common explanations of the function of ritual pollution according to both "insider" (i.e. native participant) and "outsider" (i.e. ritual analyst) do not hold true in Sunni *fiqh*. The purifications do not protect Muslims and sacred places from the immediate threat of pollution; nor (with the minor exception of its rules for women) is there any real interest in expressing religio-social hierarchies through ritual pollution. This opens the door for other interpretations. First, it was suggested that the reason Muslims are not permitted to enter mosques in a state of major *ḥadath*, when non-Muslims are, does not imply that their impurity is more powerful than the latter's but, rather, to instil in believers a sense of the dangers and importance of sexuality and fertility to Islam. The same lesson is also conveyed by attributing a minor *ḥadath* to touching someone of the opposite sex, or one's genitals, before prayer.

In the last chapter, we broadened our approach to suggest a general religio-moral function to Sunni Islam's ritual pollution system. In this theory, the restrictions accompanying each form of *najāsah* act as symbolic reminders of the isolation that awaits a Muslim if he turns from his faith. While certainly speculative, it should now be noted that this suggestion agrees with Graham's description of the religious sentiment at the heart of the *hajj* and Muslim ritual

in general. In his view, the *ḥajj*'s symbolism is diffuse rather than condensed (it does not consist of specific multivalent symbols striking a complex, but identical chord in everyone), and there is no elaborate narrative in which the believer participates. Instead, its message is stark in its simplicity, nothing more, nor less than "an overwhelming sense of coming before God". This intention to perform the *hajj* is pronounced in an uncomplicated fashion in the *talbiya*, the ritual formula to be said by all Muslims as they begin: "*labbaika, allāhumma, labbaika*" (which Graham translates as "Here I am, wholly at thy service, O Lord, here I am, wholly at thy service"). We have argued that the purifications achieve the same end, albeit on a lesser scale. Here too the symbolism is diffuse; unlike, for instance, Zoroastrian purification rituals, believers do not participate in a myth. Here too the same message is conveyed: *tahārah* like the *talbiya*, indeed like most forms of Muslim ritual, is the mechanism via which a Muslim may approach, and proclaim his presence to God. *Najāṣah*, meanwhile - stripped of demonic power and without the capacity to alter a Muslim's essential purity - is merely the mechanism that symbolically pushes him away.

As Graham observes, not only Douglas, but Western anthropologists and scholars of religions in general, have formulated all encompassing ritual theories without paying attention to Sunni Islamic ritual tradition. This study shows that ritual purity and pollution concepts are very good examples of how and why Islamic ritual does not fit Western ritual theories. For, through the jurists' unique (and enclosed) approach to the subject matter, the concept of pollution has been modified to fit an Islamic view. Ultimately, when we speak of the functions of ritual impurity in Sunni *fiqh* we refer to two very powerful strategies. On one level, by emphasising conformity to tradition, the purifications serve as "social glue" to unite believers in their preparations for prayer, yet without introducing hierarchy into the mix. On another level, they remind each Muslim that they must at all times strive to turn their face

towards God, and of what could happen if their impurity and isolation were to become real. In contrast, the concept of *najāsah* emerges as a symbolic threat upholding the sense of individual and social obligation in relation to society and to Allah.

In a recent interview, Norman Mailer memorably stated that he despised finishing any work.⁶⁸³ The last line, he complained, was always the hardest because it needs to sum up in a few words what the previous many thousand have been spent trying to do. Facing this dilemma now, I think the best and possibly only way to wrap this study up is by posing the same question of Islam that, at the beginning, Nathaniel Micklem asked of Judaism: “*of what interest can such subjects be except to the anthropologist, what can all this have to do with religion?*” For surely here, in the context of Sunni Islam, the answer must be: “a very great deal”.

⁶⁸³ The Edinburgh Book Festival, November 19th 2000.

BIBLIOGRAPHY

Abu-Zahra, N. The Pure and Powerful: Studies in Contemporary Muslim Society (1997, Lebanon, Ithaca Press)

Al-Ghazali, Abu Hamid Muhammad Ihya Ulum al-Din, translated as The Mysteries of Purity by N. Faris (1996, Lahore, Sh. Muhammad Ashraf)

‘Ali Maulana Muhammad The Religion of Islam (1936, Lahore, Ahmadiyya Anjuman Isha‘at Islam)

Al-Kalbi Kitab al-Asnam, translated as The Book of Idols by Nabih Amin Faris (1952, Princeton, Princeton University Press)

Al-Misri, ibn Naqib ‘Umdat al-Salik, translated as Reliance of the Traveller by Nuh Ha Mim Keller (1991, Maryland, Amana publications)

Al-Nawawi, Muhyi al-Din Forty Hadith, translated by Ezzedin Ibrahim and Denys Johnson-Davies (1997, Cambridge, Islamic texts society)

Al-Maqasid, translated by Nuh Ha Mim Keller (1994, London, Islamic Texts Society)

Minhaj et Talibin, translated as A Manual of Muhammadan Law According to the School of Shafi‘i by E.C. Howard (1914, London, W. Thacker & Co.)

Al-Seestani "*Tauhdihihul Masae'it*", translated as "Islamic Laws" by Hamid Mavani available at <http://www.al-islam.org/laws/>.

Al-Tabrizi, Muhammad b. Abdullah al-Khatib al-'Umari *Mishkat ul-Masabih*, translated by Abdul Hameed Siddiqui (1990, New Delhi, Kitab Bhaven)

Al-Shafi'i, Muhammad b. Idris *Kitab Al-'Umm* (n.d., Beirut, Ilm al-kutub)

Al-Shaybani, Muhammad b. al-Hasan *Kitab al-'Asl* (1990, Beirut, Ilm al-kutub)

Antoun, R. "Anthropology" in The Study of the Middle East: Research and Scholarship in the Humanities and the Social Sciences (1976, New York, John Wiley & Sons)

Babb, L.A. The Divine Hierarchy: Popular Hinduism in Central India (1975, New York, Columbia University Press)

Balzer M. "Rituals of Gender Identity" in *American Anthropologist* 87 (1981)

Bataille, G. *L'Erotisme* translated as Eroticism by M. Dalwood (1962, London, John Calder)

Bell, C. Ritual Theory, Ritual Practice (1992, Oxford, Oxford University Press)

"Ritual, Change and Changing Rituals" in *Worship* 63 I (1981) 31-41.

Bettleheim, B. Symbolic Wounds: Puberty Rites and the Envious Male (1954, New York, Free Press)

Bernanos, G. The Diary of a Country Priest

Boudhiba, A. La Sexualité en Islam, translated as Sexuality in Islam by A. Sheridan (1998, London, Saqi Books)

Bourke, J. Scatological Rites of all Nations (1891, Washington, D.C., Lowdermilk)

Bousquet, G.H. “La Pureté Rituelle en Islam” in *Revue de l'histoire des religions* 138 (1950)

Boyce, M. A History of Zoroastrianism (1975, vol 1, Leiden, Brill)

Brakke, D. “The Problematization of Nocturnal Emissions in Early Christian Syria, Egypt, and Gaul” in *Journal of Early Christian Studies* 3 (1995)

Brown, P. Body and Society: Men, Women and Sexual Renunciation in Early Christianity (1988, New York, Columbia University Press)

Browne, E.G. A Year Among the Persians (1983, London, [no. Pub])

Buckley and Gottlieb Blood Magic: The Anthropology of Menstruation (1988, Los Angeles, University of California Press)

Buitelaar, Feasting and Fasting in Morocco (1993, Oxford, Providence R.I.)

Burrus, V. “Word and Flesh: The Bodies and Sexuality of Ascetic Women in Christian Antiquity” in *JSFR* 10 (1994).

Burton, R. "Some Nuer Notions of Purity and Danger" in *Anthropology* 69 (1974)

Calder, N. Studies in Early Muslim Jurisprudence (1993 Oxford, Clarendon Press)

Carroll, M.P. "One more Time Leviticus Revisited" in Anthropological Approaches of the Old Testament (ed. B. Lang 1985 Leiden, Brill)

Choksy, J. Purity and Pollution in Zoroastrianism: Triumph Over Evil (1989 Austin, University of Texas Press).

Combs Schilling, M.E. Sacred Performances (1989 New York, Columbia University Press)

Cook, M & Crone, P. Hagarism: The Making of the Islamic World (1977 Cambridge, Cambridge University Press).

Coulson, N.J. History of Islamic Law (1964 Edinburgh, Edinburgh University Press)

Countryman, W. Dirt, Greed and Sex (1988 Philadelphia, Fortress)

Courbage, Y. and Fourbes, P. Christians and Jews Under Islam, translated by J. Mabro (1997, London, I.B. Tauris & Co)

Crone, P. Roman, Provincial and Islamic Law (1987 Princeton, Princeton University)

Culpepper, E. "Zoroastrian Menstrual Taboos" in Women and Religion (ed. J. Plaskow 1974 Missoula, Mont. Scholars Press)

De Beauvoir, S. The Second Sex, translated and edited by H.M. Pousley (1988, London Pan Books)

de Vaux, R. "The Sacrifice of Pigs in Palestine and in the Ancient Near East" in The Bible and the Ancient Near East, ed. J. Rogerson (1972, London, J.K. Publishers)

Denny, F. An Introduction to Islam (1994 Canada, Macmillan Publishing Company)

Delaney, C. "Mortal Flow in Turkish Village Society" in Blood Magic: The Anthropology of Menstruation (ed. Gottlieb 1988 Berkely, University of California Press)

Dinari, Y. "Customs Relating to the Impurity of the Menstruant" in *Tarbiz* 49 (1979-80)

Diener, P and Robkin, E. "Ecology, Evolution, and the Search for Cultural Origins: the Question of the Islamic Pig Prohibition" in *Current Anthropology* 19 (1978).

Douglas, M. Purity and Danger (1966 London, Routledge)

Natural Symbols (1970 London, Penguin)

Implicit Meanings (1975 New York, Routledge & Kegan Paul)

"Sacred Contagion" in Reading Leviticus: A Conersation with Mary Douglas (ed. J. Sawyer 1996 Sheffield, Sheffield University Press)

Doi, A. Shari'ah. The Islamic Law (1984 London, Ta Ha Publishers)

Dubois, A. Hindu, Manners, Customs, and Ceremonies (1897 Oxford, Clarendon Press)

Eilberg-Schwartz, H. The Savage in Judaism (1990, Bloomington, University of Indiana Press)

El-Saadawi, N. The Hidden Face of Eve: Women in the Arab World (1982, London, Beacon Press)

Effendi, Abu Bakr Bayan ud-Din edited and translated by Mia Brandel-Syrier as The Religious Duties of Islam as Taught and Explained by Abu Bakr Effendi (1971, Leiden, Brill)

Elliger, K. Leviticus (1996, Tübingen, J.C. Mohr)

Encyclopedia of Islam. First and second editions (Leiden, Brill)

Feldman, E. Biblical and Post-Biblical Mourning (1977, New York, Ktav)

Firmage, E. "The Biblical Dietary Laws and the Concept of Holiness" in Studies in the Pentateuch, ed. J.A. Emerton (1990, Leiden, VTSup 41)

Fontenrose, G. The Ritual Theory of Myth (1966, Los Angeles, University of California)

Frazer, J.G. The Golden Bough (1995, London, Papermac)

Freud, S. Totem and Taboo (1950, London, Routledge & Kegan Paul)

Civilisation and Its Discontents (1963, London, Hogarth Press)

Geertz, C. Islam Observed: Religious Development in Morocco and Indonesia (1968, New Haven, Yale University Press)

The Interpretation of Culture (1993, London, Fontana Press)

Gellner, E. "The Mind of a Mullah" in *New Republic* 190 (1984).

Giffen, L. "Another Perspective on Ethics in Islamic Law and Ritual" in Religion and Law: Biblical-Judaic and Islamic Perspectives, eds. E. Firmage, B. Weiss, J. Welch (1994, Winona Lake, Eisenbrauns)

Goldziher, I. "Islamisme et Parsisme" in *Revue de l'histoire des Religions* 43 (1901)

The Zahiris: Their Doctrine And Their History (1971, Leiden, E.J. Brill)

Introduction to Islamic Law (1981, Princeton, Princeton University Press)

Gorman, F. The Ideology of Ritual: Space, Time and Status in the Priestly Theology (1990, Sheffield, Sheffield University Press)

Goodwin, J. Lords of the Horizon (1999, London, Vintage)

Graham, W. "Islam in the Mirror of Ritual" in Islam's Understanding of Itself, eds. R. Hovanissian and S. Vryonis (1983, Malibu, Undena).

Haddad and Esposito Islam, Gender and Social Change (1998, Oxford, Oxford University Press)

Hallaq, W.B. "Was the Gate of *Ijtihad* Closed?" in Law and Legal Theory in Classical and Medieval Islam (1994, Aldershot Variorum).

Hanson, F.A. "Female Pollution in Polynesia" in *Journal of the Polynesian Society* 3 (1982)

Harrington, H. The Impurity Systems of Qumran and the Rabbis (1993, Atlanta, Scholars Press).

Harris, M. Cows, Pigs, Wars, Witches: The Riddles of Culture (1974, New York, Random House Books)

Hawting, G.R. "The Origins of the Muslim Sanctuary" in Studies on the First Century of Islamic Society, ed. G.H.Juynboll (no.d., pl., pub).

Hillenbrandt, C. The Crusades: Islamic Perspectives (1994, Edinburgh, Edinburgh University Press)

Hitti, P. K. History of the Arabs (1970, London, Macmillan Press)

Holland, M. Inner Dimensions of Islamic Worship (1983, London, Islamic Foundation)

Houston, W. Purity and Monotheism (1993, Sheffield, Sheffield Academic Press)

Hunn, E. "The Abominations of Leviticus Revisited" in Classifications in their Social Context, eds. R.E. Ellen and D. Reasons (1979, New York, Academic Press)

Husain, S.A. A Guide to Hajj (1972, Lahore, Sh. Muhammad Ashraf)

Hyatt, C., Duquette, L., & Ford, G Taboo The Ecstasy of Evil (1991, Arizona, New Falcon Publication)

Ibn Al-Ukhuwwa Ma'alim al-Qurba, edited and translated by Reuben Levy (1938, Cambridge, Cambridge University Press)

Ibn Qudamah Kitab al-'Umda fi ahkam al-fiqh, translated as Le Precis de Droit d'Ibn Qudamah ([no d, pl. or pub.])

Ibn Jawziyyah Ahkam Ahl al-Dhimmah (1994, Beirut, Dar al-'Ilm al-Miyin)

Ibn Rushd, Abu al-walid Muhammad ibn Ahmad Bidayat al-Mujtahid, translated by I. Nyazee as The Distinguished Jurists' Primer (1994, Reading, Garnet Publishing Co.)

Isik, K.H. Endless Bliss available at http://207.159.82.201/Endless_Bliss

Izutsu, T. God and Man in the Koran: Semantics of the Koranic Weltanschauung (1964, Tokyo, The Keio Institute of Cultural and Linguistic Studies)

Jenson, P. Graded Holiness: A Key to the Priestly Conception of the World (1992, Sheffield, Sheffield Academic Press)

Kamali, M. Principles of Islamic Jurisprudence (1991, Cambridge, Islamic Texts Society)

Karam, A. Women, Islamisms, and the State (1998, London, MacMillan Press)

Khattab, H. The Muslim Women's Handbook (1993, London, Ta Ha Publishers).

Krygier, J. "Caste and Female Pollution" in Women in India, edited by M. Allen and S.n. Mukherjee (1982, Canberra Australia National University Press)

Leach, E. "Animal Categories and Verbal Abuse" in New Directions in the Study of Language, edited by E.H. Lenneberg (1964, Cambridge, MIT Press)

Lewis, B. Race and Slavery in the Middle East: An Historical Enquiry (1990, Oxford, Oxford University Press)

Levine, B. In the Presence of the Lord (1974, Leiden, Brill)

Lindenbaum, S. "Sorcerers, Ghosts and Polluting Women: An Analysis of Religious Belief and Population control" in *Ethnology* 11 (1972)

Kuru Society: Disease and Danger in New Guinea Highlands (1979, California, Mayfield Publishing)

Macdonald, D. Development of Muslim Jurisprudence (1903, London, Routledge)

Maghen, Z. Taharah Shatir al-Iman: An Enquiry into the Historical Evolution of the Islamic System of Ritual Pollution (Unpublished PhD. Thesis, 1997, Columbia University)

Marcus, J. "Islam Women and Pollution in Turkey" in *Journal of the Anthropological Association of Oxford* 15 no.3 (1984)

Malina, B. The New Testament World (1981, Atlanta, John Knox Press)

Malik, ibn Anas Al-Muwatta, translated by Aisha Abdurrahman Bewley (1989, London, Kegan Paul)

Al-Mudawwanah Al-Kubra (1994, Beirut, Dar al-kutub al-'Ilmiyah)

Martin, R. (ed). Approaches to Islam in Religious Studies (1985, Arizona, University of Arizona Press)

Meigs, S. "A Papuan Perspective of Pollution" in *Man* 13 (1978)

Mernissi, F. Beyond the Veil (1975, New York, Schenkman)

Milgrom, J. "Israel's Sanctuary: The Priestly Picture of Dorian Gray" in *RB* 83 (1976)
Leviticus (1991, New York, The Anchor Bible)

Muslim b. al-Hajjaj Sahih Muslim, translated by Siddiqui, A. (1993, Lahore, Muhammad Ashraf)

Niewehuijze, N. Social Stratification in the Middle East (1965, Leiden, Brill)

Paige, J. & K. The Politics of Reproductive Ritual (1981 Los Angeles, University of California Press)

Paschen, W. "Rein und Unrein" in *Untersuchung zur biblischen Wortgeschichte* 24 (1970)

Peters, F.E. Muhammad and the Origins of Islam (1994A, New York, State University of New York)

The Hajj: The Muslim Pilgrimage to Mecca and the Holy Places (1994B, Princeton, Princeton University Press)

Philips, A. The Jinn (1989, Riyadh, International House)

Popper, W. "Purification, Muslim" in *Encyclopedia of Religion and Ethics* vol. 10.

Reinhardt, A.K. "Impurity and Danger" in *History of Religions* 30/1 (1990)

Ridgeon, L. Crescents on the Cross: Islamic Visions of Christianity (1999, Glasgow, Trinity St Mungo Press)

Ricoeur, P. Finitude et Culpabilite (1960, Paris, [no pub])

Rippin, A. Muslims their Religious Beliefs and Practices (1990-93, London, Routledge)

Rogerson, J.W. "Anthropology and the Old Testament" in The World of Ancient Israel: Sociological, Anthropological and Political Perspectives, edited by R.E. Clements (1989, Cambridge, Cambridge University Press)

Ryckmans, "Les Inscriptions anciennes de L'Arabe de Sud: Points de vue et problemes actuels" in *Oosters Genootschap in Nederland I* (1973)

Sabbah, F. Woman in the Muslims Unconscious translated by Mary Jo Lakeland (1984, New York, Pergamon Press)

Sabiq, S. Fiqh al-Sunnah: At-Taharah and As-Salah (1992, Indianapolis, American Trust Publications)

Schacht, J. "The Law" in Unity and Variety in Muslim Civilisation edited by G.E. von Grunebaum (1955, Chicago, University of Chicago Press)

"Ikhtilaf" in *Encyclopedia of Islam* 2nd edition.

"Law and Society" in The Cambridge History of Islam edited by P.M.Holt, A.

Lambton, B. Lewis (1970, Cambridge, Cambridge University Press)

Selvidge, M. Woman, Cult and Miracle Recital (1990, Lewisburg, Bucknell University Press)

Silberman, Isidor "A contribution to the Psychology of Menstruation" in the *International Journal of Psycho-Analysis* 31 (1950)

Shaw, T. The Burden of the Flesh (1998, Minneapolis, Fortress Press)

Siddiqui, M. "Law and the Desire for Social Control: An Insight into the Hanafi Concept of *Kafa'a* with Reference to the Fatawa 'Alamgiri (1664-1672)" in Feminism and Islam, edited by M. Yamani (1996, London, Ithaca Press)

Smart, N. "The Scientific Study of Religions in its Plurality" in Vol I of Contemporary Approaches to Religion edited by F. Whaling (1984, The Hague, Mouton)

Smith, W.R. Lectures on the Religions of the Semites (1972, New York, Schocken Books)

Soler, J. "The Dietary Prohibitions of the Hebrews" in *New York Review of Books* (1979)

Sourdel, D. "The Abbasids" in Cambridge History of Islam edited by P.Holt *et al* (1970, Cambridge, Cambridge University Press)

Spellberg, D. "Writing the Unwritten life of the Islamic Eve: Menstruation and the Demonization of Motherhood" in *The International Journal of Middle Eastern Studies* 28 (1996).

Speight, M. "The Place of Christians in Ninth Century North Africa according to Muslim Sources" in *Islamochristiana* 4 (1978)

- Stephens, W. The Oedipus Complex: Cross Cultural Evidence (1962, New York, Free Press)
- Stowasser, B.F. Women in the Qur'an, Traditions, and Interpretation (1994, New York, Oxford University Press)
- Tayob, A. Islam A Short Introduction (1999, Oxford, Oneworld)
- Tolstoy, L. Ana Karenina (1954, London, Penguin Classics)
- Turner, V. Forest of Symbols: Aspects of Ndembu Ritual (1967, Ithaca, Cornell University Press)
- Vaglieri, L.V. "The Patriarchal and Umayyad Caliphates" in The Cambridge History of Islam edited by P. Holt *et al* (1970, Cambridge, Cambridge University Press)
- Watt, M. Islamic Philosophy and Theology (1985, Edinburgh, Edinburgh University Press)
Muhammad at Medina (1956, Oxford, Clarendon Press)
- Wehr, H. A Dictionary of Modern Arabic (1980, London, Macdonald & Evans Ltd.)
- Wenham, G.J. "Why Does Sexual Intercourse Defile?" in *Zaw* 95 (1983)
- Wensinck, J. "Animismus und Damoneglaube im Untergrunde des judischen und islamischen rituellen Gebets" in *Der Islam* 4 (1913)

“Die Entstehung der muslimischen Reinheitsgesetzgebung” in *Der Islam* 5
(1914)

Westermarck, E. Ritual and Belief in Morocco (2 vols. 1926, London, Macmillan)

Marriage Ceremonies (1914, London, MacMillan)

Wright, D.P. “The Spectrum of Priestly Impurity” in Priesthood and Cult in Ancient Israel,
edited by G. Anderson (1991, Sheffield, Sheffield Academic Press)

Wuthnow R. *et al* Cultural Analysis (1984, London, Routledge & Kegan Paul)

Yates, A. Ibn Rushd as Jurist Unpublished PhD Thesis (1991 Cambridge, Kings College)

Zara, B. “The Requirement of *Taharah* for Reciting or Touching the Qur’an” available at
<http://www.uh.edu/campus/msa/articles/zara.html>

Ziegler, P. The Black Death (1997, London, The Folio Society)

Zwemer, S. The Influence of Animism on Islam (1920, London Macmillan Co).

RICHARD GAUVAIN

Part II

Sunni Islam's Ritual Pollution Laws



CHAPTER 6

KHABATH IMPURITY

In Chapter 4, the main features of Sunni Islam's *tahārah* system were outlined. In Part II we shall look at this system in greater detail. Our focus changes, and all mention of comparative approaches will be restricted to two excursions.³³⁷ The present aim is to gain a greater understanding of the range of opinions *within* Sunni Islam; and it is now the areas of disagreement between the schools (*ikhtilāf*) that concern us. Drawing attention to the principles underpinning their arguments, and the various factors influencing their decisions, in the next two chapters the major legal debates surrounding both forms of *najāsah* are summarised.

Once again, the *Bidāyat* is our main guide to these debates. Our summary loosely follows its format, and at the heading of every section, I put the corresponding page numbers of Nyazee's translation.³³⁸ There are, it must be said, drawbacks to basing our approach so firmly on his text. Significantly, opinions belonging to the last of the four major *madhāhib*, the Hanbalis, are regularly left out.³³⁹ Moreover, Ibn Rushd's work does not answer all the questions we would like it to. In fact, our author neglects to mention some matters of importance. As already noted, for instance, while the jurists unanimously agree that certain excreta (vomit, pus, *madhī*, *qadī*, *wadī*) are *khabiṭh*, they are not included in the *Bidāyat*'s section on the *khabā'ith*. While this apparent oversight concerns us, it is not too weighty because there is widespread agreement between the law schools that each of these substances

³³⁷ See Exc. A (pp.169-171), and Exc. C (pp.187-189).

³³⁸ Occasionally, it is necessary to break from his format; for instance, the *Bidāyat*'s section on animal *su'r* (see ch. 6.2. below) is to be found in the section on water purity and not *khath*.

is an impurity of equal strength.³⁴⁰ More serious are Ibn Rushd's occasional errors (for instance, his report concerning Malik and Shafi'i's attitudes to the impurity of dog saliva, see fns. 372, and 400). For these reasons, it has often been necessary to look outside the *Bidāyat* for a more thorough explanation of some topics. In addition to the various standard legal manuals already mentioned, Ze'ev Maghen's translations of Malik's *Mudawwanah*, Shaybani's *Asl*, and Shafi'i's *Umm*, have allowed me to check the accuracy of Ibn Rushd's data, and flesh it out when necessary.³⁴¹ The present survey differs from Maghen's, however, because that author is more interested in delving into the plethora of early juristic opinions so as to compare these with the Rabbis' established ritual purity and pollution laws. His thesis covers the wide variety of ideas in the earliest law texts to show – as he would have it – the complete absence of any Jewish influence on these texts. Hence, presumably because the condition of *ḥadath* is so different from anything one finds in the Jewish ritual pollution code that the matter does not require further attention, he says much more about the *ḥabā'ith* than the *ahdath*.³⁴² In this study, equal time is spent on both forms of *najāsah*. Moreover, Maghen regularly details contrasting early opinions *within* each law school. In contrast, the following summary has normally (although not always) been limited to the best known opinion of each school. Although fully aware that many of the opinions Ibn Rushd attributes to each Imam are probably derived from other authorities in that school, in reporting these opinions I have followed him in ascribing them directly to the Imam.³⁴³ The danger inherent in this approach is that the reader may emerge with a simplified, if not seriously mistaken

³³⁹ In general, but certainly not always, the Hanbalis seem to follow the Shafi'is' lead; when they do not it is noted. Thanks to Ibn Rushd, we also occasionally include the opinions of Dawud ibn Khalaf al-Zahiri and his school, which, characteristically, often takes an independent line on purity topics.

³⁴⁰ Ibn Rushd probably takes the reader's knowledge of such matters for granted.

³⁴¹ As noted, Malik's *Muwatta* has also been translated by Aisha Abdurrahman Bewley and is often referred to in the following two chapters.

³⁴² Two hundred and twenty two pages compared with thirteen!

³⁴³ On occasion, it will be seen that later Hanafi and Maliki jurists developed away from the original viewpoints of their Imams (and became more lenient, p.154 fns. 407,408). Unfortunately, analysing the process of internal development on any particular topic within one or several of the schools would require close observation of a wide range of texts from different historical periods, and is simply not possible in the present study.

idea of the sheer number of opinions within *tahārah*. This warrants a serious caveat; nevertheless, a more in-depth survey would have been impossible within the framework of the present study.

Although the jurists normally discuss the *khābā'ith* after the *ahḍāth*, for our purposes, it makes better sense to reverse this order and review their discussions concerning the *khābā'ith* first.³⁴⁴ To attempt a lucid survey of a vast area, this chapter is divided into six sections. The first four address issues relating to Ibn Rushd's main categories of *khābāth*. These, we recall, are carrion of warm-blooded animals, pig's flesh whatever its cause of death, blood, and urine and excrement. In sections 5 and 6, the jurists' discussions relating to the purity of two other substances, semen and wine, are reviewed.

6.1. CARRION IMPURITY (*Bid* pp. 81-83)

Bar that of a human being and many sea creatures (ch. 6.3), the carcass of any creature (regardless of whether it is edible or inedible) that has not died through ritual slaughter (*dhabh*, or *nahr*³⁴⁵) is described as *mayta* (carrion); all *mayta* is *khābīth*.³⁴⁶ The jurists disagree about why this is the case. On the one hand, the Malikis and Hanafis suggest that the cause (*'illa*) of *mayta*'s impurity is only the *continued existence of blood* within the carcass. Hence, slaughter only “purifies” it in so much as it drains the creature of blood.³⁴⁷ To support their view, they cite a *ḥadīth* in which Muhammad permits the consumption of food into which a fly has fallen, claiming that this is only permitted because flies are

³⁴⁴ This is because, for many, the question of whether a bodily emission is *khābīth* decides whether it is also a cause of *ḥadāth*.

³⁴⁵ “Emergency slaughter”, performed when the creature is in the process of dying, also exists and is referred to as *dhakāh* or *tadhkiyah*.

³⁴⁶ Qur'an 5:3 appears to envisage several different types of *mayta*, specifically, animals that have been sacrificed for idols, killed by a blow, by a fall, by the horns of another beast, or eaten by predators. If these once did constitute different categories, however, they are not recognised as such by the jurists.

“bloodless”.³⁴⁸ On this basis, they consider all dead insects bloodless, therefore, pure and *halal*.

Shafi‘i disagrees with their deduction. In his school, with the exception of creepy crawlies like worms and other things likely to be discovered in edibles, all carcasses –regardless of whether they are bloodless – are equally impure.³⁴⁹ This is because, in Shafi‘i’s opinion, it is only the *act of dying* which renders a carcass defiled. According to Ibn Rushd, Shafi‘i refutes the Maliki/Hanafī viewpoint on four points. Firstly, he observes that the Qur’an always mentions two separate prohibitions: “forbidden to you is *mayta and blood*” (“*ahṛām alaykum-l-mayta wa-l-dam*”) (Q. 2:173; c.f. 5:3; 6:145) – not, as may have been suggested: “forbidden to you is *mayta because of its blood*”. A true interpretation of this *āya* must, therefore, give each prohibition equal weight. Secondly, he notes that the law stipulates different methods of purification concerning either *khabath*: ritual slaughter for animals (i.e. *dhabr*), and washing for blood (i.e. *izālat al-khabath*). Logically, where there are two purifications, there must also be two impurities. Thirdly, he calls the authenticity of the *ḥadīth* about the fly into question. He maintains that, if its meaning is to be accepted, it must be restricted to flies *alone*, whose wings possess a unique quality (as shown by Muhammad’s words: “in one of its wings there is disease, and in one there is a cure”). Fourthly, Shafi‘i points out that, if the sole reason why *mayta* is impure is that it still contains blood, then a carcass will only be pure (and edible) if it contains absolutely *no* blood. As the complete evacuation of blood from a corpse is almost impossible, blood cannot be the sole reason for its initial impurity.³⁵⁰ Thus,

³⁴⁷ Although its nature is very different from *izālat al-khabath* or *rafa‘a-l-hadath* (as its success depends upon correctly slitting the victim’s throat and *releasing* an impurity, rather than expunging one), *dhabr* is clearly thought a purification of some sort, and Ibn Rushd describes it as such (*Bid* p.522).

³⁴⁸ Bukhārī “*Dhaba‘ih*”:34. The fact that insects do bleed appears not to have been known to the jurists.

³⁴⁹ Presumably, the reason for their purity is that these things are universally recognised as impossible to avoid. The same logic crops up repeatedly throughout the jurists debates (see e.g. ch. 6.2.C., 6.3, 6.4. A., and especially B.).

³⁵⁰ Shafi‘i maintains that all quantities of blood are *khabīth*, whereas most other *fuqāhā’* overlook blood in small quantities, see ch. 6.3.

in Shafi'i's argument, the fact that it is permitted to consume morsels of flesh still containing blood proves that ritual slaughter is a blessing on two levels: primarily, it removes the prohibition/impurity associated with death and, secondarily, it allows contact with, and ingestion of, this residual blood.

This argument teaches us two valuable lessons at an early stage. Specifically, that Shafi'i is often not content with the logic of the Malikis and Hanafis; and, that he is more likely than the earlier schools to adhere to a principle – in this case, the idea that death without ritual slaughter is the basis for impurity - and not deviate from it. From a practical point of view, we should also note that, here, Shafi'i's approach is far stricter; in his school, Muslims need to avoid almost every dead creature.³⁵¹

6.1.A. The Bones, and Hair of *Mayta* (*Bid* pp. 83-84)

The jurists agree that any body part cut from a live animal is *mayta*, and that hair cut from a human, or sheared from any animal,³⁵² is always pure when the host lives. They disagree on whether the bones and hair of dead, impure carcasses are pure. Applying Ibn Rushd, we may summarise the jurists' opinions on this topic as follows:

- Abu Hanifa argues that the bones and hair of *mayta*, are pure.
- Malik claims that the bones of *mayta* are also *mayta*, whilst hair taken from *mayta* is pure.
- Shafi'i argues that the bones and hair parted from *mayta* must also be *mayta*.

Their differences arise from confusion over:

³⁵¹ See e.g. *Minhaj* "Taharah":11; c.f. 'Umdat p. 96. However, the Shafi'is assume locusts to be pure on the basis of a *ḥadīth* to that effect (see e.g. 'Umdat Ibid.).

³⁵² With the possible exception of pigs and dogs according to some jurists.

What activity in the limbs can be assigned the term "life" ("ḥayy"). Those who maintained that the activity of growth (*namā*) and food intake (*taghdiya*) depicts life said that when the activity of growth and food intake is absent from hair (*sha'r*) and bones (*a'zum*), they become *mayta* (i.e. following Shafi'i). Those who maintained that the term "life" is only applied to the senses (*al-hawas*), ruled that as hair and bones do not possess the capacity to sense, they are not *mayta* (following Abu Hanifa). Those who distinguished between the two, assigned to bones the capacity to sense, but not to hair (following Malik). There is a disagreement about the capacity of the bones to sense and the matter is disputed amongst the physicians (*Bid* pp. 83-84).

The loss of life outside of ritual slaughter is enough to render something polluted. But the matter of defining life and death divides the jurists. Just as we might expect (given their emphasis on the biological nature of purity matters) they turn to the physicians and, once again, their subsequent differences of opinion are a window onto the prevailing medical theories of the day. Abu Hanifa restricts the category of things which can live and die (in a way that renders them impure) to those organisms (bar human beings) that can *sense* (i.e. have nerve endings). Because he believes that bones and hair do not possess this criteria, he understands them to be incapable of living and, therefore, pure even when the host dies without slaughter. In contrast, Malik assumes that hair does not have the capacity to sense, but bones do, and therefore judges only the latter to be *mayta*.

Making matters easier, Shafi'i rules that if a carcass is impure, *all* its parts are also impure. But he gauges things differently: in his view, an organism lives - and therefore can die and become impure - if it grows and requires food. Proof of the fact that bones and hair live is that, while the host is alive, they are always in the process of growth, or, at least change (although how it can be said they need food is not clear). When the host dies, the hair and bones also "die" because they stop changing. Ibn Rushd makes the obvious retort to Shafi'i's argument: for if evidence of food intake and growth were *solely* what matters in this

estimation, uprooted vegetation must also be *khabith* (as vegetation grows and needs sustenance too) *Bid* p.83.³⁵³

6.1.B. Skins of *Mayta* (pp. 84-85)

Most jurists agree that, if a creature dies without ritual slaughter, its skin is impure and shall not be used for any purpose, just as its flesh is not to be eaten. However, there are several opinions on whether such skin can *become* pure through tanning:³⁵⁴

- Abu Hanifa rules that all animal skins can become pure through tanning, except those belonging to swine.³⁵⁵
- Al-Shafi'i rules that tanning only purifies the skins of animals that can be ritually slaughtered.
- According to Ibn Rushd, Malik has two opinions: the first is the same as Shafi'i's; the second is that, while tanning does not purify them, using skins is permitted as long as they are not wet.
- A minority of mostly Hanbali jurists argue that tanned skins are impure, and not to be used.³⁵⁶

There are disagreements, firstly, on whether it is possible to purify an impure skin through tanning and, secondly, on which animals' skins resist such purification. Ibn Rushd attributes the varying opinions to a conflict in the meanings of *ahādīth*. Basing their judgment on a sound tradition in which Muhammad says: "tanning makes it (i.e. animal skin in general)

³⁵³ Nor does Shafi'i's theory explain why hair cut from a living creature is unanimously accepted as pure.

³⁵⁴ The process of turning skin into leather by "drying and steeping it in certain vegetable solutions, or mineral salts" (Chambers Twentieth Century Dictionary).

³⁵⁵ See *Bayan* p.19.

³⁵⁶ Ibn Rushd does not mention who these jurists are, but E.B attributes this position to the Hanbalis ("*Tahārah from Najāsāt*" p.6).

pure” (“*dibaghuha tuhuruha*”),³⁵⁷ the majority agrees that tanning can purify the skins of most creatures – bar the pig who is *rijus* - that have died without slaughter.³⁵⁸ Those who take the opposing view claim that this *hadīth* has been abrogated by a later one attributed to Ibn ‘Akim. Reputedly, this dates from only a year before Muhammad’s death, and recalls him saying that neither “a creature’s hide nor its sinews are to be used”.³⁵⁹

Of those who believe that tanning purifies the skins of *mayta*, the respective opinions of Abu Hanifa and Al-Shafi‘i are not what we might expect. For, as we shall see, the Hanafis’ regulations generally maintain a strong connection between Islam’s dietary and purity codes (ch. 6.2.). In contrast, Shafi‘i and his school usually sever this connection. Here, according to Ibn Rushd, it is the other way round. The Hanafis treat the skins of any un-slaughtered creature the same (bar the extra-impure pig), regardless of whether that creature was *halal* or *ḥarām*; whereas Shafi‘i appears to attribute greater impurity to the skins of un-slaughtered *inedible* animals (seeing only them as impervious to purification). It is possible Ibn Rushd is mistaken about Shafi‘i’s opinion. In fact, later Shafi‘i texts, such as al-Misri’s *‘Umdat*, do not mention the host’s edibility but assume that *any* skin of *mayta* (bar pigs and dogs) is purified through tanning (p.97).³⁶⁰

Putting such doubts to one side, the topic of tanning is an interesting one. Firstly, because it is the only regular occasion, besides “the defilement” of water (p.103 above), when something changes essential purity categories. Here, although the logic is the same (tanning does not simply improve the skin, it fundamentally alters its nature and leaves it a different

³⁵⁷ For this tradition, see Muslim “*Tahārah*”:712 (c.f. nos. 794-813).

³⁵⁸ Even the axiom that pig flesh cannot be purified needs to be qualified: following Dawud, some Zahiris assume that a pig’s hide can be purified on the basis of this tradition (*Bid* p.84).

³⁵⁹ *Mishkāt* “*Tahārah*”:508.

entity altogether), the transition goes the other way: from impure to pure. Secondly, it is a very good example of a theme that runs throughout *tahārah* law. Specifically, the conviction that these regulations should never cause hardship. A conviction which, as we know, lies behind the Qur'an's concession over *tayammum* (5:6). In this case, such sentiments lead most (here, the Hanbalis may deserve their reputation as the strictest of the Sunni *madhāhib*) to permit the utilisation of skins – for clothing, shoes, water flasks, etc. - that, otherwise, would be wasted. In fact, one of Malik's opinions even permits the use of skins he thinks are impure, as long as they are not wet (moisture being an excellent conductor of impurity) – which is not much of a deterrent as one can easily wait for them to dry. Ibn Rushd agrees; for him, “utilization is different from purification” and, he continues “it is not (even) necessary that each usable thing is pure” (*Bid* p.85). Most jurists do not go this far, but the simple practicality of the Sunni Islamic pollution code - constructed so as never to inconvenience Muslims – is plain to see.³⁶¹

6.1.C. Marine Creatures (*Bid* p.83)

The bodies of marine creatures are treated differently from other carcasses by Sunni *fiqh*. Most jurists (here we include the Shafi'is) agree the corpses of fish (*samak*) are pure and edible without ritual slaughter.³⁶² There are two reasons for their conclusion. First, the Qur'an makes no mention of slaughter when it entitles Muslims to eat “the catch/hunt of the sea” (*sayd al-bahr*) (5:96). And, second, there is a tradition testifying that (sea) “water is

³⁶⁰ Yet, it is also possible that Shafi'i did say something like this; as just noted, there is a certain symmetry to his logic that is often absent in the views of the other jurists. Making purification through tanning dependent upon whether the skin's host is suitable for slaughter is in keeping with that.

³⁶¹ In this regard, it should be noted that anything impure and/or inedible may be used or eaten when a Muslim is under duress. This leniency is based upon the Qur'anic passage: “He has explained unto you that which is forbidden unto you, unless you are compelled thereto” (6:120). For instance, wine (impure and undrinkable) is permitted in the case of extreme thirst (*Bid* p.577). It is unlikely that being unable to use an impure skin will cause major inconvenience, but if it should most jurists will permit the skin's utilisation regardless of its purity.

³⁶² Although the slaughter of fish is not unheard of in some quarters! See *Bayān* p. 158.

purifying (*tahūr*) and its corpses are permitted for eating” (*hu al-tahūr ma’hu al-hal maytatahu*).³⁶³

While there is almost total unanimity on the purity of dead fish, the jurists disagree over what types of marine creatures the word “*samak*” encompasses. There are two opinions on this:

- Malik and Shafi‘i think *samak* is a general category that includes the bodies of virtually all sea-creatures.³⁶⁴
- Abu Hanifa thinks *samak* only includes fish; moreover, in his view, only the carcasses of fish caught in the net, or washed up on the beach, are pure.

According to Ibn Rushd, Malik, and Shafi‘i take the view that had any species of marine life been impure Muhammad would have said so. They refer to a tradition attributed to Jabir Ibn Abdullah in which Muhammad permits the corpse of a beached (sperm) whale (*‘anbar*) – presumably not considered a fish by these jurists – to be divided amongst the Muslims, and used for food and supplies.³⁶⁵ This, they assume, adequately demonstrates the purity and edibility of all sea creatures.

In contrast, Abu Hanifa and his school think Jabir’s tradition is either an exemption restricted to that time and place, or not established, and so limit the meaning of *samak* to fish alone. Moreover, the Hanafis interpret the Qur’an’s permission to enjoy “the *hunt* (*al-sayd*) of the sea” as applying only to fish known to have died “*through a cause*”, whether in the

³⁶³ *Mishkāt “Tahārah”*: 479. The authenticity of this *ḥadīth* is disputed by some (*Bid* p. 564). Professing that he cannot find any evidence of *ijtihād* on this subject, Maghen makes the logical assumption that fish carcasses are judged pure because, spending their lives in water, fish are in a constant state of re-purification, hence their slaughter is unnecessary (Maghen 1997:109).

³⁶⁴ Some jurists even extend this to include the carcasses of sea birds (see Schacht’s article on “*samak*” in *E.I.II*)

³⁶⁵ Bukhārī “*Maghazī*”:65, cited in *Bid* pp. 83, 564.

fisherman's net, or when the sea "has grown tired of it" (*hasara 'anhu*).³⁶⁶ Only in these cases do they judge a fish sufficiently "hunted" (whether by man or nature).³⁶⁷ Alternatively, if a fish has simply floated to the surface, dying of its own accord (i.e. *ghayr sabib min kharif*), the Hanafis suppose it not to have been hunted, and its corpse to be impure and inedible.

These are the major issues surrounding the jurists' discussions on *mayta*, our first category of *khabath*. Any creature that can bleed and/or sense, other than a human being or fish, can become *khabīth*. But, according to the vast majority, the law can reclaim dead things when it proves necessary to do so. Once the hides of carrion are tanned, they become pure. Some creatures, however, are excluded entirely from the pure world, and it is to these we now turn.

