

Mosaic Constitution

David M. Goldenberg

In his history *Jewish Antiquities*, Josephus begins with and paraphrases the Hebrew Bible. His treatment of the biblical legal material is found in books 3 (§§224–86) and 4 (§§67–75, 199–301). The commentary below, on a selected portion of this material (*Ant.* 4.260–77, 288) illustrates how Josephus paraphrased the Bible. It shows that many of his additions and changes to the biblical text are paralleled in other writings, such as Proverbs and **Wisdom of Ben Sira** (*Ant.* 4.260–64, 267), and in contemporaneous biblical interpretation, as reflected in exegesis or in practice. Most prominent among these parallels are those found in the literature of the early Rabbis, the *tannaim*. We thus find extrabiblical tannaitic parallels to Josephus's understanding of a number of the laws treated in these sections:

the obligation and specifics of honoring parents (*Ant.* 4.260–64)

the hanging, exposure, and burial of an executed criminal (§§263–64)

the importance of burial for the dead (§265)

the time when and means by which collateral may be taken on a loan (§§268–69)

the penalty of double repayment for theft (§271)

the time when the biblical law concerning forced entry and theft applies (§271)

the conditions under which a fourfold or fivefold penalty applies (§272)

the obligations incumbent on a finder of lost objects, including a search for the owner, a public announcement, the content of the announcement, and an oath of innocence before keeping the object (§274)

the reasons and the conditions under which one is obligated to help animals in distress (§275)

the requirement to give directions to one lost and the prohibition against misleading someone on the road (§276)

the prohibition against cursing someone not present (§276; the Rabbinic parallel may be tannaitic)

the requirement of monetary compensation for one who killed another when the death was not immediate (§277)

the cases when the prohibition against withholding wages applies (§288).

The similarities with tannaitic literature extend not only to individual interpretations but also to the reasons for the laws (§§262, 270, 275); the juxtaposition and arrangement of various laws (§§273, 276); the internal structure of laws that are more specific than their biblical counterparts (§§269, 271, 274, 276, 277, 288); and hermeneutical techniques (§267).

The element of structure is particularly instructive, for Josephus's breakdown of each biblical law into more precisely defined cases is typical in the development of any legal system. Indeed, we see that in almost every case, the constituent elements of these laws as

they are divided by Josephus are also found in the tannaitic legal system, the *halakhah*. The common elements in Josephus and in tannaitic writings provide evidence for an extrabiblical (but biblically based) corpus of legal traditions (whether written or oral; whether exegetically citing and annotating the biblical text or apodictically listing the laws without reference to the biblical text), which served as a source both for Josephus and for later tannaitic literature. This extrabiblical body of tradition would have been one of the lenses through which Josephus viewed and understood the Bible.

Significance

It is important, at this stage in our knowledge of the ancient Jewish world, not to go beyond the evidence and say, for example, that such a corpus of material equates with the later Rabbinic literature, or that it necessarily served as the single source of that literature, and certainly not that it constituted the only body of legal traditions existing at the time of Josephus. We know of other legal traditions, such as those found in the Dead Sea Scrolls, some of which are also recorded by Josephus as the Jewish law (e.g., *J.W.* 5.227 and *Ant.* 3.261 = 11QTemple 45.15–17). What the evidence allows us to say is that Josephus's biblical laws neither represent a straightforward transmission of the biblical text nor are they exclusively Josephus's own interpretation. Rather, they indicate that there was an existing body of interpretation that is heavily paralleled in later Rabbinic *halakhah* and that served as Josephus's primary source for reading and understanding the corresponding portions of Scripture. Although this information may or may not support Josephus's self-identification with the Pharisees—generally assumed to be precursors of the *tannaim*, the early Rabbis¹—it certainly argues for the antiquity of significant parts of Rabbinic *halakhah*, a conclusion corroborated in recent years from the Dead Sea documents.²

SUGGESTED READING

Most of the earlier work on Josephus's parallels in Rabbinic literature was written in German and French; more recently, in Hebrew. Works that deal with this topic in English include:

- Blidstein, Gerald. *Honor Thy Father and Mother: Filial Responsibility in Jewish Law and Ethics*. New York: Ktav, 1975.
- Feldman, Louis. "Torah and Greek Culture in Josephus." *The Torah U-Madda Journal* 7 (1997): 48–59.
- . "Use, Authority, and Exegesis of Mikra in the Writings of Josephus." In *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity*, edited by Martin Jan Mulder, 507–18. CRINT, Section 2. Literature of the Jewish People in the Period of the Second Temple and the Talmud 1. Philadelphia: Fortress, 1988.
- . *Judaean Antiquities 1–4*. Vol. 3 of *Flavius Josephus: Translation and Commentary*, edited by Steve Mason. Leiden: Brill, 2000.
- Goldenberg, David. "The Halakha in Josephus and in Tannaitic Literature." *JQR* 67 (1976): 30–43.
- . "Halakhah in Josephus and in Tannaitic Literature: A Comparative Study." PhD diss., Dropsie College, 1978.
- . "Ant. 4.277 and 288 Compared with Early Rabbinic Law." In *Josephus, Judaism, and Christianity*, edited by Louis H. Feldman and Gohei Hata, 198–211. Detroit MI: Wayne State University Press, 1987.
- Thackeray, H. St. J., trans. *Josephus: Jewish Antiquities I–IV*. Loeb Classical Library. Cambridge MA: Harvard University Press, 1967.
- Vermes, Geza. "A Summary of the Law by Flavius Josephus." *Novum Testamentum* 24 (1982): 289–303.

TRANSLATION

²⁶⁰With regard to those youths who scorn their parents and do not grant them their honor whether because of shame or lack of understanding, demeaning them, let the parents first of all warn them with words, for they are autonomous judges over their sons, ²⁶¹saying that they came together with each other not for the sake of pleasure nor of increasing their wealth by placing in common what the two of them had, but in order that they might have children who would tend them in their old age and who would have from them whatever they needed: "When you were born, we raised you with joy; and giving the great-

COMMENTARY

260–64 These sections paraphrase Deut. 21:18–21, the law concerning the rebellious son. The Bible is specific regarding the offense of the rebellious son: "He is a glutton and a drunkard" (21:20). Josephus, on the other hand, understands the verses as referring in general to dishonor of parents, taking "a glutton and a drunkard" as an example of, or a term for, dishonor. Similarly Philo understood these verses as referring in general to dishonor toward parents (*Spec. Laws* 2.224–41). The sources for this interpretation are Exod. 21:17 and Lev. 20:9, which require a death penalty for one who *meqallels* his parents, with the Hebrew word being understood as "to dishonor" (rather than the traditional rendering "to curse"), an interpretation incorporated into some of the Palestinian Targums to these verses.³ So too does Ben Sira (3:11) understand the Hebrew *q-l-l* as meaning "dishonor." Taking Deut. 21:18–21 as referring in general to the obligation of honoring parents, Josephus's text in *Ant.* 4.260–64 becomes understandable as reflecting Jewish biblical interpretation of the time, as will be seen below.

260. whether because of shame or lack of understanding Here, Josephus has added to the biblical text a reason for the youth's misbehavior. This extrabiblical flourish is paralleled in Proverbs: in three verses that deal with a son's behavior toward his father (Prov. 10:5; 14:35; 17:2), shame is opposed to understanding or intelligence; that is, to act shamefully or with a lack of intelligence exhibits improper behavior toward a parent.⁴ A particularly close parallel to Josephus is Prov. 28:7, "An intelligent son [*ben mevin*] heeds instruction, / But he who keeps company with gluttons [*zolelim*] disgraces [or "shames" *yakhlim*; RSV, NRSV] his father," which clearly echoes Deut. 21:20, "'This son of ours is disloyal and defiant; he does not heed us. He is a glutton [*zolel*] and a drunkard.'" ⁵ Thus, improper behavior toward a father is exemplified by acting in a shameful or unintelligent manner. Whether Josephus drew his addition directly from Proverbs or from a contemporary understanding of Deut. 21:20, which is also reflected in Proverbs, cannot be determined. Clearly, though, in either case Josephus's addition derives from the Jewish exegetical environment.

let the parents first of all warn them with words Josephus goes on to say that if words don't work, the child is put to death. Philo, however, says that there was another stage after the oral admonition and before the death penalty, that of beating (*Spec. Laws* 2.232). Tannaitic law similarly has a three-stage process.⁶ Josephus may have taken the biblical "even after they discipline him [*ve-yiseru*]" to mean an oral admonition because of the following words in the verse, "[he] will not listen to them," and the words in verse 20 (RSV), "he will not obey our voice" (MT: *einennu*

Source of Translation: The translation is primarily that of Louis Feldman, *Judaean Antiquities* 1–4, cited above. I have occasionally substituted the phrasing of H. St. J. Thackeray, trans., *Josephus: Jewish Antiquities I–IV*, also cited above; or translated passages myself, as indicated in the notes.

est thanks to God we reared you with devotion, sparing nothing of what seemed to be useful for your well-being and education in the best things.²⁶² Now, however, for it is necessary to grant pardon for the failings of youth, you have sufficiently disregarded the honor toward us. Change to the more reasonable way, considering that God also is annoyed with those who commit an outrage against parents, because He himself is also the father of the whole human race and considers himself dishonored when those who have the same title as himself do not obtain from their children what is fitting for them; and there is the implacable law, the punisher of such acts, which you should not put to the test.”²⁶³ If the rebelliousness of the youths is cured by such means, let them be excused from the censures for things that they did not know, for thus the lawgiver will be good and the parents will be fortunate in beholding neither son nor

shomea' be-kolenu), either making this deduction himself or relying on such a translation tradition of *ve-yiseru* in verse 18, found in both the LXX (*paideusōsin*, “educate”) and *Targum Onkelos* (*malpin*, “teach, educate”).

261. in order that they might have children who would tend them in their old age This is the only specific obligation for children that Josephus mentions, and obviously the neglect of this duty defines “those youths who scorn their parents and do not grant them their honor.” Contemporaneous Jewish literature understood tending to parents in their old age as a requirement of honoring parents, as did ancient Near Eastern texts.⁷ Rabbinic literature specifies: “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.”⁸ The obligation to provide for parents is apparently also seen in the New Testament.⁹

261–62. we reared you with devotion . . . Now, however, . . . God also . . . considers himself dishonored

Josephus gives two reasons for the obligation to honor parents: the parents devote much care to the child’s upbringing, welfare, and training; and honoring parents is tantamount to honoring God, since God is the father of humanity. The implication of the first reason, that honoring parents is repayment of a debt, is stated by Josephus explicitly in *Ag. Ap.* 2.206: The law hands over to be stoned “one who does not repay the benefits received from [one’s parents].”¹⁰ The same idea is found in *Wisdom of Ben Sira*, *Tobit*, *Letter of Aristeas*, Philo, and pagan Hellenistic literature.¹¹ Josephus’s second reason for honoring parents, that it is tantamount to honoring God since God is the father of humanity, is found in Philo, possibly Ben Sira, Qumran literature, and several tannaitic sources. Philo: “Parents are the servants of God for the propagation of children, and he who dishonors the servant dishonors also the master.”¹² The tannaitic source puts it this way: “God considers honoring parents equal to honoring him . . . for it is written . . . thus [Scripture] equated honoring parents to honoring God.”¹³ Josephus’s remark that “God is also annoyed with those who commit an outrage against parents” recalls the tannaitic statement “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.’” Further, when Josephus says that because God is the father of the human race he therefore “considers himself dishonored when those who have the same title as himself do not obtain from their children what is fitting for them,” we are reminded of the tannaitic proposition that God, father, and mother are partners in the creation of a child.¹⁴

263. neither son nor daughter The biblical text speaks of a son only, as does the Rabbinic interpretation of the law (e.g., *M. Sanh.* 8:1). Josephus, however, refers to a son or a daughter. This change is in accord with Josephus’s interpretation of *Deut.* 21:18–21 as an instance of honoring parents, which is obligatory on both son and daughter according to tannaitic tradition (e.g., *T. Kid.* 1:11).

