person violating this view might not be a _haber_, but neither was he a transgressor.\(^{37}\)

The common people were not irreligious. They presumably kept most of the law most of the time, observed the festivals, and paid heed to 'some of the more serious purity regulations'.\(^{38}\) It was only the special purity laws of the _haberim_ which they did not observe. We should pause to consider those which they probably did observe -- or were generally expected to observe.

1.3.1. Biblical purity laws. Purity laws are strange to most of us in the West, and confusion seems to settle like a cloud around the heads of New Testament scholars who discuss Jewish purity laws. Some clarification may be useful.\(^{39}\) There are biblical laws concerning purity which all who counted themselves as at all observant would have kept. Most purity laws, however, are not prohibitions; they do not require people to avoid impurity. They regulate, rather, what must be done after contracting impurity _in order to enter the temple_. Josephus put it very well: in several instances the law prescribes purification 'in view of the sacrifices': 'after a burial, after childbirth, after conjugal union, and many others' (_Ap. II.198; cf. II.103f.; BJ V.2.27_). Purity is related to the temple and the sacrifices, and impurity does not limit ordinary associations, except for very short periods of time (_AT III.261f._).

As Josephus indicated, the most pervasive laws concerning purity are corpse uncleanness (Num. 19), menstruation, intercourse and childbirth (Lev. 12.1–8; 15.16–24). Care for the dead was and is considered a firm religious duty, and contracting corpse uncleanness was therefore required in a family in which there was a death. Childbirth and intercourse are good, and menstruation is natural. The impurity which is incurred by childbirth, until it is removed, prevents a woman from touching 'any hallowed thing' (that is, something intended for use in the temple) and from entering the temple itself (Lev. 12.4). Luke describes Mary and Joseph (depicted as good _'amme ha-aretz_) as observing the purity laws regarding childbirth (Luke 2.22f., 39). In such matters the rule is that people who have contracted impurity should not defile the temple (Lev. 15.31). Similarly the warning about corpse-uncleanness is not to defile 'the tabernacle' (Num. 19.13). Most people had corpse uncleanness a lot of the time; and, since the rite of purity requires the ashes of the red heifer, purification has been impossible since shortly after the destruction of the temple. There is nothing wrong with such people; they are only forbidden by biblical law to enter the temple area. People in a state of impurity according to these and similar laws -- the laws which were presumably accepted by all -- were not sinners, nor had they done anything which made them inappropriate companions for 'table fellowship'.\(^{40}\)

There are also prohibitions related to purity, such as those against eating or touching certain unclean creatures (Lev. 11; cf. _AT III.259f._). These convey impurity which is removed by washing and the setting of the sun (see e.g. Lev. 11.28). There are a few prohibitions which involve the transgressor in sins, such as the eating of certain fats or blood. For these, the penalty is 'cutting off' (Lev. 7.22–27). In the later Rabbinic interpretation, 'cutting off' puts the transgression strictly between human and God, and it is atoned for by repentance.\(^{41}\) The same penalty is prescribed for those who, while impure, eat sacrificial food (Lev. 7.20f.).

This discussion has by no means dealt with all aspects of the purity laws, but I shall attempt some generalizations. (1) Most impurities do not result from the transgression of a prohibition, although a few do. Purification in either case is necessary before entering the temple or otherwise contacting something holy, and it is accomplished by washing and the setting of the sun (or, in the case of corpse-uncleanness, a more complicated variant of the procedure: Num. 19.1–13). In neither case is the impure person a sinner. A substantial sin is committed only if someone while impure eats holy food or enters the temple. (2) A few purity transgressions, such as eating blood, are in and of themselves sins; that is, they require atonement. (3) Contact between an impure person and a pure person is not ordinarily considered a sin, although such contacts may have been avoided to keep impurity from spreading and ultimately touching something connected with the temple. In one important instance contact with an impure person involves both parties in a sin: sexual intercourse with a menstruant. The Bible (Lev. 20.18) specified 'cutting off' as the punishment, while the Rabbis required a sin-offering (Niddah 2.2). (4) But, as a general rule, those who became impure, either because they should do so (e.g. to care for the dead and bear children), or because they touched something forbidden (e.g. vermin), did not, as long as they lived their ordinary lives, sin. Normal human relations were not substantially affected. Recourse to the immersion pool (see just below), and waiting for the sun to set, cleansed most impurities.

