

Defilement of the Hands, Canonization of the Bible, and the Special Status of Esther, Ecclesiastes, and Song of Songs

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Introduction

IN VARIOUS PLACES IN TALMUDIC LITERATURE THE ability of three books of the Bible—Esther, Song of Songs, and Ecclesiastes—to make one's hands unclean (מטמא את הידים) is doubted, with various Talmudic authorities ruling that each of these works does not defile the hands.² While none of the opinions are accepted as normative and thus do not cast doubt on the presence of any of these works within the Jewish canon,³ these opinions and how to understand them remain problematic within Jewish tradition. Two modern schools of thought have arisen to explain the dispute concerning "clean hands." One asserts that those authorities who state that these works do not defile the hands also rule that these books are not part of the canon. Solomon Zeitlin stated this clearly:

According to [some opinions within] the Talmud the book of Esther also does not defile the hands, *which means that the book was not canonized*. . . . Therefore as late as the third century, it was recorded in the name of Samuel that Esther does not defile the hands—that is, *Esther does not belong in the Canon*.⁴ [emphasis added]

According to this approach, the identity of the books of the Jewish Bible were not beyond dispute even as late as the year 200 C.E.

Sid Z. Leiman, in his book on this topic argues to the contrary. He states:

It appears likely that the biblical canon was closed prior to the earliest of the Talmudic discussions. . . . Speculation on the date of the closing of the biblical canon, based upon evidence from Talmudic passages treating books defiling the hands, would appear gratuitous. The rabbis were questioning the inspired status of some of the books in the biblical canon already closed; *they were neither discussing canonicity nor closing the biblical canon*.⁵

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According to this approach, “the Talmudic and midrashic evidence is entirely consistent with a second century B.C. dating for the closing of the biblical canon.”⁶

This article will attempt to address three issues relevant to this dispute: First, this article will survey how the medieval Jewish commentaries (*rishonim*) and early modern Jewish commentaries (early *achronim*) understand the Talmudic dispute as to whether these works defiled the hands. Did they relate it to presence in the canon?⁷ Secondly, this article notes that there are normative opinions within Jewish law which assign to Esther, Ecclesiastes, and Song of Songs a status different from the other books of the *Writings* (*Ketuvim*) and discusses how that result is justified. Finally this article notes that there is a clear feature in common for these three biblical works—the complete absence of the Tetragrammaton (שם המפורש) from these three works (and from no other books of the Bible)—which explains why one might assign to them a different status from all the other books of the Bible, while still never doubting their membership in the canon or why, perhaps, a Talmudic authority might even doubt their membership in the canon.

A. What is “Defiling of Hands”?

Defiling the hands is a status of ritual purity (or impurity) that is completely rabbinic in nature and was enacted by the Talmudic Sages *not* to promote ritual purity, but to protect holy works from destruction or desecration.⁸ Essentially, the Sages of the Talmud observed people would store *terumah* (a “sacred” food) in the ark with holy scrolls saying “both are holy.” In order to prevent this conduct, which apparently led to rats, mice, and weasels eating the scrolls as well as the sacred food, the Sages enacted a series of rabbinic decrees designed to deter this conduct.⁹ The initial decree was that the torah scrolls defiled one’s hands; thus, a person could not directly touch sacred scrolls and then sacred food. Secondly, they decreed that if one touched a sacred scroll and then touched sacred food, that food became ritually unclean (and could not be eaten). Finally, they decreed that when one touched sacred food it defiled one’s hands, thus preventing one from first touching food and then touching sacred scrolls. The effect of these decrees were to prevent one from storing food and scrolls together or to go immediately from one to another without first washing the hands.

From the Talmud, however, it is clear that this decree was limited to certain types of sacred texts: not all sacred texts defiled the hands. Thus Tosephta (Yadayim 2:12) recounts that written-out blessings and certain verses do not defile the hands. While the Talmud does not explain this particular insight directly, the discussion in Talmud Shabbat 116–118

concerning those sacred texts which can be saved from a fire on the Sabbath does explicitly link salvation from the fire with the presence of God's name. Indeed, this is recounted in Shulchan Aruch quite clearly.¹⁰

B. The Talmudic Dispute as Understood by the Commentaries

The mishnah in Kelayim 15:6 recounts:

All books defile the hands except for the book of the Azara.¹¹

The mishnah in Yadayim 3:5 elaborates on this:

All books in the Bible defile the hands. Song of Songs and Ecclesiastes defile the hands. Rabbi Yehuda states that Song of Songs defiles the hands and Ecclesiastes is in dispute. Rabbi Yossi states that Ecclesiastes does not defile the hands and Song of Songs is in dispute.¹²

The Talmud in Megillah 7a recounts the following dispute concerning the book of Esther:

Rabbi Yehuda says in the name of Samuel: The Book of Esther does not defile the hands. Is this to be understood to mean that Samuel rules that Esther was not written with divine inspiration? But does not Samuel himself say that Esther was written with divine inspiration; Rather [Samuel rules] that Esther was said to be read and not to be written. Let us ask: Rabbi Meir states "Ecclesiastes does not defile the hands and there is a dispute as to whether Song of Songs defiles the hands." Rabbi Yossi states Song of Songs defiles the hands and Ecclesiastes is in dispute. Rabbi Shimon states: Ecclesiastes is one of the cases where Beit Shammai is more liberal than Beit Hillel, but Ruth, Song of Songs and Esther certainly defile the hands. This is in accordance with Rabbi Yehoshua who states: As learned "Rabbi Shimon ben Mennasiah states: Ecclesiastes does not defile the hands since it is the wisdom of Solomon."¹³

