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!)
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INTRODUCTION

"Shallow are the souls who have forgotten how to shudder" Leon Kass

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”. 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, 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 words) 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

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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. 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. 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. 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).

When impure, an individual changes state. 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. In Zoroastrianism the earth itself is seen as

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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.
a sacred space, and is protected by a beneficient immortal. 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. In the Durkheimian sense, ritual pollution practices thus serve to keep the sacred from being invaded by the profane. 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; 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).
13 On this, see Choksy 1989:xxv.
if he does not purify himself, faces the death penalty.\textsuperscript{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.\textsuperscript{16} And, in tribal cultures, the dangers of ritual pollution are numerous and varied.\textsuperscript{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.\textsuperscript{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,

\footnotesize{\textsuperscript{15} Ibid.  
\textsuperscript{16} Babb 1975:199 ff.  
\textsuperscript{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

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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 (najâsah) 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 (tahârah) and impurity (najâsah) 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 *Bidâyat al-Mujtahid* by Imran Ahsan Khan Nyazee, and the extensive translations of the seminal law texts in Ze'ev Maghen's recent doctorate. 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

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20 The *Bidâyat* has been translated as *The Distinguished Jurist's Primer* (1994, Reading, Garnet). Alongside Nyazee's translation, I used the Arabic version of the *Bidâyat* published in 1997 by Dar al-Kutob al-Imiyah (Beirut). Maghen's thesis is entitled *Tahârah Shatir al-Imân* 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-Imiyah), the *Kitâb al-ʿAṣf* by Al-Shaybani (1990, Beirut, Ilm al-Khutub), and *Kitâb al-ʿUmm* 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. 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

Shaf'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 *taharah* 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*. 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. At the end of Part II, a few modest observations will be made on the difference in approaches between these schools.

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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. 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. 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

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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 *taharah*’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 *taharah* 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

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27 Sometimes this chapter is titled “Ablution”, “*Wudu*”. 
by your father beards, I do, I am a past master at it!p 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 hadîth 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’îsha washed the bed sheets after having intercourse, and purified herself after menstruating. The graphic nature of these ahâdîth 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 tahârah 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 Ilm Ilum 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”!
‘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

31 See e. g. Iṣṣāp. 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).
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.  

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, *taharah* is still “*najis*” (impure/polluting).  

It is worth noting what *has* been written on the subject. To my knowledge, and notwithstanding relevant Encyclopaedia entries, 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

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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 “*ghust*”, “*hadîth*”, “*hayd*”, “*khâmîr*”, “*mî*”, “*muyâd*”, “*najîsah*”, “*taharah*”, “*tayammum*”, “*wuﬄî*”. Although, as Maghen notes, one has to wonder at a situation where the article “*najîsah/nadîs*”, 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).


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 “ḥadāth” (LE: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 ḥadāth; indeed, this was a focal point for disagreement among the schools, see Part II Exc. B.


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. 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”. Lastly and more generally, Frederick Denny (1994) and Abdulkader Tayob (1999) both write sensibly on this topic in their introductions to Islam.

Only one major study of *taharah* law exists: an unpublished Ph.D. thesis by William Ze’ev Maghen (1997). 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. 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,

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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 halakah 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

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 Micklem)

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. 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 contagion\(^{53}\)). 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. 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. 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.

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 Culpabilite (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. As Douglas notes, it also reflects a fundamentally negative assessment of the role of the human body in God’s plan. 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. 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.

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.
60 Robertson Smith 1972: 447. Robertson Smith explains Islamic rituals in the same way. Hence, he argues that the wearing of special ihram 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!” — 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. 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.

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

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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, Tubingen, 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).
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. 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.

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. 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 Groote, 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”. 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:

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

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)\textsuperscript{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,\textsuperscript{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:

\textsuperscript{76} Maghen 1997:36.
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 fiqaha’ 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* – legal treatises, indeed, invariably deal with these topics first; it is also a composite science of law and morality, whose exponents (fiqaha’) are the guardians of the Islamic conscience.

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”. But he could have singled out many others with an identical view.

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78 Maghen 1997:42.
79 The ḥakīrah and ‘aqlah codes.
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 ijtihad” (“exertion”) was closed, all intellectual activity in Islam was stifled, and philosophical development driven underground, or into Sufi abstraction. 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. 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. 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 nūjis.

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22 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. It remains only to say that recent scholars have questioned whether ijtihad ever ceased to be practised, see e.g. Hallaq “Was the Gate of Ijtihad 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 ijtihad 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 Ihādīya 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”. 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 parthenogenesis that the similarity arose; and it takes little knowledge of Jewish law to see its influence in the most diverse provisions of Islamic law.

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. 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.
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 (ruhūs), incorporated into Islam in a weaker guise. 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” - 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.

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). This is a minefield I am extremely wary of entering. For this study, the salient point is whether
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.
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. 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. Instead, in Sunni Islam, the restrictions work on a personal level, stopping a Muslim from participating in worship *wherever* s/he may be.

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94 Biblical “leprosy” (*sarā`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 Oumran 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 presupposes 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

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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 ṭahārah law. I do not think we should go quite this far, however.

The historical origins of ṭahārah 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 ṭahārah 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 ṭahārah. 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-sequitors”. 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. 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? 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; so the Companions of the Prophet asked the Prophet, and Allah,
the Exalted revealed: “And they ask you about menstruation; say it is “a

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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.J.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 *kavanah*, even to the point of including the sense of spontaneity and
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
upon Islam’s dietary laws see Michael Cook’s detailed investigation “Early Islamic Dietary Law” in Jerusalem
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"), so keep away from woman during menstruation to the end" (Q.2:222). (But then) The Messenger of Allah said: "do everything except intercourse."

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 Sabean 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.

The problem is how to explain why, in some cases, taharah 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

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106 For the different readings of this term, see ch.9.
107 Muslim "Hoyd":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-Aswam, 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 taharah 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 actuelles" 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 \textit{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

\textsuperscript{109} Graham 1983:69
\textsuperscript{110} Graham 1983:69-70.
\textsuperscript{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" ("\textit{wudū'}", see pp.81-82 for its description). For, despite claims to the contrary (see e.g. Howard 1978:45), \textit{wudū'} 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 \textit{padyah} (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

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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. 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. Regarding

114 On this see especially Graham 1983.
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”. 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.

Islamicists have traditionally been more circumspect than anthropologists. Unlike the Biblicalists, 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”.


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.

It is a pity, then, that Maghen banishes Mary Douglas to a few lines and a large footnote.\textsuperscript{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"\textsuperscript{120} – there is a potentially large audience of anthropologists, social scientists, and scholars of comparative religions, who presumably would be interested in finding out \textit{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.

\textsuperscript{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).

\textsuperscript{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.

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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”, 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”). 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 muscles; the daily baths recommended by various religions were known from the beginning to kill germs; and the seclusion of menstruants was necessary because menstrual blood carries toxins. Yet, although medicinal benefits may well have played a small part in the formation of many ritual pollution codes, 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
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". 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.

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

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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.
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. 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. 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). 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.

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. For, as a general rule, it is very important that its priests avoid contact with

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

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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).


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

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. 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.

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,

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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. 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. 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”.

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.

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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 code\textsuperscript{150}).

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.\textsuperscript{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

\textsuperscript{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).

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. 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”. 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.

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

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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. 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”, 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. 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.

155 Douglas 1966:123.
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.”\textsuperscript{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.\textsuperscript{159} The human body, is “a symbol of society”, a canvass upon which “the powers and dangers credited to social structure” are reproduced.\textsuperscript{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.

\textsuperscript{158} Douglas 1970: 99.
\textsuperscript{159} Douglas 1970:93 ff.
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”.  

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. 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. Although she has

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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. 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”.

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. Yet, despite these criticisms, Purity and Danger remains

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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. They have tested and confirmed her insight that
ritual pollution is most emphasised in contexts where there is social tension. 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.

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
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

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

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
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 skinners 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).

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 imput 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 the be the same world.  

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. 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. 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”. 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

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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. 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". 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". 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

173 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.
with blemishes, who are not Holy, are still pure and are therefore permitted to enter the sanctuary (Lev. 21:16, 22:25).\footnote{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.}

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.\footnote{Choksy 1989:xxiii.}

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.\footnote{Choksy 1989:135.}

He further observes that, through regular purifications, Zoroastrians “confine evil and pollution within the finite space and time of a ritual”,\footnote{Choksy 1989:135.} where they are eventually
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.
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". 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.

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. 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.


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 \textit{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 \textit{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 \textit{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 taharah 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 (*madhūhib*) 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

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\(^{192}\) 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).
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

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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:

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), until after washing your whole body (taghtasilsu). If you are ill (marād), 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 (fattāharu). 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).

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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”, 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. Subsequently, fiqh agrees that all such acts nullify a believer’s purity for prayer. 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 jurists), and lesser washes for the rest of these actions. 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”) 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.

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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" (rijusīn) 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 Makkah mosque:

O ye who believe! Only the idolaters/polytheists (mushrikīn) are impure (najasīn). 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 "Tayyammum" means something like "to betake", "to appropriate", or "to adapt" (Arabic-English Lexicon, Reinhardt 1990:17). Permission for tayyammum 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 "tayyammum" in E.I.D.).
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.\footnote{Rather, the terms used by the Qur’an - “rijūṣ”, and “rujāz” translated as “abomination” and “pollution/idolatry” by Ali – are not normally adopted by the Sunni jurists, who prefer the term “najūsah”. Moreover, on the only occasion when the Qur’an uses “rujāz”, to describe the mushriki, the jurists prefer a to interpret the verse metaphorically (see ch.8).}

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
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. Such works were written with the intention of “expounding the differences of opinion within a school or between different schools”. Within this genre, the Bidayat 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 (aḥām) of one school in particular. In contrast, the Bidayat’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.

Like most manuals of Sunni fiqh, the first chapter of the Bidayat (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 Bidayat provides the general features of that system. Ibn Rushd normally confines himself to citing Canonical hadith, 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 Bidayat 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.LII.
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. Because of how often the Bidāyat is cited, I have included the page numbers of Nyazee’s translation in my text, rather than footnoting them.

4.2. A. The Main Principles of Taharah

According to the Bidāyat, 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, and the other is called khabath. Each of these is described in other ways. Specifically, ḥadath impurity is said to be of a “legal/technical (‘hukmiyah’), or “abstract” (“ma’nāwiyyah”) kind. In contrast, khabath impurity, which is more often referred to simply as najāsah, is described as a “physical” (hisṣiyah) or “actual/tangible” (“haqiqiyah”) impurity. The logic behind these labels should soon become clear.


Translations are available in both cases, see Muslim Sahih al-Muslim “Taharah” trans. Abdul Hamid Siddiqi (1993, Lahore, Muhammad Ashraf) and Bukhari “Sahih al-Bukhārī” 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 Bhavan).

Other translated works of law to have been of use include the Hanafi manuals: Abu Bakr Effendi’s Rayyan 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 a1-Salik translated by Nuh Ha Mim Keller as Reliance of the Traveler (1994, Maryland, Amana), Nawawi’s al-Majāsīd also translated by Keller (1994, London, Islamic Texts Society), and Minhāj et Ta’ābīn translated as A Manual of Muhammadan Law According to the School of Shafi‘i translated by E.C. Howard (1914, London, W. Thacker & Co.); and a single Hanbali manual by Ibn Qudamah entitled Kitāb al-Umsk fi al-ahkām al-fiqh and translated into French as Le Précis de Droit d’Ibn Qudamah (1951, [n. ?], [n. pub.]). I lack a comparative source for Maliki rulings (although, not surprisingly and certainly not through favouritism, Ibn Rushd probably goes into more detail concerning Maliki’s opinions than others). Furthermore, Sayid Sabiq’s Figh al-Sumrah: As-Tahārah & As-Salah (1992, Indianapolis, American Trust Publications), which is a comprehensive survey of the subject, appears to be coming from a Maliki direction.

From the verb ḥadath, “to occur”, or “to take place recently”, see H. Wehr’s Dictionary of Modern Written Arabic (1980, London, Macdonald & Evans Ltd.).

From the verb khabutha, “to be bad, wicked, or vicious” (Wehr).

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

For these definitions, see Nyazee Bidāyat 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, Mudknwwanah, 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 najasat 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 najasat until Part II.

4.2.A.i) Hadath Impurity

Hadath 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 hadath is known as a muḥdith (or muḥdath).

- Minor Hadath. The jurists agree on five acts that cause a minor hadath. 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

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213 For the importance of health in the jurists' assessments of hadath, see pp. 177-178. The descriptions of these substances are to be found in 'Uumkat p. 80.
214 Although rarely included in the fiqh manuals, apostasy is also considered a cause of minor hadath 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 (salāt); and there is a stern hadith 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-mu'tahharun) (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 “wudū’”, and is legally incumbent

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215 Muslim “Taharah”: 435. Note the continuation of the Qur’an’s link between the concepts of purification through zakah and taharah.

216 He is also prohibited from touching things with Qur’anic verses inscribed upon them, for example gold coins, see e.g. Bayzūn, 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 (bulugh) (Bid p.2). Before beginning wudu', 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”. 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 hadith 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 hadath and is the major doctrinal distinction between lifting hadath and removing khabath.

Regarding the ritual of wudu’ itself, the law schools broadly agree that it is to follow the Qur’anic stipulations (i.e. the order found in Q.5:6). 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

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219 See p.196 for disagreements about this.
220 Semantically, wudu’ is linked to wadhah, which means “beauty” (Boudhiba 1998:45).
221 The question of whether wudu’ 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 taharah 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 Burāq goes into considerable detail on the matter (pp. 14-20); for further discussion, c.f. Schacht’s article on “wudu’” in E.I: 1.

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purifying” (taḥīr wa taḥīr) (Bid p.20). They also recommend gargling (madnadah) and snuffing water up the nose (istinshaq) (Bid p.5). 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). 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 hadath 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). Similarly, water that has been mixed with pure substances (such as soap or leaves) is also pure, but not purifying (Bid pp. 24-25). “Defiled water” (described either as mā’ mutanajjas, or mā’ naqis) loses all ability to purify, and should not be drunk. 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 khabath) (Bid pp.21-24).

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

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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’ muqlaq 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 wudū’ 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 khabath, but has not manifested any change. The final opinions of the different madhahib 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 khabath, regardless of whether this changes the water.
- On the basis of a hadith to the effect, the Shafiisi and Hanbalis are more precise, claiming that any quantity of water greater than 2 quillah (qullatayn), approximately 216 litres, is incapable of being defiled; any
incapable of finding water, a believer may lift his hadath by performing tayammum. This mirrors the performance of wudu' 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 hadath is confirmed in another hadith, 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 wudu' (Bid p.31).231

- **Major Hadath.** A major hadath is incurred by menstruation (hayd), lochial bleeding (nifās), most forms of sexual congress (janābah232), 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 hadath, according to most authorities, a person with a major hadath is not permitted to enter (or pass through) a mosque, or even recite the Qur'an (Bid pp. 41-43).233 Finally, the menstruant (ha'id) and the woman with lochial impurity (nāfsa') are also prohibited from fasting (sawm), and sexual intercourse (jima') for the duration of their bleeding (Bid pp.331; 62-63).

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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 tavib)

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.i.

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 muhdith’s exclusion from the mosque, see chs. 8 and 9. As far as recitation is concerned, Ibn Rushd notes a hadith 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 lochal 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 “Taharah” 461.
To lift a major hadath, a Muslim is to perform "ghusl", which also requires pure and purifying water. Unlike its treatment of wudū', the Qur'an does not specify how ghusl is to be performed; hence, there are more extensive differences between the madhahib on this matter. 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 hadath to be lifted through tayammum (Bid p.69).

These are the basic regulations concerning hadath 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 muhdith is not a sin, and does not, of itself, warrant blame. This may be demonstrated in two ways. Firstly, when an individual incurs a hadath 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 hadath - 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 hadath until the time of prayer. Outside of prayer, there is no legal obligation to lift a hadath 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 midmudāh 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 wudū' be performed prior to beginning ghusl (most say no, although c.f. a tradition in Muslim "Hayf":616); whether "midmudāh 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 wudu', whereupon he responded: (Why!) Am I going to pray that I should perform wudu'?

The only sin that, according to some, directly incurs a hadath 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"). For some, apostasy is constituted by the repeated and wilful missing of prayers. 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. 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. 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.

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235 Muslim "Hayd": 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).


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 Musahij at-Talibin 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-Tahyin (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 (p.11). However, Bousquet assumes that it is generally accepted as a cause of "hadath". See under hadath in E.I.1 & 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 hadath 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-hayawan dhay al-dam laysa bi ma’); pig’s flesh (lahm al-khinzir), whatever its cause of death; and flowing blood (dam masufaham) 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), madhil/qadi, and wadi. 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. He has been rendered “mutanajjas” (as opposed to being najis), normally translated as “ritually defiled” (although it is problematic to do so, 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 hadath. But he describes the matter as “an issue that is of little benefit in fiqih, as it relates to the hukm of the hereafter” (Bid p.2). See e.g. ‘Umdat p.95, F.B: “Taharat from Najasat” pp. 1-3. The fact that Ibn Rushd does not mention these in his section on the khaba’ith is perplexing. This is presupposed rather than explained by the Bidayah. However, it is strongly implied by a hadith in which Muhammad removes his sandals during prayer “because Jibril informed me there was filth (qukar, 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 hadith 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 “wуди”.241, cited in Bid pp. 80, 128).
see ch. 4.4.B), and is not permitted to enter places of prayer. As mentioned above, if *khabath* 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.