It should be emphasized that observation of the biblical purity laws was not a special concern of the Pharisees. Westerholm, who in general understands the topic of purity very well, nevertheless has some curious statements. He writes that 'in O.T. times, it was clearly the priests' responsibility to define the areas of clean and unclean, and to teach the
observance of these distinctions to the people, while 'in the N.T. period, Pharisees observed distinctions in this area drawn by scribes'. We should first note that the prescriptions for cleansing before entering the temple could not be enforced by anyone, but lay on each person's conscience. But since the biblical laws principally have to do with the temple, it was still in Jesus' day the priests' responsibility to teach them. There is no reason to believe that they had surrendered this prerogative to the Pharisees, or to secular scribes who taught them to Pharisees.

The biblical laws seem to have been widely observed. Westerholm calls attention to the passage in Josephus which describes resistance in the days of Herod Antipas to settling in Tiberias, which overlaid a burial ground (47 XVIII 36-38). Living in such an area would make one always impure. We may now also point to the numerous ritual baths (mikvaot) which archaeology has brought to light in houses in Jerusalem during the Herodian period. There were also mikvaot to the south and west of the temple area. With one exception (to my knowledge) these are not equipped with a pipe connecting the bath water to a cistern containing rain or spring water, which is virtually required in cities by later Rabbinic rule, and probably also by the Pharisees. We know that at least some of those most zealous for the law and Israel built such mikvaot before 70. The houses in west Jerusalem, a prosperous area of the city, may have been occupied by priests or others who worked for or in the temple. We may attribute the number of mikvaot partly to prosperity, and perhaps also partly to respect for Jerusalem as a holy city: observance of ritual purity may have been higher there than elsewhere. But we see in any case that it was widely observed, and observed by people of different classes and halachic orientations. The well-to-do inhabitants of West Jerusalem, probably Sadducees if anything, did not observe it because the Pharisees and scribes demanded it, but because the Bible does.

One should ask what was the situation of a person who disregarded the purity laws and did not use the immersion pool, but remained perpetually impure. Here it would be reasonable to equate being impure with being a 'sinner' in the sense of 'wicked', for such a person would have taken the position that the biblical laws need not be observed. All the laws of purity and impurity are to be voluntarily observed. If, for example, a husband and wife agreed not to observe the prohibition of intercourse during menstruation, no one would ever know unless they announced the fact. If the woman never used the immersion pool, however, her neighbours would note that she was not observant (unless she could afford a private pool). Not intending to be observant is precisely what makes one 'wicked'; but the wickedness comes not from impurity as such, but from the attitude that the commandments of the Bible need not be heeded.

Thus these biblical purity laws, which most people seem to have observed, did not lead to a fixed view that the common people were sinners. 1.3.2. Handwashing. Handwashing is an entirely different matter. It appears from the Gospels that some lay Jews (either in Jesus' day or later) washed their hands before eating (Mark 7.14, and par.). One assumes that these were the haberim, who might see this as a way of pursuing their programme: of living life as in the temple. What we do not know about the practice of handwashing, however, exceeds what we do know. We do not know, for example, that the priests washed their hands before eating. It is not a biblical requirement, though it appears in the Mishnah. According to Yoma 3.2 a priest in the temple must wash his hands and feet after urinating, and Zabin 5.12 lists the hands as rendering heave-offering invalid. In Yadaim 2.2 handwashing is also connected with eating heave-offering. In these and other cases purification by handwashing is not argued, but presupposed, and this may incline one to the view that the practice was older than the Rabbis who discuss it. Even so, however, we cannot say that the priests in the temple followed what later Rabbinic law regards as obvious, although they may have done so.