The first question is what is the underlying basis for Samuel, Rabbi Mennasiah, Rabbi Meir, and Rabbi Yossi's rule that various works do not defile the hands. Why should one text "defile the hands" and another not? Indeed, an examination of the Talmudic sources where "defiling of the hands" is mentioned, reveals that sometimes the question of whether a work "defiles the hands" is asked about a clearly canonical work with a special status (such as written to be erased)¹⁴ or about a work of the apocryphal literature such as the wisdom of Ben-Sira,¹⁵ and sometimes it is asked about heretical works such as the Gospels.¹⁶ There are even occasions where defiling of the hands is discussed unrelated to any text at all (such as whether remains from sacrifices defile the hands).¹⁷ What then is meant when the status of defiling the hands is discussed for Esther, Ecclesiastes, and Song of Songs?

An examination of the early commentaries allows one to conclude that two distinctly different understandings of Samuel's position are presented. Some early commentaries explain that the dispute is about membership in the canon; while others explain the dispute to be about a lesser issue of ritual purity.

1: A Dispute about Canon Membership

That some understand the dispute about whether Esther is really in the canon is clear. For example, Rabbi Yom Tov Ashbelli (Ritva) commenting on Samuel's statement in Megillah 7a explains that Samuel rules that Esther "is not within the *kitvai hakodesh*¹⁸ (canon), upon which the Sages decreed that one who touches them, even with washed hands,¹⁹ has his hands (secondarily) defiled for the purposes of terumah."²⁰ Similar sentiments can be found in the name of Rav Hai Gaon who is quoted in *Otzar Hagoanim* as following:

You asked whether the law is like Samuel in that Esther does not defile the hands. For what practical purpose is it necessary to answer this question? Do we now observe the rules of unclean hands and do we have terumah and kodesh? Rather, as a matter of law the ruling is not like Samuel since he is a single opinion and the rule is like the anonymous mishnah; *also don't all of Israel consider Esther to be in the Bible?*²¹

From the last section of his answer, it is clear that Rav Hai Gaon understands Samuel to be of the opinion that Esther is not one of the books of the Bible (כחבי קודש) as he resolves that the law is not like Samuel since "don't all of Israel consider Esther to be in the Bible?" Similar sentiments can be implied from the comments of Meiri,²² as well as perhaps Rabbi Asher,²³ Rabbi Aderet,²⁴ and Tosaphot Yeshanim.²⁵

Of course, even these commentaries acknowledge that Samuel accepts that Esther is to be read on Purim from a text/scroll;²⁶ however it does not have the status of "written torah" but rather has the status of some sort of "oral torah" which was to be written down as part of a rabbinic decree relating to its use as a ritual text.²⁷

These early commentaries could reply that the fact that Rabbi Shimon ben Mennassiah expounds on Ecclesiastes and Samuel expounds on Esther need not indicate that it is canonical, and that it is sufficient that it be semi-inspired to be expounded on. The status of Ecclesiastes according to Rabbi Shimon ben Mennassiah, as understood by these authorities might be similar to a work such as *Megilat Tanit* which is sometimes introduced with "it is written" and sometimes with "it is learned"—semi-inspired and not canonical. Certainly, the fact that Rabbi Shimon ben Mennassiah expounds a law from the book of Ecclesiastes does not

automatically prove it to be canonical in his opinion, as Sanhedrin 100b and Bava Kama 91²⁸ expounds on a verse in Ben-Sira, a clearly noncanonical work.²⁹

So too, in this author's opinion, these same authorities would understand Samuel, Rabbi Yossi, and Rabbi Meir, all of whom rule that either Esther, Ecclesiastes, or Song of Songs do not defile the hands, and would also rule them to be some form of sacred literature, but not part of the canon.³⁰ Particularly, Samuel's homiletic expounding of Esther³¹ is not problematic. Samuel accepts that Esther is an inspired document and thus worthy of expounding even though it is not in the canon. The differences between being in the canon or not, according to Samuel's approach, would be relatively small for an inspired work; perhaps only limited to whether the item defiles the hands and other minor technical rules.³² Indeed, it is interesting to note that Samuel never expounds on the book of Esther using the classical formulation "it is written," "the verse states," or "as it says" (the three ways in which one introduces a canonical verse). While this could be dismissed as mere coincidence, a survey of the practices of Rabbi Judah, Rabbi Yochanan, and Rabbi Eliezer, three contemporaries, reveals numerous times in which each of them can be found to use these phrases to introduce an exposition of the a verse from the Book of Esther.³³ The same is true for Rabbi Shimon ben Mennasiah and Rabbi Yosse's expounding of Ecclesiastes in *Hagigah* 1:6. Rabbi Meir does so only once (see *Ketubot* 72a and *Nedarim* 83b) and that same expounding from Rabbi Meir is recorded without that phrase elsewhere (see *Moed Katan* 28b).