Logically, a *khabath* 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 *khabath* because of several established *ahadith* 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*). To purify these outlets, a Muslim must perform two distinctive ceremonies: *istikrār* (after urination) and *istinjār* (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 *khabath* is based on the Qur’anic injunction “to purify thy garments” (Q. 74:4), and a number of *ahadith* reporting how Muhammad orders menstrual blood to be washed from clothes (*Bid* 89).

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242 Although prayers are traditionally offered in the mosque, *fiqh* permits them to be given anywhere that is *khabath* 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 *madhī*, 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 *sahabah* 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 *hadith*, 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 *hadath*, removing *khabath* is a quite straightforward matter. For the vast majority it is palpably not, however,

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\(^{246}\) 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”. After all, there are many cleaning agents besides water that can do the job of removing _khabath_ just as well; yet, according to most authorities (Malikis, Shafi‘is, and Hanbalis), they are not legally permissible. Nor can one legally remove _khabath_ through rubbing, wiping, or burning; it must be washing, and only with pure/purifying water (Bid p.90). Other stipulations for the removal of _khabath_ 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 _khabath_ is often referred to as a “legal impurity” (nejjasah 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 _khaba‘ith_) 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 _khabath_ purification from _rajā‘a-l-hadath_ 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 activity (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 _najasat_ 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 _khabath_ as “actual impurity”, which sounds worse still because it wrongly implies that the removal of _khabath_ is not a religious act (E.I.D).

\(^{249}\) On the grounds that _wudu‘_ is still required afterwards (to lift the _ahdath_ incurred through urinating and excreting), we must deduce that - like any other performance of _izālāt al-khabath_ - 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_. _Istibra‘_ 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. _Istinja‘_ 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-Hindiyyah_ 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 _izālāt al-khabath_ which permits _khabath_ to be eliminated through wiping or rubbing with any clean substance, and even to be burnt (Bid p.90, E.B “Tahārat from Najasat” 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 *najásah* 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. 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 *tahārah* texts tell us about why a *muḥdith* may not pray, or why washing *khabath* 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 *khabath* 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

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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”
  (khaglasi al-najāsah). 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” (*hassah*).

- In contrast, the purpose of wudu’, ghusl, 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” (*zakah al-nafs*). As such, these acts are beyond our
  comprehension, and most consider any performance of rafā‘a-l-hadath to be a
  “non-rational act of worship” (*ibādah ghayr ma‘qūlah*).

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

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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 wudu’ (*E.B.* “Wudu” 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 hadath requires niyyah, whereas removing khabath does not (see esp. Bid pp. 3-4). This somehow ties the performance of rafl-r-a-l-hadath to Allah (whose name is to be invoked) in a way that 'izālat al-khabath 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 khabi-th (i.e. urine, blood etc.) and incurring a hadath, 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, hadath impurity is not capable of being transmitted, and no human being is khabīth. 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 hadath 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 khabath is a complicated (and seemingly far from rational) affair (p. 89, and c.f. fn.249).
253 Short of picking up a khabath 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 naǰāsah, 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 ahādīth 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). He sleeps in the nose, and “blows in the buttocks” (hence breaking wind is hadath). He prefers certain places, and is always to be found lurking in the toilet and the hammām. Wensinck also thinks that the jinn are attracted

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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 “naǰāsah”, but implies that this connection is no longer of importance (1990:22 fn.84). 256 Wensinck believes this explains the recommendation that Muslims perform wūdūʾ 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 najasah, and he makes no distinction between the damaging effects of these creatures.\textsuperscript{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”, $al$-$mu'tahhar$	extit{un}$. His security, his hasana, is seriously in question.\textsuperscript{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.\textsuperscript{259} It is possible, however, to talk about the degree of danger the Classical law texts attribute to najasah. Let us do so from the \textit{Bidävat} 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 najasah 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 ‘izalat 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.

\textsuperscript{257} Wensinck oversimplifies matters as far as the jinn are concerned. Their relationship towards taharah 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 istinjä’ 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-'Arabi’s \textit{Asr ar al-Taharah} translated by E. Winkel as \textbf{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 \textit{One Thousand and One Arabian Nights}, the jinn of the ring is first brought out when a despairing Aladdin washes his hands during \textit{wudu}'; it is unlikely, therefore, that the jinn have always been perceived as enemies of purity.

\textsuperscript{258} Boudhiba 1998:44.

\textsuperscript{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).

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 khabath and khabā’ith” — 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. 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. ‘Um đat 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 khabath and khaba’ith as “demons, male and female” (’Um đat 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 *istibrāʾ/istinjāʿ*.

However, although it is not impossible that the jurists perceive a *muḥdith* 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, the Muslim who does not purify himself from urine, and perhaps even those who do not wash their feet properly during *wudūʾ* will both be punished, but their punishment must wait until the day of judgment. 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 “reformational” – i.e. that through ritual practices, the early Muslims set out self-consciously to distinguish themselves from “previous and contemporaneous religious traditions”.

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.

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263 Wensinck 1913:226. For the argument that *wudūʾ* and *istinjāʿ* 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 *Mawātīl* 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 muḥdith, or someone with khabath 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 khabath – 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 muḥdith 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 Madīna in a state of ḥaḍāḥah 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 ḥaḍāḥah 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 (subhan Allāh! Inna-l mūmina lā yanjūs [Bih p.60]).

What, precisely, Abu Hurayra is worried about is not explained. 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”). 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 fundemental 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 “Taharah”.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 jumābah 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


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 khabīḥ. Unthinkable as it would have been, Abu Hurayra could have spat on Muhammad and not affected the Prophet’s purity! 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 “Subhan Allâh, a Muslim never defiles” this hadith is a great foundation (asl ‘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 fluidZ75 are still upon her... is pure according to the consensus of the Muslims... As for the infidel (kāfîr), the law regarding him in the matter of purity and impurity is the same as that of the Muslim (hukmhu fi-1 tahârah wa-l najâsah hukm al-Muslim) – this is our policy as well as that of the vast majority of our predecessors (hadha madhhabina wa-maddhab al-jamâhir min al-salaf wa-l khalaf)... And since the pure status of the human being is established, whether Muslim or kāfîr, 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 junûburn or menstruating (ha‘idan) or impure through childbirth (nafṣa’)... 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-ma‘) 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.

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 “Tahârah”:513.
274 Nawawi is referring to Abu Hurayra’s hadith (p.97).
275 Nawawi probably means lochial blood.
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 najūsun (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 (najūsah ma‘nāwiyyah). 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 ‘izalat 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 khabath “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, khabath 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, khabath 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 khabath, they are polluted absolutely by it. By which we mean that sources into
which khabä’ith have been introduced are “impure” because they are now fundamentally,
bio logically (and, in most cases, irreversibly) different from before. In short, through contact
with khabath, 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 nājis (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 khabath (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
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 khabath.284

In light of this, if we return to the question of how khabath 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 khabath 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‘ taḥīr la 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 jadsath if one of its attributes is altered (Bid pp. 24–25). Second, arguing in reverse, most jurists agree that even a khabath 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 khabath (Bayam 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’ān; but, how the jurists subsequently made an important distinction between two types of impurity (ḥadath and khabath); 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 najāsat 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)\textsuperscript{2}

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 ṭahārah 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.\textsuperscript{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 najūsah 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


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.  

5.1. MATERIALIST INTERPRETATIONS OF NAJASAH

There is no evidence in the hadith material or law texts that the creation of the taharah 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 khabith because their flesh harbours trichinosis; urine and excrement are khabilh because they carry germs, and so on. 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. Yet, as Ibn Rushd is well aware, this is obviously not the general reason for purification from khabath. As is clear from the Bidayat, purification from either najasah has nothing directly to do with good health: lifting hadath is a way of glorifying Allah, whereas the aim of removing khabath is merely "cleanliness".

One recent approach to taharah 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 khabith is because of the damage pig farming was doing to Muhammad's early campaigns. In their theory, pig farming fitted "so ideally

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287 See chs.9 and esp.10.
288 For a medical materialist's reading of taharah, see W. Popper's article "purification" in Muslim Encyclopedia of Religion and Ethics vol.10 pp.496-300.
289 Actually its 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 mutanajjas 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 khabith 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, hadith, or fiqh. 294

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. 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 taharah (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 taharah and deserves an immediate mention. 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
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-Ghazali’s explanation for the impurity of these emissions appears to confirm Douglas’ theory explicitly. They are impure, Ghazali 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, Ghazali 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 Ghazali’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,

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\(^{297}\) *Iḥyā* p.16. We are using Reinhardt’s translation. (1990:16). Faris interprets Ghazali 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 \textit{equally} impure — this conflicts with Douglas’ expectations, and brings us to the third type of rationale.

5.3. \textbf{SOCIO-SYMBOLIC INTERPRETATIONS OF NAJASAH}

The absence of \textit{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 \textit{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 \textit{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 \textit{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 dhimmi" (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 “*Mawālī*” in E:1:II, (also see ch.8).

permitted to pay the jizya, and must be fought).\textsuperscript{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 mawāli like Abu Hanifa on the development of Islamic law.\textsuperscript{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

\textsuperscript{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” (\textit{Umdat} p.607). For a history of Muslim/dhimmī relations, see C.L. Cahens’ article “dhimmī” in E.I.II.

\textsuperscript{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 ṭahārah 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 position 307), 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.

in charge of "the collective obligations of enforcing Islamic morals" 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 mutawalli (mosque guardian), prayer leader, nor Muezzin ("mu'adhdhin" the caller to salāt) is required to enter, or maintain a higher status of purity than his peers, and his purifications are the same as theirs'. 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. 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.

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 (Ibid 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.


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 kaf'āh ("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). Kaf'āh demands a husband be the equal of his wife and, according to the seventeenth century Fatawa '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 Kaf'āh 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. 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 ḥanābah 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 groups.

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 ṭahūrah'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 khabath 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'ālim al-Qurba, ed. and transl. by Reuben Levy (1938, London, Cambridge University Press) p.86.

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).

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
junub 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 taharah. 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 junub 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 (Munawwa “Taharah” 22.90). Thus, the free woman’s purity would appear to be worth more
than that of the slaves.
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 ʿI’tikāf. Even the potent combinations of impurity and liquid are shown not have to 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 hadath 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 hadath 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 wudu’ from being performed with water containing the su’r of a Christian – whom the jurists unanimously assume to be in a state of major hadath as well as probably carrying khabath (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

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\(^{315}\) Muslim “Hayāt”: 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 khabath according to the Hanafis) into it. However,
of these texts. 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 junūbat 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 wrapper), 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.

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-Muslim – 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 muhdiththe power to transmit his or her impurity, it is very feasible that ritual pollution ideas...
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

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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.


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” (Ibid 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. 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). 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. 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 taharah regulations, Maghen is surely right in observing that their primary intent is to fulfill the role of “social glue”. 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 Caliphatess 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”.
not always accurate\textsuperscript{331}), Islam’s pre-\textit{salāt} purification rituals are extremely good examples of this (\textit{in potentia} at least). Minor differences of opinion exist on any point, of course, but the broad details of \textit{wudū'}, \textit{ghusl}, \textit{tayammum} are the same across the spectrum of Islamic law schools and sects. The effects of this in enhancing what Victor Turner calls “\textit{communitas}” – the idealisation of social order through ritual actions where “concrete, ideosyncratic individuals who, though differing in phsyical and mental endowment, are nevertheless regarded as equal in terms of shared humanity” - are self-evident.\textsuperscript{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.\textsuperscript{333}

\textbf{5.5. PART I: CONCLUSIONS}

In Part I, the present dearth of investigation into \textit{fahārah} 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 \textit{fahārah} 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

\textsuperscript{331} See the aforementioned disagreements between Sunnis and Shi’is on the subject of removing footwear/washing feet (fn.223).


\textsuperscript{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 \textit{iḥrām} clothing (although male and female costumes differ), see e.g. S.A.Husain \textit{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 (\textit{Umduṭ} 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.”

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’s), 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 taharah 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

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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/Schact 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.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.
Part II

Sunni Islam’s Ritual Pollution Laws
CHAPTER 6

KHABATH IMPURITY

In Chapter 4, the main features of Sunni Islam's *taharah* 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 excursuses.\(^{337}\) 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 (*ikhtilaf*) 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 *najasah* are summarised.

Once again, the *Bidayat* 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 *madhahib*, 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 *khabīth*, they are not included in the *Bidayat*'s section on the *khabā'īth*. 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

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\(^{337}\) 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 *Bidayat*'s section on animal *su'r* (see ch. 6.2. below) is to be found in the section on wafer purity and not *khabath*. 
is an impurity of equal strength. 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 fn. 372, and 400). For these reasons, it has often been necessary to look outside the Bidayat 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 ‘Ajl, and Shafi’i’s ‘Umm, have allowed me to check the accuracy of Ibn Rushd’s data, and flesh it out when necessary. 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 hadath 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 khaba’ith than the ahdath. In this study, equal time is spent on both forms of najasah. 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. 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 fn.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 *khaba'ith* after the *ahdath*, for our purposes, it makes better sense to reverse this order and review their discussions concerning the *khaba'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 *khabath*. 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 *khabīth*.\(^ {346}\) 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 *hdāth* in which Muhammad permits the consumption of food into which a fly has fallen, claiming that this is only permitted because flies are

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\(^ {344}\) This is because, for many, the question of whether a bodily emission is *khabīth* decides whether it is also a cause of *khabath*.

\(^ {345}\) "Emergency slaughter", performed when the creature is in the process of dying, also exists and is referred to as *dhakah* 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”. 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. 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/Hanafi viewpoint on four points. Firstly, he observes that the Qur’an always mentions two separate prohibitions: “forbidden to you is mayta and blood” (“ahrām 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 hadīth 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. Thus,
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. Minhâji “Tahârah”: 11; c.f. ‘Umdat p. 96. However, the Shafi’is assume locusts to be pure on the basis of a hadith 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” (“hayy”). 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 Shaf‘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)
pure” (“dibaghua tuhuruha”), the majority agrees that tanning can purify the skins of most creatures – bar the pig who is rijus - that have died without slaughter. Those who take the opposing view claim that this hadith 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”.

Of those who believe that tanning purifies the skins of mayta, the respective opinions of Abu Hanifa and Al-Shaf‘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, Shaf‘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 harām, whereas Shaf‘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 Shaf‘i’s opinion. In fact, later Shaf‘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).

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

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357 For this tradition, see Muslim “Taharah”: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 (Rid p.84).
359 Mishkat “Taharah”: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.  

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'i's) agree the corpses of fish (*samak*) are pure and edible without ritual slaughter.  

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

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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 *Bayan* p. 158.
purifying (tahūr) and its corpses are permitted for eating” (hu al-tahūr ma’hu al-hal maytatahu).

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.

- 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 (‘ambar) – presumably not considered a fish by these jurists – to be divided amongst the Muslims, and used for food and supplies. 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

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363 Mishkât “Tahárarah”: 479. The authenticity of this hadith 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.JIII) Būkhārī “Maghāzi”:65, cited in Bid pp. 83, 564.
fisherman's net, or when the sea "has grown tired of it" (hasara 'anhu).\textsuperscript{366} Only in these cases do they judge a fish sufficiently "hunted" (whether by man or nature).\textsuperscript{367} Alternatively, if a fish has simply floated to the surface, dying of its own accord (i.e. ghayr sabih 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 khabīh. 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).

\textsuperscript{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 (kilab), and most inedible (harâm) 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 Bidâyat’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. 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 “rijus” (6:45), he may qualify this in the case of pig su’r, however.

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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 Bidâyat.

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 Malik 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 \( (falyagh silhu sab 'a) \).\(^{370}\)

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 Bidawaiya 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:

(\text{Ibn al-Qasim said to Malik}) regarding a vessel in which there is water and a dog laps at it \( (yalaghu fihu) \), may a man perform the ablution with (this water)? And Malik said: if he did perform \( wudhu' \) 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” \( (wa mā'adriyu mā 'haqiqatihu) \). In the (unlikely) event that it is, Malik allows Muslims to perform the seven washings if they feel

\(^{370}\) Muslim “Taharah”: 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 (\text{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 \text{rafa'is-l-baddah}), 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). 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’). 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 Mudawwana he attributes all predatory animals (bar the dog) a degree of danger by ruling their su’r drinkable, but unusable for wudū’:

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.

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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 hadith with a hadith 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 “Wudū’”: 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 halaal 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 Mudawwana.
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). Hence, predators join a large number of other creatures viewed with suspicion in terms of their purity, because they are forbidden as food (harām). 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. 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.

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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 Hayān, 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 khabath, is permitted to drink and use for purification purposes.  

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 (jawārih al-ṭayr), dung-eating cattle (baqr al-jalalah), and the chicken fed via a bag to its head (al-dajājah al-mukhlah). 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 wudu’ 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-tawāfiin ‘alaykum aw al-tawāfīn).  

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

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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’. The problem is unlikely to have escaped the phenomenally quizzical minds of the jurists, but I have never found the question posed let alone answered.
have given their method of linking dietary and purity laws), the Hanafis declare it “disliked” ("makruh") for purification purposes, but not khabith as such. The su'r of a host of other insalubrious and harām 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 (dawājin) 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 (jawārih 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 khabath, and their su'r can therefore also be judged pure.

6.2.C. Su'r that is doubtfully purifying (mashkuk fi tāhūriyāthi)

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-baghl), 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

\(^{382}\) Miwatta “Taharah” 3:14. Cited in Bīd p. 27. However, Ibn Rushd notes the existence of at least one well-known hadīth stating that a vessel drunk from by a cat needs to be washed once or even twice.

