Halakhah in Josephus and in Tannaitic Literature: A Comparative Study

David Goldenberg
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Abstract
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PREFACE

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INTRODUCTION

The halakhah, or Jewish law, found in Josephus falls into three categories. The first is a paraphrase of the biblical laws found in the third (224-286) and fourth (67-75, 199-301) books of Antiquities. The second is a small collection of laws found in the second book of Contra Apion (103-109, 190-219) particularly chosen and explained by Josephus with apologetic motives in mind. The third consists of laws and customs mentioned as part and parcel of Josephus' history of the Jews. These are scattered throughout all his works. At times Josephus will call attention to one of these acts and call it a law or custom of the Jews; other times he will not. These laws may be additions to the biblical narrative (e.g., AJ 7.154 adds to the expressions of David's grief in II Sam. 12:16 the wearing of black clothes) or they may be part of Josephus' post-biblical history, whether antedating Josephus (e.g., AJ 16.267: Pheroras shows his grief by wearing black clothes) and, therefore, probably taken from a source, or contemporaneous with Josephus (e.g., BJ 4.260: mourners in black attire) and, therefore, reflecting the conditions of Josephus' time.
This study was first conceived as encompassing all the halakhah in Josephus. It became quickly apparent, however, that a detailed analysis of each halakhah would take far too long. It was, therefore, decided to limit the scope of the study to a judicious selection of Josephus' halakhah.

The purpose of this work is twofold. First, it is a study of the development of halakhah. Josephus, a Pharisaic Jew from Judaea, would naturally include in his works many laws and customs of the Jews. If these laws are not merely biblical paraphrase, i.e., if they are additions to or deviations from the biblical account or if they are part of Josephus' post-biblical history we may fairly accurately date them. Many of these laws appear in tannaitic sources anonymously. Others are not paralleled at all in rabbinic sources. At other times we would expect Josephus to parallel a tannaitic law but he is silent on the matter. Josephus, in short, is a reference in time for the dating of tannaitic halakhah. On the other hand, tannaitic law in its explicitness often helps to determine the meaning of a vague or ambiguous Greek phrase in Josephus.

When dealing with the halakhah one is always faced with the problem of whether a particular law has practical significance or whether it is the result of purely theoretical tannaitic exegesis. If Josephus used a tannaitic source, whether written or oral, for his exposition of the biblical laws, we are, then, faced with the same problem in regard to his biblical deviations. On the other hand, if a law or custom is mentioned as part of Josephus' recounting of events, i.e.,
part of his history, then clearly there is no question—the law is not theoretical. Similarly, halakhic additions to the biblical narrative reflect practical laws and customs of the time when the addition was made.

The second purpose of this study is to determine Josephus' source(s) for his exposition of the biblical laws in books III and IV of Antiquities. The only source we can be sure Josephus used is the Bible. But there is scarcely a law given by Josephus that is a direct translation of the biblical text; the deviations are both multifarious and multitudinous. Are these deviations Josephus' own or were they found in an extra-biblical source such as rabbinic tradition, whether written or oral? If the former, why did Josephus deviate from the Bible? Were his motives apologetic or was he bringing the Bible up to date recounting the biblical laws as they were practiced in his own day? In regard to apology, Josephus' work Contra Apion will help determine an answer since this work is an apology for Judaism to the Greco-Roman world. Some of the laws in this work are paralleled in the Mosaic legislation of Antiquities. Setting one work against the other will help to decide to what extent Josephus was apologetic in Antiquities.

Clearly, then, to answer the goals of this study an examination is needed of all three categories of halakhah in Josephus. While the ideal study would include all Josephan halakhah, we have had to content ourselves with selections from each category. This study is only a first step toward that ideal.
On the question of Josephus' sources, most scholarly research has dealt with the nonlegal portions of the historian's works. Of those scholars that have dealt with the legal material, many have devoted to it but one chapter in a larger, more comprehensive study. With a few exceptions all the research in this area suffers from two flaws. First, it is superficial, consisting usually of simply drawing parallels (or differences) between Josephus and rabbinic halakhah. Secondly, there is no historical discernment; rabbinic parallels may range anywhere from Josephus' time to Joseph Caro, who lived 1500 years later. Following is a short survey of the research that has dealt with Josephus' legal material in one way or another.

Moritz Duschak\(^1\) was the first to address the question of the relationship of Josephus to the oral law. While his treatment of Josephus' halakhah is not exhaustive, he deals with a number of laws that fall into four categories (worship, jurisprudence, moral laws, and ceremonial laws) pointing out their rabbinic parallels. Strangely, he refuses to come to any conclusions based on these comparisons, preferring instead to let the reader draw his own conclusions.

Gustav Tachauer,\(^2\) while treating mostly the nonlegal material of Antiquities, deals with twelve laws. His conclu-

\(^1\)M[oritz] Duschak, *Josephus Flavius und die Tradition* (Vienna: Jacob Schlossberg, 1864).

sion is that where Josephus deviates from the Bible, his source was rabbinic tradition. Where he deviates, as well, from rab­binic tradition, he is writing from apologetic motives.

Heinrich Bloch\textsuperscript{1} treats Josephus' dependency on rabbinic tradition for halakhic and aggadic material together. He, too, only deals with a small part of the legal matter in books III and IV of Antiquities. His conclusion is that Josephus had knowledge of rabbinic tradition.

Marcus Olitzki,\textsuperscript{2} devoting a series of studies to our subject, addresses the general question of the relationship between Josephus and the halakhah. He concludes that there is general agreement between Josephus and rabbinic law. When there is not, it is due to apologetic motives and in large measure to the fact that halakhah was unwritten and, therefore, Josephus forgot whatever he had learned of it as a youth and is, consequently, inaccurate in his reporting of it. Olitzki is also of the opinion that for some legal statements Josephus was dependent on a written Targum (p. 27, n. 36).

Paul Grünbaum\textsuperscript{3} studied Josephus' priestly laws (marriage, marriage, marriage, marriage, marriage, marriage).

\textsuperscript{1}Heinrich Bloch, Die Quellen des Flavius Josephus in seiner Archäologie (Leipzig: B.G. Teubner, 1879), pp. 23-53.


\textsuperscript{3}Paul Grünbaum, Die Priestergesetze bei Flavius Josephus; eine Parallele zu Bibel und Tradition (Halle, 1887).
physical blemishes, age requirements, clothes) in comparison with rabbinic halakhah. His conclusion, which he states in regard to all Josephan halakhah, is that generally Josephus' additions to biblical laws found in Antiquities books I-IV and in Contra Apion book II agree with rabbinic halakhah with which Josephus was familiar.

Heinrich Guttman\(^1\) attacks Olitzki's view and points out that where Josephus deviates from talmudic law, it is not due to his lack of knowledge, but to the fact that the halakhah of Josephus' time was different from the halakhah recorded in the Talmud. For this very reason, says Guttman, the Jewish law recorded by Josephus is important, for it represents a stage of halakhic development prior to the canonization of halakhah. These laws never became part of the halakhic canon and Josephus is, therefore, our only source for many laws in the early stages of their development.

Salomo Rappaport,\(^2\) in turn, attacks Guttman's view and upholds Olitzki's. He thinks it unlikely that Josephus, who in his youth was involved in political and military affairs, during which time he certainly didn't concern himself with the rabbinic tradition, would have remembered this tradition when he composed Antiquities, decades after leaving Palestine. Furthermore, argues Rappaport, the fact that Josephus' ... 


\(^2\)Salomo Rappaport, Agada und Exegese bei Flavius Josephus (Frankfurt A/M: J. Kauffmann, 1930), Introduction, especially pp. xv-xvi and n. 2.
halakhah deviates from talmudic law does not indicate a pre­
canon stage of halakhah. The Talmud, as is not the case with
modern lawbooks, preserves conflicting opinions from different
periods. Were Josephus' legal statements truly reflecting
halakhah they would have been preserved in the Talmud. Aside
from these remarks, Rappaport's work is devoted to the ag­
gadic material in Josephus and is, therefore, not directly
related to our subject. It should be noted, however, that the
difference between Rappaport's work and this one is not method­
ological but in the type of Josephan material examined. His
conclusion is that Josephus' sources were many: rabbinic
oral tradition, a written Targum, apologetic motives, and
Priestly sources.

While many of Rappaport's arguments and theories in
regard to aggadah may be applied to halakhic material as well,
some may not. So, for example, he argues (p.xxx) that some
of Josephus' aggadic additions to Scripture, although
agreeing with rabbinic tradition, may have been Josephus'
own product as long as these aggadic statements are "ein­
fach-natürlich." This would clearly not apply to legal
material. It is one thing to make up explanations and
stories; it is quite another to invent laws.

Heinrich Weyl¹ has written, what is to date, the most
comprehensive study of our subject. His work, which is
basically confined to the legal material of Antiquities

¹Heinrich Weyl, Die jüdischen Strafgesetze bei Flavius
Josephus in ihrem Verhältnis zu Schrift und Halacha (Berlin:
H. Itzkowski, 1900).
book IV and of Contra Apion book II, is far more exacting than earlier studies in that he attempts "a thorough examination of Josephus' words and a detailed comparison of these words with other Jewish legal matter" (p. 5). He also points out what he believes to be the influence of Roman law on Josephus. Weyl's study departs from earlier works also in its purpose which is twofold. Not only does he want to present a picture of Josephus' personality, his exegetical methods (and thereby, too, those of his time) and tendencies, and his relationship to his people and his religion, but he also attempts to fulfill the wish of Z. Frankel who called for a critical study of the development of halakhah prior to its codification in the Mishnah.

Gustav Hölscher, in a departure from the regnant scholarly view, claims that Josephus' source for the biblical history was not the Bible at all, but Hellenistic (Alexandrian) --Jewish compositions which had developed over the centuries out of notes taken in Jewish schools. This theory is meant to cover the legal and narrative portions of Antiquities. However, every proof offered by Hölscher deals with nonlegal material. In fact, one of his major proofs—that Josephus could not have been so well-versed in Hellenistic literature as would appear from Antiquities—would patently not apply to halakhic matter.

Abraham Schalit, in a lengthy introduction to his translation of *Antiquities*, considers Hölscher's opinion an extremist view which has no basis and cannot be accepted (cf. also Rappaport, p. xvii). He then goes on to give a detailed analysis of the problem of Josephus' extra-biblical statements in books I-XI. He divides into two the answer given this problem by scholars. Either Josephus relied on oral tradition which he learned in his studies while a youth, or Josephus relied on written sources. Schalit's opinion is that both views are correct and he gives examples from *Antiquities* which support both views. Furthermore, there are Josephus' own additions to the biblical matter. In regard to our subject, the problem with Schalit's exposition is identical with that of Hölscher's. Schalit, too, means to include the legal material in his theory. In fact, however, his entire discussion—save one small paragraph and one chart (pp. xli, 1-li)—is limited to nonlegal material. In this one paragraph devoted to *halakhah* Schalit says (without proof) that Josephus' *halakhah* is either the latter's individual opinion and, therefore, does not reflect the law of his day, or it is the *halakhah* which Josephus learned while a youth. He does not suggest that Josephus had use of written legal sources. He believes that a Targum served as a source for Josephus, but, here too, Schalit restricts his statements to nonlegal matters. In regard to Josephus' dependency on Philo, Schalit makes the fol-

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lowing valid point (p. xli): Josephus did indeed know of and utilize Philo's works but he did so only for Philo's philosophical and allegorical material. In the realm of halakhah Josephus would not have relied on a non-Palestinian Jew, particularly not on one with such strong Hellenistic leanings as Philo.

Kaufmann Kohler,⁠¹ in a monograph on the subject, deals with some thirty laws in Antiquities and Contra Apion. He finds that this halakhic material "differs essentially from the traditional view presented in ... Rabbinical literature" and concludes that Josephus' source was "an older priestly document, similar to that found in the so-called Zadokite Manifesto of Damascus.... [Josephus' legal material] represents an older stage of the Halakah ... a middle stage between Sadduceism and Pharisaism" (pp. 69-70). Kohler's view is interesting in that he is the only scholar to deal with Josephus' legal material and to posit the theory that for this material Josephus used exclusively an extra-biblical source. What is wrong with this article may be illustrated by the following examples: (1) The only instance where Kohler finds a 'halakhah common to both Josephus and the Zadokite Document is in the case of returning a lost object (p. 81). According to Kohler the Document requires the finder to make proclamation of the object and the loser to swear an oath that it is his. In fact, the Document says no such thing. (2) The duty to show strangers

the road and not to mislead others, the Talmud derives from Lev. 19:14, according to Kohler (ibid.). He does not tell us where the Talmud says this and, in fact, it does not. (3) Kohler (p. 72) cites II Macc. 15:32-35, "where we read of Nicanor that he met the punishment of the blasphemer, and how his body was hung up at the tower before the Temple," when discussing the law of the blasphemer in Josephus. The connection between II Maccabees and the law of the blasphemer in Josephus and tannaitic literature is tenuous, to say the least. Nicanor was not stoned as the law of the blasphemer requires. Neither was his body hung up as the law requires; it was his head which was hung up. His head, arm, and tongue were cut off—a process not required by the law of the blasphemer.

Bernard Revel1 deals with nine laws in Antiquities and Contra Apion concluding that where Josephus deviates from the traditional interpretation of biblical laws it is due to his dependence upon Philo, apologetic tendencies, or ignorance since he wrote his works long after he had learned the oral law which had not yet been committed to writing. Due to his ignorance of tradition, then, Josephus interpreted the Bible literally and Revel points to similar literal interpretations in Karaitic literature.

Harry Levine2 attempted a comparison of all the "public and criminal law" in Josephus' works with rabbinic literature.

Treatment of each halakhah is brief (ninety-four laws are dealt with in 140 pages) and the rabbinic parallels are at times merely a selection of rabbinic legal statements on the particular halakhah, neither in agreement nor disagreement with Josephus. Levine concludes that Josephus is generally in accord with rabbinic tradition which served as an (oral) source for the historian. About one-tenth of Josephus' halakhah stands opposed to tradition. This is explained in a number of ways:

(1) Josephus recorded practical contemporaneous law; (2) laws that are only partially cited may be explained by the fact that Josephus intended to write a special treatise on the laws; (3) a misunderstanding of the precise meaning Josephus intended; (4) the character of Josephus—e.g., sometimes Josephus states a law in abbreviated form, other times he gives details that are self-evident.

Steven Riskin¹ studied the halakhah in Contra Apion and in Vita. He concludes that Josephus basically agrees with rabbinic tradition and that, indeed, he knew and relied upon the oral law. The only instance of patent contradiction of Jewish law may be ascribed to Josephus' apologetic motives in Contra Apion.

Ronald Sobel² has included in his study of Josephus an appendix listing and detailing all legal passages in Antiquities books I-IV which deviate from the Bible. The

¹ Steven Riskin, "The Halakah in Josephus as Reflected in Against Apion and The Life" (M.A. thesis, Yeshiva University, 1970).

treatment of each passage is superficial; he merely points out the deviations. Only here and there does he attempt an explanation. His conclusion in regard to the legal matter is that Josephus designed it to show the reasonableness of the Jewish legal system. In *Antiquities* Josephus is essentially an apologist.

David Altshuler\(^1\) surveyed all the legal passages in *Antiquities* books III and IV. His work contains very useful lists of all passages where Josephus basically agrees with biblical law, where Josephus makes additions to biblical law, and where Josephus omits biblical law. His treatment, however, of the passages themselves is cursory. Completely rejecting the influence of oral law on Josephus, Altshuler's conclusion is that Josephus' only source was the Bible. Deviations from Scripture as well as Josephus' selection and organization of the laws may all be ascribed to apology for Judaism. In the Appendix to our study the question of apology in *Antiquities* is examined.

In addition to the works on Josephus, some studies of Philo's relationship to halakhah make constant reference to Josephus. The most important of these are the works of Bernard Ritter\(^2\) and Samuel Belkin.\(^3\) The former points to a number


of instances in Antiquities where he believes Josephus was dependent upon Philo. The latter believes that while Philo was not a source for Antiquities, he was for Contra Apion. Belkin is of the opinion that Josephus had a very limited knowledge of Jewish law and what he did know was probably based on acquaintance with the customs of his time.

Julien Weill,¹ H. St. J. Thackeray,² and Abraham Schalit,³ in the notes to their respective translations of Antiquities, have pointed out parallel rabbinic texts to Josephus' halakhah. Thackeray's halakhic notes are merely a translation of Weill's, while Schalit draws extensively on Weyl's Strafgesetze. By the nature of reference footnotes these commentaries contain no analysis of our subject.

* * *

The foregoing survey reveals that scholarly opinion ascribes Josephus' deviations from the biblical laws due to one or more of the following factors: oral law, apology, ignorance, contemporaneous practical law, Josephus' own opinion, Roman law, Philo, Targum, written legal source, Josephus' intention to write a separate treatise on the laws, and Josephus' character.


³Josephus, מְיוּדְנֵה הַזָכָה הַיִשְׂרָאֵל.
That Josephus knew rabbinic tradition, whether aggadic or halakhic is beyond question. The plethora of aggadic parallels shown by S. Rappaport clearly show Josephus' dependency. Similarly, the halakhic parallels appear too often to draw any other conclusion. Josephus' contradictions with rabbinic halakhah are only apparent. By a historical analysis of the rabbinic halakhah and by a detailed examination of Josephus' own words it can be shown that, by and large, these contradictions are nonexistent.

It is natural that Josephus, a Pharisee educated in their tradition, would reflect that tradition. Josephus says of his training, "I made great progress in my education (παιδείας) gaining a reputation for an excellent memory and understanding. While still a mere boy, about fourteen years old, I won universal applause for my love of letters (φιλο-γράμματον); insomuch that the chief priests and the leading men of the city (τῶν τῆς πόλεως πρῶτων = Ἡγ. 171) used constantly to come to me for precise information on some particular in our ordinances" (νομίσων; Vita 8-9). Josephus had an "expert knowledge of their [= Pharisees'] laws" (τῶν νόμων paralleling έθη τὰ πάτρια; Vita 198). He is "well versed in the study (φιλοσοφίας) of those writings (γράμματι)," that is the holy writings (ἱερὰν γραμμάτων) which he had translated (μεθηρμήνευκα) in the Antiquities (Ap. 1.54).¹ My compatriots (ομοεθνῶν) admit that in our Jewish learning (τὴν ἐπιχώριον ... παιδείαν) I far excell them" (AJ 20.263).

¹The translation φιλοσοφία as "study" is Thackeray's. Cf., however, Ap. 2.47: τούς νόμους καὶ τὴν πάτριον ἡμῶν φιλοσοφίαν.
As Schalit says, there is no reason whatsoever to doubt the veracity of Josephus' account of his educational background. "'Higher' learning ... was widespread in Jerusalem ... and Josephus doesn't say anything about himself that is unusual."¹ Rappaport summed it up the best: "[Josephus] ist also ein Kind des Rabbinismus; er hat in seiner Jugend die Sagen und Auslegungen der Rabbinen gehört, hat die Bibel mit den Erweiterungen, wie sie in Palästina gelehrt wurden, gekannt, diese rabbinischen Kenntnisse durchziehen seine Werke, und so erklären sich die verschiedenen Zeugen mündlicher Überlieferung bei Jos. Josephus ist Träger lebendiger rabbinisch-palästinensischer Tradition."²

All the scholarly objections to Josephus' knowledge of rabbinic halakhah—that he either never knew it or that he forgot it by the time he wrote in Rome—arise from one point: the contradictions between Josephus and rabbinic halakhah. However, as said above, these contradictions for the most part, do not exist. We have particularly chosen passages of Josephus which would seem to indicate blatant disagreement with the oral law to prove this point.

*   *   *

That Josephus knew the oral law does not necessarily


mean that he relied upon it for his exposition of the biblical laws. In fact, Josephus claims to set forth "the precise details of what is written in Scriptures (ἀναγραφαὶς) ... neither adding nor omitting anything" (AJ 1.17). And throughout his works he repeats this claim. "I have recounted each detail here told just as I found it in the sacred books" (ταῖς ἰσραηλίτων βιβλίοις; AJ 2.347). He has recorded each event "as I have found them in the ancient books (ἀρχαίοις ... βιβλίοις) .... I was only translating (μεταφράζων) the books (βιβλίοις) of the Hebrews ... promising to report their contents without adding anything of my own to the narrative or omitting anything therefrom" (AJ 10.218). And immediately before he transmits the biblical laws he again repeats his claim: "All is here written as he [Moses] left it: nothing have we added ... nothing which has not been bequeathed by Moses" (AJ 4.196). That his work consisted of "translating" he repeats twice more. The Antiquities "will embrace our entire ancient history and political constitution, translated from the Hebrew records" (τὴν πασὶ ἡμῖν ἀρχαιολογίαν καὶ [τὴν] διάταξιν τοῦ πολιτεύματος ἐκ τῶν Ἑβραϊκῶν μεθηρμηνευμένης γραμμάτων; AJ 1.5, cf. 20.261). "In my Antiquities, as I said, I have given a translation of our sacred books" (ἐκ τῶν ἱερῶν γραμμάτων μεθηρμηνευμένα; Ap. 1.54).

The fact that Josephus does indeed add to and omit from the Bible is answered by Louis Feldman as follows. First, the word μεθηρμηνευόμενοι may mean either translated verbatim or interpreted with some freedom. Secondly, the writings (γραμμάτων, ἀναγραφαίς) that Josephus refers to are "not merely what is
written in the Bible but also that which was included in the
Jewish tradition of interpretation and which was regarded as
an integral part of that tradition." ¹ The word μεταφράζω may
also mean to paraphrase. ² Now, Feldman is referring to mid-
rashic interpretation, but what he says may apply as well to
halakhic interpretation. Indeed, this must be so if we are to
take Josephus at his word that he has not added or subtracted,
as Feldman believes we should.

* * *

This study attempts to answer one further question. If
Josephus' source for the laws in Antiquities was, indeed,
tannaitic halakhah, could it have been in written form? The
only scholar to suggest a written legal source is Kohler,
although he shows no proof why it must have been written.
Hölscher's proofs for such a source are all related to Jose­
phus' nonlegal matter. Indeed, two scholars (Olitzki and Revel)
build their theories of Josephus' ignorance upon the fact that
he could not have had a written source, for, after all, the
oral law was ostensibly oral. However, now Epstein ³ has shown
conclusively that the oral law was put into writing in the

¹ Louis H. Feldman, "Hellenizations in Josephus' Portrayal
of Man's Decline," Religions in Antiquity, Essays in Memory of
Erwin Ramsdell Goodenough, ed. J. Neusner (Leiden: E. J. Brill,
1968), pp. 336-339. Feldman's second point was already made by
Tachauer, op. cit., pp. 45-46. Cf. also Olitzki, Josephus und
die Halacha, p. 27, n. 36.

² Henry G. Liddell and Robert Scott, A Greek-English
Lexicon, 8th ed. (hereafter cited as LS), s.v. μεταφράζω.

³ J. H. Epstein, הננה נ clipboard, 2nd ed. (Jerusalem:
tannaitic period. And a recently discovered Talmud MS claims that halakhah was written down as early as Josephus' time.\footnote{BT AZ 8b (MS Marx-Abramson): עָבְרֵי קַוָּרוֹת אֲשֶׁר רֵם בְּרֵם זַכָּרוֹת אֲשֶׁר בָּא זוּבָא שָׁמָּה שְׁאָרִי לָא הָיוּ נשָׁכְרוּ וְזַכָּרוֹת מִכַּהוּ נֶשֶׁכְרוּ נֶחֱטַב זַכָּרוֹת נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב נֶחֱטַב N. Judah ben Baba was of the Jabneh generation.) The first to have called attention to this unique reading was S. Zeitlin, "Megillat Taanit etc.," JQR 9, no. 1-2 (1918), p. 72, n. 2. See also idem, "The Manuscript of the Tractate Abodah Zarah etc.," JQR 48, no. 4 (1958), p. 392, and S. Abramson's edition of the MS (New York: Jewish Theological Seminary, 1957), pp. xiv-xv.} We, therefore, can no longer reject out of hand the possibility that Josephus had these written sources.

According to Feldman the Jewish γράμματων and ἀνάγραφαίς, which Josephus transmits in Antiquities and which contain extra-biblical material, must refer to written works and "this would imply that some of the Midrashic tradition had by Josephus' time been committed to writing." He then mentions the midrashim in the Dead Sea Scrolls, which antedate or are contemporary with Josephus, to buttress his view.\footnote{Feldman, op. cit., p. 337, n. 1.} Again we note that in Josephus' time even halakhah was committed to writing.\footnote{Cf. the halakhic expositions made of biblical verses in the Zadokite Document 9.2ff, ed. Chaim Rabin, 2nd rev. ed. (Oxford: Clarendon Press, 1958), p. 45ff. Note too that Josephus, the Pharisee, and trained in their laws, as well as Philo, did not refrain from writing down the oral law. Cf., however, AJ 4.197 where, in introducing his transmission of the biblical laws, Josephus says: "All is here written as he [= Moses] left it: nothing have we added ... nothing which has not been bequeathed by Moses.... I have thought it necessary to make this preliminary observation, lest perchance any of my countrymen (διόργανον) who read this work (τὸ γραμματ. τὸ γραμματ.) should reproach me at all for having gone astray (διαφοράκεν)." Now, although LS only lists the meaning "to go astray, to miss, to fail" for διαφοράκεν, the word is a strengthened form of διαφορά which may also mean "to sin." If Josephus meant simply reproach for failing to transmit the laws accurately, he would have said "nothing have we added or sub-}
Indeed, ἀναγραφαὶ on the biblical laws are specifically mentioned by Josephus. And if, as Feldman suggests, the sacred writings or books to which Josephus refers consist of extrabiblical works, it is possible that the "sacred books" (βιβλίων ἱερῶν) which Josephus was granted after the destruction of Jerusalem, refer to these same works (Vita 418). These "sacred books" Josephus undoubtedly took with him to Rome and used for his composition of Antiquities.

* * *

The methodology used in this study is comparison. First, of Josephus with the Bible (Hebrew, Greek, and for Ben Sira, Syriac as well). Deviations from the biblical text will be examined to determine whether Josephus himself could have produced the exegesis. Then parallel passages in rabbinic literature are compared. Unfortunately, many rabbinic statements are anonymous and even when a name is mentioned it does not necessarily point to a terminus a quo. With anonymous tracted" as he did elsewhere (AJ 1.17, 10.218; cf. Ap. 1.42 where talking of Scripture Josephus says: "No one has ventured either to add, or to remove, or to alter a syllable"; Deut. 4:2: "Ye shall not add unto the word which I command you, nor shall ye diminish aught from it"). However, if he meant reproach for having sinned in writing down halakhic additions to Scripture he could only have said what, in fact, he did say: "Nothing have we added." In other words, do we have here a veiled reference to the prohibition of writing the oral law?

1 Ap. 1.43: ....τὸν ὑπὸ τὸν λόγον χαί τὰς μετὰ τοῦτων ἀναγραφαῖς. R. Plaut, Flavius Josephus und die Bibel (Berlin: Rosenthal & Co., 1867), p. 10, calls attention to this source but does not go so far as to consider the ἀναγραφαὶ written records: "Auch werden die ἀναγραφαῖ [sic] über die Gesetze, von welchen Jos. c. Ap. 1.8 spricht, als solche Traditionen zu betrachten sein, welche die biblischen Gesetze commentirten und nach Bedürfniss zu ergänzen bestrebten waren." But see ibid., p. 36.
passages our limit is the end of the tannaitic period (c. 200 CE). No argument or proof in this study rests on a posttannaitic source. We have, nevertheless, quoted such material in footnotes where it provides the only parallel to Josephus, although, to repeat, it is never the sole support of a proof. Parallel passages in Philo were also compared; Roman law was not. Schalit (p. xli) makes the point that in regard to halakhah, Josephus would not have relied on a non-Palestinian, Hellenistic Jew as Philo. All the more is this true in regard to Roman law. Palestinian Jewry of Josephus' time had produced a large amount of halakhic material, a natural development of life. Given Josephus' educational background and given his clear parallels to rabbinic tradition, it would be absurd to assume that he deliberately forsook this learning and instead embellished Jewish biblical law with pagan Roman statutes. And yet, knowing of Josephus' Jewish education and life and having no evidence at all that Josephus knew Roman law, some scholars would do just that. ¹

We have dealt with AJ 4.260-264, for this passage is perhaps the most often quoted example of the "influence of Roman law." Supposedly, Josephus had in mind the Roman pater familias when he gives fathers the authority to kill their children. In fact, as will be shown, this authority was granted, at least in theory, to Jewish fathers.

¹Cf. V. Tcherikover, Hellenistic Civilization and the Jews, trans. S. Applebaum (New York: Atheneum, 1975), p. 319: "[Josephus] did not even know the Greek language thoroughly, much less was he expert in Greek law...."
PART I

The Mosaic Legislation
CHAPTER I

THE REBELLIOUS ELDER

AJ 4.218

Deut. 17:8-9

If a matter be unknown to thee for decision, between blood and blood, between plea and plea, and between bodily injury and injury, (or) matters of controversy within thy gates: then shalt thou arise, and get thee up unto the place which the Lord thy God will choose;

And thou shalt come unto the priests, the Levites, and unto the judge that may be in those days, and thou shalt inquire, and they shall inform thee of the sentence of the case.

When discussing the administration of justice (AJ 4.214-219) Josephus describes the courts in each city, the authority of the judges in the cities to pronounce sentence, and...
then he continues with the above cited passage. We shall deal with the composition of those who meet to give judgement—the high priest, the prophet, and the council—elsewhere. We are concerned here with the act of submitting a case to Jerusalem when the lower courts are unable to pronounce judgement. In this matter Josephus does not differ from the biblical account.¹

However, Josephus does differ with the tannaitic understanding of these biblical verses. The Tannaim interpret Deut. 17:8-13 to refer to the case of zagen mamre, an elder (=judge) who dissents from the opinion of the other judges. Such a judge travels to Jerusalem for a decision whether his dissenting opinion is correct or not. If the Beth Din Haggadol in Jerusalem rules against him and he, nevertheless, continues to decide cases based on his opinion he is killed.²

¹The difference between הָאָדוֹןָה and וְלֹא מִפְרֵא-פָּסִים תַּהְוָא and וְלֹא מִפְרֵא-פָּסִים תַּהְוָא is inconsequential if existent at all, for the subject of the biblical command is not clearly expressed. The command may not be to the judges themselves but, vaguely, to Israel in general. Furthermore, if the command is to the court itself, it need not mean the entire court but simply its representative. In fact, this was the method recorded in tannaitic literature. אָדֹן וְלֹא מִפְרֵא-פָּסִים תַּהְוָא... לא מִפְרֵא-פָּסִים תַּהְוָא אֵין שְׁכֵנִים אֶלָּא לְאַלְמָא הַשָּׁמָּאִים וְלֹא מִפְרֵא-פָּסִים תַּהְוָא אֵין שְׁכֵנִים אֶלָּא לְאַלְמָא הַשָּׁמָּאִים וְלֹא מִפְרֵא-פָּסִים תַּהְוָא... לֹא מִפְרֵא-פָּסִים תַּהְוָא אֵין שְׁכֵנִים אֶלָּא לְאַלְמָא הַשָּׁמָּאִים (T. San. 7:1; PT San. 1:7, 19c. T. Ḥag. 2:9 MS Erfurt reads מְנוֹפִּילָא while MS Vienna and the printed editions have, as T. San., מְנוֹפִּילָא. BT San. 8:8b leaves out the word altogether). For a discussion on this point see H. Albeck's notes to M. San. 11:12 in his edition of the Mishnah and Finkelstein, Sifre Deut., p. 206, n. 2.

²M. San. 11:2: And if a matter cannot be decided by a court, then bring it to Jerusalem. אָדֹן מַמְרֵא יֵשׁ לַמַּמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא... כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא... כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא... כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא כִּי יֶלֶךְ מַמְרֵא... כִּי יֶלֶ�
Now, if Josephus was familiar with the tannaitic law of his time—and our contention is that he was—one would expect that he would refer to this law when he deals with the judicial system. One would expect so all the more, since the biblical basis for this law is the passage in Deuteronomy which Josephus is citing. Furthermore, Josephus in AJ 4.214-219 does not give us a simple paraphrase of Scripture; he records elements of the court system as it was in his day.¹ Yet he does not record the element of zagen mamre.

In fact, Deut. 17:12 ("And the man that will act presumptuously, so as not to hearken unto the priest that standeth to minister there before the Lord thy God, or unto the judge, even that man shall die")² is not recorded by Josephus at all. However, this is understandable only if the historian took the verse in its simple meaning, as referring to anyone who acts counter to the court's determination of the law, and not to a rebellious elder. It would not be necessary to mention this in a description of the judges and the judicial system. We shall now show that the law of zagen mamre post-dates Josephus and therefore the historian makes no mention of it.

The earliest Tannaim that explicitly mention this law

¹See Thackeray's note ad loc. in the Loeb edition of Josephus.

²See also Sifre Deut. 152-155 (pp. 205-208).
(and the term zagen mamre’) are the students of R. Akiba\(^1\) and R. Akiba himself (first half of the second century) in a dispute with one of these same students.\(^2\) In other words, we can date this law and the term zagen mamre’ with surety only after Josephus’ time. This does not, of course, determine a terminus a quo, for the law and term appear anonymously in tannaitic sources which may antedate R. Akiba. Let us, therefore, examine these sources.

The above cited Mishnah San. 11.2, which is the source for this law, bears a close resemblance to an independent

\(^{1}\)BT San. 87a:

\(^{2}\)T. San. 11.7:

The Tosefta is quoted in BT San. 89a as follows: \(...\) only to zagen mamre’. Also in the talmudic quote (as well as in the Tosefta MS Veinna and the printed editions) the words \(...\) are replaced by \(...\) (in the Mishnah in PT these words are missing altogether). This is significant inasmuch as Sifre Deut. 91 (p. 153) has on Deut. 12 referring to Deut. 13:12 concerning the law of the zagen mamre’. (Note that the reading of Deut. 13:12 found in BT San. 63b is \(13:12\) found in BT San. 63b is \(13:12\).) In other words, the opening words of the above cited Tosefta which include the term zagen mamre’ may be an editorial addition by the compilers of the Tosefta and may not have been uttered by R. Akiba.

R. Ishmael, a contemporary of R. Akiba, also refers to the law of zagen mamre’ in PT San. 11.3/4, 30a without mentioning the term.
tradition transmitted by R. Jose (middle of the second century). He says that originally there were no halakhic disputes in Israel, for the judicial system was as follows. There was a court in each city and three in Jerusalem, one of which was the Sanhedrin (or Beth Din Haggadol). When a halakhic question was posed it was referred to the local court of the city in which the question was first raised. If they did not know of a tradition to answer the problem the case was then referred to one of the inferior Jerusalem courts. If they had no tradition it went to the next Jerusalem court and if they also had no tradition it finally came before the Sanhedrin. If they had no tradition on the matter they would decide the case themselves based on a vote of the court. However, when many students of Shamai and Hillel no longer served their teachers properly disputes arose in Israel.

This statement of R. Jose appears in four places. The same basic elements of the statement appear in each place as can be seen from the chart on the next page.

The description of the court system is connected with a tradition of halakhic devisiveness beginning after Shamai and Hillel. There is no mention of the rebellious elder. What we have here is simply a description of how halakhic questions were determined in pre-70 Judaea.

Comparing the nature of the zagen mamre‘ law with that of the judicial system we note the following differences:

1. the process of zagen mamre‘ begins in the local court when the judge dissents from the majority opinion
<table>
<thead>
<tr>
<th>מ. סנ. 11.2</th>
<th>ב. סנ. 886</th>
<th>ת. יב. 2.9</th>
<th>ת. סנ. 7.1</th>
<th>פ. סנ. 1.7, 19c</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Following: MS Munich</em></td>
<td><em>Following: MS Vienna and printed ed.</em></td>
<td><em>Following: MS Vienna and printed ed.</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2. the essence of the *zaqen mamre'* process is conflicting opinion

Judicial System: the issue is the *halakhah* to be determined. Therefore,

1. *halakhah* being a function of life, the problem arose outside the courts\(^1\) and was brought first before the local court.

2. the essence of the process is the inability to provide opinion.

By a comparison of the Mishnah with the *baraitha* of R. Jose we see that these differences are reflected clearly in the literary structure of the two sources. The opening statement of the *baraitha* (line 1 of the chart) is replaced by one introducing the law of *zaqen mamre'* in the Mishnah. As a consequence line 8 is naturally deleted. Lines 2 and 3 are retained but there is an addition of ... כר דרישה and a deletion of הזורם והכר לישאל. These changes are necessary since we are now dealing not with a question to be asked but with the elder's independent and dissenting determination.\(^2\)

The addition of כי לדיעתי is found in the BT account as well. This is, however, an interpolation from the Mishnah (with which the *baraitha* is associated in BT) as can be seen from a comparison with the other sources for the *baraitha*.

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\(^1\) So in M. Pe'ah 2.6: ומשה שהרב שמורא איצי התמצאות לברר בין חללים ולאלה ולשכחת הגירה לשאלה and M. Eduyoth 7.4: והמשה家の באמה been משכחת לא עניין לשכחת הגירה. Incidentally, both of these events partly confirm R. Jose's description of the judicial system: the Beth Din Hagra'dol served as final authority in determining *halakhah*.

\(^2\) The addition of כי לדרישה is found in the BT account as well. This is, however, an interpolation from the Mishnah (with which the *baraitha* is associated in BT) as can be seen from a comparison with the other sources for the *baraitha*. 
Lines 6 and 7 are reduced to line (7) alone, a consequence of dealing not with a description of the court system but with the dissension of one man who, to be found guilty, must continue his intransigence in the face of the final court's decision. This condition is added to the mishnaic account with the words ... דוער לו רעים ושובת למדת. All the remaining parts of the baraita are not retained in the Mishnah for the same reason mentioned for the deletion of line 6--the issue is no longer a description of the judicial system. So also in line 2, נחוי דגין של כ"א כדי וישב יכה לעירות א"כ is missing as the Mishnah is not transmitting a historical description of the court system as is the baraita but the law of zagen mamre' for which the courts of twenty-three in each city is irrelevant. We see, therefore, that the account of the zagen mamre' law in the Mishnah is a reworking of R. Jose's baraita which dealt with another matter.

Now, R. Jose was transmitting a piece of historical information; not a law. There was, therefore, no need in this account for reliance upon Scripture. The Mishnah, however, is dealing with a law which is not found explicitly in the Bible, for Deut. 17:12 read simply refers to any man who does not follow the law as determined in Jerusalem. To give this law biblical support exegesis is brought therefore on the word א"כ in Deut. 17:8. The word in tannaitic literature is interpreted to refer to a judge.¹ It is to this interpreta-

¹BT San. 86b-87a: פסלה ממקדש גזר ברו"ע, ת"ע; PT San. 11.3/4, 30a; Sifre Deut. 152, p. 205. Cf. Rashi and Tosafoth, s.v. א"כ, BT ibid.
tion that the Mishnah alludes when it declares: יִשָּׁמֵר לְעַל שְׁנֵי עַשָּׁר יַבֵּן שֵׁשׁ. In other words, the biblical verse is cited as proof for the law.\(^1\) Similarly, Deut. 17:10 ('הִנֵּה שָׁם בָּלָהּ אֶל-קִרְיָּה') is not mentioned in R. Jose's historical account while it is, however, quoted in the mishnaic law of *zagen mamre*.\(^2\) The reason is the same: to give the law biblical support.

It, therefore, follows that Sifre 152, which is based on the biblical verse, is also dealing with *zagen mamre*. In fact, the literary structure of the Sifre is similar to that of the Mishnah: both consist of lines 2, 3, and (7); both have the addition of ...ךכ וּרְשֵׁת; both delete והזְקִיעָה לְשׁוֹנָהּ; both delete בַּתְּרֵי דִּבְנֵי של שְׁנֵי עַשָּׁר בּוֹלָה: עִירָה יִשָּׁרֵת in line 2; and both delete גְּוָלָה לֶגֶד שְׁנֵי עַשָּׁר in line 3. The similarities in literary structure between the Sifre and the Mishnah speak for either an interdependence between them or a nonextant third source whence they drew. Whatever the case, it is clear that these two sources deal with *zagen mamre* and not with a description of the court system. Now we can understand מַעְבָּד in the Sifre. It is the parallel of מִלְחַמָּה in the Mishnah.

It is clear, then, that the formulation in the Mishnah and Sifre is based on R. Jose's *baraitha*. This is not to say


\(^2\)The verse is quoted in the *baraitha* of PT. However, line (7) is an interpolation, no doubt from the Mishnah. Consequently, the clause נְבָאֵי הָלָהּ שָׁמַשׁ is found there twice. The one time (line 7) without biblical support is its proper place as can be seen from both Tosefta accounts.
that the law of *zaqen mamre* postdates Josephus but only that the formulation of the law does.

The implementation of the law itself is not once recorded in rabbinic literature. This is rather strange since, as we have seen above, halakhic disputes were plentiful after Hillel's time. Furthermore, there are cases on record of early Tannaim who dissented from the majority opinion and who would not recant their views: Akavia ben Mahalalel \(^1\) and R. Eliezer. \(^2\) Yet these men were not tried as rebellious elders.

The tannaitic sources witness to the fact that a *zaqen mamre* could not be executed in Jabneh; it had to be done by the court of seventy-one in Jerusalem. \(^3\) Indeed, although the

\(^1\) M. Eduyoth 5.6:

\(^2\) BT BM 59a-b:

\(^3\) M. San. 11.4:
Jabneh court had taken over various functions of the Beth Din Haggadol, determination of a zagen mamre' was not one of them. By definition one became a zagen mamre' only after maintaining views contrary to the Beth Din Haggadol and to that court alone. It is not surprising, therefore, that R. Eliezer of the Jabneh generation was never defined or tried as a rebellious elder.

The matter is more difficult with Akabia ben Mahalalel, for we are not sure when he lived. Some scholars place him before 70 CE and some after. Even if he lived before, he may not have been tried as a zagen mamre' because the Beth Din Haggadol may not have had the power to try capital cases in

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1 Sifre Deut. 154 (p. 207): חוקי על פי התורה, על התורה לכל דיני חבלין שליברנונם היינו מהח'توي ביבליון (see Finkelstein's note, ibid., p. 206, line 10); BT San. 14b: אמר כר' יוסיisson מקויה אנא מיקי_prime פייג' ומקוי_prime עליה כל חבלינא מהני מהניא מיקי_prime עליה כל חבלינא מהני מהניא מיקי_prime עליה כל חבלינא מהני מהניא מיקי_prime עליה כל חבלינא מהני מהניא מיקי_prime עליה כל חבלינא מהני מהניא מיקי_prime. See also ibid., 87a and BT AZ 8b.

In PT AZ 2.9, 41d we find Samuel threatening to declare Rab a zagen mamre'. However, it is obvious from the incident there that this was not the formal and legal zagen mamre' which we have been discussing.

2 The sources speak only of execution in Jerusalem. The trial itself was supposedly held in the local court, BT San. 15a: רַבָּא הַדָּא צֹלְקִיָּא בַּקְּשָׁלָא הוֹא וְזָכוּרֵיָא וְזָכוּרֵיָא (see Rashi ibid.; MT, Mamarim, 3.8; and Kesef Mishnah, ad loc.). However, if the execution could not be carried out in the Jabneh era we may assume that neither was a trial ever held in that period.

his lifetime; not because there was no law of zaqen mamre. If he lived as early as the time of Hillel he should have been tried as a rebellious elder unless there was no such law.

It is easily understood why R. Jose's historical statement about the judicial system became the basis for the zaqen mamre law. The former is meant to explain why there were no halakhic controversies in Israel while the latter seeks to continue that state of noncontroversy. The basic element of both accounts, then, is a noncontroversial determination of halakhah. The new element in the Mishnah is the elder who refuses to accept such determination.

When we look for a period of history most suitable for the inception of this new element, i.e., the law of zaqen

1PT San. 1.1, 18a; 7.2, 24b: סנהו קדשו לארבעים שננה עד שאחזוה בניו đòiנו ונהלחיים הם. See also Midrash Haggadot, Ex. 21:14, p. 472. BT AZ 8b (and parallels): חננה עד לא الموجودות והנה בנותה.

2So Hoenig, ibid.

3The Amoraim, on the assumption, of course, that the law was in existence at the time of Akabia ben Mahalalel, provide two answers why the latter was not executed (BT San. 88a). First, that the law is not in effect when the elder's conflicting view is based on tradition and not reason. This is unacceptable for our purposes, for the proof of the amorain statement is from the case of Akabia whose recalcitrant view was based on a tradition (M. 'Eduyoth 5.7), i.e., the cart is being put before the horse.

Second, that the law is not in effect if the elder's teachings are only meant for theoretical and not practical purposes. There is nothing, of course, in the account of Akabia which shows that he limited his decision to theoretical speculation. Indeed, were this the case one would expect tannaitic literature to somewhere mention the reason why Akabia was not branded a rebellious elder. In fact, both amorain explanations are forced. (R. Eliezer's decisions were certainly not theoretical: והנה הלוגו הבהוא הכל שלחה תשנה, BT BM 59b and parallels.)
mamre', we find that the Jabneh period fits the bill. After the destruction of the temple the leadership of the Jews was centered at the Jabneh academy. To maintain a strong leadership toward an inner revival of Jewry rabbinic controversy was deliberately reduced.\(^1\) The reason Rabban Gamaliel gave for the excommunication of R. Eliezer was to reduce rabbinic controversy.\(^2\) The reason given in rabbinic literature for the zaqen mamre' law is the same.\(^3\)

Our discussion has established the following facts:

1. The first mention of the zaqen mamre'--either the law or the term--is by R. Akiba and his disciples

2. The formulation of the law of zaqen mamre' was accomplished no earlier than R. Jose's time

3. The law was not implemented in the Jabneh period at the time of R. Eliezer

4. The most suitable time in history for the inception of the law is the Jabneh period

We conclude from these points that the law came into being at the end of the Jabneh period, most likely as a result of the controversy with R. Eliezer.

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\(^1\) BT RH 29b: ממרא, כן רכש פיסא ATTACK על ראש ששנה לחוות ברכה... אמר להם轭 כל מקום בנו, לברך והוא נתקע אמפור מברך פיסא... אמר להם לדעתו לאחר כל נודע ולאחר הטוב אמר להםバル נפשות גור ביבנה ואיזא משיבין לאחר המעשה.

\(^2\) BT BM 59b: שלא יברך מלחכות בישראל.

\(^3\) BT San. 88a-b (and parallels): ור"א אלעזר אומרי מקייל ו exem נה שמונעין קור אמפורין כותא בברכת ברך בברכת ברך בברכת ברך ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכת ברך בברכות בישראל.
One thing remains to be explained. If this law was conceived after 70 CE, how can the Mishnah include the courts of Jerusalem in the determination of a *zagen mamre'*? In answer we might ask the same question of R. Akiba and R. Judah. How can they engage in a dialogue whether the *zagen mamre'* must be executed by the Jerusalem court when during their lifetime there was no such court? Obviously their dialogue is of no practical significance. The Jerusalem courts had, however, to be included in the law, for the latter, as we have seen, was founded upon the pre-70 historical description of how halakhah was determined. Whether R. Akiba and his contemporaries thought that R. Jose's *baraitha* actually referred to a *zagen mamre'* is another matter. We have seen that it did not. Whether or not they did think so, they are, in either case, discussing a law which could not be implemented. But the statement of such a law alone would have the desired effect: to reduce controversy among the rabbis and thence among Israel. In other words, this law conceived in Jabneh was formulated as a law existing pre-70 in order to influence the post-70 generations.