Thus, these commentaries would disagree with the approach of Leiman, and agree with Zeitlin. They would argue that the dispute is about membership in the canon. Dr. Leiman accepts that these authorities rule that these texts are part of the canon *even though they are not written with divine inspiration*; Dr. Leiman points to the fact that Rabbi Shimon ben Menassiah himself elsewhere in the Talmud (see *Mishnah Hagigah* 1:6-7) expounds on a verse in Ecclesiastes to prove that it was canonical, even according to him, and that Samuel expounds on verses in Esther thus proving it canonical.³⁴

2: A Dispute about Something Other than Membership in the Canon

Other commentaries clearly agree with Leiman and understand this dispute as relating only to whether these books defile the hands and not whether they are in the canon or not. This understanding of the dispute is much narrower, and reduces the issue discussed to a relatively technical discussion of ritual purity. Such appears to be the position taken by the author of the *Sefer HaEshkol*³⁵ who rejects Rav Hai Gaon's analysis (although accepting his conclusions) and insists that there are practical

differences between Samuel and his colleagues unrelated to whether Esther is in the canon or not.

This too appears to be the opinion of Maimonides who accepts the rationale of Rabbi Shimon ben Mennasiah³⁶ quoted in Megillah 7a and states that Song of Songs and Ecclesiastes “are from the wisdom of Solomon”³⁷ but nonetheless defile the hands. Maimonides would not have accepted any portion of Rabbi Mennasiah’s analysis were it predicated on lack of membership in the canon. Other commentaries too appear to adopt this understanding of the position of Samuel.³⁸

It is, however, worth noting that certain theoretical (theological) differences as to the origins of Ecclesiastes and Song of Songs are presented even according to this understanding of the dispute.³⁹ Essentially, those Talmudic Sages who rule Ecclesiastes and Song of Songs do not defile the hands, but yet still include it in the canon, seek a diminished status for these two works because they are only the wisdom of Solomon and not written with divine inspiration.⁴⁰ Indeed, to a great extent that aspect of Rabbi Shimon ben Mennasiah’s contention has been accepted by many rabbinic authorities. For example, Rabbi David Ibn Zimra (Radvaz) states:

Question: You asked of me if there is a reason why the book of *Ecclesiastes* does not mention the name of God except for the name “elokim.”

Answer: According to those who rule that *Ecclesiastes* was written when Solomon was elderly, [it is recorded] that his [gentile] wives turned away his heart; thus the Bible witnesses “So built Solomon.” Since he did not rebuke his wives [for worshipping idols] the Bible considers him as if he himself worshipped idols and *the ruach hakodesh [divine presence] left him and his wisdom was reduced from being above the sun [very great]*. Thus he states many times in *Ecclesiastes* that he is “under the sun.” This is directly contrary to the wisdom of Solomon and thus there is no mention of God except for the word “elokim” which is a common name as it says “God came to Avimelech”; “Curse not God”; “God came to Bilam” and many others. So too, Song of Songs does not mention the name of God except in the word Solomon as the Sages state: “every Solomon mentioned in Song of Songs is holy except for ‘Thousands are to Solomon.’”⁴¹

While Radvaz makes no mention of the Talmudic or mishnaic texts explicitly, it is clear that his assertion that Ecclesiastes was not written with divine presence must be based on *Megillah* 7a and *Yadayim* 3:5.

C. Halachic Issues Derived from Samuel’s Position

Section A demonstrated that Samuel’s ruling that Esther does not defile the hands was understood by some to mean that it was not part of the canon and by others to be a very limited technical ruling unrelated to membership in the canon. This section will demonstrate that there is a school of thought in

Jewish law that ruled that the second understanding of Samuel is the correct one and that Samuel is only commenting on technical issues and not membership in the canon; furthermore, and more significantly, this school of thought accepted Samuel's opinion as the correct one to be followed by normative Jewish law.

The understanding of Samuel's position which limits his ruling to a question of whether the text defiles the hands (and not whether it is in the canon) appears to have been a tenable or normative one among some of the early ashkenazic commentaries (early *achronim*). According to this approach, an Esther scroll does not have the same ritual status as other biblical scrolls. For example, there is a discussion in Jewish law as to whether an Esther Megillah needs to have a blank page at the beginning and at the end of it like a torah scroll or whether its rules are different and no such page is required. Rabbi Karo states that a megillah needs a blank page at the end and some blank material in the beginning like all other scrolls of biblical texts.⁴² Rabbi Moshe Isserless (Rama), however, states that this is not the custom.⁴³ In his commentary on Tur (*Darchai Moshe*), Rama indicates that the custom of not having such a page is based on a source found in the practices of Mahari Weil (R. Jacob ben Judah Weil) in the laws of Purim §16. Mahari Weil states:

Mahari Segal stated that one can justify the practice of not having an extra page in the megillah, which is the custom [not to have], since *there is a Talmudic opinion that Megilat Esther was not given to be written through prophecy and is not called a book and thus we are not careful about touching it without a covering on our hands.*