\(^{383}\) See e.g. Bāyān 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. Given this, the majority conclude that, if being covered in donkey-sweat is permissible during prayer (and sweat has the same purity hukm 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 khabath-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 mukhattifah).

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

For this tradition, see Maghen 1997:228.

On the distinction between heavy and light forms of khabath, 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 hadith 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 hadith to argue that predatory beasts and riding animals do not contaminate water. 388 Here, the Hanafi 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 hadith 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

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388 See Mug i p. 49 (Maghen 1997: 231).
389 Cited in Maghen 1997:232 (taken from Ibn Maja, but no reference included). C.f another hadith 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‘fkalati al-siba’)(Mishkār “Taharah”: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. ‘izālat 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 wudu’, 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 khabath 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 (layṣa minḥā shay‘ ḥarakām 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. 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 hadith 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 hadith, 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). 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.

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 khabath, 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 ‘izālat al-khabath 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 ‘izālat al-khabath 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 *khabath*.⁴⁹⁷ Shafi’i explains all this as follows:

Now all the various sources of contamination (*anjūs*) 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 *khabath*) with the first washing and with less washings than seven, and that the contact of the water (*mumasat al-ma‘*) with the vessel (achieves the same purificatory end) with less than seven washings⁴⁹⁸

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 *najūsah* - 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 *taharah*’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 *taharah* debate.⁴⁹⁹

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⁴⁹⁷ For Asma’s tradition, see Muslim “*Taharah*”: 573.
⁴⁹⁹ 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 *khabath* 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 *‘izalat al-khabath* requires three washes, *‘Umde* 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-hayawan. 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

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400 'Umdat 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 (fadl)." 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.

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faith, Bousquet observes that the dog “meriterait les honneurs d'une monographie”. Such a treatment would have to pay special attention to Shafi'is view, which, by attempting to reconcile Abu Hurayra's *hadīth* with the general *tahārah* rules regarding *'izālat al-khabāth* (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 *khabāth* is blood. The jurists agree that flowing blood from any source, except the blood of fish is impure. If human blood flows, whether from cupping, a wound, menstruation, lochia, or prolonged vaginal bleeding (*istihadah*), it is *khabīth* and must be washed off a person's clothes, person, and place of prayer immediately. 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.

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 *tahīr* 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 *hadīth* (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 “Wudū’” :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 *khabath* (*khabath qallif*) 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

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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 (*Ma'rif* 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 *khabath* 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 khabith 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 istinjä’ and wudū’ to pray, despite the fact that neither form of purification – istinjä’ requires the use of stones (‘Umdat p.78, cf. p.89 above), wudū’ 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.

In contrast, Shafi‘i prefers to apply the meaning of Q.5:3 generally, ruling that all quantities of blood defile. 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 khabath, arguing that what is true for istinjä’ cannot serve for further analogy (Bid p.87). Hence, in Shafi‘i’s view, a khabath does not cease to be defiling when there is only a little of it. It either is impure, or it is not.

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 fi-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 hadīth 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 (nadahā) 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 hadīth, 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 ahādīth 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 'Umākat p.98.
distinguish that from other types of impure saliva). In their view, all urine is unequivocally *khabith* and contact with it necessitates immediate purification.\(^\text{414}\) 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.\(^\text{415}\)

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. *Bayām* p.37.

\(^{415}\) See *Asl* p.52.
A few jurists claim that the excreta of all creatures is pure.\footnote{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).}

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 (marābīd al-ghanam)… (the second is) the permission granted by the Prophet to the ‘Umiyin to drink the urine and milk of camels (\textit{Bid} p. 86).

In the second instance, Ibn Rushd is referring to a \textit{hadīth} 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.\footnote{\textit{Bukhari}, “\textit{Wudū’}”: 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!} 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 \textit{if it can assist recovery from illness} (\textit{Bid} p. 86).\footnote{The Qur’anic permission to use prohibited things under duress has been noted, fn. 361 above.} 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 \textit{halāl} animals, is impure – is supported by the following \textit{hadīth} (which Ibn Rushd includes in his description of the jurists’ discussions on substances capable of removing \textit{khabath}):
The Messenger of Allah went to answer the call of nature. He asked ‘Abdullah ibn Mas‘ud to bring three stones (for istinjāl). ‘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 ḥadīth, 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-awldā”). 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 “Wu49”: 158. Clearly “riks” is another synonym for nājis/khabith.
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‘i’s 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 khabith – regardless of whether a creature’s flesh is harâm. 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” (khasīf/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 khabath khaṣṣīf to be barred from prayers. The Mabsūṭ, 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) \((ma\ 'ammat baliyahu khaffat gadiyahu)\).\(^{423}\)

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 \(tah\ir\).\(^{425}\) 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 \(khabath\), we now turn our attention to two other categories of substance described by many jurists as polluting.

\(^{423}\) \textit{Mabsüt} 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 \(ahadith\) concerning a specific impurity. Those substances about which the \(ahadith\) agree (i.e. blood, \(mayta\), most types of urine and excrement) are all heavily impure; whereas if sound \(ahadith\) conflict about a particular substance's purity, Abu Hanifa classifies it as \(khabath\) \(khaff\). Hence, for instance, in the present matter, Abu Hanifa considers all excrement heavily impure on the basis of Ibn Mas'ud's \(hadîth\) (he does not know, or refuses to consider as valid, the tradition permitting prayer in the sheepfolds) (\textit{Asl} pp. 76-77). In contrast, his disciples, Yusaf and Shaybani (and most later Hanafis), rely less on the agreement of \(hadîth\) in their estimation of a substance's impurity but, rather, on whether there is disagreement amongst the \(fugaha\) concerning it. For them, if the purity status of a \(khabath\) provokes \(ikhtilaf\), things are resolved by ruling it light (\textit{Mabsût} p.56). Here, because of the disagreements in \(ahadith\) and contradictory juristic opinions, they are left in no doubt that the urine and excrement of edible animals are only \(khabath\) \(khaff\). However, while their methods may differ, and on this occasion even result in different \(ahkam\), regarding most kinds of impurity the early Hanafis concur. For where \(ahadith\) tend to disagree, so too do the \(fugah\); and vice versa. For Maghen's review of this topic, see 1997:162-164.

\(^{424}\) \textit{Bayân} p. 21.

\(^{425}\) E.g. E.B. "\(Najâšät\):3.

\(^{426}\) Ibid
6.5. SEMEN (Bid p.88)

Male semen (manāf) 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”. 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 hadith 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). 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 Magażid p.19. See Thauban’s hadith in Muslim Hayd: 614 for an extended cogitation on the nature of male (“thick and white”) and female sperm (“thin and yellow”). Also see Muwatta “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. Mishkat “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.\footnote{Muslim “Tahārah”: 567.}

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.\footnote{See above p. 89.} 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 \textit{Umm}, Shafi’i explains this idea as follows:

\textit{mang} is not näjis, 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 näjis.\footnote{\textit{Umm} p.72 (cited in Maghen 1997:187).}

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 \textit{ahādīth}, as both show that semen needs to be removed.\footnote{The Hanafis attitude is noted above (fn.250). They permit khabath to be removed by most means with any pure substance, including fire (\textit{Bid} p.89).} 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.\footnote{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‘ dašiq). 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 tahir wa la min näjis).

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.

Ibn Rushd only mentions this topic briefly in the *Bidayat*’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. 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 (riyūsun) of Satan’s handiwork. Eschew such (abominations) that you may prosper (5:90).

The question of why khamr is declared legally khabith when the other pastimes mentioned by the Qur’an are not is interesting, but will take us outside the confines of the present survey. 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* 1:27-38). 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 “reformational” 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 khabith 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 *hadīth* stating that: “every intoxicant is *khamr*, and each *khamr* is *harām*” (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), *naqīf* (infusion of raisins), or *nabūl* (“date wine”, or mead) which they consider either lightly *khābīth*, 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 khabath “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 nabīṭh 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 nabīṭh for wudu’ 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 khabath 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 Bavän 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 suʿr, while, according to the Malikis, the urine and excrement of ḥarām creatures is khabith, and their suʿr is not to be used for ablution.

There is overwhelming evidence that, from very early in its development, a shared acknowledgment existed that, if ṭahārah 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 khabath. Moreover, according to both authorities, blood needs to flow in order for it to defile; hence, small quantities of it are considered negligible.

Doubtless Shafiʿi 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 Shafiʿi, 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 Shafiʿi’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 ahādāth, whose purification is quite beyond our ability to comprehend according to most jurists. Before moving on, and as a final thought on the khabath, 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 ṭahārah, 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 ṭahārah 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, ṭahārah 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 khabith 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 ḥadath. 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 *hadath* and *khabath* 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 *haddith* 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 *taharah* 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. *Revel* p.19 fn.3.


\(^{444}\) *Bukhārī* “*Wudūʾ*” :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 hadath impurity. The two strengths of hadath 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 AHĐATH

The jurists agree that a minor hadath is incurred through five acts: urination, defecation, breaking wind, emitting madhi/qadi, and emitting wadi (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 wudū 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 (dart); and it is only when a believer farts audibly, and/or malodorously, that he incurs a hadath. 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”.446 The same is true of khabath; 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 tahārah 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 hadith is from Bukhari “Wudu ’”: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 *khābat*, and the contraction of *hadath*. Let us begin with Abu Hanifa's view, in which, according to the *Bidayat*:

each impurity (najūsah) flowing from the body or excreted from it necessitates ablation, like blood (dam), (and blood from) excessive nose-bleeding (al-ru’āfi al-kathīrī), drawing of blood (al-fasd), cupping (hajamah), and vomiting (qay’), except for phlegm (balagham) (Bid p.32).

Here, the tangible impurity of the substance (i.e the khabath) triggers a non-tangible state of impurity (i.e. a hadath). Indeed, in the Hanafi school it is unusual to find any hadath not stemming from the emission of impure substances. These jurists consider vomiting, and any type of bleeding (including nosebleeds [ru’āf]) – two very common and much discussed mishaps – to break wudū', for blood and vomit are irrefutably khabīth. In support of this, they cite two traditions: firstly, a hadīth related from Abdullah Ibn ‘Umar which affirms the obligation of ablution due to a nosebleed and, secondly, a hadīth attributed to Thawban, which reports how “the messenger of Allah vomited and then performed ablution”. 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 tahrārah law for the Hanafis. Primarily because of their principle of linking hadath with khabath, 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. wudū’) consists of those impure things coming out of the mouth. Of these vomit and thick blood, blood, food and

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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 hadath is explained by some Hanafis along the same lines: “janabah 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 janabah (rather than “any non-rational” cause).


450 For the tradition on nose bleeds, see Muwatta “Tahārah”, 10:48; for the tradition relating to vomit, see Tirmidhi “Tahārah”: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 (najasat ghalizat)... Vomiting phlegm (balagham) 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 namaz... if the blood issuing from the stomach of from the lungs is thin it breaks namaz 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 namaz. But if it goes out through the mouth it breaks namaz. If something sniffed into the nose comes back, even after many days it does not break namaz.\(^ {452}\)

For those who consider vomiting a cause of hadath, certain principles apply. It is only if food or blood is vomited from the stomach that it is heavily defiling (khabath ghaliz, and breaks wudii'. 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, wudii' is not broken. Applying the same criteria here as they do in their treatment of khabath, the Hanafis stipulate that a believer's wudii' 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 tahir 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 qay' (or qi'), if the regurgitated substance amounts to less than a mouthful, it is described as qils f 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 qay' or more) then wudii' is said to be broken (Maghen 1997:205 ff.).

\(^{452}\) E.B. "Wudii" 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 khabith, nor necessitating re-ablution.\footnote{The other jurists apply the same criteria when judging whether or not a regurgitated substance is khabith (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”).}

Malik’s view on the relationship between impure bodily emissions and hadath appears to be slightly different. While, according to Ibn Rushd, he also thinks emitting a substance known to be khabith 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 M\textit{uwatta} (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”.\footnote{The \textit{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 mad\textbar\textbar 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” (“\textit{Tah\barah}” 14:58). No law school upholds this – mad\textbar\textbar is unanimously considered impure and always a cause of hadath but, as is about to be noted, Sa’id’s opinion epitomises a theme that runs throughout \textit{tah\barah}.} As far as the usual logic of \textit{tah\barah} is concerned, this clearly goes too far (even if bleeding is not a cause of hadath, blood itself is khabith – 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 naj\textbar\textbar (of any sort).\footnote{See ch.10.} This is a feeling that is found throughout the \textit{hadith} material and, doubtless, informs \textit{tah\barah} law on a fundamental level.\footnote{The \textit{Muwatta} “\textit{Tah\barah}” 12:51-54. On other other occasions, Malik shows himself to be less lenient, however; for the view that ru\textbar\textbar does break wud\textbar, see \textit{Muwatta “Tah\barah}” 10:48-50 and \textit{Mudawannah} p.140} In the context of the present debate, it also serves to show that, for Malik, hadath is not always triggered by...
khabath; for, if that were the case, Sa’id and ‘Umar would have stopped their prayers and repeated wudū’.457

According to Ibn Rushd, an important principle in Malik’s decision about which bodily emissions do cause hadath (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 khabith substance (be it urine, faeces, madhi, wadi, semen, or wind) “only breaks wudu’ when passed in a condition of health” (‘idha kāna khurūjūhu ala wajuhu-l-sahati fthu yanqadu-l-wudü) (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 wudu’, because the usual connection between khabath and hadath 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 (istihadah), was ordered to wash off her blood, but then permitted to pray without wudū’:

‘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 (Pala ‘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 wudū’ indicates she had no hadath to lift – her illness having canceled it out. In contrast, the other jurists prefer another version of Fatima’s hadith, in which a command to perform wudū’ before each

457 Note that, according to the Muwatta, Malik also seems to have discounted vomiting as a reason to repeat wudū’. 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 wudū’ before he prayed” (Muwatta “Tahārah” 4:17). Ibn Rushd does not mention Malik’s opinion, which may indicate that vomiting is a cause of hadath for later Malikis (but this is admittedly hypothetical).
prayer has been added.\textsuperscript{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*”.\textsuperscript{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.\textsuperscript{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 unnecessary\textsuperscript{462} – before each prayer, but no one is ever 
excluded from worship. Indeed, the jurists firmly insist that, unless propriety dicates 
otherwise, no chronic illness is a sufficient reason even to delay prayers (in case someone

\textsuperscript{458} Muslim “Hayf”.652. Judging when a *mustahadah*’s menstruation is over is a tricky business, however, see 
ch.7.2.B.

\textsuperscript{459} See Mishkät “Taharah”: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 *Hayat* p. 34; for the Shafi’is, see *Umdat* pp.94-95.

\textsuperscript{460} E.g. Magasid p.25.

\textsuperscript{461} The *Bidayat* 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 hadath. In his view and that of his madhhab, the fact that an emission breaks wudu’ 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-sabilayni (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 hadath:

Shafi‘i (solely) took into account the passages through which the excretion occurs as factors affecting the nullification of ablution (lā yangid ila al-khārij min ‘ahaid-l-sabilayni) 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 “wudu’ is broken by whatever is excreted from the two roads/passages” (intiqād al-wudu’ mima yakhruj min aḥad al-sabilayni) — 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 ḥudūth cited by Sabiq (1991:50).
464 Although for different reasons: for the Hanafis, emissions from al-sabilayni trigger a hadath 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 wudū’ 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 Bukhari conclusively demonstrates that any type of bleeding (outside of the sabila’ni) will not break wudū’. Following Shafi’i, Bukhari instructs Muslims not to repeat wudū’:

except if something is discharged from either outlet (min-l makhrijayn)... (for) Jabir stated: the Prophet was in the battle of Dhi-l-Ruqa and a person was shot with an arrow and he bled profusely (fanazafahm-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 ablation. Ibn Umar squeezed out one of his pimples and blood came out, but he did not repeat his ablation. 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 wudū’ (Bukhari “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 makhitilafani fi-l safsah wa-l ra’ihat) (Ibid). On a connected point, most Hanafis do not consider ablation 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 ablation 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 wudū’. 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 khabath and contracting hadath 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 hadath. Moreover, in his school, hadath 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 hadath 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 hadath 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 khabath brings cleanliness and is regarded as a rational, or ethical, form of worship; whereas, lifting hadath 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 najasah, and their respective purifications. For, in Abu Hanifa’s view, a hadath normally only follows the
emission of *khabath*, which implies that the acts of *rafa’a-l-hadath* are merely glorified removals of *khabath*. 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) *najçasah* on taharah, and although this kind of purification is legal (*tahrarah hukmiyyah*) it resembles the actual purification that is purity from filth (*tahrarah najäsah*)” (*Bid* p.33) (We are following Nyazee’s translation. However, for “actual purification”, the text stipulates “*tahrarah ma’nawiyyah*”, which, confusingly, is the same as *tahrarah 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 *khabath* (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 *khabath* then these acts are like any other form of ‘*izälat-al-khabath*, 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 *khabath* 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 *Bayân* p.5.
⁴⁷⁰ This explains why Abu Hanifa rules that, if a *jinūb* 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 (*Bayân* 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 *hadath* (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, then, given that blood is more polluting (*anjās*) than the penis (we would expect touching the penis, not to cause *hadath*, but this is not so)? By *giyās* 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.

Thus, contra Abu Hanafi's argument, Shafi'i demonstrates that *hadath* impurity cannot be explained by the existence of *khabath*; for if it could, then a *hadath* would be caused by the contact of the hand with menstrual blood. Rather, the reason a *hadath* 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.

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

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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 *ḥadāth* is incurred without the existence of *khabath*: 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" (*ghayyabat dhihrahu*) 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 najäsah 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 wudu after having slept:

- A minority of jurists maintains that any form of sleep (naum) always breaks wudu.