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1M. San. 11.2: עֲלֵיתָ בָּאָם לְבִּית דָּוִד הַגָּדוֹל שְׁלַשׁוֹת הָעִבְּרָה

2M. San. 11.4: בָּאָם לְבֵית דָּוִד הַגָּדוֹל שְׁבִּיָּהוֹלֶם וְאַלּ וְעָנֵי הַדָּוִד שָלֹה.
With regard to those youths who scorn their parents and pay them not the honour that is due, but whether by reason of disgrace or through weariness, break out insolently against them, first of all let the parents orally admonish them, for they have the authority of judges over their sons. [261] Let them tell them that they came together in matrimony not for pleasure's sake, nor to increase their fortunes by uniting their several properties in one, but that they might have children who should tend their old age and who should receive from them every thing that they needed. "And when thou wast born," they shall proceed, "it was with joy and deepest thankfulness to God that we raised thee up and devoted our utmost care to thine upbringing, sparing..."
nothing that appeared pro-
table for thy welfare and
training in all that was best.
[262] But now—since indul-
gence must be accorded to the
errors of youth—have done
with all that scorn of respect
towards us and return to saner
ways, reflecting that God also
is distressed at acts of ef-
frontery to a father, since
He is himself Father of the
whole human race and regards
himself as a partner in the
indignity done to those who
bear the same title as himself,
when they obtain not from their
children that which is their
due. And then there is the Law
—that chastiser of all such,
and inexorable: never mayest
thou make trial of that!"
[263] If, then, by such means
the young man's contumacy is
cured, let them be spared fur-
ther reproach for their sins
of ignorance; for thus will be
shown the goodness of the law-
giver, while the parents will
be happy in seeing neither son
nor daughter delivered to pun-
ishment. [264] But the youth
with whom these words and the
lesson in sobriety conveyed by
them appear to pass for naught
and who makes for himself im-
placable enemies of the laws
by continuous defiance of his
parents, let him be
led forth
by their
hands
without
the
city,
followed
by the
multitude,
and stoned
to death; and, after
remaining
for the whole day ex-
posed to the general view, let
him be buried at night.

Honour to parents the Law ranks
second only to honour to God,
and if a son does not respond
to the benefits received from
them—for the slightest failure
in his duty towards them—it
hands him over to be stoned.

Ap. 2.206

Γονέων τιμήν μετά τήν πρὸς
Θεόν δευτέραν ἔταξε καὶ
tόν οὐκ ἀνειδομένου τάς
παρ' αὐτῶν χάριτας ἀλλ'
eἰς ὅτι οὐδὲν ἐλλειποῦνα λευ-
σθησόμενον παραδέδωσαι.
Deut. 21:18-21

If a man have a stubborn and rebellious son, who hearkeneth not to the voice of his father, or the voice of his mother, and they chastise him, and he will not hearken unto them: Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place; And they shall say unto the elders of his city, This our son is stubborn and rebellious, he will not hearken to our voice; he is a glutton, and a drunkard. And all the men of his city shall stone him with stones, that he die; and thou shalt put away the evil from the midst of thee; and all Israel shall hear, and be afraid. 1

We note the following differences between the Josephan and the biblical account of the rebellious son:

1. The Bible is specific in regard to the sin of the son: he is a glutton and a drunkard. Josephus is vague: he is remiss in his honor to his parents

2. Josephus adds to the biblical account a reason for his rebelliousness: on account of disgrace or witlessness

3. Josephus says that the parents have the authority of judges over their sons. He mentions no trial by court. The Bible has the parents bring their son before "the elders of his city, and unto the gate of his place"

4. The biblical "they chastise him" is expanded by Josephus into a lengthy speech of admonition

5. The Bible restricts this law to a son. Josephus has both son and daughter

6. Josephus adds to the biblical stoning: remaining exposed the whole day and burial at night
To Josephus' words "by reason of disgrace" (or "on account of shame") Thackeray notes: "I.e., smarting under some disgrace." Parental admonition was supposed to engender a state of shame in the children. This can be deduced from R. Nahorai's (first half of the second century) statement that society at the advent of the messiah will be topsy-turvy.

"The young will embarrass the old, the elderly will stand up in respect before the young ... and a son will not feel shame on account of [sc., the admonition of] his father." 1 Josephus' "shame," then, is natural in the relationship of father and son and it may cause the one shamed to act insolently against him who is causing the shame, as Thackeray suggests. 2

Thackeray's explanation assumes that Josephus' addition "on account of shame or witlessness" is the latter's own.

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1BT San. 97a and parallels: מִיִּיַּוָּה קְרֵא דָּוִד דֶּרֶךְ מִיַּוָּה דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵرֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא דָּוִד אֶל בֵּן בּוֹרֵי יָבִיא וְבֵן הוּאֵרֶת לִפְתֵּי לֵוֹר מֵלֶת מֵלֶת קְרֵא Д а л а в р и с я й н а т о в а н и ем н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л о к., е к л а д с я: н е н а л и н к а н а т о в а н и я н е д р а с т в е н и я. С и р и ч: м ы с л е в а н и е. С е г а л, Б е н С и р а, а д л
invention. In fact, however, a number of verses in Proverbs ascribe precisely the same two characteristics to a bad son (or servant). "Whoso keepeth the law is an intelligent son; but he that is a companion of gluttons bringeth disgrace on his father." "The rod and reproof impart wisdom; but a lad abandoned to himself bringeth shame on his mother." "He that gathereth in summer is an intelligent son; (but) he that sleepeth in harvest is a son that causeth shame." "The king's favor is bestowed on an intelligent servant; but his wrath is against him that causeth shame." "An intelligent servant will have rule over a son that bringeth shame." 1

However, if we assume Josephus' source to be Proverbs then we must ascribe to the historian a degree of sloppiness in his translation, for ἐπεφέσα in these verses has one of two meanings, neither of which can be translated αἰσχύνη. The Hebrew word means either "to shame (someone)" or "to act shamefully." In the former case Josephus' use of διά would be incorrect, for in Proverbs the shame is not a cause of dishonoring the father but a means of dishonoring the

1Prov. 28:7: ἰδρύει (LXX: συνετός) νικηφόρος βασιλικός (ἀνεμάτζευς) 29:15: ἰδρύειν τινὰ τεκνίαν ἐλλείπμενον κῦλα (αισχύνει γυναικός) ἐρέα ἐξορθεῖαν ὑπάρχει (σοφίαν). Cf. Ben Sira 30:8: ἰδρύει πᾶν κατανεῖται λόγος (παράνομος) δόκει γεγονός γνώσας πλῆρες (νοημον); 14:35: ἰδρύει τὴν δὲ καυτὸς ἐξορθοφέσα (νοημονов) λύειν τὸν κυρίον λήπτων (νοημονος) έφαλάταιν ἀτύμλαιν; 17:2: ιδρύει ὁμολογεῖ (νοημονος) δεσποτῶν (αισχρόνων) καυτὸς

father. In the latter case the use of \( \acute{a} \sigma \chi \upsilon \nu \eta \) would be incorrect, for this word describes a state of being, not a manner of behavior. One would expect instead \( \acute{a} \sigma \chi \mu \mu \sigma \sigma \upsilon \eta \), "ill behavior" or some similar word.

We believe that Josephus did indeed rely on a source for the phrase "on account of shame or witlessness" and that the source was a tannaitic commentary to Deut. 21:18 preserved in the Sifre.

Clearly, \( \eta \tau \upsilon \chi \zeta = \acute{a} \sigma \nu \nu \varepsilon \sigma \sigma \alpha \) in Josephus. The word \( \eta \tau \upsilon \chi \zeta \), we believe, Josephus understood to be a form of the Greek word \( \theta \epsilon \rho \mu \omega \) or \( \theta \epsilon \rho \omega \) or \( \theta \epsilon \mu \alpha \iota \nu \omega \), "to heat, to make hot." Perhaps he thought of the participle \( \theta \epsilon \rho \mu \omega \), understanding the subject to be the father who makes the son hot, i.e., blushing with shame. Or perhaps Josephus had in mind a passive participle \( \theta \epsilon \rho \omicron \mu \epsilon \nu \varepsilon \varsigma \varsigma \varsigma \), "one who is hot" (with shame, embarrassment) or a passive infinitive \( \theta \epsilon \mu \eta \varsigma \nu \alpha \), "to be

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1 For this reason Schalit's translation of Josephus' phrase is unacceptable. Schalit translates: \( \kappa \nu \sigma \tau \theta \iota \kappa \lambda \omega \delta \mu \nu \nu \zeta \varsigma \varsigma \kappa \nu \theta \iota \varepsilon \varsigma \varsigma \varsigma \varsigma \), and explains in his note that he did so in order to parallel the Hebrew term \( \eta \tau \upsilon \chi \zeta \). First, how is it possible to give \( \acute{a} \iota \alpha \delta \) (propter) + accusative a noncausal force? Secondly, Schalit's translation has destroyed the either - or parallel in Josephus thereby giving it no meaning (i.e., "he has rebelled either by means of shameful acts or because of witlessness"). Thirdly, the fact that Josephus has not provided a verbal parallel to \( \eta \tau \upsilon \chi \zeta \) means nothing; he often fails to do so. Where is the parallel to \( \nu \tau \omicron \omega \nu \nu \zeta \varsigma \varsigma \varsigma \)? What is the parallel to \( \acute{a} \sigma \nu \nu \varepsilon \sigma \sigma \alpha \)?

2 Henry G. Liddell and Robert Scott, A Greek-English Lexicon, 8th ed. (hereafter cited as LS), s.v. \( \acute{a} \sigma \chi \upsilon \nu \eta \). For the same reason Josephus could not have relied on the Greek text of Prov. 28:7, 29:15.

3 Cf. Ben Sira 30:13: "Discipline thy son and make his yoke heavy / lest in his ill behavior (\( \acute{a} \sigma \chi \mu \mu \sigma \sigma \upsilon \eta \)) he stumble."

4 Sifre Deut. 218 (p. 251).
What מזרים means in the Sifre (as opposed to what Josephus thought it meant) is problematical. Finkelstein, in his edition ad loc., has accepted Brüll's emendation "ןוֹז" which is not found in the MSS, which read מז垃. (The following statement in Sifre provides no clue, for it is out of place and should follow an interpretation of מז垃 as it does in Midrash Haggadah.)

We believe that מז垃 represents the Greek שזרו or a form of שזרו or שזרמו. There are two possibilities as to the meaning of the exegesis:

(a) שזרו (read in Sifre מז&quot;ו: ) - the son makes the father hot, i.e., angry. Note that for מז垃 מזרו the LXX has νῦς ὀμποδής καὶ ἔρειδος. The last word, meaning "quarrelsome," is from ἔρειδος, "to anger." Cf. Prov. 17:25: ἀυτὸν δὲ καὶ τὸν δικαίον ἐλεύθερον "A foolish son is an anger to his father, and bitterness to her who hath born him""); Ben Sira 3:16 (the section on honor due to parents): "And he who angers his mother is cursed of the Lord" (ἐπὶ μητρὸς ἀορτοῦ μητέρα αὐτοῦ. Syriac:  וּכְלָז בָּשׁוּם. Hebrew reversed: לְאָבָא לֹא וְהוֹדָד לְאָבָא הָגֵרָן); Amphis, Philadelph. 10 (cited in LS, s.v. שזרו) νεανίκον καὶ שזרו, "young and rash" (= מזרו מזרו, νέου in Josephus). The definition מזרו -- שזרו may involve a word-play on ζυγόν. Cf. Catullus' use of furor in poem 46, line 2; BT Ἔλι. 18a where ὧδ = ὀμπός (J. N. Epstein, היבב היבב היבב, Jerusalem: Magnes Press, 1960, p. 73); and the word-play in BT San. 103b: ἀνθρώπος - ἀγνώστος.

Perhaps also the use of "to heat up" to mean "to anger" can be seen in AJ 18.259: "ἐρεθισάτω." G. C. Richards and R. J. H. Shutt (Classical Quarterly, 33 (1939), p. 182) have conjectured ζερεθισάτω. However, ζερεθισάτω (from ζερό, "to heat up") would be more likely to produce ἀρθησάτω.

(b) שזרי מנסו, ζερησάτω - the son is flushed with the effects of wine, which is an indispensible part of rebellious son law (see further, p. 43, n.1). Cf. Euripides, Alcestis, 758: ἐκείνη δὲ ζερησάτω τὸν ἀυτὸν πόλεμον (quoted in LS, s.v. שזרו). The exegesis in this case may involve a play on מזרו - שזרו, "new wine boiled down" (cf. the discussion in BT San. 70a on the age of the wine required for the law of rebellious son).

Dr. Hoenig has expressed to me his doubt that מז垃 is any Greek word at all. He is of the opinion that it is a Hebrew word of the same order as מזרו, "deceitfulness," i.e., one who is deceitful (assuming a word-play: מזרו - מזרו). But (a) there is no such Hebrew word מזרו and (b) if there were it would anyway be written מזרו. The issue is not merely the spelling. (We would, anyway, prefer a Hebrew or Aramaic word based on the root מזרו, מזרו = "to throw, cast," cf. Ben Sira 30:8: מזרו מזרו מזרו מזרו.) Our point is that, in מזרו, we would rather see a known Greek word than make up a Hebrew word.
What exactly is the sin of the rebellious son? The Tannaim are very specific. Eating meat and drinking wine\(^1\) which one has stolen from one's father.\(^2\) This interpretation is based, of course, on מַעְלֵה. The reason given for the death penalty is that it is a preventive measure for the benefit of society and the individual himself.\(^3\) As specific as are the Tannaim so vague is Josephus: scorning parents, not honoring them, being insolent to them, scorning parental respect, acts of effrontery to a father, defiance of parents.\(^4\)

Josephus has combined two distinct sources here.

\(^1\)M. San. 8.2: מַעְלֵה מֵעַל כְּשֹׁרֶר יִהוּדָה עַד שַׁיָּם קָעָל וּוֹלֵי אוֹלֹדוֹת; Sifre Deut. 219-220, pp. 252-253 (= BT San. 72a).

\(^2\)M. San. 8.3: מַעְלֵה מֵעַל כְּשֹׁרֶר יִהוּדָה עַד שַׁיָּם קָעָל; PT San. 8.1, 26a. Stealing money with which to buy the meat and wine is a late tannaitic—early amoraic development. BT San. 71a: מַעְלֵה מֵעַל כְּשֹׁרֶר יִהוּדָה עַד שַׁיָּם קָעָל; PT San. 8.2, 26b: מַעְלֵה מֵעַל כְּשֹׁרֶר יִהוּדָה עַד שַׁיָּם קָעָל. The phrase in Sifre 218 (p. 251), does not refer to money but to the food, cf. Sifre 220 (p. 253).

\(^3\)Sifre Deut. 220 (p. 253) and parallels: מַעְלֵה מֵעַל כְּשֹׁרֶר יִהוּדָה עַד שַׁיָּם קָעָל; M. San. 8.5: מַעְלֵה מֵעַל כְּשֹׁרֶר יִהוּדָה עַד שַׁיָּם קָעָל. Philo also gives the same reason for the death penalty of him who dishonors his parents (Spec. Leg. 2.248): "He is the common and indeed national enemy of all. For who could find kindness from him who is not kind even to the authors of his life...." Similarly Dec. 110 and 112.

\(^4\)περιφρονωσι τους γονεις (260), την τιμην αυτοις μη νεμοσιν (260), εξωβρειγοντες εις αυτος (260), τιμης ολογραφιας (262), τους εις πατερας τολμησιν (262), κατα των γονων τολμησι (264). Cf. also AJ 16.98: πατης οικομουνουσι, a father undutifully treated; ibid., 100: ασεβειας, (filial) impiety; Ap. 2.206: ότιον ελλειποντα, any failure whatsoever (in honor to parents); ibid., 217: δικλιας, (doing) wrong; BJ 1.540: λοιθοριας δε και σκηδωματα και θβρεις, affronts, mockeries, insults.
Together with the law of the rebellious son he has brought the law of honoring parents. From the tannaitic sources on honoring parents Josephus has fashioned the parents' speech of admonition. The only specific sin mentioned by Josephus is that the children are not tending the parents' old age (261) which was a tannaitic law: "The obligations of a son to a father are to provide him food and drink, to dress him and cover him, to lead him in and out, to wash his face, hands, and feet."¹ This law is also mentioned in Ben Sira: "My son, help thy father in his old age /and forsake him not all the days of his life /And even if his understanding fail, be considerate with him /And dishonor him not all the days of his life."²

Josephus then adds a reason for the law of honoring parents:

¹T. Qid. 1.11; Sifra Qedoshim, parshah 1.10 (p. 87a); PT Pe’ah 1.1, 15c bottom; PT Qid. 1.7, 61b; BT Qid. 31b bottom; Mekh. RaSHBI 20.12 (p. 152): אַלּוֹן אֵלֶּה סְדָרִים שָׁלוֹם עִלּוֹן יִשָּׂרֵאֵל אֶלְּהֶם שִׂמְחוּ וְהוֹסִיף וּמִזְלַכְוּ אֶלְּהֶם בָּאָדָם הַמִּינְקָל הַתּוֹלֶשׁ שָׁלוֹם וּמִזְלַכְוּ אֶלְּהֶם בָּאָדָם הַמִּינְקָל. Josephus mentions that "it is a sacred duty (δοκούν εἰςαί) to do everything for a mother" in AJ 8.8, his own addition to the biblical account. PT Qid. 1.7, 61c top and PT Pe’ah 1.1, 15d (cf. Tosafoth s.v. בר ברו in BT Qid. 32a): כֶּֽםָרְפֵּאַי יִדּוּסָה יָדִיעָה אֵין לְיהוָה לְיָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָדִיעָה יָדִיעָה כָּל לְיָдִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיקוּ לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל לְכָל L

²Ben Sira 3:12-13. The translation is a combination of the Hebrew and the Greek: como יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה Y לשון כנפיי יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיעָה יָדִיאוּ מָלַכ לְכָל לְכָל לְכָל L

See Pesiqta Rabbati 23/24, p. 122b with Friedman's footnotes.

The Syriac agrees with the Hebrew but has ἀριστοὲς for ἄριστος. See also ibid., 16: "As a blasphemer is he that forsaketh his father," ὡς βλασφημοὶ ὁ ἐγκαταληπτὼν πατέρα (Hebrew: יִזְכִּרֵךְ אֶל הָיוֹם יִזְכִּרֵךְ; Syriac: ἀριστοὲς). Cf. Tobit 4:3 (MS S.): "And honor your mother; do not abandon her all the days of her life," καὶ τίμα τὴν μητέρα σου καὶ μὴ ἐγκαταληπτῆς αὐτὴν πάσας τὰς ἡμέρας τῆς ζωῆς αὐτῆς.
parents: the parents devoted much care to the child's upbringing, welfare, and training (261). The same connection is found in rabbinic literature where honoring parents is viewed as payment of a debt incurred through child rearing.\(^1\) Although this idea is stated clearly only in the amoraic period, the concept itself is much earlier. This is seen from Ben Sira: "How canst thou repay them for what they have done for thee?"\(^2\) and from Josephus himself in Contra Apion: The law hands over to be stoned "one who does not repay [Thackeray: respond] the benefits received from [one's parents]."\(^3\)

\(^1\) PT Pe'ah, ibid.; PT Qid. 1.7, 61b bottom: א""ר אגנול ה""מ א""ר דבד שורא כפוער' 'גנ' כניבר בר' למלע יעיב' יל' לכלעה' באזיכון. Pesiqta Rabbati, ibid., p. 121b, readsacional 7 in place of 121b. These passages must have escaped the notice of S. Belkin who claims that Josephus' idea of "not responding to benefits received" must have come from Philo (The Alexandrian Halakah in Apologetic Literature of the First Century C.E.; Philadelphia: Jewish Publication Society, n.d., pp. 55-56).

\(^2\) Ben Sira 7:28: καλ γα τι ἀνταποδώσεις αὐτοῖς καθὼς αὐτοὶ σει; no Hebrew; Syriac:  ו SETTINGS ("How can you repay them for having reared you?")


Belkin's theory (see note 1) is faulty for another reason as well. The dependency of Josephus on Philo--he claims--is seen from Ap. 2.206 and Hypothetica 358. Philo says there that one is punished for an act of impiety towards a father, mother, or benefactor (εὐεργέτην). Belkin believes that when Josephus said that "one who does not respond to the benefits received from parents is stoned" he drew on Philo. In fact, however, from these very passages we can see that there was no dependency at all. Philo's law extends beyond the parents to any benefactor. Josephus has nothing of the sort anywhere. In the latter the benefactors are the parents and beneficence is mentioned only as a reason for honor to parents, as we said above. Josephus elsewhere uses the same idea simply to make more prominent the obligation of respect to parents. In AJ 17.115-117 Nicolas denounces Antipater for his conduct.
Josephus (262): "God is also distressed at acts of effrontery to a father, since He is himself Father of the whole human race and regards himself as a partner in the indignity done to those who bear the same title as himself, when they obtain not from their children that which is their due." Tannaitic: "When one troubles one's parents God says: 'It is well that I did not reside with them, for had I done so these children would have troubled me.'"¹ This statement is based on the tannaitic proposition that God, father, and mother are partners in the creation of a child.² The connection made by Josephus between honoring parents and honoring God is also made by the Tannaim.³

towards his father. He says: "You not only plotted against your father but against a father who loved you and was your benefactor (εὑεργητῆς τοῦ) ... you used the venom of serpents against your nearest kin and your greatest benefactors (εὐεργῆτας)."

¹ BT Qid. 31a: תַּנֵּךְ תנה נְפָּה דָּרוּ בָּנָה בָּנָה שְׁאָדָה מָצָאָר אֵלָי לֹא רָאָא אָמָר חָטָאָתָו לֶא עֲשָׂה שֶׁלֶּא דָּרַשׁ בִּגְוֵי שָׁאָלָלָה דְּרָאָתָו.

² Mekh. RaSHBI 20:12 (p. 152); Sifra, ibid., (p.86b); BT Nid. 31a (and parallels): ההנה בֹּנָה שֵׁלֶׂשָׂה שְׁאָדָה שְׁאָדָה שְׁאָדָה שְׁאָדָה שְׁאָדָה שְׁאָדָה.

³ Mekh. RI, Bahodesh 8 (p. 231) and parallels: שִׁלֹּךְ בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה بָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה נְפָּה בָּנָה

The rabbinic parallels cited above are all from a source(s) dealing with honoring parents. Therefore, Josephus, in using this source does not bother with לְאָבָיָה לְאָחָיָה and therefore, also, he considers the law applicable to a daughter as well as a son (263); for, although the tannaitic law of rebellious son applies only to a son, that of honoring parents applies to all children. That Josephus combined the two regulations is clearly seen in Ap. 2.206 where, in discussing honor to parents he says that one who dishonors one's parents is stoned, the punishment of the rebellious son. Similarly, Targum Neofiti prescribes death to disrespectful children. In translating the biblical "For everyone whatever that curseth his father or his mother shall be put to death: his father or his mother hath he cursed, his blood shall be upon him," this Targum substitutes "makes light of the honor of his father or mother" for "curseth his father or mother." Philo also combined the two laws. When dealing with honor to parents and explaining what is to be done to disrespectful children, he says: "Fathers have the right to upbraid their children and admonish them severely and if they do not submit

1M. San. 8.1 and parallels: פְּאֹר רָפָא לָנוּ בֵּנֵי נָּתֵן בַּעַר ... מִתרֵיצָה. קָרַבְתָם. 2T. Qid. 1.11 and parallels: מַקְּחָא ... יִשְׁמַעְתָּ לְאָבֵיכֶם. קָרַבְתָם. 3In Ap. 2.217 Josephus says: "Mere intention of doing wrong to one's parents ... is followed by instant death" (פֶּרְיוּ מִנַּה גַּדְּדָה גִּנּוֹרָה ... אִם מֵאָכַלְתָּ תָּאֵצָה, אָפְּלָנִים אַפּוּלֲהוּ). 4Lev. 20:9: כִּי אֶאֶרֶץ אֹכַל בְּבֵן זָנוּרָה אֶת אֶבֶן בֶּן נָּתֵן וְהוֹדָה אָבֵיכֶם בַּעַר לִי, הַרְבִּיעָא לְאָבֶּהָא דָּבָרָא דָּבָרָא דָּבָרָא לְאָבֶּהָא דָּבָרָא לְאָבֶּהָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא דָּבָרָא
to threats conveyed in words (δι' ἀκοῆς) to beat and degrade them and put them in bonds. And further, if in the face of this they continue to rebel, and carried away by their incorrigible depravity refuse the yoke, the law permits the parents to extend the punishment to death...."¹

* * *

That parents, according to Josephus, have the authority of judges over their children is clear not only in our passage (260) but also in AJ 16.90-126, where Herod brings his sons to trial before Augustus Caesar. There in the speeches of Herod and Alexander, his son, which were composed by Josephus, we find that a father has the authority to punish his sons:

"He had not used his authority against them ... and had given up all his own rights as a father undutifully treated." "For having both the authority of a king and the authority of a father you might have punished the guilty."² The punishment

¹ Spec. Leg. 2.232. With the remainder of the passage in Philo, "... though here [by death] it requires more than the father alone or the mother alone. So great a penalty should be the sentence, not only of one of them but of both," cf. M. San. 8.4: οὐκ εἰσίν ἀνθρώπους ἐπὶ τῶν γινώσκων καὶ ἀμώμητων τὴν ἁμαρτίαν· ἔχοντες δὲ τοὺς ἄρχοντας, τοὺς δὲ τὸν νόμον ἄνευτα. We believe that Philo is also referring to the rebellious son law when he says that "spoiled" children end up τρωφην καὶ χλιδῆν ἐξηλωκότες καὶ θαυμάζοντες μὲν τὸν ὑγρόν βίον (ibid., 240). The last words may be translated "the drunkard's life" (= λυγρός), see LS s.v. ὕγρος II, 4.

² AJ 16.98: οὐδὲ ... ἴν εἰχεν ἐξουσίαν ταύτην καὶ αὐτῶν χρησάμενος ... καὶ παρελάβων αὐτὸν πάν ὅσον ἤ πατήρ ἀσεβοῦς· μενος ... δύναται. Ibid., 106: καὶ γὰρ ἔξεσάν, παροῦσας μὲν ἐξουσίας ὡς βασιλέα, παροῦσας δὲ ὡς πατρὶ, τοὺς ἀδικοῦντας ἐπεξιέναι. See also BJ 1.536: τὸν περὶ τῶν νυόν ἐξουσίαν.
referred to is death (106-107).

The same authority to kill one's sons is found in AJ 16.365 at the later trial of the sons of Herod in Berytus, where Josephus claims (in Herod's speech) such authority to be a law of his country: "Both by nature and by Caesar's grant he himself [Herod] had authority to act, but he added that there was also a law in his country that provided that if a man's parents, after accusing, placed their hands on his head, the bustanders were bound to stone him and to kill him in this way."¹

In our passage of the rebellious son, too, the authority is for execution. If the son does not harken to the admonition of the parents, "let him be led forth by their own hands ... and stoned to death" (264). It is as an explanation of this sentence in particular (of the entire rebellious son law in general) that Josephus said at the outset: "For (γάρ) they have the authority of judges over their sons" (260). This explanatory clause does not qualify what immediately precedes it ("let the parents orally admonish them"), since one need not have judicial authority for oral admonition.²

¹ καὶ τῇ φύσει καὶ τῇ καίσαρος δόσει τὴν ἐξουσίαν αὐτὸς ἔχοι, προσέθηκεν αὐτῷ καὶ πάτριον νόμον κελεύειν, εἰ τοῦ κατηγοροῦντες οἱ γονεὶς ἐπιθύμησεν τῇ κεφαλῇ τὰς χεῖρας, ἐπιδιογεγυγκές εἶναι τοῖς περιστότεροις βάλλειν καὶ τούτον ἀποκτείνειν τὸν τρόπον. "φύσις" is more apt to apply to Herod, the father, than to Herod, the king. See also BJ 1.454: τῷ πατρὶ κτείνειν αὐτοῦς ἔστιν.

² Cf. Abaye's emendation of our Mishnah (BT San. 71b) to read: נשיᇰabinet דובכב דארכנים יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינשכיכ יינш
words, there is no intervention of a trial by court and, as pointed out by others, that is contrary to tannaitic law.\(^1\)

According to a tannaitic statement, "there never was and never will be a case of the rebellious son."\(^2\) It is indeed true that R. Jonathan (second quarter of the second century) gave an eye-witness account to the contrary.\(^3\) However, R. Jonathan makes a similar rejoinder to the statement that there never was and never will be a case of an idolatrous city.\(^4\)

Now first, there is no evidence that at R. Jonathan's time idolatry was so wide spread as to engage the attention of an entire city; and secondly, even were that possible, the Jews then did not have the authority to destroy such a city. Therefore, R. Jonathan's first statement is also suspect.

Nevertheless, he did make the statement based on an eye-witness account. The matter is further complicated by the fact that the statement: "There never was and never will be a

believes that Abaye does not mean to emend the mishnaic text.) Incidentally, Philo (Spec. Leg. 2.232) interprets the Bible as do the Tannaim, dividing the admonition into two stages, first verbal and then by beating.

\(^1\) Thackeray in his note ad loc. and Duschak, p. 66 (who also points out the lack of flagellation, the addition of the daughter, and the crime of him who does not honor his parents as opposed to the tannaitic son who engages in gluttony).

M. San. 8.4: יתמר ותלשלל לו כורות יתימים לשון; ibid., 1.4: יכין נפשות ובשורים לשון; T. San. 11.7 MS Vienna and printed editions. Philo, as Josephus, mentions no court (Spec. Leg. 2.232).

\(^2\) T. San. 11.6: מני כסירה ומרורה ולא חיה ולא חתית לה HID; BT San. 71a quotes this and another similar baraita in the name of R. Shimon.

\(^3\) BT ibid.: אמר רבא יን.xן אדי ראיתו ויסבחת על קברת.

case of a leprous house"¹ is refuted by two eye-witness accounts.² Perhaps as regards the rebellious son we may say that R. Jonathan did indeed see an execution of one such; however, it was a rare occurrence and was committed by the father alone without recourse to any court. Were it a courtroom case, it is unlikely that the Tosefta would state point-blank: "There never was and never will be a case of the rebellious son." The tannaitic law, in demanding a trial, is then, by its own admission, describing a purely theoretical instance while the statements of Josephus and R. Jonathan are based on reality.

* * *

The same distinction between theory and reality can similarly be made for the first part of this law, the chastisement, since the Tosefta says that the law in its entirety "never was." Thus Josephus' oral admonition does not conflict with the tannaitic chastisement by flagellation, which is by nature part of a judicial proceeding.³

* * *

In summary, then, the law of rebellious son in Josephus is concerned with one who does not honor his parents and it

¹Ibid. (= T. Neg. 6.1): יִנַּה יִנַּה לָא עַל הַיֵּרָד לָהֵיولا.
²Ibid.
³Sifre Deut. 218 (p. 252): רַבָּה אַתָּה בְּעַבְדֵּךְ ... נַהֲלַת מְנָלַת מְנָלַת; M. San. 1.2: מִכְּהָה בִּשְׁלֵש שֵׁלֶש שֵׁלֶש מִכְּהָה; ibid., 8.4: בַּת בַּת בַּת בַּת בַּת בַּת בַּת בַּת. Targum Neofiti also has simply רַבָּה הוּא שֵׁלֶש שֵׁלֶש שֵׁלֶש הוּא (to which there is a marginal note which, although unclear, seems to read: יִנַּה יִנַּה).
was practiced to the extent of parental admonition and execution without the courts. Indeed, Josephus says as much with the emphatic **αὐτός** (AJ 16.365) and with **αὐτάρκειας** (4.260) which means that the parents admonish and execute independent of a court, for they are the court, **αὐτάρκειας γὰρ ἐστὶν** οὗτοι δίκαιοι.

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1 Cf. BT San. 88a-b (and parallels): η δὲ ἀνατιθήματι ἂν ἐπιτιθήσεται ἀνθρωπίνης κύριως ἁμαρτίας ἡμῶν ... **ἔργον τούτον καὶ παραταχθήναι** ἀρκετόν. (Cf. AJ 14.167 and BJ 1.209.) It has been suggested to me by Prof. Zeitlin that Josephus is not recording a no longer extant halakah or custom; rather, he is simply following the LXX translation of the two verses regarding cursing parents (Ex. 21:17 and Lev. 20:9) which read (δακολογίων (Ex. 21:16 in LXX) and δεκακαῦς εἰπε). Josephus may well have had these verses in mind when discussing in general terms respect to parents. (Similarly, Targum Neofiti translates all these verses dealing with parents as having to do with their honor. Ex. 2:12: **κρατεῖ γὰρ τὴν ἱλαρότητα τῶν γονέων ... ἐπιθύμησα [a marginal note has κρατεῖ to correspond to ἱλαρότητα]; Lev. 20:9: οὐ ... ἡμῖν ἀρκετὸν γὰρ ἁμαρτίας ἐπιθύμησα; Deut. 27:16: **κρατεῖ γὰρ τὴν ἱλαρότητα [on ἁμαρτίας ἐπιθύμησα it is literal.]) However, that they were his source, either in the Hebrew or the Greek, is disproved by the fact that nowhere does Josephus talk of a verbal insult as he does elsewhere. For example, just as in the story of David and Nabal, Josephus describes the insult as being verbal, προσεβλασφημαίς (AJ 6.300; LXX has innocuously ἔδραμεν ἀπ' αὐτῶν for φησὶν σοι) or ἐξεσθείσαν λοιποιαῖς to describe Mariamme's abuse of Herod's mother and sister in BJ 1.438, he could well have added a verbal description to ἐξεσθείσανες here (AJ 4.260). (Incidentally, with the LXX κακός εἰπε above cf. AJ 6.299: προσεβλασφημαίς καὶ κακός εἶπε.) Josephus' source was not the biblical verses but life itself (or a non-extant extra-biblical source), the same source that served Targum Neofiti.

Weyl (Strafgesetze, p. 46) attributes the lack of trial in Josephus to the latter's understanding of the biblical passage regarding the rebellious son which does not explicitly mention a trial. Weyl overlooked AJ 16.365 where the father's authority to have his son killed without a trial is said to be a law of Judaea. This oversight by Weyl also caused him to say (p. 47): "Dass der Sohn von der Stadtleuten gesteinigt wird, sagt zwar Josephus nicht ausdrücklich." AJ 16.365, indeed, says just that.
Now that we are aware that death was administered to disrespectful children we can understand Mark 7:9-13 (and Matthew 15:3-6). Jesus denounces the Pharisees for in effect rejecting God's commandment in order to keep tradition. "Moses said 'Honor your father and mother' and 'He who curses (κακολογῶν) his father or mother shall die.' But you say 'If a man says to his father or mother "Korban—that is a gift—in regard to whatever you profit by me" [he shall die]; i.e. he vows not to give his parents anything]. You no longer allow him to do anything in regard to his parents." Jesus is saying that whereas the Bible demanded death for him who curses his parents, the Pharisees demand it even for any mark of disrespect including not tending to their needs.1

1 Cf. Ap. 2.206: "For the slightest failure in his duty towards them." B. Revel had hinted at this interpretation of Mark and Matthew ("Inquiry into the Sources of Karaite Halakah," JQR 3, no. 3, 1913, p. 373, n. 96). Cf. M. Sulzberger, "The Polity of the Ancient Hebrews," JQR 3, no. 1 (1912), p. 51, who makes this point on philological grounds: "By ancient Hebrew law insulting parents was probably punished with death, 'condemned to death (arur) shall be he who degrades (or insults) his father or mother' (Deut. 27:16)." B. Revel comments on this point (JQR 3, no. 2, 1912, p. 315) that this is how Josephus interpreted ῥώμα and, therefore Josephus prescribes the death penalty for insulting parents. He also explains thereby Josephus’ death sentence for a judge who takes bribes (Ap. 2.207), since Deut. 27:25 has: ῥώμα ἐκ χιλίων ῥωμῶν. Revel’s theory, however, is disproved by the fact that Josephus does not mention a death penalty for him who removes boundary-marks (AJ 4.225) although Deut. 27:17 reads: ῥώμα ἐκ χιλίων λέιβα, and for him who leads the blind astray (AJ 4.276;
To sum up, *AJ* 4.260-264 has the following in common with the Bible. A rebellious son who, although chastised by his parents, continues in his rebelliousness is led by his parents to be stoned by the multitude. On the other hand, the passage in Josephus is marked by additions and contradictions to and deletions from the biblical account. All these deviations from the Bible are paralleled in tannaitic sources dealing with the rebellious son or with honor to parents, in Ben Sira, in Philo, in the New Testament, or in Targum Neofiti. Josephus' reason for the rebelliousness is paralleled in the Sifre. Josephus describes the rebellious son vaguely as not honoring the parents; specifically as not tending to the parents old age—a tannaitic law. The reason for honoring parents is found in Ben Sira and in amoraic literature. The connection made by Josephus between God and parents is an idea found in tannaitic exegeses. Honoring parents in Josephus and in tannaitic literature is obligatory upon son and daughter. Josephus does not mention a trial by court; he says the parents have the authority of judges. The tannaitic statement that there never was a case of a rebellious son refers to a

Deut. 27:18: אָרַיְרִי מְשַׁגַּה עָרֵר (וּלְעַיְפֹּ֣ר בְּ֚חַלְחָלִּֽים).

On gorbān meaning a vow see S. Zeitlin, "Korban," *JQR* 53, no. 2 (1962), pp. 160-161 and "Korban: A Gift," *JQR* 59, no. 2 (1968), pp. 133-134. Zeitlin erred in his interpretation of Mark, having been misled by the English translation "whatever you profit by me he shall be free." The last four words are not in the Greek text. Clearly, the apodosis to be supplied is "he shall die" paralleling the "he shall die" of Moses.

formal trial and, therefore, does not contradict Josephus. The second-century tannaitic witness to the execution of a rebellious son refers to an execution by the parents outside the courts. The law that disrespectful children are executed is found in Philo, Mark, and Targum Neofiti. Therefore, the combining of the laws of rebellious son and honor to parents was not Josephus' own innovation, for this combining is the reason (or rationalization) for administering death to disrespectful children, a punishment found in sources contemporaneous with Josephus.

* * *

Josephus says that after the rebellious son is stoned to death he remains exposed throughout the day and then he is buried at night. This exposure and burial is not found in Deut. 21:18-21 which deals with the rebellious son. Did Josephus derive his statement from the following two verses in Deuteronomy which require any sinner who has been executed and then hung on a tree to be buried before nightfall? Were these verses the source for the continuation in Josephus (265) which deals with the burial of all executed criminals? Before we can answer these questions we must first deal with the treatment of convicted criminals in Josephus and in tannaitic literature.
CHAPTER III

EXECUTION AND BURIAL OF CRIMINALS

AJ 5.44 (an addition to Josh. 7:25--Achan’s execution)

καὶ οὗτος μὲν εὐθὺς ἀναρεθεὶς ἐν νυκτὶ ταφῆς ἄτιμον καὶ καταδίκως πρεποῦσης τυγχάνει.

He was straightway put to death and at nightfall was given the ignominious burial proper to the condemned.

AJ 4.202

Ὁ δὲ βλασφημήσας θεὸν καταλευθείς κρεμάσθω δι’ ἡμέρας καὶ ἄτιμως καὶ ἀφανῶς δαπτέσθω

Let him that blasphemeth God he stoned then hung for a day, and buried ignominiously and in obscurity.

AJ 4.264-265

καταλευθέντως καὶ μείνας δι’ ὀλίγης τῆς ἡμέρας εἰς θέαν τὴν ἀπάντων δαπτέσθω νυκτός. οὕτως δὲ καὶ οἱ ὀπωσοῦν ὑπὸ τῶν νόμων ἀναρεθήναι κατακριθέντες. δαπτέσθωσαν δὲ καὶ οἱ πολέμιοι καὶ νεκρὸς μηδὲ εἰς ἅμωρος γῆς2 κείσῳ περατίερον τὸν δικαίου τιμωρίαν ἐκτίνων.

Let [the rebellious son] be stoned1 and after remaining for the whole day exposed to the general view let him be buried at night. Thus shall it be too with all who howsoever are condemned by the laws to be put to death. Let burial be given even to your enemies; and let not a corpse be left without its portion of earth, paying more than its just penalty.

1The Latin adds: "lignoque suspensus" (Benedictus Niese, ed., Flavii Iosephi Opera, Berlin, 1887-1895; hereafter cited as Niese), "Let him be stoned to death, and after being hung from a plank (or, tree) and remaining...."

2Thackeray calls attention to this phrase. Cf. also AJ 8.240.
AJ 16.394 (after the execution of Herod's sons, Alexander and Aristobulus)

τὰ δὲ σώματα νῦκτωρ εἰς Ἀλεξάνδρειον ἀπέδευνε τοῦ τέ μητροπάτορος ἐκεῖ καὶ τῶν πλείστων αὐτοῖς προγόνων κειμένων.

During the night their bodies were laid away in Alexandria where their maternal grandfather and most of their ancestors were buried.

BJ 3.377

τοὺς γοῦν ἀναιροῦντας ἐκουτοῦς παρὰ μὲν ἡμῖν μέχρις ἡλίου δύσεως ἀτάφως ἐκρίθησαν ἔκριναν.

With us it is ordained that the body of a suicide should be exposed unburied until sunset.

BJ 4.317 (Jews are so careful about funeral rites that)

καὶ τοὺς ἐκ καταδίκης ἀνεσταυρωμένους πρὸ δύντως ἡλίου καθελεῖν τε καὶ θάπτειν.

even malefactors who have been sentenced to crucifixion are taken down and buried before sunset.

Lev. 24:14-16

Lead forth the blasphemer to without the camp; and all that have heard him shall lay their hands upon his head; and all the congregation shall stone him. And unto the children of Israel shalt thou speak saying, Whatever man that blasphemeth his God shall bear his sin. But he that pronounced the name of the Lord (with blasphemy) shall be put to death, all the congregation shall stone him; be he a stranger or be he one that is born in the land, when he pronounceth the (holy) Name (with blasphemy,) he shall be put to death.2

1 Saul Lieberman ("Some Aspects of After Life in Early Rabbinic Literature," Harry A. Wolfson Jubilee Volume, Jerusalem: American Academy for Jewish Research, 1965 [hereafter cited as After Life]; vol. 2, p. 516, n. 20) has already shown the similarity of expression between ὁ ἀναιροῦν ἑαυτὸν (ἐκ προσονας) and the rabbinic term for suicide: (νυξίζον) ἔμφασις.

2 ת妥协 את התמקהל אל מחוץ למחנה וסכנין כל שנ흑מים בה דים על ראשה ומהגרחר על העדה. יהא בנים ישראל חרב לאום איש איש כה כולם אלהים ובשה תוחנן. ודוקה ש ש, מוטת דמתו רוגם equivalent or כולם והחשמור כארבע הזמן שים יומת.
Deut. 21:21-23

And all the men of his city shall stone him [the rebellious son] with stones that he die; and thou shalt put away the evil from the midst of thee; and all Israel shall hear, and be afraid. And if a man have committed a sin for which there is a punishment of death, and he be to be [sic] put to death, and thou hang him on a tree, but thou shalt surely bury him on that day; (for he that is hanged is a dishonor of God;)

The problem in AJ 4.264-265 is complex: (a) The Bible does not require the rebellious son to be exposed. Whence Josephus' statement? (b) "Thus shall it be"—what is "it"? exposure? night burial? or simply burial, since Josephus continues, "Let burial be given even to your enemies...."? (c) Does the Latin preserve the correct reading? (d) Burial of enemies is not mentioned in the Bible. (e) "Let not ... penalty"—what was Josephus' source?

If we seek an answer in halakhic material the matter becomes more complex, for (a) there is no "remaining" without hanging; (b) but hanging is not required for the rebellious son.2

Weyl sought to alleviate these problems by suggesting that Josephus is here preserving a law unparalleled in halakhah; namely, that the executed criminal remained unburied until evening.3 Josephus mentions this law one other

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2 Annotating the text, Weyl comments: "If, however, the executed criminal remains unburied, then, unless the body is hung, the bodies of the enemies are not punished. If the executed criminal is hanged, then the enemies are punished. If the executed criminal is buried, then the enemies of the executed criminal are punished."

2 Weyl, "Halaqhah, p. 48.

3 Strafgesetze, p. 48.
time—in the case of the suicide (BJ 3.377). We intend to show that Weyl's theory (which he advanced without substantiation) is quite plausible because: (a) the concept of exposure for the executed criminal does not conflict with tannaitic views regarding treatment of a corpse; (b) there is reason for such a practice; (c) traces of the practice itself are to be found in rabbinic literature; (d) there is good reason why the Latin may be an interpolation.

According to Josephus it was considered a dishonor to the corpse to deny it burial, such treatment being viewed as terrible. Jews would risk their lives if it meant providing burial for a corpse. Indeed, the law demanded that "we must... not leave a corpse unburied." Such care for burial extended as well to the executed criminal (AJ 4.264-265; BJ 4.317)

1AJ 13.403: καθυβρίζειν ἀταφία

2AJ 6.375: δεινὸν ἔγκυσμενοι περιϊδεῖν ἄθιδεύτους (an addition to the biblical narrative); BJ 4.317: a great "impiety (ἁσαβεία)"; ibid., 382-383: "To deny burial is to annul the laws of nature; it is an outrage (ἀδίκημα) upon humanity and a pollution (συμπάνω) of the Deity." Cf. ibid., 360: Niger, the Peraean had only one request of the Zealots before his execution—burial (περὶ ταφῆς θέτευεν). Cf. ibid., 332: When the Zealots refused to allow burial, relatives of the deceased would steal out at night and throw some earth upon the bodies. Cf. also ibid., 5.33.

3BJ 4.331-332: "None dared openly ... bury a deceased relative ... though some venturous persons did this [throw some dirt over the bodies] by day," even though "for burying a relative ... the penalty was death " (ibid., 383).

and to the enemy slain in war. 1

Each of the above statements is paralleled in other Jewish sources. Throughout the Bible we find nonburial viewed as a terrible disgrace. 2 Tobit risked his life providing burial 3 as did those who stole R. Akiba's body. 4 Indeed, the tannaitic law of meth mizwah enjoins one not to leave a corpse unburied when it is found to be unattended. 5 Although the executed criminal is denied funeral rites, he is not denied burial. 6 From the Bible we see that the Jews would bury the


3Tobit 1:17-19; 2:4-8.


5M. Nazir 7.1: הכח גדולים ובדרי אלוגי פוגשים בקורבנות אש bile מזמות ולבת הזרה [сетים] למות מחוזק וברכוז; Sifra, Emor, introduction, 3 (p. 93b): מזמה והזרה [сетим] למות מחוזק; Sifre Num. 26 (p. 32): לא狒י במורה איננו [םערך] שמות אלא למות מחוזק והזרה [сетים] למות מחוזק; So also Philo, Hypothetica, 358: "He must not debar dead bodies from burial but throw upon them as much earth as piety demands."

slain enemy. ¹

The tannaitic objection to nonburial included not merely permanent exposure of the corpse but any unnecessary exposure. The Bible (Deut. 21:23) prohibits the exposure of an executed criminal overnight. The Tannaim broadened this prohibition into a general statement: "Whoever lets his dead lie unburied overnight violates a negative command." ² Generally speaking, the sooner the burial the better. ³

According to the halakhah an executed criminal was not buried in his family tomb. The court had a special cemetery for his burial. However, "after his flesh had wasted away," the bones were gathered and reburied in the family tomb. ⁴ The reason given for this is that "the pious and wicked are not to be buried side by side." ⁵ After the flesh has deteriorated the criminal's sins have been expiated, he is no longer considered wicked, and he may be reburied with the

¹ Kings 11:15: יִלַּשֵׁן נָשִׁים לְטַבַּעַת הַיָּﺒָדְרָה. See also Josh. 8:29, 10:27 and cf. Ezek. 39:12-15. Cf. also T. Git. 5.5: יָפָר בְּרוֹאֵב כִּי מִתְכַּנֵּשׁ.

