CHAPTER I

The sources of impurity: the human corpse

The various kinds of persons, animals and objects which cause impurity by touch or other means need to be listed and discussed. In particular, the question must be asked whether any pattern or basic theme can be discovered in all these varied causes of impurity.

In Judaism, the human corpse is by far the greatest source of impurity, in the sense that it causes the most severe level of impurity, and also contaminates in the greatest variety of modes. This very fact raises the possibility that death is the basic theme for which we are looking. Can it be that every source of impurity functions as a form of death? This has been argued by many scholars, and is supported by the fact that even animals in the Jewish system cause impurity only when they are dead. The theory, however, faces difficulties: in what way, for example, does the impurity caused by emission of semen, or by menstruation, or by childbirth, link with the concept of death?

In societal terms, the supreme impurity of the human corpse has some interesting consequences. It means, for example, that Judaism does not share with Christian societies the practice of interring the corpses of saints or other prominent people in shrines or other places of worship. For in death, all are equal: the corpses of saints are just as much sources of ritual impurity as those of other humans, and the essence of the Jewish system is that ritual impurity should be excluded from the Temple. In the holiest shrine in Christendom, the body of Saint Peter is allegedly buried. The

medieval trade in relics, especially the bones, of saints is unimaginable in Judaism.[1]

After the destruction of the Temple, the focus of Jewish worship shifted to the synagogues, and in these the exclusion of impurity was no longer a requirement. On the contrary, it became imperative not to turn the synagogues into miniature Temples, since the sacramental function of the Temple was not transferred to the synagogue. Since by biblical fiat no sacrifices could be performed outside the Temple in Jerusalem, and the Temple no longer existed, any attempt to set up the synagogues as sacramental substitutes for the Temple was regarded as a transgression. From the standpoint of ritual purity, this meant that menstruating women, for example, were not excluded from the synagogue, a point misunderstood by many non-Jewish scholars and even by many ignorant Jews, who think that the reason why women are not called to the reading of the Law is that they may be menstruating.

Yet there is one form of impurity that is excluded even from the synagogue, and that is corpse-impurity, which makes it impossible for a synagogue to contain buried corpses as so many churches and cathedrals do (and as the temples of ancient Egypt did). The reason is that corpse-impurity is the one form of impurity to which an actual prohibition is attached: namely, it is forbidden for priests (Kohanim) to contract corpse-impurity wittingly. Priests are essential for certain aspects of the liturgy (the priests' blessing and being called up first to the reading of the Law), and therefore the synagogue must be conducted in such a way that priests can enter and take part. True, the purity of priests is only nominal, since the absence of the ashes of the Red Cow means that all priests are in a state of corpse-impurity anyway; yet the avoidance of corpse-impurity by priests is one of the 'remembrances of the Temple' that have become fixed practice among post-Destruction Jews.

[1] Nevertheless, the tombs (or alleged tombs) of prominent individuals have played some part in Judaism as holy places. Examples are the Cave of Machpelah in Hebron, tomb of the Patriarchs, and the tomb of Simeon bar Yohai in Meron. Veneration of such sites, however, began only in the Middle Ages, probably under Christian and Muslim influence.

The severity of corpse-impurity is shown in several ways. It lasts for seven days, like other severe impurities, but it requires a special method of purification, the sprinkling of the ashes of the Red Cow on the third and seventh day (Num. 19:12). Even more striking is 'tent' impurity, by which a corpse imparts impurity to all persons or vessels under the same roof, even without actual physical contact. This makes it unlike any other impurity (though the 'leper' has a milder version of it, see chapter 12). Further, corpse-impurity is not as easy to shake off as other impurities: it does not descend by such immediate stages. A man who touches a corpse incurs a seven-day uncleanness, and one might expect that if in turn someone touches this man, he would incur a lesser uncleanness, of one day, say, in accordance with the general pattern that uncleanness descends by degrees according to its remoteness from the source. But in fact, in the case of corpse-impurity, the pattern is rejected, or, rather, postponed. A person or vessel that touches a person (or vessel) that has touched a corpse incurs a seven-day uncleanness. It is only at the next remove that the pattern reasserts itself, and a one-day uncleanness is incurred. Further, corpse-impurity has ramifications not exhibited by other impurities. Not only a whole corpse, but even part of one, produces impurity. Not just a corpse, but the grave in which it is buried, is a source of impurity equal to the corpse itself. Most striking of all (in rabbinic theory at any rate) a corpse has a power of contamination in a vertical line both above and below it to an unlimited extent, so that anything hovering above it (even miles above) or below it (even as far as the 'deep') is contaminated by it. Only if it is lying in a 'tent', is this vertical force limited from above, though not from below (see chapter 2).