6.2. THE ANIMAL KINGDOM (*al-Hayawān*) (*Bid* pp. 25-29)

While Ibn Rushd tells us that pig flesh is unanimously believed to be impure whatever its cause of death, there are many other animals regarded with suspicion within *tahārah* discussions even when they are alive. As noted, this suspicion normally concerns the purity of water sources; for, in early Muslim settings, water was obviously a communal asset, shared by livestock and believers alike - a reality which led to some of the most complicated arguments within *tahārah* jurisprudence.

As has been observed, the matter hinges on the purity of something's saliva. If an organism is pure then its saliva (as well as its sweat and other clear fluids) is also pure; however, if something is essentially impure then, according to *tahārah*'s logic, it will transmit this impurity through its saliva into the water, thus creating the mixture known as *su'r* (backwash).

³⁶⁶ For this expression, see *Bayān* p.158.

The three main views regarding which animals are capable of defiling may be summarised as follows:

- Malik has two opinions attributed to him: in one, he considers all creatures pure and incapable of transmitting defilement, in the other, he makes an exception for pigs. However, he thinks the saliva of predators renders water unusable for ritual purification (but not impure).
- Abu Hanifa considers the saliva of pigs and dogs (*kilāb*), and most inedible (*ḥarām*) creatures capable of transmitting defilement to varying degrees.
- Shafi'i only considers pigs and dogs defiling.

These are the general views. In this section, I will treat each of them in turn, supplementing the *Bidāyat*'s information throughout with Maghen's translations of the early texts. We will start with Malik. According to Ibn Rushd, he upholds the general principle that "if death without slaughter is legally the cause of impurity...then, via analogy, life must be the basis for the purity of the body of the animal" (*Bid* p. 26) - an argument we have already seen in the context of the hair and bones of *mayta*.³⁶⁸ On the basis of this principle, Malik proclaims every living creature pure and incapable of defilement; and in so doing, makes matters a great deal easier as far as maintaining the purity of water sources is concerned. Because of the Qur'an's description of swine as "*riḥus*" (6:45), he may qualify this in the case of pig *su'r*, however.³⁶⁹

³⁶⁷ This may not have been the original Hanafi view. According to one source, Abu Hanifa himself was not so strict and, at the very least, permitted eating crabs, and frogs, see Maghen 1997:109.

³⁶⁸ The observant reader will spot a contradiction here. For Ibn Rushd has told us that Malik and Abu Hanifa consider the *remaining quantity of blood* left in the animal, rather than its natural death, to be the main factor in triggering impurity (see ch. 6.1.A: above). Thankfully, as I have said, incompatibilities like this are relatively uncommon in the *Bidāyat*.

³⁶⁹ If he did, the extensive dislike of pigs throughout ancient Semitic culture was no doubt a factor in his thinking; for this subject, see R. de Vaux "The Sacrifice of Pigs in Palestine and in the Ancient Near East" in *The Bible and the Ancient Near East*, ed. J. Rogerson (1972, London, J.K. Publishers) p. 66. Note, however, that some jurists assume Malik's main view is that swine are pure, see e.g. '*Umdat* p.98 (c.f. Bousquet who also cites it as the only Maliki view, 1950:55).

Significantly, this would be his only qualification. For, unlike the rest of the jurists, Malik sees no threat posed by dogs to the purity of water sources. The others attribute the dog's impurity to a sound tradition reported by Abu Hurayra, in which Muhammad tells his Companions that any vessel licked by a dog needs to be washed seven times:

When a dog licks a utensil belonging to any one of you, it (the water) should be thrown away and then (the vessel) washed seven times (*falyaghsilhu sab 'a*).³⁷⁰

Given its unusual nature, it is not surprising that the jurists' responses to this tradition differ.³⁷¹ As I have said, Malik chooses to reject it. The *Bidāyat* cites Malik's opinion correctly, but does not go into detail on his reasoning.³⁷² This is a matter of some importance to early purity law so let us go back to the *Mudawwanah* to explore Malik's ideas. There, Malik puts his case plainly:

(Ibn al-Qasim said to Malik) regarding a vessel in which there is water and a dog laps at it (*yalaghu fiḥu*), may a man perform the ablution with (this water)? And Malik said: if he did perform *wuḍū'* with it and then prayed, it suffices (*'ajza 'hu*).³⁷³

So, water from which a dog has drunk (and thus which contains its saliva) is not only pure, but purifying according to Malik. Regarding Abu's Hurayra's tradition, Malik admits that it exists, but concedes, "I do not know whether it is true" (*wa mā 'adriyu mā ḥaqīqatihu*). In the (unlikely) event that it is, Malik allows Muslims to perform the seven washings if they feel

³⁷⁰ Muslim "*Tahārah*":546. In other reports of the same incident, Muhammad stipulates that the vessel should be washed with sand the first time (no.549), and/or dust (*turāb*) for an eighth (no.551). As noted above (ch. 4.4 B.), this tradition provides the one case of secondary contamination in Sunni law – the dog's saliva contaminates the water, this defiled water then passes its impurity to the vessel, which needs seven washes.

³⁷¹ Recall that Ibn Rushd explains it as a precaution against rabies (p. 107).

³⁷² In fact, Ibn Rushd says Malik describes the washing of the dog bowl as an "act of non-rational worship" (like the acts of *rafa'a-l-ḥadath*), a view which is not to be found in the *Mudawwanah*, but corresponds to Shafi'i's (see pp. 150-151 below).

³⁷³ *Mudawwanah* p.115-116 (Maghen 1997:217), the following quotes are all from the same passage.

compelled to do so. However, his own inclination is clearly not to bother; in fact, in the same passage, he describes throwing away any milk (“a portion of God’s sustenance”, “*rizq Allah*”) remaining in a vessel after a dog has drunk from it as “a terrible calamity” (*‘aziman*). Malik’s support for his argument that dogs cannot be impure is twofold. Firstly, he sensibly points out that, were a dog’s saliva really defiling, the Qur’an would not have instructed believers to “eat of what they (birds and beasts of prey) catch for you” (5:4).³⁷⁴ Secondly, he claims that dogs cannot be impure because they are “members of the household” (*ahl al-bayt*):

(Ibn al-Qasim) said: it appears that Malik was of the opinion that the dog is, as it were, a *member of the household* and thus *unlike other predators (min ahl bayt wa laysa kaghayrihu min al-siba’)*.³⁷⁵

Malik’s defense of the dog touches on two factors that were clearly important in the early jurists’ regarding the purity of water sources. To be a “member of the household” was obviously considered a positive factor. In contrast, it is implied that eating flesh is a negative one – a reason for a creature’s *su’r* to be thought of as impure (thus prompting Malik to protest that dogs are *unlike* other predators). In fact, although Malik does not say they are essentially impure, in the *Mudawwanah* he attributes all predatory animals (bar the dog) a degree of danger by ruling their *su’r* drinkable, but unusable for *wuḍū’*:

if an animal which eats the cadavers (*al-jifa*) of other animals, whether bird or (land) predator, drinks from a vessel, one should not use (the contents) for ablution.

³⁷⁴ This is picked up on in the *Bid*, see p 27.

³⁷⁵ By Ibn Rushd’s time, the Malikis defend the purity of the dog against the implications of Abu Hurayra’s *ḥadīth* with a *ḥadīth* of their own (it is also credited to Abu Hurayra):

During the lifetime of Allah’s Apostle the dogs used to urinate, and pass through the mosque, nevertheless they never used to sprinkle water on it (the urine) (Bukhari “*Wuḍū’*”:174, cited in *Bid* p. 27).

If a dog’s urine is not polluting, then the reasonable assumption is that the dog itself is pure (and even *halal* according to the usual Maliki ruling! See ch. 6.4.B.). Yet, if Malik knows of this tradition, he does not use it in the *Mudawwanah*.

Moving on from Malik, the threat posed by predators to the purity of water is far more severe in the Hanafi school. For, Abu Hanifa rules that all predators – including dogs - transmit their essential pollution through their saliva. In his view, the reason for this is simple: the purity of a creature’s “leftovers is dependent on the (*hukm of the*) flesh of the animal” (*Bid* p.27). Thus, in the Hanafi school (although not in the others), the biological essence of which we have spoken is directly connected to whether or not a creature is legally edible (*halāl*).³⁷⁶ Hence, predators join a large number of other creatures viewed with suspicion in terms of their purity, because they are forbidden as food (*harām*).³⁷⁷ This would suggest, of course, that the saliva of anything forbidden to eat is also defiling.

Things are not so simple, however. For the Hanafis very often judge an inedible creature’s *su’r* as neither totally pure, nor impure, but somewhere in between. Several factors play a part in their decisions; we have just seen two of these – whether a creature lives in close proximity to humans (and thus is a “member of the household”), and/or whether it is predatory (and, consequently, unlikely to live near humans) – mentioned by Malik. But the Hanafis also take into account eating and living habits; hence, if it is one of the “*jallalah*”, those known to consume filth, its *su’r* is also more than likely to be impure.³⁷⁸ Bearing in mind these factors, the Hanafis outline four categories of *su’r*. Ibn Rushd does not help us on the matter, and so we will follow Maghen in briefly summarising the contents of these categories.³⁷⁹

³⁷⁶ There are occasional exceptions: to eat the flesh of a horse (an “adornment” according to Q.16:8) and humans is prohibited, but both their *su’r* is pure, see *Bayān* p.19.

³⁷⁷ What constitutes a predator is, however, disputed: the Shafi’is claim that “those that attack humans are predators”, while the Hanafis say that “anything that eats meat is a predator”, and both views are expressed by different Malikis, who consider eating predators merely *makruh* (*Bid* pp. 567-569).

³⁷⁸ The *jallalah* are declared *harām* on the basis of Q.7:157, see *Bid* p.565 for discussion.

6.2.A. *Su'r* that is pure and purifying (*tahir wa tahur*)

Water that is drunk by edible herbivores (sheep, goats, cows etc.) that do not regularly eat, or come into contact with *khathath*, is permitted to drink and use for purification purposes.³⁸⁰

6.2.B. *Su'r* that is pure, but disliked (*makruh*) for purification purposes when water from the first category is available

This category is comprised of water licked by a cat (*al-hirra*), and comparable household animals (*sawākin al-buyūt*), predatory birds (*jawāriḥ al-tayr*), dung-eating cattle (*baqr al-jalalah*), and the chicken fed via a bag to its head (*al-dajājah al-mukhlah*).³⁸¹ As far as the Hanafis are concerned, every type of creature here either comes from an impure genus, but holds some mitigating feature, or a pure genus, but with some limitation. The first description fits the domestic cat. It is a predator, but like the dog in Malik's opinion, it is also a frequent visitor inside a Muslim's house. Indeed, on the basis of the following *hadith*, a cat's domesticity is proof of its purity for most other jurists:

Once Abu Qatada was visiting her (Kabsha) and she poured out some water for him to perform *wuḍū'* with. Just then a cat came to drink from it, so he tilted the vessel toward the creature to let it drink. (Kabsha continues) he saw me looking at him and said "Are you surprised, daughter of my brother?" I said "Yes". He replied that the Messenger of Allah said "Indeed she (the cat) is not impure (*laysa bi'l najas*); for she is among those who hangs around your dwellings" (*innaha min al-tawāfūn 'alaykum aw al-tawāfāt*).³⁸²

The Hanafis do not grant the cat a complete reprieve, in their opinion it is still impure to some degree. However, instead of proclaiming its *su'r* irredeemably polluting (as they might

³⁷⁹ For this material, see Maghen 1997:224-233.

³⁸⁰ The mystery is why, given that cows and deer vomit their food up in order to eat it, and vomit from any source is unequivocally seen as impure, the *su'r* of these creatures is not considered defiling by all the *fuqaha'*. This problem is unlikely to have escaped the phenomenally quizzical minds of the jurists, but I have never found the question posed let alone answered.

³⁸¹ Maghen 1997:224, who cites *'Asl* p.49.

have given their method of linking dietary and purity laws), the Hanafis declare it “disliked” (“*makruh*”) for purification purposes, but not *khābiṭh* as such. The *su’r* of a host of other insalubrious and *ḥarām* house-dwellers is presumably judged pure for the same reason. Hence, water from sources known to provide lizards, snakes, mice, and rats with refreshments is, although reprehensible for use in *wudu’*, drinkable and *tahur*, if no other is available because these creatures also hang around a Muslim’s dwellings.³⁸³

The *su’r* of chickens (*dawājīn*) is treated similarly, although for different reasons. Its purity is suspect because chickens consume filth (making them *istikhbāṭh*), hence (an ingenious suggestion to prevent contamination of water sources) chickens must wear beak-bags. However, chicken *su’r* is not irredeemably polluting, because chicken flesh is *ḥalāl*.

The Hanafis also place the *su’r* of predatory birds (*jawāriḥ al-tayr*) in this category. They should be defiling because they consume flesh and are forbidden to eat, yet – on the basis that (like hair and bones) they do not possess the attribute of sensation – their *beaks* are understood to neutralise *khābiṭh*, and their *su’r* can therefore also be judged pure.

6.2.C. *Su’r* that is doubtfully purifying (*mashkuk fī tahūriyātihī*)

This category includes water that is still drinkable, but to which *tayammum* is preferred for purification. It contains the saliva of creatures, such as the donkey (*al-ḥimār*) and mule (*al-baḡhl*), whose flesh is only doubtfully permitted for consumption.³⁸⁴ If these animals met the same criterion of domesticity that is applied to cats (and by the Malikis to dogs), then perhaps their purity status would be better. But, although in constant use, donkeys and/or mules are

³⁸² *Muwatta’ Tahārah* 3:14. Cited in *Bid* p. 27. However, Ibn Rushd notes the existence of at least one well-known *ḥadīth* stating that a vessel drunk from by a cat needs to be washed once or even twice.

³⁸³ See e.g. *Bayan* p. 19.

unlikely ever to enter believers' houses. Hence, they are not analogous to pets, and their *su'r* is not pure.

To categorise the *su'r* of donkeys and mules as only doubtfully purifying, the Hanafis must explain a number of *ahādīth* which, we might think, explicitly refute their view. For instance, one tradition often cited against them describes how Muhammad and his followers prayed in clothes that had absorbed the sweat from their donkeys' backs.³⁸⁵ Given this, the majority conclude that, if being covered in donkey-sweat is permissible during prayer (and sweat has the same purity *ḥukm* as saliva), performing the ablutions should be allowed with water that has traces of a donkey's saliva. This is a strong argument, but the Hanafi's riposte is to insist that, while saliva and sweat are *normally* analogous, it is wrong to make this connection here. For although both substances are in reality contaminating, riding is an *inevitable*, everyday occurrence during which it is very difficult to avoid the sweat from one's steed. To rule that, on dismounting, believers must immediately wash their riding clothes would cause considerable inconvenience; hence, it would run counter to the jurists' general principles. Rather than cause burden, the Hanafis conclude that Muhammad only allowed his Companions to pray in a *khath*-affected state as a concession, because to rule otherwise would have caused them (and Muslims in the future) too many problems. Of course, these jurists continue, because the *su'r* of a donkey or mule is nothing like as difficult to avoid, then this substance must be treated with greater caution than their sweat. Ultimately, they compromise, and rule that the impurity of the donkey and mule *su'r* is only "light" (*najāsah mukhaffifah*).³⁸⁶

³⁸⁴ While the majority hold that both donkey and mule are *ḥarām*, there were early disagreements on this, and Ibn Abbas among others considered eating them permissible (*Bid* pp. 569-570).

³⁸⁵ For this tradition, see Maghen 1997:228.

³⁸⁶ On the distinction between heavy and light forms of *khath*, see below ch. 6.4.B.

6.2.D. *Su'r* that is *najis*

This final category includes the *su'r* of all predatory land animals (*siba' al-bahā'im*), as well as pigs and dogs. As far as predatory animals are concerned, there are *ahadith* to support the Hanafis' ruling; one is attributed to the father of 'Ubayd Allah b. 'Abd Allah b. Umar, who we are told:

reported that the Prophet was asking about a water source located in the desert (*falaq*) of the land, and the riding animals (*al-dawāb*) and predatory beasts (*al-siba'*) that frequent it. He replied: if the amount of water was two jugs worth (*qullatayn*), then it is not contaminated (*nājis*).³⁸⁷

Apparently, the Shafi'is use the same *hadīth* to argue that predatory beasts and riding animals do *not* contaminate water.³⁸⁸ Here, the Hanafī theory is undeniably better supported. For, what would be the point of ruling such water pure when *over* two *qullahs* – exactly the maximum quantity of water deemed susceptible to defilement by Shafi'i, see above fn. 230- were the *su'r* “of riding animals and *siba'*” not capable of defiling any *lesser* amount? Nonetheless, the Hanafis' opponents have no shortage of other *ahadith* to which to appeal. For instance:

Ibn 'Umar reported that the Messenger of God went out on one of his excursions at night, and the party passed a man sitting by a pool of water which he owned. 'Umar asked “Have any beasts of prey licked at this pool of yours tonight?” Whereupon, the Prophet interrupted and said to him “Oh owner of the pool do not tell him! For we frequent (the water sources) of the predatory animals and they frequent ours.”³⁸⁹

³⁸⁷ Ibn Maja “*Tahārah*”:75 (Maghen 1997:231).

³⁸⁸ See *Mughnī* p.49 (Maghen 1997:231).

³⁸⁹ Cited in Maghen 1997:232 (taken from Ibn Maja, but no reference included). C.f another *hadīth* attributed to Jabir, in which Allah's Messenger was asked: “Should we perform *wudū'* with water left over by asses?” He (Muhammad) said: “Yes, and with all (i.e. other food and liquids) that the predators leave (*bi ma'afdalati al-siba'*)” (*Mishkāt “Tahārah*”:484)

Impressively, the Hanafis manage a variety of responses to this tradition. Some contest that the water supply was very large (large enough for a ripple not to reach both sides) and, therefore, incapable of contamination. Others insist that Muhammad responds as he does, not because the water is pure (it is not), but because the question itself is forbidden. His intentions may therefore be paraphrased: “Oh owner of the pool do not tell Umar, because he is foolish even to ask”, presumably, because a truthful response would have left the Prophet and his Companions without water for their morning *wuḍūʿ*. Some Hanafis, perhaps as a last resort, even declare that if Muhammad had believed that the water was pure, this story occurred in a time before the flesh of predatory animals was forbidden to Muslims. Since that time, however, their *suʿr* has no longer been valid for purification.

In addition to the other predators, the Hanafis also classify dog *suʿr* as impure.³⁹⁰ But, their attitude towards washing the dog’s vessel is more straightforward than the other schools; for, according to Ibn Rushd:

Abu Hanifa did not deem the number to be a condition for the purification of the vessel licked by the dog, as this is opposed, in his view, by analogy arising from the purification of impure things, that is the point under consideration is the removal of impurity alone (i.e. *ʿizālat al-khabath*) (*Bid* p.28)

In other words, Abu Hanifa does not see why, if dog *suʿr* is impure like the other *khabāʿith*, it should not also be removed like any other form of *khabath*. Regarding Abu Hurayra’s tradition, the Imam claims that it only reflects that Companion’s opinion rather than the Prophet’s. This, Ibn Rushd continues (sounding like he disapproves), “is in keeping with his practice of rejecting individual narrations when they are opposed to his principles” (*Ibid*).

³⁹⁰ At least, this is true of most Hanafis. Maghen notes that Shafiʿi bitingly counter attacks the claims of some jurists (Maghen logically presumes them to be Hanafis), who claim that it is only when water is licked by dogs *outside of the town* that it becomes impure (*ʿUmm* p.33, Maghen 1997:287). This would appear to be the Hanafi principle that something’s impurity depends upon how difficult it is to avoid taken to extremes, on this, see pp.160-161 below.

The above section is only a brief synopsis of a vast area. A connection between Islam's dietary and purity codes was plainly felt by many jurists to exist. This connection is at its strongest in the Hanafi regulations, where various other factors – most notably predatory behaviour – are inter-linked. As we have seen, Malik does not directly connect the dietary and purity codes in the same way, yet still attributes a degree of danger to the *siba'*, ruling their *su'r* unusable for *wuḍū'*, although not impure. The link between Islam's purity and dietary laws is finally (all but) severed by Shafi'i, however.³⁹¹ In his view, only pigs and dogs transmit defilement through their *su'r* – and this has nothing to do with whether their flesh is prohibited. In the following passage taken from the '*Umm*, Shafi'i summarises his views on *khābath* impurity and the animal kingdom. He obviously knows of the other jurists' practice of connecting a creature's purity and dietary status through its *su'r*, and gives a unique explanation of why, in his opinion, it is wrong to do so:

There is no defilement in any of the living creatures coming into contact with water through drinking or putting one of its limbs into it, except for the dog and the pig... the difference between the dog and the pig (on the one hand) and the other animals whose flesh may not be eaten (on the other) lies in the fact that one may keep the latter domestically as long as there is *no purpose* in doing so (*laysa minhā shay' ḥarām an yattakhadh 'illa li-m'ana*), whereas the dog may be kept domestically only if there is a *purpose* ('*illa*) in doing so, and the good deeds of one who keeps a dog for no purpose is diminished by a *qirat* or two daily.³⁹² Furthermore, the dog is distinguished by the fact that the angels do not enter a house where (a dog) is found.³⁹³ Moreover, the leftovers (*fadl*) of all creatures edible or inedible, are permitted (*ḥalāl*) save that of the dog and pig.³⁹⁴

³⁹¹ Although see above p.136 for Shafi'i's rather incongruous ruling over the skins of *mayta* (see ch. 6.1.B.).

³⁹² There is a *ḥadīth* to this effect, which runs as follows:

Malik related from Yazid b. Khusayfa that he heard Sufyan... say... I heard the Messenger of Allah say: "if anyone acquires a dog and does not use him as a sheep dog or for hunting, a *qirat* will be deducted from the reward of his good deeds each day (*Muwatta* reference data lost. In the next *ḥadīth*, which is attributed to Nafi, Muhammad makes the price two *qirats*).

³⁹³ Likewise, see Bukhārī "*al-Harṭh wa-l-Muzara'a*":3.

³⁹⁴ '*Umm* p.20 (Maghen 1997:214, his parenthesis)

There are several very interesting aspects to Shafi'i's argument. For one thing, although restricting the number of defiling creatures to two, Shafi'i imagines that pigs and dogs transmit their defilement into water via *their limbs*, as well as their *su'r*. In contrast, the Hanafis and Malikis appear to limit the defiling capacities of a creature to its impure fluids (normally saliva and sweat).³⁹⁵ Shafi'i's concession on keeping dogs – they are permitted if they serve “a purpose” – is remarkable (although I cannot pretend to understand the logic behind it). It is granted a little grudgingly: it seems plain that, in his view, most Muslims can live without a dog, and so they should. As Shafi'i notes, the leftovers of dogs are polluted and dogs even deter angels from visiting a house. However, when dogs are a necessary part of a Muslim's working environment, Shafi'i admits that there is no harm in keeping them.³⁹⁶ Nevertheless, given that he reckons owning dogs unnecessarily is a *sin* (hence, unlike other *haram* creatures, they must benefit their owners in order to justify this ownership), it may be said that the dog is essentially and even ultra impure for Shafi'i.

It follows for Shafi'i that the unique nature of canine impurity precipitated Muhammad's stipulation to purify dogs' vessels with seven washes. In contrast, all other instances of removing *khathath*, Shafi'i claims, are directly based upon a *hadith* reported by Hisham b. Urwa, in which Asma' asks Muhammad what she should do to purify her clothes from a spot of menstrual blood. The Prophet's reply, “rub it, scrape it, then sprinkle water on it and pray”, is his proof that *'izalat al-khathath* is possible with an unspecified number of washings, and

³⁹⁵ See e.g. *'Umdat* p.98. In the Shafi'i school, this leads some scholars to say that even the *dry* touch of a pig or dog requires to be brushed off, if not actually washed. The *'Umdat* does not say if this brushing off is a formal act of purification. It is unlikely to be for, as we know, in Shafi'i law any form of *'izalat al-khathath* must be with purifying water (the *'Umdat* is a standard Shafi'i text and accepts that rule). It may, therefore, merely be a precaution – the strength of pig and dog impurity being such that special vigilance is required.

³⁹⁶ Dogs have traditionally been tolerated if used for hunting, as recorded by Ibn Mughaffal's *hadith*:
The Messenger of Allah ordered killing of the dogs, and then said: “What about them, i.e. about other (hunting) dogs?” – then he granted a concession (*ruhksa* – to keep) the dog for hunting and for (the security) of the herd, but said: “When the dog licks the utensil, wash it seven times, and rub it with earth the eighth” (Muslim *“Taharah”*:551).

that the dog's purification must, therefore, be of an entirely different order to the usual instances of removing *khathath*.³⁹⁷ Shafi'i explains all this as follows:

Now all the various sources of contamination (*anjās*) are analogised to menstrual blood, as they correspond in terms of washing and purification to the latter as (so long as the essence is destroyed), they may be removed by one washing according to both the *Qur'an* (i.e. 74:4) and reason (*fil kitāb wal-m 'aqūl*), but we do not analogise from (menstrual blood) to the (*su'r*) of dogs, because (its purification must be) an *inscrutable religious obligation* (*ta'abbud*). (For) Do you not see that the term "washing" (*ghusl*) applies to one washing as it does to even more than seven? And that the vessel becomes pure (from the *khathath*) with the first washing and with less washings than seven, and that the contact of the water (*mumasat al-mā'*) with the vessel (achieves the same purificatory end) with less than seven washings?³⁹⁸

Thus, Shafi'i describes the sevenfold washing not as a rational act of purification (like removing menstrual blood), but as "*ta'abbud*" – which, following Maghen's translation, means "an inscrutable religious obligation", akin, we presume, to *wudū'*/*ghusl* and *tayammum* (which Ibn Rushd describes as "non-rational"), yet without lifting a *hadath*. Logically, Shafi'i's answer is unsatisfactory because it confuses the purposes of the purifications and merges the two definitions of *najāsah* - something he generally strives to avoid, see Exc. B. – yet, it is easy to understand why Shafi'i is driven to this conclusion. For, unlike Malik and Abu Hanifa, he does not wish to reject the meaning of an established *hadith*, but cannot make this meaning agree with *tahārah*'s usual principles. His solution is to create a separate category of dog-impurity - in which washing a dog's bowl seven times is "an act of worship"! What is most significant is that his use of *ta'abbud* seals Abu Hurayra's unusual *hadith* off so that it does not influence other aspects of the *tahārah* debate.³⁹⁹

³⁹⁷ For Asma's tradition, see Muslim "*Tahārah*":573.

³⁹⁸ '*Umm* pp.19-20 (cited in Maghen 1997:213 parenthesis added).

³⁹⁹ This function of Shafi'i's use of *ta'abbud* is noticed by Calder (1993:81). The alternative (that Shafi'i is trying to avoid) is to make all acts of removing *khathath* require seven washes (and, according to Ibn Rushd, Ibn Hanbal does think this way, *Bid* p.93; other Hanbalis do not go so far, but still insist that any act of '*izālat al-khathath* requires three washes, '*Umda* p.4.).

Shafi'i is quite prepared, nevertheless, to apply the same rule to vessels defiled by pigs, as he does to those licked by dogs. This is on the grounds that:

The status of the pig, if no worse than that of the dog, is no better, and therefore we rule on the latter by analogy to the former (*fa-qullna b-hi qiyasan alayhi*).⁴⁰⁰

Thus, the pig joins the dog in Shafi'i's extra category of *khabath* defilement. Shafi'i does not say whether he thinks purification from pig *su'r* is also *ta'abbud*, but, on the basis that pigs and dogs are to be thought of analogously, we may presume that he does. The result of Shafi'i's decision is that, in his school, *anything* a pig or dog touches (normally when either object or creature is wet) needs to be washed seven times (one of which is to be with earth [*turāb*]).⁴⁰¹

This concludes our survey of the three main approaches to *al-hayawān*.⁴⁰² We have seen how predatory creatures were initially considered a substantial threat in the vicinity of purifying water. This concern prevails in the Hanafi *madhhab*. In that school, a creature's purity and dietary status remain intertwined. In contrast, Malik and Shafi'i disconnect Islam's dietary and purity systems by making something's purity status dependent simply upon whether it lives. The purity of dogs - defiling according to Shafi'i and Abu Hanifa, but not Malik - was a particularly thorny problem for the jurists. In fact, because of its love/hate status within the

⁴⁰⁰ 'Umm p.20. Regarding Shafi'i's opinion, Ibn Rushd correctly tells us that Shafi'i "excludes the dog from all living animals, maintaining the literal meaning of the tradition implying the impurity of its leftover (*faḍl*).” But then tells us that: “He (Shafi'i) held, I think, that the impurity lies in its saliva and not in the dog itself” (*Bid* p. 27). This is confusing for, as has been explained, saliva is normally judged to be a neutral reflector of the host creature's purity status. It is also clashes with Shafi'i's intention to rule analogously for pigs and dogs. There is no doubt Shafi'i felt swine impurity to lie deeper than its saliva, thus it is probable he felt the same about dogs.

⁴⁰¹ See e.g. 'Umdat p. 98.

⁴⁰² The Hanbalis agree with the Shafi'is in these matters, see 'Umda p.2.

faith, Bousquet observes that the dog “meriterait les honneurs d’une monographie”.⁴⁰³ Such a treatment would have to pay special attention to Shafi‘i’s view, which, by attempting to reconcile Abu Hurayra’s *ḥadīth* with the general *tahārah* rules regarding *‘izālat al-khabath* (and thus attributing pigs and dogs a separate category, wherein the sevenfold purifications reflect the exceptional status of both creatures), is perhaps the most interesting of the jurists’ approaches.

6.3. BLOOD (*Bid* pp. 85-6, c.f. 566-67)

Ibn Rushd’s third category of *khabath* is blood. The jurists agree that *flowing* blood from any source, except the blood of fish is impure.⁴⁰⁴ If human blood flows, whether from cupping, a wound, menstruation, lochia, or prolonged vaginal bleeding (*istihadah*), it is *khabith* and must be washed off a person’s clothes, person, and place of prayer immediately.⁴⁰⁵ Martyrs (*shahīd*), however, possess a unique status in Islamic law, for not only is their blood pure, and thus not to be washed off their bodies before burial, but *ghusl* is not even to be performed upon them (*Bid* p.261). We will return to their example at the end of this chapter. For the time being, the jurists’ disagreements are what concern us, and in the present matter these focus on the purity of blood when it does *not flow*. There are two opinions on this:

- Malik and Abu Hanifa rule that small quantities of blood, or the blood that remains in the veins of carrion, is pure.
- Shafi‘i rules that blood always defiles, regardless of its quantity or consistency.⁴⁰⁶

⁴⁰³ Bousquet 1950:56. It should also be noted that the dog’s impurity may be explained according to Douglas’ logic. It is an anomaly – a predator that lives in the house – and, on one level, such an explanation is not inaccurate. However, this approach does not tell us why the dog, of all the household predators, is singled out as being especially impure.

⁴⁰⁴ Fish blood is presumably *tahūr* because the corpse of a fish is pure without its blood being drained (ch. 6.1.C.). According to one of Malik’s opinions, however, even this kind of blood is impure “on the basis of the (general) rule of blood” (*Bid* p.85). Also note that, on the basis of a *ḥadīth* (deemed weak by Ibn Rushd), a minority claim that the blood from the liver and spleen of *halal* animals is pure (cited in *Bid* p.567).

⁴⁰⁵ E.g. Muslim “*Tahārah*” 573, 574; Bukhari “*Wuḍū‘*”:227, 228.

⁴⁰⁶ Shafi‘i’s opinion is not given by Ibn Rushd, and it must be deduced from what the latter says of Shafi‘i’s general ruling on small quantities of impurity (see the section on negligible impurity, *Bid* p.87).

This dispute may be traced to the apparent conflict of meanings between two Qur'anic passages, one of which, 6.145, was cited above (p.75) and instructs Muhammad to say:

I find not in the Message received by me by inspiration any meat forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth (*dam masufuhan*) (6:145).

Here, only blood that gushes, or “pours forth” (from *safaha*), is prohibited from consumption.

In another Qur'anic passage, however, there is an outright prohibition of blood, without any mention of whether or not it flows:

Forbidden to you are dead meat, blood, the flesh of swine, and that on which have been invoked the name of Allah (5:3).

The Hanafis and Malikis believe the former verse qualifies the meaning of the latter, therefore, these jurists discount as negligible any quantity of blood too-small to flow. For Malik this is unusual. In fact, according to Ibn Rushd, it is only in his assessment of *dam* that Malik alters his approach (*Bid* p.87).⁴⁰⁷

The Hanafis, however, apply this rule to all forms of impurity, and blood is no different. For them, a *small* amount of *khathath* (*khathath qatl*) will not adversely affect a Muslim's purity status when attached to his/her body or clothes.⁴⁰⁸ Hence, according to the Hanafis, even if

⁴⁰⁷ According to the *Mudawwanah*, Malik holds conflicting views on the defiling properties of small quantities of blood (pp.140-142). Contrary to Ibn Rushd's report, in most of these any amount of any type of blood is described as thoroughly impure by the Maliki Imam. However, one tradition reported in the *Mudawwanah* supports Ibn Rushd's assessment; in this, Malik describes how, when he felt a nosebleed was coming, Salim b. Abd Allah would put his finger in his nose to make sure the amount of blood was small and continue to pray if it was, thus showing the negligibility of human blood in small quantities. On the basis of the *Bidayat*, it would appear that later Malikis chose to adopt the implications of this, more lenient stance on blood impurity. On the related question of whether bleeding breaks *wudu'*, see ch.7 1.A.

⁴⁰⁸ See e.g. *Bayan* p.37. It is unclear whether Abu Hanifa himself accepted this distinction as far as heavily impure matter was concerned. Indeed, in one opinion, he is said to have ruled that even the tiniest drop of blood, excreta, or wine, will rule out water for purification purposes (*'Asl* p.50). However, like the Malikis (see fn. directly above), it would seem that later Hanafis were more willing to adopt the most lenient views left to them. Accordingly, small quantities of any form of *khathath* are deemed negligible by standard Hanafi texts.

during prayers a believer discovers a speck of blood, semen, urine, excrement, or vomit, on his/her person, his prayers will stand. Their concession applies to quantities of *khath* less than a *dirham*, which we are told is roughly “the size of the outlet” (i.e. anus); and it is based on the fact that, after defecating, a believer need only perform *istinjā*’ and *wuḍū*’ to pray, despite the fact that neither form of purification – *istinjā*’ requires the use of stones (*‘Umdat* p.78, cf. p.89 above), *wuḍū*’ does not involve the anus at all – guarantees the *complete* removal of excrement. From this, the Hanafis conclude that any kind of residual impurity up to the size of the anus (a *dirham*) is not capable of transmitting impurity.⁴⁰⁹

In contrast, Shafi‘i prefers to apply the meaning of Q.5:3 generally, ruling that *all* quantities of blood defile.⁴¹⁰ His argument is that, while Q.6:145 prohibits flowing blood, this does not conflict with the stricter prohibition (and impure status) of blood. He rejects the notion of a legal distinction between negligible and significant quantities of *khath*, arguing that what is true for *istinjā*’ cannot serve for further analogy (*Bid* p.87). Hence, in Shafi‘i’s view, a *khath* does not cease to be defiling when there is only a little of it. It either is impure, or it is not.⁴¹¹

6.4. URINE AND EXCREMENT (*Bid* p.86)

The jurists treat urine and excrement as one category. Not every form of excreta is equally polluting; and that belonging to some animals is even regarded as pure. In the case of human urine, there are also some differences to be noted. Accordingly, the following section is divided between the excreta of humans, and animals.

⁴⁰⁹ “The size of a finger nail” is another way of saying the same thing (*Bayān* p.37).

⁴¹⁰ See *‘Umm* p.4.

⁴¹¹ Or, as Ibn Rushd puts it: “a thing which is impure in its essence (*nājis fī-l ‘ayni*) cannot be pure in its constituent parts” (*Bid* p.86).

6.4.A. Excreta of humans

The urine and excrement of *adult* humans is unequivocally impure: the purification rituals following defecation (*istinjā'*) and urination (*istibrā'*) show the need for each substance's immediate removal, as does the *ḥadīth* concerning the Bedouin in the mosque (p.87). The jurists disagree, however, as to whether the urine of male infants is defiling. Their disagreements stem from a tradition in which Muhammad reputedly only sprinkles his garments with water – rather than thoroughly washing them – after they are wetted by a young boy:

From Lubabah bint al-Harith who said: Hussein b. 'Ali was sitting in the Messenger of God's lap, and he urinated on him. I (Lubabah) said: Go change into another garment, and give me your *'izār* and I will wash it. He replied: washing is only required for the urine of an (infant) female, whereas one need only sprinkle (*nadaḥa*) water on the urine of an infant male.⁴¹²

This leads the Malikis and Shafi'is to permit purification from the urine of an infant male through sprinkling the affected area or garment – signifying that, while still impure, it is less defiling than the urine of adults, or even girls of the same age (whose urine needs to be thoroughly washed).⁴¹³

In contrast to these scholars, the Hanafis (who, ironically, pioneer the idea that *khabath* impurity does possess a weaker form, see next section), reject the above *ḥadīth*, denying that there is anything in the substance of urine passed by a young boy to distinguish it from other types of human urine (just as they argue that there is nothing in the saliva of dogs to

⁴¹² Abu Dawud "*Tahārah*":102 (cited in Maghen 1997: 134). Muslim "*Tahārah*":563 (c.f.560-565). Other *ahadīth* suggest that it is the urine of *unweaned* male infants that only requires a sprinkling. For example:

Umm Qais daughter of Mihsan reported that she came to the Messenger of Allah with her child, who was not yet weaned, and she placed him in his lap; and he urinated in his lap. He (Muhammad) did nothing more than spray water over it (*Mishkāt "Tahārah*":502).

⁴¹³ For Malik's opinion, see *Muwatta "Tahārah*" 30:111-112. For one version of Shafi'i's personal opinion on this, see p.239, and, for his school's general view, see '*Umdat* p.98.

distinguish that from other types of impure saliva). In their view, all urine is unequivocally *khabīth* and contact with it necessitates immediate purification.⁴¹⁴ In fact, in a passage in the *‘Asl*, Abu Hanifa’s opinion is that, if a child of either sex urinates into a well, then the entire well must be emptied – a far stricter rule than later *fuqahā*’ express.⁴¹⁵

Within *taharah*, the purity status of a child’s urine is not a major focus of debate (witness the *Bidāyat*’s one line); the subject gains significance for us, however, because it is the one occasion in Sunni *tahārah* law where ritual pollution ideas may be said to reflect social hierarchy explicitly. Indeed, it has been argued - on very little evidence aside from this - that the whole *tahārah* system functions as an exercise in gender hierarchisation (for this argument, and criticism of it, see chapter 9).

6.4.B. Excreta of animals

Once more, the jurists classify urine and dung together, but there are far greater disagreements on this topic than the last. While they acknowledge that purification from animal excreta needs to be (relatively) easy - no surprise when we think how difficult it would have been to avoid animal dung in the ancient Middle East - this acknowledgment is the one unifying factor in a variety of different juristic approaches. Once more applying Ibn Rushd, their views may be narrowed down to three:

- Malik argues that the excreta of *ḥalāl* animals is pure, and that of *ḥarām* animals impure.
- Abu Hanifa and Al-Shafi‘i agree that the excrement and urine of *all* animals, to varying degrees, is impure.

⁴¹⁴ See e.g. *Bayān* p.37.

⁴¹⁵ See *‘Asl* p.52.

- A few jurists claim that the excreta of all creatures is pure.⁴¹⁶

Ibn Rushd informs us of two reasons for the conflict of opinions:

The first is their (the jurists) dispute over the significance of the ordained permissibility of praying in the sheepfolds (*marābiḍ al-ghanam*)... (the second is) the permission granted by the Prophet to the ‘Urniyin to drink the urine and milk of camels (*Bid* p.86).

In the second instance, Ibn Rushd is referring to a *ḥadīth* recorded by Bukhari, in which Muhammad tells some travelers who have fallen ill to drink the milk and urine of camels to help them recover.⁴¹⁷ On the basis of the Prophet’s permission, Malik claims that the excreta of *edible domestic* animals must, therefore, be pure. This remains a fairly weak argument as any substance – even if the believer is normally forbidden to consume it – is generally permitted on principle *if it can assist recovery from illness* (*Bid* p.86).⁴¹⁸ The first tradition Ibn Rushd refers to provides stronger evidence for Malik’s case; for, contact with all kinds of excreta in such settings is unavoidable, and it seems unlikely Muhammad would have granted Muslims the right to pray in sheepfolds, had this excreta the power to negate worship.

The opposing view – that all urine and excrement, including that belonging to *ḥalāl* animals, is impure – is supported by the following *ḥadīth* (which Ibn Rushd includes in his description of the jurists’ discussions on substances capable of removing *khathath*):

⁴¹⁶ This may have been a very early opinion; citing Ibn Taimiyyah, Sabiq claims that: none of the companions held that it (urine and excrement) was impure. In fact, the statement that it is impure is of more recent origin and not from the early generations of the Companions (1991:12).

⁴¹⁷ Bukhārī “*Wuḍū’*”:234. The main theme of this story is retribution and has nothing to do with purity. The same travelers flee Madinah after repaying Muhammad’s kindness by killing the camel’s shepherd. Muhammad gives chase and leaves them without hands, feet, or eyes, and buried up to their necks in the desert!

⁴¹⁸ The Qur’anic permission to use prohibited things under duress has been noted, fn. 361 above.

The Messenger of Allah went to answer the call of nature. He asked ‘Abdullah ibn Mas’ud to bring three stones (for *istinjā*). ‘Abdullah reported: “I found two stones and searched for the third but could not find it. So I took a dried piece of dung (*rawth*) and brought it to him. He took the two stones and threw away the dung saying that it is disgusting (*hadha riksun*)” (*Bid* p.91).⁴¹⁹

Underpinning their choice from these contrasting *ahādīth*, Ibn Rushd claims the jurists hold fundamentally different attitudes to the natural properties of *rawth* and *bawl*. For Malik, the excreta of man is: “repulsive by nature, while that of animals is not” (*Bid* p.86). For Shafi‘i and his school, excreta of any kind (bar perhaps a boy’s urine) is essentially and unequivocally defiling, because it is *all* repulsive by nature.⁴²⁰ To explain why a Muslim is permitted to pray in the sheepfolds (which he allows), Shafi‘i and those agreeing with him are compelled to argue that this is a concession belonging to “the category of higher analogy” (“*bāb qiyās al-awlā*”).⁴²¹ Hence, they do:

(n)ot consider the permissibility of praying in the resting places of animals as implying the purity of their urine and dung, but (rather) consider it to be a *hukm* resting upon a revelatory non-rational source (*Bid* p.86).⁴²²

While we do not know if this is Shafi‘i’s argument (it is not found in the ‘*Umm*), he certainly sets the precedent for this explanation by describing the sevenfold purification of the dog’s bowl as *ta‘abbud*. For, here is another matter that cannot be explained “rationally”. As in the case of Abu Huraya’s *ḥadīth* and dogs, the Shafi‘i argument upholds the validity of a Prophetic tradition, but permits no further analogy from it. Muhammad’s permission to pray in the resting places of animals does not, therefore, indicate that these premises were free of

⁴¹⁹ Bukhārī “*Wuḍū*”:158. Clearly “*riks*” is another synonym for *nājis/khabīth*.