² M. San. 6.5: יִבְּרָא כַּל גְּדוֹלָה וּגְדוֹלָה כָּל הַשׁוֹעָה. Cf. Sem. 11.1: יִבְּרָא כַּל הַשׁוֹעָה כְּלָל הַשׁוֹעָה. Cf. also T. Neg., 6.1 where Jerusalem is singled out as a place where the corpse may not be left overnight.

³ BT MK 22a; PT MK 3.8, 83d; Sem. 9.9: יִבְּרָא כַּל מַגֵּשָׁה מַגְּשָׁה מַגְּשָׁה מַגְּשָׁה. Cf. also Midrash Haggadol, Num. 20:1 (p. 360) and parallels.

⁴ M. San. 6.5: וַאֲלֵה הַיָּאִיר קְוָרְטָא בָּקַר קְוָרְטָא אֶתְוַעְיוֹן אֵלָא שְׁנֵי בֵּית קְוָרְטָא זְרוֹעַ וְזַעְרָאָה בַּיָּאִיר קְוָרְטָא מְתַהֲקַם מְתַהֲקַם זָרַע לְיָאִיר קְוָרְטָא יָאִיר לְיָאִיר קְוָרְטָא אֵלָא שְׁנֵי בֵּית קְוָרְטָא מְתַהֲקַם.

⁵ BT San. 47a: מַגְּשָׁה כְּלָל מַגְּשָׁה בֵּית קְוָרְטָא כְּלָל מַגְּשָׁה בֵּית קְוָרְטָא כְּלָל מַגְּשָׁה בֵּית קְוָרְטָא כְּלָל מַגְּשָׁה.
Now, to the tannaitic mind any disgrace to the dead man, including nonburial (which we have seen to be a disgrace), helps to expiate his former sins: "R. Nathan (second half of the second century) said that it is a good sign if one is punished after his death. If one dies without a eulogy (or, mourning) or without burial ... it is a good sign." It is a good sign, for it signifies expiation of sins.

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1 PT San. 6.12, 23d: חניך[..., מקדיש ומקף], תארכו את הימים של המנוחה, ויתן לו את הרקמותיו למיתוג, תשכירו את מביתו, תتعريفו את הנכד, ת derpיה הולך אבן ההוט..., לברך א薅ו פלא נפשו. (Rashi on the Mishnah, ibid., 46a: התעמל ובעבורו מעשה נפשו, וגו). Expiation after death is already found in II Macc. 12:43-45.

2 Cf. also Sem. 11.1: הבשץ והבליא על תוכן, הלמידה, יש גם את מריצים לא הלמידה.

3 Sifre Num., 112 end (pp. 121-122) = BT San. 47a: כְּקָנֶה אֶת מַסְמִי שָׁוָא הַהוּא לְאָדוֹן שְׁפֹרֵי עַלְמֵיהֶם מַגְּלִים לְאָדוֹן נָפָס בִּלְבָבוֹ,... וְלֹא קָנֶה. See also M. Higgar's edition of Sema'oth (New York: Bloch, 1931; hereafter cited as Higger, Sem.) p. 252; Tosafoth, San: 46b, s.v. הַגֵּרָא הַאֵילֵא (...). Did this concept of nonburial = expiation inadvertently creep into Josephus' paraphrase of the Bible? Solomon orders the execution of Joab and says (I Kings 2:31-32): סְאָמַר שָׁוָא הַהוּא לְאָדוֹן שְׁפֹרֵי עַלְמֵיהֶם מַגְּלִים לְאָדוֹן נָפָס בִּלְבָבוֹ,... וְלֹא קָנֶה. While the LXX is literal here, Josephus paraphrases thus (AJ 8.15): προσέταξεν ὁ Σολομῶν ἐκεῖ τὴν κεφαλήν αὐτοῦ ἀποτελεῖν, καθὼς βουλεύεται, καὶ τάχυν λαβεῖν τὴν δίκην ὑπὲρ τῶν δύο στρατηγῶν, οὗς ἐν Ἰωάβος ἀνασώκως ἀπεκτείνει, ὡς εἰ δ' αὐτοῦ τὸ σῶμα, ὡς τα μὲν ἀμαρτήματα ἀμφάποτε καταλείπῃ τὸ γένος τὸ ἐκείνου.... The Greek here is nicely structured: there are two parts to Solomon's order (ἀποτελεῖν and ἡμέρας) each followed by a qualifying clause, the second of which is telic (perhaps the first too). Now, if ἡμέρας in the second part of the order has an adversative force, we translate thus: "Solomon ordered his head to be cut off there, as he wished (this being the penalty exacted for the two generals whom he had impiously slain), but his body to be
It would, therefore, not surprise us if we find that executed criminals were deliberately left unburied for specific periods of time for expiatory purposes. The Midrash tells the story of a brigand who, after his death, was treated thus: He was disgraced, cast out, for three days; his corpse was not put into a coffin; it was dragged to the grave by ropes. 1

Again, we are told that the son of R. Hanina ben Teradyon became a criminal and was later found killed. After three days he was put on a type of bier and brought into the city. 2

In other words, had he not been buried, his sins would have been expiated.

Apparently the thought process was similar in Sifre Num., ibid. Discussing the words חָטָא (Num. 15:31) R. Ishmael says that this particular sin remains with the sinner although other sins are passed on to his future generations. R. Nathan disagrees with this interpretation of חָטָא (i.e., this sin too is passed on to future generations). Rather, these words tell you that the sin remains after death (and would pass on) unless the corpse is disgraced (e.g., by nonburial), for disgrace signifies expiation.

1Koheleth Rabbah 1.15: מַגְוֹלֵל הַיִּסָּה לְאָם מִתְקַיֶּם שֵׁלֶשׁ הַנְּאָרָה לְאָם תְּכוֹנָה וּנְבָנֵי נְבוֹאָה וְגוֹרָה לְפֹּקֵד. This source does not have "cast out"; it has been added from the parallel in Ruth Rabbah 3.4: מַגְוֹלֵל הַיִּסָּה לְאָם מִתְקַיֶּם שֵׁלֶשׁ הַנְּאָרָה לְאָם תְּכוֹנָה וּנְבָנֵי נְבוֹאָה.

A. Büchler, "L'enterrement des Criminels" in REJ 46 (1903), pp. 77-78, thinks that for these three days the criminal was buried (and then disinterred, dragged, and reburied) since otherwise would be contrary to biblical law, Deut. 21:23. The Bible, however, only says that the executed shall not remain exposed overnight on the tree. This same mistake was made in Koheleth Rabbah and therefore the word חָטָא was deleted. There is no reason why the word would have been added if the original reading did not have it. Furthermore, the word חָטָא = (ἁτάουςı) ἐκοιμήθη used by Josephus to describe the exposure of the suicide (BJ 3.377) and = (ἁτάουςı) ἐθάνατο to describe the exposure of unburied Jews during the war (BJ 4.317). Cf. also Jer. 22:19: קֵנָבְתוֹת חֹר הָאָט הָנְשָׁל.

2Ekhah Rabbah 3.16 (variant reading in ed. Buber); Sem. 12.13; Midrash Haggadot, Gen. 23:2: וַתְּכַזְּבּוּ נִבְנֵי הָאֵלֶּה לָיָן הַכְּנַפָּה לְכָנָּפָה לִשְׁמוֹת הַמַּרְגּוֹת וּלְמַעַת תְּפִימוֹת נָזַר הַנְּאָרָה שְׁלֹשׁ נְבָנֵי נְבוֹאָה וְגוֹרָה לְפֹּקֵד (the reading is that of Semaḥoth).
"Exposing the corpses of the executed criminals was practiced by several nations in hoary antiquity."¹ Therefore, if Josephus mentions this practice of exposure for the executed criminal, it should not surprise us.

To be sure, the exposure mentioned by Josephus lasts one day while that in the Midrash lasts three. However, this is not a major difficulty, for a statement in Semahoth (unparalleled in talmudic sources) reads: "One may go to the cemetery to visit the dead up to three days [after the death] and not worry about it being 'heathen practice.' It once happened that they checked on a man who then went on to live twenty-five years...."² It was a custom to leave the tomb unsealed for three days to make sure that a live person had not been buried.³

¹Lieberman, After Life, p. 520, n. 41; see p. 518, n. 32. This fact plus the three day period in both midrashic stories shows that this time period was deliberately observed. We, therefore, cannot hold with Higger, Sem. 12.13, followed by D. Zlotnick (The Tractate "Mourning," Yale Judaica Series, vol. 17) who punctuates the text to read "after three days they found him," .... נמצאה תותח לחר השתיות传媒 הרגonda. Rather, read: .... נמצאת תותח לחר השתיות传媒 הרגonda and understand as Büchler, op. cit., p. 85: "c'était évidemment un outrage infligé intentionnellement à la dépouille mortelle."

²Sem. 8.1:iram נלכדת הקברות ופוקדיה על התתים עד שלש ימים ולאויר והשלום מושם הובך המוביל מעשה שפקדו אדם רוחה עשרים .... ב' שומרי. Higger, ad loc., accepts a different reading but see J. N. Epstein, הובקי תלונות ליום, pp. 469-471 who finds in M. Yeb. 16.3 a hint of this practice.

³Cf. Higger, Sem., p. 78. Similarly in Plato: "And as to the laying-out of the corpse, first, it shall remain in the house only for such a time as is required to prove that the man is not merely in a faint, but really dead; and accordingly, in a normal case, the third will be the proper day for the carrying out to burial" (Laws, 12.959, Loeb ed. p. 531). Cf. also Mark 8:31 where Jesus says that he will rise again μετὰ τρεῖς ἡμέρας; so too Matt. 27:63. (But Matt. 20:19, Luke 18:33, and 24:7 have τῇ τροιτῇ ἡμέρᾳ. Matt. 16:21, 17:23, Mark 9:31, 10:34, Luke 9:22 have either reading depending on the MS.)
This practice, of course, would involve all dead people and not just criminals. Clearly, this practice recorded in Semahoth is not the same as exposure. In the former the body was put in a place of burial although the tomb remained unsealed; in the latter it was denied burial altogether for the remainder of the day. Furthermore, the midrashic account makes it clear that the nonburial was part of the various disgraces inflicted upon the corpse. However, the time period of three days mentioned in the Midrash may have been influenced by the practice recorded in Semahoth. Nevertheless, whether or not exposure was practiced at first for one day (as in Josephus) and then extended to three days (as in the Midrash) due to the influence of a similar practice (Semahoth), the fact remains that exposure of an executed criminal is mentioned in the Midrash.

To be sure, the halakhah does not mention this practice of exposure. Nevertheless, we see that the apparent idea behind the exposure (i.e., expiation) is found imbedded in other halakhoth (e.g., double burial) and, moreover, we find it practiced in two different midrashic accounts, one of which ('Ekhah Rabbah) is considered of early composition. The story in this latter Midrash dates from the middle of the second century.¹

¹R. Ḥanina ben Teradyon was R. Meir's father-in-law. R. Ḥanina's son, then, would have lived during the Usha period.

The fact that exposure brings about expiation explains two tannaitic statements: (1) R. Elazar ben Zadok (second century) relates that his father asked to be buried at first in a נַפְּסָה and then, after decomposition of the body, to have the bones collected and deposited in a נַפְּסָה (Sem. 12.9; for a discussion on the meaning of these two words see...
Since this practice is not mentioned in the Bible but hanging is, and since this latter punishment is mentioned directly after the law of rebellious son, it is quite understandable that a later copyist would add "lignoque suspensus" to Josephus' account of the rebellious son; whereas, there would be no reason for deletion were the words originally there.

We conclude from the foregoing discussion that at the time of Josephus executed criminals were left exposed (but not hung) throughout the day.

* * *

Josephus says that blasphemers are stoned and hung (AJ 4.202). This is the only transgression for which Josephus prescribes hanging. The sole biblical source for the stoning of a blasphemer is Lev. 24:14-16 and therefore, if Josephus relied on the Bible these verses must have been his source.

Yet, hanging for a blasphemer is not mentioned in these verses.

S. Lieberman, Tosefta Ki-fshutah [New York: Jewish Theological Seminary of America, 1955- ; hereafter cited as TK] to MK 1.9, p. 1235). (2) R. Jose (middle of the second century) expressed the wish that his fate might be to die without burial or eulogy (or, mourning) for expiatory purposes (Midrash Haggadol, Gen. 44:12: לעור אתandelier כות יתלפי העשה{l הלא כשן יבנברע; most of the passage is found in BT Shab. 118b --this statement is not).

These two statements do not refer to having the corpse thrown out in a field. As with executed criminals, they refer to a double burial the first step of which was in a בור (see BT San. 6.12, 23d). Now, Lieberman (ibid.) has shown that this בור (so too הגיון and הוגה) was a place of temporary burial whereas the permanent place of burial was the קבר. In the latter were placed either bones or caskets; in the former, the corpse without a casket. In other words, the temporary burial of criminals or pious men was a type of exposure. See also Lieberman, After Life, p. 530.
nor anywhere else in the Bible. Weill, followed by Thackeray, claims that Josephus here agrees with tradition "qui restreint au blasphémateur le supplice de la lapidation suivie de penda­ison." This is incorrect, for according to tradition the idol worshipper also receives such a double penalty.

The punishment of hanging is only mentioned in Deut. 21:22-23, where it is not connected with a specific trans­gression. However, the Tannaim contemporaneous with Josephus applied the verses to a blasphemer, based on the words כ כולה אללהים חולר, and thence to similar transgressions. What sin was similar to that of the blasphemer was a matter of dispute. All the Tannaim agree, however, that the blasphemer is hung and that Deut. 21:22-23 refers to a blasphemer. Therefore, Josephus, if he knew this halakah, certainly knew only the earlier uncontroversial halakah; it is not surprising that he was ignorant of derived laws whose origin date from about his own time. It is unlikely that Josephus on his own produced the same exegesis as the Tannaim:

1In the notes to their respective translations of AJ 4.202.

2M. San. 6.4: כל הנפשליים חללו ואבי אליעזר והביאו ולפי הנכם נחלתם את המגדים והעונות עבורה ו督查 הנפשליים ... We can rule out the possibility that Josephus is following an earlier halakah preserved by R. Eliezer that all who are stoned are hung, for Josephus does not mention hanging where he elsewhere prescribes stoning (e.g. AJ 4.248, 264).

3Sifre Deut. 221, pp. 253-254 (= BT San. 45b): ההלת את אחד כל הנنفسליים חללו ואבי אליעזר והביאו ולפי הנכם נחלתם את המגדים והעונות עבורה ו督查 הנפשליים ... We can rule out the possibility that Josephus is following an earlier halakah preserved by R. Eliezer that all who are stoned are hung, for Josephus does not mention hanging where he elsewhere prescribes stoning (e.g. AJ 4.248, 264).

4See below, p. 148, n. 2.
We therefore conclude that the restriction of the double penalty to the crime of blasphemy by Josephus is in agreement with contemporaneous tannaitic halakhah and is most probably based upon it.

* * *

How long is the hanging? Josephus: "Let him that blasphemes God be stoned then hung for a day." These last four words (κρεμάσθω δὲ ἡμέρας) have caused much difficulty since they ostensibly conflict with the tannaitic declaration that the criminal is sentenced, executed, hung, and buried all in a short period before sunset, the hanging being only momentary. It has been assumed that this statement reflects actual practice (...) and must perforce date from before 70 CE. Hence, two contemporaneous accounts which seem to contradict one another.

Let us examine this tannaitic statement. Its common interpretation is as follows: How can the biblical commandment of hanging and burial on the same day be honored? By having the conviction, execution, hanging, and burial done shortly before sunset since a new day begins at sunset. For

Although δὲ ἡμέρας can in no way be construed to mean that the hanging was done immediately before sunset it does not necessarily mean "an entire day." Even the variant (Niese, ad loc.) δλὰς ἡμέρας may only mean the "remainder of the day." Cf. AJ 5.37 and 7.4 where δλὰς ἡμέρας is given for the biblical verse (Josh. 7:6, LXX: ἕως ἡσπέρας and II Sam. 1:12, LXX: ἕως δεσπόζει).
if he were sentenced and hung early in the day, the court might become lax and forget about him (since he can remain hanging until sunset according to the Bible) and he would remain hanging into the night. He is, therefore, sentenced, executed, and hung immediately before sunset when the impending nightfall (and consequent trespass of the biblical injunction) would serve to prevent any laxity (so Rashi). On the other hand, he is not sentenced and executed early in the day but hung near sunset, for laxity might cause the court to forget about the hanging altogether, since, after all, he may be hung anytime during the day (so R. Meir Halevi Abulafia). It is understood that execution must follow the sentence immediately. The only alternative left (since the sentence must be delivered during the day) is to have the entire four-step process right before sunset.

This interpretation is patently absurd. An official twenty-three member court with scribes and messengers at its disposal is not going to be lax about its functions and certainly not about committing a trespass of biblical proportion. Why, then, the postponement until sunset? How, then, do we

1 BT ibid., s.v. אשתו.
2 חותם двע, San. 46a, s.v. ההנה דבע.
3 M San. 11.4: ראבฉ החוזה אמור אילן משכין דјונר של השאר לא יせて. להפיכת פרק אוסל את בנה בנה עמה את משכין בנה בנה.
5 M. San. 4.3: מברר נפשות. T. San. 9.8 and M. RH 1.3: נפשות. In M. San. 6.1 we find another functionary, the קדוש.
interpret this baraitha in the Talmud?

A related tannaitic statement reads as follows:1 "Then shall his body not remain at night on the tree"—this is a negative precept; "but thou shalt surely bury him on that day"—this is a positive precept." Now a very simple and obvious question presented itself: Why two precepts? After all, if the positive precept is observed and the burial is in daytime there is no way to violate the negative precept and have him remain hanging during the night. To put the question differently, what can be deduced from the fact that two precepts were enjoined on one act?

The answer was that the sentence is postponed until shortly before sunset at which time he is executed. Then, after sunset, he was hung and immediately released and buried. The burial now takes place the same day as the hanging (i.e., the day beginning at sunset) per the positive precept. The hanging, however, cannot be for any length of time; the corpse must be immediately removed. If it is not, the negative precept has been violated. This way it is quite possible to observe the positive precept (burial on the same day as hanging) yet violate the negative (not removing the corpse immediately), אֶזֶם וְלָכֵּי עִבְרֵי עָלֵיָו בְּלָא הָעֵשָׁה שְׁנֵי, אֶזֶם והָלֵי.2

1Sifre Deut., 221 (p. 254):

2This is the meaning of והרא ב in the baraitha (BT San. 46b) and in Midrash Tannaim (see following note).

3Cf. Midrash Tannaim on our verse (p. 132):

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1Sifre Deut., 221 (p. 254):

2This is the meaning of והרא ב in the baraitha (BT San. 46b) and in Midrash Tannaim (see following note).

3Cf. Midrash Tannaim on our verse (p. 132):
It is apparent, then, that the tannaitic description of the hanging (... יְשַׁלַּחְתָּא יִזָּל) does not reflect actual practice. It is, rather, a theoretical interpretation of Deut. 22:21-23. The law as it was practiced is stated clearly by Josephus: the blasphemer is hung throughout the day. The baraita is of later origin.

Thus far, by a comparison of Josephus with tannaitic literature, we have deduced the following practices at the time of Josephus:

1. The blasphemer was hung
2. Other executed criminals were left exposed
3. Hanging and exposure lasted throughout the day

* * * *

Was there a specific time when the burial of executed criminals had to take place? Josephus explicitly mentions a night burial three times: AJ 5.44 (Achan), 264 (the rebellious son), and 16.394 (Herod's sons). Such a burial is, in addition, implicit in Josephus' statement regarding the suicide (BJ 3.377). On the other hand, those "who have been sentenced to crucifixion" (BJ 4.317) must be buried before sunset. This is clear from Josephus since ἔξαλ ην has a strong conjunctive, and not merely adjunctive, force; i.e., both the removal and the burial take place before sunset.¹ The time of burial for the

¹ἔξαλ ην is used by Josephus to signify not only execution by crucifixion (e.g., Vita 420)—the Roman practice, but also hanging after execution (e.g., AJ 6.374 = 1 Sam. 31:10 יַעִימו, וַיְנֵבְנָהו)—the Jewish practice. Josephus in BJ 4.317 may have deliberately aimed his comments at the Romans who would leave "the corpses on the cross for many days" (Lieberman, After Life, p. 517).
blasphemer (AJ 4.202) is not specified by Josephus.

We have seen that the only one who is "sentenced to crucifixion" is the blasphemer. Therefore, viewing all of the above statements of Josephus together, we can make one further deduction:

4. Executed criminals were buried at night. The exception is he who is hung (i.e., the blasphemer). This one must not be buried at night, for to do so would be to violate the biblical command "thou shalt bury him the same day."2

Having shown that executed criminals were buried at night, we may now conjecture that the exposure of executed criminals had its origin in the nexus of two laws: execution must be accomplished during the day3 and burial must be accomplished at night. The concept of expiation via a delay in burial, which we have shown above to be held by the Tannaim, is not at all vitiated by this conjecture. Indeed, it probably came into being as a way of giving a positive meaning to the

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1 There is no extant halakhah to this effect. Night burial was apparently practiced by the Romans. The Emperor Julian writes in his Edict on Funerals (363 CE): "It was my duty ... to restore the ancient custom which I have now decided to confirm by a law.... Therefore I think it is fitting that business connected with the burials of the dead should be performed at night.... But let these things be done at sunset and before sunrise" (pp. 191-197 in the Loeb edition). However, this was not confined (nor apparently the "ancient custom") to criminals, and so Josephus could not have used the Roman custom as his source.

2 Cf. Josh. 8:29: וְנַתָּמַע חֲזָה לַשְּׁמָּה רְוֹרִים וַיָּבֵל וֶלֶךְ וַיִּכְּרֵץ יִשְׂרָאֵל וְיֵלִּדֵת הָאָדָם וְיָמַּם. וְיֵלִּים וַיִּכְּרֵץ וְיֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּрֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים וַיִּכְּרֵץ יֵלִּים W��

3 BT San. 35a: יִלָּכֶּל הָגָה לַאֲדוֹתָה—גָּדוֹל הָשָּׁמָּה וּניֵנַר. Cf. ibid., 34b bottom: וְרָאָה נְבֵאָה דֶּרֶךְ בֵּיתוֹ הַגָּדוֹל הָשָּׁמָּה וְלִבָּה מִלְיָה w נקְדָה הָשָּׁמָּה "הָוֹדֶקֶץ הָאָדָם לחַנְדָה וְגוּרַד הָשָּׁמָּה" and also Targum Onkelos, Num. 25:4: יִלָּכֶּל הָגָה לַאֲדוֹתָה—גָּדוֹל הָשָּׁמָּה וּניֵנַר.
exposure.¹

οὕτως δέ, "thus shall it be" (AJ 4.265) now becomes clear. After telling us that the rebellious son is exposed throughout the day and buried at night, Josephus adds that exposure and night burial is also the case for all executed criminals (excepting the blasphemer, the law of which is in a class by itself).

* * * *

The "ignominious and obscure" (καὶ ἀτίμως καὶ ἀφανῶς) burial mentioned in the case of the blasphemer (see also AJ 5.44, the story of Achan) may refer to burial outside the family tomb or the lack of funeral rites.²

* * * *

There is one last passage which demands our attention.

¹The exposure of the executed criminal and the suicide, which we have shown to have been practiced, is not to be confused with the Roman πολυάνδριον, the "common ditch" into which executed criminals were thrown; this latter was a Roman institution, not a Jewish one. The fact that Josephus mentions the πολυάνδριον in BJ 6.121 neither means that it was a Jewish institution nor that the word was added later in Josephus' reworking of the War for Roman ears. The Mishnah ('Oholoth 16.5) and Tosefta (ibid., 16.13) both mention this common ditch. It was obviously an institution with which Jewish readers would have been familiar. See Lieberman, After Life, p. 515 and cf. M. Keth. 6.6: לְנֵר לְשֵׁם יֵחָדוּת. ²For burial outside the family tomb, see above p. 61, n. 4. For the lack of funeral rites, see above p. 60, n. 6. and M. San. 6.5. ἀφανῶς cannot mean "unseen" and refer to night burial, for the blasphemer, as we have seen, is buried before nightfall.
James and Simon the sons of Judas the Galilaean were brought up for trial and, at the order of Alexander were crucified.

There is a variant reading ἄνησθησαν, "were put to death," in place of ἀνήχοντο, "were brought up for trial."¹ This makes quite a difference, for the variant reading implies the Jewish form of punishment, i.e., hanging after execution, while ἀνήχοντο implies the Roman execution by crucifixion.

The crime of James and Simon was most certainly the same as that of their father: arousing the people to revolt against the Romans. It is clear from the "manifesto" of these revolutionaries (AJ 18.4-10, 23-24) that killing fellow Jews constituted part of their actions.

Who was this Tiberius Alexander who ordered the crucifixion? He was the son of the Alexander who had been alabarch in Alexandria, he became procurator of Judaea, and he "did not stand by the practices of his people" (AJ 20.100). This Alexander the alabarch was the brother of Philo the philosopher (AJ 18.259).

Now, Philo says that according to Jewish law murderers are hung up after their execution.² We have seen that there is no such law mentioned in Josephus or in rabbinic literature. Whether there was such a law among the Alexandrian Jews or Philo's words represent purely theoretical exegesis of the

¹Niese, ad loc.
²Spec. Leg. 3.151.
biblical הַנְּהִירָה (LXX: κρίμα Σανάτου, Deut. 21:22) said in the law of hanging; whether the exegesis, if it be such, is Alexandrian or Philonian—these matters we shall not discuss being, as they are, beyond the scope of this paper. What we wish to note here, however, is that the variant reading in Josephus, which causes Tiberius Alexander to inflict the Jewish form of punishment, is not at all in conflict with what we have said heretofore. The variant agrees with Philo. It would not be too surprising if Tiberius Alexander, although acting as Roman procurator and although having "left the practices of the Jews," nevertheless inflicted a punishment on the Jews in accordance with the Jewish practice (or exegesis) of his native land and/or in accordance with the law as contained in his uncle's writings which he may very well have had.

* * *

With the reconstruction of first century halakhah now in hand we may again view Josephus' statements and compare them with biblical law:

AJ 4.264 has only one point in common with Deut. 21:21: the rebellious son is stoned. The additions to the biblical account (exposure and time of burial) are derived from contemporaneous halakhah or practice.

AJ 4.265 has nothing in common with Deut. 21:22-23 and in fact contradicts it in prescribing night burial. Exposure and night burial for the executed criminal are derived from contemporaneous halakhah or practice. Burial of enemies
Josephus may have derived from various biblical narratives. "Let not a corpse be left without its portion of earth, paying more than its just penalty." Is Josephus referring to any corpse? In other words, after saying that criminals and enemies are to be buried, does he end his discussion by demanding burial for any dead person? We have seen that the Bible is often concerned with burial and that the Tannaim made this concern a law. But what does Josephus mean by "paying more than its just penalty"? Does Josephus view death as a (just) penalty?

We think that the function of καὶ (νεκροῖς... ... ) here is primarily to define what comes before it and not to add a distinct element. That is to say, "let not a corpse be left without its portion of earth... " explains why executed criminals (and enemies) are to be buried. Now, "paying more than its just penalty" has meaning, for, as we have seen, exposure was considered a just penalty for executed criminals.

AJ 4.202 has only one point in common with Lev. 24:14-16: the blasphemer is stoned. The additions to the biblical account (hanging and type of burial) are derived from contemporaneous halakhah or practice.

Josephus' other statements are not part of the Mosaic legislation given in Antiquities. The mention of night burial added to the biblical account of Achan’s execution (AJ 5.44) and recounted in the narrative of the execution of Herod’s sons (AJ 16.394) is derived from contemporaneous practice. The statement that the suicide is left exposed (BJ 3.377), which Josephus makes in his speech to his companions before
surrendering to the Romans, is a contemporaneous halakhah. The statement that those hung are taken down and buried before sunset (BJ 4.317), which Josephus makes in his account of the war with Rome, is a paraphrase of Deut. 21:22-23.
CHAPTER IV

USURY

AJ 4.266

Δανείζειν δ’ Ἃβραίων ἐπὶ τόκοις ἔξεστιν μηδὲν μὴτε βρωτῶν μὴτε ποτῶν· οὐ γὰρ δίκαιον προσοδεύεσθαι τοῦ ὅμοσύλου τὰς τύχας. ἀλλὰ βοηθήσαντας ταῖς χρείαις αὐτοῦ κέρδος εἶναι νομίζειν τὴν τ’ ἐκείνων εὐχαριστίαν καὶ τὴν ἀμοιβὴν τὴν παρὰ τοῦ θεοῦ γενημένην ἐπὶ τῇ χρηστότητι.

Let it not be permitted to lend upon usury to any Hebrew either meat or drink; for it is not just to draw a revenue from the misfortunes of a fellow-countryman. Rather, in succouring his distress, ye should reckon as gain the gratitude of such persons and the recompense which God has in store for an act of generosity.

Ap. 2.208

τίς ... τόκον οὐ λήψεται. None may ... receive interest.

Ex. 22:24

If thou lend money to my people, to the poor by thee, thou shalt not be to him as a lender of money: thou shalt not lay upon him usury.¹

Lev. 25:35–37

And if thy brother become poor, and fall in decay with thee: then shalt thou assist him, (yea) a stranger, or a sojourner, that he may live with thee. Thou shalt not take

¹ אָמָה כִּסְפּוֹת הַלֹּאָה אַחַּת עַמֵּי אֶחָד הַעֲדֵי עֵמֶר לֹא הָיִיתָ לָּהּ לְרָכַב לִנֶּה שִׁימָלָה עַלְיוֹן נַשָּׁה.
of him any usury or increase; but thou shalt be afraid of thy God: that thy brother may live with thee. Thy money shalt thou not give him upon usury, nor lend him thy victuals for increase.\footnote{Deut. 23:20-21}

Thou shalt not take interest from thy brother, interest of money, interest of victuals, interest of anything that is lent upon interest; From an alien thou mayest take interest; but from thy brother thou shalt not take interest; in order that the Lord thy God may bless thee in all the acquisitions of thy hand.\footnote{Deut. 23:20-21}

It is immediately seen that Josephus' entire explanation of this law ("for it is not just ... generosity") is not to be found in the Bible. Neither is it found in the literature of the Tannaim or of the Amoraim.

Philo, too, provides reasons for the law of usury. "He forbids anyone to lend money on interest to a brother ... for he does not think it just to amass interest on money as their yearlings are from cattle."\footnote{Philo, too, provides reasons for the law of usury. "He forbids anyone to lend money on interest to a brother ... for he does not think it just to amass interest on money as their yearlings are from cattle." It will be noticed that what is "not just" in Philo and Josephus is not the same. In the former it is the nature of interest itself that is not just; in the latter the advantage being taken of one who is "down and out" is the injustice.}

\footnote{It will be noticed that what is "not just" in Philo and Josephus is not the same. In the former it is the nature of interest itself that is not just; in the latter the advantage being taken of one who is "down and out" is the injustice.}
Philo elsewhere talks of him who lends on interest and "makes a trade of other peoples' misfortunes and enriches himself in improper ways." But he does not state this to be the reason for the prohibition of usury as does Josephus. The similarity, then, between the two authors in vocabulary alone (ἀτυχία / τύχη and προσοδέωμαι) is not proof of literary dependency.

In fact, that it is unjust to profit on another's misfortunes is clearly implied in the above cited verses of Exodus and Leviticus as well as elsewhere in the Bible. Josephus, then, is merely paraphrasing the Bible when he says, "for it is not just to draw a revenue from the misfortunes of a fellow-countryman."

The latter part of Josephus is, however, problematical. The statement that in lieu of the monetary interest one should consider as gain the borrower's gratitude and God's recompense is nowhere paralleled. The Bible, to be sure, guarantees God's recompense for lending without interest. The Midrash expatiates...

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1 Spec. Leg. 2.78: ...ἀτυχίας ἀνθρώπων ἐργάζεται προσοδέωμένος ἕξ ὅν ὀφθείκεν. The ἀτυχία of the borrower is also referred to ibid., 76.

It is worth noting an interesting parallel here between Philo (ibid., 77) and tannaitic literature. "It has been said that vice has no sense of sight; so too the money lender is blind, and has no vision of the time of repayment...." (So Colson; alternatively: "It has been said that vice has no sense of sight and that the money lender is blind...." ἄλλα πιστάν, ὡς ἐφη τοῦτο, ἡ κακία, καὶ ὁ δανείζων τυμπάνος, τὸν κρόνον τῆς ἀποδόσεως οὕτως βλέπειν....) T. BM 6.17 (BT BM 71a; PT BM 5.13, 10d): ἀλλὰ δὲ ἔφη πρὸς τοὺς ἐφη μιᾶς ἐπιλόγησεν ἐν τῇ πλώρῃ ἥραν, "Said R. Jose: 'Look how blind are those who lend on interest.'"

2 Ezek. 18:17: הַשֵּׁם קָנָה נֶשֶׁר דְּרֵשׁ וְחָמָה לֹא לַקַּח עַל עֵשֶׁב. Cf. also ibid. 8 and 13; Ps. 15:1 and 5; Prov. 28:8.

3 Deut. 23:21: לא יִכְרְךָו מִכְּלָל מִשְׁלָח יָד. Cf. also
ates further on this recompense. But in neither of the two literatures do we find Josephus' concept that God's recompense is considered as the interest; and in neither is the borrower's gratitude mentioned.

Philo, however, does mention a nonmonetary gain accruing to him who lends without interest. "For with the capital they receive besides, in place of the interest which they determine not to accept, the fairest and most precious things that human life has to give, kindness, fellowship, goodness, magnanimity, praise, and good fame." 3

Although the basic idea is the same in Philo and in

1 E.g., Midrash Haggadol on Ex. 22:24 (p. 523):rij šemayalir, pa't am haemet hašeiri bensinorg ruhash zekhot oha ḥoel ḫaturi ḫaṭaturi ḫoel ḫaturi ḫaṭaturi ḫoel ḫaturi ḫaṭaturi. The parallel in Ex. Rabbah 31.2 has the statement anonymously.

2 In fact the borrower's gratitude may constitute unlawful interest in certain circumstances according to R. Shimon (middle of the second century) or R. Akiba (first quarter of the second century): "הנה שבר בנו 로ות אומר מניון לנהלק חבירו. The parallel in Ex. Rabbah 31.2 has the statement anonymously.

3 De Virt. 84: οὐ τοῖς ἀρχαίοις ἀντὶ τῶν οὐς λαβεῖν οὐκ ἥξιωσαν ἔπεισατον τα κάλλιστα καὶ τιμωτάτα τούν ἐπὶ ἀνδριώτικα, ἡμετρήσα τα, κοινωνίαν, χρηστότητα, μεγαλόσωλον, εὐσεβεῖαν, εὐφελεῖαν. I have translated slightly differently than Colson in the Loeb edition my purpose being to convey the thought that these virtues are in place of the interest.
Josephus they differ as to the elements of gain in lieu of interest. Once again, this is enough of a reason not to assume a dependency of Josephus on Philo. The one source which specifically mentions a nonmonetary repayment by the borrower along with the monetary repayment is Ben Sira. One who does not repay the loan "repayeth him [= the lender] with cursings and railings / And instead of honor he repayeth him with insult."¹ In other words, the borrower repays honor along with the original loan. If this verse (or the idea in it) was before Philo and Josephus when they wrote about the biblical prohibition of interest it would be natural for them to consider this "honor" in lieu of the interest. It was further left for them to independently determine the nature of the honor. Josephus, in addition, considered God's recompense in lieu of the interest.²

¹Ben Sira 29:6: κατάρας καὶ λοιδορίας ἀποδώσει αὐτῷ καὶ ἀντί δόξας ἀποδώσει αὐτῷ ἀτμίαν; Syriac: مَسْمَى َسَمَةٌ رَضَا. There is no Hebrew text extant to this verse.

²Cf. also the Syriac Ben Sira 29:1: "He who lends to his neighbor sets up good recompense as an obligation due him" (وَقد سَحَّلَ بَعْلَيْهِ مَعَهُ وَلَعَظَهُ بِمُهْجِرَةٍ; LXX: 'Ο ποιών Ἐλεος δανεὶ τῷ πλησίον; no Hebrew).

This does not mean that Josephus and Philo used the Peshitta, for the Syriac translation of Ben Sira is to be dated no earlier than c. 300 CE (so Segal, Ben Sira, p. 63; cf., however, W. O. E. Oesterley, The Apocrypha, ed. R. H. Charles, p. 288). The Hebrew, however, upon which the Syriac was based was much earlier. Segal, ibid., dates the Hebrew basis for the Syriac in the second century CE. This, of course, does not preclude other earlier Hebrew texts which may have had the reading of the Peshitta in 29:1 but which reading was not preserved in the Greek translations.

If Josephus and Philo had use of a Syriac/Aramaic translation of 29:1 (a precursor to the Peshitta; cf. the Aramaic quotations from Ben Sira in BT San. 100b) then our thesis is yet more probable since مَسْمَا can have the related meaning "interest" (see J. Payne Smith, A Compendious Syriac Dictionary, s.v.). They may have understood the verse to mean: "He
There is another discrepancy between Josephus and the Bible. The former prohibits lending on usury either food or drink; the latter specifically mentions money along with food as does also the tannaitic literature.¹ Why did Josephus omit mention of money which is so clearly mentioned in all three biblical references to usury?² It is unlikely that the expression μητε βρωτον μητε ποτον connotes "nothing at all" (i.e., including money), for the very next passage in Josephus, dealing with loans and pledges, begins: "Those who have borrowed whether silver or produce of any kind, liquid or solid..."³ Here Josephus distinguishes between money and produce.⁴

There is a major difference between food and money in that lendeth to his neighbor obtaineth good interest...." just as Box and Oesterley did in their translation of Ben Sira (ed. Charles).

The expression μητε βρωτον μητε ποτον appears twice more in Ben Sira. 3:6: "He who honors his mother sets up good recompense as an obligation due him from God" (Josephus texts). LXX: και ὁ εἰσακουσόνυαυρίου ἀνα-ναύσει μητέρα αὐτοῦ; in the Hebrew all that is left of the verse is: יִשְׂרָאֵל). 35 (32):2: "He who offers a sacrifice sets up good recompense as an obligation due him" (Josephus texts). LXX: ἀνταποδιδοὺς χάριν προσφέρων σεμιδαιλιν; no Hebrew).

¹E.g., M. BM 5.1: אל יתת נשל מתים אותה משמש النفس duraim ייקלע קבש.

²Βρωτον and ποτον is tantamount to the biblical יְכוֹלָה as can be seen from Philo, De Virt. 86 where שירין και ποτά is based on the biblical יְכוֹלָה.

³AJ 4.267: Οι δὲ λαβόντες εἶτε ἀργύρια εἶτε τινὰ τῶν καρπῶν, οὐχόν ἢ ἔπρον....

⁴A definition of δανεῖζω, "to lend money on interest" (LS, s.v.), is precluded in our passage, for the verb is not absolute but has as its object βρωτον and ποτον.
regard to loans. The former is meant to help someone in need while the latter would be more in the nature of a business loan. Josephus is clearly talking of lending to the destitute: "...for it is not just to draw a revenue from the misfortunes of a fellow-countryman. Rather, in succouring his distress...." Apparently he omitted the biblical "money" for this reason or his source omitted it for the same reason.
CHAPTER V

LOANS AND PLEDGES

Those who have borrowed whether silver or produce of any kind, liquid or solid, if their affairs through God's grace proceed to their liking, shall bring back and with pleasure restore these loans to the lenders, as though they were laying them up with their own possessions and would have them again at need. [268] But if they are shameless concerning restitution, one must not prowl about the house to seize a pledge before judgement has been given on the matter; the pledge should be asked for at the door, and the debtor should bring it of himself, 'in no wise gainsaying his visitor who comes with the law to support him. [269] If he from whom the pledge has been taken be well-to-do, the lender should retain possession of it until restitution be made; but if he be poor, the lender should re-

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1 The Latin for this clause, "non in domibus eorum intro-eundum est" (Niese), is more in line with the biblical מַה אֲנָה לָהֶם. Cf. LXX: οὐκ εἰσελέγη εἰς τὴν οἰκίαν αὐτοῦ; Targum Onkelos: וַהֲשִׁיב לָהֶם מַה; Targum Ps.-Jonathan: וַהֲשִׁיב לָהֶם מַה; Targum Neofiti: וַהֲשִׁיב לָהֶם מַה.
If thou take at all thy neighbor’s raiment in pledge, thou shalt restore it unto him by the time the sun goeth down; For it is his only covering, it is his raiment for his skin; wherein shall he sleep? and it shall come to pass, when he crieth unto me, that I will hear; for I am gracious.¹

Deut. 24:6

No man shall take to pledge the nether or the upper millstone: for he taketh a man’s life to pledge.²

Deut. 24:10-13

When thou dost lend thy brother any thing as a loan, thou shalt not go into his house to take his pledge. In the street shalt thou stand, and the man to whom thou dost lend shall bring out unto thee the pledge into the street. And if he be a poor man, thou shalt not lie down with his pledge: Thou shalt punctually deliver him the pledge again when the sun goeth down, that he may lie under his own cover, and bless thee; and unto thee shall it be as righteousness before the Lord thy God.³

¹ Ex. 22:25-26

² Deut. 24:6

³ Deut. 24:10-13
Josephus begins the law of pledges with an introduction: one must pay back loans, such repayment being as if the borrower were restoring his own possessions which he would have again at need. This introduction, not found in the biblical account nor in tannaitic literature, was taken from Ben Sira 29:2-3 which deals with loans: "And pay thou thy neighbor again at the appointed time [i.e., the time stipulated for repayment]. / Confirm thy word, and keep faith with him; / And (so) shalt thou always have what thou needest." The Syriac brings out the parallelism with Josephus even more clearly that that "what thou needest" is to be sought for from the lender: "And you will always find your desires by him [i.e., the lender]."

"Whether silver or produce of any kind, liquid or solid" is an obvious amplification (possibly Josephus' own) of "any thing as a loan" (Deut. 24:10). Josephus, or his source, may have had in mind Deut. 23:20: "interest of money, interest of victuals" and Lev. 25:37: "thy money shalt thou not give him

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1καὶ πάλιν ἀπόδος τῷ πλησίον εἰς τὸν καλόν· / στερέωσον λόγον καὶ πιστότητι μετ' αὐτοῦ, / καὶ ἐν πάντι καλῷ εὑρήσεις τὴν χρείαν σου. There is no Hebrew text to this verse. "As though they were laying them up with their own possessions" is not necessarily the correct reading in Josephus. Many MSS have αὐτῶν (Niese). The idea of laying up credit against a future time of need is found in Tobit 4:9 (q.v. in the edition of Dropsie University for further references) in regard to almsgiving: "For you store up a good credit for yourself against the day of necessity." Cf. also AJ 11.213: εὔεργεῖαν καταθέσαι, a Thucydidean phrase according to Thackeray (ad loc.).

2"
upon usury, nor lend him thy victuals for increase," since the law of these verses immediately precedes AJ 4.267.

In fact, the parallelism between the biblical money and victuals said of interest on the one hand and Josephus' silver (= ἀργυρόν = money) and produce said of pledges on the other, is too close to pass over without further investigation. Indeed, the connection between the laws of interest and pledge can be seen in another point as well. In the previous chapter on usury the question was asked from where Josephus derived the idea that God's recompense and the borrower's gratitude are considered in lieu of the interest. God's recompense and the borrower's gratitude are mentioned in the Bible in the law of pledges. Deut. 24:13 "...[the borrower will] bless thee; and unto thee shall it be as righteousness before the Lord thy God."

These interconnections between the two laws lead us to believe that the principle behind Josephus' statements was the hermeneutic rule of semukhin which was in use at least as early as R. Akiba (first quarter of the second century). According to this rule, when two laws are juxtaposed in Scripture elements enunciated in the one law may be applied to the other. The law of pledges immediately follows that of usury (Ex. 22:24 and 25-26).²

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¹ Sifre Num. 131, beginning (p. 169): ר' אבראה אומר כל הענה שלמה חלופך שמה תבואנה{l} לברוחה{l} למדת cumplנה{נ} יתפושה{l} ביאחר{l} כדמגניה{l} תריהלם. Cf. I. Heinemann, יד ואר, פ' 1940, p. 200, n. 69, who sees Josephus applying this rule to an aggadic passage.

² This conjecture is not meant to vitiate what was said in the preceding chapter, i.e., that Josephus' words about
Josephus understood the biblical verses to refer to a pledge taken by the creditor when the debtor failed to pay his debt on time and not to a pledge taken at the time when the loan was first transacted. As pointed out by others, Josephus is here in accord with the tannaitic interpretation of these verses.\(^1\) S. Zeitlin is of the opinion that the LXX (Deut. 24:10-11) has this interpretation as well.\(^2\) The LXX reads: 'Ἐὰν ὄφειλημα ἦν τοῦ πλησίον σου, ὄφειλημα ὅτι οὖν, οὐκ εἰσελθῇ εἰς τὴν οἰκίαν αὐτοῦ ἐνεχυράσαι τὸ ἐνέχυρον· ἐξω στήσῃ, καὶ ὁ ἀνθρώπος, οὗ τὸ ἐδανεῖν σοι ἐστιν ἐν αὐτῷ, ἐξοίσει σοι τὸ ἐνέχυρον ἐξω. We believe that these words are as vague as the Hebrew; neither must of necessity refer to an unpaid loan although such understanding is quite possible. Josephus' source on this point, then, remains obscure. It may have been tannaitic (whether written or verbal) or it may have been his own understanding of the Bible whether Hebrew or Greek.

Before judgement is rendered, says Josephus, a pledge may not be taken; after a verdict has been rendered in the borrower's gratitude are derived from Ben Sira. The key element derived from Ben Sira is that the gratitude is a form of repayment (ἀποδώσει), which Josephus interpreted as non-monetary interest.


\(^2\)Ibid.
creditor's favor a pledge may be taken. The injection of a judgement here is not found in the LXX or in any of the Targums. It is found in tannaitic literature: "If one makes a loan to his fellow he may take a pledge only through the court." 

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1M. BM 9.13: "If one makes a loan to his fellow he may take a pledge only through the court."

Sifre Deut. 276 (p. 295): 

"If one makes a loan to his fellow he may take a pledge only through the court."

Midrash Tannaim ad loc. (p. 158): 

"If one makes a loan to his fellow he may take a pledge only through the court."

Mekh. Rashbi ad loc. (p. 212): 

"If one makes a loan to his fellow he may take a pledge only through the court."

These two sources, however, refer to an illegal seizure as is clear from the Tosefta ibid.: 

"If one makes a loan to his fellow he may take a pledge only through the court."

There is one tannaitic source which speaks of a legal seizure of the pledge without the agent of the court. BT BM 113b: 

"If one makes a loan to his fellow he may take a pledge only through the court."

Incidentally, the interpretation to the Sifre given by Finkelstein in his edition is clearly unacceptable. The correct interpretation is as follows: "If one makes a loan to his fellow he may take a pledge only through the court."

The lack of the court's agent, however, is not identical with the lack of the court's judgement and hence, authority. Therefore, this single source which speaks of a seizure by the creditor does not necessarily contradict Josephus' νομοθετεῖν, for Βοιοθεία does not mean "without" as Duschak (p. 64) believes.
"If the debtor is well-to-do the creditor may retain the pledge until restitution is made." This is an addition to the biblical account; neither is it found in the Targums. It is found in tannaitic literature: "And if he be a poor man, thou shalt not lie down with his pledge'--hence, if he be a rich man it is permissable." We must not rule out the pos-
follows that the only one who may seize is the agent and he only from without. Now, the Midrash Tannaim comes to the same conclusion via different exegeses (if not the same exegeses part of which was lost by homoiteleuton: [Matt. 28:19]). This baraita is in opposition to another (Targum Ps.-Jon). The Sifre continues: [This baraita is in opposition to another (Sifre Deut. 277, p. 295): לא יפי עני משים על דרכו ישיבךбережו cổ ותלך. This seems to be only an attempt to make the Sifre accord with R. Sheshet in the BT ibid. (In- cidentally, the interpretation of the Sifre and R. Sheshet is found also in Targum Ps.-Jonathan: לא יפי עני משים אחריו.)