Thus, Mahari Weil is indicating that the custom is to rely on the opinion of Samuel that Esther does not defile the hands. Similar sentiments can be found in the works of Rabbi Meir Eisenstadt, Responsa *Panim Meiros* (2:76) who states clearly:

Nonetheless that which Magen Avraham states that one should be careful (not to touch) a properly written *Esther* since from the silence of Maimonides we derive that the law is not like Samuel, who rules that *Esther* does not defile the hands [requires discussion]. The populace is not strict on this matter and *it appears to me to learn from the Talmud that we rule in accordance with Samuel that the Book of Esther does not defile the hands* from that which is recounted in Sanhedrin 100a that Levi bar Samuel and Rav Huna bar Cheah were repairing mantles for scrolls for Rabbi Yehuda. When they came to the *Esther* scroll they stated this scroll does not need a mantle. Rabbi Yehudah rebuked them, saying this sounds irreverent. From the words of Rashi it appears that Rabbi Judah agreed with their [legal] conclusion that no mantle is needed for an *Esther* Scroll, but objected to their manner of expressing it, which was irreverent.⁴⁴ We see from this that the law as they explained was correct and Esther does not defile the hands

and thus no mantle is needed. On this it is possible the many rely when they touch a megillah barehanded.

This position can also be implied from the comments of Rabbi Samuel Shtershon (Rashash) on *Megillah* 7a and *Shulchan Aruch, Orach Chaim* 160 where he too indicates that it is possible that the opinion of Samuel is the one we accept.⁴⁵ Similar sentiments can be found in the works of other early *achronim* who use the position of Samuel as if it is a normative one in Jewish law.⁴⁶

A contrary opinion is clearly adopted by Rabbi Avraham Ashvelli (*Magen Avraham*) in his commentary on *Orach Chaim* 147:1 where he states that the position of Samuel is not normative. The ruling of Magen Avraham is seconded by Rabbi Moshe Sofer (Chatam Sofer on *Orach Chaim* 691:1) who too disagrees with Rama's rule that no blank page is needed by stating that Esther was written with divine inspiration and to be written as well as read, is no different than any other book of *Ketuvim* and thus needs a blank page; indeed, in Rabbi Sofer's responsa he states this quite clearly. In *Orach Chaim* 163, he notes that while the position of Samuel on *Megillah* 7a is also found in the Jerusalem Talmud as the normative one, it is not accepted as normative by Jewish law. Rabbi Sofer admits that this position is contrary to Radvaz 2:771 and the conduct of his teacher (most likely Rabbi Nathan Adler) but notes that ruling contrary to Samuel is supported by the comments of Rabbi Jacob Emden, Responsa Yavetz 2:103, where, in fact, he rules contrary to Samuel.

Thus it is clear that there are three opinions advanced by the classical rabbinic scholars as to how to understand and resolve the dispute between Samuel, Rabbi Simon ben Mennasiah, Rabbi Meir, and Rabbi Yossi⁴⁷ on one hand, and the majority opinion on the other. Some authorities accept that the dispute is about membership of these books in the canon. These authorities rule that, of course, normative Judaism is not in harmony with Samuel, Rabbi Shimon ben Mennasiah, and any other authority who would remove a book from the twenty-four in the Bible.⁴⁸ Other scholars or commentators understand the dispute differently; they maintain that the dispute is not about membership in the canon but some other lesser disagreement as to whether these works—clearly members of the canon—defile the hands or not. Samuel and other Sages accept that there are some books in the Bible that do not defile the hands. Within the group of commentators and scholars who understand Samuel (and others) in this way, there is a secondary dispute. Does normative Jewish law accept the opinion of Samuel as correct that Esther does not defile the hands or is the opinion of those Talmudic Sages who deny any difference in status between these books and the other books in *Ketuvim* accepted. Rambam, Magen Avraham, Chatam Sofer, Yavetz, and others rule that the opinions of Samuel and his colleagues are rejected and there is no difference between these books and any other book of the *Writings*. Other authorities,

including apparently Rama, Mahari Weil, Panim Meiros, and even Rashash and Radvaz accept that normative Jewish law is in accordance with the opinion of Samuel and his colleagues and rule that these works do not defile the hands.

D. Differences between Esther, Ecclesiastes, and Song of Songs and the Other Books in the Bible

Essentially, those modern commentators who cite the Talmudic dispute as to defiling the hands to “prove” the late dating of the closing of the canon do so because it seems easy to argue that this dispute *must* be about membership in the canon, since nothing else, in their opinion, unites these three works with regard to the status of defiling the hands.⁴⁹ However, I would like to suggest a rationale for why the status of these three books—and no other⁵⁰—might have been subject to disagreement as to whether they “defile the hands” but yet might be full and complete members of the Jewish Canon.

I argue that the crucial characteristic of these three works is the absence of the Tetragrammaton (שם המפורש) from the works themselves.⁵¹ It is possible to argue that this fact is what led some Talmudic Sages, as well as some commentators, to rule that these works do not defile the hands (even though they are books of the Bible). *Simply put, there were some Sages who were less fearful of the religious consequences of either weasels eating the text of these scrolls or of their burning in a fire since they did not contain the holiest name of God (or in the case of Esther, any name of God) in the text.* It is that fact which led Radvaz to note that there is some diminution in the holiness of Song of Songs and Ecclesiastes. Those Talmudic authorities who disagree would state that it is the general holiness of the work, and membership in the canon, even absent the Tetragrammaton, that makes the work identical to all other books of the Bible in terms of holiness and other ritual issues. A close review of defiling of the hands reveals that it is linked at least partially to the presence of God’s name in the text.⁵² These three scrolls were thus treated—according to those who deny that they defiled the hands—like short verses in the bible that lacked God’s ultimate name.