⁴²⁰ Thus, Shafi‘i rules that water into which the urine and droppings of edible birds is mixed is polluted, see ‘*Umm* p.4.

⁴²¹ The Shafi‘is divide *qiyas* into three forms: *al-awlā* (superior), *al-musāwī* (equal), *al-adna* (inferior), M. Kamali *Principles of Islamic Jurisprudence* (1991, Cambridge, Islamic Texts Societies) pp. 214-216. As *qiyās al-awlā* is the strongest and most evident form of analogy, these scholars clearly presume that, when it comes to visiting the toilet, the similarities between man and animal are self-explanatory.

⁴²² *Ibid*.

defilement and, in all likelihood, they were not. It is simply that – for reasons known only to Allah – the strict purity of these, particular surroundings are no longer required for a Muslim’s prayers to be valid. The modern reader, however, may be forgiven for interpreting this particular revelation as another instance of juristic lenience.

Despite his policy of linking the purity status of its *su’r* with the *hukm* of a creature’s flesh, the Hanafis agree with the Shafi‘is that any sort of animal urine and excrement is *khābith* – regardless of whether a creature’s flesh is *ḥarām*. Beyond this, however, their two approaches diverge markedly. The major difference is that, unlike Shafi‘i, Abu Hanifa distinguishes between “heavy” (*ghalīz/maghallazah*) and “light” (*khafīf/mukhaffafah*) forms of impurity in the case of animals’ excreta:

In the case of heavy impurity, the amount of exemption (i.e. how much a Muslim can have on his/her person and still be permitted to pray) is limited to the size of a *dirham*, while light filth is exempted up to the extent of a fourth of the garment (*Bid* p.87).

According to Ibn Rushd, this idea is “excellent” (*Bid* p.88). Once more, it shows the jurists’ desire to avoid causing Muslims’ undue hardship through their regulations. For, in the Hanafi school, a Muslim needs to be drenched in *khābath khafīf* to be barred from prayers. The *Mabsūt*, a compendium of opinions cited by Maghen, explains that the significant variable in the Hanafis’ decision regarding whether an impurity is light or heavy is how likely a Muslim is to encounter it during his/her working day. Plainly wishing to be as lenient as possible, they rule that:

The more widespread the difficulty (in avoidance), the lighter its position (of something's impurity) (*ma 'ammāt baliyatahu khaffat qadiyatahu*).⁴²³

This principle permits a number of concessions. Regarding the present topic: dung belonging to beasts of burden, and the droppings of most birds, are classified by the Hanafis as only lightly impure.⁴²⁴ Indeed, because mosques provide near ideal roosting areas for birds, and are likely to be covered in droppings of every kind (pigeons are normally singled out as the main culprits), some of these jurists even consider excreta of edible birds *tahīr*.⁴²⁵ All are practical measures, brought about by the realisation that, for many, contact with such excreta is unavoidable. Moreover, this principle brings other concessions too, underpinning the Hanafi's decision to "downgrade" the impurity of donkey-sweat (see above ch. 6.2.C), and – doubtless to the great relief of parents everywhere – the vomit of children.⁴²⁶

Having summarised the discussions pertaining to Ibn Rushd's main categories of *khābath*, we now turn our attention to two other categories of substance described by many jurists as polluting.

⁴²³ *Mabsūt* p.60 (cited by Maghen 1997:163). Some Hanafis also take other factors into account when estimating a substance's purity status. Maghen notes, however, that there were early disagreements over what these should be. According to him, Abu Hanifa, on the one hand, bases his assessment on whether there is unequivocal proof in the *ahādīth* concerning a specific impurity. Those substances about which the *ahādīth* agree (i.e. blood, *mayta*, most types of urine and excrement) are all heavily impure; whereas if sound *ahādīth* conflict about a particular substance's purity, Abu Hanifa classifies it as *khābath khaffīf*. Hence, for instance, in the present matter, Abu Hanifa considers all excrement heavily impure on the basis of Ibn Mas'ud's *ḥadīth* (he does not know, or refuses to consider as valid, the tradition permitting prayer in the sheepfolds) (*ʿAsl* pp. 76-77). In contrast, his disciples, Yusuf and Shaybani (and most later Hanafis), rely less on the agreement of *ḥadīth* in their estimation of a substance's impurity but, rather, on whether there is disagreement amongst the *fuqahā'* concerning it. For them, if the purity status of a *khābath* provokes *ikhtilāf*, things are resolved by ruling it light (*Mabsūt* p.56). Here, because of the disagreements in *ahādīth* and contradictory juristic opinions, they are left in no doubt that the urine and excrement of edible animals are only *khābath khaffīf*. However, while their methods may differ, and on this occasion even result in different *ahkām*, regarding most kinds of impurity the early Hanafis concur. For where *ahādīth* tend to disagree, so too do the *fuqahā'*, and vice versa. For Maghen's review of this topic, see 1997:162-164.

⁴²⁴ *Bayān* p. 21.

⁴²⁵ E.g. E.B. "*Najāsāt*":3.

⁴²⁶ *Ibid*

6.5. SEMEN (*Bid* p.88)

Male semen (*mani*) is described as “a thick, viscous, white fluid”. Its smell is, when moist, “like that of the spath of a palm tree”, or “bread dough”, and when dry, “like egg-white”.

Women are also known to emit “sperm” (*mā' al-mar'ah*). This is a fine, “yellowish, seminal fluid, that smells strongly”.⁴²⁷ Male and female sperms are treated identically in the *taharah* material. However, while everyone agrees that seminal emission always incurs a major *hadath* (ch. 7.2.A.ii), the Imams and their schools are evenly divided regarding whether semen (in both its male and female forms) is *khabith*:

- Malik and Abu Hanifa consider semen heavily impure.
- Al-Shafi'i, Ibn Hanbal, and Abu Dawud consider it pure.

One factor in their disagreement is a conflict in the *ahādīth* over the Prophet's preferred method of removing semen stains from his garments. According to one set of traditions, Muhammad or, more usually, 'A'isha used *to wash* these stains out:

Ibn Abu Za'ida narrated as was transmitted from Ibn Bishr that the Messenger of Allah washed semen, and in the *hadīth* transmitted on the authority of Ibn Mubarak and Abdul Wahid the words are: “She ('A'isha) reported: I used to wash it (semen) off the garments of the Messenger of Allah” (*Bid* p.88).⁴²⁸

From this evidence, the Malikis and Hanafis argue that semen must be impure, for why else would it require washing? In other traditions, however, 'A'isha is reported as merely *scraping* (*faraka*) these stains off.

⁴²⁷ For these descriptions, see *Maqāsid* p.19. See Thauban's *hadīth* in Muslim *Ḥayḍ*: 614 for an extended cogitation on the nature of male (“thick and white”) and female sperm (“thin and yellow”). Also see *Muwatta'ah* “*Tahārah*”21.86, where we find the idea that family resemblance is due to the combined action of male and female sperm (and c.f. *Mishkāt* “*Tahārah*”:441). Here, it is obvious that Galen's idea (or a Middle Eastern version of it) of seminal emission occurring in both men and women was well known by the early jurists.

⁴²⁸ Muslim “*Tahārah*”: 571.

Al-Aswad and Hammam reported ‘A’isha as saying: I used to scrape off the semen from the clothes of the Messenger of Allah.⁴²⁹

By preferring the scraping over the washing traditions, Shafi‘i, Ibn Hanbal, Dawud and their schools argue that semen is pure. For, in their opinion, washing (with pure water) is the sole method of *‘izālat al-khabath*, and ‘A’isha could not have legally purified Muhammad’s garments by merely scraping the supposedly impure substance off.⁴³⁰ Indeed, the fact that semen is removed (by whatever means) from them only demonstrates the Prophet and his wife’s good grooming – their developed sense of *‘adab* – rather than their concern for legal purity. In the *‘Umm*, Shafi‘i explains this idea as follows:

manī is not *nājis*, and if someone were to ask: “if not, then why bother rubbing or wiping (*yamsah*) it off?” We would answer him: “just as one rubs off mucus or sputum or clay or bits of food which have stuck to his clothes, these substances being non-defiling, and if he prayed in this garment before rubbing or wiping them off, there is no problem. And semen does not render either water or anything else *nājis*.⁴³¹

Scholars from the earlier *madhāhib* respond differently to the idea that scraping may legally remove semen. The Malikis dismiss the scraping traditions outright. However, because in their more pragmatic approach water is not the only purifying agent, the Hanafis perceive no conflict between the two sets of *ahādīth*, as both show that semen needs to be removed.⁴³² Instead, they account for the different practices by adding that semen may only be scraped off when it is dry (the preferred custom being to rub it between one’s fingers until it flakes off), whereas, when wet, it is preferable the affected spot is washed.⁴³³

⁴²⁹ Muslim “*Tahārah*”: 567.

⁴³⁰ See above p. 89.

⁴³¹ *‘Umm* p.72 (cited in Maghen 1997:187).

⁴³² The Hanafis attitude is noted above (fn.250). They permit *khabath* to be removed by most means with any pure substance, including fire (*Bid* p.89).

⁴³³ See E.B. “*Tahārat from Najāsāt*”:2, 7.

Another factor in this debate is the “vacillation of semen between resembling the impure bodily excretions and resembling other pure secretions like milk” (*Bid* p.88). Semen, being neither clear and odourless like the neutral fluids, nor as mirky or pungent as the other impure discharges (e.g. excrement, urine, vomit, or blood) presents the jurists with a dilemma. Their respective positions suggest that Malik, Abu Hanifa and both their schools consider semen to bear a greater physical resemblance to the body’s impure secretions, than it does to its pure ones. Conversely, Shafi’i, Ibn Hanbal, and Dawud presume that semen’s resemblance to milk ensures its purity.

Returning to the ‘*Umm*, we also find Shafi’i defending the purity of semen on grander premises. In the following, remarkable, passage, he insists that this substance – even more than the other neutral emissions – is legally pure because it *reflects man's essential purity*:

Shafi’i said: In the beginning, Allah the Mighty and Majestic created the human being from water and clay, combining these two substances in purity. And he began the creation of human offspring with water (i.e. semen) that pours forth (*ma’ dafiq*). And the fact that He began the creation of the human being with these two pure substances (water and clay) which (produce) a pure (entity), constitutes proof that He would not begin the creation of other (human beings) except from a pure (substance) and not an impure one (*min tahīr wa lā min nājis*).⁴³⁴

Plainly, for Shafi’i, it is impossible that semen - because it creates life, perhaps *the* determining factor in something’s purity – can be impure. In fact, by tying its purity to Allah’s initial act of creation he implies, firstly, that semen shares something of this miracle, and, secondly, that anyone who declares semen impure is suggesting that Allah was content to use faulty ingredients during this act of creation.

⁴³⁴ See ‘*Umm* p.72 (cited in Maghen 1997:187).

6.6. *KHAMR* (*Bid* pp. 572-577)

Ibn Rushd only mentions this topic briefly in the *Bidāyat's kitāb al-tahārah* - telling us that most jurists agree on its impurity (*Bid* p.81), but a connected discussion is to be found later in his book on food and drink.⁴³⁵ *Khamr* is normally translated as “wine”, and is *tahārah's* most unusual category of impurity. It is an unusual addition (shared only with the Hindu pollution code) to an otherwise standard list, and something that most jurists agree is forbidden to drink or touch on the basis of this Qur'anic verse:

O ye who believe! *khamr* and gambling, sacrificing to stones, and (divination by) arrows are abominations (*rijusun*) of Satan's handiwork. Eschew such (abominations) that you may prosper (5:90).

The question of why *khamr* is declared legally *khābiṭh* when the other pastimes mentioned by the Qur'an are not is interesting, but will take us outside the confines of the present survey.⁴³⁶

Once again, our focus is the disagreement between law schools; and this stems directly from an inability to decide what kind of substance “*khamr*” is. There are two views:

- Most jurists, including Malik and Shafi'i, agree that *khamr* applies to *all* intoxicating beverages.
- The Hanafis claim that it applies only to wine fermented from grapes.

⁴³⁵ In the *tahārah* reference, Ibn Rushd states that the only disagreement on this subject occurs between some of the traditionists. As is shown, however, the major disagreement is between the Maliki/Shafi'i and Hanafi viewpoints.

⁴³⁶ Montgomery Watt's theories that drinking wine would have implied trading with the Syrian enemy, and that drinking was closely connected with pagan practices has been mentioned (ch. 5.1), and there may well be some truth to this claim. It is also well know (and confirmed in a large body of poetry), however, that the pre-Islamic Arabs drank alcohol and that, initially, Muhammad's cause had been hindered by this (See Q.4:43; Goldziher *Muslim Studies* I:27-38). Therefore, if we are looking for a material cause, it is not difficult to see the need for an early ban on intoxicants. Likewise, but from a different perspective, drunkenness stimulates a lack of bodily control, and the degree of control a believer exercises over his body will be shown to play a part in the overall logic of *tahārah* (see Exc. C). Also note that crystallised in the Qur'an's increasingly negative attitudes to alcohol is the general “reformatory” trend of which Graham speaks (p.43). Originally, it is accepted (and even mentioned as one of the delights of Paradise, Q.47:15), but the Qur'an acknowledges its evil effects (2:219) and, finally, bans it (5:90). The jurists take this ban a stage further by declaring (most forms of) alcohol *khābiṭh* and, thus, firmly setting themselves apart from all of their neighbours.

The real issue here concerns the moral question of whether drinking alcohol should be permitted. Logically, however, those who permit the drinking of certain intoxicants must also consider these liquids pure (and vice versa in the case of their opponents). In support of Shafi'i and Malik's argument, there is a sound *ḥadīth* stating that: "every intoxicant is *khamr*, and each *khamr* is *ḥarām*" (and therefore impure) (*Bid* p.572). Furthermore, as Ibn Rushd explains, because the term *khamr* is etymologically linked to the verb "to veil" (*khamara*), it follows that it may be applied "to *everything* that befuddles (i.e. veils) the intellect" (*Bid* p.572). Ignoring these arguments, the Hanafis claim that *khamr* does not necessarily include all intoxicants – such as *sakar* (an extract from the juice of fresh dates), *naqī* (infusion of raisins), or *nabīdh* ("date wine", or mead) which they consider either lightly *khabīth*, or pure – on the basis of another Qur'anic verse that describes the drinking of *sakar* as "good nourishment" (*rizukan*) (Q.16:67). In response to that, their opponents reply that this verse was revealed in Makka before the prohibition – and presumably the pollution – of alcohol was known about.

The ensuing argumentation is complex, and exploring it in further detail is unnecessary.⁴³⁷ In practical terms, however, it should be noted that drinking *khamr* leads to the one occasion when a person is capable of *transmitting* defilement. For most jurists agree that taking alcohol and then proceeding to a water vessel *without* swallowing properly, renders the water in the vessel *nājis*. Indeed, the majority assume that, even if the drinker has swallowed the wine, the left-over water is still *makruh* (although not forbidden) for *wudu'*.⁴³⁸ Of course, rather than this signifying a change in the essential purity status of the wine-drinker (through

⁴³⁷ For a good summary of early legal disputes on the permissibility, and/or immorality, of drinking, see Goldziher's *Muslim Studies* (ref. fn.436 above), and 1981:59-62.

⁴³⁸ See Maghen 1997:312-313, he refers to the '*Asl*' pp. 86-87. Ibn Rushd mentions this opinion and attributes it to Ibn al-Qasim (*Bid* p.26).

which he has become contagiously impure), it is another (and perhaps the best) example of *khathath* “contamination” through a change of location by an original impurity: the wine proceeding from the vessel into someone’s mouth, mixing with his saliva, and then being transferred onto a secondary target (the water vessel).

On the same subject, there is a final point of interest that should not go without remark. For, among the traditions the Hanafis use to support the purity of non-grape intoxicants is the following one attributed to Ibn Abbas:

Ibn Mas‘ud went out with the Messenger of Allah on the night of the *jinn* and the Messenger of Allah asked him, “Do you have any water. He said “I have *nabīdh* in my container”. (To which) (t)he Messenger of Allah asked said, “Pour out some”. He (Muhammad) performed ablution with it saying “It is a beverage and a purifying element” (*Bid* p.31).

Against all the rules, this leads Abu Hanifa to permit the use of *nabīdh* for *wuḍū’* instead of *tayammum*. Not surprisingly, his opinion is opposed by most other jurists, and even Abu Yusuf.⁴³⁹

6.7 CONCLUSIONS:

We have covered, or at least alluded to, most of the significant discussions relating to *khathath* within Sunni *fiqh*. Shared themes of influence include: whether something has died outside the sanctifying aegis of ritual slaughter, whether something was, or is, capable of sensation, whether a substance is liquid or dry, small or great, flowing or still. Contrary interpretations abound, and each case must be dealt with on its own terms. A connection

⁴³⁹ See *Bayān* p. 24. At first glance, this may appear like the sort of behaviour Douglas observes in the Nyakele and Lele tribes, where the controlled use of something normally considered polluting within a special ritual setting allows the ritual’s participants to show their mastery over the forces of impurity (see p.27 above). However, given that there is nothing even vaguely similar to that idea in the rest of *tahārah* law, this is not very convincing.

between the dietary and purity laws remains, particularly in the approaches of the earlier *madhāhib*. Hence, for the Hanafis, inedible creatures transmit defilement through their *su'r*, while, according to the Malikis, the urine and excrement of *ḥarām* creatures is *khabith*, and their *su'r* is not to be used for ablution.

There is overwhelming evidence that, from very early in its development, a shared acknowledgment existed that, if *tahārah* law was going to cause problems for believers, then this law should be altered to accommodate the practicalities of Muslim life. The Maliki and Hanafi scholars, in particular, devise ingenious methods to avoid causing a burden by distinguishing between small and large quantities, and light and heavy forms, of *khabith*. Moreover, according to both authorities, blood needs to flow in order for it to defile; hence, small quantities of it are considered negligible.

Doubtless Shafi'i understands the need for tolerance, but, on the basis of what we have seen so far, is less willing to permit concessions. Indeed, his insistence on the absolute impurity of blood and excreta make a close inspection of one's body and garments before prayer a necessity. For Shafi'i, when something is impure, it defiles regardless of quantity or fluidity. These opinions suggest his interest lies in systematising what is a very complicated area of the law, rather than merely granting more concessions. Yet, he goes some way towards both goals by disconnecting Islam's purity ideas from its dietary system. As far as his method goes, it is no surprise (given Shafi'i's general emphasis on the importance of *ḥadīth* to the legal system⁴⁴⁰) that he is reluctant to reject well-known *ahādīth* in his decision making. But, as in Abu Hurayra's tradition on the sevenfold washing of the dog bowl, this loyalty occasionally forces him into problems. His response (which his school follows in their

⁴⁴⁰ See e.g Coulson 1964:90.

interpretation of the concession to pray in the sheepfolds) is to describe it as *ta'abbud* – inscrutable religious obligation and thus beyond rational explanation.

This leads directly into the next chapter's summary of *tahārah*'s other branch of *najāsah*, the *ahdāth*, whose purification is quite beyond our ability to comprehend according to most jurists. Before moving on, and as a final thought on the *khābath*, the theory that ritual pollution behaviour stems from man's universal fear of death is worth mentioning in light of what we have now seen.

Excursus A. *Tahārah* and the fear of death

In Chapter 3.2.A., it was noted that scholars from a variety of different backgrounds have found a psychological connection between ideas of ritual pollution and man's fear of death. It is now plain that, on a certain level, the association of death with impurity and, conversely, life with purity, also plays a part in *tahārah* law. This is clear from the following factors:

- death without slaughter results in *mayta* impurity; conversely, life is described explicitly as the root of purity (see ch. 6.1).
- bones and hair of *mayta* are judged impure only if they are believed capable of dying (ch.6.1). The same criteria explains the Hanafi opinion that the *su'r* of predatory birds is not irredeemably defiling (ch. 6.2. B.). For, like hair and bones in the Hanafi school, their beaks are seen as incapable of sensation (therefore, of dying), and, hence, purify the saliva within the birds' mouths.
- predatory animals - i.e. those that kill - contaminate through their *su'r* according to the Hanafis and, to a lesser extent, the Malikis (ch. 6.2.).

- Shafi'i defends the purity of semen on the basis that it is life-giving (ch. 6.5.), thus implying that a connection exists between the forces of death and impurity.

As far as the animal kingdom is concerned, it is probably correct to say that it is not death itself that pollutes a carcass, but the process of losing life (connected by many with the outpouring of its blood). Thus, within *tahārah*, the transition from conscious living awareness to death is what matters, whereas simply being dead (as nails and hair are) is not a cause of impurity *per se*, as it is in other systems. Further, whatever influence the fear of dying may have exerted over the development of *tahārah* regulations, it is considerably weaker that may be found, for instance, in the Biblical pollution laws where this theory has been argued at length. The two codes, it must be said, have the matter of ritual slaughter in common; in each, all one has to do is pronounce the name of God over the dying beast to take the sting out of its death. Both rituals illustrate God's victory over the forces of death, and allow man to show his gratitude for the gift of the creature's flesh and skin.⁴⁴¹ Beyond this point, however, *tahārah* law is plainly less perturbed by death/dying than the Biblical scholars and Rabbis. For, while the impurity of a human corpse is the strongest form of pollution known to Judaism, no human corpse (even that of the unbeliever) is *khablth* in Sunni Islam – a fact that is traced to the Qur'an's statement that Allah has "honoured the sons of Adam" (17:70).⁴⁴²

Sunni Islam's treatment of martyrs shows the difference between the Jewish and Biblical systems most clearly. In the Bible, blood is not impure and bleeding is not a cause of impurity, but human corpses are *always* defiling regardless of the manner of death; in Sunni Islam, on the other hand, blood is (nearly) always impure, and corpses incur a *hadath*. Yet, in the case of a martyr's death, no *ghusl* is necessary and the blood need not be washed off his

⁴⁴¹ See Giffen (in Firmage 1990) p.220.

body. According to the normal rules, this would mean that he is to be buried while affected by both *ḥadath* and *khābath* impurities. But the martyr is different; it is said that he is to be admitted to heaven without examination of his earthly deeds.⁴⁴³ And there is a *ḥadīth* stating that a martyr's wound will reappear on the day of resurrection just as it was at the time of infliction; only this time his blood will smell like musk.⁴⁴⁴ Thus, it makes sense that the martyr's impurity is waived, just as his sins are waived. By doing so, the *ṭahārah* system utilises its ritual pollution ideas to show a greater disdain for the powers of death – or a greater confidence in Allah's sovereignty over them - than is apparent in the Bible's pollution code or, possibly, any other such code.⁴⁴⁵

⁴⁴² See e.g. *Bayān* p.19 fn.3.

⁴⁴³ See L. Ridgeon *Crescents on the Cross* (1999 Glasgow, Trinity St. Mungo Press) p.97.

⁴⁴⁴ Bukhārī "*Wuḍū'*":238.

CHAPTER 7

HADATH IMPURITY

Our summary of the jurists' arguments continues in this chapter, where we look at the events via which a Muslim contracts *ḥadath* impurity. The two strengths of *ḥadath* will be treated in different sections, and the chapter concludes with a consideration of the jurists' general approaches to the subject of *najāsah*.

7.1 THE MINOR *AHDATH*

The jurists agree that a minor *ḥadath* is incurred through five acts: urination, defecation, breaking wind, emitting *madhī/qadī*, and emitting *wadī* (ch.4.2.A). In addition to these five, a Muslim will also be aware of a number of other acts that may, depending upon the school to which he belongs, jeopardise his purity for prayer. Before taking a look at what they are, Ibn Rushd's assertion that *wuḍū'* will always be nullified by breaking wind requires qualification (although Ibn Rushd does nothing of the sort). For, on the basis of the Prophet's advice that no one should "leave his prayers unless he hears a sound, or perceives a smell", the jurists distinguish between doing so silently (*fasw'*) and noisily (*ḍarḥ*); and it is only when a believer farts audibly, and/or malodorously, that he incurs a *ḥadath*. From this is derived the general principle that "a state (of purity) whose existence one is certain about (*yastayaqan*) does not cease through a state (of impurity) one is uncertain about".⁴⁴⁵ The same is true of *ḥabath*; if someone is not sure that he has come into contact with an impurity, he is not legally required to wash himself.⁴⁴⁷ In the *ṭahārah* system, therefore, a Muslim's purity is directly linked to the witness of his or her conscience, and it is only when someone *knows* he has been affected

⁴⁴⁵ It might even be suggested that the martyr's blood sanctifies his corpse (if Sunni Islam possesses this concept).

⁴⁴⁶ This *ḥadith* is from Bukhari "*Wuḍu'*":139, and the general principle noted in '*Umdat* p.73.

that he is legally obliged to do something about it. Although it cannot detain us here, this is a very important point. For, it prioritises a Muslim's *intention* above the autonomous effect of the impurity. Hence, if a believer can honestly say that he is not convinced one way or other whether his purity has been broken, he may give himself the benefit of the doubt even if everyone else in the room is positive he is wrong. We shall return to the question of a believer's moral intention in chapter 10 when exploring one possible religio-moral interpretation of the *tahārah* system. This highly significant tenet noted, we now move on to the various other events that may, or may not, cause a minor *hadath*.

7.1.A. THE EMISSION OF IMPURE BODILY EXCRETA (*Bid* pp. 32-34)

While the jurists agree that, with the exception of the clear fluids (saliva, mucus, tears, sweat), semen and vaginal fluid, every bodily emission is impure, they are divided into three camps regarding which types of emission incur a minor *hadath* (*Bid* P.32-34):

- Abu Hanifa and his school, al-Thawri, and Ahmad Ibn Hanbal assume that all *impure* emissions (such as blood, urine, excrement, etc.) incur a *hadath*.
- Malik and the majority of his school assume that most impure emissions incur *hadath*, but that this will also depend upon other factors.
- Shafi'i and his school, and the Maliki scholar Muhammad ibn 'Abd al-Hakam, assume that only substances (pure or impure) emitted from the anus or genitals incur *hadath*.

Each of these opinions reflects a different understanding of the relationship between the manufacturing of *khathath*, and the contraction of *hadath*. Let us begin with Abu Hanifa's view, in which, according to the *Bidayat*:

⁴⁴⁷ *Ibid.*

each impurity (*najāsah*) flowing from the body or excreted from it necessitates ablution, like blood (*dam*), (and blood from) excessive nose-bleeding (*al-ru'āfī al-kathīrī*), drawing of blood (*al-fasd*), cupping (*ḥajamah*), and vomiting (*qay'*), except for phlegm (*balaghām*) (*Bid* p.32).

Here, the tangible impurity of the *substance* (i.e. the *khābath*) triggers a non-tangible state of impurity (i.e. a *ḥadath*). Indeed, in the Hanafī school it is unusual to find any *ḥadath* not stemming from the emission of impure substances.⁴⁴⁸ These jurists consider vomiting, and any type of bleeding (including nosebleeds [*ru'āfī*]) – two very common and much discussed mishaps – to break *wuḍū'*, for blood and vomit are irrefutably *khābīth*.⁴⁴⁹ In support of this, they cite two traditions: firstly, a *ḥadīth* related from Abdullah Ibn 'Umar which affirms the obligation of ablution due to a nosebleed and, secondly, a *ḥadīth* attributed to Thawban, which reports how “the messenger of Allah vomited and then performed ablution”.⁴⁵⁰ While on the second of these subjects, it should be noted that, despite Ibn Rushd hardly mentioning it, *qay'* is a major sub-category of *ṭahārah* law for the Hanafis. Primarily because of their principle of linking *ḥadath* with *khābath*, these jurists are drawn into lengthy discussions to determine precisely – based on its amount, form, and consistency – the stage at which regurgitation becomes vomit. Considerations of space mean that we cannot review their discussion in detail, but the following passage, from the Persian manual *Endless Bliss*, summarises their approach and should suffice here:

The second group of things breaking *namāz* (i.e. *wuḍū'*) consists of those impure things coming out of the mouth. Of these vomit and thick blood, blood, food and

⁴⁴⁸ The two exceptions are laughing during prayer (ch. 7.1.E), and penetration without seminal emission (ch. 7.2.A.ii). Indeed, the fact that *coitus interruptus* is a cause of *ḥadath* is explained by some Hanafis along the same lines: “*janābah* is incurred from the moment the genital fluid is *secreted*, not from the moment it emerges from the body” (*Bayan* p.14). Thus, it is the impure, but still hidden, discharge that brings about *janābah* (rather than “any non-rational” cause).

⁴⁴⁹ See e.g. *Bayan* p.9 / E.B. “*Wuḍū'*”, p.7.

⁴⁵⁰ For the tradition on nose bleeds, see *Muwatta* “*Ṭahārah*”, 10:48; for the tradition relating to vomit, see Tirmidhi “*Ṭahārah*”:64, both are cited in *Bid* p.33.

water coming out of the stomach break *namaz* when they amount to more than a mouthful and their appearance has clearly changed.⁴⁵¹ They are all heavy impurities (*najāsāt ghalizat*)... Vomiting phlegm (*balaghām*) will not break *namaz*. Vomiting thin blood does not break *namaz* if it is less than spittle... after coming out of the mouth, if the blood is more than spittle it breaks *namāz*... if the blood issuing from the stomach or from the lungs is thin it breaks *namāz* even if it is less than a spittle, according to *Shaikhayn* (Abu Hanifa and Abu Yusuf). If any oil dropped into the ear goes out through the ear or the nose it does not break *namāz*. But if it goes out through the mouth it breaks *namāz*. If something sniffed into the nose comes back, even after many days it does not break *namāz*.⁴⁵²

For those who consider vomiting a cause of *ḥadath*, certain principles apply. It is only if food or blood is vomited *from the stomach* that it is heavily defiling (*khabath ghalīz*, and breaks *wuḍūʿ*. If food is immediately brought back up, a believer's ablution remains intact. However, even if it does reach the stomach before repeating, if what appears *still resembles* the original meal, *wuḍūʿ* is not broken. Applying the same criteria here as they do in their treatment of *khabath*, the Hanafis stipulate that a believer's *wuḍūʿ* is not broken if the impure discharge amounts to "less than a mouthful" of vomit or blood (i.e. less than a *dirham*, which explains why Ibn Rushd says that ablution is only broken when blood *flows* and nose bleeds are excessive). Phlegm is discussed in different terms from vomit; it remains *tahīr* because it still resembles saliva, and only breaks ablution if there are food particles in it. On the evidence of the above passage, the key factor for the Hanafis in establishing the impurity of these substances (and hence their capacity to break a believer's ablution) is whether or not a substance has passed through the digestive system. Because our ears and noses have no link

⁴⁵¹ Whereas vomit is called *qayʿ* (or *qiʿ*), if the regurgitated substance amounts to less than a mouthful, it is described as *qils / qals*. If an individual gags more than once and the cumulative total of his expectorant is more than a mouthful (i.e. it adds up to *qayʿ* or more) then *wuḍūʿ* is said to be broken (Maghen 1997:205 ff.).

⁴⁵² E.B. "Wuḍūʿ" p. 7 (my emphasis). The content of this passage directly follows Abu Hanifa's views, see 'Asl pp. 78-79 (in Maghen 1997:206).

with digestion, most things that come out of them (whilst likely to be mucky) have not been transformed and, therefore, are neither *khābiṭh*, nor necessitating re-ablution.⁴⁵³

Malik's view on the relationship between impure bodily emissions and *ḥadath* appears to be slightly different. While, according to Ibn Rūshd, he also thinks emitting a substance *known to be khābiṭh* will generally break a Muslim's ablution, he makes a concession in the case of bleeding. This is upheld by several graphic traditions in the *Muwatta* (most of which deal with nose-bleeds). There, we learn, for instance, that Sa'id ibn al-Musayyab continued to pray "with blood pouring out of his nose, so that his fingers were red with it"; and how, on the night he was stabbed, 'Umar performed his prayers "with blood pouring from his wound".⁴⁵⁴ As far as the usual logic of *tahārah* is concerned, this clearly goes too far (even if bleeding is not a cause of *ḥadath*, blood itself is *khābiṭh* – albeit that according to the Malikis less than a certain amount of it is negligible [p.154] - and should be washed off in order to pray). The purpose of these traditions, however, just like the similarly dramatic report of Muhammad praying with entrails on his back (see above fn. 241), is to show that prayer is more important than *najāsah* (of any sort).⁴⁵⁵ This is a feeling that is found throughout the *ḥadīth* material and, doubtless, informs *tahārah* law on a fundamental level.⁴⁵⁶ In the context of the present debate, it also serves to show that, for Malik, *ḥadath* is not always triggered by

⁴⁵³ The other jurists apply the same criteria when judging whether or not a regurgitated substance is *khābiṭh* (see e.g. *Umdat* p.96 which states "that anything coming out of the mouth of a sleeping person is *najis* if it comes from the stomach, but pure if from the saliva ducts").

⁴⁵⁴ *Muwatta* "*Tahārah*" 12:51-54. On other other occasions, Malik shows himself to be less lenient, however, for the view that *ru'af* does break *wuḍū'*, see *Muwatta* "*Tahārah*" 10:48-50 and *Mudawannah* p.140

⁴⁵⁵ The *Muwatta* contains another very unusual tradition attributed to Yahya ibn Sa'id in the same vein. In that, Sa'id ibn al-Musayyab – who seems rather prone to misfortune and, on this evidence, might even have qualified for a concession because of it! (See on *mustahadah* immediately below) - is questioned on what he would do if he discovered evidence of *madhī* on his person during prayer. Sa'id replies: "Even if it were to flow on my leg I would not leave until I had finished the prayer" ("*Tahārah*" 14:58). No law school upholds this – *madhī* is unanimously considered impure and always a cause of *ḥadath* but, as is about to be noted, Sa'id's opinion epitomises a theme that runs throughout *tahārah*.

⁴⁵⁶ See ch.10.

khābath; for, if that were the case, Sa'id and 'Umar would have stopped their prayers and repeated *wuḍū'*.⁴⁵⁷

According to Ibn Rushd, an important principle in Malik's decision about which bodily emissions do cause *ḥadath* (in addition to whether or not the substance is impure) is his conviction that this depends upon a believer's *state of health*. Following their Imam, in the Maliki school, the emission of any *khābith* substance (be it urine, faeces, *madhi*, *wadi*, semen, or wind) "only breaks *wuḍū'* when passed in a condition of health" (*'idha kāna khurujūhu ala wajuhu-l-sahati fihu yanqadu-l-wuḍū'*) (*Bid* p.32). Conversely, chronic discharges of normal substances, or abnormal substances emitted as a result of illness (such as stones, pus, or worms), will not break *wuḍū'*, because the usual connection between *khābith* and *ḥadath* is severed on both occasions by a Muslim's ill health. Malik bases his principle on the advice Muhammad gives to Fatima who, when suffering from prolonged vaginal bleeding (*istihādah*), was ordered to wash off her blood, but then permitted to pray *without wuḍū'*:

'A'isha reported: Fatimah b. Abu Hubaysh came to Allah's Messenger and said: I am a woman whose blood keeps flowing. I am never pure (*fala 'atuhuru*); should I therefore abandon prayer? Thereupon, he (Muhammad) said: No, for that is only a vein (*irqun*) and is not menstruation. So when you begin menstruating, abandon the prayer and when it (menses) is over, then wash the blood from yourself and observe prayer.⁴⁵⁸

For the Malikis, the fact that Fatima may perform her prayers without *wuḍū'* indicates she had no *ḥadath* to lift – her illness having canceled it out. In contrast, the other jurists prefer another version of Fatima's *ḥadīth*, in which a command to perform *wuḍū'* before each

⁴⁵⁷ Note that, according to the *Muwatta*, Malik also seems to have discounted vomiting as a reason to repeat *wuḍū'*. His evidence is that he saw Rabi'a ibn Abd al-Rahman "vomit several times when he was in the mosque and not leave, nor perform *wuḍū'* before he prayed" (*Muwatta* "Ṭahārah" 4:17). Ibn Rushd does not mention Malik's opinion, which may indicate that vomiting is a cause of *ḥadath* for later Malikis (but this is admittedly hypothetical).

prayer has been added.⁴⁵⁹ In this account, Fatima was in a state of minor *hadath* but, as a concession, Muhammad permitted her to fulfill her religious obligations nevertheless. Hence, for the Hanafis and Shafi'is, a *mustahadah*'s impurity is only temporarily suspended during prayers. As soon as prayers finish, she becomes a *muhdith* once more. This being the case, the majority rules that before every prayer a *mustahadah* must "wash her affected parts, apply something absorbent to them and a dressing, and then perform *wudu*"⁴⁶⁰.

The Sunni jurists' regulations for the *mustahadah* point to a general principle of great significance. Namely, if a physical condition that is normally considered to break *hadath* is unavoidable, the law turns a blind eye to it. For, despite the difference of opinion between the Malikis and the other jurists on the degree to which illness affects the contraction of *hadath*, it is accepted by all that, if chronic discharges do incur a *hadath*, it is a seriously weakened form of it. Thus, individuals suffering from diarrhea, or incontinence (*salas*), chronic nocturnal emissions, or with festering wounds from which pus or blood seep, are permitted to touch and recite from the Qur'an, and perform superogatory prayers, without having to make a fresh ablution, as long as they have first washed the impure substance off themselves and taken sufficient precautions to bind the source of impurity.⁴⁶¹ As, according to all authorities other than Malik and his school, they are technically impure (and consistently contracting new impurity), they must perform *wudu*' – although, as they are not lifting *hadath*, the saying of *niyyah* is unnecessary⁴⁶² - before each prayer, but no one is ever excluded from worship. Indeed, the jurists firmly insist that, unless propriety dictates otherwise, no chronic illness is a sufficient reason even to delay prayers (in case someone

⁴⁵⁸ Muslim "*Hayd*":652. Judging when a *mustahadah*'s menstruation is over is a tricky business, however, see ch.7.2.B.

⁴⁵⁹ See *Mishkāt "Tahārah"*:560. Ibn Rushd tells us that this addition is disputed, but is declared *sahih* by Abu 'Umar ibn 'Abd al-Barr (*Bid* p. 34). For the Hanafis, see *Bayān* p. 34; for the Shafi'is, see *'Umdat* pp.94-95.

⁴⁶⁰ E.g. *Maqāsid* p.25.

⁴⁶¹ The *Bidāyat* does not list the concessions, but see E.B. "*Masah*" pp.4-5, and *'Umdat* pp.94-95.

thinks that this type of complaint might allow him to slack off). This is another fundamentally important point: other ritual pollution codes are never this flexible in their definition of impurity (nor perhaps this strict in their expectation that religious duty must always be fulfilled).⁴⁶³

Returning to the matter at hand, Shafi'i has a different opinion regarding which bodily emissions incur a *ḥadath*. In his view and that of his *madhhab*, the fact that an emission breaks *wuḍū'* has *nothing to do* with whether this emission is *khābiṭh*. Instead, ablution is only broken when a substance (irrespective of amount) is passed through the *genitals or anus*. These are referred to as *al-sabīlayni* (the two passages/roads), or *al-makhrijayni* (the two outlets) in the legal texts and, rather than attaching any importance to the *'ayn al-khābiṭh*, in Shafi'i's view it is only these *passages*, and not the substance, that causes *ḥadath*:

Shafi'i (solely) took into account the passages through which the excretion occurs as factors affecting the nullification of ablution (*lā yanqid ila al-khārij min 'ahaid-l-sabīlayni*) and limited these to the penis (*al-dhakar*) and anus (*al-dubur*), by saying that *anything* excreted from these two passages invalidates ablution, whatever its nature whether blood (*dam*), or stone (*hasah*), or phlegm (*balaghūm*). (*Bid* p.32).

Indeed, this principle – that “*wuḍū'* is broken by whatever is excreted from the two roads/passages” (*intiqād al-wuḍū' mima yakhruj min aḥad al-sabīlayni*) – is upheld upon by all.⁴⁶⁴ Uniquely, however, Shafi'i makes it the *only* reason for a bodily emission to incur a

⁴⁶² See e.g. *'Umdat* p.61.

⁴⁶³ The above approach may have taken some time to be generally accepted, however; for an indication of the early confusion regarding the legal status of people with chronic emissions, see Mujahid's *ḥadīth* cited by Sabiq (1991:50).

⁴⁶⁴ Although for different reasons: for the Hanafis, emissions from *al-sabīlayni* trigger a *ḥadath* simply because all substances originating there are *already* defiling.

hadath. They are polluting areas, so to speak, that, when breached, separate a believer from prayer.⁴⁶⁵

Doubtless, Shafi'i knew of Malik's traditions indicating that bleeding (and vomiting, see f.n. 457) did not compel the Prophet and his Companions to repeat their ablutions, and there are other traditions supporting this view.⁴⁶⁶ But Ibn Rushd merely tells us that Shafi'i argues this case on logical grounds. Apparently, the Imam claims that, unless the connection of bodily emissions to *hadath* depends on the outlet (and not the emission), there is no reason why *wudu'* should be necessary after breaking wind, and not after belching, given that "both winds (*riyah*) are of the same category (*dhāt*)" (*Bid* p.33). That particular argument, as Ibn Rushd says, is not a strong one, as most jurists do not believe these categories to be remotely similar.⁴⁶⁷

⁴⁶⁵ The idea that greater impurity resides beneath the waist than above it is shown to great effect in this passage from Nawawi's *Minhaj*:

As to matter from a wound, a fistula, an incision or any other opening in the proximity of the stomach... when either passage is obstructed and *the opening is below the stomach*, any issue – even if it is accidental... – negates the purity of the body... when either passage is obstructed and the opening is above the stomach... the purity of the body is unaffected (p.3).

Here, the combination of factors – a blocked genital orifice, and the proximity of the wound to the genitals – is all important. It is as if any effluent will be tainted because genital impurity might find a way out via this new opening.

⁴⁶⁶ For instance, the following selection of opinions in Bukhārī conclusively demonstrates that any type of bleeding (outside of the *sabīlayni*) will not break *wudu'*. Following Shafi'i, Bukhārī instructs Muslims not to repeat *wudu'*:

except if something is discharged from either outlet (*min-l makhrijayn*)... (for) Jabir stated: the Prophet was in the battle of *Dhāt-l-Ruqa* and a person was shot with an arrow and he bled profusely (*fanazafahu-l-dam*), but he bowed and prostrated and continued his prayer. Al-Hasan said: The Muslims used to pray regularly in their wounds. Tawus, Muhammad bin 'Ali, Ata' and the people of Hijaz say: Bleeding does not necessitate the repetition of ablution. Ibn Umar squeezed out one of his pimples and blood came out, but he did not repeat his ablution. Ibn Abi Aufa spat out blood but he carried on his prayer. Ibn Umar and al-Hasan said: If anyone lets his blood out (through cupping) then it is necessary for him to wash the cut area only (and not perform *wudu'*) (Bukhārī "*Wudu'*": ch.35).

⁴⁶⁷ *Bid* p.33. In fact, the other jurists (quite understandably) claim that these "two kinds of winds are different with respect to characteristics and odour" (*al-rihayni makhtilafani fi-l saffahi wa-l ra'ihati*) (*Ibid*). On a connected point, most Hanafis do not consider ablution broken by wind from male or female genitals, because it is unlikely to be foul (see e.g. *Bayān* p.9); whereas, in the Shafi'i school, genital wind breaks ablution because the orifice itself is *hadath*-prone ('*Umdat* p.71).