Apparently, then, we have here a tannaitic dispute. This is seen as well in two other baraitoth. BT BM 113b: ניב אחר וינו [This baraita is in opposition to another (T. BM 9.10): לא יפי עני משים על דרכו ישיבךбережו cổ ותלך. This seems to be only an attempt to make the Sifre accord with R. Sheshet in the BT ibid. (In- cidentally, the interpretation of the Sifre and R. Sheshet is found also in Targum Ps.-Jonathan: לא יפי עני משים אחריו.)

Pre-supposing the argument in this baraita is the idea that a rich woman's pledge need not be returned while a poor woman's pledge need be returned. In other words, R. Shimon's view is in support of the baraita (BM 114b) cited above which agrees with Josephus' opinion.
sibility, however, that such obvious exegesis may have occurred to Josephus on his own.

* * *

The reason given by Josephus why a millstone may not be taken in pledge, i.e., that it is used for food preparation is implicit in the words 'for he taketh a man's life to pledge'. Such understanding of these words is to be found also in Targum Onkelos, Targum Ps.-Jonathan, Fragment Targum, Targum Neofiti, tannaitic literature, and Philo. Similarly, Josephus' words "God by His nature according pity to the poor" is clearly derived from Ex. 22:26, "and it shall come to pass, when he crieth unto me, that I will hear; for I am gracious."

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CHAPTER VI

THE HOUSEBREAKER

AJ 4.271

κατ' ἐπὶ τῶν κατ' οἶκον κλεπτομένων τις δέδομεν ἑστῶ καὶ εἰς πρὸς διορύγματι τειχίου. 2

He that killeth another while engaged in burglary shall be innocent, even though the thief were yet breaking through his wall.

Ex. 22:1

If a thief be found while breaking in, and be smitten so that he die, there shall no blood be shed for him. 3

Josephus' law is, of course, a paraphrase of Ex. 22:1. But were Josephus solely relying on the Bible as his source, he could not have failed to notice the very next verse whose plain meaning is that if the theft is done in daytime the

1So the codices. Bernard has recommended ἐπὶ. Either reading affords the same basic meaning, the difference between them being grammatical. According to Bernard's emendation the condition is future more vivid; according to the reading of the codices it is present particular with the verb (ἐστί) understood. In the latter case καὶ was used (with ἑστῶ belonging to the apodosis) although the apodosis did not require ἑστῶ (LS, s.v. καὶ I, 1 and 2). Dr. Enslin is of the opinion that ἐπὶ in the MSS does not indicate ἐπὶ, "if," but ἐστί and is an obvious slip.

2The Latin omits this entire statement (κατ' ἐπὶ τῶν κατ' οἶκον κλεπτομένων τις δέδομεν ἑστῶ καὶ εἰς πρὸς διορύγματι τειχίου).

3אֶּזֶּה בֵּין תַּחְתָּה יְמֵי הָגָנָנָה וּרְאוּבָנָה לִשְׁתָּמַח אֵין לָהֶם דָּעֶת.
homeowner is guilty should he kill the thief: "If the sun be risen upon him, there shall be blood shed for him...."\(^1\) In other words, Josephus is not quoting the biblical law. He is, however, quoting the tannaitic law. In the literature or the Tannaim Ex. 22:2 is interpreted metaphorically and the law stands as Josephus has it with no distinction drawn between day and night.\(^2\)

\* \* \* \*

As Thackeray has noted the meaning of the latter clause in Josephus is that the homeowner is still innocent even if the thief hadn't yet gotten beyond the stage of breaking in.\(^3\) Josephus' wording is quite different from the Bible in either Hebrew or Greek. The latter speaks of a thief found while breaking in (or found in the breach)\(^4\) while Josephus divides

\(^1\) So was this law understood by Philo as well, Spec. Leg. 4.7; see Thackeray's note to Josephus ad loc. In Greek and Roman law also the innocence of the homeowner is restricted to a case of theft at night; see Colson's note to Philo ad loc. (Appendix, p. 426) in the Loeb edition.

\(^2\) Mekh. RI, Nezikin, 13 (p. 293) and parallels: סומא דרחה泌ם עלייה וזרימה לזרמה. So was this law understood by Philo as well, Spec. Leg. 4.7; see Thackeray's note to Josephus ad loc. In Greek and Roman law also the innocence of the homeowner is restricted to a case of theft at night; see Colson's note to Philo ad loc. (Appendix, p. 426) in the Loeb edition.

\(^3\) Note ad loc. Cf. Philo, Spec. Leg. 4.7 and Colson's note ad loc. in the Loeb edition.

\(^4\) See Colson, ibid., p. 426.
the verse into two parts: (1) while engaged in the actual theft after having made entrance, and (2) before the actual theft while still trying to break in.

This is quite a divergence from the Bible and cannot be simply ascribed to paraphrase.¹ In tannaitic law we find the same division as in Josephus. The law applies whether the thief was in the act of breaking in or whether he had already broken in and was engaged in the theft.²

¹ Weyl (Strafgesetze, pp. 126-128) holds that Josephus' source here was indeed the Bible; that the first clause in Josephus is the latter's own conclusion which follows directly from the biblical verse. Ex. 22:1 speaks of breaking in. Certainly then, would the homeowner be innocent if the thief was already in the house. There are two problems with this theory. First, Josephus does not speak of where the murder takes place, but of when--before or during the burglary (see the following note). Secondly, if Josephus' source was the Bible why does he not make the biblical distinction between day and night? Weyl is aware of this problem and does away with it by the preposterous solution that Josephus is referring to a house removed from civilization so that there is no difference between day and night (in either case there would be no help forthcoming)!

² PT San. 8.8, 26c: The last sentence is probably amoraic, for not only is it in Aramaic but it is the same reason given by Raba for the law while breaking in, BT San. 72a. PT, ibid., records a contrary tannaitic opinion but R. Shimon's is the earlier of the two.)

It is true, as Weyl (p. 126, n. 27) has remarked, that przehutler certainly probably means "outside the house," i.e., the thief was in the process of leaving with the stolen goods (contrary to the apparent opinion of Grünbaum, Priestergesetze, p. 12). Based on this Weyl concludes that Josephus does not express R. Shimon's viewpoint since the first clause of Josephus deals with the thief in the house and not on the way out. "Wenn Josephus schreibt המתי el πρὸς διορύγματι, so meint er damit, dass denjenigen, der einen bereits ins Haus eingedrungenen Dieb niederschlägt, erst recht keine Schuld treffen kann" (p. 126). What Weyl failed to realize was that Josephus is not concerned with place (i.e., where the murder took place), but with time (when the murder took place). When Josephus sets up the apposition המתי el... he is concerned with the question of whether or not the theft had yet been committed. Now, in fact, R. Shimon is concerned with this same division as can be
Josephus' use of τεθριον is a quite natural interpretation of מיתת (so also the Tannaim, BT San. 72b) and therefore to draw any conclusions from the use of the term would be casuistic and unnecessary. ¹

seen from his words לכו' שמענו של אדם הניב עליה דיבוש. The important element, according to R. Shimon, is that the theft is in the process of being committed. It doesn't matter where the murder takes place; it may even take place outside the house. In other words, we are not suggesting that Josephus had before him a statement later recorded by R. Shimon. Rather, in tannaitic halakhah of Josephus' time this law was divided into two parts: whether or not the theft had yet been committed. This division was expressed independently and differently by Josephus and R. Shimon.

¹See Rashi, BT San. 72b, s.v. רכסת איה ו' and B. Epstein, והוה תשתה, Ex. 22:1, n. 5.
CHAPTER VII

RESTITUTION OF LOST PROPERTY

AJ 4.274

'Εὰν δὲ τις ἡ χρυσιόν ή ἀγαθόν εὑρή καθ' ὁδὸν, ἐπιζητήσας τὸν ἀπολωλεκτόνα καὶ κηρύξας τὸν τόπον ἐν ὃ εὑρεν ἀποβότω, τὴν ἑκ τῆς ἐφέρετον ἡμέραν ὅποι ἁγαθὴν ὑπολαμβάνων, ὁμοίως καὶ περὶ βοσκομάτων οἷς ἁν ἐντύχῃ τις καὶ ἐρμίζων πλανωμένοις. μὴ εὑρεθέντος [ἐκ] τοῦ κυρίου παραχορήμα παρ' αὕτῳ φυλαττεῖτο μαρτυράμενος τὸν δεδομ. μὴ νοσφύζουσαι ἀλλότρια.

If anyone find gold or silver on the road, after diligent search for the loser and public proclamation of the place where he found it, let him duly restore it, reckoning it dishonest to profit by another's loss. Similarly in the case of beasts which one meets straying in a desert place; but if the owner be not found forthwith, let him keep them at his home, calling God to witness that he has not appropriated the goods of another.

Ex. 23:4

If thou meet thy enemy's ox or his ass going astray, thou shalt surely bring it back to him again.¹

Deut. 22:1-3

Thou shalt not see thy brother's ox or his lamb go astray, and withdraw thyself from them: thou shalt surely bring them back again unto thy brother. But if thy brother be not nigh unto thee, or thou know him not: then shalt thou take it unto thy own house, and it shall remain with thee until thy brother inquire after it, and then shalt thou restore it to him. In like manner shalt thou do with his

¹ כל תוף שור או הון ואשת בתו של mężה והנה הושבشاشة לו.
ass; and in like manner shalt thou do with his raiment; and in like manner shalt thou do with every lost thing of thy brother's, which may have been lost to him, and which thou hast found; thou art not at liberty to withdraw thyself.

Josephus divides the biblical law into two parts: finding gold or silver and finding beasts. Clearly, this is a division between inanimate and animate objects. Inanimate objects are considered lost when they are found on the road; animate objects are considered lost when they are found straying in a deserted place. While the Bible mentions both kinds of objects it does not differentiate between them depending on where they were found.

In tannaitic literature, however, we do find this same differentiation based on the assignation of place. "A spade or a garment on the road and a cow grazing among seeds—these are lost objects." An ass going through vineyards, utensils

1Gold or silver is neither mentioned in the Bible nor in the halakhah of lost objects. Similarly, Josephus' "gold or silver" in AJ 4.271 is paralleled neither in the Bible nor in halakhah. Dr. T. H. Gaster points out to me that χρυσίον μὴ ἀργυρὸν is a phrase decidedly not to be expected from a Judaean of Josephus' time. One would rather expect ἀργυρὸν μὴ χρυσίον paralleling the tannaitic phrase בְּכֵן מְפַרְפַּר אֲשֶׁר תִּקְרָר אֲדֻרְכֵּם אֶלָּא מִשְׁמַלְתָּה בְּכֵן מְפַרְפַּר אֶלָּא מִשְׁמַלְתָּה

2"Gold or silver" is neither mentioned in the Bible nor in the halakhah of lost objects. Similarly, Josephus' "gold or silver" in AJ 4.271 is paralleled neither in the Bible nor in halakhah. Dr. T. H. Gaster points out to me that χρυσίον μὴ ἀργυρὸν is a phrase decidedly not to be expected from a Judaean of Josephus' time. One would rather expect ἀργυρὸν μὴ χρυσίον paralleling the tannaitic phrase בְּכֵן מְפַרְפַּר אֲשֶׁר תִּקְרָר אֲדֻרְכֵּם אֶלָּא מִשְׁמַלְתָּה בְּכֵן מְפַרְפַּר אֲשֶׁר תִּקְרָר אֲדֻרְכֵּם אֶלָּא מִשְׁמַלְתָּה

3T. BM 2.19: "םֶא חָרְדוּם םֶא־כַּסְכֵּנָא לַעֲלָיָה לַא־שָׁלְעָתָא לָפֹרָה בִּלְּכֵן עָדְרָעִים הֹוַיְדָה אָבַדְתָּא."
lying in the middle of the road."¹ The Tannaim further define
the place where the animal was found. "An ass or a cow graz­ing on the road is not considered a lost object ... a cow running through vineyards is a lost object."² "The word 'straying' [in the Bible] always means outside the boundary."³ Josephus and Tannaim, then, both differentiate between animate and inanimate objects and in both the differentiation is based upon the element of place missing in the Bible. Furthermore, in both the type of place corresponds. If the inanimate object is found on the road it is considered lost which is not the case for animals. This point is particularly worth noting, for it is in direct opposition to the LXX which translates "going astray" as "wandering on the road."⁴

* * *

Josephus' "public proclamation," unrecorded in Scrip­ture, is paralleled in tannaitic halakhah. "There was a stone of [losers'] claim in Jerusalem. Whoever lost something would go there and whoever found something would go there. The one would make proclamation and the other would identify the

¹ Mekh. RaSHBI, Ex. 23:4 (p. 215): ... וה-between מיסים בקソフト חכמה כתב והฤת דרך איהם הטוענים לתוך.

² M. BM 2.9 (= Sifre Deut. 222, pp. 255-256): ואומת חזון את פועה ו CPPUNIT בזכר אחד עז אבדה הפרה וורך בן

הчемימים והרי זה אבדה.


⁴ Deut. 22:1: מַהֲוֶֽהוּ לַעֲנֹ֥ו הָאָכְלִ֖ים אוֹתָ֗וּ עַל הַכְּלַֽ֗לִים כַּעֲדָּ֖לִים אִנָּו לְהָדוֹ֑לִים...
object and take it."\(^1\) The Mishnah many times mentions proclamation as the method of returning.\(^2\) One source informs us that proclamation was the custom in Josephus' lifetime: "Originally they used to make proclamation .... however, after the destruction of the temple...."\(^3\) The Palestinian Targum adds proclamation to the biblical law.\(^4\) Lastly, we note a tannaitic exegesis which parallels Josephus in an interesting way. The Mekhilta, in explaining "until your brother's inquiry" of Deuteronomy, reverses the subject and object and says: "Until you search for your brother or, another explanation, until proclamation is made concerning it."\(^5\) Josephus: "After diligent search for the loser and public proclamation." Not only is the proclamation missing is Scripture, so too is the search.

There is no tannaitic parallel to Josephus' statement that the proclamation consisted of naming the place where the

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\(^1\) BT BM 28b: ת"ר אחרון תשעה ימים ירושלים כל מאסבתא טהר לבא באבדה נפוח לאבדים סעופה אבדים נפוח לשם זה הועמד מתורא וזו נוהג סטגנין ורוה. PT Ta'an. 3.11, 66d also connects this stone with the reclaiming of a lost object: המ אקרית וזרה בין כל כלא זרחוה מבית יהודית הזדה כלא כל זרחוה תנו עלייהית אלה כלא זרחוה מבית יהודית ומעשה מלאכה ха חוה (מייבילה = מיסכון לא) חותם. This source, however, does not mention the proclamation by the finder or the identification by the loser as does BT. The addition in BT may be an interpolation due to the mishnaic requirement of these two elements (M. BT 2.1-6 and 7).

\(^2\) M. BM 2.1-6.

\(^3\) T. BM 2.17 (quoted with variants in BT BM 28b and PT BM 2.7, 8c): ברשותה הם מוכריין עליה שלשה רגלים ... והתחתוב בכת המקדש הקיבון שליה מוכריין עליה שלשה רגלים.

\(^4\) Targum Ps.-Jonathan ends Deut. 22:3 with אכרית עליה שלשה רגלים. No other Targum, including MS Neofiti on Deuteronomy, mentions proclamation.

\(^5\) Mekh. RI, ibid.: ד"ע דרשי אכרי עליה שלשה רגלים א"פ ד"ע ד"ע דרשי עליה שלשה רגלים.
object was found. The only reference to such proclamation is amoraic, and the meaning of that reference is debated by the commentators.¹ We know from rabbinic sources that it was the Palestinian custom to make proclamation of a lost object. We can therefore assume that the rest of Josephus' statement—the content of this proclamation—was also the custom in Palestine.

* * *

Thackeray (and Whiston²) translates: "But if the owner be not found forthwith, let him keep them at his home." The impression conveyed is that the finder may keep the object for himself—an impression Josephus did not mean to give, for he uses the verb φυλαττετω. We would, therefore, prefer a more precise rendering which allows for no ambiguity: "Let him watch over them."³

* * *

Thackeray translates παραξηγονα "forthwith." This adverb, not found in the biblical version, might have been part of Josephus' paraphrase of Deut. 22:2, "but if thy brother be

¹ BT BM 22b: דאonna מואם רביה אמר לא יהי סיסתorque ובראשה. See Rashi, ibid., s.v. מברך מוקדם and Tosafoth s.v. אים דלייך.


³ Cf. the Zadokite Document 9.14-16 (ed. Ch. Rabin, p. 47): הוכל כל המ القضות צמח שנאמר ולפי ועליו ... וגו'. Rabin translates the last word "they shall guard it" and notes, "i.e. it never becomes their property."
not nigh unto thee"; i.e., so that the owner cannot be immediately found.1 If this so, however, Josephus is clearly contradicting tannaitic halakhah. The Tosefta reads: "Originally they would make proclamation during the Three Festivals and after the last festival for yet another seven days. After the destruction of the temple it was decreed that proclamation be made for thirty days. From the time of danger and thenceforth it was decreed that it is enough for him to make his find known to his neighbors, relatives, acquaintances, and fellow town-dwellers."2 A time span consisting of the Three Festivals plus an additional seven days does not translate into παραχρημα. Neither does thirty days, nor the variant reading, three days. Aside from the fact that "time of danger" probably refers to the Hadrianic persecutions—events postdating Josephus—Josephus' παραχρημα could not refer to the last decree for another reason. This decree says nothing of the length of time of the proclamation. The thirty (or three) days was probably continued. What was changed was the place of proclamation; it was no longer public.3 This has nothing to do with the time element παραχρημα.

The word παραχρημα has another related meaning: "the

1 Such is the meaning connoted in Thackeray's translation and also in Weill's: "Si le maître n'en est pas trouvé sur-le-champ, on devra les garder chez-soi...."

2 T. BM 2.17: "בנראשה לי הסבר יקר וקרוב בנות המקדש לבין המקדש שהקריבunto עליה ששותים נושן ורחון נפש את המקדש ואת המקדש שמחה מזדמן לשביביה לקורורות ולימייון ואושב עליים וזריו..."

3 This is true no matter which of the variants we accept for the decree after the temple's destruction. See G. Alon, "השערה והשתניום בכרך יسرائيل בתוקף התשמ"ה" הולדה, vol. 2, p. 44.
present.\textsuperscript{1} Understood this way Josephus would read: "But if the owner be not found, let him for the time being watch over them." In other words, for the moment (the present time) let him watch them until the owner comes inquiring after them at which time the finder returns the objects.\textsuperscript{2}

\textsuperscript{1}LS s.v. παραχρήμα.

\textsuperscript{2}It is, of course, possible to translate παραχρήμα as "immediately" and yet attach it to the following clause. The meaning would then be: "After making search and proclamation (for whatever extended period was the custom) then the finder immediately takes the object home for watching." This, however, while grammatically possible, is contextually superfluous. See the translation of M. Hadas to IV Macc. 2:14 (ed. Dropsie University) where τὰ δὲ τῶν ἔχοντων τοῖς ἀπολέσασι διασφίζων is rendered as referring to lost objects. Note that both IV Maccabees and Josephus use the same participle designating the "loser": ἄπολωλεκότα--ἀπολέσασι. Apparently the use of the compound διασφίζων as opposed to simple σφίζων in IV Maccabees has a temporal quality so that the proper translation of the clause would be: "One must preserve the things of enemies for those who lost them." That the use of the compound was deliberate is clearly seen in 4:12 and 14 (σωθεῖς--διασωθεῖς) although the quality there is one of completion and not time.
CHAPTER VIII

ASSISTANCE TO BEASTS IN DISTRESS

AJ 4.275

Μὴ ἔξειναι δὲ παρίειναι κτηνῶν τινι κακοπαθοῦντων ὑπὸ χειμῶνος πεπτυκότων ἐν πηλῷ, συνδιασάζειν δὲ καὶ τὸν πάνω σικεῖν ηγησάμενον βοηθεῖν.

It is not permissible to pass by unheeding, when a man's beasts of burden, buffeted by tempest, have fallen in the mire; one must help to rescue them and lend aid as though one laboured for oneself.

Ex. 23:5

If thou see the ass of him that hateth thee lying under his burden, thou shalt forbear to pass by him; thou shalt surely release it with him.¹

Deut. 22:4

Thou shalt not see thy brother's ass or his ox fallen down by the way, and withdraw thyself from them: thou shalt surely help to lift them up again.²

In conformity with Deut. 22:4 Josephus' halakhah is to

¹ The translation given in the text is that of the Jewish Publication Society edition, 1917. So also IV Macc. 2:14: τὰ πεπτυκότα συνεγείρων. Cf. LXX Ex. 23:5: πεπτυκός ... συνεγείρεις and see Hadas' note to IV Macc. 2:14 in the Dropsie University edition.

² לא תראה את שמור אחיך ואר שורו נופל ימ ברך ותחלו המה מה נפשו הקים על ידו.
help a fallen beast rise again. Neither account mentions the burden upon the animal's back. This is important insofar as in rabbinical literature Ex. 23:5 and Deut. 22:4 came to refer to unloading and loading an animal respectively. In the following discussion, however, it will be shown that Josephus recorded the halakhah as it was at his time; that the new interpretation of Deut. 22:4 was accomplished shortly after the completion of Antiquities.

In the Mishnah the anonymous opinion is given that while periqah (unloading a burdened animal) is Pentateuchal, te'inah (helping to load the animal) is not. R. Shimon disagrees and considers both laws Pentateuchal.

The Mekhilta informs us of a conflict between Judah ben Bathrya and R. Josiah regarding the derivation of the law te'inah. The latter infers it logically from the law periqah, while the former sees Deut. 22:4 as the source for the law. Based on this interpretation of Judah ben Bathrya, R. Shimon claims both periqah and te'inah to be Pentateuchal. It would appear, then, that the anonymous opinion of the Mishnah is that of R. Josiah in the Mekhilta.

It would also appear that until the time of Josiah and
Judah ben Bathyra (second quarter of the second century) there was no question about the legal source for te'inaḥ. Indeed, the halakhah prior to that time would seem to show a law of periqah but none of te'inaḥ. While Ex. 23:5 may refer to unloading the animal's burden, Deut. 22:4 clearly refers to helping a fallen animal with no reference whatsoever to any burden. The Mishnah BK 5.7 lists periqah and makes no mention of te'inaḥ.1 The Mekhilta informs us not only that Deut. 22:4 refers to the animal itself,2 but that there is no law of te'inaḥ.3

Not even from the verse in Exodus was it always obvious what was required. Targum Onkelos added "thou shalt unload with him" (הן תופרג) from the halakah and not from a direct translation. As a matter of fact, the most the Targum could do with רע הער was to give these words a homiletical interpretation.4

1 רעש תחת כל בקעת בפיכך הבור ולאธรรมดา הרשעתיו...
2 Mekh. RI, ibid.:
3 Ibid. (p. 325) and parallels: לבור אתת תחת משאו ולא שיאת המשאר הצביר.
4 This was taken from tannaitic literature. T. BM 2.26: אבַדּ בָּעַלְתָּנוּוֹ לִפְרֹקֲוַיִוּ בְּאֶחָד בְּאֶחָד (cf. BT BM 32b); Sifre Deut., 225 (p. 257): אם כל תמה נאםו אָן קִרְיָא מִלֵּדוֹת שֶל וְהָהְיָה כל נַכְנְבִיֵהוּ אָנָּהְיָה. Cf. ibid., 222, p. 255 and Mekh. RaSHBI 23:4, p. 215 (אם כמות אָן יָרָר לְעַשָּה שִׁנָּאָה) on the law of returning a lost object.
In tannaitic literature, as well, there is no indication why יָ֣יִן means to unload; just that it does. Only the Amoraim attempt a definition. But that is based on the words "lying under his burden" in the verse. They were equally unclear about the philological definition of יָ֣יִן.

The LXX also does not define this word as unloading; rather as helping to raise the fallen animal, an interpretation apparently taken from the parallel verse in Deuteronomy. IV Maccabees gives the same interpretation to Ex. 23:5.

From the foregoing it appears that in the early interpretations of the Bible neither Ex. 23:5 nor Deut. 22:4 demanded any action regarding the animal's burden. The command was to help the animal rise again, Exodus and Deuteronomy both having the same meaning. In time the helping of Exodus was understood as unloading. This is the stage in the development of the law that is reflected in Targum Onkelos which interprets Exodus as unloading and Deuteronomy literally, as referring to the animal itself. At a later period the helping was extended to include loading along with unloading. (After

1BT BM 32a.

2 έάν δ' ἔδη τοῦ ὑποζύγιον τοῦ ἔχόρου σου πεπτωκότι ὑπὸ τὸν γόμον αὐτοῦ, οὐ παρελεύσῃ αὐτό, ἀλλὰ συνεγερεῖς αὐτὸ μετ' αὐτοῦ. The variant συναρέτσι might represent an attempt at halakhic interpretation, for ἔγειρω would seem to refer to the beast, while αἴθω more aptly to its load (although the following pronoun still must refer to ὑποζύγιον). It is interesting that this variant is directly paralleled in Targum Onkelos. While יָ֣יִן is literally rendered as פַּּטָּס, the variant reading is בֵּטֵז which, as with the LXX, would seem to be an attempt at halakhic (i.e., פַּּטָּס) interpretation. Cf. Targum Neofiti where the translation is פַּּטָּס instead of either פַּּטָּס or בֵּטֵז.

3 2:14: τα πεπτωκότα συνεγερέων. See Hadas' note ad loc. in the Dropsie University edition.
all, it is quite sensible for one to help reload the animal instead of walking off leaving the owner, beast, and burden stranded.) A midrash was searched for with which to substantiate this new halakhah. Hence the conflict between R. Josiah and Judah ben Bathyra. It was this stage in the development of the law that is reflected in the other Targums which interpret Exodus according to R. Josiah's opinion (which became law). The different targumic interpretations are seen in the following chart:

<table>
<thead>
<tr>
<th></th>
<th>Ps.-Jon.</th>
<th>MS Neofiti</th>
<th>MS Paris</th>
<th>Onkelos</th>
<th>MS Vat.</th>
<th>MS Leip.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ex. 23:5</td>
<td>P &amp; T</td>
<td>P &amp; T</td>
<td>P &amp; T</td>
<td>P</td>
<td></td>
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<tr>
<td>Deut. 22:4</td>
<td>literal</td>
<td>(P &amp; T)</td>
<td>(P &amp; T)</td>
<td>literal</td>
<td>([P]&amp;T)</td>
<td>T</td>
</tr>
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P = periqah    T = te'īnah

The Neofiti translation to Deuteronomy was simply copied from Exodus as can be seen from the words מַשֵּׁבֵדַיְךָ תָּבִלְךָ on Deut. 22:4. The MS Paris translation to Deuteronomy is also apparently taken verbatim from Exodus. Since MS Vatican also reads לא אֲנִי תָּבִלְךָ it is clear that its translation was also copied from Exodus which probably ended מַשֵּׁבֵדַיְךָ תָּבִלְךָ... מַשֵּׁבֵדַיְךָ תָּבִלְךָ. Nothing conclusive can be said for MS Leipzig although the evidence seems to favor a take-over from Exodus as with the other MSS.

1 See M. Ginsburger's note to Deut. 22:4 in his edition of the Fragment Targum.

2 The Palestinian Targums (Ps.-Jonathan, Neofiti, MS Paris) are the probable key to understanding the last part of Mekh. RL, ibid.:
In summary, there is no Aramaic translation which interprets Deut. 22:4 as unloading. Those Targums which are clearly a translation of Deuteronomy and not a take-over from Exodus give a literal translation. Therefore, neither Targum nor contemporaneous halakhah is in conflict with Josephus.

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Josephus' phrase "buffeted by tempest have fallen in the mire," an addition to the biblical account, is not paralleled in rabbinic literature. The flourish is Josephus' own, which he could have added only if he understood Deut. 22:4 to refer to the animal and not its load. By these words Josephus distinguishes this verse from Ex. 23:5 where the burden is the cause of the discomfort.

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As it stands, this clause is problematical and various solutions have been offered (see note ibid.). Is it not possible that the original reading had the scriptural quotes reversed so that the Mekhilta read: עזוב החם, לא ולא פרקטה עתעיגה בהמה ערך חמאית, ולא הפרקטה עתעיגה בהמה ערך חמאית. This reading would fit perfectly Ps.-Jonathan's translation of Exodus and Deuteronomy.

The version in Midrash Tannaim, עזוב החם, לא ולא פרקטה עתעיגה בהמה ערך חמאית, מיכה ר’B. This reading is suggested by Horovitz - Rabin also makes no sense. If Deuteronomy refers to te'инא, then it doesn't refer to the animal itself and vice versa. However, it is possible that the original reading was: עזוב החם, לא ולא פרקטה עתעיגה בהמה ערך חמאית, מיכה ר’B. This reading would also fit Ps.-Jonathan's translation. The reading we suggested in the previous paragraph is, of course, nothing more than an enlargement of this reading. The addition of עזוב החם, as it is in Midrash Tannaim, was added later in conformity with the accepted interpretation of Deut. 22:4.
Josephus ends this halakhah with another addition to the biblical account: "As though one labored for oneself." Tannaitic literature has it that under certain conditions one need not help the man and his beast, nor must one return a lost object. The Mishnah repeats one of these conditions; i.e., if it is beneath the dignity of the finder to bother with the object. This condition is generalized in the Tosefta: "This is the principle: If he would bother were the object his, he must trouble himself." The law is, thus, equal whether the object found is lost or a burdened animal; the Mishnah refers to the former case, the Tosefta to the latter. This general principle applied to both cases is repeated by the Amora Raba: "If he would retrieve the lost object were it his, he must return it; if he would unload and load the animal were it his, he must unload and load."

To return to Josephus, it is possible that he did mean, as Thackeray translates, "one must help to rescue them and

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1Sifre Deut. 222 (p. 256): המעול בתעומת כל צדיה הכנ חכתי货源 כליה בבייה התפארת זא מזיה דקיי אריגה ליקי בנהויה של תורה מורהו פserir לכל נאמר התעתימ בתעומת כליה货源 בבייה מזיה אייה התعالות. So also ibid. 225 (pp. 257-258). Cf. also Mekh. RI, ibid. (p. 325):

2M. BM 2.8 (referring to a lost object): מץ שאר קופה כל דבור שאגי Dedicated La Cisal. No Cisal.

3T. BM 2.24: ערך הכלכל לארשה בחור שלה דה ניזקר פּוּּרֶסִי לֹא כל קי잓 העשה בחור שלא אינכן ניזקר פּוּּרֶסִי.

4BT BM 30b: אמר אלא כל שבשלו מהדייר והברר מיתרי כל שבשלו פורס וטורא bushel פורס וטורא כל הבירה פורס וטורא.
lend aid as though one labored for oneself."¹ However, the Greek τὸν πόνον οἴκετον ἠγιοῦμενον is a participial clause and accordingly may allow various adverbial meanings which need not agree with Thackeray's interpretation. One such meaning could be causal, "since he believed he would have labored for himself," a meaning which exactly parallels the rabbinic sources.

¹So too Weill: "Comme si on travaillait pour soi."
CHAPTER IX

DIRECTIONS ON THE ROAD

AJ 4.276

Μηνυείν δὲ καὶ τὰς ὁδοὺς
tois ágyoubsai, kai μὴ
gélyta ὑπομένους αὐτοῖς
ἐμποδίζειν πλάνη τὴν
ἐτέρου χρείαν.

One must point out the road
to those who are ignorant of
it, and not, for the pleasure
of laughing oneself, impede
another's business by mis-
leading him.

Ap. 2.211

Τάλλα δὲ προείρηκεν, ὃν ἢ
μετάδοσὶς ἐστίν ἁναγκαῖα-
pasi paraçexin tois òeouc-
νοις πόρ ἄδωρ τροφὴν, ὁδοὺς
φοράζειν....

The duty of sharing with
others was inculcated by our
legislator in other matters.
We must furnish fire, water,
food to all who ask for them,
point out the road....

Lev. 19:14

Thou shalt not curse the deaf, nor put a stumbling-block
before the blind....¹

Deut. 27:18

Cursed be he that causeth the blind to wander out of the
way....²

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¹.... לא חקלה חשם 롯ונכי עלר לא חוכה מכשל.
².... אורו מושה עלר בעדה.
Thackeray believes the sources of this law to be the biblical verses cited above. According to him Josephus generalized these biblical prohibitions to include all people and by so doing he refuted the accusation recorded by Juvenal that the Jews did not show the road to noncoreligionists. If Thackeray is correct we are faced with a problem of juxtaposition. Why did Josephus, after listing the laws of Deut. 22:1-3 (Ex. 23:4, lost objects) and Deut. 22:4 (Ex. 23:5, assistance to beasts) jump to Deut. 27:18 (Lev. 19:14)?

Furthermore, exactly what Juvenal says is open to question. Some scholars feel that the satirist referred to a Jewish custom of refusing "the commonest offices of humanity ... to any but co-religionists," of neither giving directions nor a drink to a non-Jew. J. Lewy believes that Juvenal intended a double entendre. On the one hand he was charging the Jews with misoxenia, hatred of strangers (not showing the road or giving a drink). On another level he was referring to the Jewish ritual of conversion (circumcision = "verpos"; immersion = "fontem"; teaching the principles of the faith = "monstrare vias"). Juvenal saw Judaism as a mystery religion with misoxenia taught in a secret, unwritten form. His accusa-

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2. J. D. Duff, ed. Satires (Cambridge: Cambridge University Press, 1929), note ad loc.
tion of misoxenia on this second level was, as with all mystery religions, against keeping their religion closed to all but a select few ("non monstrare vias").

We agree with Lewy on but one point, that "non monstrare vias" is an accusation against the secrecy of the teaching of Judaism. Juvenal, immediately preceding "non monstrare vias ...." talks about the laws of the Jews given by Moses. These laws, i.e., the Torah, are what Juvenal refers to when he says that the Jews do not "point out the way ... and conduct none ... to the desired fountain." The "fountain" is a metaphorical reference to the source of the Judaic faith, the Torah. "Forbidding to point out the way to any not worshipping the same rites" and "conducting none but the circumcised to the desired fountain" are not two separate complaints but are two sides of the same coin. Juvenal's accusation was indeed one of misoxenia. But this misoxenia did not take the form of refusing directions or a drink. Rather, it took the form of closing the faith to nonbelievers. As Josephus wrote in Contra Apion: "[The lawgiver saw to it that] we do not begrudge those who want to share our customs. To all who desire to come and live under the same laws with us, he gives a gracious welcome.... On the other hand, it was not his pleasure that casual visi-

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1 J. Lewy, "הגדיר עיניון על קדחתוגיה תורה ומקידודו עלייה", Zion, 8, no. 2 (1943), pp. 83-84.

2 Cf. the Zadokite Document 6.3 (ed. Ch. Rabin, p. 23) where, in interpreting Num. 21:18, it says והנה אֲשֶׁר אָכְמָה, "the 'well' is the Torah." Cf. also Jer. 2:13 and 17:13 where God is referred to as "the source of living waters," פַּךְ את הַיָּוָה. For Juvenal's use of fons metaphorically as "source" see Satire VI, 286. (Cf. also the "sacred fountain," "sanctum fontis," of Egeria, around which the Jews congregated, Satire III, 13-14 and Proverbs 5:15-18 both in the Hebrew and the LXX.)
tors should be admitted to the intimacies of our daily life."
Similarly, in another passage in Contra Apion Josephus rebuts the charge of Jewish "separateness," of the Jews "refusing admission to persons with other preconceived ideas about God, and ... declining to associate with those who have chosen to adopt a different mode of life." Josephus does not deny these charges; he admits their truth and justifies them. Finally, he ends his argument by saying that the Jews "gladly welcome any who wish to share our own [customs]." If Josephus was anywhere refuting anti-Semitic accusations it was in Contra Apion, his apologetic work.

Again, we find the same two charges of misanthropy and secrecy being answered (or adumbrated) in Nicloas of Damascus' defence of the Jews of Ionia. "There is nothing hostile to mankind in our customs.... Nor do we make a secret of the precepts that we use as guides in religion...." Lastly, we note another passage where Josephus talks of the secrecy of the Jews for their religion. The various conquerors of Jerusalem found in the temple only "the purest type of religion,

1 Ap. 2.209-210: ...θεονήσωμεν τοὺς μετέχειν τῶν ἡμετέρων προαιρουμένων. θοι μὲν γὰρ ἐθέλουσιν ὑπὸ τῶν αὐτῶν ἡμῶν νόμους ζῆν ὑπελαθόντες δέχεται φιλοσόφονς ... τοὺς δ' ἐκ παρέργου προοιόντας ἀναλύγνωσαι τῇ συνθείᾳ ὠν ἡθέλησεν.

2 Ap. 2.257-261: μὴ παραδεχόμεθα τοὺς ἄλλας προκατει- λημένους δόξας περὶ θεοῦ, μηδὲ ποινωνεῖν ἐθέλομεν τοῖς καθ' ἐκείναν συνηθείαιν βιῶν ζῆν προαιρουμένοις ... τοὺς μέντοι μετέχειν τῶν ἡμετέρων βουλομένους ἡδέως δεχόμεθα.

3 AJ 16.43: ἔσθων τε τῶν ἡμετέρων ἀπανθρώπων μὲν οὐδὲν ἔστιν ... καὶ οὔτε ἀποκρυπτόμεθα τά παραγγέλματα οἷς χρώμεθα πρὸς τὸν βίον ὑπομηνύσιν τῆς εὐσεβείας....
of which we may reveal nothing to aliens."\(^1\)

We have shown that although the Jews were certainly accused of misoxenia, there is no unequivocal witness that the misoxenia consisted of not giving directions or a drink of water. But even if Juvenal did have in mind refusal of directions or a drink, can we assume that this charge was a common one which Josephus knew? It is possible that Juvenal's accusation merely reflects an isolated incident which once occurred and that "quand le mal est l'exception, il paraît la règle. Cette illusion, dont la plupart des moralistes sont victimes, a souvent trompé Juvénal ... il part d'une anecdote réelle, d'un fait précis et particulier, et les généralise."\(^2\)

And even if the accusation was a common one, can we assume that Josephus means to refute it? Would an apologist take an accusation of not giving directions and, in his rebuttal, make the charge more heinous by adding that the Jew's

\(^1\) Ap. 2.82: "...purissimam pietatem, de qua nihil nobis est apud alios effabile." Thackeray, ad loc., following Reinach, would emend effabile to ineffabile, i.e., "of which we have nothing to conceal from aliens." The reason for this conjecture is, of course, that ineffabile sounds apologetic while effabile does not. There is, however, no need for emendation, for in the passage cited above (Ap. 2.209-210) Josephus says in an apology that the religion is closed to outsiders. Whereas Nicolas of Damascus' apology consists of denying the charge of secrecy (see previous note), Josephus' consists of admission and rationalization.

\(^2\) G. Boissier, La Religion Romaine d'Auguste aux Antonins, 5th ed. (Paris: Librairie Hachette et Cie., 1900), vol.2, p. 155. It is not improbable that the cause of the denial of water was not a custom of denying "the commonest offices of humanity," and perhaps not even one Jew's dislike of a particular Roman; rather, a prohibition against drawing water on the Sabbath (M. "Erubin, ch. 2; some of the Tannaim discussing this law--e.g., Akiba--are contemporary with Juvenal).
intent was to mislead and that for the pleasure of having a
good laugh?! Or, conversely, if Josephus did record the anti-
Semitic claim, would Juvenal take the maliciousness out of it
by simply saying that the Jews don't point out the road? If
the refusal of directions and drink was indeed a charge levied
against the Jews, Josephus might have referred to it in Contra
Apion (2.211) when he said, "the duty of sharing with others
was inculcated by our legislator in other matters. We must
furnish fire, water, food to all who are in need of them, point
out the road...."¹ Antiquities, however, unlike Contra Apion,
is not primarily an apology and we have shown that AJ 4.276
is not an answer to anti-Semitic claims.

Tannaitic literature also states that one must show the
road to one who has lost his way.² The biblical source of this

¹Cf. also Ap. 2.291: oδε' ἐπὶ μισανδριαν, ἀλλ' ἐπὶ τὴν
tῶν ἐντῶν κοινωνίαν παρακαλοῦντες, 
"[The laws] invite men not
to hate their fellows, but to share their possessions," and
Ap. 2.146. Even in Ap. 2.211 Josephus may have been simply
presenting Judaism in a good light without having in mind any
specific charges. The author of Job was not answering Juvenal's
complaint when he accounts it a sin not to furnish drink to
the weary and bread to the hungry (22:7: Λα μὴν οὖν ἄνθρωπος νῦν
λαμβάνει).

²Sifre Deut. 223 (p. 254): מְלַיְּשַׁנּוּת יִרְאָב מִי
תַּחַת מַעֲשֶׂהּ לָוֹד; BT San. 73a: מְלַיְּשַׁנּוּת יִרְאָב
tַּחַת מַעֲשֶׂהּ לָוֹד (although the Amoraim, ibid., believed the term מְלַיְּשַׁנּוּת to refer to
one who is in danger of losing his life, it is clear from BT
BK 81b, cited below, that the reference is to one who is lost,
cf. Finkelstein's note, Sifre, p. 257); BT BK 81b: רַע
tַּחַת מַעֲשֶׂהּ לָוֹד. The term מְלַיְּשַׁנּוּת is used to refer to
one who is lost, and it is clear from BT
BK 81b, cited above, that the reference is to one who is lost.
Cf. also PT Yeb. 16.3, 15c: נְכַנֵּךְ מִגְוָלִים שְׁעַרְתֶּה
וְהַמִּיְצָרָה נִשְׁקִית בָּרוֹנֶהָו יְבִלחָו.
See also BT BK 80b-81a: מְלַיְּשַׁנְתָּ וְתַּחַת מַעֲשֶׂהּ לָוֹד;
מְלַיְּשַׁנָּה וְתַּחַת מַעֲשֶׂהּ לָוֹד; PT
Keth. 13.7, 36b: מְלַיְּשַׁנָּה וְתַּחַת מַעֲשֶׂהּ לָוֹד
וְהַמִּיְצָרָה נִשְׁקִית בָּרוֹנֶהָו יְבִלחָו; and the following
note.
law is not "the blind man" (Deut. 27:18, Lev. 19:14) but "the lost object." One must return a lost object to its owner whether that object is a possession of the owner or the owner himself. Josephus, therefore, in AJ 4.276 did not produce his own exegesis (and did not thereby intend to refute the claim recorded by Juvenal) but followed an already established halakhah. Moreover, the source of this halakhah in tannaitic literature makes it quite clear why Josephus lists it after the law of lost object. That is precisely where it appears in tannaitic literature.¹

How is Lev. 19:14 treated in rabbinic literature? Examination of the sources reveals that the verse was interpreted to mean responding truthfully to a question of fact or responding righteously to a request for advice. The one asking the question or requesting the advice is considered unenlightened,

¹So also in T. BM 2.29 after discussing a lost object and assistance to beasts (the two topics are treated together in rabbinic literature):魔法师 מלא ברית עםalen שמראות על הבמה עצמה על bemah התוכן הבירה שלשה חסדים בבירה מפסגת הבירה מבית לבבותם על שנים עשר ועשרים שנה, ואלה לבוגרים
וכל מצוה דרך לדי עזרה היא עזרה שמראות בבירה עזרה לבוגרים עד שמשייגו
לעיגר ואחד דרכו שליל מהכיתודים לישור, ותרם
Incidentally, it appears that the text here is corrupt. It is clear that the phrase למשות שמשות על ידי bíboר כ מצוה על על העזרה יאמש ו everlasting connects the preceding statement (יהור השועה) with the succeeding on (והוא יאמש שועה). In like manner should the first למשות שמשות על ידי bíboר כ מצוה על העזרה יאמש ו everlasting connect what comes before it with what follows it. David Pardo, id loc., attempts a remedy by reading למשות שמשות על ידי bíboר כ מצוה על העזרה יאמש ו everlasting. This reading would indeed connect the preceding statement (יהור השועה) but not the succeeding one (והוא יאמש שועה). However, it is clear from למשות שמשות על ידי bíboר כ מצוה על העזרה יאמש ו everlasting that a parallelism is intended and that, therefore, למשות שמשות should connect as well with what follows. To meet these requirements, the following reading is suggested:魔法师 מלא ברית עםalen שמראות על הבמה עצמה על bemah התוכן הבירה שלשה חסדים בבירה מפסגת הבירה מפסגת הבירה מבית לבבותם על שנים עשר ועשרים שנה, ואלה לבוגרים
וכל מצוה דרך לדי עזרה היא עזרה שמראות בבירה עזרה לבוגרים עד שמשייגו
לעיגר ואחד דרכו שליל מהכיתודים לישור, ותרם
(Interestingly, this same literary formula appears in another corrupt text (T. BK 9.31):למשות שמשות על ידי bíboר כ מצוה על העזרה יאמש, והוא עצמה שועה; see Jastrow, Dictionary, s.v. יאמש I.
blind to the answer. Beginning in the tannaitic period and continuing throughout the amoraic period, the verse is interpreted to mean providing the opportunity for one to sin.

The interpretation "blind" = blind to the facts was incorporated into the Palestinian Targums to Lev. 19:14 and Deut. 27:18. "Before a stranger who is compared to a blind man do not put a stumbling block."3 "Cursed be the man who misleads a stranger on the road, for he is compared to a blind man."4

1 Sifra, Qedoshim, parshah 2 (p. 88b):

2 BT Pes. 22b (= AZ 6a-b, giving wine to a Nazirite or "torn flesh" to a non-Jew; R. Nathan); MK 5a (to mark grave-sites so that a priest does not inadvertently become impure; Abaye); ibid., 17a (honoring one's father; tannaitic); Qid. 32a (honoring one's father; R. Huna); Ned. 62b (idolatry; Rabina); BM 5b (stealing; amoraic); ibid., 75b (interest; Mishnah 5.11); ibid., (default on a loan; R. Judah in Rav's name); ibid., 90b (castration; R. Papa); AZ 14a (idolatry; Abaye); ibid., 22a (Sabbath observance; amoraic); Hul. 7b (selling dangerous animals; Pinhas ben Yair); Nid. 57a (becoming impure; amoraic). Cf. also Hul. 3a with Rashi (ritual slaughter) and Hag. 25b with Rashi (selling demai). See also Sifra cited in the note above (unlawful marriage). The only case of those mentioned that might be equivocal is Hul. 7b, an aggadic passage. Nevertheless, it certainly doesn't belong to the category of responding to a question. (With Hul. 7b cf. Ap. 2.66: "bestias aduersantes naturae nostrae.")

3 Fragment Targum, MS Paris, on Lev. 19:14: לָיְךָ נַחֲלָה צָרָה לְמַלְאֹךְ אָנָכָּם בּוֹרֵא לַחֲדֹתָהּ דֵּין גוֹבֵל וּלְמַלְאֹךְ אָנָכָּם בּוֹרֵא לַחֲדֹתָהּ דֵּין גָּדוֹל. Similarly in the margins to MS Neofiti.

It is this interpretation of Deuteronomy that Josephus used when, in the second part of *AJ* 4.276, he speaks of misleading one who is ignorant of the road.

* * *

Josephus adds to this law, "for the purpose of laughing oneself." An original flourish? The above cited Sifra ends: "Perhaps you will say, 'I gave him good advice.' God knows what was in your heart."¹ That is to say, if one meant to give good advice but it turned out to be bad, he is not held accountable. It all depends on the intent. If the intention was solely "for the pleasure of laughing oneself," he is held accountable.²

* * *

In summary, there are two parts to *AJ* 4.276: directing a lost wayfarer and deliberately misleading a lost wayfarer. The first part is found in tannaitic sources, as in Josephus, together with the law of "lost object." The second part is found in the Palestinian Targum. The element of intention added by Josephus is found in the Sifra. This does not necessarily mean that Josephus had use of three distinct sources and combined them into one unit. The connection between the verse in Leviticus and that in Deuteronomy in both word and

¹Sifra, ibid.: שמא אמר עשה שבעה אשר נשוב ולא ראה להודר המילים שלב שבע יראת מאלהיך נמי נ, מ.