daughter being punished.²⁶⁴ However, should these words and the teaching from them about moderate behavior seem worthless, and should one make the laws implacable enemies for himself through constant boldness toward his parents, let him be brought forward by them themselves outside the city with the

264. through constant boldness toward his parents The law concerning the rebellious son required repeated acts of dishonor toward the parents, as is indicated in the biblical "who does not heed his father or mother and does not obey them even after they discipline him" (Deut. 21:18). So also Philo and ancient Near Eastern texts require that the rebellious son be a habitual offender.¹⁵ **let him . . . be stoned** The Bible requires a death penalty for one who "is a glutton and a drunkard" (Deut. 21:20) but says nothing about a punishment for one who does not fulfill the general commandment to honor one's parents. In line with his understanding that this biblical text is but one instance of dishonoring parents, Josephus extends the death penalty to all who dishonor parents, repeating this interpretation with even greater severity in *Ag. Ap.* 2.217 ("Mere intention of doing wrong to one's parents . . . is followed by instant death"). Similarly Philo understands the biblical law to require death for dishonor to parents (*Spec. Laws* 2.232, 248; see also *Hypoth.* 8.7.2). This was apparently the Pharisaic tradition, as recorded by Matthew and Mark.¹⁶ The Bible indicates a trial ("His father and mother shall take hold of him and bring him out to the elders of his town at the public place of his community. They shall say to the elders of his town . . ." [Deut. 21:19–20]), which is reflected in the targumic translations and became part of tannaitic law.¹⁷ Josephus, however, says nothing of a trial, and seems to view the parents as holding sole authority to order the death of their recalcitrant child. Josephus says this explicitly later, in the narrative of the trials of Herod's sons.¹⁸ Philo too puts the authority for the death penalty in the hands of the parents (*Spec. Laws* 2.232). It is because the parents have such a right by law or custom that Josephus prefaces his account with the words, "For they are autonomous judges over their sons" (*Ant.* 4.260). This clause is not meant to explain the immediately preceding "let the parents first of all warn them with words," for which no judicial authority is necessary, but rather to explain the entire process, of which oral admonition is the first step and a death sentence the last. Despite the explicit statement in the Bible that the rebellious son must be judged by the elders of the town, the practice, as attested by Josephus and Philo, was that the father and mother acted as judge.¹⁹ This may be due to the influence of the Roman law of *patria potestas*, which gave the father such authority over his children.²⁰ In any case, tannaitic law—taking its cue from the biblical verse—required a judicial procedure, although it may have preserved an element of the earlier practice in allowing the parents the right of pardon.²¹

masses following and let him be stoned. After remaining during the whole day in the sight of all, let him be buried at night.²⁶⁵ 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,

After remaining during the whole day in the sight of all The practice of delayed burial for executed criminals or sinners is mentioned by Josephus elsewhere: "With us it is ordained that the body of a suicide should be exposed unburied until sunset" (*J.W.* 3.377).²² In many nations of antiquity, executed criminals and suicides did not receive burial (or at least, proper funeral rights).²³ Similarly the slain enemy was left unburied by the Jews, as well as other peoples of antiquity, in the biblical and Hellenistic periods.²⁴ An echo of this practice may perhaps be seen in the tannaitic law that an executed criminal is not buried in his family tomb. The court had special cemeteries for criminals, where the bodies were deposited in ledges hollowed out of rock. After the body had decomposed, the bones were collected and deposited in the family tomb (*M. Sanh.* 6:5). The reason given in Rabbinic sources for this practice is that "the pious and the wicked are not to be buried side by side." After the body has decomposed, the criminal's sins have been expiated, he is no longer considered wicked, and he may be buried with the pious (*J. Sanh.* 6:12, 23d; *B. Sanh.* 47a-b).

during the whole day Similarly, *Ant.* 4.202 says that the blasphemer is hung "for a day." Some think that this deviates from Rabbinic tradition, which limits the hanging to a short period of time.²⁵ The Greek, however, does not necessarily mean "an entire day" but "the remainder of the day."²⁶ Even the reading in *Ant.* 4.264 (*holēs hēmaras*), which is also found in a variant to *Ant.* 4.202, may mean only the "remainder of the day."²⁷ The (6th-century?) Latin translation of Josephus has an interesting variant to our text: "and after being hung from a plank [or, tree] and remaining during the whole day in the sight of all."²⁸ The only possible biblical source for this variant is Deut. 21:22-23 NRSV: "When someone is convicted of a crime punishable by death and is executed, and you hang him on a tree, his corpse must not remain all night upon the tree; you shall bury him that same day."²⁹ Since these verses immediately follow the law of the rebellious son, some assume that Josephus drew on them, extending the law to the rebellious son as well, and that therefore the Latin represents the original reading in Josephus.³⁰ However, Deut. 21:22-23 was understood by Josephus to refer to the blasphemer, and apparently to the blasphemer alone: "Let him who blasphemes God be stoned then hung for a day, and buried ignominiously and in obscurity" (*Ant.* 4.202).³¹ This interpretation is paralleled in an early Rabbinic tradition (*R. Joshua*), contemporaneous with Josephus, which interpreted Deut. 21:22-23 as referring only to a blasphemer (and an idolator).³² In sum, the Greek text of Josephus (exposure with no mention of hanging) appears to be the original, and reflects contemporary practice, while the biblical text speaking of hanging is applied by Josephus to the blasphemer, as it is by the *tannaim* as well.

let him be buried at night Several other times Josephus mentions night burial for executed criminals. In recounting Achan's execution recorded in Josh. 7:25, Josephus adds to the biblical account that Achan "at night was given the ignominious burial proper to the condemned" (*Ant.* 5.44). After the execution of Herod's sons Alexander and Aristobulos, Josephus says that the bodies were laid to rest at night (*Ant.* 16.394). Also, as noted in the comment on 4.264, *After remaining* . . . , Josephus writes that "with us it is ordained that the body of a suicide should be exposed unburied until sunset" (*J.W.* 3.377), thus implying a burial at, or shortly after, sunset for one who kills himself. Finally, in *Ant.* 4.202 Josephus says, "Let him who blasphemes God be stoned then hung for a day, and buried ignominiously and in obscurity [*aphanōs*]." Here too the implication

is that the burial takes place after sunset, not only because it occurs after being hung during the day, but also because the term "obscurity" implies a nighttime burial; *aphanōs* means literally "unseen."³³ Hints of the practice of sunset burial for executed criminals appear in tannaitic literature, where explanations of Deut. 21:21–23 state that the judicial decision, the execution, and the hanging are carried out immediately before sunset.³⁴ Since the corpse must not remain unburied overnight (*Sifre Deut.* 221; *M. Sanh.* 6:4), the body must have been buried during the night, presumably shortly after sunset. Whether the tannaitic explication represents actual practice or not, it apparently indicates a knowledge of night burial. The Palestinian Targums also know of a sunset burial for criminals. In an addition to Num. 25:4 ("Take all the ringleaders and have them publicly impaled before the LORD"), the Palestinian Targums add: "and at the setting of the sun you shall take them down and bury them."³⁵

265. *Thus shall it be* While syntactically "it" could refer to exposure, hanging (accepting the Latin reading), or night burial, Josephus most probably is referring to burial, since he continues, "Let burial be given even to your enemies." Josephus refers to the importance of burial in several other places. To deny someone burial, he says, is a dishonor (*Ant.* 13.403), such treatment being considered terrible (*Ant.* 6.375, an addition to the biblical narrative), a great impiety (*J.W.* 4.317), an annulment of the laws of nature, and "an outrage upon humanity and a pollution of the Deity" (*J.W.* 4.382–83). Jews would risk their lives to provide burial for a dead body (*J.W.* 4.331–32, 383; cf. *J.W.* 5.33, 360). Indeed, Jewish law demanded that "we must . . . not leave a corpse unburied, show consideration even to declared enemies" (*Ag. Ap.* 2.211). Such care for burial was extended as well to the executed criminals (*Ant.* 4.264, *J.W.* 4.317), and to the enemy slain in war (*Ant.* 4.265, *J.W.* 3.377), as we have seen.³⁶ This concern for burial is found also in other Jewish sources. Numerous biblical passages reflect the view that nonburial is a terrible disgrace.³⁷ Tobit risked his life providing burial, as did those who removed R. Akiva's body from the prison where the Rabbi had died.³⁸ Speaking of Jewish law and custom, Philo says that one "must not debar dead bodies from burial, but throw upon them as much earth as piety demands" (*Hypoth.* 7.7 [358]). Indeed, tannaitic law requires that if one finds an unattended corpse, Jewish or non-Jewish, one must bury it.³⁹ This concern extended as well to burial of the slain enemy.⁴⁰

Thus shall it be too with all who howsoever are condemned by the laws to be put to death The translation given is Thackeray's. The implication of Feldman's translation ("Thus let those who in any way whatever have been condemned by the laws be put to death") is that all who are condemned to death are to be executed in a similar way, i.e., by stoning. However, the Greek reads, "Thus let those who in any way whatever have been condemned by the laws to be put to death," which is more accurately reflected in Thackeray's translation. Feldman's translation may only be due to a typo: the accidental deletion of "to" before "be put to death."

paying more than its just penalty. ²⁶⁶Let it not be permitted to lend either meat or drink to any one of the Hebrews at interest, for it is not just to profit from the misfortunes of one's compatriot; but in helping his needs you should consider as a gain the gratitude of those men and reward that will come from God for this generosity. ²⁶⁷Those 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

266–70 In these sections, Josephus treats the laws concerning loans: the obligation of the lender to lend without interest to a fellow Jew (266), the obligation of the borrower to repay the loan on time (267), and the obligations of the borrower if a pledge or security has been taken against the loan (268–70). The biblical sources are Exod. 22:24–26; Lev. 25:35–37; Deut. 23:20–21; 24:6, 10–13.

266. meat or drink While the Bible speaks of lending money or food, Josephus mentions only food; see the comment below on *Ant.* 4.267. Josephus mentions the prohibition of taking interest also in *Ag. Ap.* 2.208, although he does not, in that apologetic work, mention that the law is restricted to a fellow Hebrew (see also note 54). Most of Josephus's comments in *Ant.* 4.266 are built on biblical notions. That it is not just to profit from the misfortunes of a compatriot (*homophylou*, lit. "of the same race or tribe") is implied in Exod. 22:24–26 and Lev. 25:35–37, as well as elsewhere in the Bible,⁴¹ and the idea that one who lends to those in need receives God's recompense in return is stated in Deut. 23:21 (cf. 24:13), as well as elsewhere in the Bible.⁴² Deuteronomy 24:13, the biblical verse that concludes the laws of pledges with the statement that the borrower will bless the lender, was probably the source for Josephus's statement that the lender receives the borrower's gratitude. This verse may have also been the impetus for Josephus's joining the borrower's gratitude with God's recompense: "that he [the borrower] may sleep in his cloak and bless you. And it shall be righteousness for you before the LORD your God."⁴³ Josephus's original contribution in this section seems to be the idea that the lender ought to consider the borrower's gratitude and God's recompense as the interest in lieu of monetary gain.