These are the basic differences between the jurists on the category of bodily emissions that break *wuḍū'*. Although each school has its own logic, we see once again that behind all the opinions is a clear interest in fashioning a lenient and workable set of rules. Thus, while a direct connection between emitting a *khābath* and contracting *ḥadath* persists in the Hanafi view, according to this school, a Muslim does not have to repeat his ablutions unless the quantity of discharge is a *dirham* or more. Reducing the need for added re-ablution yet further, Malik claims that bleeding (and maybe vomiting) does not incur a *ḥadath*. Moreover, in his school, *ḥadath* impurity is compassionately linked to the state of a believer's health, and it ceases to exist altogether if a Muslim is unwell. Although disagreeing with that, Shafi'i continues in the direction taken by Malik by restricting this category of *ḥadath* to bodily emissions from the genitals and anus (and thus erasing the need for the sort of debates on bile, and bleeding that the Hanafis engage in).

Before moving on, a little should be said about Shafi'i's importance in establishing the overall logic of Sunni Islam's *tahārah* system; and it is in the present matter that his influence is most noticeable. For, the relationship between the emission of an impure substance and the contraction of *ḥadath* clearly gave the early jurists problems when trying to define how the two purifications differ. In chapter 4.3.A., the majority's view on the separate aims of the purifications was noted (removing *khābath* brings cleanliness and is regarded as a rational, or ethical, form of worship; whereas, lifting *ḥadath* glorifies God, and is a non-rational form of worship). This simple formula, however, was not immediately accepted.

Excursus B: The differences between the schools on the purposes of the purifications:

The Hanafis' approach blurs the dividing line between the two forms of *najāsah*, and their respective purifications. For, in Abu Hanifa's view, a *ḥadath* normally only follows the

emission of *khathath*, which implies that the acts of *rafa'a-l-hadath* are merely glorified removals of *khathath*. Indeed, this is exactly how Ibn Rushd describes Abu Hanifa's view:

Abu Hanifa argued that the factor of annulment is the impure excrement, because of the (adverse) effect of (tangible) *najāsah* on *taharah*, and although this kind of purification is legal (*tahārah hukmiyyah*) it resembles the actual purification that is purity from filth (*tahārah najāsah*)” (*Bid* p.33) (We are following Nyazee's translation. However, for “actual purification”, the text stipulates “*taharah ma'nawiyah*”, which, confusingly, is the same as *taharah hukmiyyah*. Although Nyazee should have noted the error, the context dictates that he has diagnosed Ibn Rushd's intentions correctly).

Abu Hanifa's habit of linking the nature of the impurities, and the purpose of the purifications leads to confusion on a number of occasions. Never more so than in his attempt to establish when it becomes legally permissible to sleep with a woman who has recently ceased menstruating. For, unlike Malik, Shafi'i, and the majority of the jurists – for whom the Qur'an's injunction to wait until “they (menstruants) have purified themselves, and then go unto them” (Q.2:222) indicates that the menstruant must perform *ghusl* before she can have sex – Abu Hanifa and his school permit her to have sex without *ghusl*, as long as she has passed beyond the maximum duration for menstruation (which in their view is ten days, see p.205 below), on the basis that her *hadath* lifts itself when the *khathath* (i.e. the menstrual blood) is no longer present (*Bid* p.60).⁴⁶⁸ The same thinking explains these jurists' solitary opinion that *niyyah* is not obligatory before acts of *rafa'a l-hadath* (although it is still recommended⁴⁶⁹). For, if the purpose of *wudu'* and *ghusl* is only the removal of *khathath* then these acts are like any other form of 'izālat-al-khathath, which, the jurists agree, does not require the performance of *niyyah* (*Bid* pp. 3-4).⁴⁷⁰

⁴⁶⁸ Other jurists, for instance Al-Awzai and ibn Hazm, observe an even stronger connection between removing *khathath* and lifting *hadath*, by ruling that a man may even have sex with a menstruant as long as she has washed the blood off – for she “becomes free from *hadath* once she purifies herself (from the blood)” (*Bid* p.60).

⁴⁶⁹ *Bayān* p.5.

⁴⁷⁰ This explains why Abu Hanifa rules that, if a *jumūb* were to fall unexpectedly into a well (and has no time to say *niyyah*), his *hadath* is lifted and the water itself becomes *musta'mal* (used), just as if he had performed *ghusl* in the normal fashion (*Bayān* p.18).

Abu Hanafi's opinion disturbs Shafi'i, for whom a clear distinction between the two forms of *najāsah* is obviously important. Indeed, in the '*Umm*, Shafi'i points out the error of Abu Hanifa's view on several occasions, one of which concerns the question of whether touching the genitals is a cause of *ḥadath* (see ch. 7.1.C.). Shafi'i thinks that it is, and argues his case as follows:

If the Prophet ordered with respect to (the removal of) menstrual blood that it should be washed by hand, and did not order *wuḍū'* after that,⁴⁷¹ then, given that blood is more polluting (*anjās*) than the penis (we would expect touching the penis, not to cause *ḥadath*, but this is not so)? By *qiyās* on this ruling, the *nājis* thing that is touched does not necessitate *wuḍū'*. If this is true of (something that is) *nājis*, then what is not *nājis* in itself (i.e. the penis) ought, still more, not to entail *wuḍū'*, unless there is a specific *ḥadīth* to this effect.⁴⁷²

Thus, contra Abu Hanafi's argument, Shafi'i demonstrates that *ḥadath* impurity cannot be explained by the existence of *khābath*; for if it could, then a *ḥadath* would be caused by the contact of the hand with menstrual blood. Rather, the reason a *ḥadath* is incurred by touching one's private parts (or presumably from any other cause) is only that there is a specific *ḥadīth* in support of this.⁴⁷³

Shafi'i's reasoning elevates the purpose of lifting *ḥadath* into something more than the mere removal of tangible impurity. In another extract (ostensibly dedicated to defending semen's

⁴⁷¹ See e.g. Muslim "*Tahārah*":575, and c.f. p.87 above.

⁴⁷² '*Umm* p.19-20 (cited in Maghen 1997:187). According to Shafi'i, there are two other instances where a *ḥadath* is incurred without the existence of *khābath*: touching a person of the opposite sex (7.1.C.), and *janābah* through penetration without seminal emission (7.2.A.ii). Regarding the second of these causes, Shafi'i employs the same logic:

What is the ruling in the case of a man who "makes his penis disappear" (*ghayyaba dhikrah*) in the vagina of a permitted woman, and no semen is emitted by him? (the answer is that) He is obligated to perform *ghusl*, even though there is no *najāsah* in her vagina. However, if he puts his penis into the blood of a pig or into wine or into human excrement – all these being *nājis* substances – must he perform *ghusl*? (*Ibid*).

The answer, obviously, is "no"!

⁴⁷³ It is attributed to Busrah, and cited below (ch. 7.1.D.)

purity by citing the well known obligation to perform *ghusl* even when seminal emission has not occurred, see ch. 7.2.A.ii), Shafi‘i gives his opinion on the purpose of the major ablution.

And if someone were to claim: (how can you say that semen is not *najas*? After all) we are commanded to perform *ghusl* from it! We answer him: *ghusl* is not (performed as a result of) the *najāsah* which has been excreted. Rather *ghusl* is an *inexplicable way* that Allah the Mighty and Majestic is worshipped by his creatures (*innama al-ghusl shay ta‘abbud Allaha bihi al-khalq ‘izz wa-jall*).⁴⁷⁴

Previously Maghen had translated Shafi‘i’s use of *ta‘abbud* as an “inscrutable religious obligation” (p 151⁴⁷⁵), here he prefers “an inexplicable way” of worshipping Allah. For our purposes, the difference is immaterial as both translations directly recall Ibn Rushd’s description of the purpose of *rafa‘a-l hadath* as “*ghayr ma‘qul*”, “not subject to rationalisation”, and designed so as to permit the believer to attain “nearness” (*qarūbah*) to Allah” (*Bid* p.3, cf. p.91 above). Of course, we do not know if Shafi‘i was the first to use this expression (it is very possible he was not); nevertheless, it is accurate to say that, through criticising Abu Hanifa’s logic, the above (Shafi‘i) argument employs (or perhaps even creates) the terminology via which the purposes of the purifications are contrasted by the majority of later jurists.

7.1.B. SLEEP/LOSS OF CONSCIOUSNESS/INSANITY/INTOXICATION (*Bid* pp. 34-36)

There are three opinions on whether a Muslim needs to repeat his/her *wuḍū’* after having slept:

- A minority of jurists maintains that any form of sleep (*naum*) always breaks *wuḍū’*.

⁴⁷⁴ *‘Umm* p.72 (cited in Maghen 1997:187).

⁴⁷⁵ Although on that occasion it concerned the less exalted practice of washing a dog’s bowl.

- The majority (Hanafis, Malikis, and Shafi'is) holds that heavy sleep breaks *wudu'*, although drowsiness (*nu'as*) does not.⁴⁷⁶
- Some others claim that sleep does not break *wudu'*, unless it can be proven that a *hadāth* was incurred by the sleeper.

The legal obligation to perform *wudu'* after sleeping is attributed to Q.5:6: "O ye who believe! When you rise up for prayer (*ikḥa qumtuma 'il-l salāwhi*), wash your faces, and your hands up to the elbows." For, most jurists argue that, in this context, "rising up" (from *qāma*) implies doing so after a night's sleep (lying down). This is supported by traditions in which Muhammad tells his Companions to perform *wudu'* as soon as they wake.⁴⁷⁷ It is further strengthened by one report (used in the wiping over/taking off footwear debate) in which Muhammad instructs them not to remove their boots because of "urination, excretion, or sleep" (*Bid* p.35).⁴⁷⁸ It follows for a minority of jurists that sleep must be a cause of *hadath* in its own right, comparable to urinating and defecating. Hence, any type of slumber, even drowsiness (*nu'as*) negates ablution.

In contrast, other traditions describe Muhammad arising and praying without *wudu'* and, on their basis, a few (claiming that the Qur'an is not literally addressing those who have slept) drop the obligation to perform *wudu'* after sleep altogether.⁴⁷⁹ Yet, due to the apparent conflict in the meanings of the *aḥādīth*, most jurists compromise, ruling that *wudu'* is broken by sleeping, but only when it is sound (*nawm khafīf*). The reason they give is that this sort of sleep is legally identical to "losing one's senses" (*zawālī al-'aql*), either by fainting (*qibālī ighmā'in*), insanity (*junūn*), or intoxication (*sukrun*); and in all these states, there is an

⁴⁷⁶ A typical sign of drowsiness is that a person may continue to speak. If this is the case, even if his words are gibberish, his *wudu'* is not broken (*Umdat* p. 71).

⁴⁷⁷ See *Mishkāt "Ṭahārah"*:315, 316, 318.

⁴⁷⁸ Cited in *Bid* p.35.

increased risk of incurring a *ḥadath* because physical control has been (temporarily) lost, and a believer might break wind, or touch his genitals (*Bid* p.40). Hence, for the majority, *wuḍū'* should be performed after sleeping, not because this act constitutes a *ḥadath* in itself, but because while asleep one cannot be sure that *ḥadath* has been avoided.⁴⁸⁰

The fact that purification after sleep is to safeguard against any lapse of control is confirmed when we consider Muhammad's own behaviour (and not simply the advice he gives his followers). For, according to one tradition, Muhammad explains that he does not need to perform *wuḍū'* when he wakes on the basis that, while "my eyes sleep, my mind (*qalbī*) does not: if I had committed a *ḥadath* (*aḥḍathtu*) I would have known it".⁴⁸¹ In the same tradition, the Prophet is quoted as saying: "the eyes are the drawstring of the anus: when they sleep, the string is loosed".⁴⁸² The message is clear: a slack, loose body is more prone to impurity, whereas a firm, controlled body (such as the Prophet's) is less prone to it. This observation leads us to make a brief detour and ask how much, in general, the same factor influences the jurists' discussions in *tahārah* legislation.

Excursus C. The loss of physical control as a factor in *tahārah*

In chapter 3.2.C., we mentioned Howard Eilberg-Schwartz's theory that the Biblical idea of impurity depends to a large degree on the level of bodily control an individual exerts over a polluting act. In the context of Islam, Kevin Reinhardt makes a similar observation.⁴⁸³

⁴⁷⁹ For this view, see *Mishkāt "Tahārah":317*.

⁴⁸⁰ While generally agreeing on this point, the jurists quibble over which sleeping positions are most likely to facilitate a *ḥadath*. Here, fairly lenient, the Hanafis do not impose re-ablution unless a believer sleeps on his/her side (*nama' mudtaji'an*) as, according to a *marfu* tradition (one whose chain reaches back to Muhammad), this was the Prophet's view. Malik assumes that, no matter what type or length of sleep a believer enjoys, if he is in a position known to facilitate the escape of a *ḥadath* – e.g. lying on the back or side – then *wuḍū'* is broken. However, when sleeping in other positions, re-ablution depends upon how long one sleeps. The Shafi'i are stricter still and rule that *any* sleeping position, except sitting down, breaks *wuḍū'*.

⁴⁸¹ Cited in Reinhardt 1990:11.

⁴⁸² Ibid.

⁴⁸³ Reinhardt 1990.

Indeed, Reinhardt suggests that a fear of losing control is so deeply ingrained in the jurists' minds that it fundamentally underpins their approach(es) to all matters of *ḥadath*. This, he claims, is apparent from the nature of the purification rituals:

Contact with the impurities (that come from) inside the body (i.e. *ḥabā'ith*) requires one practical kind of cleaning (i.e. washing) if touched; but *allowing them to escape* requires another and completely different response, a ritual one.⁴⁸⁴ What is it that differentiates the substances themselves from the act of releasing them? What is it that separates the defiling substances from the otherwise benign world? Only I would suggest, self control, the human will... in this domain the will cannot control the body. Humans otherwise sovereign in their ritual and practical lives, are unable to avoid releasing defiling substances, however hard they may try... (thus) I would argue that these rituals (i.e. *wuḍū' / ghusl / tayammum*) do indeed counteract the events that negate them, but what they undo is not a specific act – not urination, not defecation – but the more general “failing” – the loss of control... the acts that lead to *ḥadath* are betrayals of the will by the body. Hearty laughter, coughing, and intemperate speech are milder forms of the same loss of control.⁴⁸⁵ On the other hand the acts that lead to preclusion (i.e. the major *ahḍath*) are rarer and so more powerful in their force; they require a more complete reappropriation of the body... With the *janābah* not only the cardinal points but everything in between as well is covered, coated with water or, in pantomime, with sand, not so much to clean as to reconsecrate, rededicate the body to the obedience of the will.⁴⁸⁶

The symbolism of covering one's body with water or sand (in pantomime) as a way of “reconsecrating”, or “rededicating” it, after it has lapsed, has been noted before and is a useful insight into *ṭahārah*.⁴⁸⁷ In light of the Prophet's explanation as to why, for most people if not himself, sleep is tantamount to a *ḥadath*, it is also very plausible that, to some degree, a fear of losing control over the body lies behind the jurists' development of the concept of impurity. Indeed, as we shall see, physical control is said to be a factor in some jurists' decision that touching a person of the opposite sex is a cause of *ḥadath* (ch.7.1.C.).

⁴⁸⁴ Reinhardt's policy of distinguishing between the purifications on the basis of “ritual” – and the problems associated with it – have already been noted (p.88 fn.248).

⁴⁸⁵ Laughing heartily breaks *wuḍū'* for a minority and *only* during prayer, see ch. 7.I.E; coughing, however, is not a cause of *ḥadath* as far as I know (Reinhardt cites al-Shirazi who recommends *wuḍū'* after coughing for the same reason as after sleep - a real *ḥadath* might have escaped without one's knowledge); intemperate speech (lying) is seen as a *ḥadath* by a minority of (mostly Khariji) scholars, see ch.10.

⁴⁸⁶ Reinhardt 1990:19-20 (parenthesis added).

Theoretically, given its obvious capacity to loosen people up, the same factor may well have influenced Islam's classification of wine as impure. And there are even traditions (very much in the pattern of the one just cited relating to sleep) praising Muhammad's ability to drink without becoming inebriated.⁴⁸⁸ Furthermore, although Reinhardt does not mention it, the notion of *hilm* (self-restraint) was of great social and theological importance to early Muslim society. And Muhammad's virtuosity in this field serves both to emphasise the value of physical control, and to remind believers of their own inadequacies.⁴⁸⁹

It is questionable, however, whether a distrust of bodily weakness should be described as the sole (or even main) ingredient in Sunni *fiqh*'s eventual understanding of *hadath*. For, unlike the Biblical rules where various bodily emissions and acts possess different strengths of impurity (depending upon the degree of control influenced over them), bar the Hanafis' distinction between heavy and light impurity, the urine of a male infant, and the basic division between a major and minor *hadath* (none of which have anything to do with losing bodily control) most jurists do not attach different strengths to either of Islam's *najāsāt*.⁴⁹⁰ Instead, what seems to be more important than the correlation between control and purity is that Muslims in a state of impurity are only kept away from prayer for the minimum duration. At times, this principle leads to the exact opposite of what we would expect from Reinhardt's theory. The *mustahadah* is the best example of what I mean. For, whereas in the Biblical system a woman suffering from extended bleeding, or the man from nocturnal emissions are

⁴⁸⁷ C.f. Marcus 1984:207.

⁴⁸⁸ Goldziher 1981:60.

⁴⁸⁹ *Hilm* is not solely a physical trait. It is a virtue of the whole person: "a positive and active power of the soul that is strong enough to curb her own impetuosity that may drive the man headlong to folly, and calm it down to patience and forbearance", T. Izutsu God and Man in the Koran: Semantics of the Koranic Weltanschauung (1964, Tokyo, The Keio Institute of Cultural and Linguistic Studies) p.198.

⁴⁹⁰ Reinhardt's claim that major *hadath* are more powerful because they are connected to rarer acts than the minor *hadath* is not always the case. Is menstruation rarer than vomiting, or pus seeping from a wound?

more, not less impure (Lev.15⁴⁹¹), in Sunni Islam, the *mustahadah* (or anyone else with chronic medical problems) is exempted from the constraints of *taharah* law. She may recite and touch the Qur'an whenever she wishes, attend prayers in the mosque, perform *hajj* and, according to the majority, even have sexual intercourse! (*Bid* p.66) Indeed, her treatment is a very good example of the jurists' thorough, lenient, yet often paradoxical approach; for she is entitled to do all these things, despite the fact that her body is constantly manufacturing *khabath*, and will probably be (depending upon the school) in a perpetual state of *hadath*. Such clemency is at variance with Reinhardt's theory; for, illness is surely the *greatest* betrayal of the will by the body, and yet it is recognised as a condition of a *mustahadah's* purity by the Malikis (and at least a reason to treat her as if she were pure by the remainder of the jurists). Hence, *pace* Reinhardt, it is when we lose all control over our bodies' functions – and therefore by his logic should be most “impure” – that *fiqh* reverses its rules and decides to include us.⁴⁹²

7.1.C. TOUCHING WOMEN (*Bid* pp.36-38)

In its concession for *tayammum*, the Qur'an tells Muslims, “if you are ill, or on a journey, or come from the toilet, or have *touched women (lamastumu-l nisa'a)*, and you find no water, then take clean sand or earth...” (Q. 5:6). Consequently, many jurists believe that when a man physically touches a woman (it is normally envisaged this way, and not vice versa) he breaks both his and her *wudu'*. As usual, however, this issue provokes much discussion, with three main opinions resulting:

- Abu Hanifa does not think touching anyone breaks either person's *wudu'*.
- Malik thinks touching a licit person of the opposite sex *lustfully* breaks *wudu'*.

⁴⁹¹ Unlike the usual purification from emissions, sacrifices are required and no quarter given if the conditions persist.

⁴⁹² The same point might be said to include the Hanafi decision to rule any form of *khabath* that one *cannot* avoid coming into contact with as only weakly defiling (ch. 6.4.B.).

- Al-Shafi‘i thinks touching a licit person of the opposite sex breaks *wudu’*, regardless of whether or not the touch is lustful.

The main reason for these disagreements lies in the jurists’ contrasting interpretations of the word “*lamasa*” (“touching”) in the context of the above verse. Abu Hanifa and his school interpret it metaphorically (*majāzī*) to mean sexual intercourse (*al-jima’*). And, while preferring a metaphorical over a literal reading of the Qur’an is problematic, they can point to several traditions – in which Muhammad caresses his wives while they prostrate, and even kisses them before going to pray – in support of doing so here.⁴⁹³ On the basis of these, and because the human condition is known to be essentially pure and non-contagious, these jurists see no reason why touching someone of the opposite sex should result in any form of impurity.⁴⁹⁴

Malik and Shafi‘i disagree. While their overall positions differ, both jurists think that *lamasa* must be interpreted literally, to mean touching by hand (*bi-l yad*). Malik, however, looks to reconcile the messages of the Qur’an and the Sunna, by arguing that, in this verse, *lamasa* possesses a sexual connotation, but does not imply full coition. Hence, touching someone of the opposite sex *may* invalidate the ablutions of both, but this will only be the case if this touch is accompanied by lust (*shahwah*), or is intended to arouse.⁴⁹⁵ This reading explains how Muhammad – whose concerns were, first and foremost, with his *ṣalāt* – did not break his

⁴⁹³ See e.g. *Mishkāt “Tahārah”*:323.

⁴⁹⁴ See *Bid* p.36. Rather against type (he normally prefers a literal interpretation whenever possible, see p.217 on Ibn-Rushd’s ^{the} purity status of the *mushrik*) Ibn Rushd agrees with the Hanafis:

What I believe is that the word “touching”, though it is equally expressive of both meanings, or almost equal, is more vivid in my view, for denoting intercourse though it is a metaphor, as Allah has used the terms *mubashara*, “contact”, and *mas*, “touching”, for copulation and they (also) denote the meaning of touching (*Bid* p.37).

⁴⁹⁵ For Malik’s opinion, see *Muwatta’ “Tahārah”* 16:66-68. Ibn Rushd does not mention if it matters whether this touch is with the finger-tips and palms (both are factors in the Maliki’s *ḥukm* on touching one’s own genitals, see ch. 7.1.D.). Apparently, in the case of kissing, the Malikis do not stipulate the accompaniment of pleasure as a factor in its breaking of *wudu’* (perhaps because it is presupposed?) (*Bid* p. 36).

wuḍū' even when he kissed his wives prior to prayer. For here, as when Muhammad wakes and prays without *wuḍū'*, Islamic tradition portrays the Prophet as the unquestioned master of his physical (especially sexual) urges and, therefore, less prone than the rest of us to *hadath* impurity.⁴⁹⁶ Most other *fuqahā'*, however, remain unconvinced by Malik's theory. And, whereas Ibn Rushd thinks that both the Hanafi and Shafi'i views were held by "predecessors from among Companions", he does not think Malik's was (*Bid* p.36).

Stricter than the earlier *fuqahā'*, in the '*Umm* Shafi'i states that *wudu'* is broken by any kind of touch from someone of the opposite sex, "with or without lust" (*bishahwah aw bighayr shahwah*). For, as far as the contraction of *hadath* goes:

Lust (*shahwah*) has no meaning (*lā ma'nī*) (in these matters) because it (lust) is of the heart (*fi-l qalb*), yet the meaning (here) is in the action (*fi-l al-fi'l*).⁴⁹⁷

Although doubtless not what he would have wished, Shafi'i expresses no need for either partner to repeat *wuḍū'* if, before prayer, a man "lasciviously fondles his wife over her garments, touches her hair, or lusts after her from a distance".⁴⁹⁸ Now, as has been noted (pp. 172-173), a Muslim's moral intention is an influential factor in *tahārah*; if a believer suspects that he has broken wind, but smells and hears nothing, he does not need to repeat his ablutions as long as he is honestly in doubt. In other words, in order for it to be wrong, he has to know he is doing wrong by continuing. By linking *hadath* to sexual desire, however, Malik takes the connection between interior motives and *hadath* a stage further. Indeed, if

⁴⁹⁶ According to one tradition, Muhammad would fondle 'A'isha during her menses as long as she covered herself with a waist-wrapper. This might have been risky had passions risen and the Prophet been tempted to have sex with 'A'isha. This was never going to happen, however, for as 'A'isha puts it: "none of you can master sexual desires like the Prophet" (Bukhārī "*Ḥayḍ*":299).

⁴⁹⁷ '*Umm* p.30 (my translation).

⁴⁹⁸ *Ibid.* Also note that, for the Shafi'is, touching does not include contact with teeth, hair, nails, or a severed limb (e.g. '*Umdat* p.72). Presumably, this is because each example is "dead" (i.e. incapable of feeling), and therefore pure.

more of the jurists had followed Malik's example, the *tahārah* code might have looked quite different because sooner or later impurity would probably have been linked to sin. Here, then, Shafi'i seeks to draw a clear line separating those things which belong to the sphere of formal *tahārah*, from interior and moral concerns "of the heart" and, thus, to prevent morality from playing an overt part in *tahārah* logic. Instead, while he considers the purpose of lifting *hadath* to be beyond rational explanation, the factors involved in creating a *hadath* are, for Shafi'i, mundane and biological: "the meaning" lies solely in the action of skin brushing against skin.

Before moving on, it is acknowledged that, in this matter, the opinions of the Malikis and Shafi'is cast doubt on our previous assumption that human beings are incapable of *transmitting* impurity. Yet we remain confident that, even here, a *hadath* is not transmitted as such, but rather *created* through the act of (lustful) touching. For it never matters whether a person is carrying a *hadath* themselves – touching a woman when she is *tahīr* negates a man's purity in exactly the same way as touching a menstruant. It simply seems that (perhaps for Shafi'i more than the other *fuqahā'*) there is something inappropriate about a man and a woman being close enough to brush skins *before prayer*, and this law reflects an interest in maintaining a "respectable" distance between the genders in the context of worship.⁴⁹⁹

7.1.D. TOUCHING THE GENTALS (AND ANUS) (*Bid* pp. 38-39)

Touching one's own genitals and/or anus (*massa-l-dhakar/farj wa-l-sharaj*) is another cause of minor *hadath* for some jurists. There are three main views:

- The Hanafis do not think touching any part of one's own body breaks *wudū'*.

⁴⁹⁹ This function of *tahārah* law will be explored in greater detail in ch.9.

- The Malikis think a man breaks *wudu'* by touching his penis, if this touch causes pleasure.
- Al-Shafi'i, Ahmad Ibn Hanbal, and Dawud think *wudu'* is broken when a man or woman touches their own genitals, or anus.

On this point, the Qur'an is silent, and the jurists' differences stem from their choices between conflicting *ahādīth*. The Maliki and Shafi'i approaches are both based on a tradition attributed to Busrah:

She heard the Messenger of Allah saying: When one of you touches his penis he should perform *wuḍū'* (*Bid* p.38).⁵⁰⁰

For Shafi'i, as we have seen, this settles matters.⁵⁰¹ Following him, the Shafi'is, Hanbalis, and Zahiris all agree that ablution is obligatory if any Muslim touches his or her genital "whatever the nature of the touch" (*fiqa kayfma massahi*), i.e. with or without lust (*Bid* p.38).⁵⁰² Furthermore, these jurists also think that touching the anus nullifies *wuḍū'* in the same manner and, by so ruling, make *al-sabīlayni* a considerable hindrance to a Muslim's purity.⁵⁰³

According to Ibn Rushd, the Malikis agree that by touching his penis a Muslim breaks *wuḍū'*. However, within the school there are two opinions: some Malikis only make ablution necessary if the touch stimulates sexual pleasure; whereas another group make ablution necessary if the touch is with the palm of the hand. In Ibn Rushd's opinion, however, both

⁵⁰⁰ Muwatta "Tahārah" 15:60.

⁵⁰¹ It is also his proof that all forms of *hadath* impurity are unconnected to *khābath*, see Exc. B.

⁵⁰² Maghen notes that the Shafi'is even rule that touching "the private parts of a corpse, an under age child, a eunuch, and a mutilated person!" – doubtless, all chosen because they are extremely unlikely objects of *shahwah* – will still break a Muslim's *wuḍū'* (1997:321).

⁵⁰³ See '*Umdat* p.73, *al-'Umda* p.11.

opinions amount to the same thing. For, those who stipulate that it is the part of the hand that matters only do so because they consider “the inner part of the hand to refer to the derivation of pleasure” (*Bid* p.38). In other words, it is more likely that touching the penis with the palms and tips of the fingers will lead to arousal, than with a less sensitive part of the hand or body.⁵⁰⁴ Malik’s actual opinion is to be found in the *Mudawwanah*, where he does specify that a minor *ḥadath* is caused by touching the penis with the palm or the finger tips of the hand (both touches being of the same category). Yet, in that passage, Malik also limits this *ḥadath* to the act of touching the *male* genitalia (which Ibn Rushd does not tell us).⁵⁰⁵ In his view, no one breaks *wuḍū’* by touching the anus (*sharaj*), and a woman does not incur a *ḥadath* by touching her vagina (*farj*) (unless stimulating an orgasm (*laddah*), 7.2.A.ii). Malik does not give a reason for the latter ruling, although two possibilities spring to mind: either he assumes the penis is more “impure” than the vagina, or (in light of the aforementioned Maliki idea that lust is an independent cause of *ḥadath*, the more probable suggestion), that a man is more likely to be sexually aroused by touching his genitals than a woman is by touching hers.⁵⁰⁶

In contrast to Malik and Shafi‘i, the Hanafis see no reason why touching the genitals should trigger *ḥadath*. As far as the reliability of Busrah’s tradition is concerned, they are scathing (on the grounds that it is reported by a woman), and prefer another related by Talq ibn Ali:

Talq b. ‘Ali reported: Allah’s messenger was asked about a man touching his penis after performing *wuḍū’*, whereupon he said, “Is it not a part of you”? (*wa hal huwa ‘illa badu’atum minhu?*) (*Bid* p.39).⁵⁰⁷

⁵⁰⁴ Other jurists have problems with this idea. For instance, Shaybani asks:

How is the inside of the hand to be distinguished from the back? If *wuḍū’* is canceled by touching with the inside of the hand, (then surely) it would be canceled too by touching it with the back of the hand (*Hujja* pp. 59-60, cited in Calder 1993:58).

⁵⁰⁵ See *Mudawwanah* p.118.

⁵⁰⁶ *Ibid.* A previous opinion attributed to Malik, mentioned by Shaybani, is that a man could incur a *ḥadath* by touching his penis with any body part he washes during *wuḍū’* (see *Kitāb al-Hujja* p.59 cited by Calder 1993:58). This ruling would appear to stem from the early belief that *ḥadath* impurity was contagious. Since it was soon established that this was not the case, the Malikis modified their view.

⁵⁰⁷ For the full tradition, see *Mishkāt “Tahārah”*:320. On the subject of Busrah’s *ḥadīth*, Shaybani writes:

Thus, in the Hanafi school, touching any part of one's own anatomy (or even someone else's) will not preclude a Muslim from prayer. These jurists' tendency to link the cause of a *ḥadath* to the discharge of *khabath* may well explain their aversion to Busrah's *ḥadīth*. After all, if a *ḥadath* really is the result of tangible pollution, to suggest that it occurs through touching someone else, let alone one's own genitals, would imply that this person, and bodily area, is tangibly filthy. In contrast, the majority of other jurists enforce a clearer distinction between the two spheres of *najāsah*. Hence, it does not trouble them to attribute the contraction of *ḥadath* to a situation involving another person or part of the body, and still maintain that these subjects are not tangibly defiled, or defiling, in any manner.

On this topic, one last area of *ikhtilāf* deserves to be mentioned. For, although the majority rules that if, after the event, a Muslim remembers that he had touched his genitalia (or incurred any other sort of *ḥadath*) before praying, he is to repeat both his ablution and prayers, a minority of (Maliki and Zahiri) jurists consider absentmindedness (*nisyan*) to be a valid excuse for having to repeat neither (*Bid* p.38).⁵⁰⁸ The obvious implication of this concession is that (at least this type of) *ḥadath* impurity ceases to exist altogether if forgotten about.

We have now mentioned most acts classified as causes of minor *ḥadath*. A final *ḥadath*, not corresponding to any pattern seen so far, remains to be discussed.

There is no *ikhtilāf* amongst us on the fact that 'Ali ibn Ali Talib, 'Abdullah ibn Mas'ud, 'Ammar ibn Yasir, Hudhayfā ibn al-Yaman, and Imanan ibn Hsin did not consider that touching the penis occasioned *wuḍū'*. And who is Busra bint Safwan compared with them? How can the *aḥādīth* of these, all of them, be abandoned for the *ḥadīth* of Busra bint Safwan a woman unaccompanied by any male (to support her transmission), knowing how weak women are in transmission? For Fatima bint Qays informed 'Umar ibn al-Khattab that her husband had divorced her three times and the Prophet had not allotted to her lodgings or expenses. But 'Umar refused to accept her word, saying: We do not consider a woman's view permissible in (establishing) our *dīn*. The same is true of Buswa bint Safwan, we do not consider her view permissible, especially in view of the Companions who oppose her. (*Hujja* p.59 in Calder 1993:58).

⁵⁰⁸ They support this with two *aḥādīth*, see Muslim "*Tahārah*":702-703.

7.1.E. LAUGHTER DURING PRAYER (*Bid* pp. 39-40)

In one of only two instances where Abu Hanifa and his school attribute *hadath* impurity to an act not involving the emission of *khathath* (penetration without ejaculation is the second), the Hanafi Imam expresses a “deviant opinion” that laughter *during prayer* (*dhahikun fi-l ṣalāt*) breaks *wudū’*. He supports this opinion with a tradition attributed to Al-Hasan Al-Basri who reported:

that he (the Prophet) was once in the middle of the prayer service, when a blind man entered and turned to the *qiblah*, intended to perform the *ṣalāt* – and the people were praying the dawn prayer – and he (the blind man) fell into a mud hole (*zabiyah*), and this made the people laugh uproariously (*istadhaka al-qawm hatta qahqaha*). When the Messenger of God finished his prayer, he said: Whoever amongst you burst out laughing must repeat his ablution.⁵⁰⁹

Despite Reinhardt’s assertion that laughing uproariously is another example of the polluting effects of losing bodily control,⁵¹⁰ the real cause of this regulation appears to be the Prophet’s sympathy for the blind man. Whatever the explanation, later Hanafis make a distinction between smiling and laughter and, perhaps in the hope that prayers never become an entirely joyless experience, rule that only the latter breaks the ablution.⁵¹¹ Heedless of that distinction, however, the other *madhāhib* firmly reject the notion that a show of mirth affects a believer’s purity status. They do so on two grounds: firstly, because Hasan’s tradition “is a *mursal*”⁵¹² and, secondly, because such a ruling “is opposed to the principles, as it makes something the cause of invalidating ablution during prayer, but not when one is praying” (*Bid* p.41). In other

⁵⁰⁹ Cited in *Mabsūt* p.77 (Maghen’s translation 1977:320-321). Ibn Rushd refers to this tradition, but attributes it to Abu al-‘Aliyah (*Bid* pp. 39-40). It is a curious point that only the participants’ ablution was invalidated, and not their prayers.

⁵¹⁰ Reinhardt 1990:20.

⁵¹¹ Laughter is understood not to break *wudū’* on the basis of a tradition in which Jariri ‘Abd-Allah al-Balijji reports that every time Muhammad saw him at prayer he would smile (cited in *Mabsūt* p.77, see Maghen 1997:320).

words, why would something cause a *ḥadath* during prayer when it does not break ablution at any other time?

Having covered the jurists' main categories of minor *ḥadath*, we will move on to their disputes concerning the stronger form of this impurity.

7.2. THE MAJOR *AḤDĀTH* (*AL-AḤDĀTH AL-AKBAR*)

The jurists agree that four types of act incur a major *ḥadath*: certain sexual ones (*janābah*), menstrual bleeding (*ḥayḍ*), postpartum bleeding (*nifas*), and dying. In the following two sections we focus on the jurists' discussions concerning *janābah*, and *ḥayḍ/nifas* (these last two conditions are deemed analogous).⁵¹³ Here, because they are united on the identity of the acts themselves, there is little major conflict in the jurists' general approaches. Instead, they concentrate their efforts on explaining the restrictions Muslims with a major *ḥadath* face, in particular his/her restriction from the mosque, and defining the boundaries between these states of major *ḥadath*, and purity. In both tasks (especially the latter), they disagree on many points. We include the main legal variations in what follows. In the first section, we review the jurists' different opinions regarding *janābah*; in the second, we turn to the distinctions they draw between *ḥayḍ/nifas* and *istihādah*.

7.2.A. SEXUAL IMPURITY (*JANĀBAH*) (*Bid* pp. 47-50)

The term "*janābah*" is mentioned in the Qur'an as necessitating a more thorough washing (hence signifying a stronger form of impurity) than results from minor *ḥadath*:

⁵¹² A *mursal ḥadīth* is one in which the name of the Companion, who is supposed to be the immediate narrator of it, is missing from the *isnad*. In such case, the *ḥadīth* is attributed directly to Muhammad from a narrator among the *tābi'ūn*.

O you who believe! Do not draw near to prayers... in a state of *janābah* except when you are passing by/journeying on the road (*abiri sabīl*), until after washing your whole body (Q.4:43).

Thus, Scripture advises the *junūb* not to pray if he cannot first perform *ghusl*, unless he is “passing by”, or “journeying on the road”, which, as we are about to see, causes problems of interpretation.⁵¹⁴ This verse does not mention the mosque, despite this, however, the *junub* and the menstruant who are *treated analogously* in this matter, are (in addition to their other restrictions) prohibited from entering a mosque according to the majority (*Bid* p.50). This is the only imposition about which there is widespread disagreement between the main law schools, thus, it deserves our attention.

7.2.A.i. Entry into the mosque:

Ibn Rushd tells us of three opinions on this:

- The Malikis prohibit Muslims with a major *ḥadath* access to mosques, unless it cannot be avoided.⁵¹⁵
- Al-Shafi‘i prohibits Muslims with a major *ḥadath* from staying in the mosque (unless, once again, it is unavoidable), but permits them to pass through.
- Dawud and the Zahiris permit the *junūb* and menstruant unlimited access to all mosques.

Our Qadi summarises the reasons for this dispute as follows:

⁵¹³ For details on ritual washing of the corpse, see *Bid* pp.260-267. There is no dispute over the fundamental purity of a human corpse, nor the obligation to perform *ghusl* upon it (as long as the deceased was not martyred).

⁵¹⁴ Yusuf Ali’s translates *abiri sabīl* as “passing by”; Pickthall translates it as “journeying on the road”.

⁵¹⁵ The schools agree that if a Muslim is in danger and finds protection in a mosque then he is free to enter regardless of his purity status (see e.g. ‘*Umdat* p.184). This indicates the invulnerability of mosques to *ḥadath*, or any impurity, a theme we shall return to below, see chs 8 and 9.

The reason for disagreement between al-Shafi'i and the Zahiris is based on the vacillation of the words of the Exalted... "when passing by" ... between two meanings. Is the use of the word metaphorical, so that an implied "place" is to be assumed inserted, that is to read "Draw near unto *the place* of prayer (i.e. the mosque)", and that the exemption for the traveler relates to the prohibition of staying in the place of prayer (Shafi'i's opinion), or, is no word is to be assumed implied and the verse to be read as it is, where the traveler is in a state of *janābah* who lacks water (and can therefore perform *tayammum* and pray, the Zahiri view)? (As for Malik's view) I do not know of any evidence for those who prohibited the *junūb* to pass through the mosque, except the literal meaning of what is related from the Prophet who said "(entry into) the mosque is not permitted to a *junūb* nor to one menstruating" (*Ibid* pp. 49-50).⁵¹⁶

In this debate, Shafi'i's argument is out of character, as he does not normally add things to the Qur'an. Yet, here, by reading "*abiri sabīl*" not as "journeying on the road" as other authorities do, but as "moving through (an interpolated mosque)", he does exactly that. The Zahiris, however, stick rigidly to what the Qur'an says; their interpretation of this verse is simply that a *junūb* is not permitted to pray, *unless* he is traveling (when there is no reason not to perform *tayammum* and pray as he should). The Malikis (and, although Ibn Rushd does not mention them, the Hanafis too⁵¹⁷) do not permit a *junūb* to enter mosques at all; therefore (against the Shafi'i's), they do not believe that the verse is missing a word, but assume (against the Zahiris) that it leaves out the prohibition altogether. It remains unclear why they should deny the *muhdith* access to mosques and, aside from one *ḥadith* in support of it, Ibn Rushd admits to being baffled by their view. As we shall see, when the jurists do attempt to explain this prohibition, many argue that it stems from a practical desire to keep impure substances (i.e. the *khābā'ith* themselves) out of the holy sanctuary. Indeed, the exclusion of the menstruant and the non-Muslim may be explained along these lines (i.e. to avoid blood or other impurities dripping onto the mosque floor); it is very difficult, however,

⁵¹⁶ For this *hadith*, see *Mishkāt "Ṭahārah"*:462; according to Ibn Rushd, it is not established according to the traditionists (*Ibid*).

⁵¹⁷ See e.g. *Bayān* p.16.

to account for the prohibition of the *junūb* in this way.⁵¹⁸ The exclusion of Muslims from the mosque will be discussed in more detail in chapter 9.

7.2.A.ii. The causes of *janābah*

Fiqh recognises two causes for *janābah*. First, it is said to result from any “normal” emission of semen, and this is upheld in a number of *aḥādīth*.⁵¹⁹ Accordingly, it is ruled that a man incurs (the same strength of) *janabah* if he ejaculates during foreplay (*mula'abah*), sexual intercourse (*jima'*, *wati'a*), masturbation (*istimnā'*), or is convinced of a nocturnal emission (*iḥtilām*) – each act being judged sufficiently normal.⁵²⁰ As we know, a woman is also described as emitting semen and this renders her *junūb* too, even when this occurs during her sleep (*Bid* p.47).⁵²¹ As has also been noted, however, the ejaculation of semen is not assumed to necessitate *ghusl* when it occurs “abnormally” or in illness, when the *junub* is treated like the *mustahādah*.⁵²² Another abnormal situation is envisaged by some, mostly Malki jurists who argue that ejaculation will not break *ghusl* even when caused by sexual interaction, if it is not accompanied by sexual pleasure (*laddah*). While in most cases this is a foregone conclusion, when it is not, such as when a man prevents himself from ejaculating during sex only to do so later “after the pleasure has subsided”, these Malikis rule that he is

⁵¹⁸ On this, see pp. 244-245 below.

⁵¹⁹ For instance:

Sa'id al-Khudri reported: The Apostle of Allah observed: *ghusl* is obligatory in case of seminal emission (Muslim “*Tahārah*”:679).

⁵²⁰ As always, Muslims must be convinced of its existence in order for it to be legally incumbent upon them to lift a *ḥadath*. If semen is *not seen* – i.e. if, after masturbating, a man prevents his semen from leaving its source, or a woman cannot find any evidence of a nocturnal emission – *ghusl* is not mandatory (Sabiq 1991:50).

⁵²¹ This is confirmed by a well know *ḥadīth*, in which Umm Salama asks Muhammad: O Messenger of Allah! If a woman sees in her sleep what a man sees, does she have to take a bath (i.e. perform *ghusl*)? He replied: Yes if she sees moisture (Bukhārī *Ghusl*:80 cited in *Bid* p.47). Note that, in another version of this *ḥadīth*, Muhammad asks Umm Salama whether or not she felt pleasure in the dream. She says “yes”, thus confirming the principle taken into account by Malik’s school, cited in *Bayān* pp. 13-14. On this subject, there are some complications when a woman’s emissions might not be hers, but her partner’s. In fact, this is an area of much dispute, but the majority agree that if a man’s semen leaves a woman after she has prayed, she needs only perform a new *wuḍū'* and not to repeat her prayers (Maghen 1997:184). Further, when a woman is raped, and sperm leaves her vagina after she has performed *ghusl*, most jurists do not require her purification to be repeated at all (see e.g. *Umdat* p.80).

not liable to perform *ghusl* at all. Apparently, he is also judged analogous to the *mustahadah* (*Bid* p.49). As in the cases of touching the genitals, touching women, or the negation of *hadath* through forgetfulness, this is another example of the Maliki tendency to see moral intention (and especially lust) play a determining role in the contraction of *hadath*, but few are swayed by it.

