

BLOOD AND LAW: UTERINE FLUIDS AND RABBINIC MAPS OF IDENTITY*

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Bleeding and blood in its various manifestations play a prominent and perhaps even central role¹ in the Jewish practice and imagination shaped by the rabbis of Late Antiquity. The legal (=halakhic) groundwork of the rabbis is first determined in the Mishnah, and from then on, blood receives their notable attention in contexts such as the purity laws,² laws of slaughter³ and sacrifice, murder,⁴ and the like.⁵ Rabbinic interest in blood is evident in a range of legal contexts, and we may indeed think of various *genres* of blood within rabbinic law.⁶ Not only are the various types of blood – such as blood that is spilled (human or animal) or women’s uterine blood – discussed in different legal contexts, but various circumstantial

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¹ I choose this articulation deliberately, not to be confused with “obsession,” as if to diagnose a cultural pathology. In spite of the following, the Mishnah is far from being obsessed with blood in general, or with menstrual blood in particular, anymore than it is obsessed with the other issues to which it devotes its detailed attention.

² Primarily Mishnah *Niddah* – and here with respect to menstrual blood. But, in the context of corpse impurity, the notion of *revi’it dam* (approx. 1/8 liter) as a minimal amount to establish the equivalent of human remains appears variously (e.g., *m. Ohalot* 2:1-2). Alternately, the Mishnah rules on blood as *liquid* that can render food items susceptible to ritual impurity via its conducting quality once they are made wet or moist by it (based on Lev 11:38), the subject of the much understudied mishnaic tractate *Makhshirin*. Mishnah *Makhshirin* 6:4 groups blood with six other fluids that have this conducting quality: “dew, water, wine, oil, blood, milk, and bees’ honey.” Cf. cross-references in the Mishnah such as *m. Terumat* 11:2 and *m. Bikkurim* 2:7. Mishnaic law here further specifies that “under ‘blood’ is included blood that flows in the slaughtering of pure beasts, wild animals, or birds, bloods let out of the veins to be given as a drink” (*m. Makhshirin* 6:5).

³ E.g., the sixth chapter of *m. Hullin*, which deals with the blood from the slaughter of unconsecrated animals, based on the biblical requirement to “cover it up” (Lev 17:13). Cf. *m. Bikkurim* 2:9 and *m. Betzah* 1:2.

⁴ E.g., *m. Sanhedrin* 4:5, where “blood” is the synecdoche for life.

⁵ It should be emphasized, in light of the following that the tannaitic legal material demonstrates very little or no interest in the blood of circumcision. The lone text in the Mishnah that circumscribes the acts required for circumcision, which provokes all kinds of different discussions does not explicate the importance of blood at all: “One can perform all the acts required for a circumcision should that fall on a Sabbath: cutting, exposing the corona and compressing the blood-vessels by sucking” (*m. Shabbat* 19:2). See also *m. Nedarim* 3:11.

⁶ It should be pointed out, however, that as opposed to Latin, which has two different terms for blood – *sanguis* for blood that is inside the body, and *cruor* for blood outside, potentially coagulated, and often synonymous with bloodshed – there is only one term for blood in Hebrew, *dam*.

factors elicit entirely different sets of meanings and significations for the specific type of blood in question: the source of bleeding, its place of exit from the body, its degree of fluidity, whether it was deliberately spilled or whether it emerges as part of a physiological process.⁷ To the rabbis, not all blood is the same. This point can be illustrated with one poignant example from the early rabbinic purity laws. In tractate *Makhshirin* 6:4-7, we find that the Mishnah groups different types of blood into three different categories: [1] blood that counts as a fluid that renders food items susceptible to ritual impurity, [2] blood that does that, but also has the inherent force to convey ritual impurity, and [3] blood that does neither of these two things. In the first group the Mishnah lists – along with such bodily fluids as water that comes from the eye, the ear, nose, or mouth – blood that is shed in the slaughter of wild and domestic animals or birds that are pure, and blood from blood-letting that is intended for drinking.⁸ In the second group we find, along with the spittle, semen, and urine of a *zav* (i.e., a man with an abnormal genital emission), a quarter *log* (approx. 1/8

⁷ Much of the recent literature on blood focuses on one factor only in this set of options, namely the juxtaposition of deliberately spilled blood – in sacrifice and especially circumcision – and blood that is merely secreted or uncontrollable, as in menstrual blood. Thus, for instance, already in H. Eilberg-Schwartz, *The Savage in Judaism* (Bloomington: Indiana University, 1990), pp. 186-189, the impurity of menstrual blood in biblical Judaism derives from the fact of its uncontrollability, while the blood of circumcision which is deliberately spilled is pure. So also, and more strongly, L.A. Hoffman, *Covenant of Blood: Circumcision and Gender in Rabbinic Judaism* (Chicago: University of Chicago, 1996), pp. 99, 135, and 190. Both have received a significant amount of critical discussion and are deeply problematic in their application of structural symbolism to rabbinic law, not to mention the dating of the sources in Hoffman's case. See, for instance, Daniel Boyarin's strongly critical assessment in his review of Hoffman in *JQR* 88 (1997), pp. 57-66; also Shaye Cohen in his more recent *Why Aren't Jewish Women Circumcised: Gender and Covenant in Judaism* (Berkeley: University of California, 2005), pp. 228 n. 11, 235 n. 11. Indeed, Cohen emphasizes the silence in classical rabbinic texts from the talmudic period with regards to attributing any significance to the blood produced by the performance of circumcision; in his words, "if the talmudic rabbis subscribed to a theology of circumcision blood, our corpora have failed to record it" (p. 29). Still, Hoffman's mistakes and misreadings are often enough simply replicated by scholars, as for instance by Blake Leyerle in her otherwise very cogently argued essay on Tertullian, "Blood Is Seed," *JR* 81 (2001), pp. 26-48 esp. 43, as well as Peggy McCracken, *The Curse of Eve, The Wound of the Hero: Blood, Gender, and Medieval Literature* (Philadelphia: University of Pennsylvania, 2003), pp. 6-8. The binary juxtaposition of the blood of circumcision and the blood of menstruation as the determinant factor for the gender politics of rabbinic Judaism simply does not work and should be laid to rest once and for all.

⁸ *dam haqazah le-shitiah*. Supposedly the drinking here refers to animals. So Chanoch Albeck in his comments, presumably relying on traditional commentaries. Various medieval commentators suggest not only animals but human beings as those who might drink the blood, without providing a reason why that would be so. The Mishnah does not specify this, nor is there any talmudic discussion of this tractate to help us with clarifying the precise meaning of this phrase. Mishnah *Keritot* 5:1 defines the *dam haqazah* (blood of bloodletting) as that with which the soul or life principle leaves the body.

of a liter) of blood from a corpse (cf. *m. Ohalot* 2:1-2), and menstrual blood, although these items remain a matter of debate.⁹ Finally, in the last group we find, along with sweat and excrement, the blood that exudes with these and the blood that is shed in the slaughter of impure animals and birds, as well as the blood from bloodletting that is used for medicinal purposes.¹⁰ This text deserves much further examination than we can pursue in the current context. Suffice it to point out for now that the rabbinic system of purity provides only one range of meanings. But clearly these groupings superimpose a different mapping of meanings, an economy of fluids onto that system, having to do with the rabbinic understanding of the nature of bodily fluids as fluids in general.

Despite this considerable investment on the part of the rabbis in differentiating among various genres of blood, I would argue that no other genre of blood receives as much rabbinic attention as does menstrual blood, at least in the Mishnah and in later halakhic contexts. This is certainly true in quantitative terms: the Mishnah devotes an entire tractate to menstrual blood, namely, tractate *Niddah*. Of the tractates in the mishnaic *Order of Purities* under which tractate *Niddah* is subsumed, it is the only tractate with a sustained halakhic tradition of discussion and commentary, beginning with the talmudic expansion and continuing with medieval rabbinic commentaries and codes, and reaching into the modern period. Arguably, this is also true in qualitative terms – recent studies and interest in the blood of sacrifice and especially the blood of circumcision notwithstanding.¹¹

Over the last two decades or so, the rabbinic laws of menstrual impurity and purification have been at the center of discussions about Jewish identity-formations, mostly as explored in terms of gender. Scholars with various feminist perspectives have presented numerous readings of the implications of the traditional rabbinic interest in menstrual blood and bleeding for Jewish women's identity; some consider this aspect of Jewish law as confining at best, while others have privileged their enabling

⁹ According to one opinion in this same paragraph, attributed to Rabbi Eleazar ben Azariah, menstrual blood does not fall under the laws of "rendering food items susceptible for ritual impurity," and according to Rabbi Simeon the blood of a corpses does not either. I will leave aside the question what any of this might mean in reality.