The origin and development of the rules about handwashing by the laity are even more obscure. The Mishnah itself says that unwashed hands do not defile common food (Parah 11.3). Further, according to the same mishnah, a person impure 'according to the words of the Scribes' but not according to the law (the category with which we are dealing), could, without immersion, enter the temple without being guilty. That is, he was not truly impure. The authors of the Mishnah took handwashing seriously: in various tractates they gave elaborate details about when it is to be done, how it is to be done, the effect of doing it, what happens if one hand is washed and the other not, and so on. But they knew that it was not an area in which one who did not follow their rules was guilty of a sin. We do not know the precise chain of tradition from those who practised handwashing in Jesus' day (I assume that some did.) to the Mishnah. Perhaps in the days of Jesus some were more rabid on the subject. We have no reason, however, to think that it was an area of serious controversy.

Having granted that we do not know the actual history of handwashing either by the priests or the laity, I shall propose a probable understanding of it. Many Jews in the time of Jesus thought that priests should wash their hands before eating heave-offering. The priests may or may not actually have done so, and my proposal requires is a lay perception that they did
or should. Some laypeople undertook to be 'trustworthy' purveyors of food to the priests, and in this connection they washed their hands before handling heave-offering. They also, perhaps motivated by the desire to live as did priests in the temple, adopted the practice of eating even common food in a state of purity. This involved, among other things, washing their hands. These were—my proposal continues—the habirim.

Although there are some uncertainties about the history of the rules on handwashing, some things are clear. It is not a biblical purity law (1:2.1), but a practice which, in Jesus’ day, was probably developing among certain groups. It is best, at least for the present purpose, to presume that those who practised it were habirim, to whom can be attributed concern for special purity rules. Mark says that the Jews washed their hands before eating (7:3), but in Jesus’ day it would have been a small number of them. The Rabbis eventually made handwashing ‘normative’, and it is worth noting that it is one of the very few practices of ritual purity which have continued. But before 70 the common people did not accept the practice. That is so by definition: had they done so they would have met one of the requirements of the habirim. But their failure to be habirim in this way, as in others, did not make them sinners. That is true even if we were to assume that the laws of the Mishnah governed the habirim in Jesus’ time.

1.3.3. Purity: Conclusion. The reason for making these simple observations is that, as I said above, confusion seems to surround the subject. Thus Braun takes Mark 7.6–9 (on handwashing) to be an instance in which Jesus castigated ‘specific abuses in the Jewish practice of his time’. Braun, we must assume, did not know the religious motive behind the programme of the habirim (to sanctify daily life), and characterizes it as ‘abuse’. But the particular point here is that he regards the handwashing code as a Jewish practice, when in fact it was limited to a small group. Similarly Aulén, summarizing recent New Testament scholarship, writes that Jesus’ view was that prescriptions in the law of Moses, for example those concerning the Sabbath and purity, must give way when they come into conflict with the love commandment. But handwashing is the only purity issue discussed in the synoptics, and it is not a prescription of the law of Moses. Prescriptions in the law which deal with purity cannot, in any case, be held to conflict with the commandment to love one’s neighbour, since they do not affect inter-personal relationships.

To reiterate: the purity laws which governed everybody did not affect ‘table-fellowship’, but principally access to the temple. Incurring impurity by the biblical code usually did not make a person a ‘sinner’. Failure to abide by the special laws of the habirim, which did govern eating, only made one a non-haber, that is, an ‘am ha-aretz.