The second cause of *janābah* is intromission. Although this law took longer to be established, all the schools eventually accept it.⁵²³ Its validity is affirmed in numerous *hadīth*, for instance:

Abu Hurayra reported: The Apostle of Allah said: “when anyone sits between the four parts (*julus bayn shu'abihi al-arba'a*) of a woman's body and then makes effort, bathing becomes obligatory (referred to in *Bid* p.48).⁵²⁴

⁵²² Thus the jurists rule that the afflicted Muslim needs only to wash him/herself, and perform *wuḍū'* to pray, and Malik (seeing no *hadath* at all) merely recommends that he wash the semen off himself (p.178).

⁵²³ Note that this is one of the few subjects within *tahārah* where the jurists chose to increase the strictness of a rule. For, Muslim tells us *janābah* was originally believed *solely* to follow the emission of semen. Hence, in the case of *coitus interruptus*, a man had merely needed to wash his penis, and perform *wuḍū'* (presumably, this was also required from his partner, see *Bid* p.48). This early ruling was based on a *hadīth* in which Muhammad is reported to have said:

When you are in haste, or semen is not emitted, *ghusl* is not mandatory, but *wuḍū'* is (Muslim “*Tahārah*”:676. Muslim mentions that in another *hadīth* [from Matar] the words: “even if there is no orgasm” are added).

While this precept was amended in the Prophet's lifetime, Muhammad's stricter opinion was rejected by some of the *Ansar*. According to the following *hadīth* attributed to Abu Musa, this argument was settled, once and for all, by 'A'isha:

There cropped up a difference of opinion between a group of Muhajirs and a group of Ansars, because the Ansar said: “*ghusl* only becomes obligatory when a man ejaculates”. But the Muhajirs said: “When a man has sexual intercourse, a bath becomes obligatory” (no matter whether or not seminal emission occurs). Abu Musa said: “well I (will) satisfy you on this issue”. He got up (and went) to 'A'isha and asked for her permission and it was granted, and said to her: “O mother of the Faithful, I want to ask you about a matter on which I feel shy”. She said: “Don't feel shy of asking me about a thing which you can ask your mother... for I am your mother too”. Upon this he said: “what makes a bath (*ghusl*) obligatory for a person?”. She replied: “you have come across one well informed!” The Messenger of Allah said: “When anyone sits amidst four parts and the circumcised parts touch each other a bath becomes obligatory” (Muslim “*Tahārah*”:684; c.f. 676).

Apparently, this did satisfy almost everybody; as it stands, only the Zahiris refute the idea the penetration causes *janabah* (*Bid* p.47).

⁵²⁴ Muslim “*Tahārah*”:682.

On the basis of such reports, it is said that, when the tip of a man's penis "intrudes as far as the point of female circumcision in the vagina" (a process known as "*iltiqā' al-khitanan*", "the meeting of the two circumcisions"), or, to a similar degree into the anus, *ghusl* is incumbent upon both partners. However, if the penis does not penetrate this far – for instance, when only inserted between the outer labia – then *ghusl* is not necessary for either partner.⁵²⁵

As far as normal sexual relations are concerned, the jurists agree on most matters. However, they are quite willing to discuss many other "abnormal" scenarios by which *janābah* can be contracted and, when the sexual act is of the rarer variety, we soon see opinions diverge. Often impressive, their scholasticism is admittedly also bewildering, and even leads to the (surely hypothetical) contemplation of what kind of purification must follow carnal relations with a fish!⁵²⁶ Unfortunately, Ibn Rushd does not go into detail on the jurists' view but Maghen locates a comprehensive survey of views on *janābah* within *Kitāb al-Fiqh alal-Madhāhib al-Arba'a*, and we shall follow that.⁵²⁷ The different rulings can be briefly summarised accordingly:

- According to the Hanafis, a man's *ghusl* is broken by penetrating a woman's vagina or anus, and a man's and hermaphrodite's anus. It is not broken, however, if he wears a barrier (*hājiz*) over his penis, and thus prevents "warming". Neither is broken by penetrating the vagina of an animal, or a cadaver, or the "dubious" orifice (*qubl*) of a hermaphrodite (as long as he does not ejaculate). When a woman is penetrated by anything other than an adult male's penis (child's penis, animal's penis, dead man's penis!, etc.), *ghusl* is not mandatory for her, as long as she is not aroused by it. A hermaphrodite's *ghusl* is not broken when (s)he uses

⁵²⁵ See Boudhiba 1998:50.

⁵²⁶ See Bousquet 1950:59. Bousquet does not mention what the disagreement was – there might be some question over whether semen leaving the corpse of a fish is transformed into a pure substance due to the ultra purity of the fish's corpse (although I admit to an unhealthy level of speculation). Equally interesting and just as bemusing is the opinion that *ghusl* is not necessary if a woman orgasms thanks to the interference of a *jinn* (Boudhiba 1998:50).

his/her organ to penetrate any orifice of either sex. Finally, if when still a minor, a boy penetrates a woman who has reached the age of majority, she alone technically incurs *janābah*.

- The Malikis agree with the Hanafis that, if a man performs any kind of normal sexual act wearing a barrier over his penis, his *ghusl* is not broken. However, unlike the Hanafi *madhhab*, they rule that it is broken by penetrating the vagina or anus of a dead person or beast. Further, they argue that if the actor is male and a minor, then *ghusl* is neither obligatory for him, *nor* his partner. If, however, the actor is of majority age, then *ghusl* is obligatory for him/her, although not for the acted on, unless he/she is also of majority age.
- The Shafi'is agree with the earlier *madhāhib* on most major details. However, they insist that if the tip of a man's penis is "absent" (*ghaba*) in either a man or woman's anus, or her vagina, then *no matter what he covers it with, ghusl* is mandatory for him and his partner. Further, according to these jurists, a minor, regardless of whether (s)he is the actor, or the acted upon, must still perform *ghusl*, and their guardian should make sure they do so (if [s]he does not perform *ghusl* at the time, then it must be done as soon as the age of majority is reached).
- Like the Malikis and Hanafis, the Hanbalis claim that *ghusl* is not necessary when a man covers his penis. Moreover, in this school, *ghusl* is not incumbent upon either partner (nor does it become so) if the actor is a minor. Unusually, they hold that if a hermaphrodite inserts his or her organ into the vagina or anus of another, then *ghusl* is mandatory. It is not mandatory if a Muslim penetrates the genitalia of a hermaphrodite (although it is if they penetrate the anus).

⁵²⁷ 'Abd al-Rahman al-Jaziri (nd., Beirut, Dar Ihya' al-Turath al-'Arabi) p. 98, cited in Maghen 1997:181-197.

The logic behind each tortuously argued point (for instance, why sex with a hermaphrodite does, or does not, incur *janābah*) is peculiar to each school. A thesis waits to be written solely on the subject of *janābah*, but entering further into the argument is neither possible, nor feasible here. One matter is, however, of specific interest. For the different opinions on the purity status of a man who wears a barrier over the tip of his penis during penetration clearly hinge on whether *shahwah* can, of itself, be said to influence the contraction of a *ḥadath*.⁵²⁸ And here, for the first time, most jurists (including Hanafis and Hanbalis) concur with the Malikis' usual assumption that it does. Hence, when penetration takes place through a covering – therefore, hindering sexual enjoyment – these jurists rule that *janabah* is not incurred. Only the Shafi'is – who impose their *aḥkām* on adults and minors alike – stick to their principles, by rejecting the influence of *shahwah* entirely.

The *fuqahā*'s discussions on *janābah* constitute a vast, complex area of jurisprudence. The important thing for the reader to grasp is that, for the majority, it is not simply a state that results from the physical “events” of ejaculation and/or penetration, nor entirely from the psychological power of lust, but rather as a result of both (with individual jurists sparring over the relative importance of either factor). Hence, physical proximity, and pleasurable orgasm are interconnected, but independent factors in *fiqh*'s determination of *janābah*.

⁵²⁸ Boudhiba translates the following from the *Fatawa Hindiyya*:

In the case of a man who surround his penis with a rag and practises intromission without ejaculation, there is a divergence of opinion... The safest course is that if the rag is fine enough

7.2.B. MENSTRUATION/POST-PARTUM BLEEDING (*HAYD/NIFAS*) AND PROLONGED VAGINAL BLEEDING (*ISTIḤĀDAH*) (*Bid* pp.51-67)

The Qur'an describes menstruation as an "*adhan*", which has usually, although not always, been translated into English as "a harm" or "an illness" (2:222).⁵²⁹ In the same verse, men are warned to "(k)eeep away from women during menstruation and do not approach them (*lā taqrubuhunna*) until they are pure (*hatta yathurnak*)". With this warning in mind, the jurists restrict menstruating women and the *nafsā'* from participating in their religious obligations, and prohibit them from having sex. Whether these restrictions represent or enforce a woman's social inferiority (as some scholars have claimed), will be discussed in Chapter 9. For the time being, we are only interested in how the jurists identify the condition of *hayd* and *nifās*. In this regard, they are at great pains to distinguish between the vaginal emissions that incur a major *hadath*, and those which do not (her *istiḥādah*, and other forms of impure vaginal secretions such as leucorrhoea (*kudr*)).⁵³⁰

The fundamental legal difference between the two sets of conditions is that, on the one hand, menstruation and lochia "flow in a state of health" (*fī ṣaḥih*), whilst, on the other, *istiḥādah* (the blood from a vein) and leucorrhoea "flow in a state of illness" (*fī marīd*) (*Bid* p.51). However, there is nothing specific in the Qur'an, and little in the *aḥādīth*, to provide the jurists with any information on how to distinguish between these fluxes. Rather, as Ibn Rushd admits:

(T)he basis (for each woman) is experience (*khibrah*) and what each believed to be the usual occurrence (for herself). Thus each one of them (the *fuqahā'*) said

for one to feel the warmth of the partner's penis and *derive pleasure from it*, one (i.e. both partners) should wash, otherwise not (Boudhiba 1998:50).

⁵²⁹ See p.233 below for a list of alternatives.

⁵³⁰ As usual, it is only if a woman *sees* menstrual and lochial blood that she is excluded from her religious obligations. When she has not bled strongly enough to leave a stain on her tampon, she is judged not to be menstruating (Boudhiba 1998:51).

what he thought the common experience of women to be (and ruled accordingly) (*Bid* p.52).

Thereafter, depending on each jurist's assessment of feminine physiology, a great deal of mental exertion goes into establishing the minimum and maximum duration for "genuine" menstrual bleeding. Underpinning all this is the shared conviction that a woman should not face restrictions if her bleeding ceases before her minimum point of menstruation is reached, or, continues beyond her maximum point (after which she becomes *mustahāḍah* and, according to the majority, must perform *ghusl* once, and bind herself⁵³¹). The minimum duration for menses differs according to the *madhāhib*: in Malik's view, there is no minimum period ("it could be a single flow of blood"), Abu Hanifa rules that it is three days, and Shafi'i compromises by stipulating twenty four hours (*Bid* p.52).⁵³² Conversely, while the Hanafis suggest only ten days, most other jurists agree that the longest a woman can menstruate is fifteen days.

Without going into excessive detail, it is clear that, in everybody's opinion menstruation (and its ritual restrictions) is a strictly temporary affair. A woman must be permitted to fulfill her religious duties for at least as long each month (and preferably longer), as she is precluded from them.⁵³³ Hence, the *shortest* duration in any month a *mustahāḍah* is assumed to be pure is fifteen days (some jurists postulate seventeen); whereas, if the same woman misses her period for months on end, there is no time limit on how long she may continue to be pure.

⁵³¹ See e.g. *Umdat* p.94.

⁵³² *Bid* p.52. Obviously, the minimum specifications are intended for women whose periods are not regular, and who do not know whether they should consider themselves *ḥa'id* or *mustahāḍah*. If a woman is accustomed to menstruating, she will consider herself in a state of major *ḥadath* from the beginning of her bleeding.

⁵³³ This is stated in a *ḥadith* attributed to 'A'isha:

'A'isha... said: Imm Habiba b. Jahsh who was the spouse of 'Abd al-Rahman 'Auf made a complaint to the Messenger of Allah about blood (in *istihāḍah*). He said to her: remain away from prayer equal (to the length of time) that your menstruation holds you back. After this bathe yourself. And she washed herself before every prayer (Muslim "*Ḥayḍ*":190).

The *nafsā*'s exclusion tends to last longer than the *ḥa'id*'s, for the obvious reason that lochial bleeding normally persists longer than menstrual bleeding. However, in all other ways, the *nafsā*' finds herself in the same position as the *ḥa'id*, hence, when her bleeding does not stop after a prolonged period, she is likewise admitted to prayer as a *mustahādah*. The *fuqahā*' dispute when this should be. The Hanafis maintain that the longest period of *nifās* is forty days, the Malikis and Shafi'is argue that its maximum duration is sixty days (*Bid* p.54). An interesting, although not widely held, opinion (to which we will return, see p. 241) is that the maximum time limit for *nifās* differs according to the gender of the child. In this *hukm*, when a woman gives birth to a girl, she remains a *nafsā*' for forty days, whereas, if a boy is born, *nifās* lasts for only thirty (*Ibid*).

In these delicate matters, it is plain that the jurists rely on women to get things right for themselves, and they are *obligated* to pay attention to their bodies (in particular, the colour of their blood).⁵³⁴ If she is suitably attentive, a Muslim woman suffering from *istihādah* or leucorrhoea will know exactly when to cease prayers, and when to return. It is her responsibility to make sure her preclusion lasts no longer than it should, as the following *ḥadīth* proves:

'A'isha reported: Umm Habiba b. Jahsh who was the sister in law of the Messenger of Allah and the wife of 'Abd al-Rahman b. Auf, remained *mustahādah* for seven years, and she, therefore asked the verdict of Shari'ah from the Messenger of Allah about it: The Messenger of Allah said: This is not menstruation, but (blood from) a vein: so wash yourself and offer prayer. 'A'isha said: She took a bath in the wash-tub placed in the apartment of her sister Zainab b. Jahsh, till the redness of the blood came over the water. Ibn Shihab said: I narrated it to Abu Bakr b. 'Abd al-Rahman b. Al-Harit b. Hisham about it who

⁵³⁴ Although in the *ahādīth* 'A'isha often steps in and shows other women how and when they should purify themselves (see e.g. *Mishkāt* "*Tahārah*":437), the jurists obviously cannot do this themselves. According to one *ḥadīth*, Muhammad is confronted by a woman who does not know her regular timing, and cannot distinguish between the types of blood, and does not know if she should pray. Betraying more than a little frustration, the Prophets' response is to call menstruation "the gush of the devil!" But then to add: "observe menstruation for six or seven days. Allah knows what number it is, then perform *ghusl*" (*Bid* p.58).

observed: May Allah have mercy on Hinda! Would that she had listened to this verdict. By Allah, she wept for not offering prayer.⁵³⁵

A fascinating, if rather tragic story, this clearly prioritises the significance of prayers above all purity matters. Abu Bakr implies that Umm Habiba has damaged herself spiritually by unnecessarily excluding herself – in comparison, her bleeding is shown to be a paltry matter. Indeed, finishing Part II's survey of the jurists' disagreements with the *mustahādah* serves our purposes admirably. For although her concession causes problems for Reinhardt's theory, it directs our attention to where the jurists themselves are looking: the *ṣalāt*.

7.3. CONCLUSION

We have reached the end of Part II. Most (although certainly not all) major legal discussions surrounding both forms of *najāsah* have been included, and the contrasting principles of the jurists noted. I will conclude with a few modest observations on how each law school's approach to the overall subject matter differs.

On nearly every topic, Ibn Rushd attributes a school's eventual position(s) to an original opinion(s) of its Imam. And, whether or not the historical Malik and Abu Hanifa had anything to do with our present texts of the *Mudawwanah* or '*Asl*, many later Maliki and Hanafi rulings have a precedent in these early works (as we have seen, thanks to Maghen's translations). As Maghen notes, the didactic style of these texts is similar:⁵³⁶ the Imams are presented with prosaic, but problematic and borderline scenarios, and asked for their response. Countless questions are fielded: what happens when a man gets only a little blood, or vomit on his clothes? Must he stop his prayers even after a nose-bleed? If one sees a cat/bird/predator licking from it, may one still use this water for ablution? And so on. Their

⁵³⁵ Muslim "*Ḥayḍ*":655.

responses appear almost *ad hoc*, and the essence of both Maliki and Hanifi purity codes in their mature form retain something of this initial spontaneity.

In both schools, the most important factor, which is also the most significant general principle within *ṭahārah*, is that *no Muslim should undergo hardship* because of his need for purification. This principle existed from the outset. It is plainly derived from the Qur'an's provision for *tayammum*; and it underpins, for instance, the unanimous decision that a believer need never purify himself, unless he is sure that he is in a state of *ḥadath* (pp 172-173). Given the impossibility of avoiding contact with, and the emission of, so many impurities, many more concessions were needed. And, subsequently, in the course of legal development, the Qur'an's original spirit of leniency was applied in a multitude of contexts by the jurists.

In this regard, the Hanafis' methods are the most ingenious. Over and above all other factors, their category of *su'r* is fundamentally shaped by whether or not contact with a creature can be avoided (ch. 6.2). If it cannot be, the impurity of its *su'r* is ruled weaker. Moreover, while these jurists maintain a connection between the contraction of *ḥadath* and the emission of *ḥabath* which the other *madhāhib* reject, rather than this leading (as it should) to an obsessive demand for purifications, by their "excellent" distinction between light and heavy, small and large quantities of *ḥabath*, they manage to elude it (ch. 6.3, 4.B).

In several respects – such as their rule that no creatures may defile water (aside possibly from pigs), or their depiction of the *mustahādah* and those with chronic illnesses as pure – the Malikis are more lenient still. The Malikis' treatment of impurity is also perhaps the most

⁵³⁶ Maghen 1997:78.

interesting; for what may be described as “interior considerations” are not entirely divorced from the domain of legal purity by these jurists. Rather, questions of intention, memory and, in particular, sexual desire and pleasure play a significant part in their understanding of *hadath* (ch.7.3, 4, 7). This strategy is in keeping with the general spirit of Maliki law which, as Coulson observes:

Represents a moralistic approach to legal problems in contrast to the formalistic attitude developed by the Hanafis; for while the Malikis place great emphasis upon the intention of a person as affecting the validity of his conduct, the Hanafis mainly confine their attention to the external conduct itself.⁵³⁷

While few other jurists directly follow his example in these matters, another of Malik’s regulations was to have lasting importance. For, the process by which *fiqh* separates its two types of impurity surely gained momentum with his decision not to classify bleeding (and possibly vomiting, see fn. 457) as causes of *hadath*, despite the tangible impurity of the emitted substance.

Shafi‘i inherits the earlier jurists’ concern for fashioning a lenient and workable pollution system; but he also clearly knows of many competing views on every topic and, therefore, elects to standardise this system by imposing several immutable principles. As a consequence, his regulations do not possess quite the same instinctive feel to them as the Hanafi and Maliki ones. From our analysis, we can see that Shafi‘i succeeds in this task in the following ways:

- By severing the connections between *fiqh*’s dietary and purity codes. Except for pigs and dogs, no creature is capable of defilement. Thus, vast quantities of inter-

⁵³⁷ Coulson 1964:99.

madhhab polemic and debate on the purity status of *su'r* and the animal kingdom simply do not apply.

- By rejecting halfway rules. Substances are either pure or impure: all parts of *mayta* are also *mayta*; all quantities of *khabath* (no matter how small) remain impure.
- By restricting the influence of moral intention and mitigating circumstances on the contraction of *ḥadath*, in favour of firm guidelines. Almost all kinds of sleep break *wuḍū'* (ch. 7.2); regardless of whether a Muslim feels lust when touching a woman (ch. 7.3), or their genitalia (ch. 7.4), and whatever part of the body is involved, their *wudu'* is broken; irrespective of whether a Muslim genuinely forgets his *ḥadath*, if he then prays without *wuḍū'*, his prayers will not stand (ch. 7.4.); and irrespective of whether a man wears a “barrier” over his penis and limits his pleasure, penetration unequivocally results in *janābah* (ch. 7.2.A.ii).
- By ruling analogously. Pigs and dogs defile in the same way, contact with them requires the same method of purification (ch.6.2.).
- By clearly differentiating between the two spheres of *najasah*. Classical *fiqh* distinguishes between the two forms of *najāsah* using terminology that can be traced to Shafi'i (7.1. Exc.B). *Al-sabīlayni*, and the witness of *ḥadīth*, are the only factors in a Muslim's contraction of *ḥadath* impurity.
- By basing *aḥkām* on Prophetic *ḥadīth* when possible. Where the meaning of a *ḥadīth* clashes with Shafi'i's general logic – the purity of fly's wings (p.132), the sevenfold washing of the dog's vessel (pp. 150-151), praying in the sheepfolds (p.159) – it is not rejected but restricted to a specific, rather than general application in *fiqh*; in doing so, Shafi'i and his school minimise the possibility that one tradition will unbalance the logic of the system.

Because of such strategies, the Sunni purity code is at its most coherent in its Shafi'i mold. One ruling, in particular, testifies to Shafi'i's wish to resolve past uncertainty. As has been noted, he stipulates a precise measurement, a *qullatayn* (216 litres approx.), over which a source of water may not be defiled unless one or more of its characteristics have changed.⁵³⁸

An instruction to keep water sources filled up to this level must have proven an arduous task in dry Middle Eastern, African, and Mediterranean climates. Indeed, this particular rule drives Al-Ghazali to distraction – in the *Ihyā* he lists seven reasons why Shafi'i is wrong!⁵³⁹

Yet, despite the commonsense in his objections, Ghazali is missing the point. As I have said, Shafi'i clearly knows of a confusing number of approaches to this and many other problematic issues; his main aim is to settle these matters – normally with the aid of one or more Prophetic *ahādīth*. Previously, the Hanafi and Maliki jurists had been rather vague in their approaches to water pollution. Shafi'i wishes to resolve this matter, and other areas of confusion, with exactitude. By adopting such strategies, the Shafi'is provide Muslims with a clearer idea of where they stand on their suitability for prayer (although not necessarily an easier path to follow).

Despite coming perilously close to having just done so, it is misleading to present the views of the different *madhāhib* as if each has a corresponding (chronological) place in the evolution of *tahārah*, culminating in the Shafi'i version of the law. The Sunni ritual pollution code(s) did not develop smoothly in one direction. Historically, the Hanbalis and Zahiri schools both arrive later than the Shafi'is, yet do not always choose to follow Shafi'i's line on purity and pollution.⁵⁴⁰ My intention was merely to compare the nature of each school's

⁵³⁸ See fn.230.

⁵³⁹ *Ihyā* pp. 17-24.

⁵⁴⁰ Although typically siding with Shafi'i, we have seen that, on the basis that these are opinions are supported by stronger traditions, the Hanbalis prefer the Maliki (e.g. on the purity of edible dung creature' dung), or

approach to purity. From this perspective, it makes sense that Shafi'i's thoughts on purity postdate many major Maliki and Hanafi decisions on the same topics.

In summary, in Part I it was shown that *tahārah* law, in general, is unusual in that it does not reflect ideas of social order. Now that we have reviewed the jurists' arguments concerning the different *najāsāt*, we have some idea of the ideosyncracies of each of the law schools' approaches. Only one principle may be said to unite all the jurists: specifically, the conviction that, while observing the purity laws is of great importance, what really matters is that these laws exclude Muslims from their religious duties as rarely as possible.

Hanafi (e.g. the cause of *hadath* from impure bodily emissions) alternatives. The Zahiris often uphold unique opinions (here as everywhere) – e.g. Muslims with major *hadath* may enter mosques, and intromission does not alone incur *janābah* – and it is pity we have not had the chance to look at their approach in more depth.

PART III

THE FUNCTIONS OF *NAJASAH*

CHAPTER 8

THE NON-MUSLIM

*“America is worse than Britain, Britain is worse than America. The Soviet Union is worse than both of them. They are all worse and more unclean than each other”
(Slogan of the Islamic Republic of Iran⁵⁴¹)*

In Part III we return to the function of ritual pollution. Recall that, in Part I, four contrasting theories on the function of pollution ideas were discussed; all that is going to be said about the first two, the materialist and psychological theories, has now been said. The fourth type of approach, the religio-moral theory, will be considered in Chapter 10.

Before then, we must come back to the third and most influential of these approaches, the socio-symbolic theory, which finds religio-social hierarchies symbolically reflected and practically enforced in ritual pollution behaviour. This theory is concerned with power strategies; it asks who is vilified through the accusation of pollution and why. In general, such an approach has been shown to be misleading in the context of Sunni Islam’s ritual pollution laws, as was the rationale behind it (Mary Douglas’ theory of a symbiotic relationship between the social and physical bodies). However, two possible instances where *najāsah* regulations do serve hierarchical purposes, non-Muslims, and women, were noted, and in chapters 8 and 9, the position of each group will be considered. We shall see that, contrary to what we would expect, non-Muslims are treated very leniently by the *tahārah* system; and it is only women who are in any way disadvantaged by it. Unfortunately, although a great deal could be said about individual jurists’ attitudes to both subjects (after Part II, we know that they rarely agree on details), our investigations must be comparatively

⁵⁴¹ Cited in Lloyd Ridgeon’s Crescents On The Cross: Islamic Visions of Christianity (1999 Glasgow Trinity St. Mungo Press) p. 108.

brief as space is limited. A significant part of them will be spent addressing the difficult topic of why people with a major *hadath* are excluded from mosques. In the next two chapters, I will also tentatively apply Mary Douglas' theory that ritual pollution ideas flourish in situations where social relations are tense, or ambiguous.

Let us begin with the non-Muslim (*kāfir*) – the *ahl al-kitāb/dhimmi* (Jews and Christians/and other payers of poll tax) and *mushrik* (polytheist, non-payers of poll tax)⁵⁴² - who, according to Nawawi, all have *the same status as the Muslim* in matters of legal purity (p.100 above). At first sight, this appears to be in direct contradiction of the Qur'an's description of the *mushrik* (if not the *ahl al-kitāb*):

O you who believe! Truly the *mushrikūn* are impure (*innamā al-mushrikūn najāsun*). Let them not approach the Sacred Mosque (*Al-Masjid al-Harām*) after this year is over (9:28).

A straightforward reading of this verse suggests that, like any other form of *najāsah* – blood, urine, excrement etc. – the *mushrik* is to remain outside the doors of the *al-Harām* because he is essentially impure (i.e. *nājis/khabith*). Moreover, this is how the Shi'i and Zahiri jurists have always interpreted it. In a recent Shi'i law manual, for instance, al-Husaini Seestani places the polytheist between pigs and wine in his list of twelve *najāsāt*. He is reluctant, however, to classify the *ahl al-kitāb* (Christians and Jews) in the same category. In Seestani's opinion:

The *mushrik* is a person who does not believe in Allah and His Oneness... (However) as regards the *ahl-al-kitāb* (Christians and Jews) they are commonly considered *nājis*, but it is not improbable that they are pure... On the basis of the

⁵⁴² The category of *dhimmi* originally included only Jews and Christians, but with the spread of Islam was soon broadened to include many other groups. See Cahen "*dhimma*" in E.I.II; and cf. fn.303 above.

Verse (9:28), the entire body of a *mushrik*, including his hair and nails, and all liquid substances are *nājis* (and thus to be avoided).⁵⁴³

Among the Sunnis, the famous Zahiri scholar Ibn Hazm reiterates much the same argument, but considers *all* non-believers impure and restricts their ability to contaminate to their saliva.⁵⁴⁴ Accordingly, he forbids anyone to use even the *ahl al-kitāb*'s cooking utensils "except in circumstances in which lawful vessels cannot possibly be obtained, and in this case only after they have been washed".⁵⁴⁵ Pace Nawawi, there are even some scholars among the four major *madhāhib* who follow a literal interpretation of the Qur'an. For instance, in his *Ahkām ahl al-Dhimmah*, the Hanbali scholar Ibn Jawziyyah tells us that, while in general the Hanbalis agree with Shafi'i, his personal opinion is that the polytheist and *dhimmī* are each utterly *khābith*, and should be kept out of mosques for that reason.⁵⁴⁶ Indeed, although Ibn Rushd presumably views the *dhimmī* as pure, he describes the polytheist's *su'r* as impure because "it is better to adopt the obvious meanings of the Book, as against analogy" (*Bid* p.28). The political ramifications of describing the *kāfir* as essentially impure are self-evident; like typical pollution strategies the world over, it ensures the physical and hierarchical separation of Muslims from non-Muslims.

As we know, however, in contrast to al-Jawziyyah and Ibn Rushd, the vast majority of the Sunnis do not think that the Qur'an believes anyone to be *nājis* in the usual legal sense. Having passed over this matter in chapter 4, the Sunnis' exegesis of Q. 9:28 will now be discussed.⁵⁴⁷ The majority of scholars within the four schools agree on two points. Firstly,

⁵⁴³ Seestani "*Tauhdhihul Masae'l* translated as "Islamic Laws" by Hamid Mavani available at <http://www.al-islam.org/laws/>.

⁵⁴⁴ Goldziher 1971:59-60. For the argument that all non-Muslims belong to the same category of purity, see next page.

⁵⁴⁵ Al-Qastallani p.206 cited in Goldziher 1971:61.

⁵⁴⁶ Ibn Jawziyyah *Ahkām Ahl al-Dhimmah* (1994, Beirut, dar al-'ilm al-miyin) p.195ff.

⁵⁴⁷ Locating detailed information on the jurists' debates regarding the purity of non-Muslims has proven difficult and, to a large degree, I rely on material drawn from Maghen (1997:272 ff.), and Goldziher (1971:59-64).

unlike Seestani and despite the fundamental difference in legal status between those who pay the poll tax (*dhimmīs*) and those who do not (*mushrikūn*), they classify *all* non-Muslims in a single category of purity.⁵⁴⁸ By doing this, they raise the status of the *mushrikūn* proper (i.e. the polytheists) to that of the *ahl al-kitāb*, and enable the essential purity of the former to be defended on logical grounds. For, while it is debatable that the Qur'an ever intends polytheists to be able to enter the Sacred Mosque, it also seems highly improbable that it considers Christians and Jews essentially impure. After all, it permits intermarriage between Muslim men, and Jewish and Christian women (Q. 5:5), and this permission would hardly have been granted had these individuals been *khabith*. This, plus Muhammad's known interaction between Muslims and Jews and Christians is a popular defense against the Shi'is' position:

The Muslims have been permitted to marry the People of the Book; and they have been allowed to use their utensils provided that they do not contain impurities (i.e. *khabā'ith*)... these facts go to prove that the Holy Prophet never treated them as inherently defiled and polluted person, for had he thought them so, he would never have come into contact with them.⁵⁴⁹

Goldziher notes that the majority of the Sunnis defend the purity of Christians (and by implication all non-Muslims) through two other traditions. In one, Umar performs *wudu'* with water drawn from the vessel of a Christian woman; and in the other, the Prophet gives his permission to eat from the dishes of the *ahl al-kitāb* (if others cannot be found).⁵⁵⁰

⁵⁴⁸ This strategy has some Scriptural support, see 9:29, for instance, where the Qur'an advocates fighting against *all* "who do not believe in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and his Messenger, nor acknowledge the Religion of Truth from among the People of the Book". For, if all non-Muslims are to be fought, then, presumably, everyone shares the same sin and purity status. How the categories of *mushrik* and *ahl al-kitāb/dhimmi* purity were conflated is not our concern. To show that there was (close to) eventual concord on this matter, suffice it to refer to the tenth century Hanafi scholar al-Jassas, who explains that "among the jurists, all disbelief is one religious grouping, even if its forms of doctrine and practice differ", J. D. McAullife "Legal exegesis: Christians as a Case Study" in *Islamic Interpretations of Christianity*, ed. L. Ridgeon (2001 Richmond, Curzon Press) p.63.

⁵⁴⁹ *Nail-l-Awtar* vol.1 pp.20-21 cited in Siddiqui's translation of the *Mishkāt* p.228. (Parenthesis added).

⁵⁵⁰ Goldziher 1971:59-60.

Goldziher also mentions al-Razi's strong argument that the body of a non-believer cannot be essentially impure, because that would imply that, by accepting Islam, his biological essence undergoes a molecular transformation (such as when an impure skin becomes pure through tanning).⁵⁵¹ In other words, as removing essential impurity only occurs through the destruction, or complete transformation of a thing's essence (ch. 4.4.A.), and neither is possible through saying the *Shahadah* and performing *ghusl* (the acts stipulated by al-Razi as the Sunni requirements to embrace the faith), a non-Muslim must be legally pure to begin with. This last point is well illustrated by a *ḥadīth* reported by Sarakhsi in which Muhammad asks Abbas to find some water for him during *hijjat al-wada'*. According to this tradition, Abbas is reluctant to do so because the water sources in the vicinity were likely to have been used by non-Muslims and thus, he presumes, polluted. Muhammad waives aside Abbas' objections and sends him out on his task, explaining that "we are no different from them".⁵⁵²

The second point of general agreement among the Sunnis is that the Qur'an's description of the *mushrikūn* as "*nājās*" is intended metaphorically. Hence, rather than referring to a status of essential impurity, it refers to his moral corruption and laxity in terms of personal hygiene. Returning to the same extract that was cited in Chapter 4 (p.100), we find Nawawi continuing:

As for the words of Allah, the Almighty and Majestic: "the polytheists are *najās*, the intent is the impurity of their beliefs and their general filthiness (*al-murād najāsāt al-i'tiqād was-l istiḡdhar*), and not that their limbs are somehow impure in the matter of urine or faeces or the like."⁵⁵³

And echoing Nawawi the best part of a millenium later, Sayyid Sabiq writes:

Although Allah says in the Qur'an: "Verily the *mushrikūn* are *najas*", this is not a reference to their physical state (i.e. their essential purity), but to their false beliefs

⁵⁵¹ Goldziher 1971:62.

⁵⁵² Cited in Maghen 1997:294.

⁵⁵³ Nawawi *Sharh* 2. P.51 (Maghen 1997:51)

and creeds. (Moreover), they may come into contact with dirt or impurity (*khathath*), but this does not mean that their possessions or bodies are impure.⁵⁵⁴

Thus, the Sunni jurists circumvent (what the Shi'is and others read as being) the obvious meaning of the Qur'an's description of the polytheists as *najas* by supposing, firstly, that the *mushrik* inhabits the same purity category as all non-believers, and secondly, that *najas* refers to the immoral beliefs and slobbish behaviour of non-Muslims, rather than their essential impurity.

What the Qur'an really intended is a mystery. Goldziher takes the verse at face value, and assumes that the early Muslim attitude was to consider non-believer's contagiously defiling (at least in the vicinity of mosques); thus, in his view, the Shi'is have remained loyal to the intention of Scripture, while the Sunnis evolved away from it.⁵⁵⁵ For Maghen, the answer lies in the precise political and historical circumstances in which it was revealed (by Tabari's dating this was 9 A.H.), and the Qur'anic context in which it is found (in particular, Q. 9 vv.1-4). In contrast to Goldziher, he concludes that all these verses are:

direct reactions to the political developments in the earliest days of Islam. They are provisions in time as it were... (in 9:28) the Qur'an did not intend to prohibit *mushrikūn* from entering the mosques from that point on in history... but rather solely and context specifically to forbid Meccan polytheists from trespassing on the grounds of the *Haraam*.⁵⁵⁶

⁵⁵⁴ Sabiq 1991:5 (parenthesis added).

⁵⁵⁵ Goldziher 1971:62. Goldziher clearly appreciates their change of heart, applauding it for: its perfectability, its possibility of evolution, and also the ability to adapt its rigid formalism to the requirements of social intercourse by modifying the Koranic tenets of the impurity of unbelievers through its own interpretation, until it reached a point where it abandoned this doctrine (Ibid)

⁵⁵⁶ Maghen 1997:278-279 (parenthesis added).

As the Qur'an does not say anything else on the subject of the non-believer and impurity, nor uses the term *najas* anywhere else, Maghen's is perhaps the more plausible of the two explanations.

The concern of this short analysis, however, is the way the Sunni jurists apply this interpretation in practical terms. How do they exclude, belittle, or subordinate the non-Muslims through the use of ritual pollution strategies? The answer is that most of them do not. The only restriction placed upon a non-Muslim concerns whether or not he may enter mosques (hardly surprisingly given the Qur'an's exclusion of the *mushrik* from *al-Harām*). In practical terms, the Malikis are the strictest; they deny all non-believers entry to any mosque unless it is absolutely necessary. As in the case of Muslims with a major *ḥadath*, the Shafi'i's and Hanbalis permit them to pass through any mosque other than the *Ḥarām*, as long as they "do not waste this opportunity by eating or sleeping there", and first gain approval from a Muslim before entering. Whereas, by far the most lenient in this regard, the Hanafis permit all non-believers to stay for "reasonable periods" within any mosque, and even to enter "*al-Harām al-Masjid*" ("as long as they do not take up residence there").⁵⁵⁷ Thus, from the four major *madhāhib*, only the Maliki *hukm* uses pollution ideas to restrict the actions of a non-Muslim (and excluding him from the mosque is probably not a great burden in most cases).⁵⁵⁸ It must be also said that their opinion is the only one that makes sense according to the usual *tahārah* rules. For, in spite of the jurists' near universal agreement that

⁵⁵⁷ For these opinions, see al-Mawardi's *Ahkam al-Sultaniyyah*, translated as "The Laws of Islamic Governance" by Asadullah Yate (1996, London, Ta Ha publishers) pp.239-240.

⁵⁵⁸ While in the Maliki *madhhab*, a non-Muslim is still viewed as essentially pure, there is a greater element of suspicion expressed towards mingling with him than in the other schools. For instance, we have already noted Malik's opinion in the *Mudawwanah* (p.122) that the *su'r* of non-Muslims is not to be used for *wudu'* (p. 118 above); likewise, while the other jurists have no problems with this, Malik (although not considering it defiling *per se*) does not permit a Muslim to perform *ghusl* upon, nor bury a non-Muslim corpse (*Bid* p.261). For a good description of the Maliki distrust of non-Muslims and especially Christians in a specific historical context, see M. Speight "The place of Christians in Ninth Century North Africa according to Muslim sources" in *Islamochristiana*, 4 (1978) 47-65.

no *believer* may enter/remain within a mosque in a state of major *ḥadath* (ch. 7.2.A.i),⁵⁵⁹ and their complete agreement that no-one shall enter mosques carrying (above a certain amount of) *khathath*, there appear to be no regulations requiring that a visiting non-Muslim should perform *ghusl*, or even that his clothes be checked for *khathath* before he enters a mosque.⁵⁶⁰ This apparent oversight leads to the surprising conclusion that, despite the damning testimony of the Qur'an itself, the vast majority of jurists deal more leniently with non-believers than with Muslims!

Before exploring why this should be the case, we must first make a small digression into the nature of the relationship between *ḥadath* impurity and the mosque. To do so, let us begin with Maghen's explanation of the present problem. For he also supposes that the purity status of non-Muslim visitors to mosques goes unchecked, but argues that this may be explained quite rationally. As far as the intruder's potential *khathath* defilement is concerned, Maghen assumes that most jurists are prepared to turn a blind eye, as long as no impurity is visible on his person,⁵⁶¹ and he uses the same logic to explain the majority's permission for the non-Muslim *ḥa'id/nafsā'* to enter mosques. This is because for Maghen, a menstruant is only excluded from sacred ground because of the possibility that she might drip menstrual blood onto the floor (see p. 244 below). Thus, he claims, as long as she is suitably wrapped up, her temporary presence in the mosque should not worry anyone (albeit Muslim women should have greater respect for sacred precincts and, presumably, should stay away on that basis). According to Maghen, the *junūb* is another matter. For, as we shall soon see, he argues that *janabah* possesses a unique and abstract capacity to *affect* mosques; in light of this, he is considerably more stretched to explain why there are no provisions for the non-

⁵⁵⁹ Indeed, in the exact reverse of the present topic only the Zahiris permit them to do so.

⁵⁶⁰ Although I concede that this might be implied in the Shafi'i's decision that non-Muslims may only enter mosques if they ask permission.

Muslim *junūb* to perform *ghusl* before entering them. In the end, he is also compelled to attribute this fact to the jurists' tendency to give everyone the benefit of the doubt. Thus, in his view, the non-Muslim *junūb* is permitted to enter mosques by most jurists because:

(He is only) *junūb* by probability: the chances are that s/he has incurred the defilement of *janābah* (but) since there is no way to obtain definite information on this score (short of asking – which is probably considered socially unfeasible...) we would suggest that the non-Muslim is simply given the benefit of the doubt.⁵⁶²

As for Shafi'i's policy of forbidding non-believers access to the *Ḥarām*, Maghen argues that this is because: "when it comes to the *Ka'aba* we (the Shafi'is) do not mess about".⁵⁶³ While what he means is relatively plain (the *Ḥarām* is more important, therefore the existence of any type of *najāsah* therein is less tolerated, and granting the benefit of the doubt less advisable), this rationale carries the unfortunate implication that the Hanafis *are* prepared to mess about! His explanation relies upon the well-attested principle that a *ḥadath* does not exist unless there is prior knowledge of it (p.172 above); however, while this is a firm plank of the *ṭahārah* system, in the present context, Maghen's use of this idea is questionable. For the notion that non-Muslims, and especially Christians (who adhere to no ritual pollution code), are very prone to impurity of all sorts is, as he points out, extremely widespread in early Muslim sources.⁵⁶⁴ Indeed, given that *janābah* is contracted through *any* emission of semen (male or female) and not simply penetration, the likelihood that a (non-castrated) adult has not incurred *janābah* at some time in his or her life is not simply remote, but virtually impossible. Moreover, when a non-Muslim embraces Islam he must (as mentioned above)

⁵⁶¹ He bases this on Shafi'i's permission to use the *mushrik's* water, as long as "one has no express knowledge of the presence of *najāsah* on him" (*Umm* p.21, cited in Maghen 1997:282-283).

⁵⁶² Maghen 1997:298.

⁵⁶³ Maghen 1997:300. (Parenthesis added). It is surprising that Maghen does not appear to consider the Qur'anic verse to be a direct influence on the Shafi'is' *ḥukm*.

⁵⁶⁴ Maghen 1997:297. Examples are manifold, what Ghazali says in his defense of the Maliki doctrine regarding water purity will suffice. He adduces the *ḥadith* in which Umar draws water from the vessel of a Christian woman. This, he claims, proves that water cannot be defiled unless one of its properties changes

perform *ghusl*, which logically indicates that the jurists *do* believe that non-Muslims are in a perpetual state of *janabah*.⁵⁶⁵ In light of these factors, it makes little sense that the majority (the Malikis are obviously more suspicious) are prepared to consider the *mushrik* naturally clean (i.e. free from *khath*), and sexless (i.e. free of *janabah*). Contra Maghen, I suspect that there is more to this than merely giving the non-believers “the benefit of the doubt”. Instead, I would suggest that most jurists’ apparent insouciance regarding whether or not non-Muslims enter mosques stems from the realisation that, in Sunni Islam, *neither the mushrik, nor anyone else in a state of hadath, is really capable of defiling sacred space* – be it a mosque or, for that matter, a Qur’an.