¹⁰ *dam haqazah le-refu'ah*.

¹¹ Regarding the critique of this undue focus on the blood of circumcision, see n. 7 above. On the blood of sacrifice, particularly the rabbinic use of the peculiar passage in Exodus 24 and Moses' sprinkling of sacrificial blood on the people, see the second chapter in David Biale's *Blood and Belief: The Circulation of a Symbol between Jews and Christians* (Berkeley: University of California, 2007). As compelling as Biale's reading of this material is, it hardly measures up to the sustained rabbinic discussions of menstrual blood and bleeding.

potential specifically for a Jewish identity-formation for women.¹² Gender politics have also been the rubric under which I presented my own study of these laws and their discussion in the Babylonian Talmud,¹³ addressing the particular question of why a scholastic community of male leaders in the making – the rabbis and their disciples – might have been so interested in the female body and its physiology, and what this might and might not have had to do with women’s religious lives. In my 2002 book, *Menstrual Purity*, I sought to maintain the Foucauldian dialectical view of legal discourse as simultaneously disciplinary and generative, and therefore instrumental in the production of specific forms of subjectivity or identity.¹⁴

In my view, the gender paradigm still holds true: rabbinic thinking about gender provides an important framework within which to study the rabbis’ adoption and reshaping of biblical priestly laws concerning menstrual blood and bleeding. And, of course, the rabbinic discourse on menstrual impurity has tremendous implications for women’s religious lives in Jewish culture, historically and to this day.

But I would like to suggest here that a slightly different emphasis will permit us to consider different mappings of religious identity in this context; that is, beyond the particular focus on menstrual blood as *women’s* blood, we might expand our view to the significance of the rabbinic, and specifically mishnaic, purity system as a whole and to the role that uterine fluids play within this framework.¹⁵ The shift is one from a focus specifically on the gender issues involved in the rabbinic “science of

¹² Cohen crowns Rabbi Joseph Bekhor Shor, a twelfth-century commentator on the Torah, as the one who precedes contemporary apologists for the rabbinic tradition regarding menstrual impurity by several centuries. He approvingly cites the Bekhor Shor’s commentary on Genesis 17: “And the blood of menstruation that women observe by telling their husbands of the onset of their periods – this for them is covenantal blood” as a feat of intellectual daring and independence (*Why Aren’t*, p. 196). Rachel Adler’s first essay on the symbolism of the menstrual purification in the *mikveh* would fall in this category; “Tum’ah and Taharah: Ends and Beginnings,” in *The Jewish Woman*, ed. E. Koltun (New York: Schocken, 1976), pp. 63-71. For a variety of perspectives ranging from the historical to the contemporary ethnographical, see R. Wasserfall (ed.), *Women and Water: Menstruation in Jewish Life and Law* (Hanover: Brandeis University, 1999).

¹³ C.E. Fonrobert, *Menstrual Purity: Rabbinic and Early Christian Reconstructions of Biblical Gender* (Stanford: Stanford University, 2002).

¹⁴ In the last chapter of *Menstrual Purity* (pp. 160-210: “Menstrual Politics in Early Christian Literature”), I emphasized the potentially positive valence of the biblical requirement of menstrual purification for women, as reflected in the unique case of the *Didascalia Apostolorum*, particularly in light of Christian rejection of those laws.

¹⁵ The body of scholarly literature on the rabbinic purity laws has grown enormously in the last two decades, ever since Jacob Neusner’s *The Idea of Purity in Ancient Judaism* (Leiden: Brill, 1973). Most recently see J. Klawans, *Impurity and Sin in Ancient Judaism* (Oxford: Oxford University, 2000), and C. Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (Oxford: Oxford University, 2003).

women's blood,"¹⁶ to the ways this very science shapes rabbinic ideas of collective identity, of the Jewish body politic. In the context of the current theme-issue, I would emphasize that it is in the framework of the purity laws that reflections on identity – or, to be more precise, on Jewish identity as it was conceived by the rabbis – play a significant role, sometimes emerging to the foreground of their legal discussions. As we shall see, this is the case specifically in discussions of menstrual impurity and purification. It is perhaps the notion of purity, particularly as it is connected to the human body, that lends itself readily to such mappings of identity, albeit it in complicated ways.¹⁷ The overt halakhic purpose of the tannaitic texts, i.e., the circumscription and control of ritual status with respect to the institution of the Temple, may work against such a claim. At the same time, we may think of the rabbinic purity laws as providing the conceptual framework for understanding the workings of the human body. They lift the body and its physiology into language, the language of *halakhah*. This, in turn, raises the question of what is to distinguish one body from another, whether in terms of gender or in terms of ethnic distinctions. Furthermore, the purity laws are heavily invested in the question of transference of a status of purity from one person to the next, especially (although not only) by genital and other fluids. Bodies are imagined as interconnected constantly. In this respect, the purity laws raise the question of the body politic as well: who is connected to whom and how, and whose touch is it that matters?

1. *The Ethnic Identity of Uterine Blood*

Let me begin our reflections on blood in the rabbinic case – and specifically menstrual blood – with a much debated, complicated, and rich text from the beginning of the fourth chapter of Mishnah *Niddah* that foregrounds the rabbinic mapping of Jewish identity.¹⁸ Indeed, in many

¹⁶ So the title of the fourth chapter in my book, *Menstrual Purity* (pp. 103-123).

¹⁷ The other legal context in early rabbinic law that lends itself for extensive reflections on identity and legal status are the laws of marriage, since here the reproduction of the body politic is at stake.

¹⁸ Of the more recent treatments, the following – in chronological order – are relevant to my discussion here: A. Büchler, "The Levitical Impurity of the Gentile in Palestine Before the Year 70," *JQR* 17 (1926), pp. 1-81; my own essay, "When Women Walk in the Way of Their Fathers: On Gendering the Rabbinic Claim for Authority," *Journal of the History of Sexuality* 10 (2001), pp. 398-416; Hayes, *Gentile Impurities*, which devotes a section ("Constructing a Rabbinic Principle of Gentile Ritual Impurity: 'Gentiles defile like *zavim* in every respect'") to the mishnaic text (pp. 122-131) to disentangle the rabbinic decree on Gentile impurity. Finally, Daniel Boyarin has attributed significant weight to this text in his recent argument for the invention of rabbinic heresiology in the Mishnah in *Border Lines: The Partition of Judaeo-Christianity* (Divinations; Philadelphia: University of Pennsylvania, 2004), pp. 58-63.

ways this passage presents a key text for considering the link between blood and identity, as it is the only text in the Mishnah that provides us with the most complete scale of types of “Jewish” identities, from “Israel,” through Sadducees and Samaritans, to non-Jews.¹⁹ This point bears emphasis, as most readings focus on one aspect or another, rather than on the map in its entirety, as we shall presently discuss. Much has been made to hinge on this overtly legal text,²⁰ and indeed much will hinge on our reading of it also in this essay. Here, this key text will help to demonstrate that menstrual bleeding and its observances had much to do, not just with rabbinic views of women’s bodies, but also with rabbinic constructions of the Jewish body politic.