Thus when scholars focus on purity as constituting the issue behind the criticism that Jesus ate with ‘sinners’, what they are saying, sometimes without knowing it, is that the habirim accused Jesus of eating with the ‘amme ha-aretz, not that Jesus associated with those who transgressed the biblical law. Making purity and table-fellowship the focal points of debate trivializes the charge against Jesus. It becomes a dispute between the habirim and the ‘amme ha-aretz, and Jesus strikes a blow against the minuiae of the former. One then misses the point of the charge: that Jesus was accused of associating with, and offering the kingdom to those who by the normal standards of Judaism were wicked. They were doubtless also impure, but it was not impurity as such which made them wicked, nor can Jesus’ inclusion of them be construed as defiance primarily of the laws of ritual purity.

1.3.4. Habirim and Pharisees. Before 70, the habirim were almost certainly a very small group, and it is dubious that habirim and Pharisees were identical. The case for identity can be made if one assumes a direct equation between the Pharisees and the Rabbis; for the Rabbis certainly thought that the laity (or at least some of them) should eat food in a state of semi-priestly purity. But the equation of ‘Pharisees’ and ‘Rabbis’ is itself precarious. And, once we turn to Rabbinic literature, we find further complications. One Rabbi suggested that no haber should touch a corpse (the haber should become in this way too like a priest). If all Rabbis were haberim, and if the opinion that haberim should not touch a corpse were to carry the day (it did not), then who would tend the dead? Neither the Rabbis, nor their wives, nor anyone who followed their rules. Thus it is doubtful that even all the Rabbis were haberim. Before 70, there was probably an appreciable overlap between Pharisees and haberim; and after 70 the Rabbis accepted the main point of the haberim. But these connections do not amount to an equation.