267. silver or produce of any kind, liquid or solid The biblical texts refer to clothing (Exod. 22:25–26) and "a loan of any sort" (Deut. 24:10). Josephus's phrasing "silver or produce" apparently derives from "money" and "food" mentioned in the biblical law of interest (Lev. 25:37; Deut. 23:20; Exod. 22:24, "money"), which he had just dealt with and which precedes the law of pledges in the Bible. Both interest and pledges fall under the category of loans, and Josephus therefore drew descriptive elements from one law and applied it to the other. Such borrowing is particularly reasonable when the two laws follow each other in the Bible, as they do in this case. This technique is similar to the tannaitic hermeneutical rule of *semukhin*, according to which elements enunciated in one law may be applied to another if the two laws are juxtaposed in Scripture.⁴⁴ The obligation of the borrower to repay a loan on time, and by doing so enabling the borrower to draw a loan again if need be, is found in Sir. 29:2–3: "Lend to your neighbor in his time of need; repay your neighbor when a loan falls due. Keep your promise and be honest with him, and on every occasion you will find what you need" (NRSV). It is clear from the Syriac translation that "what you need" is to be sought with the lender: "and you will always find your needs with him," that is, the lender.⁴⁵

with their own possessions Several manuscripts read "their" (*autōn*), possibly referring to the lender, in place of "their own" (*hautōn*), referring to the borrower, but this reading is probably erroneous, as these manuscripts do not record any variant for the preceding "as though" (*hōsper*).⁴⁶

at need.²⁶⁸ But if they are shameless concerning restitution, one must not prowl about the house to seize a pledge before judgment 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 return it before sundown, above all if the pledge consist of a cloak, that he may have it for his sleep, God by His nature according pity to the poor.²⁷⁰ But a mill and its accompanying utensils may not be taken in pledge, that folk be not deprived of the very means of preparing their food nor be reduced by want to the worst sufferings.²⁷¹ For the stealing of

²⁶⁸ A paraphrase of Deut. 24:10–11. Josephus is clearly speaking of a pledge taken when the debtor has not repaid the loan on time, and not a pledge taken at the time when the loan was made. The biblical text offers no indication as to the time the pledge is taken, although “so far as is known, in Israel this property was not taken at the time of the loan.”⁴⁷ As Josephus, so too the Mishnah discusses pledges taken when repayment has not been made.⁴⁸

one must not . . . seize a pledge before judgment has been given The Bible says nothing of a judgment before the pledge may be taken, but tannaitic literature does: “If one makes a loan to his fellow, he may take a pledge only through the court.”⁴⁹

the pledge should be asked for at the door That the creditor may not enter the debtor’s home is stated in Deut. 24:10.

the debtor should bring it of himself While the sources cited in note 49 speak of a court functionary taking the pledge, one tannaitic source refers to the creditor himself, as is implied in the biblical text and stated by Josephus: “A creditor who comes to take a pledge should not enter the [debtor’s] house to do so but he should stand outside and the [debtor] should go in and retrieve the pledge.”⁵⁰

²⁶⁹ A paraphrase of Exod. 22:25–26 and Deut. 24:12–13. To the biblical statements that if the borrower is poor, the lender should return the pledge at sundown, Josephus adds the corollary that if the borrower is well-to-do, the lender may retain possession until restitution is made. This extrabiblical notion is found in a tannaitic text: “If he is a poor man, you shall not sleep with his pledge’ (Deut. 24:12)—thus, if he be well-to-do, you may sleep with his pledge.”⁵¹ Josephus’s phrase “God by His nature according pity to the poor” apparently derives from the text in Exodus (22:25–26): “If you take your neighbor’s garment in pledge, you must return it to him before the sun sets; it is his only clothing, the sole covering for his skin. In what else shall he sleep? Therefore, if he cries out to Me, I will pay heed, for I am compassionate.”

²⁷⁰ A paraphrase of Deut. 24:6. The reason given by Josephus why a millstone may not be taken in pledge—that it is used to prepare food and thus sustain life—is implicit in the biblical verse (“for he would be taking a life in pledge”) and is the meaning given to the verse in the Targums, tannaitic literature, and Philo.⁵²

²⁷¹ This section deals with various laws of theft, which Josephus, or his source, has brought together from disparate biblical verses: Exod. 21:16 and Deut. 24:7; Exod. 21:37–22:3; and Exod. 22:6–8. Josephus has also rearranged the biblical order, putting the law of a break-in after the law of theft of money rather than after the law of theft of cattle and before monetary theft, as in the Bible.

For the stealing of a person Josephus speaks of stealing a person in general, as does the Masoretic Text (MT) of Exod. 21:16, while Deut. 24:7 and the LXX of Exodus speak of an “Israelite.” Whether or not Josephus chose “person” over “Israelite” for apologetic reasons, as some suggest, the Hebrew

a person the penalty shall be death; the purloiner of gold or silver shall pay double the sum. He who kills another while engaged in burglary shall be innocent, even though the thief were yet but breaking through his wall.²⁷² He who steals a head of cattle shall pay fourfold as penalty, save in the case of an ox, for which

text of Exod. 21:16 would have provided Josephus the necessary support for his rendition of the law—assuming, of course, that the Hebrew text before Josephus was the same as the MT.⁵³ *the purloiner of gold or silver shall pay double the sum* The Bible (Exod. 22:6–8) treats the law of theft of money or inanimate objects only in the case where these items have been entrusted to another to watch and are stolen from his possession. On the other hand, a case of simple theft is mentioned only in the case of an “ox or a sheep” (Exod. 21:37–22:3). In both cases—simple theft, and theft from the one entrusted—if the thief is caught, he pays double the value of the stolen object (unless the ox or sheep has been slaughtered or sold). Josephus drew the obvious conclusion, as did the *tannaim*, that theft is theft, whether from the original owner or from the one entrusted with the object.⁵⁴

He who kills another while engaged in burglary shall be innocent This is a paraphrase of Exod. 22:1 (NRSV 22:2, “If a thief is found breaking in, and is beaten to death, no bloodguilt is incurred.”), but the following verse restricts the law to a case that occurs at night: “If the sun has risen on him, there is bloodguilt in that case,” and so the law was understood by Philo.⁵⁵ Tannaitic law, however, interprets this verse metaphorically, and thus, like Josephus, draws no distinction between day and night.⁵⁶

Even though the thief were yet but breaking through his wall Josephus’s “breaking through his wall” explains the MT *mahteret*, which is similarly explained by Targum Pseudo-Jonathan (*hrk’ dk-wtl’*).⁵⁷ The qualification “even though” implies that the homeowner is innocent whether the thief is killed after he has already broken in or even while breaking in. Exodus 22:1 speaks only of a thief found while breaking in (or in the breach).⁵⁸ Apparently Josephus understood the verse in a broader sense, not restricted in time to the moment of breaking through, or in space to the place of the breach. After all, if the homeowner is innocent for killing a thief in the act of breaking in, he should certainly be innocent for doing so once the thief has already broken into the house and poses a greater danger to the owner’s life.⁵⁹ One tannaitic statement goes further and declares that the homeowner is innocent even if he kills the thief outside leaving the house after the theft.⁶⁰

272. He who steals a head of cattle Exodus 21:37 has “an ox or a sheep.” The Hebrew word translated “sheep” (*seh*) has the meaning of “small livestock,” including especially goats as well as sheep.⁶¹ This was also the understanding of the *tannaim*.⁶² Josephus’s “cattle” (*boskēma*; or “farm animals” as Feldman translates) reflects that understanding.

shall pay fourfold . . . fivefold According to the Bible this penalty is assessed only if the animal was either sold or slaughtered. As Josephus, so too Philo (*Spec. Laws* 4.12) refers to the law of fourfold and fivefold without mention of selling or slaughtering. Although the Mishnah (*BK* 7:1) and Tosefta (*BK* 7:12) follow the Bible in requiring sale or slaughter, one tannaitic text omits this qualification, as do Josephus and Philo, perhaps, however, only for stylistic reasons.⁶³ In *Ant.* 16.3, Josephus says that “the laws ordered that a thief was to pay a fourfold fine,” without any qualification of what was stolen. This all-encompassing statement contradicts Josephus’s statement in *Ant.* 4.271–72 that stealing inanimate objects (“gold or silver”) requires a penalty of double repayment. There are, however, parallels that are strikingly similar to Josephus’s statement in *Ant.* 16.3. *Mekilta de-Rabbi Ishmael* states, “[If one steals] clothing, fruit, utensils, domestic animals, wild

he shall be fined fivefold. He who does not have the means to defray the imposed amount shall become the slave of those who had him condemned.

²⁷³Let someone who has been sold to a fellow countryman be a slave for six years, but in the seventh year let him be set free. If he has had children from a slave woman at the house of the one who bought him, however, and wishes to be a slave because of good will and affectionate love for his own things, let him be freed when the year of the jubilee arrives—this is the fiftieth year—and let him take along both his

animals, or birds, he repays fourfold or fivefold;⁶⁴ and Luke 19:8 has Zacchaeus says to Jesus: "Look, half of my possessions, LORD, I will give to the poor; and if I have defrauded anyone of anything, I will pay back four times as much."⁶⁵

the imposed amount Greek *epitimion*, "the value of the fine." This presumably differs from the biblical "he shall be sold for his theft" (Exod. 22:2), meaning the value of the animal only, which is indeed the tannaitic understanding.⁶⁶ Some have suggested that Josephus (and Philo, *Spec. Laws* 4.3) reflects the law as it was practiced in his day.⁶⁷

shall become the slave of those who had him condemned Exodus 22:2 says that he should be sold into slavery; it does not say that he should become a slave to the person from whom he stole.⁶⁸ Two solutions have been proposed by translating the Greek for "of those who had him condemned" (*tois katadedikasmenois*) differently: "he shall become a slave through whom he was condemned" or "he shall become a slave for the benefit of whom he was condemned." According to the latter view, the thief either became a slave of the one from whom he stole, or he was sold into slavery with the proceeds going to the one from whom he stole.⁶⁹ These interpretations would agree with Josephus's report elsewhere (*Ant.* 16.3): "The laws ordered that a thief was to pay a fourfold fine, and, if he were unable to do so, he was to be sold."

²⁷³ The relevant biblical verses are Exod. 21:2–5 and Lev. 25:39–41. Deuteronomy 15:12–16 repeats the Exodus verses but adds that the master must furnish the slave with various provisions, a requirement omitted by Josephus. Josephus also omits the law, mentioned in both Exod. 21:6 and Deut. 15:17, that if the slave decides to stay with his master after six years of service, his ear is to be pierced with an awl. Both of those verses add that in such a case, the slave is to serve forever. It is Lev. 25:40 that refers to the jubilee year as the time when the slave is set free. In putting these laws of slavery after *Ant.* 4.271–72, Josephus is following not the order of the biblical verses but the similarity of topic in the immediately preceding section. Having just told us that if one cannot pay the fine for theft, he is to be sold into slavery, Josephus now continues with laws of slavery. A similar connection is made in *Tg. Ps.-J.* and *Tg. Neof.* at Exod. 21:2, "When he is sold as a slave for his theft, to an Israelite, he shall serve six years," which is based on the tannaitic understanding that Exod. 21:2–6 refers to a case where one is sold into slavery for theft: "Since it says, '[He must make restitution;] if he lacks the means, he shall be sold for his theft' (Exod. 22:2), I might think that it means forever. Therefore, it says 'he shall serve for six years' (Exod. 21:2)—he serves for six years and goes free on the seventh."⁷⁰ "Then his master shall bring him to God' (Exod. 21:6)—to the judges. Rabbi said, 'Scripture is speaking of a case where he is sold by the court for his theft.'"⁷¹ An exposition attributed to R. Yoḥanan ben Zakkai (1st century) makes the same connection homiletically: "it is the ear that is pierced because it was the ear that heard the law 'You shall not steal' (Exod. 20:13) and yet this man stole anyway."⁷²

children and his wife who is free.²⁷⁴ If anyone finds 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

²⁷⁴ This law of restitution of lost property is a paraphrase of Deut. 22:1-3: "If you see your fellow's ox or sheep gone astray, do not ignore it; you must take it back to your fellow. If your fellow does not live near you or you do not know who he is, you shall bring it home and it shall remain with you until your fellow claims it; then you shall give it back to him. You shall do the same with his ass; you shall do the same with his garment; and so too shall you do with anything that your fellow loses and you find; you must not remain indifferent" (Exod. 23:4 speaks of "your enemy's" ox or ass). As in the Bible, Josephus divides the lost property into two parts, animate and inanimate objects, although Josephus has changed the biblical inanimate "garment" to "gold and silver," perhaps recalling Exod. 22:6: "money or goods," which he had just dealt with in *Ant.* 4.271.⁷³ Josephus adds to the biblical law the criterion of where the object is found, the notion of a public announcement of the lost item, and a reason for the law.