I will begin by citing the relevant portion of the Mishnah in its entirety, both to convey the rhetorical structure of the text and to allow me a close reading of the rhetorical strategies employed in it:

4:1 The **daughters of the Samaritans** (*benot kutim*) are menstruants (*niddot*) from their cradle; and the Samaritans convey impurity to the lower and the upper bedding, since they have sex with menstruating women (*she-hen bo‘alei niddot*). Moreover, they [the daughters of the Samaritans] continue to sit on account of any blood. And because of [impurity incurred from] them, one does not become culpable by entrance into the Temple, nor does one need to burn the heave-offering, since their impurity is considered to be doubtful.

4:2 The **daughters of the Sadducees** (*benot tsadduqim*), as long as they resolve to walk in the ways of their fathers, they are regarded like Samaritan women (*kutiyyot*). If they separate themselves [from these ways] in order to walk in the ways of “**Israel**,”²¹ they are considered like

¹⁹ Which is not to say that this scale covers the entire taxonomy of collective identities in the Mishnah. For one, it does not include the Boethusians, mentioned in the context of disagreements about the festival calendar regarding the Feast of Pentecost (*m. Menahot* 10:3; cf. *m. Hagigah* 2:4). The Sadducees and Samaritans are mentioned numerous times in different contexts, but most often separately. In the Mishnah, Sadducees are explicitly mentioned mostly, but not exclusively, in the purity laws (*m. Parah* 3:3-7; *m. Yadayim* 4:6-7; see also *m. Eruvin* 6:2 and perhaps *m. Berakhot* 9:5 in variant manuscript versions).

²⁰ I will discuss Hayes, *Gentile Impurities*, and Boyarin, *Border Lines*, momentarily. Büchler, “Levitical Impurity of the Gentile,” argues that menstrual impurity and the texts discussed here lie at the origin of attributing any sort of ritual impurity to non-Jews.

²¹ Here, as throughout the essay, I put “Israel” in quotation marks, as in rabbinic Judaism that which constitutes “Israel” remains under construction. As a performative category – Israel are those who observe the law as explicated by the rabbinic sages – it necessarily remains under construction. It is the signifier of the utopian community constituted by the Oral Torah of the rabbinic sages. While it cannot operate as a descriptive category, or a historical referent, the term does lay claim to the past, namely the biblical story of the people of Israel, as has long been recognized; so already M. Simon, *Verus Israel: A Study of Relations between Christians and Jews in the Roman Empire A.D. 135-425*, trans. H. McKeating (London: The Littman Library of Jewish Civilization, 1996). For a discussion of

“**Israel.**” Rabbi Yossi says [in disagreement to the previous anonymous opinion]: They are always considered like “**Israel,**” unless they separate themselves in order to walk in the ways of their [Sadducean] fathers.

4:3 The [genital] **blood of a non-Jewish woman** (*dam nokhrit*)²² or the blood of purity [after birth] from a [Jewish] woman with leprosy – the School of Shammai declare it to be in the status of purity (*metaharim*), while the School of Hillel state: it is like spittle and like urine²³ ... (*m. Niddah* 4:1-3; my emphasis in bold)

First and foremost, this mishnaic segment provides a map of collective identities that are on the radar screen of the rabbinic sages, the polar ends of which are constituted by “Israel” – the utopian “us” – on the one side and the non-Jewish woman (*nokhrit*) – “them” – on the other. The presumption here is that the category of *nokhrit* (non-Jewish woman) requires no further clarification; it operates as a quasi-*descriptive* category. The categories of Samaritan and Sadducean women, however, are under investigation.²⁴ They constitute more or less uncomfortable middle points along the spectrum between the poles of “us” and “them.” Accordingly, the Sadducean women can be more like “us,” depending on their observance of their menstrual impurity (“if they walk in the way of Israel”) or on their reading of their bleeding. By contrast, on this scale of identities, the Samaritan women are moved more toward the end of “them,” albeit not on the scale of ritual

the contested deployment of this term in the early rabbinic period, see G. Harvey, *The True Israel: Uses of the Names Jew, Hebrew and Israel in Ancient Jewish and Early Christian Literature* (Leiden: Brill, 1996); also S. Stern, *Jewish Identity in Early Rabbinic Writing* (Leiden: Brill, 1994), pp. 10-13; S.J.D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Berkeley: University of California, 1998). More recently, this issue has been discussed by C. Baker, *Rebuilding the House of Israel* (Stanford: Stanford University, 2002), pp. 9-10, and Boyarin, *Border Lines*, pp. 58-63.

²² Cf. *m. Niddah* 7:3, which rules that stains of menstrual blood from non-Jewish women are pure. This mishnah echoes *m. Niddah* 4:1-3 in the effort of mapping identities by the scale of reading menstrual bleeding: “All menstrual blood-stains that come from [the people who live in] Rekem [a border town] are ritually pure. Rabbi Yehudah declares them to be impure, since they [the people who live there] are converts and err [regarding the laws of menstrual impurity]. Those that come from among the *non-Jews* are pure. From among *Israel* and the *Samaritans*, Rabbi Meir declares impure. The sages, however, declare them pure, since they are not suspect with regard to their [observance of their] blood stains.” See also Hayes, *Genile Impurities*, p. 111.

²³ Spittle and urine convey impurity only when wet, not dry, contra the menstrual blood of a Jewish woman, and more precisely perhaps a Jewish woman who observes the rabbinic laws, since her blood conveys impurity no matter which state it is in.

²⁴ Although there were historical communities of Samaritans, and supposedly of Sadduceans, I do not read the mishnaic texts as quasi-ethnographic texts, as if they conveyed or even strove to convey historically accurate descriptions. Rather, within the legal rhetoric of the Mishnah both groups provide conceptual tools that allow the mishnaic authors to outline their notion of the idealized Jewish community. On this, see further below.

purity itself, but as to how identity is established. That is, paradoxically, the map does not move from the “most other” as the “most impure.” On the contrary, non-Jewish menstrual blood does not even fall in the category of impurity (at least according to one opinion). Rather, the Samaritan women are more like “them” in that they are assigned the category of *niddot* as a quasi-inherent and therefore essentializing (rather than performative) category.²⁵ Sadducean women are granted an option that Samaritan women are not. Regardless of what their actual observance/practice is, the Samaritan women simply are in the status of permanent menstrual impurity – “from their cradle on”; Samaritan men are considered to be in a derivative yet equally permanent status of impurity.

The difference between the categories of Samaritan and Sadducean women, on the one hand, and non-Jewish women, on the other, is underlined by additional rhetorical strategies. First, the Samaritan women and Sadducean women are referred to as “*daughters of the Samaritans*” and “*daughters of the Sadduceans*,” while the non-Jewish woman is simply called *nokhrit*. The non-Jewish woman is what she is, inherently and essentially, while the identity of the woman who is questionably Jewish, but definitely something other than a rabbinic daughter, is derivative of her progenitors’ identity – and therefore presumably relatively more pliable. At least the Sadducean women are granted an option of choosing “their fathers,” or which “fathers” to follow. This leads to the related, and more significant, rhetorical differentiation between the Samaritan/Sadducean pair and the category non-Jew. The category of Sadducean is presented as an essentially performative one (if they *walk* in our ways, etc.), while the category of non-Jew is in no way performance-based. Samaritan women are precisely more like non-Jewish women because theirs also is primarily an essentializing category (“*niddot* from the cradle onwards”). The tension underlying our text, as indeed arguably through much of the Mishnah as a whole, is the tension between Jewish identity as the product of performance (or observance) and Jewish identity as essence or inherent. To this tension we will have to return later on in this essay.

For now, let me just emphasize that the text raises the question of the boundary of the body politic, regardless of whether or not it actually refers to socio-historically identifiable groups. Read first and foremost as a text that theorizes Jewish identity as it constructs rabbinic law, or as a legal text that makes rhetorical choices, the Mishnah here strives to naturalize a clear boundary between “us” and “them,” between “Israel” and non-Jews,

²⁵ Although the text remains conflicted: on the one hand, the Samaritan women are categorically *niddot* from their cradle on, while, on the other, two sentences later the text adds a statement concerning their supposed practice, namely, “they continue to count their days of impurity on account of any genital bleeding” (*m. Niddah* 4:1).

precisely because the attention is directed to the middle-categories. The rabbinic laws of menstrual purity and purification – or, in rabbinic halakhic terms, the legalization of menstrual blood – turn into a tool to differentiate not merely between Jews and non-Jews but also between Jews and Jews. Differently put, the laws of menstrual purity serve as a convenient tool to map Jewish identity.