All this would seem to imply that corpse-impurity is an awesome force in Judaism that must dominate the consciousness of every Jew; that he must tread with the utmost care at all times in case he incur it. However, this is far from being the case. In non-Temple times, such as the present, corpse-impurity is a matter of no consequence at all, since all Jews are in a state of corpse-impurity (only Kohanim, as mentioned above, make a show of observing it). In Temple times, again, most Jews (i.e.

non-priests) were in a state of corpse-impurity most of the time without concern. It was only when they had to enter the Temple grounds, mainly at festival times, that they had to take care to remove their corpse-impurity or other impurity by the prescribed purifications. This is certainly true of the Second Temple period; but opinions are divided about the First Temple period, when, according to Milgrom (1991), Jews were indeed very worried about corpse-impurity and other impurity. They had to remove it by purification as soon as possible – otherwise, it would pollute the Temple by flying horizontally through the air towards it like a miasma, and fastening upon it. Reasons will be given in chapter 14 and chapter 15 to reject this concept as unwarranted by the biblical evidence and as postulating an unacceptable discontinuity between First Temple and Second Temple Judaism.

An unexpected feature of corpse-impurity, however, is a strange leniency in respect of expulsion from holy areas. According to the Babylonian Talmud (Pesachim 67a–b), a corpse-contaminated person, or even a corpse itself, is not excluded from areas forbidden to other serious forms of impurity (menstruating or parturient woman, male/female suffering from sexual flux, and 'leper'). This is a great exception to the rule that corpse-impurity is more serious than any other. The reason for this seems to be simply an awkward verse in the Torah that the rabbis could not ignore. It is stated that Moses accompanied the body of Joseph throughout the journeys of the Israelites in the desert, and that the body's location at the resting-places in the wilderness was 'with him' (Exod. 13:19), i.e. in the camp of the Levites, since Moses was a Levite (b. Pes. 67a; Maimonides, *MT*, Biy'at ha-Miqdash, 3:4). Now the camp of the Levites had to be kept free of all other serious impurities, though only 'lepers' had to be excluded from all three camps. These were defined as the Camp of God, i.e. the area of the Tabernacle, the Camp of the Levites, i.e. the area surrounding the Tabernacle area, and the Camp of Israel. When the Israelites entered the Land, the three camps were redefined as the Temple grounds, the Temple surrounds or Temple Mount, and the rest of Jerusalem. Only lepers had to stay outside Jerusalem (and other

walled cities founded by Joshua), the 'pelvic dischargers' (Milgrom's term) were allowed in Jerusalem but not on the Temple Mount, while corpses and corpse-contaminated people were allowed on the Temple Mount but not in the Temple grounds. But how could this be reconciled with Numbers 31: 19, enjoining those who had killed in battle to remain outside the camp for seven days? The rabbinic answer is that this refers to exclusion from the Temple courtyard, i.e. from the camp of God, not to exclusion from the camp of Israel, or even the camp of the Levites.

This is not very convincing, and the simple explanation seems to be, as Milgrom argues, that biblically the corpse and corpse-impure were in fact excluded from the camp of the Levites, and even (in earlier legislation, see Milgrom, 1991, p. 316) from the camp of Israel too. This removes the anomaly by which corpse-impurity is treated more leniently than pelvic discharge. As for the corpse of Joseph, here again the simple answer is that this story dates from a time earlier than the priestly legislation about exclusion of impurities from various zones. Such an explanation was, of course, not available to the rabbis.

Another explanation, put forward by Maimonides (*MT*, Biy'at ha-Miqdash, 3:3), is that, in one respect, pelvic discharge is more polluting than corpse-impurity. For sufferers from pelvic discharge cause uncleanness to what they sit or lie upon, even if not in direct contact with them (see p. 32), and this is not the case with those affected by corpse-impurity. However, despite this one respect in which pelvic dischargers are more polluting than the corpse-contaminated, the general picture is the reverse, so it is hardly convincing that this one respect should be decisive for zoning. Moreover, Maimonides' explanation does not cover the case of the corpse itself, which does convey impurity to what is below it, not by 'sitting or lying', but by 'overshadowing' (see p. 17). So there is still no convincing rationale for the admittance of the bones of Joseph into the camp of the Levites while the pelvic dischargers are excluded.