gold or silver on the road . . . beasts . . . straying in a desert place This differentiation of where the object is found, while not in the Bible, is paralleled in tannaitic literature. "A spade or a garment on the road and cow grazing among seeds—these are lost objects";⁷⁴ "an ass going through vineyards, utensils lying in the middle of the road."⁷⁵ The *tannaim* further define the place where the animal was found: "An ass or cow grazing on the road is not considered a lost object . . . a cow running through vineyards is a lost object."⁷⁶ "The word 'straying' [in the Bible] always means outside the boundary."⁷⁷ Josephus and the *tannaim*, then, both add to the biblical law the criterion of place where the object is found, differentiating between animate and inanimate objects.⁷⁸

after diligent search for the loser A tannaitic source interprets the verse in Deuteronomy to mean that the finder must make a search for the loser.⁷⁹

public proclamation This addition to the biblical law is also found in tannaitic *halakhah*: "There was a rock 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 object and take it."⁸⁰ The Mishnah many times mentions proclamation as the method of returning a lost item.⁸¹ One tannaitic source dates the custom of proclamation to the time of Josephus: "Originally they used to make proclamation . . . however, after the destruction of the temple."⁸² Josephus's description of the proclamation as indicating the place where the object was found is also paralleled in a Rabbinic source, but it is a later, amoraic, one.⁸³

reckoning it dishonest to profit by another's loss This extrabiblical explanation for the law is similar to the explanation Josephus provided for the prohibition of lending on interest: "for it is not just to profit from the misfortunes of one's compatriot" (*Ant.* 4.266).

but if the owner be not found forthwith This is a paraphrase of the biblical "If your fellow does not live near you" (Deut. 22:2), with Josephus transforming spatial proximity to temporal proximity, its implied meaning in the Bible.⁸⁴

let him keep them at his home This rendering by Thackeray is not the best translation of the Greek, which means "let him watch over them," a translation that Feldman has accepted. Josephus does not mean to imply that the finder may keep the objects for himself. Cf. the translation of M. Hadas to 4 Macc. 2:14,⁸⁵ and Philo, *Virtues* 96.

calling God to witness that he has not appropriated the goods of another An extrabiblical addition,

has not appropriated the goods of another.²⁷⁵ It is not permitted to pass by when someone's beasts, suffering damage owing to a storm, have fallen in mud; reckoning the distress as one's own, one should join the rescue and lend assistance.²⁷⁶ 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 misleading him. Similarly, let no one curse a person not present or a mute person.²⁷⁷ In a fight where there is no iron weapon, if someone is

which does appear, however, in the biblical law of theft of an entrusted object at Exod. 22:7 ("If the thief is not caught, the owner of the house shall depose before God that he has not laid hands on the other's property"). In tannaitic tradition this verse was understood as requiring an oath in court, which is reflected in the Targums' translation of *elohim* as "judges" rather than "God."⁸⁶ Note also that according to the *tannaim*, the oath requires "calling God to witness."⁸⁷

²⁷⁵ Exodus 23:5 speaks of helping the beast of "your enemy," while Deut. 22:4 restricts the law to "your fellow." Josephus is nonspecific, as he is also above in the law of restitution of lost property (*Ant.* 4.274). Later tannaitic interpretation specified that Exod. 23:5 referred to unloading the animal's burden, and Deut. 22:4 to reloading it.⁸⁸

reckoning the distress as one's own Greek *ton ponon oikeion hēgēsamenon*. Feldman and Thackeray in their respective translations have presumably taken the subject of the distress (*ton ponon*) to be the owner of the animal. Whiston, however, understood the subject to be the animal: "reckoning its pain (*ton ponon*) as his own."⁸⁹ His translation would accord well with a Rabbinic understanding of the reason for the law: that one must not cause pain to animals.⁹⁰ On the other hand, taking the owner as the subject of the pain, another translation is possible if we understand the Greek participial clause (*ton ponon oikeion hēgēsamenon*) in a causal sense: "since he believed that he would have labored for himself." Such a translation would also correspond with a Rabbinic (tannaitic) interpretation of the law that requires one to help the distressed owner only if one would have helped were the animal his own.⁹¹

²⁷⁶ *One must point out the road to those who are ignorant of it* There is no biblical requirement to show the road to one who has lost his way. Josephus seems to have drawn on the same source that later served the Rabbis, since such a requirement does appear in tannaitic literature.⁹² The *tannaim* considered this law to fall under the category of lost objects: one must return a lost object to its owner whether that object is a possession of the owner or the owner himself. Thus, in tannaitic literature as in Josephus, showing the road is discussed with the laws regarding lost objects.

misleading him Does Josephus intend this phrase to mean that "neglecting to give him directions" is prohibited, as implied in the first part of the sentence, or is he introducing an additional element here, intending the phrase to mean that "deliberately misleading him" is prohibited also? The Palestinian Targum provide a direct parallel to the prohibition of deliberately misleading: *Tg. Ps.-J.* to Deut. 27:18 says "Cursed be the man who misleads a stranger on the road, for he is compared to a blind man."⁹³ The same notion, less explicitly stated, is found in the Palestinian Targums to Lev. 19:14: "Before a stranger who is compared to a blind man do not put a stumbling block."⁹⁴ A stranger, of course, is one who does not know the way.

Similarly, let no one curse a person not present or a mute person The meaning of the first clause is that one should not revile or curse someone who is not present to hear.⁹⁵ *Lekah Tov*, a medieval midrashic anthology based on earlier sources, gives this very interpretation to the biblical "deaf" in Lev. 19:14 RSV ("You shall not curse the deaf"; NJPS: insult), which "includes even one [lit. 'an Israelite'] who does not hear you; all the more so if you are in his presence" (i.e., even one

struck and dies on the spot, let him be avenged and let the one who has struck him suffer the same. If he is carried to his home and after being ill for several days then dies, let the one who struck him be free from punishment. If, however, he has been saved but has incurred much expense, let him [the one who struck him] pay for all that he has spent during the time of his confinement to bed and all that he has given to the

who is capable of hearing you but does not, because he is not in your presence; all the more so if you are in his presence). Josephus may have been aware of this exegetic expansion.⁹⁶ But why should Josephus have replaced the biblical "deaf" rather than extending its meaning, as did the Midrash? Furthermore, why did he include "the mute person"? Josephus may have interpreted the biblical prohibition as hinging on the inability of the one cursed to respond, whether because he does not hear the curse or because he is incapable of responding. I think, however, another answer is more likely. The word that is translated "deaf" in both the MT (*heresh*) and the LXX (*kōphon*) can mean "mute" as well as "deaf," and Josephus understood it as meaning "mute."⁹⁷ In this, he may have been influenced by a semantic development in which both the Hebrew and Greek words came to mean "deaf and dumb" in Josephus's time.⁹⁸

277 Josephus divides this law into three parts: (1) death is immediate, for which the killer receives the death penalty; (2) death is delayed, for which there is no punishment, (i.e., no death penalty); and (3) the victim does not die, for which monetary compensation is made. The third part is clearly derived from Exod. 21:18–19. The first part also may have a biblical basis, either Exod. 21:12 or Lev. 24:17, 21, or both; or possibly Josephus (or his source) deduced it from Exod. 21:18–19: "and he does not die but has to take to his bed—if he then gets up and walks outdoors upon his staff, the assailant shall go unpunished." That is, if the victim does die, then he who struck him shall not go unpunished but shall also die. The same deduction was made by the *tannaim* but is not as clearly enunciated until the amoraic period.⁹⁹ The second part, however—that one does not receive the death penalty if the person whom he struck remains alive several days before dying—is paralleled in the Bible only regarding the killing of a slave (Exod. 21:20–21). Some scholars believe that these verses, which immediately follow the passage concerning the killing of a freeman, were the source for Josephus, who mistakenly or deliberately combined them in his description of the law for killing a freeman.¹⁰⁰ But this view is not supported by the second part of *Ant.* 4.277, which contains close parallels to Exod. 21:18–19, the biblical treatment of the freeman. While Josephus's "for several days" may or may not derive from "a day or two" said of the slave (it may be Josephus's own addition), it is clear that "if he is carried to his home and after being ill" is a paraphrase of "but has to take to his bed" and "let the one who struck him be free from punishment" paraphrases "the assailant shall go unpunished" (Exod. 21:19), both said of the freeman. Josephus's law of delayed death is not found in the biblical text but it is recorded in Rabbinic literature. According to tannaitic *halakhah*, the law in the case of a freeman is divided into three parts, as it is in Josephus, with delayed death not requiring the death penalty: "If one smites his fellow . . . and it was determined that the injured party would live, but he died his heirs receive monetary compensation," but no death penalty.¹⁰¹ This is the meaning of Josephus's "If he is carried to his home and after being ill for several days," i.e., it appeared that he would live, and not that it was clear from the outset that he would die but that he lingered on for a while. Josephus's usage of *epeita* with a finite verb after a participle indicates that this is his meaning, for such a construction "is often used to mark an opposition between the participle and the verb, marking surprise or the like."¹⁰² Philo also has the same three-part law when

physicians.²⁸⁸ As in the case of entrusted objects, similarly if one should deprive of wages those who labor with their bodies, let him be hated. Therefore, a poor man ought not to be deprived of his wages, since we know that God has given this to him in place of land and the other possessions. In fact, one ought not even to delay the payment, but should pay him the same day, since God does not wish that the one who has worked should lack the enjoyment of the things for which he labored.

discussing the murder of a freeman: "[1] 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 . . . [2] 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 [3] even if the sufferer from the blow subsequently dies."¹⁰³ In summary, Josephus, Philo, and the *tannaim* in discussing injuries resulting from fights (Exod. 21:18–19) divide 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) The victim does not die; the striker makes compensation.

²⁸⁸ The biblical bases for this law are Deut. 24:14–15 and Lev. 19:13. In *Ant.* 20.220, Josephus notes that laborers on public works projects in Jerusalem were immediately paid for work done. Similarly Jesus's parable about the laborers in the vineyard (Matt. 20:8) indicates payment at the end of the day without delay.¹⁰⁴

those who labor with their bodies This clause is a logical inference from the biblical "a needy and destitute laborer" (Deut. 24:14), that is, excluding those who lend their animals or tools for hire, which agrees with a tannaitic interpretation: "The verse says 'because they are poor,'—those who are subject to poverty and wealth, therefore excluding animals and utensils which are not subject to poverty and wealth."¹⁰⁵ So too Philo: "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" (*Virt.* 88).

let him be hated This phrase is not found in the biblical account and may have arisen through Josephus's misreading of *nose'* "to depend on" (Deut. 24:15) as *sone'*, "to hate." The idea that one ought to hate the evildoer is found elsewhere in Josephus, in Qumran, and in the Targum to Ecclesiastes.¹⁰⁶

God has given this to him in place of land and the other possessions In other words, to deny the laborer his wages is tantamount to theft, which Josephus probably deduced from Lev. 19:13: "You shall not defraud your fellow. You shall not commit robbery. The wages of a laborer." The tannaitic corpus, relying also on Lev. 19:13, is explicit on this matter: "He who withholds the wages of a laborer transgresses five prohibitions: You shall not withhold the wages, you shall not commit theft."¹⁰⁷

one ought not even to delay the payment This division of the law into two parts, total denial of wages and deferment of wages, is apparently based on Lev. 19:13 understanding the verse as containing two separate prohibitions, thus: "You shall not defraud your fellow. You shall not commit robbery" [i.e., total denial]. The wages of a laborer shall not remain with you until morning" [i.e., deferment].¹⁰⁸

since God does not wish A paraphrase of the biblical "he will cry to the LORD against you" (Deut. 24:15).