Admittedly, this conclusion is speculative and - in light of the vast effort spent on deciding exactly when, for instance, a woman with extended bleeding is permitted to enter a mosque – it may also sound illogical. After all, pollution systems are *normally* constructed to protect sacred space from the defiling presence of those who harbour impurity.⁵⁶⁶ Indeed, the two closest relations to the *taharah* code, the Zoroastrian and Jewish pollution systems, both concur on this point. In their cases, protection of sacred space from impurity – moral and bodily – is believed to safeguard the entire religious universe.⁵⁶⁷ Nevertheless, given the evidence of the *mushrik*, it is hard to avoid the conclusion that Sunni Islam simply does not envisage any defilement of sacred space. Certainly, if a mosque were capable of being “defiled” by the entry of a *junub*, then the manner in which this could be said to occur defies easy explanation. If demons do reside within the body of the *muhdith*, there is no suggestion in the law that they spring to life to attack sacred areas. And what happens to the *muhdith*

because “*the impurity of the (Christian) woman and that of her vessels are quite evident and very readily discernible*” (*Ihya* p.20). In other words, if a Christian woman does not defile this water then noone will!

⁵⁶⁵ For this rule, see Goldziher 1971:64.

⁵⁶⁶ See above pp.4-5 There is a wealth of material on this, all of which agrees that, within pollution conscious societies (everywhere from ancient Egypt, Israel, to Hindu communities in modern America), the spheres of holy and polluted pose a threat to each other, see e.g. Milgrom 1991: 976 ff.

himself – it was argued that Allah withdraws His Blessing (ch. 4.4.A.) – cannot, we assume, hold true for mosques as well. Furthermore, to my knowledge, a *ḥadath*-defiled mosque is not something envisaged by either the *ḥadīth* material, or the legal texts. If it were, there would surely be some regular purification ceremony designed to lift a mosque's (accumulated) *ḥadath* impurity.⁵⁶⁸ At the end of the following chapter, Maghen's rational explanation of the *ḥa'id/nafsā*'s exclusion from the mosque will be critiqued, and a hypothesis suggested for why *taharah* permits access to the *mushrik* and not the Muslim with a major *ḥadath*. Until then, however, we will leave this matter pending.

The remainder of the present chapter will be restricted to a quick consideration of *why* the jurists are so lenient to the *kāfir*? Why, given the Qur'an's decision to exclude the polytheists (if not Jews and Christians) from *al-Harām*, do most choose to allow him access to mosques when they know him to be prone to impurity (if not essentially impure)? Why is it not even required that he perform *ghusl*? Unlike *tahārah*'s attitude to the Muslim, this surely has nothing to do with egalitarianism. According to the law, the non-believer *is* religiously and socially inferior, and there is no evidence that his admittance to mosques stems from humanitarian interests. From the point of view of commonsense and pragmatism, however, these questions are not difficult to answer. For it is very likely that early Islam simply could not afford to impose an exclusion order on the non-Muslim because, if it had done so, the idea that this exclusion *was* due to a non-believer's essential impurity would have been problematic to refute. Consequently, the idea of an essentially impure believer would have made religious life extremely difficult for countless Muslims, something that *tahārah* strives

⁵⁶⁷ For Zoroastrianism, see Choksy 1989:67; for Judaism, see J. Milgrom 1976.

⁵⁶⁸ Such as we find in the Bible's Day of Atonement rite, in which first the temple (Lev.16:16), and then the Israelites are purified (Lev.16:21). For this process, see Milgrom 1976:396.

to avoid at all costs.⁵⁶⁹ It would also have affected trade, of course, as physical interaction between Muslims and their neighbours would need to have been restricted.⁵⁷⁰ In addition, it would be, as Maghen notes, quite impossible to check whether someone is, or is not, in a state of major *ḥadath* (and to question them about it would break certain rules of propriety). And, if a major *ḥadath* is apparently not a problem, to insist upon checking for *khathath* would seem incongruous, as well as time consuming, for the mosque's personnel. As for the differences between the schools, the reason that the Malikis continue to exclude non-Muslims from all mosques, whereas the Hanafis go to the other extreme, probably has much to do with the original locations of these schools. After all, originally, the Malikis (probably) enjoyed the relative seclusion of Madinah and Arabia,⁵⁷¹ whereas Hanafi law took shape in the much more cosmopolitan surroundings of Iraq. Hence, by declaring the presence of non-Muslims in mosques unimportant, the Hanafis were merely demonstrating their usual pragmatism.⁵⁷² Not for the first time, Shafi'i's opinion finds the middle ground, by insisting that a non-Muslim must attain permission to enter a mosque he perhaps also lends proceedings more dignity than the Hanafis, and by restricting them from *al-Ḥarām* he follows the meaning of the Qur'anic verse.⁵⁷³

⁵⁶⁹ Especially if, as some scholars suggest, the early Muslim Caliphate consisted of more non-Muslims than believers up until the Crusades. See D. Sourdel's chapter on the Abbasid Caliphate in *The Cambridge History of Islam*, ed. P Holt *et al* (1970, Cambridge, Cambridge University Press).

⁵⁷⁰ For the difficulties in sharing a marketplace with people who are likely to defile you, or vice versa, see Dubois and Beauchamp 1897:390, and E.G. Browne's *A Year Among the Persians* (1983, London, [no. pub.]) pp.370-372. It seems that Muslims were well aware of the potential problems in losing trade through pollution laws: al-Jawziyyah claims that the reason the *jizya* tax was imposed upon Christians and Jews was because Allah realised the financial drawbacks to prohibiting non-Muslims from the Makkan mosque, and wanted to recompense them (*Ahkām ahl al-Dhimmah* p.198).

⁵⁷¹ Norman Calder's theory that Maliki law developed in Spain is interesting but remains unproven and should not distract us here (see Calder 1993). Moreover, if this were indeed the case, it could be argued that the Maliki's strictness reflected the early conflicts and tension between indigenous Spanish Christians and the newly arrived Muslims.

⁵⁷² Unfortunately, I have not been able to locate the Hanafi arguments for permitting non-Muslims to enter the *Ḥarām*. Maghen does not mention them, and Goldziher notes that they "just about abrogate the validity of the Qur'anic prohibition" without going into more detail (1971:63 fn.1).

⁵⁷³ Yet, ironically, Shafi'i's opinion may also have caused more problems than it solved, as an anecdotal piece of polemic by Ibn al-'Arabi is intended to show:

In Damascus I used to see a strange sight. The large congregational mosque there has two doors, an eastern door, which is the Bab Jayrun, and a western door. People were in the habit of using the mosque as a pathway. Walking through it all day long in their every day affairs. When a

The above reasons must have played a part in Sunni *fiqh*'s pronouncement of the non-believer as essentially pure, and the majority's decision to permit him to enter most mosques. There is, however, an additional way to explain *tahārah*'s apparent leniency towards non-Muslims, and it involves using Mary Douglas' theories in a way that she is unlikely to have envisaged. As we know, one of Douglas' central premises is that ritual pollution beliefs flourish in situations where social relations have become ambiguous or tense, and need to be resolved.⁵⁷⁴ Logically enough, Douglas observes that, when the opposite is true and there is no discernible social tension, ritual pollution themes lose their sting (either dying out or simply become superfluous):

There is a general principle that when the sense of outrage is equipped with practical sanctions in the social order, pollution is not likely to arise. Where, humanly speaking, the outrage is likely to go unpunished, pollution beliefs tend to be called in to supplement the lack of other sanctions.⁵⁷⁵

In response to this insight, it is tempting to suggest that *tahārah* does not need to use pollution ideas to coerce or exert power over non-believers because - to a large extent inheriting a political situation where Umayyad military successes had proven their faith invincible, and in which the *kāfir* was already firmly held in place by the poll tax (*jizya*)⁵⁷⁶ - the jurists developed a law code which is both relatively lenient in the degree to which it permits the non-Muslim to rule himself, and very strict in governing the boundary line

dhimmī wanted to pass through, he would stop at the door until a passing Muslim went by. Then the *dhimmī* would say to him: O Muslim, may I have your permission to go through with you? The Muslim would respond positively so the *dhimmī* would enter with him, all the while wearing the badge (*ghiyār*), the sign of the *ahl al-dhimmah*. If the mosque custodian saw the *dhimmī* he would shout at him, "Go back, go back!" But the Muslim would tell him, I have given him permission" and so the caretaker would leave him alone, cited in McAullife 2001:69.

⁵⁷⁴ See above p.58.

⁵⁷⁵ Douglas 1966:133. The Walbiris of Central Australia are her example.

between him and believers. As a result, it reflects and endorses a social situation in which non-Muslims are envisaged as incapable of causing outrage (and not worth the effort of describing as impure).⁵⁷⁷ Let us consider the evidence, *fiqh*'s method of separation is very simple: all non-Muslims are distinguished from all Muslims. Once someone converts, s/he is legally entitled to the privileges of Muslim life and does not need to pay the poll tax.⁵⁷⁸ Inside *dār al-Islām*, non-Muslims are (to a reasonable degree) permitted to rule themselves.⁵⁷⁹ In return for being taken under Islam's wing, the *dhimmīs* have to pay the *jizya*; but this is fixed at a lenient amount (according to the '*Umdat*, adult males pay a minimum of one dinar per annum) and is to be "collected with leniency and politeness, as are all debts, and not to be levied on women, children, or the insane".⁵⁸⁰ No *kāfir*, on the other hand, is entitled to live within the Hijaz, and is only allowed to pass through if granted safe conduct (*aman*) by a free male Muslim (*Bid* p.458).⁵⁸¹ Nor is he permitted any share of the booty from a successful battle (*Bid* p.462). Unsurprisingly, intermarriage between non-Muslim females and Muslims males is forbidden because their children will not be Muslims;⁵⁸² and a *kāfir* is not permitted to own a Muslim slave or concubine (if they convert he must free them or sell them to Muslims). Through such regulations, potentially risky interactions with non-Muslims are avoided.

⁵⁷⁶ According to Islamic tradition, all non-Muslims were driven out of Arabia by Umar, see Y. Courbage and P. Fourbes *Christians and Jews Under Islam*, trans. by J. Mabro (1997, London, I.B. Tauris & Co) ch.1. Recent scholars have noted that a few non-Muslim communities managed to remain (Courbage and Fourbes 1997:7)

⁵⁷⁷ On early Muslim policies regarding the *dhimmi*, see Courbage and Fourbes 1997 ch. 1.

⁵⁷⁸ As noted, the non-Arab converts and freedmen (*mawāl*), who soon constituted a major part of the early Caliphate, were often a cause of tension in early Islamic history (p.113). Yet, aside from the rule that he is not permitted to marry Arab women, there are very few legal strategies via which the *mawla* is distinguished from the Arab Muslim, see Crone's article "*mawla*" in *E.I.II*.

⁵⁷⁹ Thus, Schacht observes: "Under the Umayyads, the non-Muslim subject populations retained their own traditional legal institutions, including the ecclesiastical and rabbinical tribunals... (which proved) the basis of the factual legal autonomy of non-Muslims in the Middle Ages and has survived in part down to the present generation" (1970:548 parenthesis mine).

⁵⁸⁰ '*Umdat* p.608.

⁵⁸¹ Even then *aman* only guarantees protection against loss of life, not enslavement (*Bid* p.458).

⁵⁸² Doi 1984:134 ff.

In short, then, Muslim rule, as it is envisaged in *fiqh*, is not a tyranny, but it appears to classify the world into three categories of non-Muslim: those with whom the believer (Arab and non-Arab alike) is friendly (and to whom he grants *aman*), those he may tolerate (the *dhimmīs*), and those he must fight (the inhabitants of *dār al-harb*).⁵⁸³ My suggestion is that, because the lines separating each are clearly defined, pollution ideas are not needed to restrict interaction between them. One of the more remarkable results, as we now know, is that most jurists do not mind if a non-Muslim enters a mosque regardless of his undoubted impurity.⁵⁸⁴

Extending this logic, and in addition to the jurists' relative egalitarianism in the sphere of *ibādat*, we may hypothesise that *the firmness of the law* is another reason why *tahārah* principles ostensibly fail to disadvantage anyone (with the notable, although mild exception of women, see the following chapter). After all, while it cannot be said that *fiqh* is particularly interested in upholding social or class differences, every aspect of a Muslim's interactions within social, financial, and religious spheres – even who may legally accompany who when walking in the market place – is scrupulously regulated by law. *Fiqh* is all embracing, and the jurists classify any act under five values or principles (*al-ahkām al-khamsa*) in a concerted attempt to embrace all aspects of human existence from the legal

⁵⁸³ All non-Muslims who do not pay the *dhimma* are to be fought on the basis of Q.9:29. There are disagreements, however, over what is to be done with them if they are captured. An indication of Sunni Islam's confidence in these matters is that it is legally disallowed for Muslim soldiers to flee from an opposing army, unless it is at least twice the size of its own (*Bid* p.462)!

⁵⁸⁴ I am aware that I have described the jurists as if they were an integral part of the political and military machinery of early Islam. This is potentially misleading. The Goldziher/Schacht view is that the earliest jurists often considered themselves to be "the pious opposition" of the political powers of their day, see Goldziher 1981:47/ Schacht "*fiqh*" in E:I:II. Yet, while this may well have been the case, it is not unlikely that, in common with everybody else, both the early pious persons and later *fuqaha'* shared the pride and optimism of the early Muslims concerning what must – given the spectacular success of the Islamic campaigns – have been perceived as the inevitable military occupation of the entire *dar al-harb*. On this point, the much later practice of one of the greatest of the Ottoman rulers, Mehmet the Conquerer, provides a glorious example of how seriously the threat of pollution by the *kafir* is taken by Sunni Muslims (when everything is going well for them). Apparently, when visiting his Balkan subjects, Mehmet would always meet the Greek patriarch Gennadius at the church door, but would never step upon the holy ground of Christians. Yet this was not, we learn, "for fear of polluting himself by entering an infidel place of worship but, conversely, for fear of consecrating it (i.e. the church): (for) wherever he placed his foot was hallowed ground, and his followers could have seized upon his entry as an

perspective. Even things that are irrelevant or “indifferent” (*mubah/jaiz*) have to be declared as such by a competent legal expert.⁵⁸⁵ This strategy reduces tensions, cuts down ambiguities, and leaves little room for coercion through the kind of strategies that Douglas and other anthropologists expect to find.

This is another possible reason why Islamic law does not reflect the interest in hierarchisation that is normally found in ritual pollution systems. Although, as usual, the Sunni jurists confound Douglas’ expectations because she would not expect to find ritual pollution behaviour attached to a code so thoroughly adept at alleviating social tensions, her way of approaching the matter has produced an interesting hypothesis for *taharah*’s unusual nature. In concluding this short chapter, it does no harm to our general argument to note that, away from Sunni *law*, and in specific social contexts, Douglas’ theories are very useful regarding the present subject material. For a start, the type of siege mentality that she expects to find accompanying strict ritual pollution behaviour may help to explain the Shi’is’ interpretation of Q.9:28; as, throughout their history, the Shi’is have often perceived themselves to be under attack from those outside their sect; and, as the Iranian slogan at the start of this chapter demonstrates, the accusation of pollution is an evocative clarion call to unite true believers against the outsider. In their case, the emphasis placed upon protecting their bodies and sacred spaces from the pollution of the outsider clearly mirrors their interest in protecting the integrity of the social and political boundaries of Shi’i communities.⁵⁸⁶

Sunni history has been less besieged, but pollution ideas have been used in comparable ways. This was true, for instance, during the Crusades when, as Carole Hillenbrandt notes, Muslims

excuse to turn it into a mosque”! Jason Goodwin *Lords of the Horizons A History of the Ottoman Empire* (1999, London, Vintage) p.95. (Parenthesis added).

⁵⁸⁵ On this see Denny “Ethical Dimensions of Islamic Ritual Law” in B. Weis’ ...

⁵⁸⁶ Some Shi’i authorities even go so far as to describe Sunnis as impure (Maghen 1997:273).

were faced with imminent destruction of their lives and property at the hands of Christian warriors (Orthodox and Roman Catholic alike). As a result:

The leitmotif of medieval Muslim writers about Frankish occupation is defilement of sacred space, both public and private, although the main emphasis is on religious buildings... In the Muslim portrayal of the Franks, symbols of pollution and impurity abound. They reflect wellsprings of Muslim religious revulsion at a deep psychological level.⁵⁸⁷

No wonder that on reclaiming Jerusalem, one of Saladin's first actions was to purify the *Aqsā* of "*aqdhār wa anjās*" ("filth and impurity"), that is, from the physical taint of *kufr*.⁵⁸⁸ A millennium later, in the wake of the twin tower bombings of September 11th 2001 and in a different "crusade", pollution language is to be found in the diatribe of both sides.⁵⁸⁹ Thus, in concrete historical settings, when polemic is high and the need to keep the *mushrik* at bay more pressing, Douglas' theories may yet be confirmed in an Islamic context. However, while ideas of pollution and defilement can prove very effective symbols of resistance, the Sunni purity laws themselves speak of no need to defend Islam from the non-Muslim. Indeed, contrary to all expectations, in practical terms, *taharah* deals more strictly with Muslims than it does with non-believers.

⁵⁸⁷ C. Hillenbrandt *The Crusades: Islamic Perspectives* (1994, Edinburgh, Edinburgh University Press) p.284.

⁵⁸⁸ Hillenbrandt 1994:300.

⁵⁸⁹ A spokesman from one of Madrid's Muslim communities inflamed an already problematic situation between the city's North African Muslims and native Madrilenos when he described the day as the beginning of "a world wide purification of *kufr*" on national television! An even uglier example of this sort of usage of pollution language came from an American lorry driver named Phil Beckworth. On the day after the attacks, he went to the main offices of *The Ranger*, an independent newspaper in New York, to place an announcement. In it, Beckworth posed the rhetorical question: what can be done with the Muslims of the world? His answer was that

CHAPTER 9

WOMEN

“She is lovely because we spiritualise her... But she is inherently dirty, her elements are lustful and black, and her menstrual periods diminish her in my eyes. Nevertheless, I revere women, I love them” (Federico Garcia Lorca⁵⁹⁰)

Contrary to the general nature of the *ṭahārah* system, it may be said that Islamic pollution laws reflect – *to a very limited degree* - a Muslim woman’s inferior religio-social status. Aside from the difficulties this causes for our general thesis, there are two reasons why the present chapter must be handled with special care. Firstly, a great deal has recently been written about the lives of Muslim women; much of it has been from a feminist perspective and is often very critical of the law’s standpoint.⁵⁹¹ Secondly, until recently, there has been a consensus of scholarly opinion that the existence of menstrual pollution *automatically* demonstrates women’s lesser role in society. If we combine these viewpoints, a distorted (and anachronistically negative) picture of the jurists’ intentions regarding women will result.

To present a balanced account of this subject, the present chapter is roughly divided into four parts. It starts by listing the three ways in which the menstruant’s restrictions outweigh those imposed on men. Then, I will outline the arguments of two scholars, Julie Marcus and Denise Spellberg, whose approaches have combined Sunni *ṭahārah* material with received wisdom on menstrual “taboos”, in order to show (or, as seems more likely, to exaggerate) the subordination of women in both Islamic law and tradition. Next, I will look at the usual

“we have to find them, kill them, and wrap them in pig skin. That way they’ll never get to heaven!” For both stories, see *El Pais* Sept.15 2001.

⁵⁹⁰ Cited in Leslie Stainton’s *Lorca A Dream of Life* (1998 London, Bloomsbury) p.43.

⁵⁹¹ These studies are both political (see ie. Karam *Women, Islamisms, and the State* 1998 London, MacMillan Press), and sociological (see Haddad and Esposito’s collection of essays *Islam, Gender, and Social Change* 1998 Oxford, Oxford University Press). The interesting thing about many of these works is that they come from Muslim women who, for the first time, are speaking out and criticising their lot in life. See especially Fatima Mernissi’s *Beyond the Veil* (1975 New York, Schenkman), and Fatna Sabbah’s *Woman in the Muslim Unconscious* (trans. by Mary Jo Lakeland 1984 New York, Pergamon Press).

Muslim explanation of a woman's "impurity" which, not surprisingly, sees no such interest in subordinating her. The differences in outlook between the two approaches can be summed up by their contrasting interpretations of the word "*adhan*" in the Qur'anic verse on menstruation: "Say: it is an "*adhan*", so let women alone at such times and do not approach them until they are purified" (2:222). In the standard Qur'anic commentaries, *adhan* is rendered as "a harm", "an illness", "a hurt", "a pollution", or, in Dawood's genteel diction, "an indisposition". The truth, however, is that the precise intended meaning of *adhan* is not known, hence the reason why men are to be wary of menstruants (they are not to be "approached" [*la taqrabuhunna*]) is decided according to the perspective of the commentator. From this state of ambiguity, some Western scholars assume that Sunni Islam perceives the state of the *ḥa'id/nafsā'* to be something that causes harm; Muslim scholars, on the other hand, perceive it to indicate a woman's vulnerability. In the first reading, menstruating women *pose* danger to others, and are restricted because of this; in the second, they are *in* danger, and are restricted from certain acts for their own good. In my view, neither reading satisfactorily explains the menstruant's restrictions in *tahārah*. Instead, this chapter concludes (in its fourth part) by suggesting that an awareness of the risks and dangers accompanying men *and* women's sexual drive and fertility (in both social and religious contexts) lies behind the restrictions for each major *ḥadath*. Hence, rather than portraying Muslim women as simply the victims of the *tahārah* system, we shall see them bearing much of the same responsibility as their male counterparts.

Let us begin by asking what proof exists that women are impeded by *taharah*. The strongest evidence is simply that a man need never be excluded from his religious duties, whereas a woman inevitably is. When a man is travelling (and/or no water is available) he may purify himself through *tayammum*; a woman, however, faces habitual restrictions from worship and

the mosque due to her menstrual and lochial bleeding. That this is a serious impediment to her religious way of life – *although with the exception of sexual intercourse not her life away from it* - is surely the reason why the boundary lines between *ḥayḍ/nifas* and *istihādah* are described with such precision (ch. 7.2.B.). There are also two more subtle strategies of subordination. As we have seen, for instance, Malik, Shafi‘i, and their schools assume that a boy’s urine is less impure than a girl’s of the same age (ch. 6.4.A.). As noted, aside from the obvious implications of gender hierarchy, there is no legal reason for this. Another proof of a somewhat patriarchal subtext to the law (and one that has not been mentioned) is that a *ḥayḍ* or *nafsā’* is expected to make up her fast as *qada’* (delayed performance of worship). This is unusual, for, at any other time, *qada’* is only imposed on a Muslim who misses his or her obligatory duties through traveling, sickness, forgetfulness, or willful disobedience (*Bid* pp. 207-209). The closest *ḥayḍ/nifas* comes to any of these is sickness; however, these conditions are explicitly distinguished from *istihādah* and *kudr* on the basis that they occur in good health, while the latter do not. Thus, it transpires that a woman must make up her religious duties, despite the fact that nothing unusual has happened to her. In this way, while *qada’* performances may allow a woman to increase, or at least regain her piety, they also enforce the lasting impression of her religious inferiority.

This list (prolonged absences from worship, the greater impurity of a female infant’s urine, and the “imposition” of *qada’*) constitutes all the evidence that *ṭahārah* regulations uphold a woman’s lesser religio-social status. Given this, the position of the *ḥā’id/nafsā’* needs to be considered in light of the aforementioned consensus of opinion on the functions of menstrual pollution. For, no matter what discipline scholars have been writing from within – be it anthropology, sociology, psychoanalysis, or medicine – their approaches to menstrual pollution have generally consisted of the following three suppositions:

1) The menstrual taboo is universal... (G)enerally the object of a taboo may be a source of good or evil, but (2) in the case of menstrual blood the ascriptions are universally evil...(T)he menstrual taboo exists as a method of protecting men from danger they are sure is real (the source of which is women), and it is a means of keeping the fear of menstruating women under control... 3) menstrual taboos that often apply to native women throughout their middle years will function as a mechanism for reducing the status of women in contrast to men.⁵⁹²

The academic truism that all societies that practice menstrual pollution beliefs do so in order to reinforce the subjugation of their women is typically supported by the observation that menstrual blood (and hence the menstruant herself) seems always to be more feared, and thought more powerful than other polluting substances.⁵⁹³ We have already mentioned some of the materialist and psychological theories for why this should be the case; these include the ideas that this blood carries toxins, or invokes fears of castration, or vaginal envy (see ch. 3.1, 2). Another theory is that menstruation spells the end of the month's chance for children, and is tabooed for that reason.⁵⁹⁴ We need not go on. It suffices to say that Simone de Beauvoir's assumption that: "the blood does not make women impure; it is rather a sign of *her* impurity"⁵⁹⁵ has been repeated so many times, in so many contexts, that "menstrual theory" is now as universal as menstrual taboos.⁵⁹⁶

⁵⁹² Buckley and Gottlieb 1988:7-9.

⁵⁹³ The "most horrid and dangerous of pollutions", Frazer 1995:597.

⁵⁹⁴ See e.g. Isidor Silberman "A Contribution to the Psychology of Menstruation" in the *International Journal of Psycho-Analysis* 31 (1950) 258-267 (261-2).

⁵⁹⁵ De Beauvoir *The Second Sex* ed. and trans. by H.M. Pousley (1988, London, Pan Books) p.158

⁵⁹⁶ After Michel Foucault, any argument that depicts power relations unilaterally, and does not implicate both dominant and subordinate factions rings false, see e.g. Bell 1992: section III. Yet, arguably more than anywhere else in ritual analyses, this is exactly the way menstrual pollution rules and behaviour have been reported. Douglas must share a little of the blame for this because, although she normally expects to find menstrual pollution beliefs in contexts where women possess too much power, thus are the *cause* of social tension (and not necessarily voiceless recipients of male tyranny), she still envisages menstrual pollution as a tactic for subordination. Her arguments have had enormous influence on recent anthropological research into menstrual pollution, see above fns 167 & 168 for a list of works indebted to them. Buckley and Gottlieb's study (1988) is the definitive guide to the subject of menstrual pollution and, by showing numerous instances where menstrual blood has been accredited with powers to do good (cure illnesses, improve the fecundity of wheat fields etc.),

Marcus and Spellberg present the laws surrounding *hayd/nafsa'* as if they are typical strategies of male domination.⁵⁹⁷ Julie Marcus worked in Morocco, and bases her theory on a reasonably detailed explanation of the law.⁵⁹⁸ Anticipating Reinhardt's general rationale, her theory is that while human beings exercise some control over other bodily emissions, menstruation is beyond a woman's ability to control. This forever damns her as "polluted":

Women are polluted because they lack the ability to control their movements (i.e. menstruation and lochia). (In contrast to) a man who can control his risk of major pollution through celibacy; a celibate woman would still be uncontrollably polluted through menstruation.⁵⁹⁹

This, Marcus claims, is not merely an insight into Moroccan society of the late twentieth century, but into the "Islamic mind set" regarding a woman's place in society. In her view, "pollution categories not only establish the structure of Islamic community, they also define Muslim women as uncontrolled and, therefore, inferior".⁶⁰⁰ Indeed, she concludes that, whereas we might be tempted to look at *fiqh's* family or inheritance laws to gauge the law's influence on Islam's perception of womanhood, it is actually *taharah* law that has the most bearing on it:

and where women use menstrual taboos to work in their favour, offers a healthy critique of the general assumptions regarding menstrual pollution (see esp. Introduction).

⁵⁹⁷ For two other anthropological investigations into the functions of Islam's menstrual pollution ideas that also briefly touch on the law, see Delaney's article "Mortal Flow: Menstruation in Turkish Village Society" (in Buckley and Gottlieb 1988:75-93), and a book by Marjo Buitelaar entitled *Fasting and Feasting in Morocco* (1993 Oxford, Providence R.I.). Both authors also focus on the negative implications of a woman's bleeding. Working in a Turkish village, Delaney observes that menstruation is commonly believed to have been given to women because of Hawwa's (Eve's) act of disobedience against Allah in the Garden (which confirms Spellberg's argument, see pp.238-239). Indeed, her transgression was so great that it was responsible for bringing all impurity (*pislik*) into existence. Buitelaar did her research in Morocco and, like Delaney, draws attention to the feelings of shame that menstruating women are expected to feel (1993:117). This author devotes a small section to pollution law (see pp.103-104). However, because she classifies major impurity as only sexual (i.e. *janābah*), and minor impurity as "the result of contact with traces left after urination or defecation, dust or mud on the roads, blood or pus", rather than the acts by which these substances appear, she (like Abu Hanifa) blends the distinct natures of *hadath* and *khathath* (as well as wrongly describing mud as an impurity).

⁵⁹⁸ See Marcus 1985. She uses two Hanafi translations, *Endless Bliss* and *The Religious Duties of Islam as Taught and Explained by Abu Bakr Effendi*, which have also been used in this study.

⁵⁹⁹ Marcus 1985:216.

⁶⁰⁰ Ibid

The analysis of pollution law suggests that some important concepts about women and their place in society are indeed embedded in Islamic law... (I)t suggests that these are to be found in the laws of purity and pollution and not in family law. Unlike family law, which is constantly subverted in practice and which has the capability to improve the economic status of many Muslim women, pollution law has been relatively unchanging and is incorporated into the daily life of Turkish men and women very much as it is written.⁶⁰¹

Although, as the only anthropologist to have managed to combine field research on pollution behaviour with legal data on *najāsah*, Marcus is to be congratulated, her conclusions regarding the extent to which gender hierarchy is articulated through *tahārah* are surely erroneous. For a start, as should be perfectly obvious by now, in describing the menstruant as “polluted” she misrepresents the intention of the law. She does not mention that *ḥadath* is a morally neutral state, but gives the impression that the jurists intend to shame women. Furthermore, Marcus’ main argument (that women’s religio-social inferiority stems from, and is reflected in, her lack of biological control) runs aground for the same reason as Reinhardt’s. To reiterate what was said regarding that (see Part II, Exc.C): although physical control is a factor in the contraction of *ḥadath*, when a woman loses control of her bleeding completely, and becomes *mustahādah*, the jurists unanimously permit her to participate in prayer. This shows a lenient stance towards women; it does not portray the absence of control associated with vaginal bleeding as a woman’s fault, nor as proof of her greater pollution.

Spellberg’s article is the only other serious attempt to attribute patriarchal interests to *tahārah*’s treatment of the menstruant.⁶⁰² According to that, the figure of Eve (Hawwa) who symbolises all women in early Islamic tradition was gradually but increasingly misrepresented by *ḥadīth*, historical, and legal sources because the Qur’an’s comparatively egalitarian depiction of her proved unpopular. This process occurred because of the

⁶⁰¹ Ibid.

widespread influence of Jewish traditions and stories (*isrā'iliyyat*) on early Islam.⁶⁰³ Thus, in contrast to what we find in Scripture (see Q.20:120-123 for the fall), where she is never “an active player in her dealings with the divine or Satan”, but in keeping with Jewish and Christian fall narratives, Spellberg notes that post-Qur’anic sources (from the middle of the eighth century C.E. onwards) accuse Eve, and Eve alone, for mankind’s Expulsion from the Garden.⁶⁰⁴ According to Spellberg, because the Qur’an’s portrait of her was merely an outline, Muslims had needed to fill it in. Unfortunately, they chose to do so by adopting Judeo-Christian stereotypes - forging “shared symbolic links between the two existing Middle Eastern monotheisms and Islam” in the process⁶⁰⁵ - and, as a result, Muslim tradition has come to think of Eve/woman as deceptive, stupid, and “crooked”.⁶⁰⁶ From among the *hadith* collectors, Spellberg notes that Bukhari only makes one, very negative reference to Eve:

Were it not for Hawwa (Eve), the female would not deceive her husband.⁶⁰⁷

Tabari shares the same views, but also tells us that a woman’s biology (and, in particular, her menstrual cycle) is the physical proof of Eve’s crime:

Were it not for the calamity that afflicted Hawwa, the women of this world would not menstruate, would be wise, and bear their children with ease.⁶⁰⁸

⁶⁰² D. Spellberg “Writing the Unwritten Life of the Islamic Eve: Menstruation and the Demonization of Motherhood” in *International Journal of Middle Eastern Studies* 28 (1996) 305-324.

⁶⁰³ As proof of this influence, Spellberg notes Zayd Ibn Thabit’s familiarity with Jewish sources, and Ibn Ishaq’s inclusion of *isrā'iliyyat* in his *Kitāb al-Mubrada*’ (*The Book of Beginnings*, reconstructed by Gordon Newby), Spellberg 1996:308-309.

⁶⁰⁴ Spellberg 1996:307.

⁶⁰⁵ Spellberg 1996:320.

⁶⁰⁶ The notion that women are crooked (because they are formed from ribs) is found in another of Bukhari’s traditions (see Spellberg 1996:ibid), and has found its way into Muslim gender stereotypes. Hence, the conservative Muslim scholar Shar’rawi defends the idea of a woman’s crookedness because he thinks it is this characteristic, in particular, that enables her to perform her daily tasks, such as “dealing with children who need strong compassion, and sympathy, not rationality”, cited in B. Stowasser’s *Women in the Qur’an, Traditions, and Interpretation* (1994, New York, Oxford University Press) p.37.

⁶⁰⁷ Cited in Spellberg 1996:311.

⁶⁰⁸ Tabari *jamim al-bayam fi tafsir al-Qur'an* I:529, cited in Spellberg 1996:311.

Significantly for us, Spellberg claims that the process via which Eve was vilified was given extra momentum by *tahārah* law. To demonstrate this, she notes that, in Ibn Maja's *hadith* collection, there is only one reference to Eve, which occurs in his section on the diminished impurity of a male infant's urine. In order to explain its meaning, Ibn Maja cites Shafi'i's apparent theory that:

Male infants are composed of water and mud or clay, but their female equivalents are composed of *lahm* and *dam*.⁶⁰⁹

In other words, while Allah created man from pure ingredients (water and mud, *tahārah*'s two purifying elements), woman was created (after him) from his flesh and blood (and blood is *khābith*), which presumably means that they possess an ingrained impurity that men do not. Of course, this runs counter to the jurists' usual definition of our biological essence – which states that all human beings are thoroughly pure. Spellberg does not comment on Shafi'i's perplexing statement, but, from this one passage, deduces that:

Eve's placement in a section dedicated to ritual purity seems to signal implicitly that women are born ritually unclean and that they are made of different substances than men. Blood may also signal menses, which will indeed render the female infant ritually impure in Islamic practice on a monthly basis and link her to the physiological punishments meted out from the specific to the general indictment of all women, enforcing key differences in biology and gender definition.⁶¹⁰

Thus, Spellberg unites Shafi'i with Ibn Maja, Bukhari and Tabari in the early Muslim conspiracy to describe women as weaker, impure, and dangerous to men. By doing so, she traces Islam's misogynist and corrupt view of women to a select group of four: the greatest *hadīth* collectors, historian, and legal scholar, the faith has ever known!

⁶⁰⁹ Ibn Maja *Sunan* 1:174-175 (cited in Spellberg 1996:313).

⁶¹⁰ Spellberg 1996:313.

While Spellberg's general argument seems sound, there are several problems with her use of *tahārah* law. Firstly, despite relying on the Qur'an to show what she assumes to be Islam's earlier, less biased understanding of women, she only briefly mentions the Qur'anic verse on menstruation (cited above p. 233), saying "it enjoins men not to have intercourse at this time". This is true, however, the same verse actually states that men should not even *approach* (*lā taqrabuhunna*) women in their menses. A literal reading, therefore, would result in the complete sequestering of menstruants (such as has been known in Jewish communities⁶¹¹). Instead, the jurists take into account many, more liberal *ahādīth* and permit menstruating women almost complete freedom in their lives. We have referred to some of these already (see p. 118) and we recall that they portray 'A'isha resting her head in the Prophet's lap, or washing his hair, and sharing his ablution vessels. These indicate a very different approach to the position of the *ḥā'id/nafsā'* than the one Spellberg implies is characteristic of the law. Secondly, like Marcus, Spellberg incorrectly presumes that Muslim women are *born* ritually polluted. In light of the explanation Ibn Maja attributes to Shafi'i, it is not difficult to see why she thinks this, but it is wrong all the same. Thirdly, it is not clear what she means by describing the female *infant* as "ritually impure... on a monthly basis". A woman does not incur a major *ḥadath* until she starts to menstruate (when she is obviously no longer an infant); nor is it even obligatory to lift a *ḥadath* until a Muslim reaches adolescence (*bulūgh*). Fourthly, although it is true that many, although not all jurists rule that a baby boy's urine is less *khabiṭh* than that of a baby girl (ch. 6.4.A.), Spellberg does not note the rarity of this *ḥukm* within *tahārah*, but unfairly implies it is typical of the system as a whole. Fifth, and lastly, while Jewish (and Christian) ideas of Eve's culpability in the Garden certainly did influence Islamic textual traditions, Spellberg's conviction that Islam's views on

⁶¹¹ See Silberman 1950.

menstruation were influenced by Jewish ones is misleading. Indeed, we have noted Thabit's tradition, which explains the meaning of the Qur'anic verse (putting the mildest spin possible on it), and permits the Muslim menstruant complete freedom – with the exception of intercourse - in the social sphere.⁶¹² The Biblical purity laws, in contrast, are far better examples of gender hierarchisation, and the *taharah* system is simply not comparable.⁶¹³ In summary, it seems that Spellberg is too keen to show how Islam, in general, has strayed from the Qur'an's gentle message of gender equality to pay due attention to the law itself.

It is important to realise that, while gender concerns may have played a part in the formation of *tahārah* law, the jurists made sure that this was minimal. The following examples show that matters could have been much worse. As we know, for instance, some jurists made the duration of the *nafsā's hadath* dependent upon whether she gives birth to a boy or a girl: in the former instance, she is excluded for thirty days, in the latter forty (*Bid* p.54, see p. 207).⁶¹⁴ In the same vein, a minority rule that men are not to perform *wuḍū'* with water that has been left over by women, although, when the roles are reversed, a woman's *wuḍū'* stands (*Bid* p.29). Others hold that a menstruant's *su'r* renders ablution water invalid (*Ibid*), or that they spoil food by touching it.⁶¹⁵ And the Kharijis insist that women perform *all* their missed prayers as *qada'*, which would leave them forever straining to catch up (*Bid* p.224). If these types of regulations had represented the norm, women would fare far worse due to their menstruation. In fact, many jurists were clearly aware of the unfairness of a woman's prolonged exclusions from *ibādat* due to her menstruation, and were willing to grant her some leeway. Thus, while the *junūb* is not permitted to recite any passages of the Qur'an,

⁶¹² Muslim "*Ḥayḍ*":592. See p.41.

⁶¹³ For the Biblical restrictions on the menstruant, see Milgrom 1991:934-941; for gender hierarchy in the Old Testament, see Eilberg-Schwartz 1990:180ff.

⁶¹⁴ This is not too different from Biblical law, where the birth of a girl renders the mother impure for twice as long as the birth of a boy (Lev.12:2-6).

Malik permits the *ḥā'id/nafsā'* "some recitation because of *istiḥsān* (juristic preference)" (*Bid* p.50), and others permit it as long as she spaces the words out, or does so from memory.⁶¹⁶

Likewise, the Shafi'is allow her to touch a copy of the Qur'an if it is for purposes of learning or teaching.⁶¹⁷ While a certain degree of caution is expressed about these exemptions, through their existence the Sunni jurists show themselves to be sensitive to the nature of a woman's restrictions. Ultimately, as we repeatedly saw throughout Part II, the jurists wish no Muslim to be excluded from worship for longer than is absolutely necessary, and this maxim includes women. Indeed, the *mustahādah*, whom neither Marcus nor Spellberg mentions, is the best example of it.

If Marcus and Spellberg go too far in one direction, other scholars travel equally far in the other by denying that there may be any social function to the menstruant's legal restrictions. Instead, an argument often found in traditional Muslim sources is that these restrictions are intended solely to protect women, because menstruation makes them vulnerable. For example, a recent self-help manual for Muslim women explains that:

In Islam, menstruation is not a curse, but for one's own good certain things may not be done. Sexual intercourse is forbidden because it can cause major illnesses (like severe menorrhagia, perimetric irritation and parametric inflammation). (The) other restrictions are intended to remind you that, during this time, you are more vulnerable, and that you must nurse your body.⁶¹⁸

⁶¹⁵ See Rodinson's article on "*Ghida*" in E.I.II. The same logic explains why a minority forbid consuming the meat of an animal that had been menstruating when killed (*Ibid*).

⁶¹⁶ Boudhiba 1998:53. Those granting a concession to the *ḥā'id/nafsā'* can defend their opinion logically. For, with the exception of *tawāf*, she should participate in all acts during *Hajj*, and is expected to vocalise certain Qur'anic passages while doing so. Likewise, in the Eid prayers, which she is expected to attend, she is not just permitted, but obligated, to say the *takbir*. For these arguments, and a consideration of the general problem, see B. Zara's article "The Requirement of *Tahārah* for Reciting or Touching the Qur'an" (an appendix to a forthcoming book entitled How to Read and Understand the Qur'an) available at <http://www.uh.edu/campus/msa/articles/zara.htm>.

⁶¹⁷ Or, as in the case of Yusuf Ali's translation, when less than fifty per cent of the words are in Arabic, see *The Muslim Woman's Handbook* Huda Khattab (1993, London, Ta Ha Publishers) p.10.

⁶¹⁸ Khattab 1993:12.

For the medical materialist, this is a perfectly logical explanation of the prohibition on sexual intercourse with a woman during her menses; however, it does not explain why the majority of the jurists still have major misgivings about letting the *ha'id/nafsa'* touch, or even read a Qur'an, or enter the mosque. Yet, when it can be done, these constraints are also explained rationally; in particular, a women's prohibition from touching the Qur'an, and exclusion from the mosque are attributed to the fear that she might leak menstrual blood onto these sacred targets. Take, for example, Abdul Siddiqui's comments in his translation of the *Mishkat*:

Mahid (menstruation), which has been described in the Qur'an as an *adhan* is a noun of place (nomina loci). It is, therefore, the female organ that secretes the blood of menstruation that is polluted, and not the whole of the woman's body. If women are not permitted to enter the mosque (or touch the Book) during this period, it is not because they (women) are defiled or polluted, but due to the reason that the drops of blood may fall on the sacred places.⁶¹⁹

Although he is not interested in explaining why she is prohibited from reciting or touching the Qur'an, nor in the political uses of pollution ideas in general, Maghen concurs with Siddiqui's logic as regards the *ḥā'id/nafsā'*'s exclusion from the mosque, which he insists is only because she might drip menstrual blood onto the floor.⁶²⁰ He bases his argument on Muhammad's behaviour towards his wives when they were menstruating:

The Apostle, as depicted in these *aḥādīth*, was (solely) interested in avoiding contact with the actual '*ayn al-najāsah*', the menstrual blood. It is only this blood, as an *intrinsically* impure substance, a substance with a *status* of *najāsah*, which can potentially communicate ritual contamination to the spouse or partner.⁶²¹

⁶¹⁹ *Mishkāt* p.271. Uncomfortable with the idea that a menstruant is prohibited from entering the mosque, other scholars suggest that she is, in theory, entitled to do so; but that there is no need for this as she is not permitted to pray, see M. Ali *The Religion of Islam: A Comprehensive Discussion of the Sources, Principles and Practices of Islam* (1936, Lahore, The Ahmadiyya Anjuman Isha'at Islam) p. 394.