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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.\textsuperscript{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 (ikha quntuma 'il-l salāhi), 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.\textsuperscript{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" (\textit{Bid} p.35).\textsuperscript{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.\textsuperscript{479} Yet, due to the apparent conflict in the meanings of the ahādīth, most jurists compromise, ruling that wudu' is broken by sleeping, but only when it is sound (nawm khaṣṣ). The reason they give is that this sort of sleep is legally identical to "losing one's senses" (zawālī al-'aql), either by fainting (qībālī īghmā'in), insanity (junūn), or intoxication (sukrūn); and in all these states, there is an

\textsuperscript{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 (\textit{Umdat} p. 71).

\textsuperscript{477} See Mishkā "Tahārah": 315, 316, 318.

\textsuperscript{478} Cited in \textit{Bid} p.35.
increased risk of incurring a *hadath* because physical control has been (temporarily) lost, and a believer might break wind, or touch his genitals (*Bid* p.40). Hence, for the majority, *wudu* should be performed after sleeping, not because this act constitutes a *hadath* in itself, but because while asleep one cannot be sure that *hadath* 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 *wudu* when he wakes on the basis that, while "my eyes sleep, my mind (*galbi*) does not: if I had committed a *hadath* (*ahdathtu*) 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 *taharah* legislation.

Excursus C. The loss of physical control as a factor in *taharah*

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

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480 For this view, see *Mishkat* "Taharah": 317.
481 While generally agreeing on this point, the jurists quibble over which sleeping positions are most likely to facilitate a *hadath*. Here, fairly lenient, the Hanafis do not impose re-ablation unless a believer sleeps on his/her side (*nana mudlaji 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 *hadath* — e.g. lying on the back or side — then *wudu* is broken. However, when sleeping in other positions, re-ablation depends upon how long one sleeps. The Shafi'i are stricter still and rule that any sleeping position, except sitting down, breaks *wudu*.
482 Cited in Reinhardt 1990:11.
483 Ibid.
481 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 hadath. This, he claims, is apparent from the nature of the purification rituals:

Contact with the impurities (that come from) inside the body (i.e. khabū'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. 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. wudū'/ghusl/ayammum) 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 hadath are betrayals of the will by the body. Hearty laughter, coughing, and intemperate speech are milder forms of the same loss of control. On the other hand the acts that lead to preclusion (i.e. the major ahdath) 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.

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 tahârah. In light of the Prophet's explanation as to why, for most people if not himself, sleep is tantamount to a hadath, 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 hadath (ch.7.1.C.).

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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 wudū’ for a minority and only during prayer, see ch. 7.I.E; coughing, however, is not a cause of hadath as far as I know (Reinhardt cites al-Shirazi who recommends wudū’ after coughing for the same reason as after sleep - a real hadath might have escaped without one's knowledge); intemperate speech (lying) is seen as a hadath 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. 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.

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 najāsat.

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

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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.15:49), 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-Shafti‘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 (majäzi) 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. 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.

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. This reading explains how Muhammad – whose concerns were, first and foremost, with his salāt – did not break his

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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 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 mubahara, “contact”, and maš, “touching”, for copulation and they (also) denote the meaning of touching (Bid p.37).

495 For Malik’s opinion, see Mowatta “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 fudum 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).
wudu' even when he kissed his wives prior to prayer. For here, as when Muhammad wakes and prays without wudu', 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. Most other fugahā', 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 fugahā', 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'ni) (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').

Although doubtless not what he would have wished, Shafi'i expresses no need for either partner to repeat wudu if, before prayer, a man "lasciviously fondles his wife over her garments, touches her hair, or lusts after her from a distance". Now, as has been noted (pp. 172-173), a Muslim's moral intention is an influential factor in taharah; 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

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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" (Bukhari "Hajj":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. 'Ummat 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 tahir 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


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’.

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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 aḥādīth. 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 wudu' (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 wudu' in the same manner and, by so ruling, make al-sabālayni a considerable hindrance to a Muslim's purity.\(^{503}\)

According to Ibn Rushd, the Malikis agree that by touching his penis a Muslim breaks wudu'. 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

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\(^{500}\) Muwatta "Tahārah" 15:60.

\(^{501}\) It is also his proof that all forms of hadath impurity are unconnected to khabath, see Exc. B.

\(^{502}\) Maghen notes that the Shafi'i 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 shahrwah — will still break a Muslim's wudu" (1997:321).

\(^{503}\) See 'Umduat p.73, al-'Umdua 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 *hadath* 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 *hadath* to the act of touching the male genitalia (which Ibn Rushd does not tell us). 505 In his view, no one breaks *wudu* by touching the anus (sharaj), and a woman does not incur a *hadath* by touching her vagina (farf) (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 *hadath*, 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 *hadath*. 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 *wudu*, whereupon he said, “Is it not a part of you”? (*wa hal huwa ‘illa hadu’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 *wudu* 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 *hadath* by touching his penis with any body part he washes during *wudu* (see *Kitab al-Hujja* p.59 cited by Calder 1993:58). This ruling would appear to stem from the early belief that *hadath* 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 *Mishkat* “*Taharah*”:320. On the subject of Busrah’s *hadith*, 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 hadath to the discharge of khabath may well explain their aversion to Busrah’s hadith. After all, if a hadath 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 najisah. Hence, it does not trouble them to attribute the contraction of hadath 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 ikhtilaf 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 hadath) 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 (Hid p. 38). The obvious implication of this concession is that (at least this type of) hadath impurity ceases to exist altogether if forgotten about.

We have now mentioned most acts classified as causes of minor hadath. A final hadath, not corresponding to any pattern seen so far, remains to be discussed.

There is no ikhtilaf amongst us on the fact that ‘Ali ibn Ali Talib, ‘Abdullah ibn Mas’ud, ‘Ammar ibn Yasir, Hudhayfa ibn al-Yaman, and Imaran ibn Hsin did not consider that touching the penis occasioned wudā’. And who is Busra bint Safwan compared with them? How can the ahādīth of these, all of them, be abandoned for the hadith 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 diḥ. The same is true of Busra bint Safwan, we do not consider her view permissible, especially in view of the Companions who oppose her. (Hijja. p.59 in Calder 1993:58).

508 They support this with two ahādīth, see Muslim “Tahārah”.702-703.
In one of only two instances where Abu Hanifa and his school attribute hadath impurity to an act not involving the emission of khabath (penetration without ejaculation is the second), the Hanafi Imam expresses a “deviant opinion” that laughter during prayer (dhahikun fi-l salāt) breaks wudu’. 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 salāt – 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” (\(\textit{Bid}\) p.41). In other

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509 Cited in \(\textit{Mabsūt}\) p.77 (Maghen’s translation 1977:320-321). Ibn Rushd refers to this tradition, but attributes it to Abu al-‘Aliyāh (\(\textit{Bid}\) pp. 39-40). It is a curious point that only the participants’ ablution was invalidated, and not their prayers.


511 Laughter is understood not to break wudu’ 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 \(\textit{Mabsūt}\) p.77, see Maghen 1997:320).
words, why would something cause a hadath during prayer when it does not break ablution at any other time?

Having covered the jurists’ main categories of minor hadath, we will move on to their disputes concerning the stronger form of this impurity.

7.2. THE MAJOR AHDATH (Al-AHDATH AL-AKBAR)

The jurists agree that four types of act incur a major hadath: certain sexual ones (janābah), menstrual bleeding (hayḍ), postpartum bleeding (nifas), and dying. In the following two sections we focus on the jurists’ discussions concerning janābah, and hayḍ/nifas (these last two conditions are deemed analogous). 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 hadath face, in particular his/her restriction from the mosque, and defining the boundaries between these states of major hadath, 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 hayḍ/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 hadath:

512 A mursal hadith 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 hadith is attributed directly to Muhammad from a narrator among the tābi‘in.
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. 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 hadath access to mosques, unless it cannot be avoided.

- Al-Shafi‘i prohibits Muslims with a major hadath 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”; Fickhall 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. "Umudat p.184). This indicates the invulnerability of mosques to hadath, 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 (Shaft`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 janabah 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 junub 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 junub nor to one menstruating” (Bid 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 sabill” 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 junub 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 junub to enter mosques at all; therefore (against the Shaft`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 muddith access to mosques and, aside from one hadith 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 khaba’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 Mishkat “Taharah”: 462; according to Ibn Rushd, it is not established according to the traditionists (ibid).
517 See e.g. Bayan p.16.
to account for the prohibition of the junūb in this way.\textsuperscript{518} The exclusion of Muslims from the mosque will be discussed in more detail in chapter 9.

7.2.A.ii. The causes of jariabah

Fiqh recognises two causes for jariabah. First, it is said to result from any "normal" emission of semen, and this is upheld in a number of ahdīth.\textsuperscript{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.\textsuperscript{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).\textsuperscript{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 junūb is treated like the mustahādah.\textsuperscript{522} Another abnormal situation is envisaged by some, mostly Malikī 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

\textsuperscript{518} On this, see pp. 244-245 below.

\textsuperscript{519} For instance:

Sa'īd al-Khudrī reported: The Apostle of Allah observed: ghusl is obligatory in case of seminal emission (Muslim "Tahārah": 679).

\textsuperscript{520} As always, Muslims must be convinced of its existence in order for it to be legally incumbent upon them to lift a haddāth. 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 (Sabīq 1991: 50).

\textsuperscript{521} This is confirmed by a well know hadīth, 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 (BK Ghusl 80 cited in Bid p.47). Note that, in another version of this hadīth, 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 BID 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 wudū' 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. 'Imdat 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 janabah is intromission. Although this law took longer to be established, all the schools eventually accept it. Its validity is affirmed in numerous hadith, 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).”

Thus the jurists rule that the afflicted Muslim needs only to wash him/herself, and perform wudū’ to pray, and Malik (seeing no hadath at all) merely recommends that he wash the semen off himself (p.178).

Note that this is one of the few subjects within taharah where the jurists chose to increase the strictness of a rule. For, Muslim tells us janabah 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 wudū’ (presumably, this was also required from his partner, see Bid p.48). This early ruling was based on a hadith in which Muhammad is reported to have said:

When you are in haste, or semen is not emitted, ghusl is not mandatory, but wudū’ is (Muslim “Tahirrah”:676. Muslim mentions that in another hadith [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 hadith 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 “Taharah”: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).

Muslim “Taharah”: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 al-al-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 (ḥujiz) 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

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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 *janâbah*.

- 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 *madhhab* 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).

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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 hadath. 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 janābah is not incurred. Only the Shafi`is – who impose their ahkām 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 (ISTIHĀDAH) (Bid pp.51-67)

The Qur’ān describes menstruation as an “adhan”, which has usually, although not always, been translated into English as “a harm” or “an illness” (2:222). In the same verse, men are warned to “(k)eepe away from women during menstruation and do not approach them (lā taqrubuhumna) until they are pure (ḥatta 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 nifsā. 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 istihādah, and other forms of impure vaginal secretions such as leuchorrheah (kudr)).

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 sahih), whilst, on the other, istihādah (the blood from a vein) and leuchorrhea “flow in a state of illness” (fī marīd) (Bid p.51). However, there is nothing specific in the Qur’ān, and little in the ahādīth, 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 fuqaha’) 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).

See p.233 below for a list of alternatives.

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 herself*531*). 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). 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. 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.

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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 *ha’id* or *mustahādah*. If a woman is accustomed to menstruating, she will consider herself in a state of major *hadath* from the beginning of her bleeding.
533 This is stated in a hadith attributed to ‘A’isha:

‘A’isha... said: Imn Habiba b. Jahsh who was the spouse of ‘Abd al-Rahman ‘Auf made a complaint to the Messenger of Allah about blood (in *istiḥādah*). 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 ‘*Hayd*’:190).
The nafsā' s exclusion tends to last longer than the ha'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 ha'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 Shafis argue that its maximum duration is sixty days (Ibid 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). If she is suitably attentive, a Muslim woman suffering from istihādah or leuchorreah 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 hadith 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

Although in the ahādīth ‘A’isha often steps in and shows other women how and when they should purify themselves (see e.g. Mishkat “Taharah”:437), the jurists obviously cannot do this themselves. According to one hadith, 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 Prophet’s 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 ghust” (Ibid 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 salāt.

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 “Ḥaya’”: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 *taharah*, 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 *hadath* (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 *hadath* and the emission of *khabath* which the other madhâhib 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 *khabath*, 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 *mustahâdah* and those with chronic illnesses as pure – the Malikis are more lenient still. The Malikis' treatment of impurity is also perhaps the most

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*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 *fiqih* 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 *fiqih’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 hadath, in favour of firm guidelines. Almost all kinds of sleep break wudū’ (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 hadath, if he then prays without wudü’, 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 janūbah (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-sabilaymi, and the witness of hadīth, are the only factors in a Muslim’s contraction of hadath impurity.

- By basing aḥkām on Prophetic hadīth when possible. Where the meaning of a hadīth 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 *Ihya* 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

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538 See fn.230.
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 *hukath* from impure bodily emissions) alternatives. The Zahiris often uphold unique opinions (here as everywhere) – e.g. Muslims with major *hukath* 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 Iran\textsuperscript{541})

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 

\textit{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 \textit{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

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) 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 najāṣah – blood, urine, excrement etc. – the mushrik is to remain outside the doors of the al-Haram 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 najāṣāt. 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...
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 khābīth, 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,

\(^{544}\) Goldziher 1971:59-60. For the argument that all non-Muslims belong to the same category of purity, see next page.
\(^{547}\) 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. 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 khabīth. 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.

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).

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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/dhimmī 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.


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). 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 hadith 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”.

The second point of general agreement among the Sunnis is that the Qur’an’s description of the mushrikün as “ Nugas" 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 Nugas, the intent is the impurity of their beliefs and their general filthiness (al-murad Nugasat al-i'tiqad was-I istiqdhar), and not that their limbs are somehow impure in the matter of urine or faeces or the like.”

And echoing Nawawi the best part of a millenium later, Sayyid Sabiq writes:

Although Allah says in the Qur’an: “Verily the mushrikün are Nugas”, this is not a reference to their physical state (i.e. their essential purity), but to their false beliefs

553 Nawawi Sharh 2. P.51 (Maghen 1997:51)
and creeds. (Moreover), they may come into contact with dirt or impurity (khabath), but this does not mean that their possessions or bodies are impure.\footnote{Sabiq 1991:5 (parenthesis added).}

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.\footnote{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) Maghen 1997:278-279 (parenthesis added).} 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 mushrikīn 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.\footnote{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-Haram). 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'is and Hanbalis permit them to pass through any mosque other than the Haram, 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-Haram al-Masjid" ("as long as they do not take up residence there").

Thus, from the four major madhhab, 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). It must be also said that their opinion is the only one that makes sense according to the usual taharah rules. For, in spite of the jurists' near universal agreement that

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557 For these opinions, see al-Mawardi's Ahkam al-Sultaniyah, 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 hadath (ch. 7.2.A.i), and their complete agreement that no-one shall enter mosques carrying (above a certain amount of) khabath, there appear to be no regulations requiring that a visiting non-Muslim should perform ghusl, or even that his clothes be checked for khabath before he enters a mosque. 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 hadath 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 khabath 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; and he uses the same logic to explain the majority's permission for the non-Muslim ha'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 Haram, 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 Haram 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 hadath does not exist unless there is prior knowledge of it (p.172 above); however, while this is a firm plank of the tahārah 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).
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’ hukm.
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 hadith 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. 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 khabath), 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. 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. 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" (Ibn Qayyim al-Jawziyya, Al-Adhkar, p. 20). In other words, if a Christian woman does not defile this water then noone will!

For this rule, see Goldziher 1971:64.

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 hadath-defiled mosque is not something envisaged by either the hadith material, or the legal texts. If it were, there would surely be some regular purification ceremony designed to lift a mosque’s (accumulated) hadath impurity. At the end of the following chapter, Maghen’s rational explanation of the i‘d/nafs’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 hadath. 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 kafir? Why, given the Qur’an’s decision to exclude the polytheists (if not Jews and Christians) from al-Haram, 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 taharah’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 taharah 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.\textsuperscript{569} It would also have affected trade, of course, as physical interaction between Muslims and their neighbours would need to have been restricted.\textsuperscript{570} In addition, it would be, as Maghen notes, quite impossible to check whether someone is, or is not, in a state of major \textit{hadath} (and to question them about it would break certain rules of propriety). And, if a major \textit{hadath} is apparently not a problem, to insist upon checking for \textit{khabath} 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,\textsuperscript{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.\textsuperscript{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 \textit{al-Haram} he follows the meaning of the Qur’anic verse.\textsuperscript{573}

\textsuperscript{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).

\textsuperscript{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 \textit{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 \textit{jizya} tax was imposed upon Christians and Jews was because Allah realised the financial drawbacks to prohibiting non-Muslims from the Makkah mosque, and wanted to recompense them (\textit{Ahkâm al-Dhimmah} p.198).

\textsuperscript{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.

\textsuperscript{572} Unfortunately, I have not been able to locate the Hanafi arguments for permitting non-Muslims to enter the \textit{Haram}. 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).