NOTES

1. David Nahman has recently argued that Pharisaic-tannaitic law represents the common, not specifically sectarian, *halakhah* of the time, and therefore Josephus's correspondence with such laws cannot be used to support a Pharisaic identification ("Halakha be-khitve Yosef ben Mattityahu" [PhD diss., Bar Ilan University, 2004], 310–36). Peter Tomson ("Les systèmes de halakha du *Contre Apion* et des *Antiquités*," *Internationales Josephus-Kolloquium Paris 2001*, ed. Folker Siegert and Jürgen Kalms, 188–220, esp. 203–5; in *Münsteraner judaistische Studien* 12 [Munich: Lit 2002]), on the other hand, sees the correspondence between Josephus and tannaitic *halakhah* as an indication that Josephus was a Pharisee. The question of Josephus's identity remains unsettled because although his legal paraphrase of Scripture may reflect a primarily Pharisaic-tannaitic viewpoint, it does not reflect an exclusively Pharisaic-tannaitic viewpoint. On this, see also Eyal Regev and David Nahman, "Yosef ben Mattityahu veka-halakhah shel ha-kitot bi-yemei ha-bayit ha-sheni," *Zion* 67 (2002): 401–33. For how the nonlegal parts of Josephus affect the question of Josephus's Pharisaic self-identity, see Harold Attridge, *The Interpretation of Biblical History in the Antiquitates Judaicae of Flavius Josephus* (Missoula MT: Scholars Press, 1976), 6–16, 178. For an alternative to the common view of the Pharisees as precursors of the *tannaim*, see Martin Goodman, "Josephus and Variety in First-Century Judaism," *Proceedings of the Israel Academy of Sciences and Humanities* 7, no. 6 (2000): 201–11. For others who also question the connection, see Amram Tropper, *Wisdom, Politics and Historiography: Tractate Avot in the Context of the Graeco-Roman Near East* (Oxford: Oxford University Press, 2004), 512, and Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), 69, based on the work of Shaye Cohen and Peter Schäfer.
2. See Ya'akov Sussman, "The History of the Halakha and the Dead Sea Scrolls: Preliminary Talmudic Observations on Miqsat Ma'ase ha-Torah (4QMMT)," in Elisha Qimron and John Strugnell, *Qumran Cave 4.V. Miqsat Ma'ase ha-Torah*, DJD 10 (Oxford, Clarendon Press, 1994), 179–200, which is an abridged English version of Sussman's article in *Tarbiz* 59 (1990): 11–76. See several of Lawrence Schiffman's articles, recently collected in his *Qumran and Jerusalem* (Grand Rapids: William B. Eerdmans, 2010) especially chapters 10, 12, 19, and "Halakhah and Sectarianism in the Dead Sea Scrolls," *The Dead Sea Scrolls in Their Historical Context*, ed. Timothy H. Lim (Edinburgh: T & T Clark, 2000), 123–142. The first several sections (14–30) of Albert Baumgarten's article, "Rabbinic Literature as a Source for the History of Jewish Sectarianism in the Second Temple Period," *DSD* 2.1 (1995), also has a good discussion of the varieties of early *halakhah*, including Rabbinic and Qumran parallels. The early roots of Rabbinic *halakhah* extend as well to legal terminology, on which see Elisha Qimron, "Munahei ha-halakha bi-megilot midbar yehuda ve-hashivotam le-heqer toledot ha-halakha," in *The Scrolls of the Judaean Desert: Forty Years of Research*, ed. Magen Broshi et al. (Jerusalem: Mosad Bialik, 1992), 128–38. In recent years there has been increasing interest in the halakhic material from Qumran. For an overview of this material, see Lawrence Schiffman, "Legal Texts and Codification in the Dead Sea Scrolls," *Discussing Cultural Differences: Text, Context, and Non-Text in Rabbinic Judaism*, ed. Rivka Ulmer (Lanham MD: University Press of America, 2007), 1–21, and Hannah K. Harrington, "Biblical Law at Qumran," *The Dead Sea Scrolls after Fifty Years*, ed. Peter W. Flint and James C. VanderKam; with the assistance of Andrea E. Alvarez (Leiden: Brill, 1998), 1:160–185, and note her concluding remarks that "much of the Pharisaic *halakhah* existed at the time of the writers of these Scrolls" (183). For a bibliography on this topic, especially the work of Schiffman and Joseph Baumgarten, see the footnotes in Lutz Doering, "Parallels without 'Parallelomania': Methodological Reflections on Comparative Analysis of Halakhah in the Dead Sea Scrolls," *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls*, Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 7–9 January, 2003, ed. Steven Fraade, Aharon Shemesh, Ruth Clements (Leiden: Brill, 2006), 13–42.
3. Exod. 21:17, "to treat with contempt" (*mbzy*); Lev. 20:9, "to make light of" (*yzlzl*). See A. Diez Macho, *Biblia Polyglotta Matritensis*, Series 4, *Targum Palaestinense in Pentateuchem: Numeri* (Madrid: Consejo Superior de Investigaciones Científicas, 1977), ad loc. See also the Targums (including *Onkelos*) on Deut. 27:16.
4. For the meaning "to act shamefully" for *mevish*, see *b-w-sh* in L. Koehler, W. Baumgartner, and Johann J. Stamm *The Hebrew and Aramaic Lexicon of the Old Testament*, trans. M. E. J. Richardson (Leiden: Brill, 1994–2001), 1:117 and in David Clines, *Dictionary of Classical Hebrew* (Sheffield, England: Sheffield

- Academic Press, 1993), 2:131. For one of the two elements, either intelligence or shame, in the context of behavior toward a parent, see Prov. 15:20 (cf. 30:17); 19:26 (cf. 13:5); and 29:15.
5. See also Prov. 23:20–22, where “Listen to your father who begot you; / Do not disdain your mother when she is old” follows immediately on “Do not be of those who guzzle wine (*sove’e yayin*), / Or glut themselves on meat (*zolele basar*); / For guzzlers and gluttons (*sove’e we-zolel*) will be impoverished, / And drowsiness will clothe you in rags.” That the verb indicating shame in Prov. 28:7 is transitive while in the other Proverb verses it is intransitive hardly matters in this case, for to act shamefully toward one’s father is to shame one’s father. Clines notes (*Dictionary of Classical Hebrew*, 2:131, under *Hi*. §4) that in some cases the distinction cannot be discerned.
 6. *Sifre Deut.* 218 (in *Sifre on Deuteronomy*, ed. Louis Finkelstein [New York: Jewish Theological Seminary of America, 1969], 252); *M. Sanh.* 8:4. See *B. Sanh.* 71b with the discussion by J. N. Epstein, *Mavo’ le-Nusah ha-Mishnah*, 2nd ed. (Jerusalem: Magnes, 1964), 377. Note that the Peshitta, the Samaritan Targum (see *The Samaritan Targum of the Pentateuch: A Critical Edition*, by A. Tal [Tel Aviv: Tel Aviv University Press?, 1980–83]), and *Targum Neofiti* margin understand *we-yisseru* as meaning corporal punishment (see M. Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period*, 2nd ed., Publications of the Comprehensive Aramaic Lexicon Project [Baltimore: The Bar-Ilan University Press and The Johns Hopkins University Press, 2003], s.v. *rdy*).
 7. *Sir.* 3:11–13; *Tob.* 4:3 (MS S); see also Prov. 23:22 and 30:17 (LXX and Peshitta). Marten Stole, “The Care of the Elderly in Mesopotamia in the Old Babylonian Period,” in *The Care of the Elderly in the Ancient Near East*, ed. M. Stol and S. P. Vleeming (Leiden: Brill, 1998), 60, with bibliography in n2. See also the earlier study by Gerald Blidstein, *Honor Thy Father and Mother: Filial Responsibility in Jewish Law and Ethics* (New York: Ktav Publishing House, 1975), 173, 174n3.
 8. *T. Kid.* 1:11; *Sifra*, *Kedoshim*, *parashah* 1:10 (see I. H. Weiss, ed., *Sifra de-ve Rav* [Vienna: Schlossberg, 1862], 87a); *J. Pe’ah* 1:1, 15c bottom; *J. Kid.* 1:7, 61b; *B. Kid.* 31b bottom; *Mekh. de-Rashbi* 20:12 (see J. N. Epstein and E. Z. Melamed, eds., *Mekhila de-Rabbi Shimon bar Yoḥai* [Jerusalem: Mekize Nirdamim, 1955], 152). In *Ant.* 8.8 Josephus says that “it is a sacred duty to do everything for a mother,” his own addition to the biblical account. On the obligation to provide food for a parent, see *J. Kid.* 1:7, 61c top; and *J. Pe’ah* 1:1, 15d (cf. *Tosafot*, s.v. ‘*Oro* in *B. Kid.* 32a). See also *Pesikta Rabbati*, ed. M. Friedmann (*Ish Shalom*) 23/24 (Vienna, 1880; rpt. Tel Aviv, 1963), 122b, with Friedmann’s notes. Aside from the qualification of having children to provide for the parents’ old age, Josephus (*Ag. Ap.* 2.199), Philo (*Spec. Laws* 3.34; *Joseph* 43), and Rabbinic literature (*M. Git.* 4:5; *M. Yev.* 6:5 with *B. Yev.* 61a–b; *Gen. Rab.* 30.2; cf. *M. Sot.* 4:3) state in general terms that the purpose of marriage is to produce children. See the discussion in Isaiah Gafni, *Yehudei bavel bitekufat ha-talmud* (Jerusalem: Merkaz Zalman Shazar, 1990), 266–67 (and correct his references to Philo, *Spec. Laws* 2.133 and 3.33).
 9. *Matt.* 15:3–6; *Mark* 7:9–13. Jesus’s point is that whereas the Bible understands honor to parents as meaning not speaking evil of or to them, the Pharisees interpreted honoring parents as providing for them. Thus, the definition of what constitutes dishonor (*Matt.* 15:6) has become almost any act (*Mark* 7:12). See further below, n16.
 10. Thackeray translates “respond to the benefits”; see Henry G. Liddell and Robert Scott, rev. Sir Henry S. Jones and Roderick McKenzie, *A Greek-English Lexicon*, 9th ed. [LSJ] (rev. supp., Oxford: Oxford University Press, 1996), s.v. *ameibō*, §B.I.3.
 11. *Sir.* 7:27–28; *Tob.* 4:3–4; *Let. Aris.* 228; *Spec. Laws* 2.234, 248; *Decalogue* 112, 115, 117–18. For pagan sources, see O. Larry Yarbrough, “Parents and Children in the Jewish Family of Antiquity,” in *The Jewish Family in Antiquity*, ed. Shaye J. D. Cohen, *Brown Judaic Studies* 289 (Atlanta: Scholars Press, 1993), 53; and Joseph Hewitt, “Gratitude to Parents,” *American Journal of Philology* 52 (1931): 30–48. On the notion of gratitude toward parents, see Blidstein, *Honor*, 8–19.
 12. *Decalogue* 119. See also *Spec. Laws* 2.225; *Hypoth.* 7.2 (358). For *Sir.* (Hebrew) 3.5, see Blidstein, *Honor*, 2. For Qumran, see 4Q416, frg. 2 3.16 = 4Q418, frg. 9 .17, DJD 34. 110, 120–121, 235. This close relationship between honoring God and honoring parents is found elsewhere in Josephus (*Ag. Ap.* 2.206, 217), and also in Ps.-Phoc. 8 (P. W. van der Horst, *The Sentences of Pseudo-Phocylides* [Leiden: Brill, 1978], 116) and other Hellenistic sources. See Adele Reinhartz, “Parents and Children: A Philonic Perspective,” in *The Jewish Family in Antiquity*, ed. Cohen, 66–67; and Aryeh Kasher’s translation and commentary *Josephus Flavius:*