A more detailed and analytical survey now follows of the polluting effects of a corpse.

1. *The corpse itself.* This includes portions of a corpse. It causes a seven-day uncleanness to persons or vessels by:
   touching;
   being in the same enclosed space ('tent');
   overshadowing;
   carrying (i.e. being carried, or moved, even if not touched).
2. *A person or vessel that has contracted uncleanness from a corpse.* These convey a seven-day uncleanness to other persons or vessels by:
   touching.
3. *A grave.* Conveys a seven-day uncleanness by:
   touching;
   overshadowing.
4. *A person or vessel that has touched a person or vessel that has touched a corpse.* Conveys a one-day uncleanness to other persons or vessels by:
   touching.
5. *A person or vessel suffering one-day uncleanness as in 4.* Does not convey uncleanness to other persons or vessels, but only to foodstuffs. This rule applies to any one-day uncleanness, not just to that derived from corpse-impurity.

I.e. if a person or vessel touches such a person or vessels, they remain clean. There are, however, some rabbinical enactments that modify this situation, especially as regards liquids, but such enactments are regarded as of human, not divine, authority, and, having been enacted in order to cope with some human difficulty, are, in theory, subject to cancellation in the light of changing circumstances.

COMMENTS

The communication of impurity by 'tent' and 'overshadowing' are peculiar to a corpse. 'Tent' has plain biblical authority (Num. 19), while 'overshadowing' has only tenuous textual support, yet is regarded as biblical by the rabbis (but see chapter 2 for the rationale of 'overshadowing', and its relationship to 'tent'). 'Tent' means any enclosed place with a ceiling or roof; if a person or vessel shares such a place with a corpse or portion

of a corpse, that person or vessel becomes unclean even without actual contact. 'Overshadowing' occurs when the corpse is directly above or below a person or vessel either in the open air or within a solid block of material, no matter how far above or below the corpse the target is. These two methods of contamination are the most prominent examples of action at a distance in the field of ritual purity (unless one accepts Milgrom's theory, see chapter 14), though there is something similar to 'tent' in the case of the 'leper' (see chapter 12), and there are some shorter distance-mechanisms, viz. carrying or moving without direct contact, pressure through sitting or lying, and presence in the containing space of a contaminated earthenware vessel.

Contamination by 'carrying' is stated explicitly in the Torah only in the case of pelvic dischargers (Lev. 15:10). However, the rabbis extended it also to corpse-impurity by the use of an *a fortiori* argument.[2] They regarded this decision as of divine, not human authority, since it seemed a plain implication of the biblical code.

One must always be careful to distinguish in rabbinic law between those decisions that were regarded as having only human authority (*derabbanan*) and those regarded as having divine authority (*de'oraita*), even though sometimes arrived at by a process of human reasoning. The distinction is clear, even though the rabbis themselves sometimes had difficulty with it, wondering which modes of reasoning linked indissolubly with the biblical text, and which partook too much of human fallibility to be totally relied on in textual explication. Not taking the Karaite view (similar to that of early Protestantism) that the text was perspicuous, the rabbis had to struggle with the demarcation between the human and the divine, though they were quite clear that rabbinic legislation itself (by which new regulations and institutions were added to the biblical code) was entirely human and fallible. To give any greater authority to rabbinic legislation (in the form of a doctrine analogous to that of 'papal infallibility') would have been to

[2] Sifrei, Parah, on Numbers 19:16.

infringe against the biblical injunction, 'Thou shalt not add to it, nor shalt thou take away' (Deut. 12:32).[3]

'Carrying' is a kind of contamination from a distance, for it is effective even if the contaminating object is not touched by the carrier. Also, carrying need not be literal removal by the use of one's arms, or on one's head; it may be removal of the object in any way from its original location, for example by the use of a rod or beam. Many cases of carrying are also cases of overshadowing, so one has to exercise one's imagination to conceive a corpse-impurity case where there is no overshadowing, yet the object is contaminated by being 'carried' or removed.

Corpse-impurity and Gentiles

The general rule (surprising as it may seem) is that non-Jews do not contract ritual impurity at all, and are therefore regarded as permanently clean, at least while alive. This applies to all sources of ritual impurity, not just corpse-impurity. 'Of all animated species there is no species which, while still alive, contracts or conveys uncleanness except man alone, provided that he is an Israelite' (Maimonides, *MT*, Corpse Uncleanness, 1:14). A Gentile cannot become unclean by touching a corpse, or carrying one, or overshadowing one, or being in the same room as one. A Gentile does not become unclean through parturition or menstruation or other discharges. A Gentile cannot even contract leprosy-impurity, which shows that the impurity of this condition is not a medical matter. A Jew who touches a Gentile thus never becomes unclean thereby.