\textsuperscript{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:

\textit{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 *taharah*’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 *taharah* 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 *kafir* 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

\(^{574}\) 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).\textsuperscript{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.\textsuperscript{578} Inside dār al-Islām, non-Muslims are (to a reasonable degree) permitted to rule themselves.\textsuperscript{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".\textsuperscript{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.\textsuperscript{581} Nor is he permitted any share of the booty from a successful battle.\textsuperscript{581} Unsurprisingly, intermarriage between non-Muslim females and Muslims males is forbidden because their children will not be Muslims;\textsuperscript{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.

\begin{enumerate}
\item[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)
\item[577] On early Muslim policies regarding the dhimmī, see Courbage and Fourbes 1997 ch. 1.
\item[578] As noted, the non-Arab converts and freedmen (mawal), 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. R.
\item[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).
\item[580] 'Umdat p.608.
\item[581] Even then aman only guarantees protection against loss of life, not enslavement (Bid p.458).
\item[582] Doi 1984:134 ff.
\end{enumerate}
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 *dhimmis*), and those he must fight (the inhabitants of *dār al-ḥarb*).\footnote{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)!} 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.\footnote{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 *dār al-ḥarb*. 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 opportunity” (p.613).} 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 *ṭahārah* 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-ḥāṣām al-khamsa*) in a concerted attempt to embrace all aspects of human existence from the legal
perspective. Even things that are irrelevant or “indifferent” (mubah/jaiz) have to be declared as such by a competent legal expert. This strategy reduces tensions, cuts down ambiguities, and leaves little reason 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. Some Shi‘i authorities even go so far as to describe Sunnis as impure (Maghen 1997:273).

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

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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.

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\(^{588}\) 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 āhrah 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 āhrah 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.


591 These studies are both political (see eg. 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 tagrabuhunna”]) 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 ha’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 hadath. 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 hayd/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 hayd 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 hayd/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 tahārah regulations uphold a woman’s lesser religio-social status. Given this, the position of the ġā‘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 Beavoir’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

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593 The “most horrid and dangerous of pollutions”, Frazer 1995:597.
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 fn5 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* 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 dams 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. *janâbah*), 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 *khobath* (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 ṭahārah 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 hadath 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 hadath, 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 ṭahārah’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 hadith, 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‘īliyyat) on early Islam. 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. 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 process - and, as a result, Muslim tradition has come to think of Eve/woman as deceptive, stupid, and “crooked”. 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.

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.
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 *khabith*), 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 *hadith* collectors, historian, and legal scholar, the faith has ever known!

\(^{610}\) Spellberg 1996:313.
While Spellberg’s general argument seems sound, there are several problems with her use of *tahârah* 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 (*la taqrabuhunna*) women in their menses. A literal reading, therefore, would result in the complete sequestering of menstruants (such as has been known in Jewish communities\(^6\)). Instead, the jurists take into account many, more liberal *ahâdilh* 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 *hâ’id/nafsâ* 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 Shafî’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 *hadath* until she starts to menstruate (when she is obviously no longer an infant); nor is it even obligatory to lift a *hadath* until a Muslim reaches adolescence (*bulûgh*). Fourthly, although it is true that many, although not all jurists rule that a baby boy’s urine is less *khabith* than that of a baby girl (ch. 6.4.A.), Spellberg does not note the rarity of this *hukm* within *tahârah*, 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

\(^{61}\) 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. \textsuperscript{612} The Biblical purity laws, in contrast, are far better examples of gender hierarchisation, and the *taharah* system is simply not comparable. \textsuperscript{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 *taharah* 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 (\textit{Bid} p. 54, see p. 207). \textsuperscript{614} In the same vein, a minority rule that men are not to perform *wudu’* with water that has been left over by women, although, when the roles are reversed, a woman’s *wudu’* stands (\textit{Bid} p. 29). Others hold that a menstruant’s *su’r* renders ablution water invalid (\textit{Ibid}), or that they spoil food by touching it. \textsuperscript{615} And the Kharijis insist that women perform all their missed prayers as *qada’,* which would leave them forever straining to catch up (\textit{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,

\textsuperscript{612} Muslim “*Hayf*”: 592. See p. 41.
\textsuperscript{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.
\textsuperscript{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 hā'īd/nafsā‘ “some recitation because of istihsān (juristic preference)” (Bid p.50), and others permit it as long as she spaces the words out, or does so from memory. Likewise, the Shafi‘is allow her to touch a copy of the Qur’an if it is for purposes of learning or teaching. 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, perimteric irrigation 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.

615 See Rodinson’s article on “Ghida” in E.III. 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 hā'īd/nafsā‘ can defend their opinion logically. For, with the exception of tawāf, she should participate in all acts during Ḥajj, 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 Tāhirah 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.\(^\text{619}\)

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 *ha'id/nafsā*'s exclusion from the mosque, which he insists is only because she might drip menstrual blood onto the floor.\(^\text{620}\) 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.\(^\text{621}\)

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\(^\text{619}\) *Mishkat* 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.

\(^\text{620}\) 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).

\(^\text{621}\) 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 ‘āyn 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 form 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 junūb is also expelled from the mosque. Maghen is well aware of this, for he admits that:
while the ḫuʿād might drip menstrual blood onto the floor (as the nafsāʾ 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 fuqahaʾ rule, following a report of ʿAʾisha that jaṭābah is contracted by julūs bayn shuʿabihi al-arbaʿa (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 ʿayn al-najāsah.\footnote{Maghen 1997:295-296.}

The above realisation forces him into something of a volte-face; his solution is that jaṭābah 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 jaṭābah which is conceived to be fundamentally at odds with sacred space.\footnote{Maghen 1997:297 (my emphasis).}

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 jaṭābah 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 jaṭābah, 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 ḫuʿād/nafsāʾ, on the assumption that their impurity is of equal severity and type.

\footnote{Maghen 1997:264. (Parenthesis added.)}
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 hadath. 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. 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. 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 fn. 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 hu id"nafsir’ is not allowed to pray as long as she wraps herself up like the mustahākah (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:

Hadith 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

628 These days this is a particularly volatile issue, see Karam (1998:144).
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 ḥa'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.

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 mustahādāh shows, this holds true for women too. Perhaps, then, it may be said that the predominant emphasis in taharah is not on using pollution ideas to marginalise women in any aspect of life – but rather to include them, up to a point.

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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). Probably, the best textual evidence that menstrual pollution ideas were sometimes used in typical ways to subordinate women is a thoroughly chauvinistic hadāth 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 (uriyitukwwa akhtar ahl al-nnr)”! 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 “Hadh” 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 ḥaʾid/nafsāʾ 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 Qurʾan, 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 ḥaʾid/nafsāʾ 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 Qurʾan. 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 Shafiʿi’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.\textsuperscript{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.\textsuperscript{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 khabath and major hadath 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) najasah. 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

\textsuperscript{634} This is especially true of the Malikis' reading of tahārah, where lust is often an important factor in the contraction of hadath. 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 wudū', his hukm, 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 liqūlu-bikum 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 Makkah 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

NAJASAH

"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)\(^\text{637}\)

Of our four approaches to ritual pollution, only one, the religio-moral, remains to be considered more fully in the context of taharah. 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.

\(^{637}\) 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-salāh 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 hadīth (and several others like it) in the Muwatā 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 hadath symbolises the cleansing of sins:

Yahya related to me from Malik... that the Messenger of Allah said: The believing slave does wudu’ 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.
Traditions like this occur regularly in the hadith collections, they provide the religious sentiment and imagery from which the taharah system was forged. 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 taharah law is a formal discipline as Reinhardt claims, it is also embedded in the theological ideas and values of early Islam.

If we accept that Sunni Islam’s law and theology are not separate disciplines but, at least in the context of taharah, 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 hadith, wudū’ 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 najasah (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’ hadith 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 “Taharah”:438-451.
early tendency to combine *hadath* 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 *hadath*.\textsuperscript{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*.\textsuperscript{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.\textsuperscript{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.\textsuperscript{646} In contrast to this, the Sunni majority restricts *hadath* 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

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\textsuperscript{642} One of which, as he himself implies, is *hilām* (self-mastery).

\textsuperscript{643} Howard 1974:44. On these grounds, it is hard to imagine what sin would constitute a major *hadath*.

\textsuperscript{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 engage résolument dans cette voie" (Ibid).

\textsuperscript{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 Khairiji line and declare all forms of deception a cause of impurity.

\textsuperscript{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 ṭahārah 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 ṭahārah 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 ghustl or even ‘izālat al-khabath in the case of the martyr, ṭahārah 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 ṭahārah to draw attention to the importance of human sexuality and fertility. However, while both observations are hopefully valid, they only address parts of the ṭahārah 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 najasah. 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). 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 hadath 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 hukm 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 muhdith 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

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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 hadath, 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 muhdiš 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 ahdath; 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 hadath 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. Tahara’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 janaba and hayd/nifas) – 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 hadath or khabath, 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 hadath are concerned, this aim is strongly implied in the majority’s description of them as ways of
“drawing near” to God (ḥadath thus signifying a way of being pushed away from God). The stated purpose of removing khabath, 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 juriub: 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, nafsah 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, ṭaharah 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 wudu’, 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 nafsah 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-ʿArabi describes the concept of impurity in Asrar al-Ṭaharah. In a highly creative marriage of Sufi reasoning and law, he suggests an inward realm corresponding to every aspect of the ṭaharah system. Al-ʿArabi’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 *hadath* 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 *hadath* to an impure emission when the believer is healthy, because this symbolises the knowing rejection of Allah; he does not attach a *hadath* 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 *hadath* 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 *wudu* 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 *wudu* remains intact, if not, it is broken. And those who hold that laughter breaks *wudu* (Hanafis) do so on the basis that a thoughtless expression of mirth symbolises the heedlessness of those who do not believe.

\(^{650}\) *Asrar* p.151.
In contrast to hadath, al-`Arabi interprets khabath as “blameworthy character traits”. 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. 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”. 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. 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

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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

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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 khabatḥ 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 muhdith 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‘sidnafsā 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. This holds true even when the pollution involved is thoroughly tangible; thus, if a Muslim unknowingly uses water that contains khabā‘ih to perform wudū’,
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 taharah. 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) - taharah 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 mustahadal), 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 khabath in the impure water) will not, therefore, negate the value of his prayer (see e.g. E.B. “Taharah from Najasat 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).

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 hadith 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 wudū' (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-semenal 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 wudū' again. 659

Madhi is khabith and not to be brought into a mosque, prayers are not to be said in a state of hadath. 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 tahârah 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.

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 *najasah* – 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 *hadath* impurity, and contact with *khabath*, 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 tahārah law, and began the task of applying ritual pollution theories to an Islamic context. Part II analysed tahārah 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 excursuses 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 taharah 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 hadath.
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
William 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 Chrisms, 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 ulama‘ 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

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).
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”. 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”. (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.) 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”. 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”. 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.
669 Graham 1983:68.
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:

(0)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

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672 Graham 1983:68.
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". 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".

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. 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. Indeed, his assertion that the Hajj's major rites have nothing to do with the Abrahamic myth is challenged by a hadīth 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

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679 Early Islam’s self-conscious rejection of ritual efficacy is best illustrated by a famous hadīth 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).
Arafat.\textsuperscript{681} Also, to make an obvious point, Graham's observation that "the worshipper does not see himself or herself like Hagar or Abraham\textsuperscript{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, fend 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 \textit{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, \textit{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

\textsuperscript{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 “reformational” 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 (ḥilm) 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

ahādīth and the liturgy of the niyyah and ʿistinjāʾ), 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 ʿjunūb 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 latters’ 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 *talibiya*, the ritual formula to be said by all Muslims as they begin: "*labbaika, allâhumma, 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: *laharah* like the *talibiya*, indeed like most forms of Muslim ritual, is the mechanism via which a Muslim may approach, and proclaim his presence to God. *Najâsah*, 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. 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".

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BIBLIOGRAPHY


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-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)


Bernanos, G. *The Diary of a Country Priest*


Bourke, J. *Scatological Rites of all Nations* (1891, Washington, D.C., Lowdermilk)


Boyce, M. *A History of Zoroastrianism* (1975, vol 1, Leiden, Brill)


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)


Dinari, Y. “Customs Relating to the Impurity of the Menstruant” in *Tarbiz* 49 (1979-80)


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)


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, Tubingen, J.C. Mohr)

Encyclopedia of Islam. First and second editions (Leiden, Brill)

Feldman, E. Biblical and Post-Biblical Mourning (1977, New York, Ktav)


Fontenrose, G. The Ritual Theory of Myth (1966, Los Angeles, University of California)


Goldziher, I. “Islamisme et Parsisme” in Revue de l'histoire des Religiones 43 (1901)

The Zahiris: Their Doctrine And Their History (1971, Leiden, E.J. Brill)


Hanson, F.A. “Female Pollution in Polynesia” in *Journal of the Polynesian Society* 3 (1982)


Houston, W. Purity and Monotheism (1993, Sheffield, Sheffield Academic Press)


Husain, S.A. A Guide to Haji (1972, Lahore, Sh. Muhammad Ashraf)


Ibn Qudamah Kitab al-ʿUmda fi ahkam al-fiqh, translated as Le Precis de Droit d’Ibn Qudamah ([no d, pl. or pub.])


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 Weltanschaung (1964, Tokyo, The Keio Institute of Cultural and Linguistic Studies)


Levine, B. *In the Presence of the Lord* (1974, Leiden, Brill)


Kuru Society: Disease and Danger in New Guinea Highlands (1979, California, Mayfield Publishing)


*Al-Mudawwanah Al-Kubra* (1994, Beirut, Dar al-kutub al-‘Ilmiyah)


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)

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)


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)


Ricoeur, P. *Finitude et Culpabilité* (1960, Paris, [no pub])


Ryckmans, "Les Inscriptiones anciennes de L'Arabe de Sud: Points de vue et problemes actuelles" in *Oosters Genootschap in Nederland* 1 (1973)


Selvidge, M. *Woman, Cult and Miracle Recital* (1990, Lewisburg, Bucknell University Press)


Wensinck, J. “Animismus und Damoneglaube im Untergrunde des judischen und islamischen rituellen Gebets” in Der Islam 4 (1913)
"Die Enstehung der muslimischen Reinheitsgezetzgebung" in *Der Islam* 5 (1914)


  *Marriage Ceremonies* (1914, London, MacMillan)


Zara, B. "The Requirement of Taharah for Reciting or Touching the Qur’an" available at http://www.uh.edu/campus/msa/articles/zara.htm


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 excursuses.\(^{337}\) 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 najāṣah 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, qadî, wadî) are khabīth, 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 khabath.
is an impurity of equal strength. 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 Bid’vat 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. 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 hadath 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 khabā’ith than the ahdath. 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. The danger inherent in this approach is that the reader may emerge with a simplified, if not seriously mistaken

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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 Khalsaf 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 ṭahārah. 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 khaba’ith after the aḥdāth, for our purposes, it makes better sense to reverse this order and review their discussions concerning the khaba’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 khabath. 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 nahr345) is described as mayta (carrion); all mayta is khabīth.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 khabīth decides whether it is also a cause of ḥadīth.
345 “Emergency slaughter”, performed when the creature is in the process of dying, also exists and is referred to as ḍhakah or tadhkiyah.
346 Qur’ān 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". 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. 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/Hanafi viewpoint on four points. Firstly, he observes that the Qur'an always mentions two separate prohibitions: "forbidden to you is mayta and blood" ("ahīrūm 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. Secondy, 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. 'īzālat al-khabath). Logically, where there are two purifications, there must also be two impurities. Thirdly, he calls the authenticity of the hadīth 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. Thus,

347 Although its nature is very different from 'īzālat 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 Bukhāri “Dhaha ‘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 fuqūhā’ 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.  

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, 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:

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

332 With the possible exception of pigs and dogs according to some jurists.
What activity in the limbs can be assigned the term “life” (“hayy”). Those who maintained that the activity of growth (namā) and food intake (tāghdiya) 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 F.B attributes this position to the Hanbalis ("*Tahārah from Najāsāt*" p.6).
pure” ("dibaghuha tahruruha"),\textsuperscript{357} the majority agrees that tanning can purify the skins of most creatures – bar the pig who is rijus - that have died without slaughter.\textsuperscript{358} Those who take the opposing view claim that this hadith 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”\textsuperscript{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 harām, 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).\textsuperscript{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

\textsuperscript{357} For this tradition, see Muslim “Taharah”: 712 (c.f. nos. 794-813).
\textsuperscript{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).
\textsuperscript{359} Mishkāt “Taharah”: 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

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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 *Raven* p. 158.
purifying (tahir) and its corpses are permitted for eating” (hu al-tahir 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 ('ambar) – 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

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363 Mishkat "Taharah": 479. The authenticity of this hadith is disputed by some (Bid p. 564). Professing that he cannot find any evidence of ijtihad 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.II).

fisherman’s net, or when the sea “has grown tired of it” (hasara ‘anhu). Only in these cases do they judge a fish sufficiently “hunted” (whether by man or nature). Alternatively, if a fish has simply floated to the surface, dying of its own accord (i.e. ghayr sabih 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 khabïh. 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-Hayawan) (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 tahârah 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 tahârah 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 tahârah’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 Bayan 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 (harām) 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. 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 “rijuṣ” (6:45), he may qualify this in the case of pig su’r, however.

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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. *Umādat* p.98 (c.f. Bousquet who also cites it as the only Malikī 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 fihu), may a man perform the ablution with (this water)? And Malik said: if he did perform wudu’ 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 mä’adriyu mä hagiigatihu). In the (unlikely) event that it is, Malik allows Muslims to perform the seven washings if they feel

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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 (turâb) 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 refa‘a-l-hadâth), 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). 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 wudū’:

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 hadith with a hadith 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 “Wudū’”: 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 Hayān 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 makhruh (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. *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 *khabath*, 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 (*jawārih 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 *wudu*’ 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-tawāfīn ‘alaykum aw al-tawafät*).\(^{382}\)

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 ‘Aṣl p.49.
have given their method of linking dietary and purity laws), the Hanafis declare it “disliked” ("makruh") for purification purposes, but not khabith as such. The su' r of a host of other insalubrious and harâm 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 (dawajin) is treated similarly, although for different reasons. Its purity is suspect because chickens consume filth (making them istikhbâth), 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 halâl.