⁶²⁰ Maghen's real concern is to show that the menstruant is excluded from sacred places for different reasons than her Jewish counterpart (who is capable of defiling places as well as people).

⁶²¹ *Ibid* (his emphases).

From this, Maghen reasons that what is true for the Muslim male, must also be true for the mosque:

Like the inherently pure beast (who is) rendered temporarily “impure” by virtue of contact with or ingestion of *najāsah*, (and) who can only transmit his contamination onward by emitting the ‘*ayn al-najāsah*’ itself from a given orifice, such that it touches or mixes with the “target”— so here the problem is most likely the potential dripping of blood from the vagina onto the floor of the mosque.⁶²²

This argument falls short in three significant ways. Firstly, as we have seen, the majority of jurists are not concerned when a non-Muslim enters most mosques; this includes non-Muslim menstruants, whose undergarments are certainly not checked and who, presumably, are just as likely to leak menstrual blood as Muslim women. There is no logical reason why a mosque should be susceptible to the effects of blood belonging to a believer, and not a non-believer; thus, we must conclude that it is not the menstrual blood itself that compels the exclusion. Secondly, despite the obvious meaning of the traditions involving Muhammad and his wives, it is also not proven that the prohibition against sexual intercourse with a menstruant stems solely from a wish to avoid her menstrual blood. Instead, there seems to be more to the matter than this. For most jurists rule that, regardless of whether or not it has blood on it, the *skin* under a woman’s ‘*izar*’ is not to be touched (*Bid* pp. 59-60). If it is not bloody, her skin is not *mutanajjas* (if men do venture to put a hand there, they do not then have to wash), yet it is still out of bounds, or “fenced off”. It follows that, if the jurists are not solely concerned with making sure that a man does not come into contact with menstrual blood, then perhaps they are not solely concerned with keeping menstrual blood out of the mosque. The third, and most compelling reason why this argument does not convince is that it cannot explain why the *jimūb* is also expelled from the mosque. Maghen is well aware of this, for he admits that:

while the *ḥā'id* might drip menstrual blood onto the floor (as the *nafsā'* might do the same with post partum blood)... it would be hard to argue that the *junūb* poses a similar hazard: semen dries quickly not to mention that most of the *fuqaha'* rule, following a report of 'A'isha that *janābah* is contracted by *julūs bayn shu'abihi al-arba'a* (sitting between her four parts) and *mass al-khitan al-khitan* ("the meeting of the two circumcisions") regardless of whether semen (of any kind) is emitted or not... with this data in mind, we cannot with confidence attribute the prohibition against a *junūb* entering a mosque to the fear of contamination of the place of prayer via contact with *'ayn al-najāsah*.⁶²³

The above realisation forces him into something of a *volte-face*; his solution is that *janabah* and not *hayd* or *nifas* must somehow:

Constitute a special case, a state which is *polluting* of the mosque in a different fashion than other categories of impurity, a fashion which falls outside of the normal routes of the transmission of defilement in the *tahārah* system. This uniqueness would appear to consist in some special, intangible/spiritual quality of *janābah* which is conceived to be fundamentally at odds with sacred space.⁶²⁴

Maghen does not explain what this special, "intangible/spiritual quality" of impurity might be, or why it is magnetically attracted to places of prayer. We will not be sidetracked into speculating over these things yet. For the moment, what is important is, as I have already argued, that there is nothing to prove that a mosque is capable of being polluted in any way whatsoever (and if *janābah* could do this, we can be sure that all the jurists and not just the Malikis would prohibit non-Muslims from entering mosques). Furthermore, there is also no evidence that the jurists believe that, in *janābah*, they are dealing with a different kind of impurity altogether. In fact, the opposite appears to be true, as most of them rule identically for the *junūb* and *ḥā'id/nafsā'*, on the assumption that their impurity is of equal severity and type.

⁶²² Maghen 1997:264. (Parenthesis added.)

⁶²³ Maghen 1997:295-296.

⁶²⁴ Maghen 1997:297 (my emphasis).

It has been necessary to point out the inconsistencies in Maghen's argument because, by explaining the menstruant's regular exclusions from the mosque as stemming solely from the tangible impurity of her blood, he is in danger of obscuring the fact that this regulation *distances* women (and not just the parts of them that bleed) from the ritual sphere. As we began by noting, because they are never excluded from that sphere, this strategy elevates men above women (to a small degree) there. This point made, I believe that, rather than being weak strategies of gender domination, there is a far clearer message behind the restrictions accompanying major *ḥadath*. Before coming to that, it proves heuristic to ask why – if at all other times the *tahārah* system spurns the use of pollution themes to bolster hierarchies – it is not even more lenient in the case of women.⁶²⁵ To suggest an explanation, let us return once more to Douglas' theory that areas of social tension often attract the use of ritual pollution ideas.⁶²⁶ In particular, this may help to explain why menstrual impurity only limits a woman in her religious obligations, and not - bar sexual intercourse - in her other daily interactions. For, in those interactions, a woman's position, like the *kāfir*'s, is set firmly and unambiguously below a man's because the jurists can rely on specific Qur'anic verses to delineate precisely what constitutes a man and woman's share of money and power. On the basis of these verses, Rippin summarises women's legal position in the following, straightforward terms:

In terms of her legal standing in the Islamic system, women's rank, logically enough reflects the assumptions of the social structure... Thus the Qur'an establishes that the testimony of two women is required to equal one man (2:282).

⁶²⁵ I concede that this question is anachronistic. Expecting the already remarkably lenient jurists to grant menstruating women more leeway still – where throughout the ancient Middle East, and certainly in (Southern) Arabic culture menstrual restrictions were generally far more severe, see f.n. 108, and Milgrom 1991:948 for a list of cross cultural data – is demanding political correctness in the wrong context. However, solely for the point of argumentation, one can ask why the *ḥā'id/nafsū'* is not allowed to pray as long as she wraps herself up like the *mustahādah* (whose blood is also, lest we forget, *khabith*). Or why, if she is permitted *dhikr* as long as she spaces the words out, she cannot recite in a normal fashion, and so on. My hypothesis for the restrictions follows shortly, and may help to explain why they remain important.

⁶²⁶ Regarding menstrual pollution, Douglas' hypothesis is well tried and has proven very successful in numerous contexts, see above fn. 167 for a list of studies influenced by it.

The portion of a woman's inheritance is less than that of a man (4:11). Divorce is allowable upon the woman's instigation only for a set number of reasons (e.g. infidelity, impotence etc., whereas a man need no specific pretext at all... The male rules the house in all matters; the religion of the male is presumed to be the religion of the entire household... A man may marry up to four wives at a time, but a woman may only marry one husband (5:6).⁶²⁷

Add to the above list, the ban on women judges,⁶²⁸ and we see that, in the daily running of socio-economic affairs (i.e. the *mu'āmalāt*), *fiqh* does not need to use pollution ideas to reinforce male dominion over women because, through the above strictures, it envisages little tension between them.

In contrast, however, the Qur'an's teaching on ethical and religious matters (*ibādāt*) promises a Muslim woman absolute equality. Several verses describe how, come the final day, she is to be judged on the same scale of religious merits as men, and that she will enter Paradise as his equal (see e.g. Q. 9:71-72; 16:97, 33:35, 43:70). Thus, it may be argued that there is an inherent tension in the Qur'anic message concerning women that arises from a conflict between its provisions for *mu'āmalat* and *ibādāt*. It follows that, if this tension were to manifest itself at all, it would do so in the sphere of religious worship, rather than in the socio-economic sphere of daily life where a Muslim woman is known to be "a degree" less than her male counterpart (4:34). After all, there is nothing written in the Qur'an to stop women from asserting their ritual equality, or even leading prayers. And, in the earliest times, Stowasser assumes this to have been the case:

Hadīth elaborates on the Qur'anic teachings regarding spiritual equality of women and men, and provides detailed information on women who performed all the religious duties enjoined by Islamic doctrine, thereby proving their full membership to the faith such as prayer, almsgiving, the freeing of a slave, ritual slaughtering of sacrificial animals, and fasting... As for the holy war, its

⁶²⁷ A. Rippin *Muslims their Religious Beliefs and Practices* (1990-93, London, Routledge) p. 119.

⁶²⁸ These days this is a particularly volatile issue, see Karam (1998:144).

equivalent is the blameless pilgrimage. Regarding martyrdom, the woman who dies in childbirth was a martyr. Women also built mosques, and could even act as prayer leaders.⁶²⁹

Like Spellberg, Stowasser may be idealising the status of women among the first Muslims. But, whatever the historical accuracy of her statement, we may be sure that, if ritual performance was once wholly egalitarian between the sexes, its continuation as such is firmly prevented by *fiqh*. For, nearly all the jurists agree that women cannot lead prayers; rather, “they are to remain behind (a man) as Allah has kept them behind” (*Bid* p.161). In light of that, while the *ḥā'id/nafsā'* restrictions may not amount to much – and are certainly not the blunt tools of gender domination that Marcus and Spellberg take them to be – their very existence may reflect the ambiguity of a woman’s status in the early faith.⁶³⁰

Throughout this chapter, I have intended to strike a balance between the external criticisms and internal justifications of a woman’s place within *taharah*. Doubtless, many Muslim women are subordinated via the use of ritual pollution strategies, yet, the prevailing attitude of the jurists as we know is to exclude Muslims from worship for the minimum period possible and, as the example of the *mustahādah* shows, this holds true for women too. Perhaps, then, it may be said that the predominant emphasis in *ṭahārah* is not on using pollution ideas to marginalise women in any aspect of life – but rather to include them, up to a point.⁶³¹

⁶²⁹ Stowasser 1994:30.

⁶³⁰ The Hanafi’s uncharitable assessment of Busrah’s reliability on the question of whether touching the penis causes a minor *hadāth* betrays more than a little resentment that the testimony of women had the power to decide legal practice (f.n.506).^c Probably, the best textual evidence that menstrual pollution ideas were sometimes used in typical ways to subordinate women is a thoroughly chauvinistic *hadīth* attributed to Sa‘id al-Khudri. In it, Muhammad says to a group of women he passes that they should give alms, “as I have seen that you are the majority of the dwellers of Hell (*uriyitukunna akhtar ahl al-nār*)”! When the women ask him why, Muhammad replies that every woman is deficient in intelligence and religion; her intellectual deficiency is proven by the fact that her witness only counts for half that of men, and her religious deficiency is that, when she menstruates, she may neither pray nor fast (Bukhārī “*Ḥayḍ*”:301).

Rather than describing women as victims of *taharah* law, there is perhaps a better way to interpret the rules surrounding both the major *ahdath*. Namely, to consider them as reminders, or symbols, of *the seriousness with which male and female sexuality, and fertility are taken by Islamic law and ritual*. In this reading, both the *junūb* and the *ḥā'id/nafsā'* are joined under the same rubric because, although neither *hadath* is a sin, they are both personally desacralizing. *Janābah* means “exile”, and the *junūb* is temporarily exiled from his Qur'an, his prayers, and, in perhaps the most effective tactic, from mosques as well; a woman also faces a temporary exile from the sacred sphere when she bleeds through menstruation or after childbirth. Although her bleeding is not connected to lust (in fact, having sex with a menstruant is anathema to the jurists⁶³²), it is sexual in the broader sense because it announces her fertility, her capacity to procreate, or her success in doing so.⁶³³

Thus, excluding the Muslim *junūb* and *ḥā'id/nafsā'* from the mosque draws attention to how seriously Islam takes the body's reproductive capabilities. When Muslims contract a major *hadath* – thus becoming overtly sexualised - an invisible drawbridge is lowered, excluding them from their sacred territory, and from the Qur'an. It is not raised until they have gained Allah's blessing through performing their purifications. Accordingly, the awesome nature of fertility, and the importance of sexuality are brought to the fore through symbolic means. Indeed, when we consider that, for many jurists, touching the genitalia, and (according to the Shafi'i's) even brushing the skin of a person of the opposite sex breaks *wuḍū'*, this logic

⁶³¹ For a very good assessment of a woman's actual status within Islamic ritual, see Tayob 1999:71-79.

⁶³² According to Ibn Hanbal, it is punishable by a fine of one (or one half) dinar (*Bid* p.62).

⁶³³ In an interesting study of the Beng tribe, Gottlieb also argues that menstrual taboos are intricately connected to the symbolic classification of space and fertility. For the Beng, a menstruant's seclusion is not necessarily a means to subordinate her (menstruants often enjoy their time apart), but arise because menstrual blood is seen as a symbol of human fertility, and, therefore, must be kept away from the fields which are symbolic of earth's fertility (Gottlieb 1988:55-75). This is a very different context from the Sunni Islamic texts – mosques are not symbols of earth's fertility – nevertheless, the observation that restrictions focusing on menstrual bleeding are not always perceived negatively, but sometimes as a means of signalling women's sexual (and social) power may prove helpful.

seems to permeate throughout much of the *tahārah* system.⁶³⁴ Pace Maghen, I suggest that a Muslims' exclusion from the mosque is not to protect sacred ground from a uniquely powerful impurity, but to teach believers this lesson. This provides a better explanation, moreover, for why the non-Muslim may enter a mosque without *ghusl* when Muslims may not: specifically, that a *kāfir* is *already* exiled – perhaps irredeemably so – from the sacred. After all, whereas a Muslim's sexuality is a powerful and potentially corruptive force, a fact that believers need to be constantly reminded of, further corruption for a non-Muslim is impossible. For most jurists, the matter of whether he enters a mosque is, therefore, irrelevant because it is a lesson that does not apply to someone until they pronounce the *Shahadah*.

An interesting implication of this hypothesis is that, in order to satisfy a very different purpose from the one we usually find, Sunni Islam has overhauled the notion of sacred space as it is expressed in other religious traditions. For, as noted, Jewish, Zoroastrian, and pre-Islamic Arabic societies also exclude menstruants and sexually impure people from entering sacred territory.⁶³⁵ However, they do so because this territory houses the deity, or deities, and hence – if they are not to be upset – it needs to be protected from the ravages of impurity. As both *khābath* and major *ḥadath* are not permitted within the confines of mosques, Islam retains the idea that sacred space is to be preserved from impurity. Yet, there is no suggestion that, if it does gain access, the mosque is vulnerable to attack from (either form of) *najāsah*. Thus, here, as in the matter of demon-pollution, *tahārah* only superficially conforms to the findings of past research into pollution systems. In both cases, its differences serve to highlight distinctive aspects of Muslim faith. As it stands, the regular exclusion of Muslims

⁶³⁴ This is especially true of the Malikis' reading of *tahārah*, where lust is often an important factor in the contraction of *ḥadath*. However, even though Shafi'i himself is adamant that lust should not affect matters, by ruling that *any* kind of physical contact between men and women breaks *wuḍū'*, his *ḥukm*, ironically, conveys the strictest warning about the potential of sexuality (ch. 7.1.C/D).

from the mosque has nothing to do with their threat to Allah (a concept I have a feeling the jurists would have found laughable), but surely helps to instil in believers a constant awareness of the potential danger and power that accompanies human sexuality.⁶³⁶

With this lesson in mind, the following Qur'anic passages strikes a fitting note on which to end this chapter:

And when you ask (Muhammad's wives) ask them from behind a screen (*hijāb*); that makes for greater purity for your hearts and for theirs (*dhalikum atharu liqūlūbikum wa qulūbihunna*) (Q.33:53).

The *hijāb* is often depicted as a symbol of patriarchy, and proof of Muslim women's unfair treatment, but that is not the intention of this *āya*, which calls for sexual restraint and cooperation to be exercised on the parts of *both* Muslim men and women. I would suggest that a complimentary message lies at the heart of the otherwise paradoxical exclusion from the mosque of only Muslims with a major *hadath*.

Recalling the four types of argument by which the function of ritual pollution behaviour is explained, our theory concerning the restrictions placed upon those with a major *hadath* has encompassed aspects from both the socio-symbolic and religio-moral approaches. It is socio-symbolic because it grounds a strict (and to a small degree hierarchised) view of social interaction between the sexes in ritual behaviour; it is religio-moral in that it draws attention to how seriously sexuality, and the creation of life is taken within Islam. Thus, it prepares us

⁶³⁵ See above pp. 4-5, and fn.108.

⁶³⁶ It must be admitted that the subject of sacred space in Islam deserves much more attention than we have been able to give it. Hardly any research in this topic exists and that which does looks solely at the Makkan sanctuary and, true to form, tries to decide whether this was a continuation of the pre-Islamic Arabic reality, or if its origins lie in Jewish notions of the Sanctuary, see G.R. Hawting "The Origins of the Muslim Sanctuary at Mecca" in *Studies on the First Century of Islamic Society*, ed. G.H.A. Juynboll (no d., pub. p.) pp. 25-47. Hawting prefers the latter option. Neither possibility should be discounted; however, as has been said more than

for the next chapter in which Sunni Islam's *ṭahārah* system is considered solely from a religio-moral perspective.

once, it also implies that the major point of interest (the essence of the matter) lies solely in origins, rather than

CHAPTER 10

TOWARDS A RELIGIO-MORAL INTERPRETATION OF *NAJĀSAH*

“Purity is not imposed upon us as though it were a kind of punishment, it is one of those mysterious but obvious conditions of that supernatural knowledge of ourselves in the Divine, which we speak of as faith. Impurity does not destroy this knowledge, it slays our need for it”
(George Bernanos)⁶³⁷

Of our four approaches to ritual pollution, only one, the religio-moral, remains to be considered more fully in the context of *tahārah*. In chapter 3.4 we mentioned four recent attempts in this vein by modern scholars. In contrast to the general and still pervasive tendency among Western scholars to discuss ritual (and especially ritual pollution) as if it has nothing to do with beliefs, each claimed to find a theological message powerfully conveyed through ritual pollution practices. For Choksy, such practices confirm Zoroastrianism’s eschatological promises. For Douglas, the Biblical dietary and pollution systems direct a believer’s attention towards the oneness of God. For Milgrom, the same systems were designed to inculcate respect for life. And, for Wright, Israel’s ritual pollution laws function as symbolic reminders of Leviticus’ numerous moral pollutions. This type of analysis is ambitious. Very often it is also apologetic; indeed, both Milgrom and Choksy are believers and clearly write from that perspective. Yet, while one regularly finds writers declaring their (previously well hidden) allegiances in final chapters, it must be said that this is not my intention. Rather, and not only in the interests of inclusivism, I believe there is a place for this type of approach within the present study. We shall draw it to a close, therefore, by asking what single theological principle is communicated most coherently through Sunni Islam’s manifold *taharah* regulations.

in how pre-existing ideas were re-shaped by the early Muslims.

⁶³⁷ From *The Diary of a Country Priest* (1936 Ch 4).

Before doing so, Reinhardt's apparent supposition that the *tahārah* system is detached from religious feeling must be rejected. As noted, in Reinhardt's view, *tahārah* is an exercise in logical reasoning, a *tour de force* but a system that is characterised by an interest solely in "formal", rather than moral notions of purity.⁶³⁸ This does not convince given the jurists' reliance on the Qur'an and Sunnah – Islam's sacred texts – on every issue. It also ignores the fact that both forms of purifications are described as "*ibādah*" and, in particular, the majority's definition of the pre-*ṣalāh* ablutions as "purifications of the soul", and means "of approaching Allah" (ch. 4.4.A.). Such language may not have been radically new – indeed, as Neusner has shown, metaphorical interpretations of bodily purity and pollution were commonplace in the Middle and Near East by Jesus' time⁶³⁹ – but it shows that, *pace* Reinhardt, *fiqh*'s spheres of legal and moral purity are not completely divorced. Instead, as the following *ḥadīth* (and several others like it) in the *Muwatta* illustrate, when the *taharah* system was still under construction, popular religious themes of spiritual purification were drawn from to show that, while neither form of *najāsah* constitutes sin, lifting a *ḥadath* symbolises the cleansing of sins:

Yahya related to me from Malik... that the Messenger of Allah said: The believing slave does *wuḍū'* and as he rinses his mouth the wrong actions leave it. As he washes his nose, the wrong actions leave it. As he washes his face, the wrong actions leave it, even from underneath his eyelashes. As he washes his hands the wrong actions leave them, even from underneath his fingernails. As he wipes his head the wrong actions leave it, even from his ears. And as he washes his feet the wrong actions leave them, even from underneath the toenails of both his feet.⁶⁴⁰

⁶³⁸ Reinhardt 1990:21, see p.92.

⁶³⁹ J. Neusner 1973:14.

⁶⁴⁰ *Muwatta* "Taharah": 6.31.

Traditions like this occur regularly in the *ḥadīth* collections, they provide the religious sentiment and imagery from which the *tahārah* system was forged.⁶⁴¹ Indeed, even Shafi‘i, who prizes formality and discounts the significance of interior motives in matters of *taharah*, employs spiritual language on occasion (in the case of a dog’s saliva, or the purity of semen for instance, see pp. 150, 164) to support his regulations. In short, although *tahārah* law is a formal discipline as Reinhardt claims, it is also embedded in the theological ideas and values of early Islam.⁶⁴²

If we accept that Sunni Islam’s law and theology are not separate disciplines but, at least in the context of *tahārah*, thoroughly interwoven, looking for a connection between ritual pollution and religious belief is less problematic than Reinhardt would have us suppose. Following the lead of the aforementioned scholars, the challenge is to try and find the *dominant* message – the strongest meeting point between ritual pollution and religious doctrine – as, unlike the Eucharist or even the Zoroastrian purification rituals, there is no direct connection between Sunni Islamic pollution rules and a *specific* religious narrative or doctrine. Hence, while in Yahya’s *ḥadīth*, *wuḍū’* is described as washing away sins, nowhere in that tradition or any similar account does it say what type of iniquities are being (symbolically) cleansed. Instead, as we know, the major Sunni law schools do not associate legal *najāsah* (of either kind) with moral crimes.

This appears to have been a deliberate move, because other early Muslims *were* prepared to fuse moral and legal pollution concepts. In particular, and bearing in mind Ibn Abbas’ *ḥadīth* in which two men are being punished in the after life, one for not purifying himself from urine, and the other for spreading calumnies (cited p.94 above), it seems as if there was an

⁶⁴¹ See e.g. Muslim “*Tahārah*”:438-451.

early tendency to combine *ḥadath* with deception. The examples of the Imami Shi'is and Kharijis demonstrate that this was indeed the case. The former scholars uphold a tradition in which Jaf'ar al-Sadiq remembers Muhammad saying that lying against the Prophets and the Imams is a cause of minor *ḥadath*.⁶⁴³ True to their reputation, the Kharijis take this tendency a stage further, ruling that virtually any act of deceit or impropriety - "bad mouthing, slander, false promises, insults, obscene language, bad or improper thoughts" - breaks *wuḍū'*.⁶⁴⁴ Through these decisions, both factions imbue legal pollution ideas with a moral flavour that is thoroughly in keeping with their own religious and political views. In the Shi'i version, *najāsah* is recruited to support the doctrine that their Imams are the rightful descendants of Muhammad, the born leaders of all Muslims; the implication being, of course, that to lie against them is as "defiling" as lying against the Prophets of old, and even Muhammad himself.⁶⁴⁵ The Kharijis, on the other hand, link *tahārah* with honesty, straight-dealing, upholding one's end of the bargain, and general moral rectitude. Once again, these are all qualities that were prized very highly by the early sectarians who saw themselves as the moral defendants of a faith that had been corrupted by weakness, dishonesty and vacillation.⁶⁴⁶ In contrast to this, the Sunni majority restricts *ḥadath* impurity almost exclusively to biological functions; and, in doing so, ensures that the connection between religio-moral and legal pollution remains undefined.

Yet, this obviously does not mean that *tahārah* is disconnected from Islam's spiritual sphere.

In fact, its laws may be seen to uphold several powerful religious messages. For a start, on

⁶⁴² One of which, as he himself implies, is *hilm* (self-mastery).

⁶⁴³ Howard 1974:44. On these grounds, it is hard to imagine what sin would constitute a major *ḥadath*.

⁶⁴⁴ Bousquet 1950:58. Bousquet bemoans the Sunni's rejection of this link, observing that "il est regrettable que l'Islam ne se soit pas engagé résolument dans cette voie" (Ibid).

⁶⁴⁵ In light of the fact that, for the Shi'is, dissimulation is not only permitted but recommended in situations where telling the truth will land a Shi'i in trouble (a doctrine known as *taqqiya*), it is not surprising that they do not follow the Khariji line and declare all forms of deception a cause of impurity.

⁶⁴⁶ See Watt 1985:7-13.

what may be termed a “horizontal” plane (i.e. the way in which man relates to his fellow man), it has been shown that *tahārah* encourages egalitarianism and compassion whereas other pollution systems uphold the religio-social status-quo. In the present chapter, however, we shall concentrate on the “vertical” function of the *tahārah* system (i.e. how it defines man’s relationship to God). In this respect, it has already been suggested that, by pronouncing the human corpse essentially pure and by dispensing with the obligation for *ghusl* or even *‘izālat al-khabath* in the case of the martyr, *tahārah* draws attention to Allah’s victory over the forces of death, and conveys the promise of a glorious afterlife to the faithful Muslim (Part II Exc. A). Likewise, in the last chapter, it was argued that the concept of sacred territory has been re-sculpted by *tahārah* to draw attention to the importance of human sexuality and fertility. However, while both observations are hopefully valid, they only address parts of the *tahārah* system; there are numerous rules in it that have no obvious connection with death or sex. What is needed, if this type of approach is to be convincing, is an explanation that manages to encompass all the rules, and the system as a whole.

We have already alluded to what this might be in Chapter 4. To elucidate further, we will borrow David Wright’s theory on the religio-moral function of the Biblical pollution laws.⁶⁴⁷

Wright speculates that an important reason why Leviticus’ permitted impurities (menstruation and lochia, sexual intercourse, touching corpses, leprosy and so on, Lev. 11-15) are incorporated into the Priestly Canon is to act as a constant reminder to the Israelites that their bond to Yahweh is not unbreakable. Rather, he suggests that the minor separation from the ritual sphere following these permitted impurities, symbolically imitates the eternal separation - the cutting off from God (*karet*) – that follows the prohibited ones (sexual wickedness, idolatry, murder, and other sins, Lev.18-21). While, as Maghen has shown, there

⁶⁴⁷ Wright 1991; c.f. ch.3.4.A. above

are many differences between the Biblical/Rabbinic pollution system and Sunni Islam's, it can be argued that Wright's interpretation of the religio-moral function of Biblical ritual pollution is also a very helpful way of understanding Sunni Islam's pollution system.

The difference, of course, as the reader has just been reminded, is that Sunni Islamic *taharah* texts do not possess a separate chapter of moral *najasaḥ*. Thus, we cannot simply juxtapose Islam's lists of ritual (permitted) and moral (prohibited) impurities and argue for the existence of a symbolic connection between the two. What we need to ask is what possible sin exists within Sunni Islam that is capable of *terminally* separating a Muslim from Allah. The answer is that there is only one: disbelief (*kufr*).⁶⁴⁸ In this respect, it is highly significant (and, according to this argument, hardly coincidental) that, for some jurists at least, the one moral act also to incur a *ḥadath* is apostasy – the turning away from Islam by the rejection of Allah (and, for some, the wilful absence from prayer, see p. 85). For, through this *ḥukm* an implied message is made almost explicit.

In fact, theorizing that the religio-moral aim of Sunni Islam's pollution laws is to educate Muslims to consider what would happen if the temporary isolation of the *muhḍith* were to become permanent is appealing for a number of reasons. Specifically, it permits us to move the onus away from what the impure person has done, and focus attention on the demands placed upon him (as on all believers) to renew his faith, to remain within the community of the faithful, and on the willingness of Allah to re-embrace him after each and every show of faith (through purification). This lesson is intended for the Muslim alone; the fact that a non-believer is not *khabith* (as we might expect according to this logic) is irrelevant, because his

⁶⁴⁸ The *'Umdat* mentions twenty acts that entail leaving Islam, but all of them fall within the broad definition of *kufr*. Such acts include idol worship, verbal disrespect of Allah, calling another Muslim an unbeliever (and thus taking Allah's place as judge over him), to deny the existence of angels or *jinn*, or the uncreatedness of the Qur'an and so on (*'Umdat* pp. 596-598).

choice is already made and presumably does not worry him. Instead, it is only the Muslim who, through every *ḥadath*, will *feel* that he has been isolated from his prayers and Qur'an, and thus be compelled to do something about it. Hence, rather than viewing the regulations surrounding the *muhḍith* as law for the sake of law, or baseless acts of divine whimsy, they may be seen as constituting a valuable lesson on the importance of renewing belief. Indeed, reading Qur'an 4.43 from this perspective sheds light on why, despite the fact that the Qur'an does not describe any of the various impurities as sins, the last sentence of this verse praises Allah for blotting out sins and "forgiving again and again". This theory also makes sense of the choice of such mundane and morally neutral *ahḍath*; for, they could not be attached to sins because that would confuse the issue. Instead, in order to make the point, they need only to be *regular* and unavoidable. By linking *ḥadath* to sexual acts, menstruation, breaking wind, going to sleep, and so on, believers are reminded not of specific ethical transgressions – lying, murder, cheating and so on, but of man's *general* predicament: his carnality. *Tahārah*'s obvious sensitivity to sexual behaviour and fertility - its rules for touching the genitals, brushing against a person of the opposite sex, and the increased strength of sexual impurity (in which we included both *janābah* and *ḥayḍ/nifās*) – do not clash with this observation, but confirm it. For, through their sexuality, Muslims are at the most carnal, and perhaps their most distant from God.

Adapting Wright's theory, it is possible to read the *taharah* system as a meditation on the importance of belief. In such a reading, it does not matter whether a Muslim is "alienated" by a *ḥadath* or *khath*, both are merely causes of temporary separation, reminders of what can happen if an individual separates himself from Islam. Conversely, both types of purifications enable him to rejoin the fold. Indeed, as far as the rites designed to lift *ḥadath* are concerned, this aim is strongly implied in the majority's description of them as ways of

“drawing near” to God (*hadath* thus signifying a way of being pushed away from God). The stated purpose of removing *khathath*, on the hand, is only cleanliness (ch.4.3.A.); nevertheless, in practical terms, someone who is *mutanajjas* is sidelined in the same way as the *junūb*: he is not fit to pray, nor enter a mosque. It may be argued, therefore, that both forms of impurity and their purifications share the same symbolic purposes. In either form, *najāsah* draws a line between the believer and Allah, the purifications erase this line and, by so doing, symbolically testify to God’s constant willingness to forgive and readmit the believer who lapses. Seen in this way, the religio-moral function of Sunni Islam’s ritual pollution laws is simple, but effective. Any crime less than apostasy is of no importance, social hegemonies are (at best) a minor consideration. Instead, *tahārah* law applies to *all* Muslims, whose attention, through the legal obligation for bodily purification, is repeatedly drawn to the (infinitely more pressing) need to join in, and to re-affirm their faith. This symbolism is confirmed on a grander scale when we consider that, just as apostasy breaks *wuḍū’*, so the convert must also perform *ghusl*. In this case, the purifications really are portals through which one enters or exits Islam. Thus, while in the previous two chapters we saw that it is very difficult to find any idea of spatial defilement in Sunni Islam, here, it may be suggested that, in the final analysis, all effects of *najāsah* attain an entirely symbolic status: lacking independent power, both forms of impurity act as *symbols* of disbelief – the only thing capable of separating a Muslim from God.

It is interesting that the above religio-moral interpretation is not too far removed from the way Ibn al-‘Arabi describes the concept of impurity in *Asrār al-Tahārah*.⁶⁴⁹ In a highly creative marriage of Sufi reasoning and law, he suggests an inward realm corresponding to every aspect of the *tahārah* system. Al-‘Arabi’s ideas are complex, and we do not have space

⁶⁴⁹ Translated by Eric Winkel as *Mysteries of Purity* 1995 Indiana, Cross Cultural Publications.

to do justice to them, but his basic thesis appears simply to be that *najāsah* symbolises “everything which takes you out of knowledge of Allah”, whereas *tahārah* is the action through which one realises one’s faith.⁶⁵⁰

For the Sufi master, however, this message is reiterated in a different form by every *hukm*; and he subsequently explores each in a variety of ways. He rarely criticises (or even attributes a school to) any view, but seeks only to show what he sees to be the inner meaning behind the jurists’ opinions. Hence, for instance, when discussing the category of bodily emissions to break ablution (c.f. ch. 7.1.A.), he claims that Abu Hanifa attaches a *ḥadath* to the emission of every impure substance because that substance symbolises a statement that contradicts one’s faith. Shafi‘i’s approach, on the other hand, shows that even something good (like the profession of faith) means nothing unless it comes from a pure site (a true and faithful heart), not from the bad sites (the anus and genitals represent hypocrisy and suspicion). In contrast, Malik attaches a *ḥadath* to an impure emission when the believer is healthy, because this symbolises the knowing rejection of Allah; he does not attach a *ḥadath* to an emission when it occurs through sickness, on the other hand, because that symbolises the mistaken obedience to disbelief when one knows no better, and, therefore, is blameless.⁶⁵¹

For al-‘Arabi, those who attach a *ḥadath* to touching women with lust (Malikis) do so because lust is a symbol of *anything* someone wants, knowing that to possess it is to disobey Allah. Whether a man breaks *wuḍū’* by touching his penis (Malikis, Shafi‘is and Hanbalis) depends upon him first realising that Allah holds dominion over all things; if he does, his *wuḍu’* remains intact, if not, it is broken. And those who hold that laughter breaks *wuḍu’* (Hanafis) do so on the basis that a thoughtless expression of mirth symbolises the heedlessness of those who do not believe.

⁶⁵⁰ *Asrār* p.151.

In contrast to *hadath*, al-‘Arabī interprets *khath* as “blameworthy character traits”.⁶⁵² However, instead of singling out specific moral crimes, these traits may once again be summarised as “things that deny the sovereignty of Allah”. Blood is good because it symbolises man’s exalted position; but too much blood (more than a *dirham*) is impure because it symbolises man’s arrogance when he becomes aware of this position.⁶⁵³ To counterbalance the nobility of his blood, impurity of urine and excrement symbolise the badness of his nature, the things that keep him from Allah. The reason that some jurists think semen is impure is that the emission of semen can be so pleasurable that a believer loses his awareness of Allah, “and “becomes annihilated from his lord”.⁶⁵⁴ Conversely, those who consider the blood of marine animals pure do so because the word *bahr* (sea) is etymologically related to *ibārah* which is “an expression for knowledge”, or awareness of Allah. Bloodless *maytah* is pure because without blood a creature is “innocent from pretentious claim”, and is never veiled from Allah.⁶⁵⁵ And so on. Thus, while in al-‘Arabi’s view, each form of inward *tahārah* differs according to the form of metaphorical *najāsah* for which it is prescribed, purity itself seems only to amount to the knowledge that Allah exists and must be praised. *Asrār al-Tahārah* is a far cry from the jurists’ discussions, and I do not wish to suggest that the early *fuqaha*’ had the same flights of creative fantasy in mind when they created the *tahārah* code. But I do think that Ibn al-‘Arabi perceptively plays upon the central religious dichotomy - faith/*tahārah* and disbelief/*najāsah* - to be found within it.

Attempting to discover a hidden religious lesson in a ritual system that is both enormously complex, and capable of tolerating a vast number of conflicting opinions within its

⁶⁵¹ *Asrār* p.153.

⁶⁵² *Asrār* p.246.

⁶⁵³ *Asrār* p.250.

⁶⁵⁴ *Asrār* p.260.

parameters, merits a large caveat: as we observed of the religio-moral approaches in general, any such theory is speculative. The obvious, but nonetheless potent rejoinder to the present one is to ask why if the jurists consciously wished to use ritual purity and pollution ideas in these ways they did not say so openly. And to this, of course, there is no convincing answer. What can be said, however, is that our hypothesis (if not necessarily the far more imaginative ideas of al-‘Arabi) – that *tahārah* regulations train believers to reflect upon their faith by symbolically imitating the isolation they would feel were they permanently separated from God – fits the jurists’ unique vision of ritual pollution. Let us finish then by reconsidering the nature and essential features of this vision.

Purity and pollution are biological facts, and a believer’s fundamental purity status is irreversibly pure. Whereas, in other cultures, impurity is perceived as a concrete (normally demonic) force capable of wreaking damage upon individuals and the sacred, Shaytan and demons are only theatrically linked to *najāsah* and neither Muslims nor their sacred places or objects may be damaged by them. Punishment for transgressing *tahārah* regulations is Allah’s to impose and will not be imposed until a Muslim dies. As far as setting the laws is concerned, however, the jurists made their decisions as lawgivers *for* Allah and, while their logic is far from arbitrary, they plainly understood themselves to be in control over the realities of purity and pollution.

The absence of any immediate and demonic threat to Muslims gave them leeway to create a uniquely lenient and prayer-focussed purity code. To a large degree, this is the work of the Malikis and Hanafis. For, while Shafi‘i does his best to stabilise the still maleable system - and, in doing so, demonstrates his own confidence over its rules and regulations - the

⁶⁵⁵ *Asrar* p.252.

previous jurists had consistently redefined the meaning of impurity to suit their purposes. As a result, *tahārah* avoids causing a burden whenever possible, and the effects of *najasah* are conspicuously weakened, or even cancelled altogether, when they threaten the performance of prayer. Among the two early schools, the list of extenuating circumstances is long: the Hanafis' rules on light and heavy, small and large impurity, and the Malikis classification of the *mustahādah* (and anyone with a chronic illness) as pure, and their rejection of bleeding as a cause of *hadath*, enable countless Muslims who would otherwise be excluded to participate in prayers. Indeed, several concessions remain to be mentioned; for instance, when excrement or any other form of *khābath* attaches itself to the bottom half of a woman's dress, or one's shoes, it may be removed by rubbing with dry herbage rather than water (*Bid* p.92). Shafi'i accepts these concessions, just as he permits praying in the sheepfolds and drinking substances into which flies have fallen. The field of *tahārah* debates must have been so full of extenuating circumstances before he sought to fix the system that, more often than not, Shafi'i can only endorse its leniency.

These concessions convey a very important message. For, by conspicuously prioritising his willingness to pray, they ensure – despite Shafi'i's insistence that it does not play an overt part (p. 191) – a believer's moral *intention* is shown to be of fundamental importance to the workings of *tahārah*. If a *muḥdith* forgets his state and prays, or does not notice that he has trodden in some filth on the way to the mosque, the jurists unanimously agree that his prayers will stand (p. 172). Similarly, if a *junūb* or *ḥā'id/nafsā'* has no other choice, s/he can enter the mosque (p. 198, fn.515). On these occasions, intention determines whether or not an impurity takes effect.⁶⁵⁶ This holds true even when the pollution involved is thoroughly tangible; thus, if a Muslim unknowingly uses water that contains *khābā'ith* to perform *wuḍū'*,

his worship is not affected. And, if a man's spouse knows that he has performed *wudu'* with such water, and she feels it is kinder not to tell him (and, thus, not obligate him to perform the ablutions and prayers afresh), there is no compunction upon her to do so.⁶⁵⁷

Such emphasis on intention is unique to *tahārah*. In other cultures, impurity is perceived as occurring *ex opere operato* (by the act itself), i.e. it is effective regardless of the moral condition of the person involved. Douglas explains:

a polluting person is always in the wrong. He has developed some wrong condition or simply crossed some line which should not have been crossed and this displacement unleashes danger for someone... Pollution can be committed intentionally, but intention is irrelevant to its effect.⁶⁵⁸

In stark contrast, by making the effects of impurity dependent upon whether or not someone knows about his state, or is capable of stopping it - just as lifting *ḥadath* depends upon first professing one's intention to be pure (*niyyah*) - *tahārah* once again confounds Douglas' expectations.

It is hard to convey how strange the Sunni Muslim code looks when it is compared against other pollution systems. In Sunni Islam, ritual purity is a private negotiation between believer and deity. Coming to prayer, or walking through a mosque in a state of *janabah* presumably displeases Allah, but He does not seem to mind if this occurs without prior intent, or as a result of pressure. Conversely, however, if a Muslim chooses to ignore the pollution

⁶⁵⁶ For the Malikis, intention may even determine whether a *ḥadath* occurs (e.g. the *mustahādah*, and those who claim that forgetfulness cancels out the existence of a *ḥadath*, see p.196).

⁶⁵⁷ His continuing state of *ḥadath* (and possible "defilement" through traces of *khābath* in the impure water) will not, therefore, negate the value of his prayer (see e.g. E.B. "*Tahārah from Najāsāt*" p.3; although honesty on the wife's part is still recommended). Likewise, recall the *ḥadīth* used by the Hanafis to demonstrate the impurity of water lapped from by predatory animals. There, when Ibn 'Umar worriedly asks the owner of a pool of water whether or not it has been polluted by (the *su'r* of) predatory animals, Muhammad instructs the man not to tell him, on the basis that what Muslims do not know will not hurt them (p.148).

⁶⁵⁸ Douglas 1966:114.

rules and consciously attends prayer in a state of impurity, he also consciously disobeys the will of Allah (and the jurists) and his prayers will not be accepted. The isolation is real, but the state of “impurity” is really only a yardstick against which a believer’s commitment to the rules may be judged.

Returning to our theory, it has been argued that a possible, religio-moral function of these laws is to stimulate a Muslim into reflecting upon his commitment to his faith by symbolically imitating the isolation he would feel were he separated from it. This is an idea we find perfectly illustrated in a *ḥadīth* attributed to ‘Umar:

From ‘Umar b. al-Khattab, (who said) that one day he got up and left in the middle of prayers (of which he was the Imam) and when the people concluded the service, they turned around and saw him praying in the last row. (To satisfy their curiosity) he explained: I performed *wuḍū’* (before worship and was about to enter the mosque) when my concubine Rowmiyah passed by me, and I kissed her. And when I began (leading) the prayers, I felt a trickle of pre-seminal fluid (*wajadtu madhan*). I said to myself – ashamed as I was in front of all of you – I’ll just continue with my prayer.” But then I thought: To fear God the Exalted is far better for me than to fear all of you! And I left and performed *wuḍū’* again.⁶⁵⁹

Madhi is *khābiṭh* and not to be brought into a mosque, prayers are not to be said in a state of *ḥadath*. Yet, ‘Umar’s prayers would not have been affected if he had not noticed his lapse. He did, and that seems to be the lesson. In Sunni *ṭahārah* law, the jurists have linked impurity to one’s conscience; hence, only by willfully choosing not to repeat his purification would ‘Umar have angered Allah. Impurity therefore remains a cause of fear, but it is not a separate and demonic force: only a symbol of disobedience and distance. The responsibility for breaking the purity laws is severe (symbolically reflecting the choice of disbelief over faith), but it is left to the believer’s conscience – the judgment being Allah’s alone to impose.

⁶⁵⁹ *Mabsūt* p.68, Maghen translation 1997:183. Material in parenthesis his.

In summary, *pace* the general tendency to explain the content of ritual systems as resulting from a series of external factors (political, economic, and/or societal), the jurists plainly understood themselves to be in control over the realities of ritual pollution. Accordingly, they created a pollution code that conforms not just to the logical, but also to the religious principles they thought should shape it. Unlike other such systems, within *tahārah*, pollution points to but does not signify an autonomous force, nor does it involve a fundamental change in a person's condition; instead, it is a yardstick according to which a believer's suitability for prayer, and obedience to his faith, may be judged. Neither form of *najasaḥ* – of its own accord – possesses the ability to hurt Muslims or affect the sacred, albeit that, through God's judgement, there is still danger in breaking the rules. In the knowledge that no external threat to the sacred exists, *tahārah*'s regulations are often extremely lenient and human intention plays a major factor (how major depends upon the law school) in determining impurity.