- Against Apion* [in Hebrew] (Jerusalem: Zalman Shazar Center, 1996), 499. Similarly in ancient Greek (and Zoroastrian) literature; see Hewitt, "Gratitude to Parents," 30–32.
13. *Mekh. R. Ish, Ba-ḥodesh* 8, in H. S. Horovitz and Israel A. Rabin, eds., *Mekhilta de-Rabbi Ishmael* (Frankfurt: [J. Kauffmann] 1928–1931; rpt. Jerusalem: Bamberger and Wahrman, 1960), 231. See also the parallels in *Mekhilta de-Rashbi* 20:12 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yoḥai*, 152); *Sifra, Kedoshim, parashah* 1:5 (Weiss, *Sifra de-ve Rav*, 86b); *Midr. Aseret Hadibrot* 5, in *Bet ha-midrash*, ed. A. Jellinek (Leipzig: Nies, 1853), 1:76. See also *J. Sanh.* 8:2, 26b, which implicitly compares God and father when it comments on "who will not obey the voice of his father" by saying: "this excludes one who listens to his father in heaven." Note also a geonic responsum published by S. Asaf in *Mi-sifrut ha-ge'onim* (= *Toratan shel ge'onim ve-ri'shonim* 1) (Jerusalem: Darom, 1933), 173: "He who dishonors his father, it is as if he denies his Creator. . . ."
 14. *Mekh. de-Rashbi* 20:12 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yoḥai*, 152) and *Sifra, Kedoshim, parashah* 1:5 (Weiss, *Sifra de-ve Rav*, 86b); *B. Nid.* 31a (and parallels). See Blidstein, *Honor*, 160n11. The translation "considers himself dishonored when those who have the same title as himself" is mine, agreeing substantially with Thackeray but disagreeing with Feldman.
 15. *Spec. Laws* 2.232. Marcus, "Juvenile Delinquency in the Bible and the Ancient Near East," *Journal of the Ancient Near Eastern Society* 13 (1981): 41–43; see also his remarks on p. 36.
 16. This seems to be the meaning of *Matt.* 15:3–6 (= *Mark* 7:9–13) although the death penalty is not explicitly mentioned, for the two sources place biblical law in opposition to Pharisaic law. Thus, just as the Bible requires a death penalty for dishonoring parents by "speaking evil" of or to them, so the Pharisaic law would require a death penalty for one who withholds all benefits to a parent. Cf. *Ag. Ap.* 2.206: "If a son does not respond to benefits received from [his parents]—for the slightest failure in his duty toward them—it hands him over to be stoned." See Bernard Revel, "Inquiry into the Sources of Karaite Halakah," *JQR* 3 (1913): 373n96. This explanation of the New Testament passages differs from the traditional interpretation, in which Jesus's complaint against the Pharisees is that they allow a child to avoid providing for a parent by consecrating to God all future benefit that might derive from the child. See at note 9. Note also the implication in *T. Sol.* 110–15 that a son who insults and threatens his father will receive a death penalty (the son denies hitting his father).
 17. *Targum Pseudo-Jonathan, Neofiti, Onkelos: li-tra' beit din* or similar wording. *M. Sanh.* 8:4; *T. Sanh.* 11:7 in MS Vienna and printed editions. Similarly, ancient Mesopotamian texts ("in the Old Babylonian period, if not in all periods") require a trial before judges; see Marcus, "Juvenile Delinquency in the Bible and the Ancient Near East," 41–43.
 18. At *Ant.* 16.365 at the trial in Berytus, Josephus has Herod say to the Roman council, "Both by nature and Caesar's grant he himself [i.e., 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 bystanders were bound to stone him and to kill him in this way." Also earlier when Herod brings his sons to trial before Caesar in Rome, we see the same parental authority when Herod says to Caesar that he, Herod, "had not used his authority against them . . . and had given up all his own rights as a father undutifully treated" (*Ant.* 16.98), a sentiment repeated by Herod's son, Alexander: "For having both the authority of a king and the authority of a father you might have punished the guilty" (*Ant.* 16.106). The punishment referred to is death (106–7).
 19. Throughout *Ant.* 4.260–64, Josephus speaks of both parents—both have been dishonored, both admonish the child, and both determine the death penalty. The Bible as well speaks of both parents. Philo (*Spec. Laws* 2.232) emphasizes this aspect of the law, as does tannaitic law (*M. Sanh.* 8:4).
 20. On *patria potestas* (including bibliography), see the entry by Barry Nicholas and Susan Treggiari in *The Oxford Classical Dictionary*, 3rd ed., s.v. *patria potestas*; and the references in Reinhartz, "Parents and Children," 77n44. Against the view that Herod was acting in *patria potestas*, see Mordecai Rabello, "Beit din beitti etzel Hurdus?" *Perakim be-toledot Yerushalayim bi-yimei bayit sheni: Sefer zikaron le-Avraham Shalit*, ed. Aharon Oppenheimer, Uriel Rappaport, and Menahem Stern (Jerusalem: Yad Ben Tzvi, 1981), 119–35; bibliography at 130n48, which see also regarding the statement in *Ant.* 16.365 that the parents of a rebellious son would place their hands on their son's head. Rabello has also examined *patria potestas* in "Al shilton ha-av be-mishpat ha-romi uve-mishpat ha-ivri," *Dine Yisrael* 5 (1974): 85–153. See also Kasher, *Josephus Flavius: Against Apion*, 500, 512 (on *Ag. Ap.* 206 and 217).

21. *Midr. Tan.* 17:13, in *Midrash Tannaim al Sefer Devarim*, ed. D. Z. Hoffman, 103 (Berlin: T. H. Itskovitski, 1908; rpt. Tel Aviv, 1963). For parallels see Finkelstein, *Sifre on Deuteronomy*, 251n.
22. The practice of hanging the dead body, recorded in Deut. 21:23 and carried out by David on the descendants of Saul at the demand of the Gibeonites (2 Sam. 21:9–10), as well as the continued hanging of the crucified after death, are also instances of exposure of the executed criminal and enemy. For these cases, see Saul Lieberman, "Some Aspects of After Life in Early Rabbinic Literature," in *Harry Austryn Wolfson Jubilee Volume* (Jerusalem: American Academy for Jewish Research, 1965), 2:517.
23. Lieberman, "Some Aspects of After Life," 513–30, especially 515, 520n41.
24. 1 Macc. 7:17; *J.W.* 4.382. Lieberman ("Some Aspects of After Life," 516) deduces from 2 Kings 9:34 that Jezebel would not have been buried had she not been a king's daughter.
25. B. *Sanh.* 46b; *Sifre Deut.* 221 (Finkelstein, *Sifre on Deuteronomy*, 254); T. *Sanh.* 9:6. Thackeray, ad loc., following Julien Weill, trans., *Antiquités Judaïques*, vol. 1, *Œuvres complètes de Flavius Josèphe*, ed. Théodore Reinach (Paris: Leroux, 1900), 262.
26. See LSJ, s.v. *dia*, A.II.1.
27. See *Ant.* 5.37 and 7.4, where *holēs hēmaras* is given for the biblical *ad ha-'erev* (Josh. 7:6; 2 Sam. 1:12).
28. The Latin is *lingnoque suspensus*, lit. "being hung from wood," thus "a plank (or tree)."
29. The biblical text refers to exposure of the corpse, not to crucifixion; see Jeffrey Tigay, *JPS Torah Commentary: Deuteronomy* (Philadelphia: The Jewish Publication Society, 1996), 383n60. Some later interpreted the verse as referring to crucifixion, but that clearly is not how Josephus saw it. For a recent full discussion of this issue, see Yeshayahu Maori, *The Peshitta Version of the Pentateuch and Early Jewish Exegesis* [Hebrew] (Jerusalem: Magnes, 1995), 194–200.
30. See, e.g., Feldman, *Judaean Antiquities* 1–4, 435n867. Such an interpretation would accord with a Rabbinic tradition attributed to R. Eliezer (1st–2nd centuries) that all those who were executed by stoning were to be hung (M. *Sanh.* 6:4). R. Eliezer is known for transmitting early halakhic traditions; see, e.g., Isaac Gilat, *Mishnato shel R. Eliezer ben Hyrcanus u-mekomah be-toledot ha-halakhah* (Tel Aviv: Dvir, 1968), 7–35.
31. For the view that *Ant.* 4.202 implies that hanging applied only to the blasphemer, see the translations of that passage by Julien Weill (*Œuvres complètes de Flavius Josèphe*, 1:262) and Thackeray, and Heinrich Weyl, *Die jüdischen Strafgesetze bei Flavius Josephus in ihrem Verhältnis zu Schrift und Halacha* (Berlin: H. Hrkowski, 1900), 31. The biblical text requiring the stoning of the blasphemer (Lev. 24:14–16) says nothing of hanging, thus the requirement of hanging that appears in the Latin translation of Josephus must derive from Deut. 21:22–23.
32. See *Sifre Deut.* 221 (Finkelstein, *Sifre on Deuteronomy*, 253–54), *Midr. Tan.* (Hoffman, *Midrash Tannaim*, 132); B. *Sanh.* 45b; see also *Sifre Zuta Devarim: Muva'ot mi-midrash tana'i hadash*, ed. Menahem Y. Kahana (rpt. Jerusalem: Magnes Press, 2005), 322–24. The basis of the exegesis is a reading of the words "cursed of God" as "one who curses God" (objective genitive). For a full discussion of the exegesis of this clause in early Jewish texts, see Moshe Bernstein, "Ki kilelat elohim talui (Deut. 21:23): A Study in Early Jewish Exegesis," *JQR* 74 (1983): 21–45; Maori, *The Peshitta Version of the Pentateuch*, 194–200; and David Henshke, "Le-toledot midrash ha-katuv kilelat elohim talui . . .," in *Tarbiz* 69 (2000): 524, 525n84.
33. *J.W.* 4.317 ("even those who have been sentenced to be hung are taken down and buried before sunset"), which is apparently based on Deut. 21:22–23, seems to contradict these Josephan passages, which reflect the Jewish practice of night burial in Josephus's time. The word "before" (*pro*) in this passage, however, does not mean anytime before sunset but toward, i.e., close to, sunset. This is more clearly seen in a variant to this passage, found in both the Latin translation and in a 14th-century Greek manuscript, which reads: "toward (*pros, ad*) sunset" (Benedictus Niese, ed., *Flavii Iosephi Opera* [Berlin: Weidmannos, 1887–95], 6:388). Note also that Latin *ad* can mean "at." *J.W.* 4.317 would then agree with the other cited passages in recording the Jewish practice of burial for executed criminals at night, apparently at sunset or shortly thereafter.
34. *Sifre Deut.* 221 (Finkelstein, *Sifre on Deuteronomy*, 254); *Midr. Tan.* 21:23 (Hoffman, *Midrash Tannaim*, 132); B. *Sanh.* 46b.
35. In an addition to Num. 25:4 ("Take all the ringleaders and have them publicly impaled before the LORD. . ."), the Palestinian Targumim (*Tg. Ps-J.*; *Frg. Tg.*; *Tg. Neof.*) add: "and at the setting of the sun you shall take them down and bury them." On the practice of night burial for criminals as recorded in Josephus, see Adolf Büchler, "L'enterrement des criminels d'après le Talmud et le Midrasch," *Revue des études juives* 46 (1903): 74–88, esp. 75 and 88.