I will now turn to discuss briefly two recent analyses and uses of this segment from the Mishnah that have recognized its central importance for our understanding of rabbinic identity politics. Christine Hayes devoted some attention to this mishnah in her 2003 study of the evolution of the notion of Gentile impurity in the history of ancient Jewish culture, as did Daniel Boyarin in his 2004 book on the entwined rise of rabbinic Judaism and Christianity. For Boyarin, the text comes to play a crucial role in his argument about heresiology as a cultural practice *shared* by rabbinic sages and Christian writers such as Justin Martyr. While Hayes focuses on the juxtaposition of Jew and non-Jew, Boyarin is much more interested in the middle-categories of Samaritans and Sadducees. Let us briefly examine and compare both approaches with the aim of building upon and advancing this conversation about late antique Jewish identities.

2. Christine E. Hayes' Reading of m. Niddah 4:1-3: A Critical Assessment

Hayes treats the mishnaic segment in the context of her effort to trace the historical origin and legal/halakhic significance of the rabbinic attribution of *ritual* impurity to non-Jews. In her aim to provide a corrective to previous scholarship regarding Jewish (and specifically rabbinic) views of the impurity attributed to non-Jews, she advances a number of arguments that I find entirely convincing. These arguments can be summarized as follows: [1] the biblical priestly writers excluded non-Jews from their laws of ritual impurity and purification in Leviticus 12-15;²⁶ [2] the rabbis would have done so as well in their halakhic considerations of the issues relating to ritual impurity engendered and contracted by humans;²⁷ but [3] the rabbis rather than any other Jewish group or writer earlier at some point instituted

²⁶ Hayes thus agrees with Jonathan Klawans' effort to draw a clear distinction between the notion of "ritual impurity" and "moral impurity," as advanced in his *Impurity and Sin*. "Ritual impurity" here is meant to indicate ritual *status*, specifically with respect to access to the Temple and to guarding the purity of Temple related items, a status that bears no moral or ethical valence whatsoever.

²⁷ I.e., Hayes demonstrates that "rabbinic discussions of Gentiles and ritual impurity make a clear distinction between Torah law and rabbinic law. All passages that assert the Gentile's exclusion from the laws of ritual impurity in Lev 12-15 are statements of Torah law" (*Gentile Impurities*, pp. 122-123).

a law of ritual impurity of non-Jews;²⁸ and finally [4] this attribution of a status of impurity to non-Jews is merely statutory, but not intrinsic. This latter distinction is crucial to her argument, insofar as Hayes concludes:

...in contrast to Ezra's holy seed ideology, Second Temple and sectarian notions of genealogical impurity, and the Pauline and early Christian concept of carnal impurity, the rabbinic attribution of ritual impurity to Gentiles primarily in connection with interethnic unions is *notably lenient*.²⁹

Hayes reads this decree first and foremost as an intra-Jewish polemic. As she puts it: "the decree of Gentile ritual impurity was less a strategy for eliminating the evil of miscegenation than a volley in the internal cultural wars of first-century Judaism."³⁰ That is, if I understand her correctly, the polemic of the decree would be directed not primarily at fellow rabbinic Jews to keep them from mingling with non-Jews, but rather at other groups of Jews who draw much stricter and less permeable ethnic boundaries around themselves. On Hayes' reading, leniency serves as a tool of intra-Jewish differentiation.

Hayes concentrates on a ruling that is found in various early rabbinic sources, namely, that "non-Jews convey ritual impurity like *zavim* in every respect,"³¹ and she investigates the legal/halakhic valence of this somewhat irregular ruling. Why exactly would non-Jews be equated with the biblical category of *zavim*, and why are they "like" *zavim*? It should be pointed out that the Mishnah itself explicitly emphasizes that the laws of ritual impurity do not apply to non-Jews in various contexts, by constructing what we would consider some extreme limit cases. For instance, in tractate *Mikva'ot*, we learn the following:

If a non-Jewish woman (*nokhrit*) emits the (male) seminal fluid of a Jew (*yisra'el*) [after having had sex with him] – [in and by itself] that seminal fluid is impure. If a Jewish woman (*bat-yisra'el*) emits the seminal fluid of a non-Jew (*nokhri*) – that fluid is pure. (*m. Mikva'ot* 8:4; cf. *t. Mikva'ot* 6:7)

Here, the ritual status of the seminal fluid is made to depend on the identity of the male originator rather than on the woman with whom he had sex. Ethnic identity is made to attach to the seminal fluid itself and the woman

²⁸ *Contra* mostly Gedaliah Alon.

²⁹ Hayes, *Gentile Impurities*, p. 196.

³⁰ Hayes, *Gentile Impurities*, p. 196.

³¹ See *t. Zavim* 2:1; *Sifra, pereq zavim* 1:1; Hayes, *Gentile Impurities*, p. 123. See also n. 37 below.

merely houses the fluid.³² The ramifications are striking: the rules of ritual impurity do not apply to the non-Jew but are only to be understood as a script for Jewish bodies. Non-Jewish sperm is in fact pure, while Jewish sperm is not.

Further, in its rules on the impurity of skin diseases, the Mishnah establishes the following principle in tractate *Nega'im*:

All contract a status of ritual impurity from scale disease, **excluding** the non-Jews (*goyim*) and the resident alien.³³ (*m. Nega'im* 3:1; my emphasis in bold)

In another graphic way of emphasizing the divisive force of the ethnic boundary between Jew and non-Jew, the Mishnah rules as follows in the tractate dealing with the law of mostly male genital fluids other than regular ejaculation:

A non-Jew (*goi*) who ejaculates and is converted [immediately] thereafter – he immediately contracts a status of ritual impurity by reason of genital fluid. (*m. Zavim* 2:3)

We may paraphrase prosaically: as long as the non-Jew is not converted, the rules of ritual impurity do not apply to him, but the conversion brings with it the script of ritual impurity even if his genital fluids were produced preceding the ritual performance of the conversion. Or, as Hayes puts it in her own prosaic description: “In this passage we see conversion functioning as a kind of legal litmus test for expressing a person’s susceptibility or insusceptibility to ritual impurity.”³⁴

This ruling is striking and bears further emphasis; whereas one might have thought that conversion could have been represented in a language of purification of sorts, the stress here is rather put on the somewhat counterintuitive fact that the status of impurity – that is, the script of the purity laws – kicks in the moment the non-Jew enters the body politic of the Jews. Only Jews are susceptible to ritual purity; their genital fluids establish

³² That metaphor is used in the continuation of this ruling, namely: “The woman who served her house [=had sex], and then descended into the *mikveh* to immerse, but had not swept the house [her vaginal area], it is as if she had not immersed” (*m. Mikva'ot* 8:4). On the metaphor of house in the context of the gender politics of the rabbinic texts, and specifically the Mishnah, see *Menstrual Purity*, pp. 40-67, esp. 64, where I discuss the latter part of this text, and Baker, *Building the House of Israel*, passim.

³³ Cf. *m. Nega'im* 11:1 and 12:1. On the exclusion of non-Jewish clothes and houses from the laws of impurity of leprosy, see Hayes, *Gentile Impurities*, pp. 110-111. My student Mira Balberg is currently preparing for publication a paper on this very issue, entitled “Authority, Identity, and Body Hermeneutics in Mishnah *Nega'im*.”