It is through a clear understanding of the rules and rationale for *why* texts defile the hands that one can understand why one might doubt if Esther, Song of Songs, and Ecclesiastes defile the hands but are still members of the Biblical canon.⁵³ Indeed, part of this understanding of the difference between the names of God generally, and the Tetragrammaton (שם המפורש) in particular, can be understood in the context of saving scrolls from destruction. The *Shulchan Aruch* states that a properly written scroll containing Esther should be saved, but one that contains the text not

written in accordance with the technical rules of writing holy books should not be saved, since “it does not have any names of God.”⁵⁴ The fact that a similar statement is not made about the Song of Songs was also initially surprising, since, at first glance it too does not contain the name of God.⁵⁵ However, a review of the standard commentaries indicates that nearly all authorities accept that at least one of the “God-like” words found in Song of Songs is classified as one of the seven principal names of God and thus not erasable.⁵⁶

Conclusion

This article surveyed three issues: the rabbinic understanding of the dispute as to whether Esther, Song of Songs and Ecclesiastes defile the hands; how that issue is resolved in Jewish law; and a possible rationale for the unique status of these three books. While at first glance it might appear that these three issues are unrelated, in fact they all revolve around a discussion of the special status of Esther, Ecclesiastes, and Song of Songs. Each of these works have their status discussed in the Talmud and each has various rabbinic authorities who question whether its status is similar to that of other books of the *Writings* since each of these lacks the presence of the Tetragrammaton (שם המפורש).

NOTES

1. As with everything I write in the field of Bible and biblical rabbinics, an intellectual debt is owed to Dr. (Rabbi) Moshe Bernstein of Yeshiva College whose sagacity extends beyond his ability to explain the Sages.

As noted in the Introduction to this article, an enormous debt is owed to my friend and colleague, David Blumenthal, for his insights into the issues presented.

2. See material cited below in section B.

3. See Bava Kama 14a and below sections B and C.

4. S. Zeitlin, “An Historical Study of the Canonization of the Hebrew Scriptures” PAAJR 3 (1931) 121, 132-133 cited in Sid Z. Leiman, *The Canonization of Hebrew Scripture: The Talmudic and Midrashic Evidence* (Archon, 1976) 113.

5. Sid Z. Leiman, *The Canonization of Hebrew Scripture* (Archon, 1976), 119-120.

6. Leiman, *The Canonization of Hebrew Scripture*, 135.

7. That is, if one held that these works did not defile the hands, did one also rule that they were not part of the canon? (The related question is what is meant when one states that a work is not written “with the spirit of the Divine” (ברוח הקודש).)

In his work on this topic, Dr. Leiman argues that the standard analysis of this topic by modern academic biblical scholars—which asserted that uncleanness of the hands and entry into the canon are one and the same—is incorrect, a misreading of the Jewish tradition, and that there was no dispute that these three books were included in the canon even by those who argue that they did not defile the hands. As explained further in this article, while that school of thought is present in the early commentaries, it is by no means the sole approach present; Dr. Leiman does not, in his truly insightful book on this topic, attempt to systemically survey the post-Talmudic early classical Jewish commentaries in this area, something which this article does attempt to do. Dr. Leiman’s conclusions, however, are strongly supported by the those sources cited in the second half of section B and section C of this article, since the presence of some sixteenth-through-

nineteenth Jewish law authorities who accept that Esther does not defile the hands as a normative rule, certainly does not prove that these same authorities did not have Esther in their canon. Rather it demonstrates that these authorities thought that the two statuses are unrelated. So too, this author's own analysis found in section D supports Dr. Leiman's position.

This article frequently follows the terminology of Dr. Leiman's work and thus, for example, uses the phrase "defiles the hands" to denote טומאת ידים.

8. See generally, Rambam, Shear Avot Hatumah 9:3-5.

9. Shabbat 14a-b; See also Rabbi Ezeiel Landau, Nodah Beyehudah 1:7 who harmonizes these multiple decrees by positing that there were only two decrees. Such an approach is also adopted by Rabbi Yechiel Michel Epstein, Orach Chaim 147 and 691 and Rabbi Yechiel Michel Epstein, Aruch HaShulchan He'atid Shear Avot Hatumah 138:1-7 and might be the combined formulation of Rambam and Ravad on Shear Avot Hatumah 8:8.

10. Rabbi Joseph Karo, Shulchan Aruch Orach Chaim 334:12-13.

11. For a discussion of what is the book of the Azara, see Dr. Leiman's *The Canonization of Hebrew Scripture*, p. 104 and n. 496 where most authorities are cited as linking this to the temple scroll.