36. Cf. also *Ant.* 5:124, an addition to *Judg.* 1:7, and *Ant.* 7:43.
37. *Deut.* 28:26; 1 *Kings* 14:11–13; 21:23–24; 2 *Kings* 9:34–37; *Jer.* 8:2; 9:21; 14:16; 16:4–6; 22:19; *Ps.* 79:2–3. See also 1 *Macc.* 7:17.
38. *Tob.* 1:17–19; 2:4–8; *Midr. Mishlei* 9:2 (S. Buber, ed., *Midrash Mishlei* [1893; rpt. Jerusalem: 1965], 61–62; Burton L. Visotzky, ed., *Midrash Mishle: A Critical Edition Based on Vatican MS Ebr.* 44 ... [New York: Jewish Theological Seminary of America, 1990], 67–68).
39. *M. Naz.* 7:1; *Sifra, Emor*, Introduction 3 (ed. Weiss, 93b); *Sifre Num.* 26 (H. S. Horovitz, ed., *Sifre 'al sefer bamidbar ve-sifre Zuṭa* (Jerusalem: Wahrman, 1966 [Leipzig, 1917]), 32.); *Semahot* 4:16–19; *B. Git.* 61a.
40. 1 *Kings* 11:15. See also *Josh.* 8:29; 10:27; and cf. *Ezek.* 39:12–15. Cf. also *T. Git.* 3:14/5:5 (S. Lieberman, ed., *Tosefta ki-feshutah* [New York: Jewish Theological Seminary, 1955–88]: 4:259).
41. *Ezek.* 18:17. Cf. also *Ezek.* 18:8, 13; *Ps.* 15:1, 5; *Prov.* 28:8. The idea is also found in *Spec. Laws* 2:78. Interestingly both Philo and Rabbinic literature refer to one who lends on interest as blind, although they use the term for different purposes. Philo (*Spec. Laws* 2:77) considers him blind for he cannot see that he will probably not get his money back; R. Yose considers him blind for he cannot see that he is transgressing God's law (*T. BM* 6:17 = *B. BM* 71a, *J. BM* 5:13, 10d).
42. *Deut.* 15:7–10; *Prov.* 19:17; 22:9; 25:21–22; 28:27; *Ps.* 15:1, 5; 41:2; 112:5. See Tigay's comment on *Deut.* 14:29 (*Deuteronomy*, 144). Cf. also *Luke* 6:35 and the *Shepherd of Hermas* (2nd century CE), Par. 2:5.
43. *Deut.* 24:13.
44. The rule is used at least as early as R. Eleazar b. Azariah (1st quarter, 2nd century) and his younger contemporary R. Akiva in a legal context (for Eleazar, see *B. Mak.* 23b and *B. Yev.* 4a; for Akiva, see *Sifre Num.* 131 [Horovitz, *Sifre*, 169]), and even earlier, by R. Eliezer, in an aggadic context (*B. Yev.* 63b). Henshke ("Le-toledot midrash," 515, 516n37) finds that *semukhin* was also used by R. Akiva's teacher and two of R. Akiva's contemporaries, as well as by R. Eliezer in a halakhic context; see there also for bibliography. Cf. I. Heinemann ("Darko shel Yosefus be-tei'ur Kadmoniyot ha-Yehudim," *Zion* 5 [1940]: 200n69), who sees Josephus applying the rule to an aggadic passage.
45. As opposed to the idea found in *Tob.* 4:9 and elsewhere. See Frank Zimmerman, *Book of Tobit*, Dropsie College Series (New York: Harper & Brothers, 1958), comment on *Tob.* 4:9, where giving charity is said to store up good credit with God against the day of necessity.
46. See Niese, *Flavii Iosephi Opera*, 1:278. The idea of laying up credit against a time of need is found elsewhere in regard to almsgiving. See *Tob.* 4:9 in Zimmermann, *The Book of Tobit*, where other references are cited. Similarly, regarding good works: *Psalms of Solomon* 9:5 (*Old Testament Pseudepigrapha*, ed. James Charlesworth [Garden City NY, 1983] 2:660) and *Ignatius to Polycarp* 6 (ed. Kirsopp Lake, *The Apostolic Fathers* [Cambridge: Harvard University Press, 1912] 1:274–75).
47. Tigay, *Deuteronomy*, 223, comment on *Deut.* 24:6, introduction. See further the references in Tigay, "A Talmudic Parallel to the Petition from Yavneh-Yam," in *Minhah le-Nahum*, ed. Marc Brettler and Michale Fishbane (Sheffield: JSOT Press, 1993), 330n1.
48. *M. BM* 9:13. See Solomon Zeitlin, "Studies in Talmudic Jurisprudence: Possession, Pignus and Hypothec," *JQR* 60 (1969): 101–3, for discussion and other Rabbinic sources.
49. *M. BM* 9:13. So too *Sifre Deut.* 276 (Finkelstein, *Sifre on Deuteronomy*, 295), *Midr. Tan.*, ad loc. (Hoffman, *Midrash Tannaim*, 158), *Mek. de-Rashbi*, ad loc. (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yoḥai*, 212; = *B. BM* 113b), *T. BM* 10:8, *J. Git.* 5:1 46c (= *J. BM* 9:15, 12a).
50. *B. BM* 113b. This text does not necessarily imply that no court judgment exists. Josephus's "who comes with the law to support him" assumes that a judgment has been rendered and that the creditor comes to ask for the pledge on the basis of that judgment (contra Hanokh Albeck's comment to *M. BM* 9:13 in his *Shishah sidre mishnah* [Jerusalem: Bialik Institute; Tel Aviv: Dvir, 1958–59, 430]. The Greek is literally "with the help of the law," but it does not imply that a court functionary accompanied the creditor as Moritz Duschak believes (*Josephus Flavius und die Tradition*, [Vienna: Schlossberg, 1864], 64).
51. *B. BM* 114b. This view is, however, disputed; see *Sifre Deut.* 277 (Finkelstein, *Sifre on Deuteronomy*, 295) and Goldenberg, "Halakhah in Josephus and in Tannaitic Literature: A Comparative Study" (PhD diss., Dropsie College, 1978), 91n1.
52. Targums to the verse; *M. BM* 9:13 (= *Sifre Deut.* 272, in Finkelstein, *Sifre on Deuteronomy*, 292); *B. BM* 113b; *Spec. Laws* 3:204.
53. Philo's source, on the other hand, relied on the LXX, according to which the law applies exclusively to the

- Israelite. Thus Philo distinguishes between kidnapping an Israelite, for which the penalty is death, and kidnapping a non-Israelite, for which the penalty is "such as is adjudged by the court" (*Spec. Laws* 4.19). As for Josephus's possible apologetic motives, see Feldman's notes to the passage (*Judaean Antiquities* 1-4, 439-440). The claim of apologetic tendencies in Josephus has been overstated. For example, David Altshuler ("Descriptions in Josephus' *Antiquities* of the Mosaic Constitution" [PhD diss., Hebrew Union College—Jewish Institute of Religion, 1977], 48, 137) claims that when Josephus deals with the law of interest (*Ant.* 4.266), he omits for apologetic reasons the biblical detail that one may take interest from a non-Jew (*Deut.* 23:21). But Josephus does in fact restrict the prohibition to "Hebrews" at *Ant.* 4.266. By not stating explicitly the corollary as found in Deuteronomy, Josephus may merely be abridging the biblical text, just as he apparently does in the law of kidnapping, where he omits the biblical clause that the kidnaper must be put to death whether the kidnaped person has already been sold or is yet found in the kidnaper's possession. On the other hand, in *Against Apion*, an explicitly apologetic work, Josephus's omission of the "Hebrew" qualification on the prohibition of interest is probably apologetically motivated. On the question of apology in Josephus, see Goldenberg, "Halakhah," PhD diss., 218-35; Gregory Sterling, *Historiography and Self-Definition: Josephus, Luke-Acts and Apologetic Historiography* (Leiden: Brill, 1992), 297-308; and Silvia Castelli, "Antiquities 3-4 and *Against Apion* 2:145ff.: Different Approaches to the Law," in *Internationales Josephus-Kolloquium: Amsterdam 2000*, ed. Jürgen Kalms (Munich: Lit, 2001), 166.
54. *M. BK* 7:1; discussion in *B. BK* 63b; and see Bernard Jackson, *Theft in Early Jewish Law* (Oxford: Clarendon Press, 1972), 108. Cf. *Ant.* 4.285 with 288, where Josephus uses the same verb (*apostereō*) to describe misappropriation of deposits and withholding of wages to a laborer. Theft is theft.
 55. *Spec. Laws* 4.7. In *Ant.* 16.1-3, Josephus says that Herod instituted a law, contrary to Jewish law, that house-breakers were to be sold into slavery to foreigners outside of the Land of Israel. On this law in Josephus and Philo, see Jackson, *Theft*, 158-64.
 56. *Mekh. R. Ish.*, *Nez.* 13 (in H. S. Horovitz and Israel A. Rabin, eds., *Mekhilta de-Rabbi Ishmael* [Frankfurt, 1928-1931; reprint, Jerusalem: Bamberger and Wahrman, 1960], 293). See also Jackson's discussion (*Theft*, 210-11).
 57. LXX has a non-specific "break-in." Similarly RSV and NRSV have "breaking in" but NJPS understands the Hebrew as "tunneling" under the wall of the house.
 58. Jackson (*Theft*, 207) notes that Josephus's ambiguous formulation could refer either to the place where the act is committed ("in the breach") or to the time when the act is committed ("in the breaking through").
 59. As noted by as Weyl, *Strafgesetze*, 126-28.
 60. R. Shimon bar Yoḥai, at *J. Sanh.* 8:8, 26c, *afilu hutz le-mahteret*; cf. *Mekhilta de-Rashbi* 22:2 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yoḥai*, 193, lines 25-25b). Contrary to Jackson's view, these texts do not imply that their authors understood *Exod.* 22:1 to refer to place rather than time.
 61. See L. Koehler, W. Baumgartner, and Johann J. Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament*, 3:1310, s.v. *seh*.
 62. *M. Bek.* 1:4; *T. Bek.* 1:13. Cf. *Mekhilta de-Rabbi Ishmael*, *Nez.* 12 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 292) and *Mekhilta de-Rashbi* 21:37 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yoḥai*, 190), which oppose wild animals to the biblical "ox or a sheep" (*Exod.* 21:37).
 63. *Mekhilta de-Rabbi Ishmael*, *Nez.* 13 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 295.9-10). The reading in MS *Midrash Hakhamim*, recorded in the variants, supplies the missing qualification. *Midrash akhamim* is a 5th-century Italian composition according to Menahem Kahana in *Literature of the Sages*, ed. Shmuel Safrai, vol. 2 (Assen: Van Gorcum, 2006), 70. Jackson (*Theft*, 70, 107) sees the lack of the sale or slaughter qualification as reflecting an earlier law.
 64. *Mekhilta de-Rabbi Ishmael*, *Nez.* 13 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 295.7-8). See Jackson's discussion in *Theft*, 105-6.
 65. A fourfold repayment is also mentioned in Papyrus 19 of the Dead Sea Murabba'at documents, but the context, which refers to damages, is not entirely clear. See Pierre Benoit, Josef Tadeusz Milik, and Roland de Vaux, *Les Grottes de Murabba'at, Vol. 1, Texte*, DJD 2.1 (Oxford: Clarendon Press, 1961), 104-9. See Jackson, *Theft*, 137n9 for bibliography.
 66. *Mekh. de-Rashbi*, 22:2 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yoḥai*, 192); *B. Kid.* 18a; *J. Sot.* 3:8, 19b.