³⁴ Hayes, *Gentile Impurities*, p. 112.

a script of ritual status that calls for deciphering, while non-Jewish fluids do not. In fact, all of these passages³⁵ demonstrate that, as far as the functional understanding of ritual impurity was concerned, at least the rabbis of the Mishnah considered it to apply to Jews only and not to non-Jews. By and large, the biblical script of ritual impurity that had the institution of the Temple as its functional center applied to – and for the rabbis of the Mishnah continued to apply to – Jews only.³⁶

Nonetheless, these self-same rabbis instituted, post-mishnaically, the rule that “non-Jews do confer a status of ritual impurity like *zavim*.”³⁷ And this is where our text on menstrual blood enters Hayes’ discussion. She underlines the fact that this rabbinic statement uses analogical language: the non-Jews defile merely “like” *zavim*; they are not entirely equated with the category of male Jews who suffer an abnormal genital discharge. For Hayes, the analogical language, first and foremost, has historiographical importance as it indicates the rabbinic origin of the decree,³⁸ meaning its innovativeness vis-à-vis biblical law.

By contrast, our text regarding the Samaritan women does not employ analogical language. Instead, it draws a simple equivalency: Samaritan women are not “like” *niddot*; rather, they “are” *niddot* from their cradle on. This leads Hayes to the following claim: “...because they are subject to the Torah’s laws of ritual impurity but do not follow the rabbinic interpretation of these laws, they are suspected of bearing genuine menstrual impurity at all times.”³⁹ It is not entirely clear, however, how we know that to the rabbis the Samaritans are supposed to be subject to the laws of ritual impurity *ab initio*.⁴⁰ Elsewhere, the tannaim demonstrate that they in fact

³⁵ See also *m. Niddah* 7:3; 10:4.

³⁶ Cf. Hayes, *Gentile Impurities*, p. 110: “The rabbis clearly conceive of the ritual purity laws as stipulations of the Mosaic Covenant, extending only to members of the covenantal community.” It should be pointed out here that Hayes nowhere raises the question of what it means to insist that only Jews, or only members of what she calls the covenantal community, can become impure, while conceptually – or by Torah law – non-Jews are “pure.”

³⁷ See *t. Zavim* 2:1; *Sifra, pereq zavim* 1:1; Hayes, *Gentile Impurities*, p. 123. I think that much more can be made of the fact that the Mishnah itself, which so clearly excludes the non-Jews from the various purity laws, does not mention this ruling, a fact not elaborated upon by Hayes, mostly because she rejects the “documentary hypothesis” in favor of source criticism. That is, early rabbinic thinking and teaching is established primarily by smaller text units and traditions, rather than by an entire “document,” such as the entire text known to us as the Mishnah or the entire corpus known to us as the Tosefta. But the fact that the Mishnah does not mention the rule of Gentile impurity at the very least raises the question whether indeed those who promote the rule extra- or post-mishnaically should be referred to as the “self-same” rabbis.

³⁸ The use of the analogical language is “an implicit mark of the rabbinic origin of the law” (Hayes, *Gentile Impurities*, p. 123).

³⁹ Hayes, *Gentile Impurities*, p. 123.

⁴⁰ Boyarin, for instance, claims the contrary when he dismisses A. Saldarini’s analysis in *Pharisees, Scribes, and Sadducees in Palestinian Society: A Sociological Approach*

remained ambivalent about the Samaritans: “A Samaritan is *like* a non-Jew, according to the opinion of Rabbi [Yehudah ha-Nasi]. But Rabban Simeon ben Gamaliel says: A Samaritan is *like* ‘Israel’ in all respects” (*t. Terumot* 4:12). This text employs the same analogical language that Hayes makes so much of in the case of the rabbinic attribution of ritual impurity to non-Jews (i.e., they are “like” *zavim*). The deployment of analogical language is much too diverse and even contradictory in the tannaitic texts for it to be interpreted in any one case for its precise legislative implications only. Rather, I would surmise that analogical language more often than not functions as a rhetorical tool that needs to be read as such.

Likewise, the precise valence of “genuine” menstrual impurity is likewise not entirely clear. On Hayes’ reasoning, the remainder of *m. Niddah* 4:1 does not make much sense, since the ruling here would be appropriate for the analogical category of impurity only. Thus, she observes that “because of [impurity incurred from] them, one does not become culpable by entrance into the Temple, nor does one need to burn the heave-offering, since their impurity is considered to be doubtful.” Yet, the passages attributing the ritual impurity of *zavim* to Gentiles make that very same differentiation,⁴¹ and in that case Hayes has argued that “the analogy drawn between the Gentile and the *zav* is partial rather than total,” which is intimated by the ruling that “*godashim* are not burned after contact with a Gentile, as they would be after contact with a *genuine zav*.”⁴² It would seem, then, that here also the ruling is one based on analogy rather than attributing “genuine” menstrual impurity to the Samaritan women.

My aim here is not to contest Hayes’ interpretation of the fundamental principles governing Gentile impurity, but rather to call attention to the unresolved tensions within rabbinic law in general and our text in particular. With all her effort to account for the decree on non-Jewish ritual impurity in halakhic terms, there remains a certain imprecision and even

(Wilmington: M. Glazier, 1988). According to Saldarini, “The Sadducean women who do not follow mishnaic custom are contrasted with Israelite women and thus are treated as less than good Jews, like Samaritans” (p. 232, cited in Boyarin, *Border Lines*, p. 255 n. 146). Boyarin here comments: “But those who are contrasted with Israelites are not ‘less than good Jews;’ they are not Jews are [*sic*] all – precisely like Samaritans.” That is, according to this statement, presumably the Samaritans would *not* be subject to the Torah’s laws of impurity. This, however, ignores the rabbis’ ambivalence even about the category of the Samaritans, as for instance reflected in the text from the Tosefta (*t. Terumot* 4:12) cited above (p. 33) but ignored by Boyarin. Admittedly, Boyarin does not develop his point here, since his focus is restricted to the Sadducean women, as we shall see below, nor does he investigate the numerous references to the Samaritans elsewhere in the Mishnah in order to build a case.

⁴¹ See *t. Zavim* 2:1 and *Sifra, pereq Zavim* 1:1.

⁴² Hayes, *Gentile Impurities*, p. 124 (my emphasis). It bears emphasizing that precisely in their pragmatic function – the regulation of who can and cannot go to the Temple or handle Temple-related matters – the purity laws are not made to work in these contexts.

self-contradiction in the rabbinic rhetoric. In this respect, the decree that non-Jews are “like *zavim* in every respect” could in the end be referred to as a *para-legal* statement at best rather than a legally/halakhically operative statement insofar as it equates Samaritan women with the halakhic category of menstruating woman. Precisely in their main pragmatic function, that is, the regulation of who can and cannot go to the Temple or handle Temple-related items – most likely in priestly families – the purity laws are declared not to be functional. All this is, of course, corroborated by the fact that the rabbinic purity laws were by and large promulgated after Jews had lost the Jerusalem Temple as their functional center to begin with. I would argue that these considerations strengthen a reading of rabbinic innovations in the purity laws and their discourse on ritual purity more generally as a tool for mapping and enforcing Jewish identity – rabbinically reconceived.

3. Daniel Boyarin’s Reading of m. Niddah 4:1-3: A Critical Assessment

Before I develop this argument further, let us turn briefly to Daniel Boyarin’s use and reading of this same central text. Boyarin puts forth an argument similar to the one I wish to advance here, although he does so without any interest *per se* in the rabbinic discourse of purity. In brief, Boyarin turns to the mishnaic discussion of the menstrual impurity of Samaritan and Sadducean women in his argument about heresiology as a cultural and religious practice shared by rabbinic and early Christian writers. Unlike Hayes, he is not at all interested in the category of the non-Jew here but only in the intermediary categories of the other-than-rabbinic Jews, precisely the Samaritan and the Sadducean women. Indeed, Boyarin turns our text into a central piece of evidence for his argument that the rabbis responsible for the Mishnah participated in the radical change in which collective identities are conceived and constituted in the Roman world of the second century. This change entailed a shift from a cultural regime that allowed for different schools of thought or sects or sectarianism within one larger group, by and large ethnically conceived, the *ethnos*, to one predicated upon the notion of orthodoxy, the true and correct way of constituting a group, contrasted with its heresies. Boyarin writes: “Both Christian writers of the tendency that would ultimately be classified as orthodox and the Rabbis are invested in the model of orthodox/heresy as their favored mode of self-definition in these two centuries” (i.e., the second and third centuries CE).⁴³ By and large, Boyarin emphasizes the model of shared participation in a common socio-cultural process:

⁴³ Boyarin, *Border Lines*, p. 28. Boyarin’s study is focused on Jewish and Christian writers, but he surmises that the shift applies also to Roman religion in general, as argued separately by M. Beard, J.A. North, and S.R.F. Price, *Religions of Rome* (Cambridge:

Heresiology emerges at the moment when sectarian/school structure is becoming less viable everywhere. The transformation of both nascent Christianity and nascent Judaism⁴⁴ from groups of sects ... into orthodox churches with their heretical others would be seen on this reading as part of the same sociocultural process and practice.⁴⁵

As evidence for the Mishnah's participation in this process, Boyarin produces three passages, one of them being our passage from tractate *Niddah*,⁴⁶ and in particular the section on the Sadducean women. Accordingly he emphasizes: "The implication of this text seems clear: 'The ways of their [Sadducean daughters'] fathers' are contrasted with the 'ways of Israel.' If that is a paradigm, then those fathers' traditional ways (very likely ancient norms), and indeed those fathers themselves, have been semantically excommunicated from Israel."⁴⁷ The Sadducees, so his argument runs, have in effect been declared a heresy (as not being part of catholic Israel), a fact that Boyarin sees confirmed in the other two texts he cites explicitly, one doctrinal (*m. Sanhedrin* 10:1) and the other a pseudo-historiographical passage that traces the origins of the Sadducean and Boethusian sects (*Avot de-Rabbi Nathan*).

This, then, is one piece of his reading of our text, the exclusion or excommunication of the Sadducean women and therefore the Sadduceans as a group from utopian "Israel." The second piece is the observation that, in the end, the text is not about the halakhic issue *per se*, or at least not primarily. Rather, its concerns revolve around the issue of authority, that is, of establishing not merely the authority to rule halakhically, but also the

Cambridge University, 1998). Hence, Boyarin attributes these changes to the same forces that "were at work in producing or leading to such massive and widespread epistemic developments, forces that began to wield their power in the second century and came to one sort of culmination in the fourth" (p. 60).

⁴⁴ I.e., the Judaism of the rabbis.

⁴⁵ Boyarin, *Border Lines*, 30. Concerning the summary of his argument I will leave it at this, although much more could be said as to his wavering between attributing the originating moment of this process to the Christian writers, at least as far as his focus on the pair of Judaism and Christianity is concerned, and between keeping underlining the mutuality of this process, i.e., keeping both in balance as participating in a process larger than them. A discussion of this tension, productive and provocative as it has proved to be, is not entirely relevant to the current context.

⁴⁶ With the other two being the famous dogmatic or doctrinal mishnah opening the eschatological chapter in tractate *Sanhedrin* (10:1), and the passage from the later text in *Avot de Rabbi Nathan*, explaining the origins of the Sadducean and Boethusian heresies.

⁴⁷ Boyarin, *Border Lines*, p. 60. Cp. also my own earlier reading in my article "When Women Walk in the Way of Their Fathers": "The contrast between 'the ways of their fathers' and 'the ways of Israel' is notable... It is the abstract category of universal Israel that is contrasted with the ways of 'their fathers,' a contrast that sounds almost tribal, and deliberately so" (p. 410).

authority to define who is in and who is out: “Other Jews, presumably behaving in accordance with ancient Jewish practice or with the ways of their fathers ... are read out of Israel because they refuse the control of the rabbinic party.”⁴⁸

To prove this point, however, Boyarin resorts to a somewhat problematic or imprecise argument. He draws on the Foucauldian argument⁴⁹ that the rabbis of the Mishnah (and beyond) invent a science of blood, and menstrual blood in particular, by distinguishing between various kinds of blood, some impure, some pure, so as to establish and corroborate rabbinic control over women’s physiology as Torah knowledge. In other words, while the rabbis overtly establish legal leniency with regard to menstrual bleeding and declare some types of bleeding to be pure and therefore most likely not uterine, the Samaritan women⁵⁰ in our text come across as more conservative and “hyperstrict,” because they do not follow the rabbinic distinction between various types of menstrual blood: “and they ‘sit’ on account of all types of blood (*kol dam ve-dam*)” (*m. Niddah* 4:1). In other words, they count their days of menstrual impurity on account of any type of genital bleeding, in contrast to the rabbinic/mishnaic innovation of differentiating between types of genital bleeding.

The argument holds, but I would nonetheless take issue with how Boyarin arrives at his reading of this mishnaic segment as being concerned above all with constructing rabbinic authority by casting rabbinic Judaism as an “orthodoxy.” In fact, he takes recourse to a much later talmudic text to demonstrate this claim:

However, when the women of the Rabbis decided to declare themselves impure upon seeing any spot the size of a mustard seed (which, equally according to biblical law, would not cause impurity), this was considered praiseworthy by the Rabbis in spite of its producing precisely

⁴⁸ Boyarin, *Border Lines*, p. 62.

⁴⁹ Advanced in my book, see *Menstrual Purity*, ch. 4: “The Hermeneutics of Colors and Stains: The Rabbinic Science of Women’s Blood” (pp. 103-127).

⁵⁰ Boyarin here conflates the categories of Sadducean and Samaritan women (*Border Lines*, p. 62), in my opinion unjustifiably, since *m. Niddah* 4:1 (on the Samaritan women) and *m. Niddah* 4:2 (on the Sadducean women) employ expressly different reasoning and rhetorical strategies. It is not as if we could draw a sharp distinction between the two, since these categories are variously deployed throughout the Mishnah and other tannaitic texts. Their halakhic *Gestalt* in rabbinic legal literature could not be entirely distinguished from each other even if one tried to collate the various statements. Nonetheless, here the text does draw a distinction and insists on putting both categories next to each other, with distinct rhetoric at work for each case.

the same result as the Samaritan practice. In short, the issue is authority.⁵¹

The unidentified reference here is to the much discussed *taqanah* or decree attributed to a certain Rabbi Zera, a third-generation Palestinian talmudic sage (end of third century), that “the daughters of Israel assumed a stringency upon themselves, that even if they see a blood spot of the size of a mustard seed they sit for seven days [without evidence of bleeding]” before resuming sex with their husbands (*b. Niddah* 66a).⁵² By pointing to the later talmudic change in practice, Boyarin demonstrates the inconsistent logic in the rabbinic discourse on menstrual impurity, which in turn proves that the issue in the earlier texts is about authority.

However, this can be demonstrated much more cogently with an equally famous text, a story from the Tosefta, commenting on our mishnaic segment. That story deserves to be cited in full, again, as it bears directly on the issues under discussion here:

A case story about a Sadducee who conversed with a high priest. Some spittle escaped from his mouth and fell on the clothes of the high priest, whereupon the high priest’s face turned yellow. They went and asked his [the Sadducee’s] wife and she said: “My good priest, even though we are Sadducean women (*nashei zaduqiot*) we all consult a sage (*hakham*).” Rabbi Yossi said: “We are experts in Sadducean women more than anybody, because they all consult a sage, except for one who was amongst them and died.”⁵³ (*t. Niddah* 5:3; cf. *b. Niddah* 33b)

⁵¹ Boyarin, *Border Lines*, p. 63. To be as clear as possible, my point is merely one of clarification, by insisting on Boyarin’s own methodological principles that later rabbinic texts should not be used to interpret earlier ones.

⁵² This text (i.e., *b. Niddah* 66a) has played a significant role in the feminist discussions of the rabbinic laws of menstrual impurity, not only because of the ruling pronounced here, but also because it is attributed to the supposed practice of Jewish women themselves, albeit mediated through the attribution to a male rabbinic legislator. It should be pointed out that the talmudic passage does not necessarily consider the women’s behavior as praiseworthy.