The Hanafis also place the su’ r of predatory birds (jawarih 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 khabath, and their su’ r can therefore also be judged pure.

6.2.C. Su’ r that is doubtfully purifying (mashkuk fi tahûriyâthi)
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-ﬁmâr) and mule (al-baghl), 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 ‘Taharah” 3:14. Cited in Bid p. 27. However, Ibn Rushd notes the existence of at least one well-known hadith stating that a vessel drunk from by a cat needs to be washed once or even twice.
383 See e.g. Roven 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 hukm 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 khabath-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 harām, 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 khabath, 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 hadith to argue that predatory beasts and riding animals do not contaminate water.388 Here, the Hanafi 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

388 See Mug i p.49 (Maghen 1997: 231).
389 Cited in Maghen 1997:232 (taken from Ibn Maja, but no reference included). C.f another hadith 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‘afkalati al-siba’) (Mishkūr “Taharah”: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 wudū’. 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. 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. ‘izālat 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 (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 *suʿr* unusable for *wudū*, although not impure. The link between Islam’s purity and dietary laws is finally (all but) severed by Shafi‘i, however. In his view, only pigs and dogs transmit defilement through their *suʿr* - 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 *khabath* impurity and the animal kingdom. He obviously knows of the other jurists’ practice of connecting a creature’s purity and dietary status through its *suʿr*, 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 (*laisy minhā shay ḥaraṯan 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. Furthermore, the dog is distinguished by the fact that the angels do not enter a house where (a dog) is found. Moreover, the leftovers (*fadl*) of all creatures edible or inedible, are permitted (*ḥalāl*) save that of the dog and pig.

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 *ḥadith* 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 (*Muwat‘a* reference data lost. In the next *ḥadith*, 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). 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. 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 khabath, 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 ‘izālat al-khabath is possible with an unspecified number of washings, and

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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 so, as we know, in Shafi‘i law any form of ‘izālat al-khabath 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 Mughaifil’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 khabath.\footnote{For Asma’s tradition, see Muslim “Taharah”:573.} Shafi’i explains all this as follows:

Now all the various sources of contamination (anjas) 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 kitab wal-m ‘aqil), 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 khabath) with the first washing and with less washings than seven, and that the contact of the water (mumasat al-ma’) with the vessel (achieves the same purificatory end) with less than seven washings?\footnote{\’Lhnn pp.19-20 (cited in Maghen 1997:213 parenthesis added).}

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 wudđ’/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 najjasah - 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 taharah’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 taharah debate.\footnote{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 khabath 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 izalat al-khabath requires three washes, ‘Umks 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 qiyyasan 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 [turabb]). 401

This concludes our survey of the three main approaches to al-hayawan. 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

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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 (fadil).” 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. ‘Umda 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”. Such a treatment would have to pay special attention to Shafi‘is view, which, by attempting to reconcile Abu Hurayra’s hadîth with the general tahârah rules regarding ‘izâlat 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. If human blood flows, whether from cupping, a wound, menstruation, lochia, or prolonged vaginal bleeding (istihada), it is khabith and must be washed off a person’s clothes, person, and place of prayer immediately. Martyrs (shahîd), 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.

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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 tahîr 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 hadîth (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 “Tahârah” 573, 574; Bukhari “Wudî’”: 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 khabath (khabath qaliil) 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 Malikis 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 Bi'diyat, 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. Baytul 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 (Ag 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 khabath 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 khabith 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 wudū’ to pray, despite the fact that neither form of purification – istinjā’ requires the use of stones (‘Umdat p. 78, cf. p. 89 above), wudū’ 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 khabath, arguing that what is true for istinjā’ cannot serve for further analogy (Bid p. 87). Hence, in Shafi‘i’s view, a khabath 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 (najis fi-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 hadīth 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 ‘izzār and I will wash it. He replied: washing is only required for the urine of an (infant) female, whereas one need only sprinkle (nadaha) 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 hadīth, 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 ahādīth 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 *khabith* and contact with it necessitates immediate purification.\footnote{See e.g. *Bayyín* p.37.} 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.\footnote{See *'Asl* p.52.}

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 *halāl* animals is pure, and that of *harām* animals impure.

- Abu Hanifa and Al-Shafi‘i agree that the excrement and urine of *all* animals, to varying degrees, is impure.
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 (marâbid al-ghanam)... (the second is) the permission granted by the Prophet to the 'Umiyin to drink the urine and milk of camels (Bih p. 86).

In the second instance, Ibn Rushd is referring to a hadîth 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 (Bih 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 halâl animals, is impure – is supported by the following hadîth (which Ibn Rushd includes in his description of the jurists’ discussions on substances capable of removing khabath):

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

417 Bukhari “Wudū’”.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 istinjä`). ‘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 ahädîth, 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” (“bâb qiyyös al-awlij”).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 hadith 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 Bukhär “Wu49”: 158. Clearly “rits” is another synonym for näjis/khabith.
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 qiyyäs into three forms: al-awlij (superior), al-musawi (equal), al-adna (inferior), M. Kamali Principles of Islamic Jurisprudence (1991, Cambridge, Islamic Texts Societies) pp. 214-216. As qiyyäs al-awlij 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 ḥukm of a creature’s flesh, the Hanafis agree with the Shafi‘is that any sort of animal urine and excrement is khabith – 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” (khaṣīf/mukhaṣṣafah) 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 khabath khaṣīf to be barred from prayers. The Mabsūṭ, 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 'ammat baliyatu khaffat gadiyatu)\textsuperscript{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.\textsuperscript{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 tah\textit{f}\textsuperscript{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.\textsuperscript{426}

Having summarised the discussions pertaining to Ibn Rushd's main categories of \textit{khabath}, we now turn our attention to two other categories of substance described by many jurists as polluting.

\textsuperscript{423} \textit{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 \textit{ahadīth} concerning a specific impurity. Those substances about which the \textit{ahadīth} agree (i.e. blood, maya, most types of urine and excrement) are all heavily impure; whereas if sound \textit{ahadīth} conflict about a particular substance's purity, Abu Hanifa classifies it as \textit{khabath khaf`f}. Hence, for instance, in the present matter, Abu Hanifa considers all excrement heavily impure on the basis of Ibn Mas'ud's \textit{hadith} (he does not know, or refuses to consider as valid, the tradition permitting prayer in the sheepfolds) (\textit{Asl} pp. 76-77). In contrast, his disciples, Yusaf and Shaybani (and most later Hanafis), rely less on the agreement of \textit{hadith} in their estimation of a substance's impurity but, rather, on whether there is disagreement amongst the \textit{fugaha} concerning it. For them, if the purity status of a \textit{khabath} provokes ikhtilaf, things are resolved by ruling it light (\textit{Mabsūt} p.56). Here, because of the disagreements in \textit{ahadīth} and contradictory juristic opinions, they are left in no doubt that the urine and excrement of edible animals are only \textit{khabath khaf`f}. However, while their methods may differ, and on this occasion even result in different \textit{ahkam}, regarding most kinds of impurity the early Hanafis concur. For where \textit{ahadīth} tend to disagree, so too do the \textit{fugaha}, and vice versa. For Maghen's review of this topic, see 1997:162-164.

\textsuperscript{424} \textit{Bayān} p. 21.

\textsuperscript{425} E.g. E.B. "\textit{Najāsāt}":3.

\textsuperscript{426} Ibid
6.5. SEMEN (*Bid* p.88)

Male semen (*manī*) 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 *Magāsid* p.19. See Tha’uban’s *hadīth* in *Muslim Hayl*: 614 for an extended cogitation on the nature of male (“thick and white”) and female sperm (“thin and yellow”). Also see *Muwatta “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. *Mishkīn “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:

\[\text{mant} \text{ is not nājis, and if someone were to ask: “if not, then why bother rubbing or wiping (yamsah) it off?” We would answer him: “just as one rubs off mucus or sputum or clay or bits of food which have stuck to his clothes, these substances being non-defiling, and if he prayed in this garment before rubbing or wiping them off, there is no problem. And semen does not render either water or anything else nājis.}^{431}\]

Scholars from the earlier madḥāhib 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 “Taharaḥ”: 567.

\(^{430}\) See above p. 89.


\(^{432}\) 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. “Taharaḥ 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' ḍafiq). 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 ṭahir wa lā min ṭamījūs).

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.

6.6. KHAMR (Bid pp. 572-577)

Ibn Rushd only mentions this topic briefly in the Bidâyat’s kitâb al-tahârah - 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. Khamr is normally translated as “wine”, and is tahârah’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 khabith when the other pastimes mentioned by the Qur’an are not is interesting, but will take us outside the confines of the present survey. 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.

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435 In the tahârah 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 1:27-38). 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 tahârah (see Exc. C). Also note that crystallised in the Qur’an’s increasingly negative attitudes to alcohol is the general “reformational” 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 khabith 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 Shaf‘i and Malik’s argument, there is a sound hadith stating that: “every intoxicant is khamr, and each khamr is harâm” (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), naqṣ (infusion of raisins), or nabīdīn (“date wine”, or mead) which they consider either lightly khabiṣ, 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

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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 Asf al 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 *khabath* “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 nabīdīh 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 *nabīdīh* for *wudū’* 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 *khabath* 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 *Bauin* 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 *zabārah* 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 suʿr, while, according to the Malikis, the urine and excrement of harām creatures is khabith, and their suʿr 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 khabath. 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 khabath, 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.

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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 ʿtahārah, 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 ʿtahārah 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. Beyond this point, however, ʿtahārah 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 ʿkhābīth in Sunni Islam – a fact that is traced to the Qur’ān’s statement that Allah has “honoured the sons of Adam” (17:70).

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 ḥadath. Yet, in the case of a martyr’s death, no ghusl is necessary and the blood need not be washed off his

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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 hadath and khabath impurities. But the martyr is different; it is said that he is to be admitted to heaven without examination of his earthly deeds.\footnote{See L. Ridgeon Crescents on the Cross (1999 Glasgow, Trinity St. Mungo Press) p.97.} And there is a *hadith* 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.\footnote{Bukhārī “Wadā” 238.} Thus, it makes sense that the martyr’s impurity is waived, just as his sins are waived. By doing so, the *tahārah* 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.\footnote{See e.g. Rosner p.19 fn.3.}
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 
hadath impurity. The two strengths of hadath 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 AHĐATH

The jurists agree that a minor hadath is incurred through five acts: urination, defecation, breaking wind, emitting madhiqadi, and emitting wadi (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 wudū 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 (dart); and it is only when a believer farts audibly, and/or malodorously, that he incurs a hadath. 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". The same is true of khabath; if someone is not sure that he has come into contact with an impurity, he is not legally required to wash himself. In the tahārah 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

446 This hadith is from Bukhari "Wudu": 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 khabath, and the contraction of hadath. Let us begin with Abu Hanifa's view, in which, according to the Bidayat:

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447 Ibid.
each impurity (najāšah) flowing from the body or excreted from it necessitates ablution, like blood (dam), and blood from) excessive nose-bleeding (al-ruʿāfi al-kathirā), drawing of blood (al-fasād), cupping (hajamah), and vomiting (qay'), except for phlegm (balaghah) (Bid p.32).

Here, the tangible impurity of the substance (i.e. the khabath) triggers a non-tangible state of impurity (i.e. a hadath). Indeed, in the Hanafi school it is unusual to find any hadath not stemming from the emission of impure substances.448 These jurists consider vomiting, and any type of bleeding (including nosebleeds [ruʿāf]) – two very common and much discussed mishaps – to break wudu', for blood and vomit are irrefutably khabith.449 In support of this, they cite two traditions: firstly, a hadīth related from Abdullah Ibn ‘Umar which affirms the obligation of ablution due to a nosebleed and, secondly, a hadīth 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 taharah law for the Hanafis. Primarily because of their principle of linking hadath with khabath, 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. wudu') 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.iii). Indeed, the fact that coitus interruptus is a cause of hadath 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” (Bayun p.14). Thus, it is the impure, but still hidden, discharge that brings about janābah (rather than “any non-rational” cause).
450 For the tradition on nose bleeds, see Muwatta “Tahārah”, 10:48; for the tradition relating to vomit, see Tirmidhi “Tahārah”: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. They are all heavy impurities (najāsāt ghalizat)… Vomiting phlegm (balagham) 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 of 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.\footnote{E.B. "Wudu", p. 7 (my emphasis). The content of this passage directly follows Abu Hanifa’s views, see ‘Aṣl pp. 78–79 (in Maghen 1997:206).}

For those who consider vomiting a cause of hadath, certain principles apply. It is only if food or blood is vomited from the stomach that it is heavily defiling (khabath ghalīṣ, and breaks wudu’. 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, wudu’ is not broken. Applying the same criteria here as they do in their treatment of khabath, the Hanafis stipulate that a believer’s wudu’ 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 tahir 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

\footnote{Whereas vomit is called qay’ (or qi’), 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 qay’ or more) then wudu’ is said to be broken (Maghen 1997:205 ff.).}
Malik’s view on the relationship between impure bodily emissions and hadath appears to be slightly different. While, according to Ibn Rushd, he also thinks emitting a substance known to be khabith 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”. As far as the usual logic of tahārah is concerned, this clearly goes too far (even if bleeding is not a cause of hadath, blood itself is khabith – 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). This is a feeling that is found throughout the hadīth material and, doubtless, informs tahārah law on a fundamental level. In the context of the present debate, it also serves to show that, for Malik, hadath is not always triggered by

453 The other jurists apply the same criteria when judging whether or not a regurgitated substance is khabith (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 wusfa’, 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 do if he discovered evidence of madāt 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 – madāt is unanimously considered impure and always a cause of hadath but, as is about to be noted, Sa’id’s opinion epitomises a theme that runs throughout tahārah.

456 See ch.10.
khabath; for, if that were the case, Sa’id and ‘Umar would have stopped their prayers and repeated wudū'.

According to Ibn Rushd, an important principle in Malik’s decision about which bodily emissions do cause hadath (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 khabith substance (be it urine, faeces, madhi, wadi, semen, or wind) “only breaks wudu’ when passed in a condition of health” (‘idha kāna khurjûhu ala wajihu-l-sahati fthu yanqadu-l-wudü’) (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 wudu’, because the usual connection between khabath and hadath 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 (istihadah), was ordered to wash off her blood, but then permitted to pray without wudū’:

“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 (Pala ‘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.”

For the Malikis, the fact that Fatima may perform her prayers without wudu’ indicates she had no hadath to lift – her illness having canceled it out. In contrast, the other jurists prefer another version of Fatima’s hadith, in which a command to perform wudū’ before each

457 Note that, according to the ‘Muwatta. Malik also seems to have discounted vomiting as a reason to repeat wud”. 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 wudū’ before he prayed” (Muwatta “Tahārah” 4:17). Ibn Rushd does not mention Malik’s opinion, which may indicate that vomiting is a cause of hadath 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 mukdith 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 wudū”. 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 wudū’—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 dicates 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 Mishkat “Taharah”: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 Hayān p. 34; for the Shafi’is, see ‘Umdat pp.94-95.
460 E.g. Magāsid p.25.
461 The Bidgāyat 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).\(^\text{463}\)

Returning to the matter at hand, Shafi‘i’ has a different opinion regarding which bodily emissions incur a hadath. In his view and that of his madhhab, the fact that an emission breaks wudu’ 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-sabilayni (the two passages/roads), or al-makhrUayni (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 hadath:

Shafi‘i (solely) took into account the passages through which the excretion occurs as factors affecting the nullification of ablution (lā yāngid īla al-khārij min ‘ahaid-l-sabilayni) 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).\(^\text{Bid p. 32}\).

Indeed, this principle — that “wudu’ is broken by whatever is excreted from the two roads/passages” (intiğäd al-wudu’ mima yakhruj min aḥad al-sabilayni) — is upheld upon by all.\(^\text{464}\) Uniquely, however, Shafi‘i makes it the only reason for a bodily emission to incur a

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\(^{462}\) 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 ḥudūth cited by Sabiq (1991:50).

\(^{464}\) Although for different reasons: for the Hanafis, emissions from al-sabilayni trigger a hadath 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

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.

For instance, the following selection of opinions in Bukhāri conclusively demonstrates that any type of bleeding (outside of the sabīlāyi) will not break wudu’. Following Shafi’i, Bukhāri 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 Dḥāl-L-Ruqa and a person was shot with an arrow and he bled profusely (fanazṣafal-m-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 Abī Auṣa 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’ (Bukhāri “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-rihayn makhtilafān fī-l safahi wa-l ra’īhān) (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 wudū’. 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 khabath and contracting hadath 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 hadath. Moreover, in his school, hadath 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 hadath 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 ṭahārah 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 hadath 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 khabath brings cleanliness and is regarded as a rational, or ethical, form of worship; whereas, lifting hadath 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 najasah, and their respective purifications. For, in Abu Hanifa’s view, a hadath normally only follows the
emission of khabath, which implies that the acts of rafa’a-l-hadath are merely glorified removals of khabath. 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 (taharah hukmiyyah) it resembles the actual purification that is purity from filth (taharah najāsah)” (Bid p.33) (We are following Nyazee’s translation. However, for “actual purification”, the text stipulates “taharah ma’nawiyyah”, 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, Shafiʿi, 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 khabath (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 khabath then these acts are like any other form of ‘izālat-al-khabath, 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 khabath 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 junūb were to fall unexpectedly into a well (and has no time to say niyyah), his hadath is lifted and the water itself becomes mista’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 hadath (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 wudu’ after that, then, given that blood is more polluting (anjās) than the penis (we would expect touching the penis, not to cause hadath, but this is not so)? By giyās on this ruling, the näjis thing that is touched does not necessitate wudu’. If this is true of (something that is) näjis, then what is not näjis in itself (i.e. the penis) ought, still more, not to entail wudu’, unless there is a specific hadīth to this effect.