²The phrase γέλωςα δεικνυόνως has a tannaitic parallel in a different context. *M. Keth.* 6.6: ונה לא השה לא. Cf. also Sifra, ibid. (and parallels): לא חלנו על מתת למח訓練.
thought is clear. The interpretation of "blind" in the Targum on Deuteronomy is found in the Sifra on Leviticus. Therefore, while it is possible that Josephus did indeed combine different sources, it is also possible that the combination of these thoughts (whether oral or written) antedated Josephus. Whatever the case, the juxtaposition of the laws of a lost object and pointing out the road in Josephus certainly shows reliance upon tannaitic halakhah. The juxtaposition of the laws of pointing out the road and deliberately misleading a wayfarer is a natural one. The law of misleading is based on a tannaitic/targumic interpretation to Deut. 27:18 and Lev. 19:14. This would naturally lead into a discussion of the remainder of the verse in Leviticus as it does with the next halakhah in Antiquities.
Similarly, let none revile the sightless or the dumb.

Lev. 19:14

Thou shalt not curse the deaf, nor put a stumbling-block before the blind; but thou shalt be afraid of thy God: I am the Lord.1

As Thackeray has pointed out, the text here is doubtful. Most MSS have ἀπόντα, "the absent one," while the reading preferred by Thackeray is ἄσπιον, which he translates "the sightless." However, this latter word "in its one occurrence elsewhere means 'unseen' (not 'unseeing')."2

The Bible here speaks of reviling only the deaf; the blind is not mentioned in connection with cursing or blasphemy.3 The parallelism in the Bible is clear. One is not to

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1 Thackeray, note ad loc.

2 Thackeray, note ad loc.

3 Targum Neofiti margin would seem to support Thackeray's rendering: "לעא תולעתה והשה ביצק דלא שמע קדום אככתייה דעה מדהו". However, the הנעיה seems to be an error.
put a stumbling block before a blind man which he cannot see, and one is not to revile a deaf man with a curse which he cannot hear. Josephus, however, expands the meaning of "deaf" to one who does not hear the curse whether he be deaf or not; i.e., one absent, ἀπόντα.\(^1\) Josephus would then read: "Let none revile the absent person or the deaf person (even if he be present)." This expansion of the meaning of "deaf" in the Bible is found also in a Midrash compiled during the Middle Ages but based on early sources, not all of which are extant: "[Deaf] includes even one (i.e., who is able to hear but) who does not hear you."\(^2\)

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1With this meaning we can also accept the reading in the inferior MSS: δοκτοῦν, which we would then translate precisely as it is translated "in its one occurrence elsewhere" --unseen.

2Midrash Leqaḥ Tob on Lev. 19:14: מִנָּה אֲפִיָּלוּן יָרְפָא. Cf. also Targum Neofiti margin: ואֵלֶּה לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת לְעַבְרָן שֶׁהַעֲבַרַת מִן אֲפִיָּלוּן יָרְפָא. The tannaitic sources speak of compensatory damages incurred for "embarassing" the blind or the dumb (יָרְפָא; M. BK 8.1; T. ibid., 9.13; BT ibid., 86b). These were not, however, Josephus' sources, for first, מִן אֲפִיָּלוּן יָרְפָא is clearly a translation of לְעַבְרָן שֶׁהַעֲבַרַת מִן אֲפִיָּלוּן יָרְפָא in the Bible and secondly, the Tannaim expounding this viewpoint are R. Meir and R. Judah the Patriarch, both of whom lived after Josephus.
CHAPTER XI

QUARRELS AND RESULTING INJURIES

Ex. 21:12

He that smiteth a man, so that he die, shall surely be put to death.¹

Ex. 21:18-19

And if men strive together, and one smite the other with a stone, or with the fist, and he die not, but keepeth his bed: If he rise again, and walk abroad upon his crutch, then shall he that smote him be quit only he shall pay for the loss of his time, and shall cause him to be thoroughly

¹הנה תוח על תוח קב א formatDate.
Lev. 24:17, 21

And he that taketh the life of any man shall surely be put to death.... and he that killeth a man, shall be put to death.\(^2\)

There is no biblical parallel to Josephus' statement that one goes unpunished if the person whom he struck remains alive several days before dying. Weyl thinks that Josephus has mistakenly combined two biblical laws: the killing of a freeman and the killing of a slave.\(^3\) Ex. 21:20-21 speaks of a slave: "If a man smites his slave so that he die he shall be avenged; if, however, the slave remains alive a day or two he shall not be avenged."\(^4\) This Josephus paraphrases with "in a fight ... shall go unpunished." The second part of AJ 4.277, "howbeit ... to the physicians," corresponds to Ex. 21:18-19 which speaks of a free man. Thus far Weyl (followed by Reinach, Thackeray, and Schalit)\(^5\) who bases his conjecture on two points. First, the distinction which Josephus makes between immediate death (= guilty) and delayed death (= innocent) is

\(^1\) נכין יריבוך הוא והכה ואת רעהו אשם זא נברך ורא

\(^2\) לאו כי כל הכ כל.guna האדם מתה..... מתה האדם יומת.

\(^3\) Strafgesetze, pp. 54-57.

\(^4\) נכין כי כל הכ את עבד ואת אחיו בישב רכשה יומתACING] 

\(^5\) All ad loc. in their respective editions of Josephus. So also Belkin, Philo and the Oral Law, p. 99 (where Ex. 21:26 is mistakenly written for Ex. 21:20). Schalit refers to the wrong page in Weyl.
found only in the law regarding the slave. Secondly, Josephus' ἐκδικεῖσθω, "he shall be avenged," is not found in the law of the free man but is found in the law of the slave, Ex. 21:20: δίκη ἐκδικηθήτω (LXX: δίκη ἐκδικηθήτω).

There is only one problem with this theory. It is wrong. In fact, it raises more questions than it answers. Most important, of course, is that Josephus is not talking here of slaves. Besides that, ἐν μάχῃ clearly corresponds to ἐν σάλβῃ in the law of the free man (Ex. 21:18); ὅπου μὴ σίδηρος is probably a paraphrase for ἔργαν ίν ζωὴν (ibid.) as Thackeray has noted and as Weyl himself states is meant to clarify the later recuperation of the free man spoken of by Josephus;¹ and κομισθεῖσι παρ' ἐαυτὸν καὶ νοσήσας is clearly a paraphrase of ἔργαν λίγη̣ said of the free man and not of την' (LXX: διαβιώσῃ) said of the slave and therefore ἐπὶ πλήξας ἡμέρας is probably Josephus' own addition rather than a rendering of ποιήσας ήν ή δύο said of the slave for which it would, anyway, be a faulty translation.

Lest undue emphasis be given to Josephus' use of ἐκδικεῖσθω, as Weyl would have it, the following are noted: ἄθροος εὐστάτω διὰ τὸ πλὴξας is patently a translation of ποιήσας πρίν (LXX: ἄθροος εὐστάτω διὰ τὸ πατέξας) said of the free man; in fact, were Josephus paraphrasing the slave law we should expect an antithetical οὐκ ἐκδικηθήσεται as the LXX translates δὲν ήλ; Josephus' explanation of the avenging that the killer "suffer

¹Op. cit., p. 54. Josephus' paraphrase, according to Weyl, is also meant to clarify the fact that the injured lingered on for a while before succumbing; with a sword death would be immediate.
a like fate," i.e., death, is not mentioned in the slave law.¹

Weyl seems to be aware of all these problems, for in his last footnote dealing with this part of Josephus he says, "daraus wird uns aber erstens klar, dass Josephus die Gesetze, zum Teil wenigstens, aus dem Gedachtnisse dargestellt hat." The scholar, with this statement, is apparently glossing over the fact that Josephus, throughout AJ 4.277, has so many parallels to the biblical law of the free man and not to that of the slave. However, with this statement Weyl has destroyed his entire argument, for if Josephus is writing from memory of the slave.

Finally, we note that Philo too, when discussing the murder of a free man, has the same three-part law as Josephus. "He smites the other with his clenched fist or takes up a stone and throws it.... If his opponent dies at once the striker too must die ... but if that other is not killed on the spot by the blow, but is laid up with sickness and after keeping his bed and receiving the proper care gets up again and goes abroad ... the striker must be fined twice over, first to make good the other's enforced idleness and secondly to compensate for the cost of his cure. This payment will release him from the death-penalty even if the sufferer from

¹Weyl (p. 56, n. 16) is aware of this problem and claims that Josephus was following the halakhic interpretation of the avenging found in Mekh. RI, Nezikin, 7 (p. 273; ḫaq qal ḫq̄aš); Philo, Spec. Leg. 3.141; and Targum Ps.-Jonathan. However, if we assume that Josephus is speaking of the death of a free man, Josephus' statement is simply a paraphrase of the Bible; see below.
the blow subsequently dies."

That Josephus in *AJ* 4.277 is speaking only of the free man is beyond doubt. The problem raised by the scholars—that Josephus differentiates between an immediate death and a delayed death—is no problem at all, for Josephus was merely following tannaitic halakhah. According to the Tosefta, "if one smites his fellow ... and it was determined that the injured party would live but he, nevertheless, died his heirs receive monetary compensation" but he who smote is not put to death. This is also seen in another clause of the Tosefta: "If one smites his fellow ... and it was determined that the injured party would live, a second determination for death is not made." This means that if, after the determination of life, he nevertheless died the injurer is not liable to the death penalty. The Amoraim, as well, understood this to be the tannaitic law probably having in mind this last cited clause of the Tosefta.  

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1 Spec. Leg. 3.105-107. Philo follows this last law with its reason: "For as he got better and walked abroad, his death may be due not to the blow but to other causes." Cf. *M. San.* 9.1.  

2 *T. BK* 9.5-6: "If one smites his fellow ... and it was determined that the injured party would live, a second determination for death is not made."  

3 *T. BK* 9.5: This means that if, after the determination of life, he nevertheless died the injurer is not liable to the death penalty. The Amoraim, as well, understood this to be the tannaitic law probably having in mind this last cited clause of the Tosefta.  

4 *BT San.* 78b: "This means that if one smites his fellow ... and it was determined that the injured party would live, a second determination for death is not made."  

This is the meaning of Josephus' "if he be carried home and lie sick," i.e., it appeared that he would live.¹ That this is the meaning connoted by Josephus is seen by his usage of ἔπειτα with a finite verb after a participle, which construction "is often used to mark an opposition between the participle and the verb, marking surprise or the like."² ἔπειτα, then, does not have merely a sequential force as Thackeray has given it. Josephus is to be translated thus: "If he be carried home and lie sick for several days but (incongruously) nevertheless dies, he that struck him shall go unpunished."

* * *

The first statement in AJ 4.277, that the penalty is death if the one smitten dies immediately, is not found in Ex. 21:18-19. It is possible that Josephus had in mind Ex. 21:12 (or Lev. 24:17, 21).³ We think it more likely, however, that Josephus in all of AJ 4.277 was dealing only with Ex. 21:18-19 and that this law was deduced (either by himself or by a source before him whether written or oral) from 'those very verses which declare that if the victim does not die

¹And not that it was clear from the outset that he would die but that he lingered on for a while, which is the meaning given by the Tannaim to סמך על עַד אֶל ה' מָנוּר in regard to the slave law as opposed to the free man law. Cf. Mekh. RI, ibid. (p. 272): ישראליпочтמר הבアイינן בו איזן ואילוים ... קנועי ששקל with M. San. 9.1 (free man): ואFrançois ליהת רחלית מה שהח קוורא מען המאיצ' וחצ'ייל מה חילב.

²LS s.v. ἔπειτα II, 3.

³Cf. Mekh. RI, ibid., 4 (p. 261): המכת אֶלֶת רַעַת מְזוֹה, להמה באאמר לפני שֶבָּהֲמָר אֵאוֹי כִּכְּהַ כְּלַכְכַל שֶבָּהֲמָר אַפּּלָלׁ מעַרְרָר, סטְיַדְרַה הַלֵּחַל המכת אֶלֶת רַעַת מְזוֹה שאַכנָּךְ מְזֹהֲוָרָה דּר שֶבָּהֲמָר נַפְשָּׁה.
"then shall he that smote him be quit only he shall pay," i.e., if the victim does die, then shall he that smote him not be quit but shall die. This same deduction was made by the Tannaim although it is not as clearly enunciated as Josephus' statement until the amoraic period.¹

* * *

In summary, Josephus (and Philo), in discussing injuries resulting from quarrels (= Ex. 21:18-19) divides the possible results into three cases. (1) Death is immediate. The penalty to the striker is death. (2) Death is delayed. The striker is not punished by death. (3) There is no death but only injuries. The striker makes compensation.

The entire three-part section is an amalgamation of Ex. 21:18-19 and tannaitic halakhah (and perhaps Ex. 21:12).

¹Mekh. RI, ibid., 6 (p. 270): יתקפה יתמה,igers.יאכז אבר '"וכו יתמה" ב dönemde אנש ותת הוליה קח תונות מידי שותהו קוחה. ב"Keth. 33b: ... כב נועז בערב מברק ומקרא מברק בבר קוחה שחרבש וארות ומקトップות קות לאﳢ מה שבדה קות וסחמאו. Cf. Midrash Haggadol ad loc. (p. 476): לא אומדוה unordered הא יתקפה בית הפותח מיי דמתמצא לא את חומע התקפה.
CHAPTER XII

WITHHOLDING WAGES

AJ 4.288

And as with deposits, so if anyone withhold the wages of those who labor with their bodies, let him be execrated; since one must not deprive a poor man of his wages, knowing that this, instead of land and other possessions, is the portion which God has granted him. Nay, one must not even defer payment, but discharge it the selfsame day, for God would not have the laborer kept waiting for the enjoyment of the fruits of his toil.

AJ 20.220

(Shortly before the war with Rome broke out the work on the temple was completed idling thousands. Public works projects, therefore, were found for them. Josephus then adds this parenthetic remark.)

If anyone worked for but one hour of the day, he at once received his pay for this.

Lev. 19:13

Thou shalt not withhold any thing from thy neighbor, nor rob him: there shall not abide with thee the wages of him
that is hired, through the night until morning.¹

Deut. 24:14-15

Thou shalt not withhold the wages of a hired man, of the poor and needy (whether he be) of thy brethren, or of thy strangers that are in thy land within thy gates. On the same day shalt thou give him his wages, that the sun may not go down upon it; for he is poor, and his soul longeth for it; so that he may not cry against thee unto the Lord, and it be sin in thee.²

Josephus restricts this law to one who works with his body.³ This point is interesting inasmuch as it conflicts with the tannaitic statement that the hire for one's animal or one's utensils must also be paid promptly.⁴ This statement

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¹ לא תוסף אתرار לא יגרזל ולא תהיין פעלולות שכרך חוץ עד בוקר.

² לא תוסף שכרך עד ידם וה主要领导 אינומרخلاف באברך בשערו. בַּיּותֶתַּנֶת שכרך ולא תגר הלילה שכרך כי אנכי מְאֹד תָּלְפֶתַּנֶת נַעֲשַׂה לא יתקשש ולא יקרע יולֶּיךָ אל אֱלֹהֵינוֹ. רֹא שֵמֶשׁ.

³ Cf. also Philo, De Virt. 88: "The wages of the poor man are to be paid on the same day ... because the manual worker or load carrier who toils painfully with his whole body like a beast of burden, 'lives from day to day,' as the phrase goes and his hopes rest upon his payment. (μισθὸν πένθητος αὐθημηροῦ ἀποδίδει τῷ ἔργῳ ... ἄτι τε ... ὡς ἐπέον τινες, ἐφημηρίδοις οὐ δὲ χειροτέχνῃ οὐ δὲ ἀρχηγῷ παλαιαθῶν ὑποτυγχάνον τρόπον, ἐπὶ τῷ μισθῷ τέθεθαι τῷ ἐλπίδα.) Incidentally, note here Philo's agreement with the LXX interpretation of ἀλλήλων κατασκεύασμα in Deut. 24:15: καὶ ἐν αὐτῷ ἔσχα τὴν ἐλπίδα, and with Targum Ps.-Jonathan: ὁμοθυλήσασθαι οὓς σεβήνεις, τίνι μὴ δειτίᾳ.

⁴ Sifre Deut. 278 (p. 296): ηρέκε ό οὗτος σεβήνει, κατασκευάζει σεβήνει, καὶ δειτίᾳ, κατασκευάζει σεβήνει, καὶ δειτίᾳ, and see also Midrash Tannaim to Deut. 24:15 (p. 159); M. BM 9.12: Τῇ εἰρήνῃ υἱοθέτησεν καὶ κατασκευάζει σεβήνει, καὶ δειτίᾳ, κατασκευάζει σεβήνει, καὶ δειτίᾳ, T. BM 10.3-4: κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβήνει, κατασκευάζει σεβή

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See also Finkelstein's note ibid. and see also Midrash Tannaim to Deut. 24:15 (p. 159); M. BM 9.12: Τῇ εἰρήνῃ υἱοθέτησεν καὶ κατασκευάζει σεβήνει, καὶ δειτίᾳ, κατασκευάζει σεβήνει, καὶ δειτίᾳ, T. BM 10.3-4: κατασκευάζει σεβήνει, κατασκευάζει σεβή

...
of the Tannaim, given anonymously, cannot be dated. We can, however, give it a terminus ad quem. That animals and utensils were subject to this law was deduced exegetically from the verse in Deuteronomy (or Leviticus according to the Sifra).

The exact nature of the biblical admonition regarding animals and utensils was then debated by R. Jose ben Judah and his contemporaries. In other words, the extension of the law to include property was accomplished no later than the time of R. Jose ben Judah (end of the second and beginning of the third centuries). At any rate there is no proof of a conflict here between Josephus and contemporaneous halakhah.

Josephus may simply be paraphrasing the verse in Deuteronomy understanding יְרוּשָׁלַיִם as to mean "those who labor with their bodies." Such understanding, indeed, underlies the tannaitic exegeses of these words. In fact, there is a baraita which clearly restricts the law to work done by the laborer himself: "R. Hanania learned: The verse says 'Neither shall the sun go down upon it, for he is poor,'"
., only that which is subject to poverty and wealth, therefore excluding animals and utensils which are not subject to poverty and wealth."¹

To be sure, the editors of the Talmud understood this baraita differently. R. Jose ben Judah is of the opinion that animals and utensils are subject only to the prohibition stated in Deut. 24:14 but not to the commandment in the next verse. The above cited baraita is adduced to support R. Jose ben Judah's view.² However, this support is unsatisfactory as already noted by Yom Tob Isbili, for if the baraita excludes animals and utensils from בידתא תוןך שכירה it should also exclude them from לן תעושש שכירה, for the basis of the exegesis, the word יָּעַי, is applicable in both verses.³

The editors of the Talmud, then, understood the baraita to include property in the law of prompt payment but to restrict the Pentateuchal admonition concerning it to the words לן תעושש שכירה. There is nothing, however, in the baraita itself that demands such an interpretation and, as we have already noted, adding this baraita to support R. Jose ben Judah is semeiatical. We believe, therefore, that the baraita is

¹ BT BM lllb: תונך תנה תבנית אמקר שאר (לא נבמא עליך תושש) כעני הנד מפע שַּחֵק בְּנֵי לְבָדָּה עֲבֹדָה וּמַעֲשֵׂיָהּ הָעֹשֶׂה בְּכָלָּה שֶׁלָּם. The words enclosed in parenthesis are ad in the printed editions but excluded in every extant MS. The ant readings for the name are: ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא.

² BT ibid.

³ תועושש לא יאיב: כעני הנד (לָּא נבמא עליך תושש) מַעֲשֵׂיָהוֹת הָעֹשֶׂה בְּכָלָּה שֶׁלָּם. The words enclosed in parenthesis are ad in the printed editions but excluded in every extant MS. The ant readings for the name are: ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא, ר' חנניא.

*Thackeray's* account reading, *"The editors of the Pentateuchal admonition were the Talmud, understanding this baraita differently. R. Jose ben Judah is of the opinion that animals and utensils are subject only to the prohibition stated in Deut. 24:14 but not to the commandment in the next verse. The above cited baraita is adduced to support R. Jose ben Judah's view. However, this support is unsatisfactory as already noted by Yom Tob Isbili, for if the baraita excludes animals and utensils from בידתא תוןך שכירה it should also exclude them from לן תעושש שכירה, for the basis of the exegesis, the word יָּעַי, is applicable in both verses. The editors of the Talmud, then, understood the baraita to include property in the law of prompt payment but to restrict the Pentateuchal admonition concerning it to the words לן תעושש שכירה. There is nothing, however, in the baraita itself that demands such an interpretation and, as we have already noted, adding this baraita to support R. Jose ben Judah is semeiatical. We believe, therefore, that the baraita is*...
After introducing the subject of paying wages, Josephus divides the law into two parts: (1) total denial of wages (ἀποστερέω), and (2) deferment of wages (ἀναβάδδλλομαι). This structure is apparently based on Deut. 24:14-15: "Thou shalt not withhold the wages of a hired man.... On the same day shalt thou give him his wages, that the sun may not go down upon it." 1

Josephus supplies a reason for the prohibition of withholding wages: "This, instead of land and other possessions, is the portion which God has granted him." His wages are his portion and denial of them would be theft as would be removal of one's possessions. Tannaitic literature also views withholding of wages as theft. 2 Josephus, however, may not have relied on tannaitic statements but may have based himself on the same source as the Tannaim: Lev. 19:13, "Thou shalt not withhold anything from thy neighbor, nor rob him: there shall not abide with thee the wages of him that is hired, through the night until morning." 3

1 Cf. Targum Ps.-Jonathan to Deut. 24:14: לא תשלומיין הָאָדָם לָוֶיֶּהוֹת וּלְאַשְּאַנוֹת שְׁוֵיִים מַעֲרָיוֹת.

2 T. BM 10.3 (Sifre Deut. 278, pp. 295-296; BT BM 111a; Midrash Tannaim ad loc., p. 158): הבונש שכר רבים מעבר שבטים תמאל לאוין תשמיש בל 흩setUpהש ותפוש תמאלא בל תמאלא.

3 Cf. Philo, Spec. Leg. 4.196: "He who having appointed the evening as the time in which a labourer should receive his recompense ... and does not permit the wage ... to be delayed ... how much more does he forbid robbery and theft and repudiation of debts and other things of the same kind...." Cf. also Lev. 5:21-22: נפש כל התנא וממותת עליה, ונתן בשעת bootloaderアジ ... Note...
The reason given by Josephus for the prohibition of deferment of wages ("for God would not have the labourer kept waiting...".) is simply a paraphrase of Deut. 24:15.

* * *

Biblical law states that the wages of the laborer must be paid on the same day of his work. Tannaitic law further discusses the time when payment is due for the different types of laborers.1 One type of worker so discussed is the laborer who works by the hour. When he must be payed depends on various factors: (1) whether he is employed by day or night,2 (2) conflicting tannaitic opinions,3 (3) interpretation of a mishnaic text,4 and (4) variant readings.5 Nowhere, however, is there a tannaitic halakhah that the hourly worker is to be that the law of paying wages follows that of deposits in Josephus.

1M. BM 9.11 and parallels.

2T. BM 10.2:

3BT BM 11a:

4Ibid.:

5T. ibid.: So both MSS (as also the Mishnah ibid.). The printed editions, however, do not have this clause (cf. Moses Margalit, תואמה הפיכת on PT) and PT BM 9.11, 12a quoting the Tosefta has:
paid immediately upon completion of his work as Josephus seems to intimate (AJ 20.220).

Josephus' statement is, of course, a reflection of historical events and not a paraphrase of any law, tannaitic or otherwise. The halakhah, in determining the latest time of payment, does not preclude immediate payment. What needs to be pointed out here, however, is the agreement between the historical reality as recorded by Josephus and the spirit of these halakhoth, biblical and tannaitic: the laborer was to be paid with as little delay as possible.¹

¹Similarly, Jesus' parable about the laborers in the vineyard (Matt. 20:8) undoubtedly reflects actual practice: "And when even was come, the lord of the vineyard saith unto his steward, Call the laborers, and pay them their hire."
CHAPTER XIII

BURIAL AND FUNERAL RITES

Purification of the Corpse

Ap. 2.203

(After discussing ablutions [ἀπολούσασθαι] required after sexual intercourse Josephus gives the following reason for this law.)

Ψυχής γὰρ ἔχειν τὸ ὅμοιον πρὸς ἄλλην χώσαν ὑπέ-έλαθεν· καὶ γὰρ ἐμψυμένη σῶμας κακοπαθεῖ, καὶ τού-των αὖ δανᾶτω διακριθείσα. διὸ περ ἄγνητας ἐπὶ πάσιν τοῖς παρυπατοῖς ἐπαξεν.

For the Law regards this act as involving a partition of the soul [part of it going] into another place; for it suffers both when being implanted in bodies, and again when severed from them by death. That is why the Law has enjoined purifications in all such cases.

The body from which the soul has departed, whether through intercourse¹ or through death, requires purification. Purification of a corpse before burial was practiced at the time of Josephus as can be seen from the following New Testament passage: "And it came to pass in those days, that she was sick, and died; whom when they had washed her, they laid her in an upper chamber."² So also tannaitic halakhah: "On

¹Cf. AJ 3.263.

the Sabbath it is permitted to attend the corpse: to anoint it and to wash it.1

Burial Accoutrements

There is mention in Josephus of ornaments (κόσμος) accompanying a royal burial. Herod's ornaments accompanied the procession at his funeral.2 At the burial of Aristobulus, the brother of Mariamme, Herod buried along with the corpse a great amount of ornaments.3 John Hyrcanus I took 3000 talents of silver out of King David's tomb.4 And when Herod opened King David's tomb he found "many ornaments of gold and other valuable deposits."5

1M. Shab. 23.5: וראית כל כרכך 집 כוכב חיות sollen. Sem. 1.3: זריע מבית יהוה ... וירא המיתות אדר את ... Cf. PT Ber. 4.1, 7b (= Gen. R. 37): קתיב התימא תעה דברות נבくる פענית. רוח להקויות מה לכל השעה שוער ... ויהי שא ישר ית מימים והתרוק ויהי לחם מים והתרוק בחちょう. J. H. Schorr, HeHalutz, vol. 9/I (1873), p. 7, states: sine aura = "אף כייה כל דרש מלת "שכר" וה"ר"ת רחובות בשתיים (ﾔן ﻣacceptable) sine arum ולין (ﯽﯽ) We could find no such Latin word arum having the meaning גזית. The only thing close is aruo (which is actually Greek ἀρω) meaning "to draw water" and found only once—in the fourth century (A. Souter, Glossary of Later Latin; Oxford: Clarendon Press, 1949). However, a passive participle of this word would be aratum (or in Greek ἀρωμένου, ἀρωδέν, ἠρωμένον, or ἀρωμένον and not arum.

2BJ 1.671: 'Ἀρχέλαος ... πάντα τοῦ βασιλικοῦ κόσμου προ-
ήνευκεν συμπομπεύοντα τῷ νεκρῷ; AJ 17.196: πάντα τοῦ κόσμου
προκομίσαντος (variant: συγχ.) έδ ο συμπομπεύοντα τῷ νεκρῷ.

3AJ 15.61: πολύν δὲ συγκαταδάπτων κόσμου.

4AJ 13.249: 'ὑρκανός δὲ τὸν θαυμάτου τάφον ἀνοίξας ...
τρισχίλια μὲν ἀργυρίου τάλαντα ἐξεκόμισεν. So also BJ 1.61.

5AJ 16.180-181: ἀνοίξας τοῦ τάφον ... ἀποδέχομαι μὲν οὖν χρήματα, καθὰπερ ὑρκανός, οὐχ εὐφευγε, κόσμον δὲ χρυσίων (variant: χρυσοῖ) καὶ ψηφιζήλων πολύν. Variants: κόσμον δὲ πολύν
κειμήλιων χρυσίων; "ornament vero et vasa aurea plura." Richards
and Shutt, "Critical Notes on Josephus' Antiquities," Classical
Quarterly 31 (1937), p. 175: "χρυσοῖ καὶ κειμήλιων both are
The halakhah of the mid-second century presupposes an earlier custom among the Jews of throwing utensils (or clothes) upon the coffin. "'If his father and mother threw utensils (or clothes on him it is incumbent upon others to save the objects' ... Rabban Shimon ben Gamaliel remarked that this law is in force only if the objects had not touched the coffin." ¹ Arche-
governed by κόσμου."

The opening of David's tomb by Hyrcanus and Herod is mentioned again in AJ 7.392-394 after Josephus relates David's death: Solomon "buried with him a great abundance of wealth (πλοῦτον αὐτῷ πολύν καὶ ἀφθονον συνεκθέσαεν—this is an addi-
tion to the Scriptural account) ... Hyrcanus ... opened one of the chambers in David's tomb (Ἐνα οἶκον τῶν ἐν τῷ Δαυίδου
μνήματι) and carried off 3000 talents ... King Herod opened
another chamber and took away a large sum of money" (Ἡσίων

¹BT San. 48a-b: ת"א היה אבי כי בת פרדכי וב כלים מזר חל על
השער הפרדכי וה LoginPage of עלה באמרرشי בחר זכרת אמות
אריסטות ותוכל לחפש שלך. See also Sem. 9.23: כל המצעים
כל ימאה📲ו מהת מהת. The Greek word for κόσμου שומד שומד
רָּאִים לְפָדְתַּל וְרָאִים שְׁחֵרָּבִים אֵילָּא. עד שהי
ח͡סָרָבִים וְלְפָדְתַּל וְלְפָדְתַּל
משתמשים בין יראות בל מילמק אל האומד של.Arrays לא
את אום כורכר כורכר. The more we search we will find.
אמר כי רבע כל אöm זכו כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כוזב כז
מכה עלינו רימיה רמיה רמיה רמיה רמיה רמיה ר(Pointer של ארץ
רְמאִים לְפָדְתַּל בָּרָּבִים שומד שומד שומד שומד שומד...
לאבד יבג נא סנאerman
יהודים לא ישארות ... ת"א כלים לַפְדְתַּל פְדְתַּל...
ומקור שבין של התבוסס ... ת"א בָּרָּבִים שומד שומד שומד שומד שומד...
גָבָנְהַנְג בָּרְגָנְה (בַּרְגָנְה) הָסְתּוּרנְג בָּרְגָנְה... רכסת שמטיא
השל השל השל בָּרְגָנְה הָסְתּוּרנְג בָּרְגָנְה.

Much has been written on the significance of a key in
this context; see Zlotnick, Tractate "Mourning," pp. 16-17.
Without developing the point here we should like to make the
following observations:
(a) In the sources cited above in this note what was
thrown on the coffin was מִשְׁלָך. The Greek word for מִשְׁלָך
which may have been written מִשְׁלָך.
(b) Semahoth reads: כָּלֶּהוּ מֵבִא שָׁלִּךְ לוֹ מִשְׁלָך
בֵּן גוּרְבְּנוּ. Some interpretations of the "key"
custom connect it with the fact that the deceased had no son
(see Zlotnick, ibid.). Note, however, that it is a close rel-
ative who throws things in the tomb: "If his father and mother
opened the coffin, and the deceased has no children..." Samuel,
therefore, having no children would have no one
throwing things in his grave. The sages, therefore, assumed
this function. In other words, מִשְׁלָך does not the object
(תַּל יָבִי) but those who put the object
there— the sages (רָּאִים לְפָדְתַּל).
ological discoveries bear out this custom of placing personal effects in the grave along with the body of the deceased.  

Place of Burial

Twice Josephus mentions that corpses were brought outside Jerusalem for burial. In tannaitic halakhah the burial site had to be a proscribed distance from a city. Accounts dating from the first century CE testify to the historical accuracy of this law. And in regard to Jerusalem an unburied corpse could not even be kept there overnight.

1See Lieberman, After Life, p. 509, n. 22 and Zlotnick, op. cit., p. 138 who cite reports of Palestinian excavations.

2AJ 15.6: After Herod captured Jerusalem he "killed forty-five of the leading men of Antigonus' party, and stationed guards at the gates of the walls in order that nothing might be brought out together with the dead," וֹנָּה מִיָּה סַם-סּכָּאָה אַרְכָּא וְאֵּנְהַוָּא. BJ 5.567–570: Josephus numbers the amount of corpses that were carried out through the city gates during the war with Rome. The horrors of the siege reached such a degree that "burial consisted merely in bringing [the corpses] forth and casting them out of the town," ταφὴ δ' ἂν τὸ προκομίσαντας ἐκ τοῦ ἀστεος ὅπαται.

3M. BB 2.9: הַמְּרָכְתֵּן הַאֲחָלָה אֲשֶׁר הָקָרְבּוּר ... וַתִּשְׁתַּחְשֵׁתוּ אֵיתָר ... וְהָקָרְבּוּר תֶּשֶׁמֶשׁ אַחַת ... הַמְּרָכְתֵּן אֲשֶׁר הָקָרְבּוּר קָטַבְוּר מִפְּרוּךְ אַחַת. "Now when he came nigh to the gate of the city [Nain], behold, there was a dead man being carried out." See also John 11:30–38 where Lazarus is buried outside the town of Bethany.

4BT Git. 56a: ר. יוחנן בן זקאי, pretending to be dead, was carried through the gates of Jerusalem during the Roman siege. Luke 7:12:ὅς δὲ ἦγεθεν τῇ πόλῃ τῆς πόλεως, καὶ ἔστιν ἀνάκοινοι τοὺς τεθνηκός. "Now when he came nigh to the gate of the city [Nain], behold, there was a dead man being carried out." See also John 11:30–38 where Lazarus is buried outside the town of Bethany.

5T. Neg. 6.1–2: וּרְאוּ אֲנֵי מַלְיִלְיָן בָּהָה אֲשֶׁר ... הקבש שלשלית הַלְּאֹרֶב מִלְיָנָא בִּבְךָה שָׁלוֹם וְאוֹרִיִּיס בֶּן אֵלִילִיס אֲשֶׁר ... וּרְאוֹתָה כִּתָּה וָלְכוֹן בְּתוֹכָהּ לְיוֹרֶלֶוָלִים, the reference is to the necropolis surrounding Jerusalem as Zlotnick, op. cit., ad loc., has remarked. Cf. AJ 20.95: "Monobazus sent her [Helena's] bones and those of his brother to Jerusalem with instructions that they should be buried ... at a distance of three furlongs from the city of Jerusalem." See also BJ 1.581 (AJ 17.59).
Eulogy

After the death of Alexander Jannaeus the Pharisees eulogized him and "by their eulogies they elicited from the people such mourning and sorrow that they gave him a more splendid burial than had been given any of the kings before him."\(^1\) Eulogies are as old as the Bible.\(^2\) According to the Tannaim some funeral rites were practiced for this reason alone—to move the people to grief.\(^3\) Indeed, a tannaitic eulogy from the time of Josephus begins: "Over this one it is good to cry. Over him it is good to mourn."\(^4\) Note also the parallel in Ben Sira: "Make your crying bitter and your eulogy...

\(^1\) AJ 13.406: τὸν δὲμον εἰς πένθος καὶ τὴν ὑπὲρ αὐτοῦ κατήσθαιν εξεκαλέσαντο τοῖς ἐπαίνοις, ὡστε καὶ λαμπρότερον ἢ τίνα τῶν πρὸ αὐτοῦ βασιλέων αὐτὸν ἐκθέοις. Our translation, which differs only slightly from Marcus', is meant to bring into greater relief the comparison with the rabbinic sources.

\(^2\) E.g., II San. 1:17-27. See also LXX II Chron. 21:20, καὶ ἐπορεύθη ὁ υἱὸς ἐν ἐπαίνῳ for καὶ ἐπορεύθη. (In regard to the Hebrew, cf. Sem. 8.7: שמות מעקק נעל מהודרת של פעמים זיל in the eulogy for Samuel the Little.)


\(^4\) Sem. 8.7: רוחנייא קטעי ... רוחنيיא בוכך ברייא רכיב. The parallels (T. Soṭ. 13.4; BT San. 11a; Soṭ. 48b; BT Soṭ. 9.13-14, 24b), however, have a different eulogy. See also BT MK 8a: והיה רבי דר רח듭יא בְּמַעְעֵר אִתי. מַעְעֵר אִתי בְּמַעְעֵר מְנַהֲלֵי אֲשֶׁר ... רב בָּנָא יִדְחָא (cf. Ben Sira 38:17 והיה רב בָּנָא יִדְחָא which presupposes a Hebrew המִשָּׁם; see the editions of Segal and of Charles, ad loc.). Cf. MK 28b: והיה ידך רְאֵמָה "וְיָדָה יָדָה בן עֲבָדָי רֵאוֹחֵל לִילָה" (but see ibid.); Ber. 6b: להן ידך יָדָה יָדָה בן עֲבָדָי "בְּמַעְעֵר" (חרית קול, but see ibid.); Shab. 105b; Alon, op. cit., p. 102.
I gies complete."

Dirge

Josephus mentions a "dirge directed by a conductor" as an element of mourning. The Mishnah defines the funereal in exactly this way: "One leads and the rest respond."

Flute-players

At the lamentations for Jotapata Josephus says that "many of the mourners hired flute-players who would begin the funeral dirges for them." As Thackeray has pointed out in his note to Josephus, these flute-players are mentioned in Matthew 9:23. They are also mentioned in the Mishnah where it is seen that they were hired.

Spices

Josephus records that in Herod's funeral procession

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1Ben Sira 38:17: This is based on a variant noted in the margin of a Hebrew MS (instead of 'ים) and on the LXX (which Segal, ad loc., accepts as the correct reading.

2BJ 2.6: θερήνος ἐγκέλαυστος.

3M. MK 3.9: These are already found in Jer. 9:16.

4BJ 3.437: πλείστους δὲ μισσοῦσαν τοὺς αὐλητὰς, οἱ θερήνων αὐτοὺς ἐξηρξον.


6M. Keth. 4.4 (= Sem. 14.7): אֲלַנַּה יְרֵא עָלָיו הַבּוּל שְׁוַאֲלָל; אֲפִילָה עֵרֶב שְׁבֵיתָא לֹא יָפֵתַה מְשֵׁנָא הָיִלָּים תְּמוּנָה; M. BM 6.1: שֶׁבֶר אַחַת הַקּוֹרֵם וַהֲתִן הַכַּפָּר לְהָבִיָא פָּרִיפִּיכָא וְהָיִלָּיים לְבַלָּה אֶלָּה.
there were those who carried spices.\(^1\) Also, at the burial of Aristobulus, the brother of Mariamme, Herod provided a great quantity of "perfumes."\(^2\) Whatever their purpose, spices at a burial are mentioned in Chronicles, the Gospels, and the Mishnah.\(^3\)

**Special Funeral Rites for National Leaders**

In a few places Josephus mentions public mourning at the death of national leader.\(^4\) In two of these instances (\textit{AJ} 6.293, 377) it appears that the "public mourning" consisted

\(\text{\textit{AJ} 17.196, BJ 1.673}: \) \(\text{ἀρωματοφόροι}.\)

\(\text{\textit{AJ} 15.61}: \) \(\text{Ṣυμλώματα}.\) LS defines this word as "incense" or "fragrant stuffs for burning."

\(\text{II Chron. 16:14}: \) \(\text{יוּשכְכֹכֵתְה בְּשֵׁכֶכֶת אָרָי בַּשָּׂם רְוֵדָם רְוֵדָם} \text{מְשָׁמְרִים לִשְׁמֹאֲל.}\)

Mk. 16:1: After Jesus' body was laid in the sepulchre, spices (\(\text{ἀρωματα} \)) were brought that it might be anointed (\(\text{ήν ... ἀλειψοντω} \)); Lk. 24:1 has \(\text{ἀρωματα καὶ μόρα} \); Jn. 19:39-40 has a mixture of \(\text{σμύρνα} \) and \(\text{ἀλόν}.\) In John we are told that these \(\text{ἀρωματα} \) with the linen shrouds were put around Jesus' body "in the manner of the Jews" (\(\text{καθὼς ἦθος ἐστὶν τοῖς Ἰουδαίοις ἑνταφιάζοντες} \)). Referring to the "spikenard" (\(\text{μύρον τάρσεως} \) \text{variant: \(\text{μύρον} \)}) mentioned in Jn. 12:3, Jesus says, "Against the day of my burying hath she kept this" (Jn. 12:7).

M. Ber. 8.6: \(\text{אֶתְה לִשְׁמֹאֲל בֶּן בֵּית} \). Cf. Sem 12.9: \(\text{קֵרוֹנָי לִשְׁמֹאֲל נֶאֶר הָעָלָה} \) and the note of Zlotnick, \textit{op. cit.}, pp. 161-162.

\(\text{\textit{AJ} 6.293}: \) When Samuel died the people wept for him very many days "with no mere public mourning as for the death of a stranger, but each privately grieving as for his own" (\(\text{όυ κοιλὸν τοῦτο πάσχοντες ὡς ἐπ' ἄλλοτρῷ τελευτᾷ, ὡς οἰκεῖον δ' ἐκαστὸς διὸν ποθῶν} \)). From this addition to the biblical account it can be inferred that at the death of a national leader there was public grieving (\(\text{κοιλὸν πάσχοντες} \)). \textit{AJ} 6.377: "The Jabesenians with public weeping (\(\text{πανηθήμει κλάσαντες} \)) buried the bodies [of Saul and his sons]." The public weeping is an addition to the scriptural account, I Sam. 31:12-13. See Niese ad loc. cited by Marcus ad loc. \textit{BJ} 2.5: \(\text{το κοιλὸν [πάνθος] over Herod's death.} \)
simply of mass feelings of grief which cannot be classified as halakhic mourning rites. In the remaining instance (BJ 2.5) the mode of the mourning is not clear. However, in paraphrasing the account of Judah Maccabaeus' death Josephus adds to the public mourning in I Macc. 9:20 that the people "publicly honored him with the customary ceremonies." This reference to halakhic rites may pertain to funereal and/or mourning practices. In tannaitic literature a national leader is likewise honored by public mourning rites and by special funeral practices. The latter consisted of funeral pyres and, in the case of kings, hamstringing animals.

1Cf. also BJ 1.581 where at the death of Herod's brother, Pheroras, Herod proclaimed a "solemn national mourning" (πένθος τε μέγιστον διω τῇ ἐθνεί κατηγγείλειν).


4T. San. 4.2-3: מָלֵךְ יִשְׂרָאֵל . . . שָׂרִי וַעֲבוֹדָה עַל עָם מַעֲבָד. T. Shab. 7/8.18-19: כִּי שָׂרִי עָלֶיךָ עַל עָם מַעֲבָד. Funeral pyres for kings are found in the Bible: II Chron. 16:14; 21:19; and Jer. 34:5.
The pious rites which [the Law] provides for the dead do not consist of costly shrouds or the erection of conspicuous monuments.

Shrouds

The first part of Ap. 2.205 parallels the talmudic account that beginning with Rabban Gamaliel II the dead were dressed in simple linen shrouds. "At one time the funeral expenses were a greater cause for pain than the grief over the deceased. People, consequently, began to abandon their dead. Rabban Gamaliel, therefore, made light of his own honor and ordered that his corpse be borne away in simple linen. The people followed suit." Rabban Gamaliel flourished in the last quarter of the first century and was, therefore, Josephus' contemporary. Even if we do not accept the theory that Josephus

1 BT MK 27b (= Keth. 8b): ἀφέσις τῷ ταπεινῷ τῷ κεκολομημένῳ τῷ ἐν τῇ τοιᾷ κεκολομημένῳ ἐν τῷ ἐν θαλάσσῃ λάθει. LXX: μὴ ἀπερέξῃς τὸν τοὐφήν αὐτοῦ. Note also that LXX reads περίστευλον for ημικ which provides yet a closer parallel to the talmudic statement).

In the Testament of the Twelve Patriarchs 26:3, Judah tells his sons: "Let no one bury me in costly apparel" (Μὴ δέξῃς με ἐν ταφώματι πολυτελῆς ἔσοχῆς); see G. Alon, חכרוהנ=========ך ערכו, vol. 2, p. 165; cf. also Higger, Sem., p. 246. Jesus, before being placed in the tomb, is also wrapped in linen shrouds (σινδών), Matt. 27:59; Mk. 15:46; Lk. 23:53; Jn. 19:40 (σάνδων). The last source adds that Jesus' body was wrapped in linen with spices "as the manner of the Jews is to bury" (καθὼς ἔδωκε ἑστιν τοῖς Ἰουδαίοις ἐνταφιάζετεν). On enwrapping the body in shrouds see Segal, Ben Sira, p. 249, who points to LXX Ezek. 29:5: "You will not be enwrapped" (οὐ μὴ περιστευλής reading γῆν for γῆν as also Targum Jonathan); Tobit 12:13: περίστευλες τον νεκρόν; and Ben Sira 38:16: περιστευλὼν τὸ σῶμα αὐτοῦ for Hebrew יمنح אנשך. Cf. also BT San. 106a: כי נקשו י לזה יעדים ליך [>.]
was visited in Rome by Rabban Gamaliel and three other Tannaim,\(^1\) it seems certain that Josephus would have, nonetheless, known of this new practice. For, not only was the practice instituted by the leader of the Jewish people, but it was a practice that was quickly adopted by the Jews. If we grant Josephus even a minimal amount of interest in his homeland; if we grant him even a modicum of interest in the situation of his people after the war's devastation, he would have heard of the measures taken by the leadership of the Jews to improve the economic and social conditions of the masses.\(^2\)

This account, then, of Rabban Gamaliel's measure enables us to determine what Josephus had in mind when he wrote \(\varepsilon\nu\tau\alpha\rho\iota\mathrm{\omega}\nu\). We have, therefore, translated "shrouds" and have rejected Thackeray's more general "obsequies."

**Monuments**

The second part of Ap. 2.205 is problematical. What does Josephus mean by \(\mu\nu\nu\mu\epsilon\mathrm{\iota\omega}\nu\)? On the one hand, the word means "memorial" or "monument" and in regard to burial practices in


\(^2\)The statement was made above (p. 67) that Josephus would not have known of the law of hanging which came into being during his lifetime. This in no way militates against our contention here that Josephus would have heard about the practice of simple burial. The latter was a measure promulgated by Jewry's leader and put into practice by the populace. The law of hanging, on the other hand, was a matter of scholastic exegesis, most probably having no practical significance whatsoever since it was developed after the loss of Judaean independence (see above, p. 31, n 3).
Judaea it would signify the ἱ. This was a monument built over or near the grave and it served as a memorial. On the other hand, μνημεῖον may mean the tomb itself which may or may not be noticeable by some construction. Whether by μνημεῖον Josephus meant a tomb or a memorial, the fact is that both were highly "conspicuous" and Josephus himself must have seen a number of them in Judaea.

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1. The building which Simon the Hasmonaean erected over the grave of his father and brothers is termed τάφος (I Macc. 13:30). But Josephus calls it μνημεῖον (AJ 13.211-212) and the Peshitta, while it has ἱ (13:30) for the building, calls the pyramids, which constituted part of the building, ἱ (13:28). (One wonders whether the "seven-towered right reason" said of the seven martyred brothers in IV Macc. 13:7 might not be a subtle allusion to the seven pyramids which constituted part of Simon's construction.)