People who have learned who the Pharisees were by reading Jeremias, supposedly a reliable authority, will find these terminological distinctions puzzling. That is because Jeremias, obviously thinking that all Pharisees were haberim and all haberim Pharisees, simply wrote the word ‘Pharisees’ when he was discussing a text which contains the word haberim. Thus, for example, he wrote that ‘A Pharisee does not dwell with them [the ‘amme ha-aretz] as a guest’ as his translation of Demai 2.3; but ‘Pharisee’ does not appear in the text: it reads haber. When one adds the assumption (which was long held, and which Jeremias shared with many) that the Rabbis...
further the discussion in Fiedler, Jesus und die Sünde, pp. 140-44.
16. I have given the terminological information in Paul and Palestinian Judaism, pp. 142ff; 203 (n. 119: the wicked do not accept the Torah); 342-5; 351-2; 357f; 361; 399-405; 414. See also, ‘Jesus from the Semitic Point of View’, The Cambridge History of Judaism, forthcoming.
19. See Paul and Palestinian Judaism, pp. 243f, 257, 272 (Dead Sea Scrolls), 351 (I
Enoch 83-90), 391, 399-406 (Psalms of Solomon).
20. N. 17 above.
21. See Paul and Palestinian Judaism, p. 149.
22. Phigalgos 77b (2.1).
24. Even the parables, usually regarded as sarcasm, may be questioned. For
the sake of the present argument, however, I do not press the doubts. On the dubious
25. See the caution in Perrin, Rediscovering, p. 97.
26. See above n. 9; below, ch. 10 at nn. 38-40.
27. Nolan, Jesus before Christianity, pp. 68-9 proposes that the Pharisees oppressed
the poor and that Jesus attacked them for this. The Gospels do not, however, fit simple
social-economic theories. The ‘wicked’ – tax collectors and usurers – were not
necessarily impoverished!
28. See the Index to Paul and Palestinian Judaism, e.g. ‘The wicked’.
29. I have proposed before that the view that the Pharisees considered the ‘amme
he-arets cut off from Israel is without foundation (Paul and Palestinian Judaism, pp. 145,
152-7). No one has challenged the proposal, but on the other hand, it does not seem
to have been accepted.
30. Jeremias, Proclamation, p. 119 seems to accept John 7.49 as evidence of the
view of Pharisaism before 70. In Jerusalem in the Time of Jesus (p. 266 n. 71) he relies
more detailed study of anti-Judaism (including anti-Pharisaism) in Luke.
32. E.g. Pesahim 49b.
33. See recently Solomon J. Spiro, ‘Who was the Haker? A New Approach to an
34. Jacob Neusner, The Idea of Purity in Ancient Judaism, 1973, pp. 63. See also
Vermes and others, eds., The History of the Jewish People in the Age of Jesus Christ II, p.
388 n. 16. Neusner speaks of ‘the Pharisees’, which raises a problem: see 1.2.4 below.
35. Spiro, ‘Who was the Haker?’, p. 208.
36. I am indebted for this point to Hyam Maccoby.
(ed. M. Davis), 1956, pp. 74-81 (= Essays in Greco-Roman and Related Talmudic Literature
[ed. Henry A. Schiff], 1977, pp. 190-97), here pp. 73f. (= 189f). Cf. Westerholm,
shall not discuss the fascinating question of what conception(s) of reality lay behind
these laws, but only the question of when impurity involves sin. We enter this discussion
under the chapter heading ‘The Sinners’. On the use of the language of impurity for
moral wickedness, see especially Adolf Bühler, Studies in Sin and Atonement in the
Rabbinic Literature of the First Century, 1929, repr. 1967, pp. 212-9 (the Bible),
270-74 (post-biblical literature). This subject is also left out of account here, though
there are short summaries in Paul and Palestinian Judaism, see the index, s.v. ‘purity’.
40. See the quotation from Finkelstein just above. See also Adolf Bühler, Types of
Jewish-Palestinian Piety from 70 B.C.E. to 70 C.E., 1921, repr. 1968, p. 143: ‘The common
mistaken assumption of modern Christian historians of rabbinic Judaism that the
contraction of a levitical defilement implied a sin, is totally foreign to rabbinic law,
especially with reference to Temple times. Not even if the high-priest accidentally
contracted the gravest defilement from a human corpse, did he incur the slightest
sin, unless he, in his defined state, entered the Temple or handled holy things.
41. Paul and Palestinian Judaism, p. 179.
42. Westerholm, Jesus and Scribal Authority, p. 62. Dr Westerholm now informs me
that he intended to say that the scribes taught additional purity laws.
43. On the priests’ responsibility in general, see Ap. II, 177, below, at n. 73.
44. Westerholm, Jesus and Scribal Authority, p. 66.
45. For the midrash in the houses, including one with the connecting pipe, see
Avigad, Discovering Jerusalem, pp. 139, 142. Those outside the temple area may be
inspected, though technical evaluation is difficult. Their existence is noted by Benjamin
Mazar, ‘Herodian Jerusalem in the Light of the Excavations South and South-West
46. Milikov 6.1, 71; cf. 3.2.
47. See Yigael Yadin, Masada, Herod’s Fortress and the Zealots: Last Stand, 1966, pp.
165ff.
48. Note Avigad’s slight surprise: Even though the inhabitants of the western hill were
probably Sadducees, ‘there is no specific archaeological evidence here to indicate
any laxity’ . . . ‘On the contrary, finds indicate that the laws of ritual purity were
kept’ (p. 83). He seems to have been influenced by a common view, generally accepted
by Christian scholars, that only the Pharisees were concerned about the law, especially
laws of purity. Similarly Yadin (loc. cit.) states that the construction of the midrash at
Masada was such that ‘the defenders were not Jews’. But so were many of those
in Jerusalem who constructed their midrash differently. We should not equate devotion
and piety with agreement with Rabbinic law.
49. See Westerholm, Jesus and Scribal Authority, p. 66 and notes; Paul and Palestinian
Judaism, p. 154 n. 40. To the literature cited there should be added Ch. Albeck, The
Six Orders of the Mishnah, Tohorot, 1959, pp. 625-7; and the ET of Alon: Gedalyahu
Alon, Jesus, Judaism and the Classical World, ET 1977, esp. pp. 219-23. The problem of
the extension of handwashing to the laity has been fully aired, though not resolved,
by Bühler and those who have attempted – not, in my judgment, entirely successfully
– to refute him. He dated the general extension to the laity ca. 100 CE. It is reasonable
to think that the extension of some laws of purity coincided with the elimination of
others, when the temple was destroyed.
50. Cf. Spiro, ‘Who was the Haker?’
51. The talmudists who have debated the extension of the handwashing code to the
laity (n. 40) have not, as far as I have noted, come to terms with a basic problem:
why handwashing? My colleague Al Baumgartner remarked to me that the biblical view
is ‘all or nothing’: a person who is unclean should be immersed and wait for the sun to
set (see the previous subsection). Büchler pointed out that the simple washing of hands
does not remove true levitical (biblical) impurity (Adolf Büchler, 'The Law of
Purification in Mark vii.1–23', Exp. 21, 1909–10, p. 40, and he therefore proposed
that 'handwashing' was not the issue in the Gospels, but 'defilement' (by biblical law)
of hands which touched priestly food. For someone to reply, as does Alon, that Judith
11.13 indicates that lay hands could render priestly food impure, and that therefore 'it
follows that the washing of the hands for holy things was practised before the time of
Hillel and Shammai', (Alon, loc. cit., p. 222 n. 85) is to miss the point. Lay hands may
well have been considered defiled and not to be cleansed simply by washing. Scholars
themselves shift from the biblical purity laws to the scribal ones; we should not be too
hard on Mark for not knowing the difference. But I dare say that Jesus and his
contemporaries did. In any case, the questions of priestly and lay handwashing, as far
as I can see, await solution. They are irrelevant, however, for our present problem. Sin
is in no case involved.