Thus, contra Abu Hanafi’s argument, Shafi’i demonstrates that hadath impurity cannot be explained by the existence of khabath; for if it could, then a hadath would be caused by the contact of the hand with menstrual blood. Rather, the reason a hadath is incurred by touching one’s private parts (or presumably from any other cause) is only that there is a specific hadīth in support of this.

Shafi’i’s reasoning elevates the purpose of lifting hadath into something more than the mere removal of tangible impurity. In another extract (ostensibly dedicated to defending semen’s

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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 hadath is incurred without the existence of khabath: touching a person of the opposite sex (7.1.C.), and janāb 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 dinkrah) in the vagina of a permitted woman, and no semen is emitted by him? (the answer is that) He is obligated to perform ghuss, 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 näjis substances — must he perform ghuss? (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 najäsah 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).

Previously Maghen had translated Shafi‘i’s use of ta‘abbud as an “inscrutable religious obligation” (p 151), 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” (qarubah) 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 wudū‘ after having slept:

- A minority of jurists maintains that any form of sleep (naum) always breaks wudū‘.

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 hadath 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 (ikha quntuma '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 ahādīth, 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 (qībālī ighmā'in), insanity (junūn), or intoxication (sukrūn); 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 Mishkār “Tahārah”:315, 316, 318.
478 Cited in Bid p.35.
increased risk of incurring a hadath because physical control has been (temporarily) lost, and a believer might break wind, or touch his genitals (Bid p.40). Hence, for the majority, wudū’ should be performed after sleeping, not because this act constitutes a hadath in itself, but because while asleep one cannot be sure that hadath 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 wudū’ when he wakes on the basis that, while “my eyes sleep, my mind (qalbī) does not: if I had committed a hadath (ahdathtu) 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 tāhārah

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 Mishkat “Tahārah”: 317.
480 While generally agreeing on this point, the jurists quibble over which sleeping positions are most likely to facilitate a hadath. Here, fairly lenient, the Hanafis do not impose re-ablution unless a believer sleeps on his/her side (nāmā mudlajī‘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 hadath – e.g. lying on the back or side – then wudū’ 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 wudū’.
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 hadath. This, he claims, is apparent from the nature of the purification rituals:

Contact with the impurities (that come from) inside the body (i.e. khabū’īth) 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. 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. wudu’/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 hadath are betrayals of the will by the body. Hearty laughter, coughing, and intemperate speech are milder forms of the same loss of control. On the other hand the acts that lead to preclusion (i.e the. major ahdath) are rarer and so more powerful in their force; they require a more complete reappropriation of the body... With the janabah 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.

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 taharah. In light of the Prophet’s explanation as to why, for most people if not himself, sleep is tantamount to a hadath, 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 hadath (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 wudu’ for a minority and only during prayer, see ch. 7.1.E; coughing, however, is not a cause of hadath as far as I know (Reinhardt cites al-Shirazi who recommends wudu’ after coughing for the same reason as after sleep – a real hadath might have escaped without one’s knowledge); intemperate speech (lying) is seen as a hadath by a minority of (mostly Kharaji) 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. 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.

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 najasat.

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

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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.15:49), in Sunni Islam, the mustahadah (or anyone else with chronic medical problems) is exempted from the constraints of tahārah 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-1 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-Shaft'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 (majāzi) 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. 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 salāt – 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 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 Moeatta "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 hukm 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).
wudu’ even when he kissed his wives prior to prayer. For here, as when Muhammad wakes and prays without wudu’, 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. 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).

Although doubtless not what he would have wished, Shafi‘i expresses no need for either partner to repeat wudu’ if, before prayer, a man “lasciviously fondles his wife over her garments, touches her hair, or lusts after her from a distance”. 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 “Havād’: 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. ‘Ummat 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 *tahir* 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


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 *wudu'*.  

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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 wudu' (Bid p.38).

For Shafi'i, as we have seen, this settles matters. 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). Furthermore, these jurists also think that touching the anus nullifies wudu' in the same manner and, by so ruling, make al-sabīlaynī a considerable hindrance to a Muslim’s purity.

According to Ibn Rushd, the Malikis agree that by touching his penis a Muslim breaks wudu'. 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

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500 Muwatta “Tahārah” 15:60.
501 It is also his proof that all forms of hadath impurity are unconnected to khabath, 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 shahrwah – will still break a Muslim’s wudu’ (1997:321).
503 See 'Umādat 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.\footnote{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 wudu’ 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 (Hujiа pp. 59-60, cited in Calder 1993:58).}

Malik’s actual opinion is to be found in the Mudawwanah, where he does specify that a minor hadath 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 hadath to the act of touching the male genitalia (which Ibn Rushd does not tell us).\footnote{Ibid. A previous opinion attributed to Malik, mentioned by Shaybani, is that a man could incur a hadath by touching his penis with any body part he washes during wudu’ (see Kitab al-Hujiа p.59 cited by Calder 1993:58). This ruling would appear to stem from the early belief that hadath impurity was contagious. Since it was soon established that this was not the case, the Malikis modified their view.}

In his view, no one breaks wudu’ by touching the anus (sharaj), and a woman does not incur a hadath by touching her vagina (farf) (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 hadath, 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.\footnote{For the full tradition, see Mishkat “Tahara”:320. On the subject of Busrah’s hadith, Shaybani writes:}

In contrast to Malik and Shafi’i, the Hanafis see no reason why touching the genitals should trigger hadath. 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:

\begin{quote}
Talq b. ‘Ali reported: Allah’s messenger was asked about a man touching his penis after performing wudu’, whereupon he said, “Is it not a part of you”? (wa hal huwa ‘illa badu’atum minhu?) (Bid p.39).
\end{quote}

\footnote{See Mudawwanah p.118.}
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 hadath to the discharge of khabath may well explain their aversion to Busrah’s hadith. After all, if a hadath 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 najūsah. Hence, it does not trouble them to attribute the contraction of hadath 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 hadath) before praying, he is to repeat both his ablution and prayers, a minority of (Maliki and Zahiri) jurists consider absentmindedness (nisyān) to be a valid excuse for having to repeat neither (Rid p.38). The obvious implication of this concession is that (at least this type of) hadath impurity ceases to exist altogether if forgotten about.

We have now mentioned most acts classified as causes of minor hadath. A final hadath, not corresponding to any pattern seen so far, remains to be discussed.

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There is no ikhtilāf amongst us on the fact that ‘Ali ibn Ali Talib, ‘Abdullah ibn Mas’ud, ‘Ammar ibn Yasir, Hudhayfa ibn al-Yaman, and Imran ibn Hsin did not consider that touching the penis occasioned wudū’. And who is Busra bint Safwan compared with them? How can the ahadith of these, all of them, be abandoned for the hadith 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 diñ. The same is true of Busra 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).

They support this with two ahadith, see Muslim “Tahārah”.702-703.

508
M. 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 *khabath* (penetration without ejaculation is the second), the Hanafi Imam expresses a “deviant opinion” that laughter during prayer (*dahihkun fi-l salāt*) 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 *salāt* – and the people were praying the dawn prayer – and he (the blind man) fell into a mud hole (*zabiyyah*), 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.

Despite Reinhardt’s assertion that laughing uproariously is another example of the polluting effects of losing bodily control, 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. 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*” 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

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509 Cited in Mabsit 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.


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 Mabsit p.77, see Maghen 1997:320).
words, why would something cause a hadath during prayer when it does not break ablution at any other time?

Having covered the jurists’ main categories of minor hadath, we will move on to their disputes concerning the stronger form of this impurity.

7.2. THE MAJOR AHDATH (AL-AHDATH AL-AKBAR)

The jurists agree that four types of act incur a major hadath: certain sexual ones (janâbah), menstrual bleeding (hayd), postpartum bleeding (nifas), and dying. In the following two sections we focus on the jurists’ discussions concerning janâbah, and hayd/nifas (these last two conditions are deemed analogous). 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 hadath face, in particular his/her restriction from the mosque, and defining the boundaries between these states of major hadath, 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 janâbah; in the second, we turn to the distinctions they draw between hayd/nifas and istihâdah.

7.2.A. SEXUAL IMPURITY (JANÂBAH) (Bid pp. 47-50)

The term “janâbah” is mentioned in the Qur’an as necessitating a more thorough washing (hence signifying a stronger form of impurity) than results from minor hadath:

512 A mursal hadîth 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 hadîth is attributed directly to Muhammad from a narrator among the tâbi’ûn.
O you who believe! Do not draw near to prayers... in a state of \textit{janābah} except when you are passing by/journeying on the road (\textit{abirī sabīl}), until after washing your whole body (Q. 4:43).

Thus, Scripture advises the \textit{junūb} not to pray if he cannot first perform \textit{ghusl}, unless he is “passing by”, or “journeying on the road”, which, as we are about to see, causes problems of interpretation.\textsuperscript{514} This verse does not mention the mosque, despite this, however, the \textit{junūb} and the menstruant who are \textit{treated analogously} in this matter, are (in addition to their other restrictions) prohibited from entering a mosque according to the majority (\textit{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 \textit{hadath} access to mosques, unless it cannot be avoided.\textsuperscript{515}

- Al-Shafi‘i prohibits Muslims with a major \textit{hadath} from staying in the mosque (unless, once again, it is unavoidable), but permits them to pass through.

- Dawud and the Zahiris permit the \textit{junūb} and menstruant unlimited access to all mosques.

Our Qadi summarises the reasons for this dispute as follows:

\textsuperscript{513} For details on ritual washing of the corpse, see \textit{Bid} pp.260-267. There is no dispute over the fundamental purity of a human corpse, nor the obligation to perform \textit{ghusl} upon it (as long as the deceased was not martyred). \textsuperscript{514} Yusuf Ali’s translates \textit{abirī sabīl} as “passing by”; Pickthall translates it as “journeying on the road”. \textsuperscript{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. \textit{Umudat} p.184). This indicates the invulnerability of mosques to \textit{hadath}, 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” (Bid pp. 49-50).  

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 too) 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 muddith access to mosques and, aside from one hadith 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 khabā‘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,
to account for the prohibition of the junūb in this way.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 (\textit{Bid}, p.47).\textsuperscript{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 junūb is treated like the mustahādah.\textsuperscript{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

\textsuperscript{518} On this, see pp. 244-245 below.

\textsuperscript{519} For instance:

Sa'īd al-Khudri reported: The Apostle of Allah observed: ghusl is obligatory in case of seminal emission (\textit{Muslim} "Tahārah":679).

\textsuperscript{520} As always, Muslims must be convinced of its existence in order for it to be legally incumbent upon them to lift a hadith. 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).

\textsuperscript{521} This is confirmed by a well know hadith, 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 \textit{Ghusl}:80 cited in \textit{Bid}, p.47). Note that, in another version of this hadith, 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 \textit{Dā'.}, 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 wudū' 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. \textit{'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 janabah is intromission. Although this law took longer to be established, all the schools eventually accept it. Its validity is affirmed in numerous hadith, 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).”

Thus the jurists rule that the afflicted Muslim needs only to wash him/herself, and perform wudū’ to pray, and Malik (seeing no hadath at all) merely recommends that he wash the semen off himself (p.178).

Note that this is one of the few subjects within taharah where the jurists chose to increase the strictness of a rule. For, Muslim tells us janabah 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 wudū’ (presumably, this was also required from his partner, see Bid p.48). This early ruling was based on a hadith in which Muhammad is reported to have said:

> When you are in haste, or semen is not emitted, ghusl is not mandatory, but wudū’ is (Muslim “Tahirrah”:676. Muslim mentions that in another hadith 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 hadith 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 “Tahirrah”: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 “Tahirrah”: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 (ḥujiz) 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 *madhhab* 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).

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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 *hadath*.\(^{528}\) 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 *ahkām* on adults and minors alike — stick to their principles, by rejecting the influence of *shahwah* entirely.

The *fuqahā*’s discussions on *janabah* 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 *janabah*.

\(^{528}\) Boudhiba translates the following from the *Fatwa Hindiyer*:
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 (ISTIHĀDĀH) (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). In the same verse, men are warned to “(k)eep 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 istihādah, and other forms of impure vaginal secretions such as leuchorreah (kudr)).

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” (ṣaḥih), whilst, on the other, istihādah (the blood from a vein) and leuchorrhea “flow in a state of illness” (mariy) (Bid p.51).

However, there is nothing specific in the Qur’an, and little in the ahjādh, 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

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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 herself\textsuperscript{531}). The minimum duration for menses differs according to the madhāhīb: 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).\textsuperscript{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.\textsuperscript{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.

\textsuperscript{531} See e.g. ‘Um̄dat p.94.
\textsuperscript{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 ha‘id or mustahādah. If a woman is accustomed to menstruating, she will consider herself in a state of major haddith from the beginning of her bleeding.
\textsuperscript{533} This is stated in a haddith 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 “Hayḍ”:190).
The nafṣā’s exclusion tends to last longer than the ḥaʿīḍ’s, for the obvious reason that lochial bleeding normally persists longer than menstrual bleeding. However, in all other ways, the nafṣā finds herself in the same position as the ḥaʿīḍ; 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 nīfās is forty days, the Malikīs and Shafi‘īs 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 nīfās differs according to the gender of the child. In this hukm, when a woman gives birth to a girl, she remains a nafṣā for forty days, whereas, if a boy is born, nīfās 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). If she is suitably attentive, a Muslim woman suffering from istihādah or leuchorrhoea 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 hadīth proves:

‘A’ishah 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’ishah 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 hadīth, 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.  

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 mustahādāh 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 salāt.

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: 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 “Hady”: 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 *taharah*, 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 *hadath* (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 *hadath* and the emission of *khabath* 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 *khabath*, 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

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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.\textsuperscript{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-

\textsuperscript{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 hadath, in favour of firm guidelines. Almost all kinds of sleep break wudū’ (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 wudū’ is broken; irrespective of whether a Muslim genuinely forgets his hadath, if he then prays without wudū’, 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-sabilayni, and the witness of hadīth, are the only factors in a Muslim’s contraction of hadath impurity.

- By basing aḥkām on Prophetic hadīth when possible. Where the meaning of a hadīth 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 *Ihya* he lists seven reason 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 maddhahib as if each has a corresponding (chronological) place in the evolution of *taharah*, 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.
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 ُئَاذَرَاح 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 ُئَاذَرَاح, 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 ُعَدَاح from impure bodily emissions) alternatives. The Zahiris often uphold unique opinions (here as everywhere) – e.g. Muslims with major ُعَدَاح may enter mosques, and intromission does not alone incur ُئَاذَرَاح – 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 Iran)

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

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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 (käftr) – the ahl al-kitäb/dhimmî (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-kitäb):

O you who believe! Truly the mushrikin are impure (innamä al-mushrikin najäsun). Let them not approach the Sacred Mosque (Al-Masjid al-Haräm) after this year is over (9:28).

A straightforward reading of this verse suggests that, like any other form of najäsah – blood, urine, excrement etc. – the mushrik is to remain outside the doors of the al-Haräm because he is essentially impure (i.e. näjis/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 najäsät. He is reluctant, however, to classify the ahl al-kitäb (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-kitäb (Christians and Jews) they are commonly considered näjis, but it is not improbable that they are pure... On the basis of the

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⁵⁴² The category of dhimmî originally included only Jews and Christians, but with the spread of Islam was soon broadened to include many other groups. See Cahen “dhimmî” in E.LII, 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).\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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 khābīḥ, and should be kept out of mosques for that reason.\textsuperscript{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.\textsuperscript{547} The majority of scholars within the four schools agree on two points. Firstly,
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. By doing this, they raise the status of the *mushrikūn* proper (i.e. the polytheists) to that of the *ahl al-kiāb*, 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 *khabīth*. 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.

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-kiāb* (if others cannot be found).

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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-kiāb/dhimmī* 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.


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). 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 hadith reported by Sarakhsi in which Muhammad asks Abbas to find some water for him during hijajat 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”.

The second point of general agreement among the Sunnis is that the Qur’an’s description of the mushrikün 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 najāsūd al-iʿtiqād was-ī istiqdhar), and not that their limbs are somehow impure in the matter of urine or faeces or the like.”

And echoing Nawawi the best part of a millennium later, Sayyid Sabiq writes:

Although Allah says in the Qur’an: “Verily the mushrikün are najas”, this is not a reference to their physical state (i.e. their essential purity), but to their false beliefs

553 Nawawi Sharh 2. P.51 (Maghen 1997:51)
and creeds. (Moreover), they may come into contact with dirt or impurity (khabath), but this does not mean that their possessions or bodies are impure.\textsuperscript{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.\textsuperscript{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 mushriku'n 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.\textsuperscript{556}

\textsuperscript{554} Sabiq 1991:5 (parenthesis added).
\textsuperscript{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)
\textsuperscript{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 Tate (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 *Mukjewanah* (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 hadath (ch. 7.2.A.i), and their complete agreement that no-one shall enter mosques carrying (above a certain amount of) khabath, there appear to be no regulations requiring that a visiting non-Muslim should perform ghusl, or even that his clothes be checked for khabath before he enters a mosque. 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 hadath 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 khabath 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; and he uses the same logic to explain the majority’s permission for the non-Muslim ha'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 ghust 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 Harām, 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 Harām 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 hadath does not exist unless there is prior knowledge of it (p.172 above); however, while this is a firm plank of the tahārah 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” (Umūm, p.21, cited in Maghen 1997:282-283).
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‘i’s hukm.
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 hadith 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. 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 khabath), 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. 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. 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" (Ibn Abi p.20). In other words, if a Christian woman does not defile this water then noone will!