⁵³ I discussed this story in some detail in my article “When Women Walk in the Way of Their Fathers,” where my main concern was with the gender politics of the story. The entire literature on the history of the Sadducean-Pharisaic controversy deals with this story, primarily because of Rabbi Yossi’s reference to a contemporaneous Sadducean woman in his neighborhood which would locate her in the mid-second century. See S.J.D. Cohen, “The Significance of Yavneh,” *HUCA* 55 (1984), pp. 27-53, esp. 33-34; T. Ilan, *Jewish Women in Greco-Roman Palestine* (Peabody: Hendrickson, 1996), pp. 100-105; G. Stemmerger, *Pharisäer, Sadduzäer, Essener* (Stuttgart: Verlag Katholisches Bibelwerk, 1991), p. 129, a.o. All of these historiographical accounts are perturbed by the fact that Sadduceans should still be around in the mid-second century CE, when the general assumption is that they disappeared in the aftermath of the destruction of the Temple. Obviously, this concern is not one moving me here, as I am more interested in the rhetorical strategies of the Mishnah and its cognate texts.

As an illustration of what the mishnaic phrase “walking in the ways of Israel” might mean, the story demonstrates in an almost banal fashion that this has singularly to do with the submission to the authority of the rabbinic sages of the Mishnah. “Walking in the ways of Israel” means walking over to the next sage in the neighborhood to consult with him about purity and impurity.

As we have seen, both Hayes and Boyarin provide detailed discussion of the mishnaic texts on the rabbinic entanglement of menstrual bleeding and religious identities under consideration here. While both recognize the importance of *m. Niddah* 4:1-3 to the discussion of identity issues in rabbinic literature, they pursue different interests and use these texts for different purposes, complementary to each other and to my purpose here. Hayes is primarily interested in the ways in which the rabbinic texts establish and strengthen the boundaries between Jews and non-Jews, while Boyarin devotes his analysis to the interstitial categories, the Sadducean and Samaritan women as other-than-rabbinic Jews whom the Mishnah no longer recognizes as Jewish (or, in the Mishnah’s terminology: as “Israel,” its “orthodox” version of Jewish identity). Hayes analyzes the transformation of the notion of purity and its relevance for understanding the construction of Jewish identity in various texts and literatures stretching from the biblical to talmudic period. She suggests that the rabbis followed the biblical-priestly system in promoting a view that, according to biblical law, the ritual purity laws do not apply to non-Jews,⁵⁴ while some early rabbinic sources attributed by analogy a certain kind of ritual impurity to non-Jews (i.e., that of the *zav*). She suggests that the rabbis did so, not because they considered non-Jews to be intrinsically impure, but in order to discourage intimate (i.e., sexual) connections of Jews with non-Jews. Boyarin, by contrast, is not interested in the usefulness of the notion of purity, menstrual or otherwise, for discussions of Jewish and Christian identity politics in the second and third centuries. His main focus is on the *discursive* practice of heresiology, and the emergence of a notion of heresy on which both Christian writers and the Mishnah drew in order to reinvent their respective cultures (practices and beliefs) as orthodoxies. Boyarin reads this constellation of texts as heresiological in nature in order to demonstrate that the rabbis developed a sense of self-definition (or a discourse thereof) very similar to that of early Christian writers – an “orthodoxy” – thereby reconfiguring the understanding of the boundary from a genealogical to the religious model.⁵⁵ To this latter point, Hayes

⁵⁴ Here I pointed out that the Mishnah as a whole still seems to go by this assumption.

⁵⁵ To that end, he privileges belief over practice – or, as it were, *m. Sanhedrin* 10:1 over *m. Niddah* 4:1-2 – in order to make rabbinic heresiology cohere more closely with the early

might agree, as she equally emphasizes the intra-Jewish polemical directedness of our texts against Jewish groups (or their literatures) that elevate the genealogical model above all else, such as those who might promote a notion of genealogical purity like Ezra's concept of the "holy seed." Compared to those literatures, Hayes argues, the rabbinic model of Jewish identity as projected by their attribution of *ritual* impurity *only* to non-Jews appears to be notably lenient and, pragmatically speaking, ineffective for policing the boundaries between Jews and non-Jews. Accordingly, she argues that the decree's primary function may be one of differentiating rabbinic Jews from other Jewish groups.

4. *Blood and Other Bodily Fluids*

Let us return to the issue of blood and bleeding – specifically of the menstrual sort. As I have insisted in the introduction to this article, it is uterine blood that is the most interesting to and culturally productive for the rabbis of the Mishnah and their inheritors. It is this one genre of blood that engenders an entire literature and the one that they entwine with their efforts to map various sorts of identities as well as to draw boundaries between groups, even if in the most intangible of ways. We should recall that the key text that we have read so carefully here, in dialogue with others who have themselves carefully read at least parts of it, is the only one in the Mishnah that provides the entire map of categories of collective identities ranging from "Israel" to *nokhrit* by focusing on women's observances of their menstrual bleeding.⁵⁶ I have already suggested that the purity system in particular might lend itself easily to the project of mapping Jewish identities, precisely because it focuses so intensely on the human body and its physiology.

But why menstrual blood? Is indeed menstrual blood "ein ganz besonderer Saft," to adapt Faust's famous exclamation for our purposes? Why might the rabbis attribute a distinctive capacity to menstrual blood to signify not only gender difference, but Jewish group identity?

To answer this question – or at least to advance some ideas toward an answer – let us briefly consider the importance of bodily fluids in the purity system. Obviously, fluids are primarily regarded as transmitters of impurity, already in the biblical text (Leviticus 15), although much expanded in early rabbinic law. Genital fluids in particular, both male and female, sperm and uterine bleeding, have this power to communicate impurity in and by

Christian practice thereof. Accordingly, the (rabbinically projected) Sadducees differ from rabbinic Jews not primarily because of difference in practice.

⁵⁶ See n. 19.

themselves – and not just as by-products of the most intense communication of bodies, sexual intercourse. As we have seen above, spittle and urine also are attributed that power. Our local Sadducee and priest, in the story from Tosefta *Niddah* 5:3 discussed above,⁵⁷ converse in the market place, and the former's spittle creates a physical connection beyond the intangible verbal one. Through the Sadducee's spittle, the priest is linked almost physically back to the wife, with whom the Sadducee in turn is physically connected by sexual intercourse. Menstrual blood links husband and wife, spittle in turn links the two men in the marketplace. Sexual intercourse and social intercourse are closely intertwined via bodily fluids of various sorts. Bodies remain uncontained, they overflow, they reach beyond themselves.

It is here that I wish to provide a different twist to the dominant view of the (rabbinic) theory of contagion, or anxiety of transmission of impurity from one person to the next, in this case beginning with the wife in the bedroom. Viewed in such a light, the process of transmission conveys a sense of anxiety, such as the one expressed by the priest in the toseftan text discussed earlier who has been defiled by the spittle of a Sadducee (*t. Niddah* 5:3). He notices the spittle on his garment or perhaps felt the droplet on his arm and immediately realizes that his professional life is in peril, at least temporarily. We thus might think that the story conveys not only the priest's anxious reaction but also illustrates the *rabbis'* anxiety about ritual impurity as contagion and their fixation on the transmission of such impurity. Those scholars who would advance such an interpretation see contagion everywhere. And Mary Douglas – or at least the Mary Douglas of *Purity and Danger* – can be called onto the podium to account for such a worry about contagion.

In contrast, I would suggest that, while our priest is perhaps worried, those who tell the story and devote a great deal of intellectual energy to the nature of bodily fluids in general, and menstrual bleeding in particular, are not. The priest in the story has reasons to worry since his livelihood might be at stake. But why would the rabbis of the Mishnah have reason to worry? After all, most of the discourse of purity and impurity remained entirely theoretical in the century and more after the destruction of the Jerusalem Temple during which the Mishnah came into existence. Had the rabbis been so anxious, the easier solution for them might simply have been to ignore ritual impurity altogether. Rather, we may read the legal discourse of purity and impurity within the framework of the Mishnah as an opportunity to

⁵⁷ Although spittle and urine are often named as a pair in mishnaic law, I am not aware of any case story that might illustrate how urine reaches from one person to the next.

think about the body and human physiology.⁵⁸ The disciplinary discourse thus is productive of new forms of thinking about identity, by moving the body to the center of negotiating identity. It is the focus on the body that moved the rabbis to think productively about identity, collective identity, and the boundaries that demarcate it.