12. The mishnah continues, stating:

Rabbi Shimon states that Ecclesiastes is among the more lenient decisions of Beit Shammai and the strict ones of Beit Hillel. Rabbi Shimon Ben Azzai states "I heard a tradition from the seventy two elders that on the day that Rabbi Eliezer ben Azaria was appointed to the Yeshiva that Song of Songs and Ecclesiastes defile the hands."

13. The Talmud continues, stating:

They stated to Rabbi Shimon ben Mennassiah "Is this not all: Does it not state (Kings 1:4) and "he spoke 3000 parables" and (Prov. 30:6) "Add not to his words." . . . Come and listen: "Do not add to his words." Rabbi Eliezer states Esther was written with divine inspiration as it says Haman said in his heart; Rabbi Akiva states: Esther was written with divine inspiration as it says "Esther found favor in all who saw her"; Rabbi Meir states Esther was written with divine inspiration as it says "and the matter was known to Mordecai"; Rabbi Yossie ben Dormaskit states Esther was written with divine inspiration as it states "in the booty they did not take." Samuel says if your analysis were correct I could give a better proof, since it says "they kept and accepted"—they kept in heaven that which they accepted below. Rava states that each of these proofs can be refuted except for Samuel's, which cannot be refuted.

14. See Kelayim 15:6, Sotah 18a, Yadayim 4:5.

15. Tosephta Yadayim 2:13.

16. Tosephta 2:13; that the word "gilyonim" means gospels is noted by Leiman, *The Canonization of Hebrew Scripture*, n.511 where other possibilities are suggested.

17. Mishnah Pesachim 10:9.

18. "כתיב הקודש" designates all of Scripture. In some amoraic texts it designates the Hagiography (J. Shabbath 15b,c)." Leiman, *The Canonization of Hebrew Scripture*, 57 and note n.281.

19. The correctness of the statement "even with washed hands" is quite critical for a different issue. If this is correct, it is prohibited to directly touch even a megillah scroll after washing one's hands. Normative Jewish law declines to follow this statement, and accepts that after washing the hands one may touch scrolls of Prophets and Ketuvim, but not Torah; see Rabbi Israel Meir Kagin, *Biur Halacha* O.C. 147 "tov."

20. Rabbi Yom Tov Ashbelli (Ritva) Megillah 7a,

21. B. Levin, *Otzar Hagaonim*, Megillah 7a.

22. Rabbi Menachem ben Meir, commenting on Megillah 7a.

23. Tosaphot Rabbi Asher Megillah 7a "and not uttered to be written" and Yoma 29a;

See also comments of Pnei Yehoshua Megillah 7a "thus it appears to me to explain."

24. Rabbi Shlomo ben Aderet, Megillah 7a "Given to be read and not to be written." See also comments of Rabbi Moshe Schreiber, Chatam Sofer on Megillah 7a "Rabbi Eliezer states."

25. Commenting on Yoma 29a.

26. As it states on Megillah 19a-b.

27. See sources cited in notes 16, 19, and 20 who note this fact. The comments by Rashba and Rosh which indicate that megillah is to be written down even according to Samuel based on a rabbinic decree shed light on how they understood this opinion. Samuel ruled that Esther is a part of the Purim liturgy which must be recited. It is not, however, part of the holy written canon. Samuel, however, acknowledges that since it is to be liturgically recited, it must be written down based on a rabbinic decree that compels one to read from a text that which is recited. Those who disagree with Samuel rule that the text must be written down because the written canon may not be recited by heart according to biblical rule; see sources cited in note 37.

28. And many other places, see Leiman, pp. 96-97.

29. But see Leiman, p. 113.

30. This opinion cannot be found explicitly in the commentaries, but it flows logically from their commentary on Samuel's opinion (if Samuel, who acknowledges the divine inspiration of Esther, nonetheless maintains that it is not part of the canon, Rabbi Shimon ben Mennassiah, who rules that Ecclesiastes is not divinely inspired, certainly rules it not part of the canon).

31. See e.g., Megillah 11a, 13a, and 15a.

32. But see Sid Z. Leiman, *The Canonization of Hebrew Scripture: The Talmudic and Midrashic Evidence* (Archon, 1976), 113-114, n. 531-532.

33. Checked by Computer search on Bar-Ilan and Davka CD-Rom.

34. See Sid Z. Leiman, *The Canonization of Hebrew Scripture: The Talmudic and Midrashic Evidence* (Archon, 1976), pp. 113-116.

35. *Sefer Haeshkol*, Albeck edition, pp. 153-154.

36. This explanation of Rambam's opinion would explain why the *Ain Mishpat* indicates (on Megillah 7a) that Rambam does accept the opinion of Rabbi Shimon ben Mennassah as correct. Rabbi Shimon says two things: (1) Song of Songs was not written with divine inspiration; and (2) thus it does not defile the hands. Rambam rejects the second of these two statements as legally incorrect. He does, however, accept the first of them as factually correct. This has nothing to do with whether these books are, or are not, in the canon. This analysis supports the opinion of Dr. Leiman that the debate over defiling the hands has nothing to do with being in the canon. Indeed, all of the latter authorities quoted in this article support that thesis. It is inconceivable that these latter authorities who accept the opinion of Samuel as correct or tenably correct do so by removing it from the Bible; see also Rabbi Y. M. Epstein, *Aruch HaShulchan He'atid Shear Avot Hatumah* 141:10 discusses the problematic formulation of Rambam without providing any answer.