For this rule, see Goldziher 1971:64.

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 hadath-defiled mosque is not something envisaged by either the hadîth material, or the legal texts. If it were, there would surely be some regular purification ceremony designed to lift a mosque’s (accumulated) hadath impurity.\footnote{At the end of the following chapter, Maghen’s rational explanation of the ha’id/nafsa’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 hadath. 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 kafir? Why, given the Qur'an’s decision to exclude the polytheists (if not Jews and Christians) from al-Haram, 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 taharah’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 taharah strives

\footnote{For Zoroastrianism, see Choksy 1989:67; for Judaism, see J. Milgrom 1976.}

\footnote{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. It would also have affected trade, of course, as physical interaction between Muslims and their neighbours would need to have been restricted. In addition, it would be, as Maghen notes, quite impossible to check whether someone is, or is not, in a state of major hadath (and to question them about it would break certain rules of propriety). And, if a major hadath is apparently not a problem, to insist upon checking for khabath 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, 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.

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-Haram he follows the meaning of the Qur’anic verse.

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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 Makkah mosque, and wanted to recompense them (Ahkâm ah! 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 Haram. 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 taharah'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. 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.

In response to this insight, it is tempting to suggest that taharah 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 kafir was already firmly held in place by the poll tax (jizya) - 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

\[\text{dhimmi}^\text{wanted} \text{to pass through, he would stop at the door until a passing Muslim went by. Then the dhimmi}^\text{would say to him: O Muslim, may I have your permission to go through with you? The Muslim would respond positively so the dhimmi}^\text{would enter with him, all the while wearing the badge (ghiyar), the sign of the ahli al-dhimmah. If the mosque custodian saw the dhimmi he would shout at him, "Go back, go back!" But the Muslim would tell him, I have given him permission" and so the caretaker would leave him alone, cited in McAullife 2001:69.}\]

\[\footnote{\text{See above p.58.}}\]

\[\footnote{\text{Douglas 1966:133. The Walbiris of Central Australia are her example.}}\]
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).  
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. Inside dar al-Islām, non-Muslims are (to a reasonable degree) permitted to rule themselves. 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”. 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). 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; 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 dhimmī, see Courbage and Fourbes 1997 ch. 1.
578 As noted, the non-Arab converts and freedmen (mawal), 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.I.
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 dhimmis), and those he must fight (the inhabitants of dar al-harb). 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.

Extending this logic, and in addition to the jurists' relative egalitarianism in the sphere of ibadat, we may hypothesise that the firmness of the law is another reason why taharah 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-ahkam al-khamsa) in a concerted attempt to embrace all aspects of human existence from the legal

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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/ Shacht “fiqh” in E.I.11 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.\footnote{585} This strategy reduces tensions, cuts down ambiguities, and leaves little reason 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.\footnote{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 \textit{Lords of the Horizons A History of the Ottoman Empire} (1999, London, Vintage) p.95. (Parenthesis added).

\footnote{585} On this see Denny "Ethical Dimensions of Islamic Ritual Law" in B. Weis' ... 

\footnote{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 Aqṣā 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.

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.

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 ha’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 hadath. 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 *hayd/nifas* and *istihâdah* 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'î, 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 *hayd* or *nafsâ'* 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 *hayd/nifas* comes to any of these is sickness; however, these conditions are explicitly distinguished from *istihâdah* 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 *tahârah* regulations uphold a woman's lesser religio-social status. Given this, the position of the *hâ'id/nafsâ'* 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.

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. 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. We need not go on. It suffices to say that Simone de Beavoir’s assumption that: “the blood does not make women impure; it is rather a sign of her impurity” has been repeated so many times, in so many contexts, that “menstrual theory” is now as universal as menstrual taboos.
Marcus and Spellberg present the laws surrounding hayd/nafsa' as if they are typical strategies of male domination. Julie Marcus worked in Morocco, and bases her theory on a reasonably detailed explanation of the law. 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.

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". 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).

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. janubah), 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 khabath (as well as wrongly describing mud as an impurity). 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. Marcus 1985:216.
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.  

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 ḥahārah 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 ṭahārah's treatment of the menstruant. According to that, the figure of Eve (Hawwa) who symbolises all women in early Islamic tradition was gradually but increasingly misrepresented by hadīth, historical, and legal sources because the Qur'an's comparatively egalitarian depiction of her proved unpopular. This process occurred because of the

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601 Ibid.
widespread influence of Jewish traditions and stories (isrā‘iliyyat) on early Islam. 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. 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 process - and, as a result, Muslim tradition has come to think of Eve/woman as deceptive, stupid, and “crooked”. 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.

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.

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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 Kiṭāb al-Mubradā (The Book of Beginnings, reconstructed by Gordon Newby), Spellberg 1996:308-309.
607 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.
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 *laḥm* 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 *khabīth*), 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 *hadith* collectors, historian, and legal scholar, the faith has ever known!

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\(^{610}\) 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 (la taqrabuhunna) women in their menses. A literal reading, therefore, would result in the complete sequestering of menstruants (such as has been known in Jewish communities).

Instead, the jurists take into account many, more liberal ahädîh 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 hä'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 hadath until she starts to menstruate (when she is obviously no longer an infant); nor is it even obligatory to lift a hadath until a Muslim reaches adolescence (bulugh).

Fourthly, although it is true that many, although not all jurists rule that a baby boy’s urine is less khabith than that of a baby girl (ch. 6.4.A.), Spellberg does not note the rarity of this hukm 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

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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.\footnote{Muslim "Hayf": 592. See p. 41.} The Biblical purity laws, in contrast, are far better examples of gender hierarchisation, and the taharah system is simply not comparable.\footnote{For the Biblical restrictions on the menstruant, see Milgrom 1991:934-941; for gender hierarchy in the Old Testament, see Eilberg-Schwartz 1990:180ff.} 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 taharah 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 (\textit{Bid} p. 54, see p. 207).\footnote{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).} In the same vein, a minority rule that men are not to perform wudū' with water that has been left over by women, although, when the roles are reversed, a woman's wudū' stands (\textit{Bid} p. 29). Others hold that a menstruant's su'r renders ablution water invalid (\textit{Ibid}), or that they spoil food by touching it.\footnote{For the Biblical restrictions on the menstruant, see Milgrom 1991:934-941; for gender hierarchy in the Old Testament, see Eilberg-Schwartz 1990:180ff.} And the Kharijis insist that women perform all their missed prayers as qada', which would leave them forever straining to catch up (\textit{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,
Malik permits the ḥāʿid/nafṣāʿ “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. Likewise, the Shafiʿis allow her to touch a copy of the Qurʾān if it is for purposes of learning or teaching. 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 irrigation 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.

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615 See Rodinson’s article on “Ghida” in E.III. The same logic explains why a minority forbid consuming the mawarn of an animal that had been menstruating when killed (Ibid).

616 Boudhiba 1998:53. Those granting a concession to the ḥāʿid/nafṣāʿ can defend their opinion logically. For, with the exception of ṭawāf, she should participate in all acts during Ḥajj, and is expected to vocalise certain Qur’ānic 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 takbīr. For these arguments, and a consideration of the general problem, see B. Zara’s article “The Requirement of Ṭahlīl for Reciting or Touching the Qurʾān” (an appendix to a forthcoming book entitled How to Read and Understand the Qurʾān) 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 *ha'id/nafsä*”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 *ahädfh*, was (solely) interested in avoiding contact with the actual ‘*ayn al-najäsah*, the menstrual blood. It is only this blood, as an *intrinsically* impure substance, a substance with a *status* of *najäsah*, which can potentially communicate ritual contamination to the spouse or partner. 621

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619 *Mishkat* 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 form 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 junūb is also expelled from the mosque. Maghen is well aware of this, for he admits that:
while the ḥā'īd might drip menstrual blood onto the floor (as the nafsāʾ 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 nifās 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'īd/nafsāʾ, on the assumption that their impurity is of equal severity and type.

622 Maghen 1997:264. (Parenthesis added.)
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 *hadath*. 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 fn. 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 *hā'īd kifāsā* is not allowed to pray as long as she wraps herself up like the *mustahādah* (whose blood is also, lest we forget, *khābita*). 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).

Add to the above list, the ban on women judges, and we see that, in the daily running of socio-economic affairs (i.e. the mu'amalāt), 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'amalat 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

628 These days this is a particularly volatile issue, see Kararn (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'īḍ/aςā' 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

630 The Hanafi’s uncharitable assessment of Busrah’s reliability on the question of whether touching the penis
causes a minor hadāthh betrays more than a little resentment that the testimony of women had the power to
decide legal practice (fn.506). Probably, the best textual evidence that menstrual pollution ideas were
sometimes used in typical ways to subordinate women is a thoroughly chauvinistic hadāth 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 (urīyitukunna akhīr 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 “Hayf”: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 ḥāʾid/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 ḥāʾid/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 \textit{tahārah} system.\footnote{This is especially true of the Malikis' reading of \textit{tahārah}, where lust is often an important factor in the contraction of \textit{hadath}. However, even though Shafi'i himself is adamant that lust should not affect matters, by ruling that \textit{any} kind of physical contact between men and women breaks \textit{wudhū}, his \textit{hukm}, ironically, conveys the strictest warning about the potential of sexuality (ch. 7.1.C/D).} 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 \textit{ghusl} when Muslims may not: specifically, that a \textit{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 \textit{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.\footnote{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 \textit{khabath} and major \textit{hadath} 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) \textit{najasah}. Thus, here, as in the matter of demon-pollution, \textit{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}
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 liqülu-bikum wa qulübihunna) (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 ḥāfa, 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 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 taharah. 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.

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. 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-salāh 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 hadith (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 hadath symbolises the cleansing of sins:

Yahya related to me from Malik... that the Messenger of Allah said: The believing slave does wudū’ 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

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638 Reinhardt 1990:21, see p.92.
Traditions like this occur regularly in the *ḥadīth* collections, they provide the religious sentiment and imagery from which the *tahārah* system was forged. 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.

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*, *wudū‘* 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 *najāṣah* (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

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641 See e.g. Muslim “*Tahārah*”:438-451.
early tendency to combine *hadath* 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 *hadath*.\(^{643}\) 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 *wudu*.\(^{644}\) 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 *hadath* 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 *hadath*.

\(^{644}\) Bousquet 1950:38. 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 *kaqqiya*), it is not surprising that they do not follow the Khairiji line and declare all forms of deception a cause of impurity.

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 ghust 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. 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

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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 najasah. 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). 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 hadath 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 hukm 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 muhdith 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

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648 The ‘Umdkat 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 (‘Umdkat pp. 596-598).
choice is already made and presumably does not worry him. Instead, it is only the Muslim who, through every hadath, 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 muhdith 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 ahdath; 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 hadath 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. Taharah’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 janabah and hayd/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 hadath or khabath, 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 hadath 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 khabath, 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 juriub: 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, najäsah 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, tahäräh 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 wudü’, 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 najäsah 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 Asrär al-Tahäräh. In a highly creative marriage of Sufi reasoning and law, he suggests an inward realm corresponding to every aspect of the tahäräh system. Al-'Arabi' s ideas are complex, and we do not have space
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 ṭahārah is the action through which one realises one’s faith.\footnote{Asrar p.151.}

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 hadath 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 hadath to an impure emission when the believer is healthy, because this symbolises the knowing rejection of Allah; he does not attach a hadath 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.\footnote{Asrar p.151.}

For al-`Arabi, those who attach a hadath 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 wudu’ 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 wudu’ remains intact, if not, it is broken. And those who hold that laughter breaks wudu’ (Hanafis) do so on the basis that a thoughtless expression of mirth symbolises the heedlessness of those who do not believe.
In contrast to hadath, al-`Arabi interprets khabath as “blameworthy character traits”. 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. 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”. Conversely, those who consider the blood of marine animals pure do so because the word bahr (sea) is etymologically related to ibârah 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. And so on. Thus, while in al-`Arabi’s view, each form of inward tahârah differs according to the form of metaphorical najâsah for which it is prescribed, purity itself seems only to amount to the knowledge that Allah exists and must be praised. Asrar al-Tahârah 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 tahârah code. But I do think that Ibn al-`Arabi perceptively plays upon the central religious dichotomy - faith/tahârah and disbelief/najâsah - 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

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652 Asrar p.246.
653 Asrar p.250.
654 Asrar 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
previous jurists had consistently redefined the meaning of impurity to suit their purposes. As a result, ṭahārah 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 khabath 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 ṭahārah 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 ṭahārah. 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 ḥāʾid/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'īuḥ to perform ṭuḍū',
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 taharah. 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) - taharah 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 mustahadah, 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 khabath in the impure water) will not, therefore, negate the value of his prayer (see e.g. E.B. "Taharah from Nafasah 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).
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 hadith 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 wudu' (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 wudu' again.659

Madhi is khabith and not to be brought into a mosque, prayers are not to be said in a state of
hadath. 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 taharah 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.

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 *najasah* – 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 *hadath* impurity, and contact with *khabath*, 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 taharah law, and began the task of applying ritual pollution theories to an Islamic context. Part II analysed taharah 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 excursuses 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 taharah 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 hadathQA
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. 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).

Douglas divides religious experience into “ritualist” and “non- or anti-ritualist”
categories. 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 Chrisms, 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

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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

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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).
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”. 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 Orthoprax) 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”. (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.) 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”. 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 *wuqāf* at ‘Arafat, have no link with the Abraham story at all”. 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...
"paradigm", and "no statement that the worshipper sees himself or herself as like Hagar or Abraham". 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.

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.

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*).

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 practices.

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672 Graham 1983:68.
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". 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".

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. 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. Indeed, his assertion that the Hajj's major rites have nothing to do with the Abrahamic myth is challenged by a *hadith* 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

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678 Early Islam's self-conscious rejection of ritual efficacy is best illustrated by a famous *hadith* 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).
Arafat. Also, to make an obvious point, Graham’s observation that “the worshipper does not see himself or herself like Hagar or Abraham” 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

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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, tahârah 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 tahârah 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 tahârah, 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 tahârah data against these theories, the same “reformational” 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 ḥadath, 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 ḥadath. 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 ḥadath when it occurs through sleeping or intoxication, and self-control (ḥilm) 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

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 hadath, when non-Muslims are, does not imply that their impurity is more powerful than the latters’ 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 hadath 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 *talibiya*, the ritual formula to be said by all Muslims as they begin: "*labbaika, allâhumma, 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: *tahârah* like the *talibiya*, indeed like most forms of Muslim ritual, is the mechanism via which a Muslim may approach, and proclaim his presence to God. *Najâsah*, 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. 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”.

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BIBLIOGRAPHY


Al-Misri, ibn Naqib *Umday al-Salik*, translated as Reliance of the Traveller by Nuh Ha Mim Keller (1991, Maryland, Amana publications)


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)


Bernanos, G. *The Diary of a Country Priest*


Bourke, J. *Scatological Rites of all Nations* (1891, Washington, D.C., Lowdermilk)

Bousquet, G.H. "La Purete Rituelle en Islam" in *Revue de l'histoire des religions* 138 (1950)

Boyce, M. *A History of Zoroastrianism* (1975, vol 1, Leiden, Brill)


Dinari, Y. “Customs Relating to the Impurity of the Menstruant” in Tarbiz 49 (1979-80)


Implicit Meanings (1975 New York, Routledge & Kegan Paul)


Dubois, A. Hindu, Manners, Customs, and Ceremonies (1897 Oxford, Clarendon Press)

Eilberg-Schwartz, H. The Savage in Judaism (1990, Bloomington, University of Indiana 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)


Encyclopedia of Islam. First and second editions (Leiden, Brill)

Feldman, E. Biblical and Post-Biblical Mourning (1977, New York, Ktav)


Fontenrose, G. The Ritual Theory of Myth (1966, Los Angeles, University of California)


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)


Hanson, F.A. “Female Pollution in Polynesia” in Journal of the Polynesian Society 3 (1982)


Ibn Qudamah *Kitab al-ʿUmda fi ahkam al-fiqh*, translated as *Le Precis de Droit d’Ibn Qudamah* ([no d, pl. or pub.])


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 Weltanschaung* (1964, Tokyo, The Keio Institute of Cultural and Linguistic Studies)


Levine, B. *In the Presence of the Lord* (1974, Leiden, Brill)


*Kuru Society: Disease and Danger in New Guinea Highlands* (1979, California, Mayfield Publishing)


*Al-Mudawwanah Al-Kubra* (1994, Beirut, Dar al-kutub al-’Ilmiyah)


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)

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)


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)


Ricoeur, P. *Finitude et Culpabilité* (1960, Paris, [no pub])


Selvidge, M. *Woman, Cult and Miracle Recital* (1990, Lewisburg, Bucknell University Press)


Wensinck, J. “Animismus und Damoneglaube im Untergrunde des judischen und islamischen rituellen Gebets” in *Der Islam* 4 (1913)
Die Entstehung der muslimischen Reinheitsgezetzgebung” in Der Islam 5 (1914)


Marriage Ceremonies (1914, London, MacMillan)


Zara, B. “The Requirement of Taharah for Reciting or Touching the Qur’an” available at http://www.uh.edu/campus/msa/articles/zara.html