In light of this, we have suggested a religio-moral function of Sunni Islam's impurity laws via which the temporary exclusion following both the contraction of *ḥadath* impurity, and contact with *khathath*, serves to imitate the exclusion a Muslim faces if he makes a conscious choice to leave Islam. In this theory, through its many rulings, the *tahārah* system may be seen to encourage Muslims never to become complacent about their faith. It uses the extraordinarily powerful ideas of ritual pollution and purity to instil in believers a constant awareness of the need to renew their allegiance to Allah.

CONCLUSION

The primary goals of this research were, firstly, to describe Sunni Islam's ritual pollution system and explore the variety of opinions within it, and, secondly, to consider this system in the wider context of ritual pollution studies. To achieve these goals I examined the topic in three parts. Part I set forth the reasons why Sunni Islam's ritual pollution laws have not been studied, it described and critiqued four types of theory on the function of ritual pollution ideas, outlined the main features of Sunni *ṭahārah* law, and began the task of applying ritual pollution theories to an Islamic context. Part II analysed *ṭahārah* law in greater depth by enumerating and comparing the main opinions of the Sunni law schools concerning each form of impurity, as well as making excursions on the relationship between *najāsah* and two psychological theories of its function. Part III considered the jurists' attitude to non-Muslims, and women, and finished by suggesting a religio-moral function to Sunni Islam's ritual pollution system.

In attempting to reach the first goal, something of the scope of *taharah* law has been shown. Thinking back to when I started collecting material for this study, it now seems remarkable that most secondary sources can condense the jurists' views into a matter of lines. The fact that they can, as we know, is due to the still pervasive belief that Islamic ritual was borrowed from a foreign – normally Jewish – origin. As Maghen argues, it does not require much investigation to see that the Sunni Islamic and Jewish codes are wholly different from each other. These secondary sources' capacity for abridgement is all the more remarkable, however, given that within Sunni *fiqh* there are significant differences of opinion over almost every aspect of *ṭahārah* law. This includes the identity of the impurities themselves. The essential purity of the saliva of predatory animals, dogs (and even pigs), semen, or grape wine depends upon the law school to which a Muslim belongs; likewise, some attach *ḥadath*

impurity to nose bleeds, vomiting, and/or laughing while others do not. Quantity and avoidability are significant factors in the Hanafis' determination of *khabath*, whereas Shafi'i chooses generally to ignore them. The Malikis prioritise a believer's moral intention to a greater degree than the other law schools. And so on. There are even variations in the way the underlying logic of the system is explained: in opposition to the majority, the Hanafis do not consider *hadath* purification a "non-rational" act of worship, and this draws strong criticism from Shafi'i, who appears to have played a special part in systematizing the *taharah* code. Indeed, this study reveals only one principle upon which everyone appears to agree; specifically, that no Muslim should be excluded from worship for longer than is absolutely necessary. And, in the case of men, this means never.

In attempting to achieve the second goal, the Sunni Islamic data was considered against various theories on the function of ritual pollution ideas. To my knowledge, it is the first study of this kind to try and read Islamic ritual in light of a spectrum of different approaches from other fields. In the process of doing so, we have explored the differences between Sunni Islam's ideas and how ritual pollution is generally thought to work. Particular attention has been paid to the arguments of Mary Douglas because of their influence on anthropologists, Biblicists, and scholars of comparative religions alike. This was not the first study to consider Douglas' theories in the context of Islam, however; A. Kevin Reinhardt and Willian Graham had both previously argued that Islamic ritual does not easily fit "the Douglas view".⁶⁶⁰ Whereas Reinhardt's ideas have been considered in various places during this thesis, Graham's analysis provides an ideal vantage point from which to reflect upon our own conclusions and relate *taharah* to the rest of Islamic ritual practices. All mention of it

⁶⁶⁰ By which both mean the views Douglas' expresses in Purity and Danger and Natural Symbols. As noted (pp.124-125), Douglas has changed her mind regarding the Biblical purity laws, but this change has rarely been noticed.

has, therefore, been left until now. The same analysis also requires that we return, for a final time, to the theories of Mary Douglas.

By appealing to Sunni Islamic “Orthopraxy”, Graham counters Douglas’ claims in Natural Symbols about the types of attitude that must accompany ritual performance.⁶⁶¹ There, as has been noted, Douglas divides religious experience into “ritualist” and “non- or anti-ritualist” categories.⁶⁶² She seeks to show that most societies have practiced both in a given period, but that this will always depend upon, and reflect, other social factors and religious values. According to her argument, ritualist settings will possess a high level of social cohesion and strong traditional forms of authority; in such settings, ritual action will be accompanied by a strong belief in its “efficacy”, and a heightened sensitivity to “condensed” symbols. Conversely, Douglas assumes that, where social cohesion and traditional authority is weak or collapsing, a community will be non- or anti-ritualist, and the religious symbolism will be “diffuse”. By ritual efficacy, Douglas means that ritual (i.e. external) actions will be perceived as having powerful and *immediate* effects through which people expect “to make right what is wrong with the world” (appeasing gods, driving away demons, placating one’s ancestors etc). By condensed symbols, she means ideas and symbols that condense an immensely wide range of reference by acting as focal points for a community’s self-identity. Examples of which include the Christian Eucharist and Chrism, Friday abstinence for the Bog Irish, the Jewish idea of “exile” (*galut*), or the Ndembu perception of the colour red, all of which trigger a host of interconnected meanings. Such symbols, Douglas points out, abound in places where social cohesion and authority is strongly felt, their function is to

⁶⁶¹ According to Graham, “Orthopraxy” (a term first coined by Wilfred Cantwell Smith) refers to “the Shari’a tradition of legal and religious interpretation that emerged as early as the second/eighth century and has ever since, in the hands of the *ulamā*’ served as a kind of yardstick for faith and normative practice” (1983:56 fn. 20). He distinguishes between this concept on the one hand and “popular”, “folk”, and Shi’a Islamic practices, on the other. Graham believes that the latter examples correlate much better with Douglas’ arguments (p.65).

⁶⁶² For her argument, see Natural Symbols Chapter 1.

strike the same type of multiple chord in everyone (thus to show the “whole orchestration is on a cosmic scale”), and are invariably connected to a culture’s dominant myth or narrative. Through their inclusion in ritual action, the myth is re-enacted, and the condensed symbols consistently imbued with meaning and relevance. By participating in the ritual one lives out, and replenishes the myth, which remains timeless.⁶⁶³

In contrast, in settings where social cohesion is weak or breaking down, and traditional forms of authority undefined or collapsing, Douglas expects to find “diffuse” symbolism, modern Western examples of which include concepts like “human values” and “social responsibility” or, among tribal peoples, the idea of “joy” in Mbuti society.⁶⁶⁴ In her view, these concepts also generate standard responses, but, because social cohesion is generally lacking, they do not unite with other aspects of the larger symbolic system and, thus, prove very difficult to analyse. As a result, religious feeling will emphasise the votary’s personal relationship to God, and ideas of sin and virtue will be interiorised and seen as states of mind, rather than connected with any external form of action. Here, ritual does not necessarily disappear from religion, but it will gradually become less relevant, more a cause for suspicion and, if it is continued, will eventually attain only a “commemorative” quality.⁶⁶⁵

While Douglas’ typology has been criticised for being too obviously anchored in the historical shift from Roman Catholicism to Protestantism,⁶⁶⁶ it is remarkable how well it has been shown to function in a wide variety of contexts.⁶⁶⁷ In Graham’s view, however, in the case of Islamic Orthoprax tradition, it flounders. For according to Douglas’ logic, there is no

⁶⁶³ Douglas 1970: 99.

⁶⁶⁴ Douglas 1970:29. The Mbuti pygmies are Douglas’ best example of an anti-ritualist society: “their religion is one of internal feeling not of external sign” because their social groupings are fluid and fluctuating (1970:34).

⁶⁶⁵ Douglas 1970:27.

⁶⁶⁶ Morris 1987:233. Indeed, even the term “commemorative” is based on the Protestants’ re-evaluation of the Eucharist’s nature.

social setting that could have produced the attitude to ritual that we find there. Given its clear ideas of sin and virtue, and emphasis on purity and dietary laws, we must assume that the original social context(s) from which Islamic ritual was born correlates with Douglas “ritualist” setting, and thus was governed by strong communal bonding and traditional authority. This sounds very plausible and, in fact, Graham generalises that historically “Islamic tradition has strong communal bonding, strong traditional authorities” and is “at the core strongly ritualist by almost any standard”.⁶⁶⁸ Yet, Douglas also requires ritual efficacy, and condensed symbolism from her ritualist attitude, and Graham finds neither embedded in traditional Sunni Islamic Orthoprax interpretations of its key ritual practices. As his main example, Graham explores the *hajj*. Regarding ritual efficacy (in Graham’s understanding of Orthopraxy) Muslims do not perform the *hajj* to achieve any concrete “magical” result: there is no “redemptive or absolving power” in its performance, even the stoning rituals at Mina are explained not as acts of defense against pagan powers, but simply “as reminders of Abraham’s and Ishmael’s faith”.⁶⁶⁹ (This should be compared with the obvious type of efficacy expected from Shi‘i practices such as *ziyāra*, where the tombs of saints are believed to heal the sick who visit them.⁶⁷⁰) And, in regard to condensed symbolism, Graham finds no parallel to the type of focal symbols mentioned above. Interestingly, the *hajj* does place Muslims within a myth: “the Abraham-Hagar-Ishmael cycle”.⁶⁷¹ But, Graham claims that most of the *hajj* remains completely unconnected to the Abraham narrative: “the Arafat and Muzdalifa rites, including the major rite of the entire *hajj*, the *wuqūf* at ‘Arafat, have no link with the Abraham story at all”.⁶⁷² Rather than the usual bond between myth and ritual, therefore, “there is no sense in the flow of ritual events in *hajj* that one is reenacting a mythic

⁶⁶⁷ For examples, see e.g. Wuthnow *et al* 1984.

⁶⁶⁸ Graham 1983:65.

⁶⁶⁹ Graham 1983:68.

⁶⁷⁰ Graham 1983:65.

⁶⁷¹ Muslims are to run seven times between Safa and Marwa re-enacting Hagar’s desperate search for water, and offer the sacrifice at Mina just as Abraham offered Isaac.

paradigm”, and “no statement that the worshipper sees himself or herself as like Hagar or Abraham”.⁶⁷³ Thus, in opposition to Douglas’ theories, Graham suggests that, while Muslim ritual certainly strengthens community bonding (what she sees as the main aim of most rituals), the religious feeling motivated by Islamic ritual is internal, pietistic, moral, and its symbolism is “diffuse” - characteristics that Douglas normally attributes to non-ritual settings.⁶⁷⁴

As the best example of what he means, Graham points to the *wuquf* at ‘Arafat. Here:

(o)ne must at some point during the prescribed hours stand in prayer, meditations, or recitations on or near the Mount of Mercy on the Arafat plain. Symbolically, this act has no precise mythological or theological connotations. Repentance, humility, introspection, awareness of community – these are the themes of the suggested prayers for the *wuquf*, but there is no effort at more condensed symbolic interpretation. Here in the sparseness of ritual action – *being there* is the only requirement.⁶⁷⁵

Instead of the type of feelings and religious mode of expression that Douglas assumes must accompany ritual, Graham concludes that:

(t)here is no *do ut des*, no elaborate symbolic drama at the heart of these rites, only the overwhelming sense of *coming before God* to “worship and serve” in obedience (*ibāda*) and to declare “His oneness” with simplicity and sincerity (*tauhid*).⁶⁷⁶

Graham believes that the unique character of Islamic ritual, and hence its capacity to elude Douglas’ scheme, is due to a very powerful initial desire in the first Muslim generations to distinguish Islamic faith and practice from those of previous and contemporaneous religious

⁶⁷² Graham 1983:68.

⁶⁷³ Graham 1983:68-69.

⁶⁷⁴ On this point, however, Graham seems to give the impression that Douglas never expects to find “internal” or ethical concepts (like *tauhid*) communicated via condensed symbolism; this is not the case. For, as we know, in her original argument, Douglas was quite willing to attribute this type of meaning to the Jewish pollution rituals; she described them “as upholding the oneness of God” (see ch.3.4.). The difference is that Douglas expected this interpretation to interconnect with any number of other social and theological meanings, all emphasising the importance of unbroken boundary lines, and all striking the same coherent chord.

⁶⁷⁵ Graham 1983:70. My emphasis.

traditions (especially that of pre-Islamic paganism and the *ahl al-kitāb*) by designing a ritual system that is “aniconic, “amythical”, and “antisacramentalist”.⁶⁷⁷ In short, to create a system wherein the sole purpose is the remembrance of God – and any hint of a magical quality (Douglas’ “ritual efficacy”) is militated against. Thus, although early Islam (unlike Christianity) did not necessarily reject pre-existing pagan rituals such as purity and dietary ideas, it adapted and Islamicised them to such a degree that any resemblance to previous connected practices were lost. As we know, Graham refers to this trend as “reformational”.⁶⁷⁸

There are a few niggles with Graham’s article. The concept of orthopraxy has been criticised for, on the one hand, implying that Islam consists of nothing more than rules of ethics and conduct, and hence of being “devoid of belief”, and, on the other, for being too general.⁶⁷⁹

More specifically, Graham’s choice of the Hajj as his example of the amythical nature of Islamic rites is a strange decision, as it is the only ritual practice that is explicitly linked to a myth by Islamic tradition. And, while Graham describes this link as incidental, other scholars attach much more importance in it.⁶⁸⁰ Indeed, his assertion that the Hajj’s major rites have nothing to do with the Abrahamic myth is challenged by a *ḥadīth* in which, after Abraham has finished building the Ka’ba, Gabriel guides him through the sevenfold circumambulation and all the ritual acts associated with Safa, Marwa, Mina, Muzdalifa, and

⁶⁷⁶ Graham 1983:69-70. My emphasis.

⁶⁷⁷ Graham 1983:67.

⁶⁷⁸ Early Islam’s self-conscious rejection of ritual efficacy is best illustrated by a famous *ḥadīth* ascribed to ‘Umar ibn al-Khattab. Umar is reported to have said when, during the *hajj*, he kissed the Black Stone, “By God, I know that you are only a Stone, and had I not seen the Apostle of God kiss you, I would not kiss you! (cited in Graham 1983:67).

⁶⁷⁹ See e.g. Nadia Abu-Zahra *The Pure and Powerful: Studies in Contemporary Muslim Society* (1997, Lebanon, Ithaca Press) pp. 37-41.

⁶⁸⁰ According to Peters, the Abrahamic narrative is vital to the meaning of Hajj because it places it (and the Islamic faith) within the history of monotheistic traditions. “Absent the Abrahamic myth”, he observes, “and the Hajj of Muhammad’s Mecca disintegrates into an obscure series of acts centering not on Mecca but on the mountain called Arafat” *The Hajj: Muslim Pilgrimage to Mecca and the Holy Places* (1994 Princeton, Princeton University Press) p.31.

Arafat.⁶⁸¹ Also, to make an obvious point, Graham's observation that "the worshipper does not see himself or herself like Hagar or Abraham"⁶⁸² is probably true for many Muslims, but not for others. Finally, there are one or two Sunni ritual practices that do seem to possess Douglas' characteristic of ritual efficacy (in other words, they are done for a "magical" purpose other than "being before God"). Ritual slaughter, for instance, fends off death defilement and transforms a creature's flesh and skin from a (potential) source of impurity to one of purity and usability, just as *zakāh* purifies a believer's wealth (arguably changing its nature).

Putting such reservations to one side however, I believe that, in general, Graham manages to diagnose the distinctive nature of Sunni ritual more trenchantly than any other scholar. Moreover, as I have said, his arguments provide the ideal background against which to set our conclusions. For a start, his description of Islamic ritual as "reformational" is, as noted in our second chapter, very helpful. For, while the law texts show that the jurists were only really interested in discussing matters between themselves, their treatment of our subject (and all others) was shaped by an awareness of how different Islam was; and because of that the term "reformational" remains thoroughly applicable to it.

But "reformational" may also be applied to *tahārah* in a different way, for it is clear that Sunni Islamic ideas of ritual pollution, to a significant degree, also "reform" the scholarly consensus of opinion on the way these ideas function. We will conclude by considering how. Firstly, and of primary importance, *tahārah* law neither replicates nor enforces social hierarchies in the way Douglas and many scholars since have argued. In fact, Douglas' main thesis that, due to the symbiotic relationship between social and physical bodies, ritual

⁶⁸¹ The authority is al-Azraqi and is cited by Peters 1994 B:7-8. It is strange that Peters notes Graham's article

pollution ideas inevitably replicate pressures from social margins, makes no sense in the context of early Sunni Islamic history which consisted of a series of victories where other peoples boundaries were crossed. Instead, by displaying an egalitarianism that confounds Douglas' expectations, *ṭahārah* reflects the attitude of a gracious winner; and a variety of strategies explicitly rule out the chance of hierarchisation along pollution lines. These include the idea that higher purity is granted to no-one from birth, nor is it necessary for jobs, all impurities are the same strength, human beings contract a non-contagious form of impurity, and lifting *hadath* is only necessary for worship. This is not to say, however, that Douglas' arguments have proven worthless. For a start, her theory of anomaly is better applied to *ṭahārah* than to the Biblical code. Likewise, her observation that ritual pollution beliefs are politically most effective in settings of social tension enabled us to hypothesise why ritual pollution is not necessary for such purposes in Islam: specifically, Sunni law is constructed so as to fix social relations – between insider and outside - and avoid tensions (pp. 227-229). The fact that, in *ṭahārah*, the non-Muslim finds his position firmly nailed in place ensures that his “impurity” carries no real bite. Moreover, it has been suggested that, in the one case where ritual pollution law could be said to disadvantage a section of society, in its provisions for women, this may reflect the ambiguity of a woman's status in early Islam. In this case, Douglas' theories can be applied to a Sunni Islamic context in a more predictable way.

Douglas' approach was only one of several discussed. In contrast, other scholars attribute this behaviour specific material or psychological causes and functions. I would like to suggest that, by considering the *ṭahārah* data against these theories, the same “reformatory” treatment of themes becomes apparent. For instance, while two of the main psychological

(p.363), but does not remark on this.

explanations for pollution behaviour – a fear of death, and loss of bodily control – are applicable to *tahārah* at a certain level, whereas in other pollution systems they dominate the entire code, in *tahārah* these themes are used strategically to make certain points. Thus, while the fact that human blood is impure, and bleeding (according to the Hanafis, Shafi'is, and Hanbalis, see ch.7.1.A.) is a source of *hadath*, may reflect our instinctual fear that through the loss of blood one draws closer to death, we cannot but notice that the martyr's blood is not impure, nor is his death a cause of major *hadath*. Likewise, while human corpses are generally viewed as very impure in most pollution systems, they are not in *tahārah* because, as the Qur'an says, Allah created mankind to be superior (Q. 17:70). Such strategies show that for Muslims death possesses only limited powers. By the same token, losing bodily control is normally considered (akin to) a cause of *hadath* when it occurs through sleeping or intoxication, and self-control (*hilm*) is a key ethical concept in Islam, but when ritual impurity is chronic as with the *mustahādah*, it ceases to be a cause for concern. This conveys two highly significant lessons: firstly, the greater importance of prayer over impurity; and, secondly, the influence of moral intention in the effect and/or contraction of impurity (and implicitly in the judgement of an action).

Through such reforms, the concept of ritual pollution is brought into line with an Islamic perception of the world. A very important aspect of this process is the connection that remains between impurity and danger. Contrary to the norm, it is - as Graham claims - very difficult to find in Sunni Islam's purifications the usual, and *immediate*, ritual efficacy (e.g. purifying the body of demons/spirits/crimes) that normally explain the performance of these ceremonies. In Sunni Islam, there are benefits to purification (both rational and non-rational, ch.4.3.A) but, while a connection persists between impurity and supernatural forces (in both

⁶⁸² Graham 1963:69.

ahādīth and the liturgy of the *niyyah* and *istinjā*'), the law does not grant these forces the power to hurt Muslims; thus, the purifications' "efficacy" is delayed and the way in which, to use Douglas' expression, purification "makes the world right" is more difficult to pin down. Equally unusual for pollution codes, it is clearly impossible for the sanctity of mosques, holy things or places to be harmed by pollution. This explains why the *mushrik* – who is bound to be *junūb* if not necessarily *mutanajjas* – is judged harmless, and may, according to most jurists, wander through a mosque.

The most common explanations of the function of ritual pollution according to both "insider" (i.e. native participant) and "outsider" (i.e. ritual analyst) do not hold true in Sunni *fiqh*. The purifications do not protect Muslims and sacred places from the immediate threat of pollution; nor (with the minor exception of its rules for women) is there any real interest in expressing religio-social hierarchies through ritual pollution. This opens the door for other interpretations. First, it was suggested that the reason Muslims are not permitted to enter mosques in a state of major *ḥadath*, when non-Muslims are, does not imply that their impurity is more powerful than the latter's but, rather, to instil in believers a sense of the dangers and importance of sexuality and fertility to Islam. The same lesson is also conveyed by attributing a minor *ḥadath* to touching someone of the opposite sex, or one's genitals, before prayer.

In the last chapter, we broadened our approach to suggest a general religio-moral function to Sunni Islam's ritual pollution system. In this theory, the restrictions accompanying each form of *najāsah* act as symbolic reminders of the isolation that awaits a Muslim if he turns from his faith. While certainly speculative, it should now be noted that this suggestion agrees with Graham's description of the religious sentiment at the heart of the *hajj* and Muslim ritual

in general. In his view, the *hajj*'s symbolism is diffuse rather than condensed (it does not consist of specific multivalent symbols striking a complex, but identical chord in everyone), and there is no elaborate narrative in which the believer participates. Instead, its message is stark in its simplicity, nothing more, nor less than "an overwhelming sense of coming before God". This intention to perform the *hajj* is pronounced in an uncomplicated fashion in the *talbiya*, the ritual formula to be said by all Muslims as they begin: "*labbaika, allāhumma, labbaika*" (which Graham translates as "Here I am, wholly at thy service, O Lord, here I am, wholly at thy service"). We have argued that the purifications achieve the same end, albeit on a lesser scale. Here too the symbolism is diffuse; unlike, for instance, Zoroastrian purification rituals, believers do not participate in a myth. Here too the same message is conveyed: *tahārah* like the *talbiya*, indeed like most forms of Muslim ritual, is the mechanism via which a Muslim may approach, and proclaim his presence to God. *Najāṣah*, meanwhile - stripped of demonic power and without the capacity to alter a Muslim's essential purity - is merely the mechanism that symbolically pushes him away.

As Graham observes, not only Douglas, but Western anthropologists and scholars of religions in general, have formulated all encompassing ritual theories without paying attention to Sunni Islamic ritual tradition. This study shows that ritual purity and pollution concepts are very good examples of how and why Islamic ritual does not fit Western ritual theories. For, through the jurists' unique (and enclosed) approach to the subject matter, the concept of pollution has been modified to fit an Islamic view. Ultimately, when we speak of the functions of ritual impurity in Sunni *fiqh* we refer to two very powerful strategies. On one level, by emphasising conformity to tradition, the purifications serve as "social glue" to unite believers in their preparations for prayer, yet without introducing hierarchy into the mix. On another level, they remind each Muslim that they must at all times strive to turn their face

towards God, and of what could happen if their impurity and isolation were to become real. In contrast, the concept of *najāsah* emerges as a symbolic threat upholding the sense of individual and social obligation in relation to society and to Allah.

In a recent interview, Norman Mailer memorably stated that he despised finishing any work.⁶⁸³ The last line, he complained, was always the hardest because it needs to sum up in a few words what the previous many thousand have been spent trying to do. Facing this dilemma now, I think the best and possibly only way to wrap this study up is by posing the same question of Islam that, at the beginning, Nathaniel Micklem asked of Judaism: “*of what interest can such subjects be except to the anthropologist, what can all this have to do with religion?*” For surely here, in the context of Sunni Islam, the answer must be: “a very great deal”.

⁶⁸³ The Edinburgh Book Festival, November 19th 2000.

BIBLIOGRAPHY

Abu-Zahra, N. The Pure and Powerful: Studies in Contemporary Muslim Society (1997, Lebanon, Ithaca Press)

Al-Ghazali, Abu Hamid Muhammad Ihya Ulum al-Din, translated as The Mysteries of Purity by N. Faris (1996, Lahore, Sh. Muhammad Ashraf)

‘Ali Maulana Muhammad The Religion of Islam (1936, Lahore, Ahmadiyya Anjuman Isha‘at Islam)

Al-Kalbi Kitab al-Asnam, translated as The Book of Idols by Nabih Amin Faris (1952, Princeton, Princeton University Press)

Al-Misri, ibn Naqib ‘Umdat al-Salik, translated as Reliance of the Traveller by Nuh Ha Mim Keller (1991, Maryland, Amana publications)

Al-Nawawi, Muhyi al-Din Forty Hadith, translated by Ezzedin Ibrahim and Denys Johnson-Davies (1997, Cambridge, Islamic texts society)

Al-Maqasid, translated by Nuh Ha Mim Keller (1994, London, Islamic Texts Society)

Minhaj et Talibin, translated as A Manual of Muhammadan Law According to the School of Shafi‘i by E.C. Howard (1914, London, W. Thacker & Co.)

Al-Seestani "*Tauhdihihul Masae'it*", translated as "Islamic Laws" by Hamid Mavani available at <http://www.al-islam.org/laws/>.

Al-Tabrizi, Muhammad b. Abdullah al-Khatib al-'Umari *Mishkat ul-Masabih*, translated by Abdul Hameed Siddiqui (1990, New Delhi, Kitab Bhaven)

Al-Shafi'i, Muhammad b. Idris *Kitab Al-'Umm* (n.d., Beirut, Ilm al-kutub)

Al-Shaybani, Muhammad b. al-Hasan *Kitab al-'Asl* (1990, Beirut, Ilm al-kutub)

Antoun, R. "Anthropology" in The Study of the Middle East: Research and Scholarship in the Humanities and the Social Sciences (1976, New York, John Wiley & Sons)

Babb, L.A. The Divine Hierarchy: Popular Hinduism in Central India (1975, New York, Columbia University Press)

Balzer M. "Rituals of Gender Identity" in *American Anthropologist* 87 (1981)

Bataille, G. *L'Erotisme* translated as Eroticism by M. Dalwood (1962, London, John Calder)

Bell, C. Ritual Theory, Ritual Practice (1992, Oxford, Oxford University Press)

"Ritual, Change and Changing Rituals" in *Worship* 63 I (1981) 31-41.

Bettleheim, B. Symbolic Wounds: Puberty Rites and the Envious Male (1954, New York, Free Press)

Bernanos, G. The Diary of a Country Priest

Boudhiba, A. La Sexualité en Islam, translated as Sexuality in Islam by A. Sheridan (1998, London, Saqi Books)

Bourke, J. Scatological Rites of all Nations (1891, Washington, D.C., Lowdermilk)

Bousquet, G.H. "La Pureté Rituelle en Islam" in *Revue de l'histoire des religions* 138 (1950)

Boyce, M. A History of Zoroastrianism (1975, vol 1, Leiden, Brill)

Brakke, D. "The Problematization of Nocturnal Emissions in Early Christian Syria, Egypt, and Gaul" in *Journal of Early Christian Studies* 3 (1995)

Brown, P. Body and Society: Men, Women and Sexual Renunciation in Early Christianity (1988, New York, Columbia University Press)

Browne, E.G. A Year Among the Persians (1983, London, [no. Pub])

Buckley and Gottlieb Blood Magic: The Anthropology of Menstruation (1988, Los Angeles, University of California Press)

Buitelaar, Feasting and Fasting in Morocco (1993, Oxford, Providence R.I.)

Burrus, V. "Word and Flesh: The Bodies and Sexuality of Ascetic Women in Christian Antiquity" in *JSFR* 10 (1994).

Burton, R. "Some Nuer Notions of Purity and Danger" in *Anthropology* 69 (1974)

Calder, N. Studies in Early Muslim Jurisprudence (1993 Oxford, Clarendon Press)

Carroll, M.P. "One more Time Leviticus Revisited" in Anthropological Approaches of the Old Testament (ed. B. Lang 1985 Leiden, Brill)

Choksy, J. Purity and Pollution in Zoroastrianism: Triumph Over Evil (1989 Austin, University of Texas Press).

Combs Schilling, M.E. Sacred Performances (1989 New York, Columbia University Press)

Cook, M & Crone, P. Hagarism: The Making of the Islamic World (1977 Cambridge, Cambridge University Press).

Coulson, N.J. History of Islamic Law (1964 Edinburgh, Edinburgh University Press)

Countryman, W. Dirt, Greed and Sex (1988 Philadelphia, Fortress)

Courbage, Y. and Fourbes, P. Christians and Jews Under Islam, translated by J. Mabro (1997, London, I.B. Tauris & Co)

Crone, P. Roman, Provincial and Islamic Law (1987 Princeton, Princeton University)

Culpepper, E. "Zoroastrian Menstrual Taboos" in Women and Religion (ed. J. Plaskow 1974 Missoula, Mont. Scholars Press)

De Beauvoir, S. The Second Sex, translated and edited by H.M. Pousley (1988, London Pan Books)

de Vaux, R. "The Sacrifice of Pigs in Palestine and in the Ancient Near East" in The Bible and the Ancient Near East, ed. J. Rogerson (1972, London, J.K. Publishers)

Denny, F. An Introduction to Islam (1994 Canada, Macmillan Publishing Company)

Delaney, C. "Mortal Flow in Turkish Village Society" in Blood Magic: The Anthropology of Menstruation (ed. Gottlieb 1988 Berkely, University of California Press)

Dinari, Y. "Customs Relating to the Impurity of the Menstruant" in *Tarbiz* 49 (1979-80)

Diener, P and Robkin, E. "Ecology, Evolution, and the Search for Cultural Origins: the Question of the Islamic Pig Prohibition" in *Current Anthropology* 19 (1978).

Douglas, M. Purity and Danger (1966 London, Routledge)

Natural Symbols (1970 London, Penguin)

Implicit Meanings (1975 New York, Routledge & Kegan Paul)

"Sacred Contagion" in Reading Leviticus: A Conersation with Mary Douglas (ed. J. Sawyer 1996 Sheffield, Sheffield University Press)

Doi, A. Shari'ah. The Islamic Law (1984 London, Ta Ha Publishers)

Dubois, A. Hindu, Manners, Customs, and Ceremonies (1897 Oxford, Clarendon Press)

Eilberg-Schwartz, H. The Savage in Judaism (1990, Bloomington, University of Indiana Press)

El-Saadawi, N. The Hidden Face of Eve: Women in the Arab World (1982, London, Beacon Press)

Effendi, Abu Bakr Bayan ud-Din edited and translated by Mia Brandel-Syrier as The Religious Duties of Islam as Taught and Explained by Abu Bakr Effendi (1971, Leiden, Brill)

Elliger, K. Leviticus (1996, Tübingen, J.C. Mohr)

Encyclopedia of Islam. First and second editions (Leiden, Brill)

Feldman, E. Biblical and Post-Biblical Mourning (1977, New York, Ktav)

Firmage, E. "The Biblical Dietary Laws and the Concept of Holiness" in Studies in the Pentateuch, ed. J.A. Emerton (1990, Leiden, VTSup 41)

Fontenrose, G. The Ritual Theory of Myth (1966, Los Angeles, University of California)

Frazer, J.G. The Golden Bough (1995, London, Papermac)

Freud, S. Totem and Taboo (1950, London, Routledge & Kegan Paul)

Civilisation and Its Discontents (1963, London, Hogarth Press)

Geertz, C. Islam Observed: Religious Development in Morocco and Indonesia (1968, New Haven, Yale University Press)

The Interpretation of Culture (1993, London, Fontana Press)

Gellner, E. "The Mind of a Mullah" in *New Republic* 190 (1984).

Giffen, L. "Another Perspective on Ethics in Islamic Law and Ritual" in Religion and Law: Biblical-Judaic and Islamic Perspectives, eds. E. Firmage, B. Weiss, J. Welch (1994, Winona Lake, Eisenbrauns)

Goldziher, I. "Islamisme et Parsisme" in *Revue de l'histoire des Religions* 43 (1901)

The Zahiris: Their Doctrine And Their History (1971, Leiden, E.J. Brill)

Introduction to Islamic Law (1981, Princeton, Princeton University Press)

Gorman, F. The Ideology of Ritual: Space, Time and Status in the Priestly Theology (1990, Sheffield, Sheffield University Press)

Goodwin, J. Lords of the Horizon (1999, London, Vintage)

Graham, W. "Islam in the Mirror of Ritual" in Islam's Understanding of Itself, eds. R. Hovanissian and S. Vryonis (1983, Malibu, Undena).

Haddad and Esposito Islam, Gender and Social Change (1998, Oxford, Oxford University Press)

Hallaq, W.B. "Was the Gate of *Ijtihad* Closed?" in Law and Legal Theory in Classical and Medieval Islam (1994, Aldershot Variorum).

Hanson, F.A. "Female Pollution in Polynesia" in *Journal of the Polynesian Society* 3 (1982)

Harrington, H. The Impurity Systems of Qumran and the Rabbis (1993, Atlanta, Scholars Press).

Harris, M. Cows, Pigs, Wars, Witches: The Riddles of Culture (1974, New York, Random House Books)

Hawting, G.R. "The Origins of the Muslim Sanctuary" in Studies on the First Century of Islamic Society, ed. G.H.Juynboll (no.d., pl., pub).

Hillenbrandt, C. The Crusades: Islamic Perspectives (1994, Edinburgh, Edinburgh University Press)

Hitti, P. K. History of the Arabs (1970, London, Macmillan Press)

Holland, M. Inner Dimensions of Islamic Worship (1983, London, Islamic Foundation)

Houston, W. Purity and Monotheism (1993, Sheffield, Sheffield Academic Press)

Hunn, E. "The Abominations of Leviticus Revisited" in Classifications in their Social Context, eds. R.E. Ellen and D. Reasons (1979, New York, Academic Press)

Husain, S.A. A Guide to Hajj (1972, Lahore, Sh. Muhammad Ashraf)

Hyatt, C., Duquette, L., & Ford, G Taboo The Ecstasy of Evil (1991, Arizona, New Falcon Publication)

Ibn Al-Ukhuwwa Ma'alim al-Qurba, edited and translated by Reuben Levy (1938, Cambridge, Cambridge University Press)

Ibn Qudamah Kitab al-'Umda fi ahkam al-fiqh, translated as Le Precis de Droit d'Ibn Qudamah ([no d, pl. or pub.])

Ibn Jawziyyah Ahkam Ahl al-Dhimmah (1994, Beirut, Dar al-'Ilm al-Miyin)

Ibn Rushd, Abu al-walid Muhammad ibn Ahmad Bidayat al-Mujtahid, translated by I. Nyazee as The Distinguished Jurists' Primer (1994, Reading, Garnet Publishing Co.)

Isik, K.H. Endless Bliss available at http://207.159.82.201/Endless_Bliss

Izutsu, T. God and Man in the Koran: Semantics of the Koranic Weltanschauung (1964, Tokyo, The Keio Institute of Cultural and Linguistic Studies)

Jenson, P. Graded Holiness: A Key to the Priestly Conception of the World (1992, Sheffield, Sheffield Academic Press)

Kamali, M. Principles of Islamic Jurisprudence (1991, Cambridge, Islamic Texts Society)

Karam, A. Women, Islamisms, and the State (1998, London, MacMillan Press)

Khattab, H. The Muslim Women's Handbook (1993, London, Ta Ha Publishers).

Krygier, J. "Caste and Female Pollution" in Women in India, edited by M. Allen and S.n. Mukherjee (1982, Canberra Australia National University Press)

Leach, E. "Animal Categories and Verbal Abuse" in New Directions in the Study of Language, edited by E.H. Lenneberg (1964, Cambridge, MIT Press)

Lewis, B. Race and Slavery in the Middle East: An Historical Enquiry (1990, Oxford, Oxford University Press)

Levine, B. In the Presence of the Lord (1974, Leiden, Brill)

Lindenbaum, S. "Sorcerers, Ghosts and Polluting Women: An Analysis of Religious Belief and Population control" in *Ethnology* 11 (1972)

Kuru Society: Disease and Danger in New Guinea Highlands (1979, California, Mayfield Publishing)

Macdonald, D. Development of Muslim Jurisprudence (1903, London, Routledge)

Maghen, Z. Taharah Shatir al-Iman: An Enquiry into the Historical Evolution of the Islamic System of Ritual Pollution (Unpublished PhD. Thesis, 1997, Columbia University)

Marcus, J. "Islam Women and Pollution in Turkey" in *Journal of the Anthropological Association of Oxford* 15 no.3 (1984)

Malina, B. The New Testament World (1981, Atlanta, John Knox Press)

Malik, ibn Anas Al-Muwatta, translated by Aisha Abdurrahman Bewley (1989, London, Kegan Paul)

Al-Mudawwanah Al-Kubra (1994, Beirut, Dar al-kutub al-'Ilmiyah)

Martin, R. (ed). Approaches to Islam in Religious Studies (1985, Arizona, University of Arizona Press)

Meigs, S. "A Papuan Perspective of Pollution" in *Man* 13 (1978)

Mernissi, F. Beyond the Veil (1975, New York, Schenkman)

Milgrom, J. "Israel's Sanctuary: The Priestly Picture of Dorian Gray" in *RB* 83 (1976)
Leviticus (1991, New York, The Anchor Bible)

- Muslim b. al-Hajjaj Sahih Muslim, translated by Siddiqui, A. (1993, Lahore, Muhammad Ashraf)
- Niewehuijze, N. Social Stratification in the Middle East (1965, Leiden, Brill)
- Paige, J. & K. The Politics of Reproductive Ritual (1981 Los Angeles, University of California Press)
- Paschen, W. "Rein und Unrein" in *Untersuchung zur biblischen Wortgeschichte* 24 (1970)
- Peters, F.E. Muhammad and the Origins of Islam (1994A, New York, State University of New York)
- The Hajj: The Muslim Pilgrimage to Mecca and the Holy Places (1994B, Princeton, Princeton University Press)
- Philips, A. The Jinn (1989, Riyadh, International House)
- Popper, W. "Purification, Muslim" in *Encyclopedia of Religion and Ethics* vol. 10.
- Reinhardt, A.K. "Impurity and Danger" in *History of Religions* 30/1 (1990)
- Ridgeon, L. Crescents on the Cross: Islamic Visions of Christianity (1999, Glasgow, Trinity St Mungo Press)
- Ricoeur, P. Finitude et Culpabilite (1960, Paris, [no pub])

Rippin, A. Muslims their Religious Beliefs and Practices (1990-93, London, Routledge)

Rogerson, J.W. "Anthropology and the Old Testament" in The World of Ancient Israel: Sociological, Anthropological and Political Perspectives, edited by R.E. Clements (1989, Cambridge, Cambridge University Press)

Ryckmans, "Les Inscriptions anciennes de L'Arabe de Sud: Points de vue et problemes actuels" in *Oosters Genootschap in Nederland I* (1973)

Sabbah, F. Woman in the Muslims Unconscious translated by Mary Jo Lakeland (1984, New York, Pergamon Press)

Sabiq, S. Fiqh al-Sunnah: At-Taharah and As-Salah (1992, Indianapolis, American Trust Publications)

Schacht, J. "The Law" in Unity and Variety in Muslim Civilisation edited by G.E. von Grunebaum (1955, Chicago, University of Chicago Press)

"Ikhtilaf" in *Encyclopedia of Islam* 2nd edition.

"Law and Society" in The Cambridge History of Islam edited by P.M.Holt, A.

Lambton, B. Lewis (1970, Cambridge, Cambridge University Press)

Selvidge, M. Woman, Cult and Miracle Recital (1990, Lewisburg, Bucknell University Press)

Silberman, Isidor "A contribution to the Psychology of Menstruation" in the *International Journal of Psycho-Analysis* 31 (1950)

Shaw, T. The Burden of the Flesh (1998, Minneapolis, Fortress Press)

Siddiqui, M. "Law and the Desire for Social Control: An Insight into the Hanafi Concept of *Kafa'a* with Reference to the Fatawa 'Alamgiri (1664-1672)" in Feminism and Islam, edited by M. Yamani (1996, London, Ithaca Press)

Smart, N. "The Scientific Study of Religions in its Plurality" in Vol I of Contemporary Approaches to Religion edited by F. Whaling (1984, The Hague, Mouton)

Smith, W.R. Lectures on the Religions of the Semites (1972, New York, Schocken Books)

Soler, J. "The Dietary Prohibitions of the Hebrews" in *New York Review of Books* (1979)

Sourdel, D. "The Abbasids" in Cambridge History of Islam edited by P.Holt *et al* (1970, Cambridge, Cambridge University Press)

Spellberg, D. "Writing the Unwritten life of the Islamic Eve: Menstruation and the Demonization of Motherhood" in *The International Journal of Middle Eastern Studies* 28 (1996).

Speight, M. "The Place of Christians in Ninth Century North Africa according to Muslim Sources" in *Islamochristiana* 4 (1978)

- Stephens, W. The Oedipus Complex: Cross Cultural Evidence (1962, New York, Free Press)
- Stowasser, B.F. Women in the Qur'an, Traditions, and Interpretation (1994, New York, Oxford University Press)
- Tayob, A. Islam A Short Introduction (1999, Oxford, Oneworld)
- Tolstoy, L. Ana Karenina (1954, London, Penguin Classics)
- Turner, V. Forest of Symbols: Aspects of Ndembu Ritual (1967, Ithaca, Cornell University Press)
- Vaglieri, L.V. "The Patriarchal and Umayyad Caliphates" in The Cambridge History of Islam edited by P. Holt *et al* (1970, Cambridge, Cambridge University Press)
- Watt, M. Islamic Philosophy and Theology (1985, Edinburgh, Edinburgh University Press)
Muhammad at Medina (1956, Oxford, Clarendon Press)
- Wehr, H. A Dictionary of Modern Arabic (1980, London, Macdonald & Evans Ltd.)
- Wenham, G.J. "Why Does Sexual Intercourse Defile?" in *Zaw* 95 (1983)
- Wensinck, J. "Animismus und Damoneglaube im Untergrunde des judischen und islamischen rituellen Gebets" in *Der Islam* 4 (1913)

“Die Entstehung der muslimischen Reinheitsgesetzgebung” in *Der Islam* 5
(1914)

Westermarck, E. Ritual and Belief in Morocco (2 vols. 1926, London, Macmillan)

Marriage Ceremonies (1914, London, MacMillan)

Wright, D.P. “The Spectrum of Priestly Impurity” in Priesthood and Cult in Ancient Israel,
edited by G. Anderson (1991, Sheffield, Sheffield Academic Press)

Wuthnow R. *et al* Cultural Analysis (1984, London, Routledge & Kegan Paul)

Yates, A. Ibn Rushd as Jurist Unpublished PhD Thesis (1991 Cambridge, Kings College)

Zara, B. “The Requirement of *Taharah* for Reciting or Touching the Qur’an” available at
<http://www.uh.edu/campus/msa/articles/zara.html>

Ziegler, P. The Black Death (1997, London, The Folio Society)

Zwemer, S. The Influence of Animism on Islam (1920, London Macmillan Co).