2. M. Sheq. 2.5: ἱ ἐπὶ κεῖσθαι τοῖς θανάσις τοῦ λαοῦ. The monument in Jerusalem known as μετέπειτα ἱ "consists of two parts: the square building which is the tomb and the circular construction above it which is the ἱ" (N. Avigad, ἱ, ed. M. Avi-Yonah [Jerusalem: Bialik Institute, 1956], vol. 1, p. 344). Nearby is another tomb upon whose frieze the following inscription is found: ... ἱ καὶ ἱ ὑπὸ ἱ ἔρχοντι καὶ ἱ ἐπὶ τοῦ λαοῦ. Avigad (ibid.) conjectures that the ἱ was beside the grave. Similarly the monument known a Zachariah's Tomb is actually a ἱ of some graves nearby (ibid., p. 345). That the ἱ served as a memorial can be seen from the statement of R. Shimon ben Gamaliel: ἐξ ἱ ἐκστάσεως λατρεύσεις θεοῦ ἐμπνεύσθη ἐρχόμενος αὐτοῖς ἡ χείρ; (PT Sheq. 2.7, 47a). Cf. also II Sam. 18:16: ἐπὶ τὸ ἱ πᾶννες ἐκ τοῦ πολέμου λατρεύοντες ἐμπνεύσθη αὐτοῖς ἡ χείρ; and I Macc. 13:29: εἰς θύσιν αἰώνιον αὐτὸν and AJ 16.144: Herod built a monument (μνημεῖα) to his brother Phasael which was a memorial (μνήμης) to the dead man "because it was called by his name" (ὅτα την προσηγορίαν).

3. Lk. 11:44: ἐστε ὃς τὰ μνημεῖα τὰ νεκρὰ, καὶ οἱ ἀνήλικοι οἱ περίπατον τοὺς ἑως ὑμᾶς, "You are as the tombs which appear not and the men that walk over them know it not." Jn. 5:28: ἔρχεται ὁ χρόνος πάντως εἰς τὸν τοὺς μνημεῖοις ἐκούσωσιν τῆς φωνῆς αὐτοῦ, "The hour is coming in which all that are in the graves shall hear his voice." See also Matt. 27:52-53, 60-61; Mk. 15:46; Lk. 23:53-55. Cf. also AJ 18.38 (μνήμη).

4. The monumental tombs and memorials which surround Jerusalem were constructed between the Hasmonaean period and 70 CE (Avigad, ibid., p. 328).
However, these monumental tombs and memorials found today in Israel belonged to the aristocratic rich. The outlay for their construction was considerable which only the wealthy could afford.¹ R. Shimon ben Gamaliel (middle of the second century) said: "Memorials are not built for the righteous; their words are their memorial."² What prompted this statement was undoubtedly a concern for the surviving relatives. R. Shimon ben Gamaliel is following in his father's footsteps by minimalizing the relative's expenses. The sages had nothing against a memorial per se as long as there was no financial strain.³ Whether or not memorials were constructed by the nonwealthy as well,⁴ the halakhah does not require any kind

¹Avigad, ibid., p. 321. Cf. Pausanias, 8.16.4-5: "I know many wonderful graves (τάφος), and will mention two of them, the one at Halicarnassus and one in the land of the Hebrews ... that of Helen." Cf. Ulla's statement which is undoubtedly based upon the tombs he saw in Palestine (BT San. 96b): אביר עכולו והמא ... כיוון שמעניי ובריא ...便可 나ֵי הַרְאוּעָה, שֶּׁלָּלְה הַרְאוּעָה שֶּׁלָּו ... יְמֵיהַרְאוּעָה. דְּוִרוּסְלִית שֶּׁלָּו בֵּיה שֶּׁלָּו שֶּׁלָּו מַעָּלִיתֶּה. שֶּׁלָּו.


³M. Sheq. 2.5 (T. Sheq. 1.12; Gen. R. 82): הַמַּרְאוּעָה הַיִּשְׂרָאֵל הַיִּשְׂרָאֵל ... והיה נחום אם מרו טורה בושיほう יברון. BT San. 48a quotes the Tosefta (Tosefta קמן יְשָׁע) - קמן יְשָׁע [Gen. R.] - as שֶּׁלָּו כְּבוֹד יְשָׁע (דָּוֹמְכָךְ - וְיַדְמוּךָ) - יְשָׁע. In other words no one was being hard pressed financially. There is, then, no conflict among the Tannaim on this point as Riskin, "Halakah in Against Apion and The Life," p. 44, believes. (He also misinterprets חֲלֹק מִשְׁקָף.) Zunz, Zur Geschichte und Literatur (Berlin, 1845), pp. 390-391, already saw R. Shimon ben Gamaliel's statement as reflecting a concern for the peoples' finances.

⁴T. Sheq. 1.12, ר' נחום א审议通过 תורה עם בורך לו נשע על עבידי, would seem to indicate that a need not be so expensive. This halak (or דְּוִרוּסְלִית, BT ibid.; PT
of monument, either for tomb or memorial, and certainly not a conspicuous one. To be sure, Josephus saw monuments and wrote about some others\(^1\) but he is concerned here with the demands of the law. The same may be said in regard to the dressing of the corpse. Josephus himself described the "costly shrouds" used in Herod’s burial\(^2\) but the "pious rites" of the halakhah do not require it.

An alternative solution is that Josephus is writing about Rome where he had been living for some thirty-five years when he wrote these words. Not that he had forgotten about the tombs and monuments of Judaea, but it must be remembered that *Contra Apion* is an apologia written for Roman ears. No Roman could have seen a Jewish memorial, conspicuous or otherwise, since until the fourth or fifth century the Jews of Rome buried their dead in catacombs.\(^3\)

\(^{1}\) Besides the Hasmonaean monuments mentioned above, p. 149 n. 1, he also mentions the monument (μνημείον) built by Herod at David’s tomb (AJ 16.182) which was a "huge expense" (πολύτελεστάτη δαμάνη) and the μνημείον of Queen Helena of Adiabene (BJ 5.55, 119, 147). See also BJ 5.108 (μνημείον of Herod) and 507 (μνημείον of Herod).

\(^{2}\) AJ 17.197; BJ 1.671.

The funeral ceremony is to be undertaken by the nearest relatives, and all who pass while a burial is proceeding must join the procession and share the mourning of the family.

If κηδεία means "funeral" or "burial," as the translators assume,\(^1\) then the halakhic parallel to Josephus' words that the ceremony is to be undertaken by the nearest relatives, is intimated in the Bible. God’s commandment to the priests is that "none of them shall defile himself on the dead among his people. But on his kin, that is near unto him, on his mother, his father, his son, his daughter, and his brother. And on his sister that is a virgin...."\(^2\) The nonpriest, who is not enjoined against corpse impurity, must certainly then undertake the funeral and burial of these relatives. The only tannaitic halakhoth that deal with who is obligated to arrange whose funeral and burial deal with a husband's obligation toward his wife (or, if he should die, the law discusses upon


\(^2\)Lev. 21:1-3: לִבְגִּשׁ לָא לְעַטְנָא בְּעָנָיִם כַּי אַף לָשֵׁר נְכֶרֹב לָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָא לָא מִזְּמָנָa לָא מִזְּמָnא לָא מִזְּמָnא לָא מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִזְּמָnא לָa מִzְּמָnא לָa מִzְּמָnא לָa מִzְּמָnא לָa מִzְּמָnא לָa מִzְּמָnא לָa מִzְּמָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּמָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּמָnא לָa מִzְּmָnא לָa مִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא לָa מִzְּmָnא LXX: τὸ οἴκειω τὸ έγγοιστα. Cf. AJ 3.210 where the corpses of Nadab and Abihu are borne by their father, Aaron, and by their brothers. In Lev. 10:4 it is their Levite cousins who carry out their corpses. See Rappaport, Agada und Exegese, ad loc.
whom the obligation devolves)--the one relation not mentioned in the biblical passage. That the practice, however, involved the relatives in general can be seen from various tannaitic statements which presuppose such practice.

If the relatives do not or cannot undertake the funeral and burial, these services were funded by a community charity, according to the halakhah. The parallel in Josephus is exact. During the war with Rome a certain Mannaeus reported that 115,880 corpses were carried out through one city gate. "All

1 M. Keth. 4.4: לַעֲדֵי יִשְׂרָאֵל לֹא יֵעָסֵק שֹׁמֶר לְעֹ֣בְדֵי בְּשַׁ֣מְתֹּ֔ם. T. Keth. 4.2: שָׁבֵעֲלוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים מַעְלָה בְּשַׁם מִקְדֵּשׁ. PT Keth. 4.6, 28d (Sem. 14.7): מַעֲבַדְתָה הַשָּׁבָעִיִּים מַעְלָה בְּשַׁם מִקְדֵּשׁ. M. Keth. 11.1: יָרִיאוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים מַעֲבַדְתָה. See PT Keth. 8.9, 32b.

2 BT MK 27b (and parallels): הבשامت והצחה של השם משתקף...לַשְּׁבָעִיִּים. See T. Nid. 9.17. BT BB 100b (and parallels): וְיָרִיאוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים. Gen. R. 100: יָרִיאוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים. That relatives were obligated to arrange for the funeral and burial is also implied in such expressions as הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים (M. San. 6.5). Cf. also Tobit 6:15; IV Macc. 16:11 with Hadas' note in the Dropsie University edition; Matt. 9:21 (Luke 9:59); BJ 4.383, 5.545.

3 T. Keth. 9.3: מִי שָׁמַ֣עְתָה נְבֵיָ֣ים וּמְשַׁלֵּיָ֑ים וּרְצָ֥ה עַלְיוּן֙ כַּהֵן...לֹא יֵעָסֵ֖ק שֹׁמֶר לְעֹ֣בְדֵי בְּשַׁ֣מְתֹּ֔ם. M. Sheq. 2.5: חֹמְץ הַשָּׁבָעִיִּים; Alfasi's reading of M. Keth. 4.4: לַעֲדֵי יִשְׂרָאֵל לֹא יֵעָסֵֽק. T. Keth. 4.2: שָׁבֵעֲלוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים. Cf. PT Keth. 11.1, 34b: מָעַרְתָּן הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים. Gen. R. 100: יָרִיאוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים. BT MK 27b: יָרִיאוּ הָיוּ...לִפְסֵדְיוֹת הַשָּׁבָעִיִּים. On this term see L. Ginzburg, "Historical Inquiries: Heber Ir," JTJ, 48, no. 2 (1957), pp. 123-132.
these were of the poorer class; nor had he undertaken this charge himself, but being responsible for the payment of public funds he was bound to keep count. The remainder were buried by their relatives.\(^1\)

Now, the word κηδεία can mean "mourning" and not necessarily "care (for the dead)" = "funeral" or "burial."\(^2\) If Josephus did have in mind "mourning" then again we have a clear tannaitic parallel, for the same seven close relatives who are obligated to arrange the funeral are the only ones who are obligated to perform the various mourning rites.\(^3\)

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Josephus: "And all who pass while a burial is proceeding must join the procession and share the mourning of the family." This law has its clear tannaitic parallel. One was even obligated to forsake Torah study in order to join a funeral procession.\(^4\) Even a person already in mourning must

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\(^1\)\text{BT 5.568: τούτο δ' ἢν πλήθος ἀπόρων ... ἀλλὰ δημοσία μισθῶν διδούς ἐξ ἀνάγκης ἐργάζεται. τοὺς δὲ λοιποὺς οἱ προσήκοντες ἔθαπτον. Ibid 518: "The dead were buried at public expense" (ἐξ τοῦ δημοσίου θησαυροῦ). For relatives burying the dead, see ibid. 33: καὶ οὗτοι πρὸς τους ζῶντας ἢν αἵδως ἐτὶ τοῖς προσήκοντες ἐστε πρόνοια τῶν ἀπολολοῦτων ταφής, "No regard for the living was any longer paid by their relatives, neither was thought taken for the burial of the dead"; ibid. 514: δάπτειν δὲ τοὺς προσήκοντας..., "As for burying their relatives...."}

\(^2\)\text{LS s.v. κηδεία.}

\(^3\)\text{BT MK 20b (Sem. 4.1; PT MK 3.5, 82d bottom with variants): τί γὰρ ἐπικαιροὺς βιοτείς συνεχῶς στίχοι λόγον ἄλλως τινὰ ἀληθῶς ἀλλήλους προσήκοντες βοήθησιν. Cf. also T. Meg. 3/4.16: 'אקר רחבעה נזקה ותומך לזרע ולזרע ... ותומך לזרע ולזרע and BT Ber. 18a (amoraic): אקר רחבעה נזקה ותומך לזרע ולזרע יזקנו לזרע לזרע...}

\(^4\)\text{BT Keth. 17a (Meg. 3b, 29a): καὶ δὴ ἔργα τῆς ζωῆς καὶ τῆς ἀποθανοῦσας. Cf. also T. Meg. 3/4.16: 'אקר רחבעה נזקה ותומך לזרע ולזרע ... ותומך לזרע ולזרע and BT Ber. 18a (amoraic): אקר רחבעה נזקה ותומך לזרע ולזרע יזקנו לזרע לזרע...}
join a funeral procession,¹ and even a priest, who must not defile himself for any deceased but his immediate relatives, yet must join in the procession and burial if there is a lack of people for this purpose.²

The translation given to this clause in Josephus is based on the reading παρισοῦσι, "they who pass by." This reading, however, is preserved only in Eusebius.³ In the Greek and Latin MSS of Contra Apion the reading is περισσοῦσι and "viventibus," "survivors" or "they who remain alive," "they who outlive."⁴

Another word of interest in this passage is προσελθεῖν which Thackeray translates "to join the procession." This word literally means "to come to," "to go to."⁵ Thackeray chose his translation because of the implied object found in the preceding clause, ἡσσεία, "the funeral ceremony," i.e., to go to the procession. However, we have seen that ἡσσεία may have another meaning—"mourning." How would this latter meaning affect the translation of παρισοῦσι / περισσοῦσι and προσελθεῖν? and how would it relate to the halakhah?

²Sem. 4.4: ונהו הו התל יבש ממהיו יבש התל יבש אייבון: ריצא יתעלב בושע יומא. Cf. BT MK 21b.
⁴LS s.v. περιέμει. The MSS of AJ 13.312 similarly present a confusion of περιόντα and παρίοντα.
⁵LS s.v. προσέρχομαι.
We can see from the halakhic material that besides the immediate relatives there others who attended the funeral and burial.¹ Some of these were distant relatives and some were friends.² There were two reasons why people came to the funeral. "One, by the relatives and friends, was to join in the mourner's anguish--this was 'consoling the mourners.' The other, by strangers, was to honor the mourner."³ This consolation of the mourner by others continued at the mourner's house beyond the time of burial.⁴

¹BT San. 19a: "The bereaved also added many other kindnesses to console the bereaved... The kind words of the bereaved were consoling. PT Ber. 3.2, 6b (= PT San. 2.2, 20a): "The words of kindness are consoling. Moreover, kind words to the bereaved continue even beyond the burial..."

²T. Ber. 2.11: "In his mourning, even the stranger who did not come to the funeral..."

³Lieberman, TK on T. Ber. 2.11 (P. 19), s.v. لاَّسَمَبَرَ. See also Acts 8:2: "And devout men carried Stephan to his burial."

⁴BT MK 21a: "If the bereaved were kind words to the bereaved..." Sem. 10.9: "If the bereaved were kind words to the bereaved..."
Now, if ἔνδεια means "mourning rites" we may translate Josephus thus: "On the one hand (μέν) the nearest relatives perform the mourning rites, but on the other (δέ), all those who remain alive (περιοῦσι) must visit them and share in their mourning."

It seems to us that either translation of Josephus is valid. As far as the Greek is concerned, Thackeray's rendering interprets the μέν ... δέ ... antithesis as the arranging of the funeral as opposed to the joining of the funeral, while our alternative translation parallels the immediate relatives with other survivors. As far as tannaitic literature is concerned, we have seen that either translation agrees with halakah. Either interpretation would be in agreement with Ben Sira: "And also from the dead withhold not kindness / Withdraw not thyself from them that weep / And mourn with them that mourn."¹

¹Ben Sira 7:33-34: דואגאנש אולא חמצאhtar והב"ה זא אָלֶימָא תַתָּה / מְבֵּכִים / וָאָלֶים תַתָּה. Cf. BT Sot. 14a (amoraic): הקב'ה"א זא אָלֶים ... אָלֶים אעָלֶים הקב'ה זא מַתָּה אָלֶים אָלֶים תַתָּה.
Impurity of a Corpse

In view of the sacrifices the Law has prescribed purifications for various occasions: after a funeral...

After the funeral the house and its inmates must be purified in order that anyone guilty of murder may be very far from thinking himself pure.

A like rule applies to those who have paid the last rites to the dead: after the same number of days [seven] they may rejoin their fellows.

And our law declares that such settlers are unclean for seven days.

Num. 19:14, 16-18

This is the law, when a man dieth in a tent: Everyone that cometh into the tent, and all that is in the tent, shall be unclean seven days.... And whosoever toucheth in the open field one that hath been slain with a sword, or a dead body, or a bone of a man, or a grave, shall be unclean seven days. And they shall take for the unclean person some of the ashes

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1Cf. Judith 16:18: "When the people were purified [from their contact with dead bodies], they offered their whole burnt offerings and their freewill offerings and gifts." Cf. also BJ 4.382.
of the burnt purification-offering, and they shall put thereupon running water in a vessel. And a clean person shall take hyssop, and dip it in the water, and sprinkle it upon the tent, and upon all the vessels, and upon the persons that have been there, and upon him that hath touched the bone, or the one slain, or the dead, or the grave. 1

Tannaitic law records that a corpse renders impure all under the same roof 2 and that gravesites render one impure. 3 Although purification after a burial may have been practiced in tannaitic times (in symbolic form), 4 the language of Ap.

1 והתחזה אתם כי יומו באהל כל הכה אל הכהל כל אשר באהל
ויישאם שם הבית... כל אשר ישב על פנים תהלת הבית הוא海滨 יפגש
בעולם אחר בקרה יישאם שם הבית. יללוהเลขים מעפר שפת התחלת
זבחו עלינו שם הבית אל כלל. יללוהcherche בבלו מקימ אלה שחרת רודה
על הכהל על כלのではないか בין השפות אשר היה שם ועל התורתבעוigne Acres
הכהל ואלה בו כbara.

2M. Kelim 1.4: החזורים מחנת חופה מעמס לבאות
M. Oholoth 2.1: ...מחנה מעמס לבאות.

3M. Oholoth 18.2: ...שלשה בبوابة ותворот חוכה
ותחנה מחנה לב ActiveSupport לבאות, שדה שטראך שהבתוכה
ומحماس בביקע לבдеся לבאות. ספר בוקע [: כוכבי] לא מכמא
שים מעמס לבאות.

4PT MK 3.5, 82d (PT Ber. 2.7, 5b): חונים מבושג שבנגוג להורר
התרחשה תרצתץ בב שיהיה ודות
The traditional interpretation of the baraita, following Nahmanides (ספרא הריני, in חיבור תיבון ed. Chavel, vol. 2, p. 175; quoted by Jacob ben Asher, ערב יוהל טהת 381 ["ט센터" is a printer's error, cf. B. Ratner, ז"ז ערב יוהל טהת רשי לעים תחתוים to MK 3.5, p. 118]; see Joel Sirkes, שד ותב to Tur, ibid. 376, s.v. דאהל), is that this washing has nothing to do with purification; it is, rather, the removal of dirt gathered during burial. Nahmanides' interpretation, however, is not without difficulties (cf. David Frankel, שעני הפר בברק to PT MK, ibid., s.v. שפאר). Furthermore, the variants of the PT text (ספרא הריני - חונים, מבושג שבנגוג להורר, טתוס - יללוה כיושםו לברחת קמעה; [so MS Leiden, cited by J. N. Epstein, מבושג שבנגוג להורר, to PT Ber., ibid., p. 350]) and the obscurity of its meaning allow for our interpretation of the baraita and do not at all necessitate Nahmanides'.

Aside from this baraita, the earliest references to the custom of washing the hands after burial date from the middle of the ninth century (assuming that the R. Naṭronai, cited below, is the Gaon of Sura and not Pumbeditha, in which latter case it would push the dating back about a century and a
2.205 ("the house and its inmates") implies that the verses in Numbers ("sprinkle it upon the tent ... and upon the persons that have been there") were Josephus' source.

* * *

quarter earlier):

(1) R. Naṭronai Gaon says: רַחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מֵבוֹזִי מַעַשׂ הַלּוֹחֵם אַבְרָעָן אֶת לְאִשֵּׁי 잘 רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן. (Cited by Isaac ben Meir of Vienna, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת לְאִשֵּׁיzahl רָחֲמִית לָהֶם כְּשַׁחֲרֹרֵי מַעַשׂ הַלּוֹחֵם אַבְרָעָן, אֶת L. Ginzburg (Beyond the Baraita, vol. 1, p. 380) already saw the connection but he relied on Nahmanides interpretation of the baraitha. We, on the other hand, believe that the medieval custom and the tannaitic custom are one and the same and that the custom is a symbolic purification of corpse impurity as remarked by Nahmanides' teacher who had it on "tradition."
The word of concern in Ap. 2.205 is κηδος which Thackeray has rendered "funeral" no doubt because he so rendered κηδεία in the preceding sentence. We have seen, however, that κηδεία may be translated "mourning." This alternative translation of κηδεία does not necessitate us to give κηδος the same meaning, which it may have, for Josephus may have deliberately chosen a different word (κηδος) to convey the meaning of funeral as opposed to mourning (κηδεία). On the other hand—and this seems to us more likely—Josephus is probably merely giving variety to his vocabulary as any good writer but he means the same thing with both words.

Now, according to the Bible the house and all in it remained impure for seven days after which the inhabitants were purified. This seven day period of impurity is mentioned in AJ 3.262 and 18.38. We shall see that the mourning period in Josephus' day lasted seven days. Therefore, following biblical law the purification took place immediately after the mourning and not immediately after the funeral. Hence, we must translate κηδος as "mourning." However, when Josephus elsewhere talks of the mourning period he uses the noun πνευδος or its verb. We, therefore, believe that the words κηδεία and κηδος in Ap. 2.205 and 198 mean "care for the dead" which in Josephus' mind included both the funeral and the mourning

1 LS s.v. κηδος.
2 P. 163.
3 Ibid.
afterwards.¹

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The following clause in Josephus, "in order that anyone guilty of murder may be very far from thinking himself pure," which S. Belkin sees as pointing to an Alexandrian source,² is thought by others to be a gloss.³

¹This is not to say that Josephus did not elsewhere use θησεω to mean "burial." AJ 12.432, where Simon and Jonathan θησεουσαν their brother Judah Maccabaeus, directly parallels I Macc. 9:19 where the brothers ἔδωκαν αὐτοῦ ἐν τῷ τάφῳ. Cf. also AJ 3.262, 8.242, and 13.406.

²Alexandrian Halakah, pp. 36-37.

³So Thackeray ad loc., Reinach ad loc., and S. Lieberman, Hellenism in Jewish Palestine, p. 166, n. 16. It is interesting to note that this reason given by Josephus is found imbedded in a custom of the middle ages. The יבּ (author amonous; written during the 13-14th centuries) records that after a burial those present wash their hands and recite Deut. 21:7-8: "Our hands have not shed this blood ...." (יִבּ, p. 86 in the edition cited above).
CHAPTER XIV

MOURNING RITES

The Mourning Period

Seven days of mourning is as old as the Bible (Gen. 50:10). Josephus mentions this time period when describing Archelaus' grief over the death of his father Herod (AJ 17.200, BJ 2.1: πένθος). A mourning period of thirty days is also biblical (Num. 20:29; Deut. 34:8 = AJ 4.330: πένθος). Josephus also mentions thirty days of lamentations for those who fell in Jotapata (BJ 3.437: ἐλέφαντας). Both these periods of mourning

1 It is true that "the garb of mourning naturally becomes also the symbol of distress in general, and distress is of necessity involved in a display of submission or in an appeal for mercy" (M. Jastrow, "The Tearing of Garments as a Symbol of Mourning etc.," JAOS 21 (1900), p. 35; see also pp. 34-35). This is equally true with many different mourning expressions besides the mode of dress. Such individual expressions of grief and entreaty mentioned by Josephus have been noted and compared with rabbinic sources. The major concern of this chapter, however, is mourning rites, for this is regulated by halakhah whereas individual expressions of grief and entreaty are not. On the other hand, formal and public expressions of grief and entreaty (e.g., fasting for rain) are regulated by halakhah. However, to keep the parallels between Josephus and the rabbinic sources as close as possible we have not cited these latter expressions.

2 In AJ Josephus calls this period "the custom (νομίμον) of the country." A seven day mourning period is also found in Ben Sira 22:12 and Judith 16:24.
The Mourners' Meal

In narrating the events after Herod's death, Josephus mentions the mourners' banquet. The fact that there was such a meal agrees with halakhah. The type of meal, a banquet (ἐστίασις), is also corroborated by rabbinic literature where we find meat, fish, cakes, cooked foods, and ten cups of wine as part of the meal. As a matter of fact, the purpose of

1See Higger, Sem., p. 77 for sources.

2Sem. 7.3 (Abba Saul; parallels in Higger, ad loc.); 10.12 (R. Shimon, R. Meir, or R. Judah in parallels); PT MK 3.8, 83d (R. Nathan). Cf. also BT MK 23a: רבי קמא בר רבי שניאור, אמר לא רמאי ורגל אתי理财 ... והלך אמר ... which refers to the Usha sages, see Sem. 7.10.

3Sem. 7.15: ממות ממותה אשה של רבי ספרון instead of לא בהעליה אשה לאajaran שלום (variant: göre ובוים; BT MK 23a: דין חכמים).

4BJ 2.1: πενθήσεως γι' ημέρας ἕπτα τῶν πατέρα καὶ τῆς ἐπιτάφιων ἐστίασιν πολυτελῆ τῷ πληθεὶς παρασκόφῳ. AJ 17.200: 'Αρχέλαος δὲ ἐπὶ μὲν ἐβδομὴν ἡμέραν πένθος τὸ ἐπὶ τῷ πατρὶ τιμῶν διετέλει ... ἐστίασας δὲ τοὺς ὀμίλους καὶ καταλύσας τὸ πένθος ἀνέστην εἰς τὸ ἱερὸν.

5PT Ber. 3.1, 6a: כְּדָו ... וַיֹּאמֶר לִבְרֵית אֶלֶךָ בֵּשָּׁר וָשָׂׂהיָה ... וַיֹּאמֶר רָבֵא: רַבִּי לָא רֵאשׁ בּוֹדָע צָרָה לַא בְּדַרְבּוּלָהּ בְּדַרְבּוּלָהּ בְּדַרְבּוּלָהּ וַיֹּאמֶר רָבֵא: רַבִּי וַיֹּאמֶר לוֹ: וַיֹּאמֶר לָא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא לַא ل...
some of the wine was to make all that food more easily digestible. Revelry was not unheard of. Indeed, in an exegetical remark it is said that the mourner "is chief of the banqueters." There are, however, two apparent differences between the Josephan and the halakhic accounts of the mourners' meal.

According to the former the mourner provided the meal for the populace after the seven days of mourning, while in halakhah the mourner is provided the meal on the first day of mourning. In fact, however, these accounts are not truly contradictory.

In regard to who served whom the mourners' meal, Archelaus served his meal in 4 BCE, while the earliest halakhoth which speak of the mourner being served cannot be dated with

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1BT Keth. 8b: "תמס או עותה כנוקת חכמים בגדי האבל שילשה קינים כאכילה כד ליתות את בני מעור (דרים): שערי רוגיילך להמשיכם פרפראת לעין פשר עונס כהנים או אסיטרמח ובראתם על שם עונסם של האבעות לצילון בני האדם כל לבנה אוכלת כל לשורה אוכלת משמעי.

2PT ibid.: ר"ע תקציח ברית ע"ד, הנה בتراث מענייתו אוכלת ונכלה ולגבות ה', הננה רובי חパターン להזה יפר עד איצטוק עניין וגבעתי. להבר את זה עליכי미 מיעול אביגד. אם, לְךָ רכוב אכלי זו עניין חדтвердיא. לא יותר עוצר ח olmasını אלא אוסיר ורהפקד

3BT Keth. 69b (= MK 28b): מניין לאכול שמשב ברוח ... מר וטרא אמרumatic "أمر מותך כרחותי" מר זו נשות שיב לשהותש Werner G. Ginsburg, The Tosefta: Treatises by the Tosefta, vol. 2, pp. 77-79.

4BT MK 27b: אמבר בר ירוחם אמבר בר אבלי יומ רחישון אסר נא לאכול לחםреш.
certainty before the third century CE. During this period of over two centuries, the server and the served obviously switched roles. In fact, there was good reason for such a change. This funeral banquet was "a custom which was a cause of poverty to many Jews since this feasting of the people was done not without compulsion, for to neglect it would have been impious." The threat of incipient penury was due cause for other tannatic changes. "At one time the funeral expenses were a greater cause for pain than the grief over the deceased. People, consequently, began to abandon their dead. Rabban Gamaliel, therefore, made light of his own honor and ordered that his corpse

1E.g., Rab's statement (previous note) or anonymous tannatic statements such as BT B3 16b: אִיבֵּאָל לָמוּשׁ עַל מְעֶרֶבֶּת הָעֵדֶּמֶּיֶת לָעֶרֶבֶּת לָעֶרֶבֶּת. The statement made by R. Shimon ben Gamaliel, רפְּתָה יַעֲשֵׂהוּ בָּעָרָר הָעֵדֶּמֶּיֶת (Sem.14.13; above, p. 164, n. 5) may well have been said in regard to a meal prepared by the mourner. The editors of Semahoth, however, coupled it with מְעֶרֶבֶּת מִלְעֹלֶיִים מְעֶרֶבֶּת מִלְעֹלֶיִים. Ezek. 24:17, מְעֶרֶבֶּת מִלְעֹלֶיִים, received the meaning in rabbinic literature "the meal served by consolers to the mourner" via Rab's statement. What Ezekiel had in mind is another matter entirely (cf. Hos. 9:4: וְלָכֵיָה לִכְלַיִם. Besides, even if the prophet meant the same thing that Rab meant we are, nevertheless, dealing with a period half a millenium later, at which time Archelaus, the mourner, served the people. Cf., however, Higger, Sem., p. 74, who wishes to draw a distinction between the mourning rites of kings and those of others.

2Even assuming that these words about the funeral banquet were injected by Josephus when he wrote BJ and were not found in his source material, the theory propounded about the role switch still stands. Incidentally, this passage has a double negative (οὐχ ἄνευ) which Thackeray, Josephus, the Man and the Historian (New York: Jewish Institute of Religion Press, 1929), p. 111, claims is characteristic of the "Thucydidean hack." The same phrase occurs in AJ 15.248, which passage Thackeray ascribes to the "able assistant."

3BJ 2.1: ἔδοξε δὲ τοῦτο παρὰ Ἰουδαῖον πολλὸς πενίας αἰττον, διὰ τὸ πλῆθος ἐστιάν οὐχ ἄνευ ἀνάγκης, εἰ γαρ παραλεῖποι τὴς, οὐχ ὄσιος.
be borne away in simple linen. The people followed suit. 1

The financial burden of a banquet would be greatly reduced if many contribute to serve the mourner rather than vice versa. 2

Note that in Antiquities, written some twenty years after the War, there is no parenthetical remark about this banquet being a custom bringing some to poverty. And note that it was during this interval that Rabban Gamaliel flourished. Similarly, in Contra Apion, written after Antiquities, Josephus says: "The pious rites which [the Law] provides for the dead do not consist of costly shrouds." 3 These "pious rites" took effect only during Rabban Gamaliel's term of office. As suggested above (pp. 147-148), Josephus would have heard of these changes.

In regard to the time of the meal, there is also no real conflict between Josephus and the halakhah, for the earliest rabbinic statement dealing with the time of the meal is made by Rab who lived two hundred years after Archelaus' banquet. 4

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1 BT MK 27b; see above, p. 147, n. 1.

2 That it was the mourner who originally served the meal cannot be shown philologically. True, the rabbinic term used to describe the act of the mourner being served the meal is in the hiph'il / causative conjugation. T. MK 2:17:宝石 של חומק העו נקרנים על כלם בנווין והכל מוברק עלינו קורנוון על כל אחד ואחד ולא קורנוון שלحم. But this may not be due to the fact that originally the mourner did the serving; rather the hiph'il here may be inchoative. See M.H. Segal, A Grammar of Mishnaic Hebrew, (Oxford: 1927) p. 68, para. 146; Hebrew ed. (Tel Aviv: 1936) p. 121, para. 210(b).


4 It is worth pointing out that although the accounts in Josephus (especially in AJ) suggest that Archelaus gave his meal after the seven days of mourning, a strictly grammatical and syntactical reading of the Greek does not demand such an interpretation. In BJ while πενεύσος is certainly a comprehensive aorist, παρασχόων is a momentary aorist since ἐπιστάσος is in the singular. In AJ τετελεύσος is likewise a momentary aorist. (The terms are E. D. Burton's, Moods and Tenses of New Testament Greek, 3rd ed. [Edinburgh: T. & T. Clark, 1973],
Rending Clothes

The custom of rending clothes is also found in the Bible (e.g., Gen. 37:34). For rabbinic sources see BT MK 22b, 24, and Sem. chapter 9. To the biblical account of mourning (over captured wives and children; I Sam. 30:1-6) Josephus adds this custom. Besides biblical parallels, Josephus mentions rending of clothes in three other places. In these cases the gesture is part of an act of supplication and petition to humans. In the last case Josephus terms it part of a "pose of humiliation" (BJ 2.604: ταπείνωσις). Once, when copying the bibli-

pp. 19-20.) Whether this "moment" took place on the first or last day of mourning cannot be determined from the Greek. There is nothing in Jer. 16:7-8, Ezek. 24:17, or II Sam. 12:19-23 which shows that "the old custom was to make a banquet after the seven days of mourning" (Higgin, Sem., p. 78).

It is interesting that a thousand years after Archelaus we find a custom among Babylonian Jews of providing a meal on the last day of mourning. Hai Gaon writes: תָּפֵּלָא הַיּוֹם אִנָּה יָמַנוֹת [ה]וֹרַכְלָה שְּלָל יָשָׁר ... תְּפֵּלָא (S. Asaf, הַיּוֹם אִנָּה יָמַנוֹת דְּבָחָה [Jerusalem: Darom, 1929], p. 103).

1AJ 6.357: περιποιημένη ... τὸν ἑσθήτα.


3As Marcus points out in his notes on AJ 13.161 Josephus omits the detail of rent clothes found in I Macc. 9:71 (and putting earth on the head) as a gesture of supplication / petition to God. This is not the only place. Cf., e.g., AJ 5.264 with Judges 11:35. In AJ 11.10 for the biblical (II Kings 19:19) וְלַיְלָה נְפֹרָת Josephus has ἀποδυθῇ ἑσθήτα, "he took off his clothes." (Cf. M. Jastrow, op. cit., in JAO S, vol. 21.)

In AJ 18.78 we find this act practiced among the Romans in times of grief (περιποιημένας τὸν στολήν). Judith 14:16, 19 has this custom practiced by the Assyrians.

In AJ 2.136 Josephus uses the words "mourners' guise" (ἐν πενθίμοις σχήματι) to mean rent garments. On the other hand, he uses the same words in AJ 4.257 to refer to a different article of clothing that is put on, πένθιμον σχήμα ἀναλαβούσαν. So also the phrase "mourners' dress" (AJ 9.232: πενθικὴν ἑσθήτα περιθεμένη = LXX ἔνεσθαι τιμήν στενοχωρίας καὶ πένθους) refers to a different article of clothing as can be seen by the verb.
cal narrative which mentions rending clothes and putting on sackcloth (II Sam. 3:31), Josephus adds that these were the "customary rites" \(\text{(AJ 7.40: τοὺς νομιζόμενους)}\).

**Fasting**

Fasting is found in the Bible as an expression of mourning (I Sam. 31:13; II Sam. 1:12; cf. 12:21) and also as an expression of grief / entreaty to God (e.g., Ezra 10:6; II Sam. 12:22-23). Josephus mentions private fasting three times (besides biblical parallels) all of which are expressions of grief and / or entreaty to God.\(^1\) Similarly, in tannaitic literature individual fasting is not demanded to express mourning over a deceased relative\(^2\) although we do find that it was practiced for other purposes.\(^3\)

\(^1\)AJ 5.37: τροφῆς οἰκεῖοι έπειστησθήσαν πολεμόνεοι; AJ 11.232: καὶ τροφῆς καὶ πότης ... ἀποταξαμένην; AJ 20.89: ἐπὶ τὴν ἱκετείαν ἐτοέπετο τοῦ θεοῦ ... ἐνήστευεν. In the second source the abstention from food may not necessarily be based on the custom at Josephus' time since (a) Apoc. Esther, Josephus' source, has here "she humbled (ἐταπεινώσεν) her body" which may have suggested fasting to Josephus as in Ps. 35:13, ἔμυσσαν Ἐσθέρ, or Isaiah 58:5, and (b) Esther has already promised to fast (AJ 11.228).

Josephus omits the biblical fasting in II Chron. 20:3 (AJ 9.8; entreaty) and in II Sam. 1:12 (AJ 7.4; mourning).

\(^2\)The baraita in Ned. 12a: וitori את אשתו של אביך ... Moses, does not provide proof that fasting was part of the official mourning rites because (a) a lack of meat and wine does not constitute a fast (a fact made very clear in BT BB 60b: רבנו פרווסע בישראל שאם לבו מים ... ויאת אשתו אמך ... אתי כל להים לא נאכלו ... ויאת אשתו אמה ... ליאת לא נאכלו), and (b) there is nothing to intimate that he refrained from these foods on the day that his father died, see further ibid.

\(^3\)Meggilath Ta'anith, end (ed. Z. Lichtenstein, p. 350): וצרתי חヴィי שבל עליה להיוּת מסע, to which the scholia add: ... וצרתי חヴィי שבל עליה להיוּת מסע. For the various reasons for fasting see, e.g., BT San. 65b (וּכְרָתָא)
Earth or Dust on the Head

In the Bible we find that earth (מַעְזָק; II Sam. 15:32), dust (רָעָה; Josh. 7:6), and ashes (רֵאשׁ; II Sam. 13:19) were put on the head. Besides biblical parallels Josephus mentions this practice five times, all of which are concerned with entreaty to either God or man. This is in agreement with the Bible and with tannaitic sources both of which confine the practice of dust / ashes on the head to grief / entreaty and not to mourning.

See, however, M. Jastrow, "Dust, Earth and Ashes etc.," JAOS 20 (1899), pp. 133-150.

In Judith 4:11 and 9:1 it is also a sign of entreaty.
Sackcloth

The wearing of sackcloth is another sign of mourning and grief that extends back to the Bible (e.g., Gen. 37:34) and is found in Josephus (besides biblical parallels) four times.\(^1\) These four cases deal with grief or entreaty (to God or human) but not with mourning, although Josephus tells us that this attire was customary in times of danger, mourning, and for purposes of entreaty.\(^2\) In tannaitic literature we do not find sackcloth used to express mourning\(^3\) although it is

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\(^2\) AJ 7.40, mourning: τοῖς νομιζομένοις τιμῶν αὐτῶ τὸ σῶμα ... ἐνδύντι δὲ σάκχως ("customary rites"); AJ 12.300, entreating God: τοῦτον ἢκπετεν τῷ πατρίῳ νόμῳ σάκχως περιθεμένους ("ancestral custom"); ibid., danger: καὶ τὸ σάνθης αὐτῷ σχῆμα τῆς ἱκεσίας παρὰ τοὺς μεγάλους κιενδύνους ἐπεδειξάντας ("by exhibiting to Him this form of supplication, usual in times of great danger..."). All of this is missing in I Macc. 3:47 and may have been partially taken over by Josephus from 2:14.; AJ 19.349, entreating God: ἐπὶ σάκχως καθεσθεία τῷ πατρίῳ νόμῳ τὸν θεὸν ἢκπετεν ("ancestral custom"). Cf. also AJ 8.362.

\(^3\) Sem. 8.8-9 has: ידוע ... אֵינַיָּהוּ עֲרָיָה יְשָׁבָה יְשָׁבָה ... מַהֵרָה יְשָׁבָה עֲרָיָהוּ עֲרָיָהוּ יְשָׁבָה יְשָׁבָה. However, in יְשָׁבָה יְשָׁבָה, s.v. יְשָׁבָה יְשָׁבָה and אֵינַיָּהוּ עֲרָיָה (pp. 25 and 38 in ed. Frankfurt, 1924) there is no mention of the sackcloth. In Mekh. RI, Neziqin 18, p. 313 (= Sem. 8.8) both the sackcloth and the rending is missing. (Also, in his article תַּנָּאִית הַנְּזִיקִין p. 63, M. Auerbach quotes Sem. 8.8 thus: ידוע ... אֵינַיָּהוּ עֲרָיָה יְשָׁבָה יְשָׁבָה. Higger, however, lists no such variant.) Note also that in 'Ekhah Rabbah, Introduction, 24, Abraham is represented as acting out a long list of mourning / grief rites, but donning sackcloth is conspicuously absent: רֹאָמִיא נְנוֹרָת נְטָעָה שַׂעָרָה בַּשָּׂעָרָה לְפָאָה אֶפְרָאָה לְפָאָה אֱבֹרָה יְשָׁבָה יְשָׁבָה ... מַהֵרָה יְשָׁבָה יְשָׁבָה. Cf. Pesiqta deRav Kahana 15.3 (ed. B. Mandelbaum [New York: Jewish Theological Seminary, 1962], p. 250): ידוע על פָּאָה יְשָׁבָה.
found in gestures of grief and entreaty.¹ It appears, then, that in Josephus’ time sackcloth was no longer used as an expression of mourning. When Josephus calls this custom together with rending clothes “customary rites” in his paraphrase of the Bible (AJ 7.40) he is referring to the time of the narrative and not his own time.

In regard to how the sackcloth was worn, note that twice Josephus says it replaced the regular clothes,² once it was worn over the regular clothes,³ and twice he is not clear as to exactly how it was worn.⁴

**Black Clothes**

Wearing black clothes as a sign of grief, mourning, or entreaty is not found in the Bible. It is found in Josephus. As a sign of mourning and grief it is found once;⁵ as a sign

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¹ Cf. BT San. 101a: תגש רכזת הקדשה פסוק של שייר חלרית ורעש אתיה כתיב זמרו... מביי רעש עלולים אף הeuillez ומשלחתות קרה... לורומא לחביין ההושמה.

² AJ 20.123: μετενδοσάμενοι σάκκους; AJ 10.11: τὴν βασιλικὴν ἀποδύσην ἑσθήτα, ἀμφισάμενοι δὲ σάκκους, for which the Bible (II Kings 19:1) has: καὶ ἔστε σκῆναν ἐν τοῖς ὑπόθεσιν.


⁵ BJ 4.260: καὶ γυναίκα καὶ γενεὰς τῶν ἀπεσφαγμένων μελανείμονούσας.
of entreaty and grief it is found five times among the Jews and once by the Arab Syllaesus. Furthermore, since Josephus says that after entreatying God, King David put on white clothes whereas during the entreaty he wore black clothes, we can therefore assume that when Archelaus "changed into white raiment" after seven days of mourning for his father, he had worn black clothes during those days.

Tannaitic literature also mentions the black clothes of a mourner and Josephus undoubtedly based his remarks on the practice of his day as has already been noted by others.

1AJ 7.154: μέλαιανον δὲ περιθέμενος ἐσθητα, an addition to II Sam. 12:16; AJ 16.267: μελανειμονών καὶ πάντα τὰ σημεῖα τῆς μετὰ μικρὸν ἀπολείας ἔχον (Marcus translates "in the black garb of a mourner." The last three words are uncalled for); BJ 1.506: μελαίνη τε ἐσθητή; Vita 138: μετενδύος οὖν μέλαιαν ἐσθήτα; AJ 14.172: ἐσθητα μέλαιαν ἐνδεδυμένος, of the accused at trial seeking the judges' mercy. (He also lets his hair grow according to Josephus. This is exactly what the PT RH 1.3, 57b says: διακόνας βεβραίων ἅδε ζωύθυς λέει λόγῳ διὲν άρετής διότι πρόει δύνης.)


3AJ 7.156: λαβὼν ἐσθήτα λευκῆν.

4AJ 7.154, see above, n. 1.

5BJ 2.1: μεταλαμβάνει μὲν ἐσθήτα λευκῆν.

6Weill, note to AJ 7.156. (Cf. also Shir Hashirim Rabbah 1.36: כהנימים מתבגרぬ כהנים מכותנים כהנים, רחל כנה עד הלילה, רחל כנה, רחל כנה, רחל כנה). See also Marcus' note ad loc. who rightly remarks that Rappaport's rabbinic citations are not parallels at all. It should also be noted that Rappaport's Josephan citations (AJ 11.331, correct Rappaport; BJ 2.123; BJ 7.29) also have nothing to do with wearing black during mourning or entreaty.

Marcus, ibid., errs in calling the 15th of Ab the "Fast of Ab" (!). Also, in his Appendix C, after book XI of Antiquities (p. 517), he quotes Meggillath Ta'anith, "He [Simon the Just] thereupon put on his priestly garments and wrapped himself in his priestly garments," to which he adds "(sic)." It should be noted that this expression is a common rabbinic idiom. M. Mid. 5.4: לובש שחוריים ומדתעף שחוריים ... לוונש לenburg...
Head Covering

As expressions of grief and mourning the Bible mentions covering the upper lip, covering the head, and covering the face. Rabbinic literature seems to preserve two practices. On the one hand we have the amoraic statement that one must cover one's mouth. From the question and answer which follow this statement it appears that it reflects actual practice and not theoretical exegesis. On the other hand, all other statements either speak of covering the head or do not designate...
the object to be covered. The identification of covering the head with covering the lip has already been questioned.

Josephus, in paraphrasing II Sam. 19:5, translates מָלֵא הַאֲרֻעָה (LXX: ...ἐξαρανοῦ τὸ πρόσωπον αὐτοῦ) as מָתָאֵל פַּאָמָא וּבָאָלָא (AJ 7.254) perhaps deliberately leaving out mention of the face since in his day such might not have been the practice. At any rate, his lack of mention agrees with contemporaneous tannaitic halakhah which speaks of covering only the head.

Josephus omits mention altogether of מָלֵא הַאֲרֻעָה in II Sam. 15:30 (AJ 7.202) and in Esther 6:12 (AJ 11.259). This is quite different from mentioning the act of covering but neglecting to mention the object of the act.

Covering the head is a required funeral rite in the Talmud, see above, p. 174, n. 6. We, therefore, do not understand Zeitlin (op. cit., p. 305) who says that the mourner "covered his head if he so desired." We think Zeitlin also errs, ibid., when he says that the mourner stood with uncovered head, out of respect for his deceased parents, until the grave was closed. Indeed, afterwards the mourner removed his head covering when meeting people out of respect to them. However, the sources do not speak of what the mourner must do during burial. The law of head covering begins after burial because that is when the other mourning rites begin (e.g., PT MK 3.5, 83a: רֹבֵי הַנַּחַת אַחוֹרֶם ... בָּאְרוֹנָם נַפְּלִית עָלָיוֹן). It cannot be inferred from this that during burial one must be uncovered of head.
Barefoot

Going without shoes is found in the Bible as an expression of grief, mourning, and entreaty.¹ According to tannaitic law a mourner must go barefoot.² This act is also one of the formal expressions of entreaty to God in halakhah.³ Josephus mentions this custom twice, once expressing entreaty to man⁴ and once to God.⁵

Cutting of Hair and Nails

In paraphrasing II Sam. 19:25, יא עשת ילודיו ויא עשת, שופר, אל ואברר לא כבש, Josephus says: "Wearing a soiled garment and with his hair long and unkempt ... he had not, be-

¹E.g., II Sam. 15:30; Isa. 20:2; Ezek. 24:17.

²BT MK 21a (= Sem. 6.1): ... תיב על זלא ודנשים שפוך אופר בחלック נועלוות חסנקל מיכן שאותו פותח אופר ובנעלוות חסנקל; T. Ta'an. 1.6 and parallels (see ed. Lieberman): כל אילו נשמרים אופרים בנעליות הנפש, יזגו על הכור נגלה, שהיינו לכר, חורץ. רכז אוף את, בוגריה ואמל; Sem. 10.10: עליל: שעה בֵּנ שופר ובעל את הנסיך במראו, ישנה חרוז הקוף.