52. Braun, Jesus of Nazareth, p. 53.
53. G. Aulén, Jesus, p. 49.
54. They would of course affect relations with Gentiles (as Gal. 2.11–14 shows).
This, however, is not the problem in the material about Jesus.
55. Westerholm, who clearly perceives that the wicked are not the 'amme ha-aretz,
nevertheless writes that 'In taking his message to the most notorious sinners, Jesus
indicated that the matter of ritual purity was at best a very subordinate consideration'
(Jesus and Scribal Authority, p. 71).
56. M. Demai 2.3; R. Judah.
58. Paul: Gal. 1.14; Phil. 3.6; cf. Acts 23.6; Josephus: BJ II.162. (Cohen, however,
has doubts about Josephus's Pharisaism; see below at n. 81.)
80, 83. He argues that the Pharisees, after Hillel, were essentially haibirum – a small,
parochial party concerned with purity. He regards this as having been proved by his study
of Rabbinic material (The Rabbinic Traditions about the Pharisees before 70, 3 vols.,
1971). The Pharisaic laws which survive, he argues, primarily have to do with the internal
governance of a purity sect. Agricultural laws are a secondary element, but these too
affect 'table-fellowship' (vol. III, p. 288). The third group consists of temple rules; but
they are not numerous, since the Pharisees did not control the cult (pp. 288, 290). His
argument rests, however, on an analysis of traditions assigned to individuals or to
houses. Thus the summary does not reflect the numerous anonymous laws which
probably represent common belief and practice, including large bodies of law on civil
matters, worship, feasts, and the temple cult. Neusner is prepared to grant that the
Pharisees and others shared a large area of common ground (pp. 289 ff.), but this is
curiously deleted from his definition of Pharisaism as a purity sect. Individual
anonymous pericopes dealing with non-purity matters can seldom be shown to be
earlier than 70 (or, in fact, be closely dated at all), but one should not convert this
difficulty into a denial that the Pharisees before 70 were substantially concerned with
these topics. If the ground common to all parties – the existence of which Neusner is
prepared to grant in general – is added to the definition of Pharisaism, it will be seen
that the Mishnah too points towards defining the Pharisees as what Josephus says they
were – lay experts in the law – not just as a purity sect.

Neusner notes the problem which Josephus causes for his view in Rabbinic Traditions
III, pp. 239–44, and he attempted to meet it in Josephus's Pharisees. A Complete