37. *Shear Avot Hatumah* 9:5. Chazon Nachum, commenting on *Yadayim* 3:6 has a different text of Rambam. He states that Rambam says "even Song of Songs and Ecclesiastes, which are the words of Solomon." *Responsa Kol Mevasser* 2:43 notes that this is simply a mistake.

38. This can be implied as well from the comments of Rabbi Shimon MeShantz on *Yadayim* 3:5 where he asserts that the reversal of names between the *Yadayim* 3:5 and *Megillah* 7a reflects a substantive disagreement; this approach is agreed to by *Tosaphot Yom Tov* commenting on *Yadayim* 3:5 who additionally cites others who accept this distinction. Were he to hold that this dispute is about membership in the canon such an explanation would be untenable. See also *Responsa Tashbetz* 1:5 who seems to adopt this line of reasoning and asserts that the halacha is not in harmony with Samuel and that even Samuel accepts that Esther is in the canon.

39. They are not present for Esther, as the one authority who denies that Esther defiles the hands clearly agrees that the work was divinely inspired. For the book of Esther, on the other hand, certain very practical distinctions are present; see section B.

40. This is clearly stated in *Tosefta Yadayim* 2:14 where Rabbi Shimon ben Mennassiah states that he rules that Song of Songs does defile the hands, as it was written with divine inspiration, whereas he rules Ecclesiastes is not as it was not written with divine inspiration.

41. Radvaz, Responsa 2:722. The approach of Radvaz is by no means the only one to this issue. Responsa Rabbi Joseph Chaim, Rav Peelim 4:11 also addresses this issue, although he approaches it from a classical midrashic perspective. He states:

On your second question concerning why *Esther* does not contain the name of God. This question is found in the works of the Sages and is quoted in Midrash Eliyahu of Mahra Hacohein 55:4 who states the reason the name of God is not found in the book of Esther was to indicate that God's hand was hidden at the time of Haman as it says "I will hide my face." Thus the name of God was hidden and not written in Esther. . . . Your question of why the name of God is not found in the *Song of Songs* is discussed by the Sages in Shevuot 35 where they state that every Solomon found in Song of Songs is holy except for the one "thousands are to Solomon." Such is also found in Rambam Yesodei HaTorah 6:8. It is stated by Rabbi Karo in Kesef Mishnah there that all of the Solomons are not really holy like the names of God that cannot be erased, but only that one who swears by the name Solomon has sworn in the name of God. . . . The reason that the name of God is only mentioned in a hinted manner in the name of Solomon "the one who peace is his name," and God's name is not mentioned clearly is because Song of Songs, from beginning to end is a parable, containing matters which are hidden and secret and are not simple. . . . Your question as to why Ecclesiastes does not contain the Tetragrammaton and only the name Elokeim is because the work deals with the confusions of this world and the final destiny of man. Thus it only uses the name elokim in this context which is the name of God for complete justice and the judge of law and justice. . . .

42. Rabbi Joseph Karo, Shulchan Aruch, Orach Chaim 691:2; see also Rabbi Joseph Karo, Beit Yosef Orach Chaim 691.

43. Glosses of Rama on O.C. 691:12. Rabbi David Halevi, writing in *Tura Zahav* suggest a different manner of justifying the custom. His suggestion, however, is very difficult as given two varied opinions within the rishonim it is difficult to accept as normative an approach which says halacha rejects both of them.

44. Mantles were covering designed to allow one to handle the scroll without defiling ones hands. A scroll that does not need a mantle, does not defile the hands.

This author would add additionally that it appears from the analytic give and take of Yoma 29a that the Talmud was not prepared to accept an answer incompatible with Samuel's opinion, which is an indication that his opinion might be normative.

45. Rabbi Samuel Shtershon's, Rashash, notes are very cryptic, and difficult to understand. He is perhaps understood by the notes in Albeck's Eshkol in this manner; Sefat Emet commenting on Megilah 7a also indicates that perhaps the law is like Samuel.

46. See generally Rabbi Jacob Beirav, Responsa Mahari beiRav 34 (quoted completely by Rabbi Solomon ben Avraham Hacohein, Responsa Maharshach 2:215) and Rabbi Yom Tov ben Moshe Tzahalon, MahariTatz 1:115 who discuss the opinion of Samuel in a manner which might indicate that it is accepted as normative. It is possible to derive this opinion as well from the combined insights of Responsa Radvaz 2:771 and 2:722 (quoted above) where he uses language which indicates that this might be his opinion. Radvaz 2:771 states in part:

You asked my opinion whether the rabbinic decree that sacred texts defile the hands applies to the oral law, like *mishnayot*:

Response: Oral law does not defile the hands. You should know that there is a dispute whether all sacred works defile the hands; but it was learned and established that even Ecclesiastes and Esther are in that group [note: *Song of Songs* is not mentioned—mb]. That authority who held that Esther did not defile the hands asserted this because it was written to be read and not to be written. We see from this that any item which was not given to be written does not defile the hands. The oral law was not given to be written as it says "on the bases [lit: through the mouth]" words that are verbally transmitted are not supposed to be written down. Only because of "a time came for G-d" they permitted the writing of *mishnayot* and halachot; however, since according to the law they were not given to be

written, they do not defile the hands and it is permissible to touch them uncovered.