³M. Ta'an. 1.6: עברת אלוה ולא ענבר בֵּי זר אבריר שק is תיב על זלא דנשים שלח נועלוות חסנקל עיניהם את מר בילקל ... נועלוות חסנקל (T. ibid., 1.5; BT ibid., 13a); M. Yoma 8.1: יוס הקפורים אפער ... נועלוות חסנקל; T. ibid., 4/5.1: אֵליע, ולאבריר לקא בּלִד ... .

⁴BJ 2.314: γυμνοποιοῦσα ... λικέτευε.

⁵AJ 8.362: γυμνοτός τοις ποιοί δεχεναι. So Josephus translates שׁך תיבל (I Kings 21:27). Thackeray (note, ad loc.; Josephus, the Man etc., p. 82; accepted by Schalit, p. xxxi) presumes a dependency here on Targum: תיבלו. While this is possible, one should not overlook the possibility that this interpretation of שׁך was common in Judaea. PT San. 10.2, 28b (= Shir Hashirim Rabbah 1.36): ירדו על זלא והיזגו על הכור נגלה. (R. Joshua ben Levi flourished in the first half of the third century.) Incidentally, this interpretation is probably based on the word תיב = thorn, found in Targum Onkelos to Gen 3.18 and Targum Jonathan to Hos. 10:8 (see Sperber's ed.; also quoted by Levy, Chaldäisches Wörterbuch über die Targumim).
cause of his grief, either cut his hair or washed his garment."¹

λυπούμενος, "because of his grief," is supplied by Josephus from the context. Otherwise, there are two differences between the accounts: (1) Josephus does not mention רֶחֶם הַנַּפַּת הַרָּגִל, and (2) he translates מָשׁ as κώμη. Can anything be deduced from these divergences?

In regard to the first difference, in halakhah it is clearly stated that a mourner may not cut his nails.² However, this law, found in the extra-canonical tractate Semaḥoth, is clearly of late origin since the law was debated by the sages without reaching a consensus from the mid-second century³ well into the amoraic period.⁴ In other words, we have no halakhah contemporaneous with Josephus that forbids paring of nails. Furthermore, since the first mention of such a prohibition stems from a period half a century after Josephus' death,⁵ at

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¹AJ 7.267: ῥυπαρὰν τε τὴν ἐσθήτα περικείμενος καὶ τὴν κώμην βαθείαν καὶ κατμυθημένην ἔχων... οὔτ' ἀπεκείρατο λυπούμενος οὔτ' ἐκάθερε τὴν ἐσθήτα.

²Sem. 7.11: τὸ ψάρον τὸν ἐκείνους καὶ τὴν κώμην γίνεται ἄλληα μέλαινα.

³T. MK 2.2: τὸ ψάρον τὸν ἐκείνους καὶ τὴν κώμην γίνεται μηδέν ἀλλοτρίῳ στάσεις ἕρως; ST MK 17b divides the Tosefta into two parts; PT MK 3.1, 82a: τὸ ψάρον τὸν ἐκείνους καὶ τὴν κώμην γίνεται μηδέν ἀλλοτρίῳ στάσεις ἕρως. The discussion which follows in PT, according to which both Tannaim agree that a mourner (not during νῦν ἀλλὰ) may not pare his nails, is of no concern to us here, for it is an amoraic attempt to harmonize both views.

⁴PT ibid.

⁵The statement in Sifre Deut. 212 (p. 246) buttressing R. Eliezer's contention that משׁ means "cutting," ἐγείρεται λήβην ἔρκει σε αἰτίαν ἡ θέσινος βελτιστότερον ἡ θέσις, is of no moment here, for (1) it stems from a period after R. Eliezer, and (2) it is, at any rate, an interpretation of a verse and not halakhah.
which time the question first came to be discussed, we may therefore assume that at Josephus' time the halakhah permitted cutting of nails to a mourner. If, therefore, Josephus understood the phrase ר铆טנ לשר to refer to nail cutting, as did the LXX,\(^1\) there is good reason why he did not mention it --it would have conflicted with the halakhic practice of his day.\(^2\)

In regard to the second difference, what was said in the preceding paragraph about nail cutting applies as well to the cutting of moustache hairs, i.e., the question of prohibiting the latter remained undecided from the tannaitic period well into the amoraic.\(^3\) However, there are numerous undebated tannaitic statements that either prohibit the mourner to cut the hair of his head or presuppose such a prohibition.\(^4\) And

\(^1\) οὐκ ἐμπέπεσεν τοὺς πόδας αὐτοῦ οὔτε ωσθούσατο. Josephus may, however, have understood כן_large as Targum Jonathan: כן_large שוע אגסייה.

\(^2\) The fact, however, that in paraphrasing Deut. 21:12-13 Josephus omits כן large the teshuva (AJ 4.257) cannot be due to a conflict with halakha. For, although Josephus clearly sees the acts of the captive woman as mourning rites (καὶ γυνὴν ἀναλαμβάνων ἀποθηκηγούσα) he, nevertheless, translates כן_large very literally (ἐπιστάσαντος) which also conflicts with halakha (at least during the first seven days). Actually, there is no conflict here because Josephus obviously understood these rites to be non-Jewish.

\(^3\) Cf. ibid. (above, p. 177, n. 3). Cf. PT ibid.: כן_large וּכְנ̄וּר שופט סעון יבָרוֹכֵו כְּנ̄וּר כְּנ̄וּר.

\(^4\) T. MK 2.1: כְּנ̄וּר אַלָּכֶר חָשַׁר מַעַּרְס עָפָר לְשֵׁקָר בְּחֵקָר. (These are the exceptions [M. MK 3.1] and even these cases are not permitted according to another tannaitic opinion [BT MK 17b, PT MK 3.1, 82a]. For variant readings and parallels see TK ad loc. If the meaning of this Tosefta is that the holiday falls within the thirty days of mourning [PT ibid. and see Lieberman, TK, ad loc.], it is only for this reason that mourning rites are suspended; otherwise, without the intervention of a holiday, they are not.) T. MK 2.2: כְּנ̄וּר כְּנ̄וּר.
this halakhah is at least as early as the mid-second century.¹

Now, the fact that Josephus deliberately changed ἀνά (LXX: μῶσταξ) into κώμη, which means the hair of the head, ² shows that this difference in halakhah between head hair and moustache hair dates back an additional half a century to his time.

**Beating the Breast**

It is debatable whether beating one's breast is mentioned in the Bible as a sign of grief and mourning.³ We do find the gesture of slapping the thigh to express grief⁴ and...
of clapping the hands together in anger.\(^1\)

In the Mishnah we find that at funerals the women would chant dirges and slap their hands.\(^2\) It is not said whether the slapping was done with one hand against the other or against the breast or the thigh.\(^3\) The Tosefta quite clearly says that part of the funeral consisted of beating the breast.\(^4\) However, is this statement based on reality or is it theoretical exegesis?

Again, it is recounted that when R. Eliezer died R. Akiba beat his breast.\(^5\) However, in a parallel account we have "he beat at his body" and in another "he tore his hair."\(^6\)

\(^1\) Num. 24:10: רָגָעַת אֶת בָּלָק אֶל בָּלָק יְרָפֵרוּ שֶׁאֵכָּל. So also LXX: συνεκρότησεν ταῖς χερσίν.

\(^2\) M. MK 3.8-9: כְּשֶׁמִּשְׁמַעְתָּן מִצְמוֹת אֶלָּא מַעֲקַדָּתָן. רֹבִּי יְשַׁעַיאֵל.

\(^3\) Rashi vacillates on the definition of יָשְׂפִּיט, sometimes defining it as clapping the hands (BT Bezáh 30a; MK 27b) sometimes as beating the breast (BT Shab. 148b; 'Erub. 104a; Meg. 3b). He similarly gives two definitions to יָשְׂפִּיט: clapping the hands (BT Shab. ibid.; 'Erub. ibid.) and slapping the thigh (BT Bezáh 30a, 36b).

From the account in PT Bezáh 5.2, 63a we don't believe that the nature of either gesture can be determined. Since the distinction is drawn there between יָשְׂפִּיט and יָשְׂפִּיט, the former being done in anger and the latter in joy, there clearly must have been a difference between the two actions. However, the sages may not necessarily have understood Num. 24:10 as referring to clapping, cf. Tosafot, BT MK 27b, s.v. שָׂפָה. Similarly, we do not see anything in the words יָשְׂפִּיט יָשְׂפִּיט that demands an interpretation of clapping as opposed to slapping the thigh or any other part of the body.

\(^4\) T. MK 2.17: אוֹ דָּהַ כִּפְּרוּ וַיַּעֲקִיב וַיִּשָּׂפְּרוּ עַל שְׂדֵימֵם וַיִּשָּׂפְּרוּ. Cf., however, BT MK 27b where no tannaitic source is quoted: אוֹ דָּהַ כִּפְּרוּ וַיַּעֲקִיב וַיִּשָּׂפְּרוּ עַל שְׂדֵימֵם.

\(^5\) Sem. 9.2: וַיַּעֲשֵׂה כִּפְּרוּ רְבֵּי אֲלֵיֵיִר וְהָלָּיָא בְּרֵי עֶקְּגֵנִּיָּא לְפָּוְאָר לְבָּא שְׁנֵי דוּדוּ וַיִּתְנַחְמֶנֶינָא לְפָּוְאָר לְבָּא שְׁנֵי דוּדוּ שׁוֹתָה.

\(^6\) BT San. 68a: הַיָּהָה מַכָּה בַּבְּשָׂרָה. ARN₁ 25 (p. 81): תִּלְשֶׁת בַּבְּשָׂרָה וּהֲיָה דָּוָה שׁוֹתָה.
There is proof, nonetheless, that beating the breast was a common gesture of grief and mourning. For not only does the LXX translate ρέων μείσσαν ὑπὸ in Isaiah as "beating the breast,"¹ but also Josephus adds to the account in II Sam. 19:1-3 "beating his breast."² The Tosefta's statement, therefore, is not merely theoretical exegesis.

Were there, in addition, the other gestures to express grief and mourning, i.e., slapping the thigh or clapping the hands? We have seen that from tannaitic literature this cannot be determined.³ Similarly, Josephus mentions the indeterminate "striking oneself" five times.⁴ Note, however, that in these

¹ ἐπὶ τῶν μαστῶν κόπησε κατά στένον ὁ γάτων in perfect agreement with the Tosefta. Did one influence the other? The LXX also translates ὑπὸ as "to smite oneself" in Jer. 16:5-6.

² AJ 7.252: τυπτόμενος τὰ στένον. Perhaps, also, this custom is referred to in Targum Jonathan to Ezek. 31:15: ἀκολούθησεν αὐτὸς ἐφθασενεν εἰς τὴν ἀναστροφήν τῆς νόησες.

³ We do find striking the face (יָסָר וְהָכְהָה) in 'Ekhah Rabbah, Introduction, 24. From Koheleth Rabbah 12.7: והנה הַגֵּדָה אֲשֶׁר יָסָר וְהָכְהָה and 'Ekhah Rabbah, Introduction, 23: וְהַגֵּדָה אֲשֶׁר יָסָר וְהָכְהָה all we can see is that one hand could be used for דָּוָה. From PT San. 2.1, 19d-20a: והנה הַגֵּדָה אֲשֶׁר יָסָר וְהָכְהָה (ャנ appears to be a dittography from יָסָר וְהָכְהָה), we see that two hands were the usual method of דָּוָה.

⁴ BT MK 27b: כָּבָס הַגֵּדָה אֲשֶׁר יָסָר וְהָכְהָה אֵין נְכִי נָבָדַד אֵין נְכִי נְכִי. Based on this, S. Krauss, Talmudische Archäologie, vol. 2, p. 483, n. 485, remarks: "Man die losen Sandalen von den Füssen riss und sich damit schlug." But this is not apparent. Rashi's interpretation, "injuring herself with her hands," can just as well be true, i.e., the shoe remained on the foot.

⁵ AJ 6.377: κοπτόμενοι, an addition to I Sam. 31:13 (mourning); AJ 7.41: κοπτόμενος ἐπὶ, an addition to II Sam. 3:31 (mourning); AJ 8.273: κοπτομένη, an addition to I Kings 14:17 (grief); AJ 13.399: κοπτομένη (grief); BJ 2.6: κοπτοτε (mourning). Note that in all these cases the Loeb translation has "beating the breast"—an inaccurate translation. Cf. also Josephus' addition to I Kings 17:17: ταῖς ἑρεθίν αὐτῆς αἰκηζομένη, "injuring herself with her hands" (AJ 8.325; mourning), and Ben Sira 38:17: δέρμαν κοπτόν, "make passionate your strikings"; see above, p. 143, n. 4.
five cases Josephus uses the verb κόπτω while in the one instance above where the breast is mentioned the verb is τύπτω.

Baring the Breast

As a sign of entreaty Josephus mentions baring the breast (together with putting dust on the head and tearing the clothes). In tannaitic halakhah we find the custom of baring one's shoulder in mourning. However, Josephus is not here referring to any specific custom. He is simply telling us the result obtained upon tearing the garment. This is borne out on two sides.

First, by the Greek. The chief priests are depicted with three phrases: heaping dust, bared at the breast, and clothes torn. The last phrase, however, is set apart in the genitive absolute and we believe the adverbial sense connoted is one of cause or means / manner, i.e., their breasts were bare because (or "by means of") the clothes had been rent.

Secondly, this interpretation is substantiated by a tannaitic statement which uses the same expression. "R. Meir (middle of the second century) says that one must reveal his

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1BJ 2.322: τούς δ' ἄρχειρες αὐτοὺς ἢν ἱδεῖν καταστρεμένους μὲν τῆς κεφαλῆς κόνιν, γυμνοὺς δὲ τὰ στέρνα τῶν ἐσθήτων διερρημένων.

2M. MK 3.7: οἵ τε θυρεύεται οὐκ ἐβύθετο... ἀλλὰ κρομμός πεπελεκτὸς... Καὶ εἰς τὴν ἄνωθεν τῷ ἀνθρώπῳ ἐκκλησίας ἐπεθύμησεν...; BT MK 22b (= Sem. 9.3 with variants): ὅπλα τὰ περιστατικά τοῦ συνετέρου... ὡς πρὸς πολλὰς ἡμέρας καὶ ἂν τῆς...; after which follows an account of this custom involving R. Judah the Patriarch. In Sema both there is an account of R. Akiba involving the custom (which is not mentioned in the parallels). See also BT ibid., bottom; and PT MK 3.7, 83b (ἀλλὰ ἐν κύριοις); and Sem. 9.2.
breast [literally: heart; i.e., by the rent in his garment] only for deceased parents." ¹

**Posture**

Josephus mentions the pose of falling prostrate unequivocally four times as a gesture of entreaty (thrice to God; once to man). ² Three other times (all in entreaty: once to God; twice to man) his language is not so descriptive.³ Falling prostrate in supplication is explained by Josephus as "the ancestral custom." ⁴

In the Bible this pose of entreaty is found often.⁵ In

¹ PT MK 3.8, 83d: Ἱεροσόλυμα καὶ Ἰερωσίμα, πάντα εἰς τὸν περαιτέρω ἄγνωστον, ἰσόν μετὰ τοῦ τάξιν ἐκείνην ὁμοίως, ἵνα ἔσται ἀλήθεια, ἵνα ἔρθῃ ἡ ἀλήθεια ἐκ τῆς ἐορτῆς ἧς ἦν ἐν τῷ ἄγαλμα, τοὺς πατέρας τοὺς πάντας ἐκεῖνοι καὶ τὸν τόπον τοῦ τάξιν ἐκείνου. Cf. BT MK 22b: Ἱεροσόλυμα καὶ Ἰερωσίμα, πάντα εἰς τὸν περαιτέρω ἄγνωστον, ἵνα ἔσται ἀλήθεια, ἵνα ἔρθῃ ἡ ἀλήθεια ἐκ τῆς ἐορτῆς ἧς ἦν ἐν τῷ ἄγαλμα, τοὺς πατέρας τοὺς πάντας ἐκεῖνοι καὶ τὸν τόπον τοῦ τάξιν ἐκείνου. The expression and connection with tearing the garment is so identical in both sources that we venture to say we can see here an original Semitic War.

² AJ 10.11: πεσόν ἐπὶ πρόσωπον τὸν θεὸν ἰκέτευε καὶ ... ἰδικὸς, presumably an amplification of II Kings 19:1: καὶ ἴδιον ἰδικὸς. (Judith 9:1 has the same: ἐπεσεν ἐπὶ πρόσωπον; also 4:11: ἐπεσεν κατὰ πρόσωπον τοῦ ναοῦ. Note that the words added by Josephus are a pure Hebraism: ἵνα ἐπὶ ἰδικὸς.) AJ 11.231: ἰκέτευε δὲ καὶ Ἰσραήλ τὸν θεὸν τῷ πατρίῳ νόμῳ, δίψασα κατὰ τῆς γῆς ἐκτίμην, an addition to Apoc. Esther (14:1). (Whatever τὸ σῶμα αὐτοῦ ἐκτίμησεν in Apoc. Esther originally meant, it probably suggested fasting and not prostration to Josephus, see above, p. 167, n. 1.); AJ 19.349: ποιμένες καταπίπτοντας. (Incidentally, this passage shows a telltale sign of the "Thucydidean hack" according to Thackeray [Josephus, the Man etc., p. 111]—a double negative: ἀδίσκομεν οὐδὲ οὐκ ἀδίσκομεν, "he himself did not remain without tears," although this scholar asserts that this passage is the work of Josephus himself [ibid., p. 106]); Vita 138: ποιμένες πεσόν.

³ AJ 16.126: ὑποπέσειν ἐπὶ δεήσει; AJ 20.89: ἐπὶ τὴν ἰκέτειαν ἔτρεπε τοῦ θεοῦ, χαμαὶ τε δίψας αὐτοῦ; BJ 2.321: προέπιτον, which literally means "they fell at the feet (of another)." Thackeray's translation, they "fell on their knees," is, therefore, inexact.

⁴ AJ 10.11 and 11.231: τῷ πατρίῳ νόμῳ.

⁵ E.g., Josh. 7:6 or II Macc. 10:4: πεσόντες ἐπὶ κοιλίαν.
tannaitic halakhah we find this posture of falling prostrate as part of the formal temple service. By a study of the development of the ἱερών prayer from this temple service, I. Elbogen has shown that it was during this prostration that personal entreaties to God were made. This theory seems corroborated by a comparison of the Mishnah and Ben Sira on the one hand and Josephus on the other. The former say that the prostration occurred after the Tamid which is the communal sacrifice. The latter says: "At these sacrifices prayers for the welfare of the community must be first and then, those for ourselves." This connection of prostration with entreaty has never abated.

Supplication in War

Josephus mentions three customs as acts of supposition

1M. Tamid 7.3: οὐκ ἐστίν ἡ προσευχὴ, ἐνθάδε ἐστίν. So also Ben Sira 50:16-19: οὐκ ἐστιν ἡ προσευχὴ, ἐνθάδε ἐστιν. / .... / η εἴσοδος υπὲρ ἑαυτὸς / .... / ἐνθάδε ἐστίν. / .... / ἐνθάδε ἐστίν. / ....

2Der jüdische Gottesdienst in seiner geschichtlichen Entwicklung, 3rd ed. (Frankfurt a/M, 1931), pp. 73-75. Note that the LXX has καὶ ἐξομήνυ ὁ λαὸς τοῦ ὕψιστος, "And the people besought the Lord Most High" for γρηγορίν ὑπὸ καὶ ἐν Ben Sira 50:19.

3Ant. 2.196: καὶ ἐπὶ ταῖς θυσίαις καὶ προτοῦ ὑπὲρ τῆς κοινῆς ἐυχὴς οἱ οἰκείοι ἐκπολέμησαν, εἰς ὑπὲρ ἑαυτῶν. We have translated slightly differently than Thackeray to bring out our point. Cf. J. Heinemann, "םוסינאו יאדויה התングת התングת," 2nd ed. (Jerusalem: Magnes Press, 1966), p. 79.

4The only thing that has changed is the posture itself. In time prostration was modified (BT Meg. 22b; but see MT, קְרִית, 5.13-14). However, the connection between entreaty and "falling on one's face" continued as can be seen from the story of R. Eliezer in BT BM 59b and, at a much later date, from the words of R. Amram Gaon (mid-ninth century): מָגַן לַפֵּרָה וַיִּנָּחָה לְהַעֲבַרָה מֵאֵיזו אֶדֶן לְהַעֲבַרָה. We have translated slightly differently than Thackeray to bring out our point. Cf. J. Heinemann, מוסינאה יאדויה התングת התングת, ed. D. Goldschmidt [Jerusalem: Mossad Harav Kook, 1971], 65, p. 37.
(and occurring together with other acts of supplication mentioned above): holding one’s hands behind one’s back,\(^1\) suspending one’s sword from one’s neck,\(^2\) and holding (or, waving) olive branches.\(^3\) These acts are associated with war. One sued for peace by presenting oneself in these positions. Obviously, these rules of war never entered the **halakhah** as modes of supplication.

\(^{1}\)BJ 2.601: ἀποστρέψας δὲ ὑπίσω τὰς χεῖρας; of Josephus when attacked at Tarichaeae.

\(^{2}\)BJ 2.601: τὸ ἵππον ἔφυσεν ἐπιδήσας τὸ τένοντι; Vita 138: τὸ ἔφυσεν ἀπαρτισμένος ἐν τῷ αὖχένος; both of Josephus when attacked at Tarichaeae.

\(^{3}\)BJ 2.637: κατασχέοντες ἰκετηρίας, of the Tibereans when attacked by Josephus; BJ 4.553: μεθ’ ἰκετηρίων προσθών-τες, of the inhabitants of Capharabis when attacked by Vespasian.
CHAPTER XV

RESPECT FOR THE AGED

Ap. 2.206

καὶ παντὸς τοῦ πρεσβυτέρου
timhν ἔχειν τοὺς νέους ϕη-
sing, ἐπεὶ πρεσβύτατον ὁ
Θεός.

[The Law] requires respect
to be paid by the young to
all their elders because
God is the most Ancient of
all.

Lev. 19:32

Before the hoary head shalt thou rise up, and honor the
face of the old man; and thou shalt be afraid of thy God. 1

The Tannaim are divided whether this law applies to any
elder, as Josephus has it, or just to a learned man. 2

* * *

God is called the "Ancient of Days" in Daniel. 3 That

1 (*)(*) (*) (*)

God is called the "Ancient of Days" in Daniel. 3 That

2 BT Qid. 32b: καὶ παντὸς τοῦ πρεσβυτέρου
timhν ἔχειν τοὺς νέους ϕη
sings, ἐπεὶ πρεσβύτατον ὁ
Θεός.

Except for 'Isi's statement the baraitha
is found in Sifra, Qedoshim, pereq 7 (p. 91a).

3 Daniel 7:9: וְיֵשׁ לְךָ בְּיִשְׂרָאֵל אֶלֶּהָ שְׂעָרָה הַיָּה הַיָּה. See also
12:7 where God is termed the "Everlasting One," "E vôlôm hîn.
this should be a reason for respect to elders, as Josephus says, is not paralleled in the Bible nor in rabbinic literature. However, the underlying connection between God and is found in both word and thought. In word: Ben Sira calls the aged "ancient of days."\(^2\) In thought: R. Eliezer's (last quarter of the first and beginning of the second centuries) interpretation of Ecclesiastes 8:13: "Because he is not afraid of God," I would not know the nature of this fear were it not for the verse 'Before the hoary head shalt thou rise up ... and thou shalt be afraid of thy God' from which I deduce that the "fear" of Ecclesiastes means rising."\(^3\) As Thackeray has hinted in his note to Ap. 2.206, Josephus' reason of

\(^1\)Cf. AJ 4.262 where, in discussing honor to parents, Josephus says that God "is distressed at acts of effrontery to a father, since He is himself Father of the whole human race" (πατήρ τοῦ παντός ἄνθρωπου γενόμενου). The nature of God is reason for yet other laws. AJ 4.201: "In no other city [than Jerusalem] let there be either altar or temple; for God is one and the Hebrew race is one." Ap. 2.193-194: "We have but one temple for the one God—for like ever loveth like—common to all as God is common to all... Any who disobey him [the priest] will pay the penalty as for impiety towards God himself." For other names given God by Josephus see A. Schlatter, Wie sprach Josephus von Gott? (Gütersloh: C. Bertelsmann, 1910). Schlatter (p. 24) neglected to list BJ 1.630 where God is called "One who ἀφορά πάντα" ("BJ 1.543," ibid., is a printer's error; read: 4.543) and under δισμότης (pp. 8-9) he neglected AJ 1.20 (cf. Judith 9:12).

\(^2\)Syriac Ben Sira 25:4: מנדנא אída דסא

\(^3\)BT Qid. 33b and parallels: אָשֶׁר אָבִּין יִדְיוֹ לָחוֹז הַאָמָה הַגָּלְפִּיִּית Num. R., 15 reads: יְהוָֽה יִדְּיָהוּ. Cf. Derekh 'Ereẓ Zuta', 7: גְּרוּ כֵּן בְּנֵי הָעָם. The connection also underlies R. Akiba's (first quarter of the second century) interpretation of Deut. 10:20: אַלּוֹתֵי ה' יוֹשֵׁב יֶשֶׁת וְיָדוֹת. (BT Qid. 57a and parallels; Num. R., ibid. reads: לִבְּרֵי עַלְיוֹ וְיָדוֹת). The outcome of this exegesis is in line with the opinion that יִדְיָהוּ = יְהוָֽה, but the idea behind it is the parallel between God and יִדְיָהוּ. Cf. also 'Aboth 4:12: יְהוָֽה יִדְּיָהוּ כְּעַנְּרוֹת לִבְּרֵי. (BT San. 110b = Num. R., 18.15 has a number of amoraic statements comparing one's teacher with God.)
God as the Ancient is indeed based on the end of Lev. 19:32: יִנְחַלְתָּם תַּאֲרוּבָ. However, the connection between God and elder in this verse, which served as the basis for Josephus' exegesis, was common among his Jewish contemporaries and served as well for their own exegeses.\(^1\)

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Regarding the juxtaposition of this law with that of honor to parents (Ap. 2.206), we cannot say that Josephus relied on a source. The juxtaposition is a natural one which was felt also by the compilers of BT Qid. 32-33 where treatment of the one law follows that of the other.

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Josephus mentions the concept of respect to elders in four other places:

1. When describing the Pharisees, Josephus says (AJ 18.12), τιμής γε τοῖς ἡλικίας προσκομίσων παραχωροῦσιν οὐδέ ἐν ἀντιλέξει τῶν εἰσηγηθέντων δράσει ἐπαιρόμενοι. Taking τιμής as genitive of cause, we translate: "Out of respect they give place to those advanced in years, nor do they rashly rise up in contradiction of their proposals." Tosefta: "What is the nature of this honor of which the Torah says, 'Thou shalt honor the face of the old man'? It is this: not to stand in

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\(^1\) Cf. also PT Bik. 3.3, 65c: אַחַר שְׁמֵיתָם אֵלֶּה מָשָׁם שְׁמַע בְּלִי קְרִיעָה בְּתוּכָּם בָּעָלֵנוּ כֹּל וְרָאֲתֵנוּ מַשְׁקַל תַּאֲדוּר וְשָׁם שְׁכִּיָּהֶת מַשָּׁם. Here, as in other exegeses found in PT, ibid., the last words of the verse are not considered distinct from the rest of the verse.
his place, nor to speak in his place, nor to contradict his words." ¹

2. When recounting the story of David and Goliath, Josephus says that Eliab, David's oldest brother rebuked him for his talk of meeting Goliath in battle. Thus far Josephus does not differ substantially from the Bible. But then he adds: "Out of respect for his brother David withdrew" ² which is an addition to the biblical story. This little addition, used to spice up the narrative, was undoubtedly drawn from common practice which demanded respect for an older brother. As a baraitha puts it: "The law of honoring parents includes one's older brother." ³

3. In the story of Ruth, Naomi tells Ruth to slip surreptitiously into Boaz's bed at night. To this Josephus adds that Ruth, "regarding it as a pious duty in nothing to gainsay the behests of her mother-in-law repaired thither." ⁴ There is neither a biblical nor a tannaitic law demanding respect for a mother-in-law. Nevertheless, both literatures provide proof that it apparently was very unusual for a daughter-in-law to "gainsay the behests" of her mother-in-law or 'in any

¹T. Meg. 3/4.24: οὐδὲν δὲν τὴν ἱματικὴν τὴν ἔβαλεν τῷ Πατρὶς ἀντιλαμβάνεται. Sifra, Qedoshim, pereq 7.14 (p. 91a) has ἀντιλαμβάνεται ἐπὶ ἀντιλαμβάνεται for a simple ἀντιλαμβάνεται seems to be the work of the "Thucydidean hack" who is fond of such verbosity according to Thackeray, Josephus, the Man etc., p. 111.


³BT Keth. 103a: τῇ τῆς ἡμέρος τῇ ἔννοιᾳ τῆς ἀνεπάρκειας τῆς ζωῆς τῆς ἀναπαύσεως τῆς κοινωνίας.

⁴AJ 5.329: ἣ δὲ, πρὸς οὕδεν γὰρ ἀντιλαμβάνει τῶν ὑπὸ τῆς ἐκκλησίας κελευθερών ὁσίον ἡγεῖτο, παραγίνεται.
way to dishonor her. Micah, in lamenting the moral corruption of Judaea, ranks such dishonor with that of a son for his father. "For the son disgraceth the father, the daughter riseth up against her mother, the daughter-in-law against her mother-in-law...." R. Nahorai (first half of the second century) also considers a woman's disrespect of her mother-in-law as the abnormal state of affairs. At the advent of the messiah when society's standards will be corrupt "a daughter-in-law," he says, "will rise up against her mother-in-law."²

4. One of the marks of the Essenes is that they obey their elders.³

* * *

A specific mark of respect (or, contrarily, disrespect) seen in Josephus is in seating arrangements at banquets.⁴

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In summary, the law as stated by Josephus does not differ from the biblical law and agrees with one tannaitic opinion

1Micah 7:6: הַנָּהַמָּה בִּנְיָמִין בָּאָאָת נֹשְׁרֵת נֹשְׁרֵת. The International Critical Commentary to this verse states, with no apparent proof: "The mother was granted absolute authority over her son's wife."

2BT San. 97a: הַנָּהַמָּה בִּנְיָמִין בָּאָאָת נֹשְׁרֵת נֹשְׁרֵת. That R. Nahorai is not simply quoting Micah is seen by the other additions to his list of which Micah is silent. The Tanna is obviously hypothesizing a society based on the society of his own time. He merely uses a quote from the prophet to aid him in his description.

3BJ 2.146: προσβονετοις οπακουελυν.

('Isi ben Judah, second quarter of the second century). Josephus adds to the biblical account a reason for the law which is not paralleled elsewhere. The thought, however, behind the reason is common in tannaitic literature. The description of the Pharisees in regard to this law agrees almost to the letter with the tannaitic halakhah. Two additions to the biblical narrative were drawn by Josephus from the practice of his day. One practice, respect for an older brother, is preserved in tannaitic halakhah. The other, respect for a mother-in-law by her daughter-in-law, is preserved in a biblical and a tannaitic statement.
In a number of places Josephus mentions that the Jews chose to die rather than to transgress the law. 1 Sometimes he

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1AJ 6.149 (an addition to Samuel's denunciation of Saul in 1 Sam. 15:22-23): "But they who are mindful of this one thing alone, to wit what God has spoken and commanded, and who choose rather to die than to transgress aught thereof, in them does He rejoice" (τανάναι μᾶλλον ή παραβήναι τι τούτων). The similarity of expression between ἀποσάνειν μᾶλλον ή παραβήναι and ἡ αὐτή has already been noted by M. Hadas in his note to IV Macc. 16:24 (Dropsie University edition).

AJ 15.288: "...the communal customs for which it is worthy for all men to either preserve or to die for" (τῶν κοινῶν ἐδών, δ' καὶ πάσιν ή φυλάττειν ή θυσίαθεν πρὸ ἄντων ἂν νοσάνων).

Ap. 1.42: Regarding Scriptures, Josephus says that "it is an instinct in every Jew ... if need be, cheerfully to die for them" (νάνα δὲ σμύρωτον ἐστίν ... Ἰουδαίοις ... υπὲρ αὐτῶν, εἴ δέοι θυσίαθεν ἀδελφοί).

Ap. 1.190-191: "In another passage Hecataeus mentions our regard for our laws (νόμους), and how we deliberately choose and hold it a point of honour to endure anything rather than transgress them" (πάντα πάσχειν ὑπὲρ τοῦ μὴ παραβήναι τούτων). Then he quotes Hecataeus: "For these laws they face tortures and death in its most terrible form, rather than repudiate the faith of their forefathers" (περὶ τούτων ... δανατοὺς ... πάνω ἀπαντᾶσα, μὴ ἀρνοῦμεν τὰ πατρίδα).

Ap. 1.212 (describing the Jews): "These are men who consistently care more for the observance of their laws and for their religion than for their own lives and their country's fate" (καὶ σωτηρίας καὶ πατρίδος ἀνθρωποί τινες νόμων φυλακὴν καὶ τὴν πρὸς δῶν εὐδέξησαν ἀεὶ προσποιώσιν).

Ap. 2.218: "...those who observe the laws and, if they must needs die for them, willingly meet death" (τοῖς τούς νόμους διαμιμέσακα καί εἴ δέοι θυσίαθεν υπὲρ αὐτῶν προσήμως ἀποθανοῦσι).

See also Ap. 2.146, 228, and 271.
makes this comment in regard to the transgression of a specific law: idolatry and the making of images,\(^1\) abeyance of the sacrifices,\(^2\) blaspheming the "lawgiver" and eating forbidden food.\(^3\) Twice he recounts that the Jews preferred death to even speaking against the laws.\(^4\)

\(^1\)The attempt to set up Gaius' statue in the temple, *AJ* 18.264, 266: The Jews offered their lives first (τοῦ νόμου τῆς προαιρέσεως); 271: "We will die sooner than violate our laws (τεθνησомерα δὲ πρῶτον ἐπαραβήναι τοὺς νόμους); 274: νόμιμα; 287: τοῦ νομίμου τῆς θρησκείας; *BJ* 2.196-197: νόμιμος. Cf. *AJ* 19.15.

BJ 1.650: The "sophists," when exhorting their disciples to cut down the golden eagle which Herod had erected over the temple gate, "said that even if the action proved hazardous it was a good thing to die for the ancestral law" (καλὸν εἶναι λέγοντες, εἴ καὶ τὸς γένοιτο κύνδυνος ὑπὲρ τοῦ πατρίου νόμου θυνήσκειν). Cf. *AJ* 17.152.

BJ 2.174: When Pilate brought the Roman standards into Jerusalem the Jews "exclaimed that they were ready rather to die than to transgress the law" (ἐτοίμους ἀναμείνῃς σφαῖρας ἔβολον μᾶλλον ἢ τὸν νόμον παραβήναι).

\(^2\) *AJ* 14.67 and *BJ* 1.150: At Pompey's capture of the temple, although the Romans were slaughtering the Jews in the temple, the priests continued to perform the sacred ceremonies (ἰερουργοῦντες; *BJ*: θρησκεία). They "thought it better to endure whatever they might have to suffer there beside the altars than to neglect any of the ordinances" (νόμιμα; *BJ*: τῆς πρὸς τὸ θεῖον θεραπείας).

*AJ* 15.248: The Jews would rather give up their lives than the worship (θρησκεία; i.e., by sacrifice). See also *AJ* 20.193.

\(^3\) *BJ* 2.152-153 (of the Essenes): "Made to pass through every instrument of torture in order to induce them to blaspheme their lawgiver or to eat some forbidden thing ... they cheerfully resigned their souls" (ἐν τῇ βλασφημίᾳ τοῦ νομοθέτην ἢ φάγωσιν τι τῶν ἀσυνήθων εὐθύμοι τὰς ψυχὰς ἀποκέντρωσαν).

\(^4\) Ap. 1.43: Time and again Jews chose death over "uttering a single word against the laws and the allied documents" (ἐπὶ τοῦ μηδὲν ῥῆμα προέσθαι παρὰ τοὺς νόμους καὶ τὰς μετὰ τούτων ἀναγραφὰς).

Ap. 2.219: "Many of our countrymen have on many occasions are now preferred to brave all manner of suffering rather than to utter a single word against the Law" (περὶ τοῦ μηδὲν ῥῆμα φθέγξασθαι παρὰ τὸν νόμον πάντα παθεῖν γενναίως προεῖλοντο).
In none of these instances does Josephus say that the choice of death was demanded by Jewish law. Since, however, there is a halakhah in regard to this matter and since some scholars have claimed that at various times the Jews acted in accordance with this halakhah, we feel it necessary to trace the historical development of this law.

The tannaitic opinion in regard to cases of "transgression or death" is as follows:

1. In three instances one must submit to death: idolatry, illicit sexual relations, and murder

2. Idolatry is permissable in private; publicly one must submit to death

Later opinion limited the above to cases:

1. where there is no concerted effort by those in power to destroy Judaism; if there is then death is to be chosen over any transgression

2. of private transgression; if in public, however, death is to be chosen over any transgression

1 M. Hadas in his introduction to IV Maccabees (Dropsie University edition), pp. 119-120, feels that this law was in effect at the time of the composition of IV Maccabees which he dates in the reign of Caligula (37-41 CE). I. Halevy, הורד התפוצות, vol. Ie (Frankfurt a. M., 1918), pp. 652-653, would have the law in effect as early as the persecutions under Antiochus Epiphanes.

2 BT San. 74a and parallels: כיון מנהיגים קהל יזהר באה יdziałו בהלל ויחד לכל העבירות שבתרצו את שלמים נ不来א עבירות ואל תחרגו עבירות ואל תחרגו עבירות ולא תחרגו עבירות ואל תחרגו עבירות ולא תחרגו עבירות ולא תחרגו עבירות ולא תחרגו עבירות לאם עבירות ואל תחרגו עבירות ואל תחרגו עבירות ולא תחרגו עבירות ואל תחרגו עבירות ולא תחרגו עבירות ולא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרגו עבירות לא תחרغو
When dealing with the halakhah in Josephus we must disregard not only the later qualifying statements but even the earlier ones, for they stem from the time of the Hadrianic persecutions (132-135). In other words, at the time of the incidents related by Josephus, which is at the times of Pompey, Caligula, Pilate, and the war with Rome there was no law that determined in which instances one must submit to death.

As in Josephus so in other accounts there are instances of Jews choosing martyrdom rather than transgress laws other than idolatry, illicit sexual relations, and murder. In I Maccabees we are told that Jews were killed for practicing circumcision, abstaining from unclean food, and refusing to profane the Sabbath and it is intimated that for their refusal


The qualifying statements are amoraic (R. Yoḥanan) in the talmudic sources. However, the first of the two (הנוש) appears anonymously in a tannaitic source (T. Shab. 15/16.17; see also Sifra ṭa, pereq 9.4, p. 99b and ṭa ṭa, pereq 13.14, p. 86a). At any rate, this does not affect our discussion, for these two statements qualify laws which postdate Josephus and, therefore, as legal statutes can be no earlier than that which they qualify. (That the second set of statements were produced at a later date than the first was noticed by S. Klein, op. cit., pp. 533-535.)

2Cf. Also Sifre Deut. 32 (p. 55): דב אליעזר אומר אמן נאמר כל נפשך לה🌙ו נאמרים כל נ האח לה月亮 לה$s intervenes.ISH 011, 011, 011, 011. Although this statement, according to the Amoraim, refers specifically to the sin of idolatry (BT San. 74a and parallels) there is nothing in R. Eliezer's words which demands this interpretation. It must, however, be noted that there is also nothing here which demands the amoraic interpretation of martyrdom. Seeuate, Qedoshim 118 (ed. Mirsky, p. 207), Finkelstein's note to Sifre ad loc., and BT Ber. 61b.
to transgress other commandments as well they were killed.¹

In IV Maccabees it is related that the Jews continued their fidelity to the law although a decree had been issued that "any who were found living according to the Law of their fathers must die."² In the Book of Daniel we are told that Daniel prayed to God although he knew that to do so would be courting death.³ The rabbinic sources recount various laws the adherence to which brought about death during the Hadri-anic persecutions.⁴

¹I Macc. 1:60-63: circumcision and unclean food; 2:33-37: profanation of the Sabbath. In 1:44-50 we are informed that all would die who do not obey the order to "follow customs foreign to the land, to withhold burnt offerings and sacrifices, and drink offerings from the sanctuary, to profane the Sabbath and festivals, to pollute the sanctuary and the holy ones, to build high places and sacred groves and idols, to sacrifice swine's flesh and unclean cattle, to leave their sons uncircumcised, and to defile themselves with every kind of uncleanness and profanation." Also, "wherever a book of the covenant was found in anyone's possession, or if anyone respected the Law, the decree of the king imposed the sentence of death upon him" (1:57). We have omitted reference to the eating of swine found in II and IV Maccabees, for in these sources the act is connected with idolatry (II Macc. 6:21, 7:42, and see p. 47 of Zeitlin's Introduction in the edition of Dropsie University; IV Macc. 4:26, 5:2, and see Hadas' notes to these verses and to 16:24, and his Introduction, p. 119 in the Dropsie edition).

²IV Macc. 4:23-24. Circumcision is specifically mentioned there (4:25) as an act which led to death.

³Dan. 6:3-11.

⁴Mekh. RI, Babodesh 6 (p. 227): רבן חכמי אמר לגדולי הלשון דמרות אילו ישראל שמעו שלוש ימי בגיהר ורגלנו נבשע על המנהיגת, אוול ערץ לאחר עצות בין אח. מת לעזר ליוו על שפחתה. מת לעזר על ש조치יתו. מת לעזר לען שבנוו על הולך. See also BT Ber. 61b, San. 110b, AZ 18a, 8b (see TK on Yoma' p. 755, n. 14), Mekh. RI, Shirah 3 (p. 127, lines 12-13), and Gen. R. 82.9.

It is possible either that the Jews practiced martyrdom when they were not obligated by law to do so (I. H. Weiss, דוד רוזן, vol. 2, p. 118, n. 1) or that the law promulgated by the Lyddean council came after and as a result of these martyrdoms (L. Finkelstein, "The Ten Martyrs," Essays and Studies in Memory of Linda R. Miller, p. 42).
In summary, the laws of martyrdom (הלגונות ברויא) postdate the events recounted by Josephus, the events in the Books of the Maccabees, the events which spawned the story in Daniel, and perhaps, as well, the events of the Hadrianic persecutions recounted in rabbinic literature. In fact, having been established no earlier than 132 CE, these laws postdate Josephus himself. Therefore, he could not have said that the martyrdoms were in accordance with halakhah.

In one other place, however, Josephus does connect Jewish law with the voluntary acceptance of death. After having surrendered to Vespasian, Josephus tells the Roman commander that he did so only to act as God's messenger. "Had I not been sent on this errand by God, I knew the law of the Jews and how it becomes a general to die."¹

To the best of our knowledge there is no such extant halakhah. It may well be that there was, indeed, a law that the general must die with his troops. However, due to its military nature it fell into desuetude in time and was never incorporated into the halakhah. We have seen above that, similarly, acts of supplication and postures of contrition which were peculiarly militaristic never became part of halakhah although such acts and postures which were not militaristic were eventually embodied in the laws of mourning and of entreaty to God.²

However, it is possible that by νόμος Josephus does not

¹BJ 3.400: μὴ γὰρ ὑπὸ θεοῦ προπεμφὸμενος ἦδειν τοῦ Ἰουδαίων νόμου, καὶ πῶς στρατηγοῖς ἀποθνῄσκειν πρέπει.
²P. 185.
mean a law but a custom.¹ We have seen in this chapter the numerous times that martyrdom was chosen over transgression of the law although Josephus does not mention such a choice to be halakhah and we have found no trace in other Jewish literature of there ever being such a halakhah. Furthermore, there are other instances where martyrdom was chosen over surrender although such surrender did not involve transgression of the laws. The most famous example of this is, of course, Massada.²

In other words, that there was a custom, a propensity, for Jewish fighters to die rather than transgress the law or surrender to their foes is beyond question. Indeed, the Jews had a reputation for this among the other nations³ and it may well have appeared to have had the force of law. Moreover, it has been shown that many halakhoth had their beginning in widespread customs.⁴ It may well be that BJ 3.400 affords us a glimpse into this process.⁵

¹The use of πρόεπει would seem to confirm this. Also, it must be remembered that νόμος may mean "custom" as well as "law."

²BJ 7.320-401. For this reason the Massada suicide was omitted in the discussion above of ריבועי לני את, since the alternative to death there is not μαραθαινειν τους νόμους but ὕβρις εἰν τοὺς νόμους (BJ 7.357). This is just another way of saying that since those in Massada had fought in order to serve none but God (i.e., τοὺς νόμους), to surrender now to another master would be a denial of their cause; suicide for them was a verification of this cause (323).


⁵There is a law which discusses the halakhically correct procedure to take when the life of one person is weighed
against the lives of many. May the one be forfeited to save the many or not? T. Ter. 7.20: שיעורום של בני אדם שאמור ללחם גורים: חבורו לגביע אחד מסתובב והוא שלTPL חגורת ערב אלף והם מחוברים והם כלッם חורף כלול, והאלים יוכלו万千瓦 נפש את העיר. אבל אם יהיה להם בוגר שיחהرى שלאן בוגר בכלים ולהם והם יחרוג כלול. See also M. Ter. 8.11-12. However, this halakhah does not reproduce the circumstances under which Josephus was captured. It was not a question there of the death of one for the lives if many. On the contrary Josephus was guaranteed his life.
CHAPTER XVII

FALSE PROPHECY

After the death of John Hyrcanus, Aristobulus became ruler of Judaea. The latter had his brother, Antigonus, murdered in an underground passage in Jerusalem called Straton's Tower. "And in this connexion one may well wonder at the story of a certain Judas of the Essene group, who had never been known to speak falsely in his prophecies (οὐδέποτε δ' ἐν οἷς προείπεν διαψευσάμενον τάληθές), but when he saw Antigonus passing by the temple, cried out to his companions and disciples, who were together with him for the purpose of receiving instruction in foretelling the future (τοῦ προέλεγεν τὰ μέλλοντα), that it would be well for him to die as one who had spoken falsely (ὡς ἀποθανεῖν αὐτῷ καλὸν διεψευσμένῳ)\(^1\) ... so that his prophecy was unfortunately likely to prove false (.....ὡς τ' αὐτῷ κινδυνεύειν τὸ μάντευμα ψεύδος εἶναι )."\(^2\)

According to biblical law a false prophet is executed, the falseness being determined by the prophecy's nonfulfill-

\(^1\)Giving the participle causal force. Literally: "It would be well for him to die having spoken falsely."

\(^2\)AJ 13.311-312. For the parallel in BJ 1.75-80 see below.
ment. However, by the nature of the narrative it is apparent that Josephus' source for this incident recorded the law as it was at the time of the incident. In other words, in 104 or 103 BCE the halakhah demanding the death of a false prophet was in force. This halakhah is found, as well, in tannaitic literature.

Now we are in a position to render a more accurate translation than Thackeray of the parallel in BJ 1.79. Thinking he had prophesied falsely Judas said, "Ah me! now it is right that I die since truth has died before me and one of my prophecies has been falsified." (Thackeray: "Ah me! now were I better dead.