If we read the Mishnah's purity and impurity system in the terms suggested here, it starts to make sense how bodily fluids in general, and those of a genital nature in particular, come to play their significant and signifying role. Fluids and fluidity, it might be argued, dissolve and undo boundaries.⁵⁹ Fluidity represents the very impossibility of demarcating boundaries, let alone boundaries of identity. Sadducean-ness flows right out of the bedroom and into the marketplace, one might say. Thankfully, our Sadducean wife contained her fluids according to rabbinic rules: "Israel" had (or claims to have) established itself in the bedroom of the story. The fluids in our texts connect individual bodies, weld them together into collective bodies.

In that capacity, however, it is the fluids that lend themselves to marking difference, not only and not even primarily of gender, but of "Israel" and its others, of Jewish of a specific sort. "Israel" is the individual body – the signifier for the individual Jew – at the same time as it signifies the collective body, and here collective *body* can almost be understood literally: "Israel" as a collective body comprises all those whose bodies are connected by bodily fluids that *communicate*. Here I would claim that the mishnaic declaration of non-Jewish menstrual blood as pure (*m. Niddah* 4:3) or of non-Jewish sperm as pure (*m. Mikva'ot* 8:4) amounts to rendering those fluids "meaningless." They do not *communicate*. Mishnah *Zavim* 2:3, cited once above, is instructive here: a man's sperm begins to "communicate" precisely at the moment of conversion only: "A non-Jews who ejaculates and is converted [immediately] thereafter – he immediately contracts a status of ritual impurity by reason of genital fluid."⁶⁰

⁵⁸ This is precisely the Foucauldian dialectic learned from the first volume of the *History of Sexuality: An Introduction* (New York: Vintage, 1990) that is so extremely fruitful for reading rabbinic legal discourse.

⁵⁹ Elizabeth Grosz, following to a certain degree Luce Irigaray, considers fluidity as one of the central problems in the Western philosophical tradition. See her *Volatile Bodies: Toward a Corporeal Feminism* (Bloomington: Indiana University, 1994), and my discussion of her theoretical approach and its relevance to rabbinic purity law in *Menstrual Purity*, pp. 45, 96.

⁶⁰ This is not to ignore Hayes' extensive discussion of the supposedly slightly later rabbinic attribution of ritual impurity to non-Jews "as if," discussed above. Mostly, I am interested in the Mishnah. But either way, here I am merely trying to understand what it might mean to insist that non-Jewish menstrual blood or sperm is "pure," while that of a Jew ("Israel") is not.

We might almost turn the commonsensical logic of considering the rabbinic system of purity and impurity as a disciplinary system on its head and think of it as a poetics of the body. Bodily fluids have to be read and interpreted; they are lifted into language, into the language of law, law that demarcates Jews as a people anew and differently in the Mishnah.

Do bodily fluids then differ from each other? Of course they do in halakhic terms (whether they are wet or dry, whether they are touched or communicated directly or only indirectly, etc.) but we are interested in bodily fluids as tools to demarcate the body politic, and in this regard we can perhaps summarize the rabbinic economy of bodily fluids discussed in this essay. They can be subdivided into genital or sexual fluids (menstrual blood, sperm, and other male genital fluids) and social fluids (predominantly spittle, paired with urine).⁶¹ Spittle is the fluid that communicates between men, in the marketplace. Genital fluids are more commonly deployed to demarcate the boundary between “Israel” and its others. *Notably, male sexual fluids are used to demarcate the boundary between Israel and non-Jews only, while menstrual blood is made to establish a script for intra-Jewish differentiation – for rabbinic heresiology – in addition to the boundary between Israel and the nations.* What are we to make of this difference? Why is male sperm useful for a one-dimensional kind of demarcation only, while menstrual blood for a multi-dimensional kind? Indeed, why might the script of menstrual blood be so much more elaborate than the one of male genital fluid?

There is no evidence, and certainly no easy answer. Clearly, this is where the gendered dimension of these fluids has to be foregrounded once again. The story in the Tosefta clearly demonstrates that the primary and quite overt concern of the differentiation between Sadducean, Samaritan, and “Israelite” is about authority, about establishing rabbinic control over women’s bodies. The Sadducean wife pacifies the hysteric priests by assuring him that she consults with the neighborhood rabbinic sage, and not only her, but – she claims – “all Sadducean women” (*nashei tsadduqiyot*). Sadducean they might be; “we” don’t particularly care, as long as “they” consult with “us” about our script of bodily fluids. The gendered presumptions are various. For one, most women do not know how to read the script of their own bodily fluids – the (rabbinic sage) has to do so for them. Furthermore, “we” sages need to ascertain that they follow our script, since they might indeed think that they have their own traditions to follow, that of their “fathers.”⁶²

⁶¹ Perhaps this is not altogether precise, as urine is of course a genital fluid. But it is treated distinctly from sperm and menstrual blood.

⁶² For this interpretation, see my “When Women Walk in the Ways of their Fathers,” as well as my discussion of Boyarin, *Border Lines*, above.

I would emphasize now, however, that this interpretation does not sufficiently explain why the rabbinic sages would attribute such a distinct power to menstrual fluids of communicating and therefore defining the body politic of “Israel.” This, I submit, derives first and foremost from the rabbinic commitment to embodiedness, to the human body made of flesh and blood, to a body politic that consists of flesh and blood, and the fluids that hold it all together, one that is – to be sure – not left to the maternal body to produce, but one that is entirely rescripted by the law of the rabbinic sages (“walking the ways of the fathers”).

5. Conclusion

In the end, I would wish to insist on transcending our reading of the Mishnah and its cognate texts as primarily disciplinary text, which of course they also are in their nature as legal texts. At the same time, however, the Mishnah and its cognate texts produce tools of thinking that evoke and produce social meanings and effects, as I have tried to establish here. This insistence on the meaningfulness of such discourses of blood we learn from no lesser scholar than Caroline Walker Bynum, again we might say, in her recent and masterful book, *Wonderful Blood*, in which she explores the nature of the medieval northern German “obsession” with Christ’s blood, the salvific function of his blood and bleeding, sacrificial theology, blood relics, blood cults, and ultimately divinization of blood.⁶³ Although overtly those medieval Christian “obsessions” might not resonate with the literature we have just explored, there is an important lesson to be learned from Walker Bynum’s study, namely, her insistence that her texts and evidence of practice should not be treated reductively by resorting to explanatory models that foreground ecclesial discipline or the like, as if that were sufficient to motivate anyone in the end. Rather, she insists throughout her book that “behind issues of ecclesiastical discipline and control lay quite specific ontological and soteriological questions about the nature of the human person and about access to the presence of the divine.”⁶⁴ If this formulation were adapted to our texts, I would concur that behind the rabbinic discipline of control – of women’s bodies, of the power of bodily fluids to communicate, etc. – lay questions concerning the embodiedness of Israel, Israel as a collective body. To Walker Bynum, the obsession with Christ’s blood as images of the *risen* Christ and even of Christ in majesty showing his blood still flowing, liquid, and red, is about locating “access to

⁶³ C. Walker Bynum, *Wonderful Blood: Theology and Practice in Late Medieval Northern Germany and Beyond* (Philadelphia: University of Pennsylvania, 2007). See p. 44 for the language of “obsession.”

⁶⁴ Walker Bynum, *Wonderful Blood*, p. 45

the eternal in change and dissolution itself.”⁶⁵ This insight may very well be applied to the rabbinic commitment to the human body in its physicality. The body is entirely scripted and mapped by the legal discourse of the rabbis. In its nature as Torah, as the Oral Torah that was handed down from Sinai, that legal discourse seeks to accomplish the same, namely, to establish a body politic that elevates “change and dissolution,” sperm and blood, spittle and urine, to the language of Torah. Accordingly, the eternal Torah is embodied as “Israel,” the Word becomes incarnate.

⁶⁵ Walker Bynum, *Wonderful Blood*, p. 232.