This is not at all in accordance with the common view that Israelites or Jews by adopting a complicated system of purity condemn all non-Jews, who do not observe such rules, to a state of permanent impurity.

On the other hand, some people, on being informed that Gentiles cannot become unclean, are not too happy about this either. It seems to them a condescending state of affairs, that

[3] On this, see Maimonides, Introduction to *Mishneh Torah* (conclusion): see Isadore Twersky, *A Maimonides Reader*, New York, 1972, p. 41, for the correct placing of this passage (misplaced in some editions).

only Jews qualify for the rankings in the system of impurities, as if Gentiles are too unimportant even to be considered unclean. A Talmudic statement, likening Gentiles to animals in this respect (for live animals cannot become unclean either) is often quoted by antisemites to show that Gentiles are regarded as animals.

The real point is that Israelites are regarded as a priestly nation. Their purity code is that of a dedicated order, and therefore it does not apply to the rest of mankind, who, however, can opt to become Jews, whereby they become liable to observe the purity laws and also, from the moment of conversion, contract and convey uncleanness. Rabbinic Judaism considers that all humanity, whether Jews or not, are in covenant with God and are bound to keep the laws of morality as summarized in the Seven Noachian Laws, the first code of international law. To become converted to Judaism is not a matter of salvation, but of dedication. Those who are born Jews must function as Jews, but for other members of humanity, Judaism is a choice; just as it is a choice for a Catholic to become a priest or a member of a monastic order, by which he will become liable to obey rules not applicable to the majority of Catholics. This conception of the role of Jews as a priestly nation is not just rabbinic; it is also biblical.

The whole purity code found in the Torah and elaborated in the rabbinic literature is thus a protocol for a dedicated group living constantly in the presence of God, whose Tabernacle is in their midst. It is a kind of palace protocol or etiquette, observed in the court of a monarch, but not required outside the confines of the palace. Even for Jews, once the palace was destroyed, most of the rules became inoperative, though they continued to be studied. Studying the rules came to be a substitute for operating them, and, partly by this means, the Jewish self-perception as a priestly nation was preserved; though, of course, many of the laws of the priestly code, such as the dietary laws and the observance of the festivals, remained fully or partly valid even without the Temple.

The above picture, however, appears to be falsified by rabbinic rules that declare that live Gentiles do, after all, convey

uncleanness (b. Niddah 34a; see Maimonides, *MT*, Tum. Met 1:14). The degree of uncleanness is that of a person with a 'running issue' or flux (*zab*), a seven-day uncleanness (see chapter 5). This is quite a serious degree of uncleanness, though less than corpse-uncleanness. This assignment of uncleanness, however, has no biblical authority, and is fully acknowledged in the rabbinic sources to be of human authority only. Consequently, a Jew who has touched a Gentile and then enters the Temple is not punished for sacrilege. This comes into the category of rabbinic enactments, which are, in theory, reversible. The reason for this enactment is given that it was intended to discourage social relations between Jews and non-Jews. The enactment was made, together with similar enactments, in 66 CE, just before the outbreak of war with Rome, at a time when relations between Jews and non-Jews were very strained. There is Talmudic evidence that later rabbis regretted these decrees (known as the Eighteen Decrees). The decision was after all a very illiberal one, because the rabbinically imposed uncleanness could not be remedied by purification procedures, unlike the biblically imposed impurities to which Jews were liable. In any case, the lapse of purity observance some time after the destruction of the Temple made the rabbinic law of Gentile impurity inoperative, since all Jews had become irremediably unclean, and contact with a non-Jew could not make them more unclean than they were already. This rabbinic law (of which much has been made by antisemites, as racist) was practically speaking of short duration.

A strong proof that the impurity of Gentiles is rabbinic is that it does not in fact disturb the rule that the established biblical sources of impurity do not affect Gentiles. Thus, even though a Gentile, by rabbinic decree, is unclean, in the degree of *zab*, he cannot contract further uncleanness by touching a corpse, or by becoming a 'leper'. A Gentile can have only the rabbinic uncleanness and no other. Even if he becomes a *zab* (i.e. contracts a sexual disease), which is the same uncleanness that he fictitiously contracts by rabbinic decree, a legal distinction is made between the two types of uncleanness, for the rabbinic status of *zab* allotted to a Gentile is not to be confused with the