In regard to the matter of false prophets we may call attention to an aggadic parallel in Josephus which escaped the notice of S. Rappaport in his comprehensive work, Agada und Exegese bei Flavius Josephus. In his paraphrase of I Kings

1 Deut. 18:20-22: אֵלָּה הַשֵּׁקָר הַמַּהֲנֹתֵם בּוֹלַעָתָם אֲשֶׁר אֲשֶׁר לֹא עָרַיֵה לֹא בִּלְבֹּן לֹא תִּהְיוּ בְּלוֹבֹּן לֹא לֹא עָרַיֵה לֹא בִּלְבֹּנֶהָ מחָרְבָּם אֲשֶׁר לֹא בָּרַבְּבָם לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא לֹא L

2M. San. 11.5: נֵבֶנָה חָסֵר הַשֵּׁקָר הַמַּהֲנֹתֵם עלָהֶם שֵׁפֶת שֵׁפֶת שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה שֵׁפֶה Sh.

In tannaitic literature we find the prophet assuming functions other than foretelling the future, e.g., T. ibid. 14.13: הַשֵּׁקָר לֹא בָּרַבְּבָם בּוֹלַעָתָם הַשֵּׁקָר לֹא בָּרַבְּבָם בּוֹלַעָתָם הַשֵּׁקָר לֹא בָּרַבְּבָם בּוֹלַעָתָם הַשֵּׁקָר לֹא בָּרַבְּבָם בּוֹלַעָתָם הַשֵּׁקָר לֹא בָּרַבְּבָם בּוֹלַעָתָם הַשֵּׁקָר L

3παπά, νῦν ἐμοὶ καλὸν ... τὸ ἁνεῖν, ὅτε μοι προτεῖνκεν ὁ ἑλήθεια καὶ τι τῶν ὕπ' ἐμοὶ προσφηδέντων διέφεισται.
22 (= II Chron. 18) Josephus recounts that after the prophets had foretold victory to Ahab, Josaphat saw by their words that they were false prophets. Marcus notes here correctly: "Scripture does not have this detail, but Targum speaks of them as 'false prophets.'" It should be remarked that while Scripture does not, indeed, call them false prophets it does say that God put a spirit of falseness in the mouths of these prophets. Josephus' addition, therefore, may have been his own deduction. In rabbinic literature also, this story is seen as a classic case of false prophecy.

What may show Josephus' reliance on rabbinic aggadah, however, is his statement that "Josaphat ... saw by their words that they were false prophets." In the aggadah the verse, "And Jehoshaphat said, Is there not here a prophet of the Eternal besides..." is understood to mean that Josaphat knew the other prophets to be false prophets. He knew so "by their words" since no two prophets utter the same prophecy in the exact same words as they had (I Kings 22:13, II Chron. 18:12: "The words of the prophets are with one voice").

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1AJ 8.402: ουσεις ἐκ τῶν λόγων Ἰωσαφατος καί θευδοπροφητα τυγχάνουσιν.... Josephus calls them false prophets three more times in this story (406, 409).

2Marcus, ad loc., in the Loeb edition. Targum Jonathan I Kings 22:6, 10, 12, 13 and II Chron. 18:9, 11, 12 has רַבְּבָּאָם for Hebrew רַבְּבָּאָם.


4BT San. 89a.

5Ibid.: דָּמֶר רֶבֶם לִיצְחֶק ... וַאֲנֵה שְׁנֵי בְּנֵי אֲיִן מְחַבְּבָּאָנִי בֵּיתוֹגּוֹל ... אָכַד ... הָנַּהַמּוֹרָמִי, כלַּהַוֶּהָוָה שָׁמַע מַעֲנֵה לָא כֶלֶם קַמְרֵה ... וּיִשְׁפַּשְּפֵּשׁ הַהַוֶּהָוָה הַקְּמִּר לָא דַּמְּטִיב לָא דָּמֶר דָּמֶר יִשְׁפַּשְּפֵּשׁ הַאָיִל כָּלְּנַלְּא ...
Josephus twice more mentions a false prophet: *AJ* 8.236 (see Marcus' note, ad loc.), 241-242, and *BJ* 2.261.
CONCLUSION

I. Josephus' Sources for the Exposition of the Biblical Laws

No definite conclusions can be drawn in regard to Josephus' source for the biblical laws until all the laws as treated by the historian are examined. Of these laws, contained in AJ 3.224-286, 4.67-75, and 199-301, we have examined but a few: AJ 4.202, 218, 260-271, 274-277, and 288. Nevertheless, the examination has been thorough and we believe that some tentative deductions may be made.

In all the laws studied Josephus' account is vastly different from that of the Bible. Whence stem these deviations? We have seen that AJ 4.260-264 is not merely a paraphrase of the biblical rebellious-son law. It is, rather, an account of laws contemporaneous with Josephus and dealing with disrespectful children which was the interpretation given in Josephus' time to the "rebellious son" of the Bible. The composite elements of this Josephan passage were found paralleled in tannaitic sources, in Ben Sira, in Philo, in the New Testament, and in targumic literature. The description of the hanging, exposure, and burial of criminals (AJ 4.202, 264-265) was found to have been the practice in
Judaea at the time of Josephus. The additions in AJ 4.266 (usury) to the Bible are derived from the biblical words, from Ben Sira, and from the biblical verses dealing with pledges via the hermeneutic rule of semukhin. The additions in AJ 4.267-270 (pledges) to the Bible are paralleled in Ben Sira and in tannaitic halakhah. Josephus' interpretation of the time when the pledge is taken is the same as that of the Tannaim. The deviations in AJ 4.271 (housebreaker) from the Bible are all paralleled in tannaitic halakhah. The division between animate and inanimate objects and the legal basis of the division made by Josephus in AJ 4.274 (lost property) is made in tannaitic halakhah. Other non-biblical elements of this passage are found in targumic literature and tannaitic halakhah. Josephus' interpretation of the biblical "deaf" (AJ 4.276) is found in a medieval Midrash which is based on earlier sources not all of which are extant. A law mentioned in AJ 4.277 ("delayed death") is not found in the Bible but is found in tannaitic halakhah. Another law ("immediate death") may not have been drawn from the Bible, but from tannaitic halakhah. Additions to the Bible found in AJ 4.288 agree with tannaitic halakhah and exegesis.

It is apparent that Josephus' deviations from the Bible stem from the halakhah of his time. This is surely to be expected in the realm of practical law. It is natural that Josephus, if he is not simply translating biblical law—and he is not, would explain these laws as they were practiced and understood in his time. Apparently such laws as the pro-
clamation of a lost object, the death penalty to a disrespectful child, the hanging, exposure, and burial of executed criminals are examples of this. In the passages examined we have found no instance where Josephus contradicts contemporaneous practical law as we know it from rabbinic sources.

Does Josephus also draw on theoretical law? In other words, did he also have as a source the law, not necessarily as it was practiced, but as it was interpreted by the sages of his day? This is well within the realm of possibility, for, as we have shown in the Introduction, Josephus was schooled in Pharisaic exegesis and excelled in it. In fact, our study leads ineluctably to this conclusion. The passages examined are full of interpretations of the biblical laws that are found in tannaitic literature.

Thus far, while we have shown many hitherto unnoticed parallels between Josephus and the oral law, and while we have shown ostensible contradictions between the two to be non-existent, yet our conclusions have not differed from those of earlier scholars who also saw rabbinic tradition as a source for Josephus. Now, however, we shall attempt to describe this source more exactly.

In the law of pledges (AJ 4.269) Josephus distinguishes between a debtor who is well to do and one who is poor. In AJ 4.271 the biblical law of the housebreaker is divided into two parts: whether or not the theft had yet been committed. In AJ 4.276 there is again a two-part division: to point out the road to those lost and not to deliberately

This type of structuring of the laws, i.e., the breakdown of each biblical law into more precisely defined cases, is exactly the type of structure one would find in a legal code. And, indeed, we have seen that in almost every case the constituent elements of these laws as they are divided by Josephus, are to be found in the tannaitic legal system, the halakhah. When we add to this point the fact that the law of showing the road to one lost (*AJ* 4.276) is treated together with the law of lost object (*AJ* 4.274) as it is in tannaitic halakhah and the fact that the tannaitic rule of semukhin seems to underlie Josephus' treatment of the laws of usury and pledges (*AJ* 4.266-270), we must conclude that Josephus' source for his exposition of the biblical laws was a legal code of halakhah.

Could this code have been in written form? It was pointed out in the Introduction that halakhah was written down at Josephus' time. In the laws we have examined there is no decisive evidence that argues for a written source, for, although the juxtaposition of various laws and the use of a phrase found in Sifre (יוֹדָה לוֹ מָשָׁא = *AJ* 4.260: αἰσχὸν, ἄφωνος) could easily come about through the use of a written source, they could also--less easily--be based on an oral source. However, the content and form of these passages in Josephus argues for a written source. The few pas-
sages we have studied are replete with laws, biblical interpretations, and phrases that come from the halakhic tradition. It is simply impossible that Josephus remembered all this a half century after he learned it, a half century in which he was presumably not engaged in study of the Pharisaic halakhic tradition.

We agree, then, with the premise of some earlier scholars that Josephus could not have remembered all his studies of a youth when he set to write Antiquities. But, whereas they use this premise to explain Josephus' contradictions with halakhah, we argue that these contradictions (at least in the passages studied) do not exist and we use this same premise to postulate a written source. Furthermore, underlying many of Josephus' passages we have found the neat structure of a legal code. This is not to be expected from one relying on memory.

Besides the parallels with tannaitic halakhah we have seen other elements of Josephus' legal passages that are found in tannaitic exegesis, targumic material and in Ben Sira. Not enough Josephan material has been studied, however, to determine whether this represents three further distinct sources for Josephus. It is possible that both the tannaitic exegetical statements and the targumic matter paralleling Josephus were interwoven with his source of halakhic material as the case is with the extant halakhic midrashim. And it is possible that this source had in it, as well, the ideas and concepts of Ben Sira which we found in Josephus. The Ben
Sira parallels in the passages studied are simply too few and sometimes too vague to come to a decisive conclusion in this regard.

There is one other element that appears in Josephus' legal material. Time and again we find that Josephus provides a reason or rationalization for a law. Usury is forbidden, "for it is not just to draw a revenue from the misfortunes of a fellow-countryman" (AJ 4.266). One must return a lost object "reckoning it dishonest to profit by another's loss" (AJ 4.274). Withholding wages from a poor man is forbidden since his pay, "instead of land and other possessions, is the portion which God has granted him." Even to defer payment is forbidden, "for God would not have the labourer kept waiting for the enjoyment of the fruits of his toil" (AJ 4.288). The lender must return a poor man's pledge before sundown, since "God by His nature accords pity to the poor" (AJ 4.269). Parents may admonish (or perhaps, kill) a rebellious child, "for they have the authority of judges" over them. One must honor one's parents, for it is as if one were paying back a debt incurred through the child's upbringing. Dishonor to parents is sinful, since "God also is distressed at acts of effrontery to a father, since He is himself Father of the whole human race and regards himself as a partner in the indignity done to those who bear the same title as himself." If the rebellious child changes his ways he is spared further reproach, "for thus will be shown the goodness of the lawgiver" (AJ 4.260-263). A corpse must be buried, for it "pays more than its just penalty" (AJ 4.265). One is obligated to help another's beast in distress, since he would have
done it for himself (Thackeray: "As though one laboured for oneself"; AJ 4.275).  

These additions to the biblical statements have the flavor of subdued apology. Josephus is presenting the Jews—their past history and present mode of life—to the non-Jewish world. It would be surprising were we not to find explanations of the laws. These explanations are often of an ethical nature. The laws, according to Josephus' explanations, act as a guard against doing an injustice to man or God. Here too, not enough of the laws were studied to decide whether the explanations given by Josephus were his own creation or whether he drew on a source.

In summary, we find that Josephus' source for his exposition of the Jewish laws was the early tannaitic exposition of the Jewish laws, i.e., halakhic tradition. Both the content and the structure of Josephus' laws argue for this. That is not to say that this source was used exclusive of the Bible itself, for we have seen many Josephan statements that seem to derive directly or indirectly from the Bible. In addition

1We also found reasons for the laws in Contra Apion. Ap. 2.203: Ablutions are required after sexual intercourse and death, for the soul has left the body. Ap. 2.205: After a funeral the house and its inmates must be purified "in order that anyone guilty of murder may be very far from thinking himself pure."

The many explanations of the laws which we have pointed out would perhaps shed new light on Josephus' projected work on "Customs and Causes" which, as Thackeray points out, had already taken shape in the author's mind and was possibly begun when Josephus wrote Antiquities (note to AJ 1.25 and Dictionary of the Bible, s.v. Josephus, p. 467).

to these two sources Josephus may have used as sources targumic literature, Ben Sira, and the law as he saw it in practice. It is only natural that, in explaining the Jewish laws to a non-Jewish audience, Josephus would use whatever was available to him from the rich storehouse of Jewish tradition. On the other hand, it is also possible that the historian did not combine these different sources into one unit, but that they were already so combined before him. We simply do not know enough about the structure of first-century halakhic compositions to deny this possibility. In regard to the reasons given for the laws, we cannot yet come to a definite conclusion. However, it would appear that this is the one element of Josephus' exposition that seems not to have been drawn directly from a source. These statements sound very much like Josephus' own creation designed to show Judaism in a good light to a non-Jewish world.

This source of halakhah that Josephus used was in written form. The combination of Josephus' long absence (and geographic distance) from the study of halakhic tradition together with his very many halakhic parallels in Antiquities and the structure of these parallels argues this point. The only reason such a theory was not argued heretofore is that it had always been assumed that at Josephus' time the oral law was still oral. But we now know that at his time the halakhah was already in written form. Having, then, a written composition of halakhah available to him, it is only natural that Josephus would have made use of it.
II. The Development of Halakhah

This study has shown that at the time of Josephus the following were either the practical application and/or the exegetical interpretation of biblical laws:

1. The biblical rebellious son was interpreted as a child who dishonors its parents and could, therefore, be killed by its parents for such dishonor.

2. Only the blasphemer was hung after being executed.

3. Other executed criminals were left exposed but not hung. This law developed naturally via the nexus of two other laws: execution must be done during the day and burial must be done at night.

4. Hanging and exposure lasted throughout the day.

5. Executed criminals were buried at night. The blasphemer, however, was buried before nightfall.

6. The executed criminal was buried outside his family tomb and/or he was denied funeral rites.

7. The pledge taken by the creditor for a loan was done so when the debtor failed to pay his debt on time; not when the loan was first transacted.

8. The pledge may be seized only through the court.

9. The law of the housebreaker--i.e., if he is killed by the homeowner the latter is not guilty--applies whether the theft is committed by day or by night.

10. The homeowner is not guilty if he killed the housebreaker even if the latter had not yet stolen anything.

11. The criteria for determining whether an object was considered lost were: (a) whether the object was animate or
or inanimate, and (b) where the object was found.

12. One who found a lost object would make a public proclamation of his find. The proclamation consisted of naming the place where the object was found.

13. One was obligated to help another’s beast in distress if he were to bother were his own animal under similar circumstances.

14. One was obligated to point out the road to a lost wayfarer.

15. One was responsible for misleading a lost wayfarer only if the misleading was intentional.

16. The prohibition against reviling the deaf in Lev. 19:14 included also the nondeaf who could not hear the curse.

17. If one smite another in a way that should not lead to death but the victim, after lying sick several days, nevertheless died, he who smote is not killed.

18. A corpse was washed before burial.

19. Personal effects were buried with the corpse.

20. Burial sites were removed from the city.

21. Eulogies were designed to elicit sorrow.

22. Flute-players were hired at the funeral.

23. Spices were used at a burial.

24. Special funeral rites were practiced for national leaders.

25. Monumental tombs or memorials were not required by the law.

26. Responsibility for burying the dead lay with the nearest relatives.
27. If they could not assume the responsibility, it was assumed by the communal charity.

28. All who pass by a funeral procession had to join it.

29. Only immediate relatives performed the mourning rites (alternative translation of Josephus).

30. Others were obligated to visit the immediate relatives to console them (alternative translation of Josephus).

31. There was a thirty day mourning period.

32. Rending clothes was a mourning practice.

33. Wearing black clothes was a mourning practice.

34. Beating the breast was a mourning practice.

35. Leaving the hair of the head uncut was a mourning practice.

36. Fasting was an expression of grief and entreaty.

37. Going barefoot was an expression of grief and entreaty.

38. Ashes were put on the head as an expression of grief and entreaty. In biblical times it was dust that was put on the head.

The following were in practice in the year 4 BCE:

39. There was a seven day mourning period.

40. There was a mourners' meal which was a banquet.

41. Funeral dirges were led by a conductor.

We have also seen the following developments of halakhah:

42. The law of zaqen mamre' had not come into being in Josephus' time. It was developed at the end of the Jabneh period.
43. Originally Ex. 23:5 (שָׁכַר הָרָעֵץ) and Deut. 22:4 (שָׁכַר עַל שָׁכַר) were understood as referring to the animal itself: if it falls one is obligated to help the owner raise it. Later Ex. 23:5 came to mean unloading the animal's burden (periqah). In the second quarter of the second century the law of helping the owner with his animal came to include loading (te'ınah) as well as unloading.

44. Lev. 19:14 (לֹא יִקְחוּ לְעָרוֹן) was originally interpreted to mean responding truthfully to a question of fact or responding righteously to a request for advice. Another interpretation—providing an opportunity for one to sin—is probably a later development.

45. The law of prompt payment was restricted to manual labor; it did not apply to the hire for one's possessions. The law came to include possessions rented between the end of the second and the beginning of the third centuries.

46. The custom of burying the dead in noncostly shrouds was developed during Josephus' lifetime.

47. The mourners' meal was served by the mourner in 4 BCE. Two hundred years later the mourner was served by others. The change probably took place in the last quarter of the first century.

48. The mourners' meal was served on the last day of mourning in 4 BCE. Two hundred years later the meal was served on the first day of mourning.

49. In biblical times wearing sackcloth was an expression of mourning. In Josephus' time this was no longer in practice.

50. Covering the face as an expression of mourning is
found in the Bible. This practice was not in vogue in Josephus' day [*argumentum e silentio*].

51. The law prohibiting a mourner to cut his nails was established after the tannaitic period.

52. The law prohibiting a mourner to cut his moustache hairs was established after the tannaitic period.

53. Personal entreaties to God were made while lying prostrate during the temple service.

54. The laws of martyrdom (רוצ'י אלי גבור) were established between 132-135 CE.

55. The law demanding death for a false prophet was in force in 104-103 BCE.
III. Semitic expressions in Josephus

BJ 2.322: γυμνοὺς δὲ τὰ στέρνα τῶν ἐσθήτων διερρήματα. This is related to the phrase ἤδη τὸν ἑλέεις τῇ ἀρχῇ.

AJ 6.149: ἀποθανεῖν μᾶλλον ἡ παραβήναι = ἤδη τὸν ἑλέεις (already noted by Hadas on IV Macc. 16:24).

APPENDIX

APOLOGY IN ANTIQUITIES

Contra Apion is Josephus' apology for Judaism. Does Antiquities, as well, reveal apologetic tendencies? Every scholar who has asked this question of Josephus' treatment of the biblical narrative has answered in the affirmative. To take just a few representative examples, Niese writes of the Old Testament history that Josephus is concerned, above all, to present Jewish history in "the most favourable light. He accordingly takes pains to remove or to palliate the more sinister or repulsive elements...." ¹ Perhaps the most common example given of this tendency is Josephus' omission of the golden calf incident in Exodus. Although Thackeray may remark that Josephus "has been taxed, perhaps a little too severely, with 'whitewashing'" ² he, nevertheless admits that "the apologetic nature of the history is evident on the face of it." ³

² Thackeray, Josephus, the Man and the Historian, p. 58.
Rappaport, who wrote the most comprehensive work on Josephus' aggadic additions to Scripture, concludes that, "...so hat er [Josephus] doch aus seinen Quellen ein neues, eigenartiges Werk geschaffen, eine neue Bibel, mit apologetischer Tendenz gegen die Heiden." Tcherikover has demonstrated time and again Josephus' apologetic nature in the latter's treatment of postbiblical history.

Does Josephus display apologetic tendencies also in his treatment in Antiquities of the biblical legal matter? Many scholars have answered this question, as well, in the affirmative. The latest, and strongest, proponent of this view is David Altshuler who says, "Comparison of legal materials in Antiquities with Scriptural parallels consistently demonstrates apologetic tendencies of Josephus," and who considers Antiquities on par with Contra Apion as an apologia.

Since Altshuler has taken the most extreme view, considering apology to be the primary purpose of Josephus' treatment

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1 Rappaport, Agada und Exegese, p. xxvii.
2 Tcherikover, Hellenistic Civilization and the Jews, pp. 309; 326; 328-329; 509, n. 35; 516, n. 92; 518, n. 10.
5 Ibid., p. 62.
of the laws, we shall investigate the matter of apology by examining his proofs. He claims that Josephus' omissions of and additions to the biblical laws can be explained by apologetic tendencies, by Josephus' "marked de-emphasis of cultic-exclusive and xenophobic themes in Biblical law."\(^1\)

Child sacrifice to Molech is cited as an example of omission for apologetic purposes.\(^2\) We fail to see how omitting the prohibition of child sacrifice can be seen as apologetic. Certainly a Roman reader would not think highly of the prohibition against sacrifice to foreign gods (Ex. 22:20). Certainly, too, the Molech prohibition is cultic-exclusive, but it is not exclusive of the Romans. And if Josephus was so interested in showing the humanity of Judaism, a prohibition against child sacrifice is one law not to omit.

An omission of a biblical detail for "apologetic" purposes is taking interest from foreigners.\(^3\) Deut. 23:21 reads: "From an alien (אֵלִים) thou mayest take interest; but from thy brother (אִדָּם) thou shalt not take interest." Josephus (AJ 4.266) has: "Let it not be permitted to lend upon usury to any Hebrew ... for it is not just to draw a revenue from the misfortunes of a fellow-countryman (ἀδελφοῦ)." If this is apologetic Josephus was an extremely tactless apologist.

Altshuler agrees with others that AJ 4.276 (giving di-

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\(^1\)Ibid., p. 48.

\(^2\)Ibid.

\(^3\)Ibid., pp. 48, 137.
reictions to travelers) is based on an apologetic theme. But we have seen that this is a tannaitic law.

"Josephus clearly softens in ... Ant. 4:289 [read: 261] (on rebellious children) Biblical laws which to non-Jews may have appeared overharsh." But the Bible does not include daughters in this law and Josephus does. Is this softening the law? Furthermore, Josephus in Contra Apion (2.216-217), a patently apologetic work, makes the rebellious son law even stricter than in Antiquities: "Mere intention of doing wrong to one's parents ... is followed by instant death." And he openly says there that this law, among others, is more severe than its parallel with other nations. Weyl, in fact, is of the opinion that the apology consists of making this law severe in order to show the grandeur of Judaism.

In Josephus' paraphrase of the law of transvestizing (AJ 4.301) Altshuler sees apologetic concerns. But, as noted by others, Josephus' addition is found in first-century tannaitic halakhah and in Targum Onkelos.

Altshuler gives us a list of twelve "cultic-exclusive" subjects in the Bible that were omitted by Josephus in his account of the Mosaic Constitution. Of these, he eliminates

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1Ibid., pp. 52, 143.
2Ibid., pp. 52, 136.
3Strafgesetze, p. 40, n. 3.
4Altshuler, p. 48.
5Weill, ad loc.; Finkelstein's notes to Sifre Deut. 226 (p. 258); Tachauer, Das Verhältniss, p. 40.
two, for they were treated elsewhere in Josephus' writings.\(^1\) Of the remaining ten, we may eliminate seven more for the same or similar reasons.

One such law is the prohibition against using wizards, consulters of familiar spirits, diviners, observers of times, enchanters, conjurers, charmers, or inquirers of the dead (Lev. 19:31, 20:6; Deut. 18:10-11). If this omission, however, is due to apology, we find it rather strange that Josephus in his apologetic work, *Contra Apion* (1.200-204), quotes Hecataeus' story of the Jewish soldier of Alexander's army who, with sarcastic derision, denigrates divination. Furthermore, not only does Josephus not omit I Sam. 28:3 ("And Saul had removed those that had familiar spirits, and the wizards, out of the land.") from his history, but he adds "except the prophets" (AJ 6.327). This addition may not be merely a way of introducing Saul's subsequent use of the prophets. The addition may have been drawn from the Deuteronomic exception of prophets to the prohibition of diviners (Deut. 18:15).

Altshuler also lists under cultic-exclusive omissions due to apology the following prohibitions: sacrifice to foreign gods (Ex. 22:19),\(^2\) following false gods (Deut. 12:29-13:19;\(^3\) 17:2-5), and following Egyptian and Canaanite customs (Lev. 18:1-5, 24-30). One might cite in support of Altshuler

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\(^1\)Altshuler, p. 26-27. All future references to Altshuler are on these pages.

\(^2\)Altshuler has Ex. 22:20 following the English translations of the Bible.

\(^3\)Altshuler has 13:18 following the English translations of the Bible.
AJ 8.195 where no mention is made of the altars to foreign gods which Solomon erected (I Kings 11:7-8). Monotheism was a cause for concern in the Roman world and, indeed, we find Josephus justifying it in his apologia. In Ap. 2.65-67 Josephus answers Apion's complaint that the Jews refuse to worship the same gods as the Alexandrians. In his other works, however, the matter is different:

1. Josephus considerably expands Num. 25:1-3 (AJ 4.126-149). The Bible merely says that the daughters of Moab induced the Jews to sacrifice and worship (and eat) with them to the Moabite gods, on account of which God was angry. Josephus considers this participation in "foreign customs" to be "renouncing of the laws (νόμους) of their fathers," "a transgression of the laws of their fathers (τὰ πάτρια)," and "a danger of complete ruin of their own [the Jews'] institutions (ἔξοδομῶν)." And Josephus makes these comments after having the Midianite women make a speech which must have been appealing to Roman readers: "Nor can any man reproach you for venerating the special gods of the country whereto ye are come, above all when our gods are common to all mankind, while yours has no other worshipper." Would Josephus have so expanded this biblical passage, let alone make these comments, had apology been such a strong motive in his history?

2. Josephus (AJ 5.100-113) neither omits nor palliates the biblical condemnation of the altar set up by the two and one-half tribes (Josh. 22:9-29). In fact, whereas the Bible merely calls this action a "trespass against God," "turning away from God," and "rebellion against God in building an
altar other than the altar of God," Josephus is more vehement and explicit in his description of the sin. He calls it "an innovation," "the introduction of strange gods," "divine worship" (or "worship of gods"), "a turning away from the rites (ἐθνῶν) of their fathers," "vices of the Canaanites," "madness," and finally he adds to the biblical narrative that for such a sin, "all would justly deserve to be extirpated who, being of the race of Abraham, attempt rites (εἴδεσιν) that are new and different from our customary practice." It would seem that Josephus' "cultic-exclusive" Jewishness broke through his veil of "apology."

3. In AJ 18.340-352 Josephus tells the story of Anileaus and his gentile wife who continued to worship the images (ἀγαλματα) of the Parthian gods. Josephus is quite unapologetic in his condemnation of her act. He terms her worship "a violation of the Jewish code (τῶν πατρίων)," "transgression of the strict rules of the Jews' accustomed sacrifices and rituals (σεβασμοῦ)," "transgression of the laws (παρανομοειν)," "an outrage to the laws (νόμους)," and "disrespect for the God of their religion (σεβασμίου)."

4. When an image (ἀνσώριας) of Caesar is set up in the synagogue of Dora the action is termed (AJ 19.301-305) "an overthrow of the ancestral laws (τῶν πατρίων ... νόμων)," "sacrilege (ἀσέβειαν)," "a breach of law (τὴν τῶν ἐννόμων παράβασιν)," "a transgression of the laws (παρανομοούντας) of the Jews." Would Josephus have even mentioned the incident, let alone condemn it so strongly, were he apologetic about the Jews' refusal to worship foreign gods?
5. The Jews "refused to transgress the religion (ἦπειρονδοκείαν) of their fathers by addressing [Caligula] as a god" (AJ 19.284, 18.256-309; BJ 2.184-203; the transgression here involves also "graven images").

6. In BJ 7.50 Josephus tells of Antiochus, the renegade Jew who thought he would prove his "detestation of Jewish customs (ἦσι) by sacrificing after the manner of the Greeks."

7. BJ 2.266: The Syrians of Caesarea claimed that "Herod would never have erected the statues and temples which he placed [in Caesarea] had he destined [the city] for Jews."

The prohibition against following Egyptian and Canaanite customs would not be cultic-exclusive to the Romans and would not bother an apologist to the Romans unless our "apologist" understood the biblical prohibition to refer to the customs of non-Jews in general as the Tannaim did. But if apology is Josephus' reason for omitting this law, it is strange that:

8. In AJ 5.306 he adds to the biblical narrative about Samson that "he was already transgressing the laws of his forefathers (τὰ πατρία) and his own rule of life by the imitation of foreign usages (ἐξενακων ἐθημοῦν)."

9. In AJ 15.267-268 he says: "Herod went still farther in departing from the native customs (πατρίων ἔθων) and through foreign practices (ἐξενακων ἐπιτηθεμάσιν) he gradually corrupted the ancient way of life (κατάστασιν), which had hitherto been inviolable. As a result of this we suffered considerable harm at a later time as well, because those things were neg-

1. Sifra, וקרוות, נניר, pereq 13.9 (p. 86a): והקשתרים לאoser התרומר אל רכינ התנורין שמוגן חכמה ...
lected which had formerly induced piety in the masses." And what were these corrupting influences? "Athletic contests every fifth year in honour of Caesar ... a theatre in Jerusalem ... a very large amphitheatre in the plain." These were "foreign to Jewish custom (ἐξωκός), for the use of such build­ings and the exhibition of such spectacles have not been tra­ditional (with the Jews)." These buildings and spectacles were exactly how the Tannaim defined "in their customs shall ye not walk" (Lev. 18:3). ¹ Josephus, in describing the con­tests and theater, says, "to the natives [= the Jews] it meant an open break with the customs (ἐξωκός) held in honour by them ... and it seemed a further impiety to change their established ways (ἐξωκομοῦς; variant: ἐξονομοῦς, laws) for foreign practices."

Even when Herod adorned pagan cities "he was forced to depart from the customs (of the Jews, ἐξωκός) and to alter many of their regulations (νομοὶ), for ... he founded cities and erected temples—not in Jewish territory, for the Jews would not have put up with this, since we are forbidden such things ...." (AJ 15.328-329).²

Another "cultic-exclusive" law omitted due to "apology" is the prohibition against setting up an 'asherah or a mezzebah

¹Ibid. : הказалось והלא חלך דבר שלמה בניימרה שלחה בזרובים קרקס קוקלקת, היה כנון תריירה וקרקס 활용 לארץ ישראל.

²Note, however, that when both Agrippas adorned Berytus, a "foreign city," with theaters, amphitheaters, and spectacles there is no remark about "foreign practices" (AJ 19.335-337, 20.211-212; but see Feldman's note c to AJ 19.332 in the Loeb edition). Similarly, in the other accounts of Herod's building of gymnasia, temples, and theaters for foreign cities (BJ 1. 403, 422; AJ 16.147-149) there is no such remark.
(Deut. 16:21-22). But wouldn't the Roman readers of Josephus be far more offended at the prohibition against graven images? Yet Josephus does not omit mention of this prohibition (AJ 3.91; cf. Ap. 2.191). And many times throughout his works he explains that images are against Jewish law:

1. AJ 8.195: Speaking of Solomon, Josephus says, "he sinned and went astray in respect of the observance of the laws (νομίμων), namely when he made the images (διομοιόματα) of the bronze bulls ... for in making them he committed an im­pious act." This statement is a Josephan addition to Scripture.

2. AJ 15.276-279: The Jews were against Herod for his introduction of trophies into the city, for they thought them images (εἰκόνας) "which it was against their national custom (πάτριον) to worship.... In their displeasure at the offences of which they thought him guilty, they cried out with one voice that although everything else might be endured, they would not endure images of men ... for this was against their national custom."

3. AJ 15.329: "We are forbidden such things as the honouring of statues and sculptured forms (ἀγάλματα καὶ τύπους μεμορφωμένους) in the manner of the Greeks."

4. AJ 16.158: The Jew "found it impossible to flatter the king's [Herod's] ambition with statues (εἰκόσις) or temples or such tokens."

5. AJ 17.150-151: "Herod had set about doing certain

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1 The JPS (1917) translation has "Asherah" and "pillar." BDB on 'asherah has "symbol of this goddess [Ashera], a sacred tree or pole set up near an altar," and on maggebah has "pillar."
things that were contrary to the Law (νόμον) ... for the king had erected ... a great golden eagle, although the Law forbids ... setting up images (εἰκόνων) or to make dedications of (the likeness of) any living creatures."

6. BJ 1.649-650: In explaining the action of those who tore down Herod's eagle, Josephus says, "it was, in fact, unlawful (ἀδειμένον) to place in the temple either images or busts (ἡ εἰκόνας ἡ προτομάς) or any representation whatsoever of a living creature (ζῷον τινὸς ἐπώνυμον ἔργον)."

7. AJ 18.55-59: Pilate "took a bold step in subversion of Jewish practices (νομίμων; variant: νόμων) by introducing into the city the busts (προτομάς) of the emperor that were attached to the military standards, for our law (νόμου) forbids the making of images (εἰκόνων)." The Jews supplicated Pilate to remove the images, declaring that they would sooner die than "transgress the wise provisions of the laws (νόμων)."

8. BJ 2.169-171: Pilate brought into Jerusalem "the effigies (εἰκόνας) of Caesar which are called standards." The Jews considered "their laws (νόμων) to have been trampled under foot, as those laws permit no image (δεικνύου) to be erected in the city.... The Jews implored him to remove the standards from Jerusalem and to uphold the laws of their ancestors (τὰ πάτρια)."

9. AJ 18.121: When Vitellius, on an expedition, had to march through Judaea the Jews implored him not to. "For, they said, it was contrary to their tradition (πάτριον) to allow images (εἰκόνας), of which there were many attached to the military standards, to be brought upon their soil."
10. *AJ* 18.257-309: Gaius Caligula attempts to have his statue (ἀνδριάς) set up in the temple at Jerusalem. Had the Jews allowed this it would have been a transgression of the law (266: νόμου; 268: νομίμου). They would rather die. Cf. 19.284.

11. *BJ* 2.184-203: The parallel account of Gaius' statue (185: ἄνδριάντας; 197: εἰκόνας). The Jews claimed that "they were forbidden to place an image (δεινηλον) of God, much more of a man, not only in their sanctuary but even in any unconsecrated spot throughout the country" (195).

12. *AJ* 19.300-305: When an image (ἀνδριάς) of Caesar is set up in the synagogue of Dora the action is termed "an overthrow of the ancestral laws (τῶν πατρίων ... νόμων)," "sacrilege (ἀσέβειαν)," "a breach of law (τὴν τῶν ἐννόμων παράβασιν)," and a "transgression of the laws (παρανομούντας) of the Jews."

13. *BJ* 2.266: The Syrians of Caesarea claimed the city theirs, for, although Herod founded it, he "would never have erected the statues (ἄνδριάντας) and temples which he placed there had he destined it for Jews."

14. *Vita* 65: Josephus says he was commissioned to demolish "the palace erected by Herod the tetrarch, which contained representations of animals (τῶν μορφῶν) such a style of architecture being forbidden by the laws (νόμων)."

15. *Ap.* 2.73-75: Jews do not erect statues (imagines) of the emperors, for it would "violate their national laws (patria iura).... The Greeks, with some other nations, think it right to make statues.... On the other hand, our legislator... out of contempt for practice profitable to neither God nor
man, forbade the making of images, alike of any living creature, and much more of God who ... is not a creature." Even in his apologia Josephus doesn't sound very apologetic.

Another "cultic-exclusive" omission listed by Altshuler is Lev. 20:25, separating clean and unclean beasts and clean and unclean fowl. Josephus, however, did not omit this law but dealt with it in AJ 3.259: "As concerning animals, [the Lawgiver] distinguished in detail those which might be eaten and those on the contrary from which one must perpetually abstain." Also, in Contra Apion (2.173-174) Josephus says, "starting from the very beginning with the food of which we partake from infancy ... [the Lawgiver] left nothing ... to the discretion and caprice of the individual. What meats (σιτίων) a man should abstain from, and what he may enjoy."

Unclean food or the special diet of the Jews is also mentioned in AJ 4.137-139 (addition to Scripture), 11.346, 14.226, 261; BJ 2.152, 4.326, 7.264; Vita 14; Ap. 2.137, 234, 282. And how mitigating of xenophobic themes was Josephus when he says that use of non-Jewish oil is a violation of Jewish law (τὰ νόμιμα; Vita 74) or that the Jews did not use foreign oil (AJ 12.120: ἀλλοφύλῳ ἐλαίῳ; BJ 2.591: ἐλαίῳ ... μη βι’ ὁμοφύλων ἐγκεχεῖται-ρισμένῳ)?

Deut. 23:4-9,¹ relations with foreign nations, is another "cultic-exclusive" omission listed by Altshuler. These verses restrict the admission into the "assembly of the Lord" of Ammonites and Moabites (to the tenth generation) and Edomites

¹Altshuler has Deut. 23:3-8 following the English translations of the Bible.
and Egyptians (to the third generation). Altshuler might have also added Deut. 7:3 (cf. Ex. 34:16) which prohibits marriage with the seven Canaanite nations. Josephus does, however, mention this law elsewhere in his works:

1. Josephus adds to the biblical narrative of the rape of Dinah (Gen. 34:1-31) that Jacob "thought it unlawful to marry his daughter to a foreigner." 1

2. The Bible (I Kings 11:1-2; cf. Neh. 13:26) says that Solomon "loved" foreign women "from the nations concerning which the Lord had said unto the children of Israel, Ye shall not go in among them, nor shall they come in among you." Not only does Josephus (AJ 8.190-192) not omit this condemnation of Solomon and not only does he call the act "abandoning the observance of his fathers' customs (ἐδοσιμῶν)," but he extends the biblical prohibition to foreign nations in general: Solomon "transgressed the laws (νόμους) of Moses who forbade marriage with persons of other races (συνοικεῖν ταῖς οὐχ ὀμοφύλοις)." The lawgiver "warned the Hebrews against marrying women of other countries (γαμεῖν τὰς ἀλλοτριοχώρους)."

3. The Bible (Ezra 9:1-10:17; I Esdras 8:68-9:17) tells of how Ezra persuaded the Jews to divorce their foreign wives. Josephus recounts the story (AJ 11.139-153) calling the marriages a "violation of the constitution (πολιτείαν)" and a "breach of the ancestral laws (νόμους; παρανομήσατο)." Whereas

1AJ 1.338: οὔτε νόμισμα ἡγούμενος ἀλλοφύλῳ συνοικίζειν τὴν δυνατέρα. When the Bible speaks of Dinah being defiled (vv. 5, 13, 27) and of the "disgraceful thing" (v. 7) which had been done to her, it is referring to the past rape. Josephus, in the above-cited passage, refers to the future marriage...
the Bible, however, makes it clear that these women were of the Canaanite nations and of the Egyptians, Josephus omits this detail, which we should not expect from an apologist. Instead he appears more "xenophobic" by generalizing and calling the women ἄλλοσθένεις (140, 145, 151), οὐκ ἐξ ὁμοφύλων (149), and ἄλλοφύλοις (150). Furthermore, Josephus adds to the biblical account: "Having rectified the wrongdoing of the forementioned men in marrying (γάμους), Ezra purified the practice (συνήθειαν) relating to this matter so that it remained fixed (μόνιμον; variant: νόμιμον = law) for the future."

4. AJ 11.306-308: "Now the elders of Jerusalem, resenting the fact that the brother of the high priest Jaddus was sharing the high priesthood while married to a foreigner [ἄλλοφύλῳ συνοικοῦντα; the foreigner was "of the Cuthaean race from whom the Samaritans also are descended" (302)], rose up against him, for they considered this marriage (γάμου) to be a stepping-stone for those who might wish to transgress the laws about taking wives (παρανομεῖν περὶ τὰς τῶν γυναικῶν συνοικίσεις) and that this would be the beginning of intercourse with foreigners (τῆς πρὸς τοὺς ἄλλοφύλους αὐτοῖς κοινωνίας). They believed, moreover, that their former captivity and misfortunes had been caused by some who had erred in marrying (γάμους) and taking wives who were not of their own country (οὐκ ἐπιχωρίας)."

5. Josephus does not mind reporting to his Roman readers that Archelaus feared that "he might not be considered a legitimate (γνήσιος) son of Herod" (AJ 17.312). Archelaus was born of the Samaritan, Malthace (AJ 17.20; BJ 1.562).
6. AJ 18.345-349: Anilaeus' "actions were quite contrary to Hebraic custom and not consonant with their laws in that he had taken a gentile wife (οὐδαμῶς πρόσωπον Ἑβραϊκά οὐδὲ ὀπόσα νόμων ... ἡμένως ἄλλοφυλον). ... Anilaeus' marriage (γάμον) ... was not in accordance with the laws (νόμων) which they were accustomed to follow." The woman was presumably Parthian.¹

Much more can be said against the theories of apology in Josephus' writings in general and against Altshuler's proofs in particular. However, such is not the object of this paper and we have limited ourselves here to those laws which Altshuler deems most likely to have been omitted for apologetic purposes. Of course Contra Apion is an apologetic work and of course there is apology running through the other works of Josephus (e.g., AJ 3.179-180). But we believe we have shown that ascription to apology of a statement by Josephus must be made with not a little care, and that Antiquities is far from an apologetic work.

We end this discussion with one last remark about apology in Josephus. A number of pagan writers condemned the Jews

¹Other instances of relations with foreign women related by Josephus concern sexual intercourse and not marriage. We list them here, for, although they do not come under the prohibition of Deut. 7:3 and 23:4-9, they do concern "xenophobic" and separatist themes; i.e., Josephus would not have made the following remarks had he been so concerned with apology:

1. AJ 5.306: In an addition to the biblical narrative Josephus says of Samson that he was "transgressing the laws of his forefathers (τὰ πάτρων) ... for, being enamoured of a woman who was a harlot among the Philistines, Dalala by name, he consorted (συνήν) with her."

2. AJ 12.187-189: "The Jews were prevented by law (νόμω) from having intercourse with a foreign woman (ἄλλοφύλῳ πλησίως)." To do so is to "fall into disgrace."

3. In the Slavonic additions to BJ it says of Herod that he had "defiled his dominion with ... illicit intercourse with foreign women" (or, "other men's wives"; from the appendix to BJ in the Loeb edition, p. 644).
for their "separateness" from non-Jews, a charge common in Josephus' day. Were apology so strong a motive we should expect Josephus to refute or justify this charge at every opportunity. Instead we find that he does so only in his apologetic work *Contra Apion*. Elsewhere, however, out of five opportunities he is apologetic but once:

1. Ap. 2.257-261: "Plato followed the example of our legislator.... He [Plato] took precautions to prevent foreigners from mixing (ἐπιμελησθαι τινα ἔξωθεν) with them [the Greeks] at random, and to keep the state pure and confined to law-abiding citizens. Of these facts Apollonius Molon took no account when he condemned us for refusing admission to persons with other preconceived ideas about God, and for declining to associate (κοινωνεῖν) with those who have chosen to adopt a different mode (συνήθειαν) of life. Yet even this habit is not peculiar to us.... While we have no desire to emulate the customs of others (τὰ μὲν τῶν ἄλλων), yet gladly welcome any who wish to share our own. That, I think, may be taken as a proof both of humanity and magnanimity."  

2. AJ 8.117: In an apologetic addition to Scripture Josephus has Solomon say in his prayer to God: "For so would

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1 Similarly, the related charges of Jewish misanthropy are rebutted by Josephus regularly in *Contra Apion* (1.318; 2.121-124, 146, 291) but only once elsewhere (AJ 8.117).

2 Cf. also Ap. 1.68 where Josephus, explaining why the Greek historians are silent about the Jews, says that it should not be surprising that "our nation, so remote from the sea, and so deliberately living its own life (οὕτως δὲ Βιομελεὺς ποιηθέντων) ... remained largely unknown"; Ap. 2.174: The Law regulates for the Jew "with what persons he should associate (περὶ τῶν κοινωνοθέτων τῆς διαίτης)."
all men know that ... we are not inhumane (ἀπάνθρωπος) by nature nor unfriendly (ἀλλοτριός) to those who are not of our country (τοὺς οὓς ὀμοφύλους).

3. **AJ 1.192**: In an addition to Scripture Josephus gives a reason for circumcision, i.e., so that Jews should be kept from mixing with others (τοῖς ἀλλοις οὐχι συμφρονόμενοι).

4. **AJ 11.212**: In an addition to the biblical account Josephus has Haman say that the Jews are "unfriendly and unsocial (ἀμικτον ὀμοφύλον)." ¹

5. **AJ 13.245-247**: With no apologetic remark Josephus mentions the Jews' "separateness of their way of life" and that "they did not come into contact with other peoples because of their separateness."²

6. **AJ 11.307**: What is wrong with marrying foreign women is that "this would be the beginning of intercourse with foreigners (τὴς πρὸς τοὺς ἀλλοφύλους αὐτοῖς κοινωνίας)."

¹The Bible (Esther 3:8) has: ἀπερνάμενοι ἐν τοις ἐθνεσιν, "scattered abroad and dispersed among the peoples" (so the JPS, 1917, translation; Leeser's translation has: "scattered yet separate"). LXX: διεσπαρμένον ἐν τοῖς ἐθνεσιν, "dispersed among the nations."

²Τὴν πρὸς ἀλλόων αὐτῶν τῆς διαίτης ἀμιξίαν ... διὰ τὴν ἀμιξίαν οὗκ ἐφικνοῦμενοι πρὸς ἀλλοῦς (variants: ἀλλοῦς for ἀλλόων and ἐφικνοῦμενοι for ἐφικνοῦμενοι). Cf. also the following:

1. **AJ 14.285**: "It was not proper to admit to Jerusalem a crowd of foreigners (ἀλλοδαπόν) when the people were in a state of ritual purity."

2. **BJ 6.427**: "Those afflicted with leprosy or gonorrhoea, or menstruous women, or persons otherwise defiled were not permitted to partake of this [Passover] sacrifice, nor yet any foreigners (ἀλλοφύλους)...."

3. **BJ 2.150**: A senior member of the Essenes "if but touched by a junior, must take a bath, as after contact with an alien (ἀλλοφύλῳ)."
BIBLIOGRAPHY

I. Sources

Josephus


Philo


Bible

Targum

Translations are our own. Texts used are as follows:
Fragment Targum--the edition of M. Ginzburger, Berlin, 1899.
The Neofiti Targum was copied from the MS photocopy, Jerusalem, 1971.

Rabbinic Sources


II. Selected Literature


Ginzburg, Louis. חָבוֹן וַתַּרְפִּים בְּכָל הַיָּמִים, 4 vols. New York: Jewish Theological Seminary, 1941.


Heinemann, Isaac. דרכון של הרב פרופס בתיovable קדונילנו תועדו ומכים, Zion 5 (1940), pp. 180-203.


. ידיעות ביבליות. New York: Jewish Theological Seminary, 1955--.


ABBREVIATIONS

Ap. = Contra Apionem
AJ = Antiquitates Judaicae
ARN = Aboth de R. Nathan
BDB = Brown, Driver, and Briggs, Hebrew Lexicon of the OT
BJ = Bellum Judaicum
BT = Babylonian Talmud
De Virt. = De Virtutibus
Dec. = De Decalogo
JAOS = Journal of the American Oriental Society
JQR = Jewish Quarterly Review
M. = Mishnah
Mekh. RaSHBI = Mekhilta de R. Shimon bar Yoḥai
Mekh. RI = Mekhilta de R. Ishmael
MT = Maimonides, Mishnah Torah
PT = Palestinian Talmud
R. = Rabbah, e.g., Gen. R. = Genesis Rabbah
REJ = Revue des Etudes Juives
Spec. Leg. = De Specialibus Legibus
T. = Tosefta
TK = Saul Lieberman, Tosefta Ki-fṣhuṭah