On the other hand responsa 2:771 contains language which indicates that his conclusion could be different. Chatam Sofer commenting on Orach Chaim 691 indicates that Radvaz agreed with Rama's ruling.

This author would assert that the omission of Song of Songs from this responsa in the list of works which defile the hands, in combination with his treatment of it in responsa 2:722, would indicate that he accepted the classification of it as not defiling the hands (and not written with divine inspiration). Indeed, it is somewhat surprising that Maimonides accepts that *both* Song of Songs and Ecclesiastes are the wisdom of Solomon as that assertion is not found in Talmudic literature in regards to Song of Songs. (Rabbi Yossi in Yadayim 4:6 does assert that it might not defile the hands, but does not give a reason.) Indeed, Maimonides' acceptance of both opinions, even though Rabbi Shimon ben Mennassiah himself accepts that the Song of Songs does defile the hands (see Tosefta Yadayim 2:14) most likely is based on the facts discussed by this article in section C.

For a general discussion of the status of Song of Songs in Judaism, see Rabbi Meshulam Roth, Responsa Kol Mevaser 2:43. In that responsa some parity between Esther, Song of Songs, and Ecclesiastes is assumed, but not demonstrated. A strong claim can be made that the status of Esther is different from each of these other works, as even Samuel admits that it was written with divine inspiration; the problematic formulation with regards to the Song of Songs is noted in Aruch HaShulchan He'atid, Shear Avot Hatumah 141:10.

47. Each of these authorities states that one of these books does not defile the hands. Of course, they themselves disagree as to which of the books have that status.

48. Indeed, one is nearly compelled in that direction as the listing of books in the canon found in Bava Kama 14a cites no disputing opinion as to membership in the canon.

49. See I. H. Eybers, Historical Evidence on the Canon of the Old Testament with Special Reference to the Qumran Sect, 29 as cited in Sid Z. Leiman, *The Canonization of Hebrew Scripture: The Talmudic and Midrashic Evidence* (Archon, 1976), 111 and S. Zeitlin, "An Historical Study of the Canonization of the Hebrew Scriptures" PAAJR 3 (1931), 132-133.

50. While it is true that Megillah 7a also affirms that Ruth defiles the hands, one finds no dissenting opinion to that fact in the rabbinic literature. While Leiman (Sid Z. Leiman, *The Canonization of Hebrew Scripture: The Talmudic and Midrashic Evidence* (Archon, 1976), n.504) infers that there must have been some dispute as to its status also, one could easily reply that that dispute was with the Christian elements and not found within the rabbinic circles. Indeed, there are early Christian sources which deny the canonization of Ruth; see Leiman, 41-50.

51. Esther contains no explicit mention of God; Song of Songs contains no clear unambiguous references to God's name except the word Solomon which the Talmud states is a nickname for God in this context and the references listed in note; Ecclesiastes contains only the name elokim. All other books of the Bible contain the Tetragrammaton. This fact was first noted by Radvaz and Rav Peilim, as discussed above, and was pointed out to the author by his colleague Dr. David Blumenthal in a discussion of Dr. Blumenthal's piece.

The crucial difference between these three works themselves is that Esther contains no mention of God's name in any of its un-erasable forms, whereas Ecclesiastes and Song of Songs do.

52. See the example given in Tosephta Yadayim Chapter 2 where it states clearly that a complete short verse which does not contain God's name does not defile the hands, and the related material concerning saving sacred texts from burning in Shabbat 115-118 and Rabbi Joseph Karo, Shulchan Aruch Orach Chaim 334.

53. It is worth noting that this distinction would explain Maimonides' assertion that Song of Songs and Ecclesiastes are "the wisdom of Solomon" (a phrase which indicates that they are not written with complete divine inspiration). They remain in the canon and they even defile the hands according to Maimonides; but nonetheless, their status is different from the other works in the Bible as they are lacking the ultimate name of God.

54. Rabbi Joseph Karo, Shulchan Aruch Orach Chaim 334:12-13; see also Hagoat Mayoniout Shabbat 23:27 (n.23).

55. See Yesodai Hatorah 6:9 where Rambam clearly rules that the word "Solomon" in Song of Songs is *not* a name of God, but rather only as other as other descriptions of God, like *rachamin*; this is affirmed by Rabbi Karo (*Kesef Mishnah*) in the name of numerous other authorities.

56. See Song of Songs 2:7, 3:5, 8:6 and commentaries of Rashi, Nachmanides, Ibn Ezra, and others. Indeed, the standard masoretic works clearly list the reference in Song of Songs 8:6 as holy; see David Ginsburg, *The Masorah III*: 196; but see Minchat Shai commenting on Song of Songs 8:6 who notes that this is in dispute between the Ben-Asher and the Ben-Naphtali texts. There are two different issues present in this discussion: whether the words refer by reference to God and whether they are words that cannot be erased as they are a name of God. It is unclear which is needed to be classified as "saving from a fire" as Esther contains neither. Only *Metzudat David/Tzion* lists all of them as not even referring to God.

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