67. Jackson, *Theft*, 143.
68. Jackson, however, understands the biblical text (*we-nimkar bi-gnevato*) to mean "he shall be handed over" rather than "he shall be sold" (*Theft*, 139–42). *Tg. Ps.-J.* to Exod. 21:2 implies that the thief does not become a slave to the person from whom he stole.
69. The first was proposed by Marcus Olitzki, "Der jüdische Sklave nach Josephus und der Halacha," *Monatschrift für Geschichte und Wissenschaft des Judentums* 16 (1889): 77; the second by Heinrich Weyl, *Strafgesetze*, 120, and Solomon Zeitlin, "Slavery during the Second Commonwealth and the Tannaitic Period," *JQR* 53 (1963): 187. Zeitlin explains that "he shall become a slave for the benefit of whom he was condemned" is the meaning of the biblical verse since in biblical law, theft was a private matter between the thief and the injured party. Cf. Maimonides, *Mishneh Torah*, *Genevah* 3:11. As to the rights of the injured party over the thief, cf. R. Judah's statement in *Mekh. R. Ish.*, *Nez.* 13 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 294). Ephraim Urbach proposed that Josephus was recording the practice of a later period. See "Hilkhot 'avadim ke-makor le-historiya ha-hevratit," *Zion* 25 (1960): 150 (= *Me'olamam shel hakhamim* [Jerusalem: Magnes Press, 1988], 188).
70. *Mekhilta de-Rabbi Ishmael*, *Nez.* 1 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 248).
71. *Mekhilta de-Rabbi Ishmael*, *Nez.* 2 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 252).
72. *Mekhilta de-Rabbi Ishmael*, 253. In other sources (*T. BK* 7:5; *J. Kid.* 1:2, 59d; *B. Kid.* 22b; see Rashi to Exod. 21:6) R. Yohanan's exposition is based on the connection between two other verses dealing with slaves: "For it is to Me that the Israelites are servants . . ." (*Lev.* 25:55) and yet this man took a human master (*Lev.* 25:39), therefore the ear is pierced."
73. A "contamination" of the wording here dealing with lost objects with the wording in *Ant.* 4.271 dealing with double payment is especially likely since, as pointed out by Robert Gallant ("Josephus' Exposition of Biblical Law: An Internal Analysis," [PhD. diss., Yale University, 1988], 248–49), the list of lost objects in the Bible (*Deut.* 22:1–3)—ox, sheep, donkey, garment, any lost thing—is almost identical with the list of objects (*Exod.* 22:3, 6, 8) for which one pays a double penalty.
74. *T. BM* 2:19.
75. *Mekh. de-Rashbi* 23:4 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yohai*, 215).
76. *M. BM* 2:9 (= *Sifre Deut.* 222, in Finkelstein, *Sifre on Deuteronomy*, 255–56).
77. *Mekh. R. Ish.*, *Kaspa* 20 (Horovitz and Rabin, *Mekhilta d'Rabbi Ishmael*, 324).
78. Note that the Josephan and Rabbinic criteria for lost animals are in opposition to the LXX, which translates "going astray" as "wandering on the road."
79. *Mekh. R. Ish.*, *Kaspa* 20 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 324).
80. *B. BM* 28b. *J. BM Ta'an* 3:11, 66d also connects this rock with the reclaiming of a lost object, but it does not mention the proclamation by the founder or the identification by the loser.
81. *M. BM* 2:1–6. Also in *Mekh. R. Ish.*, *Kaspa* 20 (Horovitz and Rabin, *Mekhilta d'Rabbi Ishmael*, 324).
82. *T. BM* 2:17 (quoted with variants in *B. BM* 28b and *J. BM* 2:7, 8c).
83. *B. BM* 22b. See Rashi, s.v. *makhreiz makom*, and Tosafot, s.v. *i deleka*, ad loc.
84. So implied in Thackeray's and Weill's translations, as in Gallant, "Josephus' Exposition of Biblical Law," 251; there, Gallant rightly objects on methodological grounds to my earlier translation of *parachrēma* as "for the time being" or "the present."
85. M. Hadas, ed. and trans., *The Third and Fourth Books of Maccabees*, Jewish Apocryphal Literature Series (New York: Dropsie College for Hebrew and Cognate Learning, 1953).
86. *Mekh. R. Ish.*, *Nez.* 15 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 300); *Mekh. de-Rashbi* 22:7 (Epstein and Melamed, *Mekhilta de-Rabbi Shimon bar Yohai*, 201); *B. BM* 41b; *B. BK* 63b; *Tg. Onk.*, *Neof.*, and *Ps.-J.* at Exod. 22:7; *Frg. Tg.* ad loc. The language of the Hebrew text—"that he has not laid hands on the other's property"—implies an oath, as can be seen in Exod. 22:10, "an oath before the LORD shall decide between the two of them that the one has not laid hands on the property of the other." So also LXX, although it translates *elohim* literally as "God": "the owner of the house shall come near to God and swear that. . ." See also Exod. 22:7 NJPS: "... the owner shall . . . depose before God . . ."
87. *Mekh. R. Ish.*, *Nez.* 15 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 300). *Mekh. R. Ish.*, *Nez.* 16 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 303): "All biblical oaths require the invocation of God's name" (*be-yod he'*). So too *Sifre Num.* 15 (Horovitz, *Sifre*, 20).

88. For a discussion of this development, see Goldenberg, "Halakhah," PhD diss., 104–9; and Goldenberg, "Al hitpathutah shel halakhah ahat," in *Bitzaron*, Shevat-Adar 5737 (January-February 1977): 111ff. Helping a fallen animal is found also in Pseudo-Phocylides 140, and cf. 4 Maccabees 2:14.
89. William Whiston's translation, *The Works of Flavius Josephus* (Philadelphia: J. B. Smith, 1859) is "as having a sympathy with it in its pain." I have rephrased the clause to give a more literal translation of the Greek and to provide an easier comparison with Feldman's translation.
90. See B. BM 32a–b. Rabbinic discussions of the principle of *sa'ar ba'alei hayyim* in general, and as applied to Deut. 22:4 in particular, is amoraic, although it would appear that both the principle and its scriptural application extend back to the tannaitic period. See *Midrash ha-gadol* (Jerusalem: Mossad Harav Kook, 1975), *Bemidbar*, ed. Zvi M. Rabinowitz, at 22:32, quoting R. Yoḥanan, a first-generation *amora*, who derives the principle from Num. 22:32 (cf. Maimonides, *Moreh nevukhim* [Guide of the Perplexed] 3:17).
91. T. BM 2:24.
92. *Sifre Deut.* 223 (Finkelstein, *Sifre on Deuteronomy*, 254); T. BM 2:29; B. *Sanh.* 73a (see Finkelstein, *Sifre on Deuteronomy*, 257n); B. *BK* 81b; J. *Yev.* 16:3, 15c. See also B. *BK* 80b–81a and J. *Ket.* 13:7, 36b. Thus, Josephus did not invent this law, as some think, in an attempt to refute the charge that Jews pointed out the road only to coreligionists. See Goldenberg, "The Halakha in Josephus," *JQR*, 38–39, and "Halakhah," PhD diss., 117–18 for a full discussion.
93. Similarly in the margin to MS Neofiti.
94. *Frg. Tg.* (MS Paris) and MS Neofiti margin to Lev. 19:14. See also the *Targum* manuscript to Ps. 146:8 (quoted by J. Levy, *Chaldäisches Wörterbuch über die Targumim*, 3rd ed., s.v. *akhsanya'*).
95. This is so whether one accepts the reading *aponta* (absent person) or *aopton* (unseen person). Thackeray (and Whiston, 1737; and Abraham Schalit, *Joseph ben Mattityahu: Kadmoniyot ha-yehudim* [Jerusalem: Bialik Institute, 1955], 1:136, 2:88 in the Hebrew pagination) took *aopton* as the correct reading and translated it "unseeing, sightless," an attractive suggestion since it echoes the biblical verse that speaks of the blind. (Probably for the same reason, Schalit translates *eneon* as "deaf" although the word means "dumb," "mute"—it follows the biblical text. Schalit offers no comment on this translation.) But as Thackeray is forced to admit, the Greek word "in its one occurrence elsewhere means 'unseen' (not 'unseeing')" (*Jewish Antiquities* to 4.276, 609).
96. Cf. also *Targumim Neofiti* margin and *Pseudo-Jonathan. Lekah Tov*, also known as *Pesikta Zuṭrata*, compiled by Ṭoviah b. Eliezer of 11th–12th-century Bulgaria, is an anthology of earlier midrashic works, with commentary. S. Buber edited the volume on the Pentateuch (*Midrash Lekah Tov* [Vilna: Rom, 1880–84]) and A. W. Greenup on the five scrolls (*Midrash Lekah Tov le-ḥamesh megilot* rpt. Jerusalem: Vagshal, 1988/89]). Not all of the sources found in *Lekah Tov* are extant in their original compositions.
97. See s.v. *kōpheuō* in LSJ; G. W. H. Lampe, *A Patristic Greek Lexicon* (Oxford: Clarendon, 1961); and William F. Arndt and F. Wilbur Gingrich, *A Greek-English Lexicon of the New Testament and Other Early Christian Literature*, 2nd ed., rev. by Frederick W. Danker (Chicago: University of Chicago, 1979). For *heresh*, see L. Koehler, W. Baumgartner, and J. Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament*; Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (London/New York: Luzac, 1903); cf. Eliezer Ben-Yehuda, *Milon ha-lashon ha'ivrit ha-yeshanah veḥa-hadashah* (rpt. Tel-Aviv: La'am, 1948–59).
98. For Hebrew, see M. *Ter.* 1:2; for Greek, see Arndt, Gingrich, rev. Danker, *Greek-English Lexicon*, s.v. *kōphon*, citing Philo and the *Letter to Diognetus*, a Christian work of the 2nd century CE.
99. See *Mekh. R. Ish.*, *Nez.* 6 (Horovitz and Rabin, *Mekhilta de-Rabbi Ishmael*, 270); B. *Ket.* 33b; cf. *Midr. ha-Gadol, Shemot*, ed. Mordecai Margulies, at 21:18–19 (p. 476).
100. Weyl, *Strafgesetze*, 54–57, followed by Reinach (in Weill), Thackeray, and Schalit in their respective editions of Josephus; and by Samuel Belkin, *Philo and the Oral Law* (Cambridge, Mass.: Harvard University Press, 1940), 99; and Gallant, "Josephus' Exposition of Biblical Law," 254–55.
101. See, e.g., T. *BK* 9:5–6 (ed. Zuckerman, 363), which is echoed 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" (ibid.). This means that even if the injured party dies after the determination of life is made, 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; see B. *Sanh.* 78b; cf. also *Midr. ha-Gadol, Shemot*, ibid., at 21:18–19 (ed. Margulies, 476), and J. *Naz.* 9:5, 58a (J. *Sanh.* 9:3, 27a).

102. LSJ, s.v. *epeita* II, 3. See also David Goldenberg, "AJ 4.277 and 288 Compared with Early Rabbinic Law," *Josephus, Judaism, and Christianity*, ed. Louis H. Feldman and Gohei Hata (Detroit MI: Wayne State University Press, 1987), 208–209n16.
103. *Spec. Laws* 3.105–7. Philo follows the last statement 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. R. Nehemiah's view in *M. Naz.* 9:4 (similarly *M. Sanh.* 9:1): "If one smites his fellow and it was determined that the injured party would die but his condition improved, and later, however, he died, he [the smiter] is liable [to the death penalty]. R. Nehemiah says that he is free, for there is proof that he did not die of the injuries [lit. *raglayim le-davar*];" see Albeck's notes to *M. Naz.* 9:4 (*Shishah sidre mishnah*, 3:380); and cf. *M. Sanh.* 9:1.
104. See J. Duncan M. Derrett, "Workers in the Vineyard: A Parable of Jesus," *JJS* 25 (1974): 71–73.
105. *B. BM* 111b. To be sure, the redactors of the Talmud understood this tannaitic text differently. However, as already noted by Ritba (d. 1330), *Ḥidushe ha-Riṭba* (Jerusalem: Mosad ha-Rav Kuk, 1992), ad loc. in his novellae to the passage, the talmudic interpretation of the text is problematic; see Goldenberg, "Halakhah," PhD diss., 133–35 for a full discussion. The standard tannaitic view disagrees with this exclusion and extends the prohibition to include withholding payment for the hiring of one's animals and property; see *M. BM* 9:12; *T. BM* 10:3–4; *B. BM* 111a–b; *J. BM* 9:13, 12b; *Sifra*, *Kedoshim* 2:9 (Weiss, *Sifra de-ve Rav*, 88b); *Sifre Deut.* 278 (Finkelstein, *Sifre on Deuteronomy*, 296n), *Midr. Tan.* to Deut 24:15 (Hoffman, *Midrash Tannaim*, 159). The earliest named authority for this inclusion is R. Yose ben Judah, a fourth-generation *tanna* and contemporary of R. Judah ha-Nasi, whereas the opinion that excludes animals and property is attributed to R. Hananya (Ḥanina), a second-generation *tanna*. In other words, the early *halakhah* agrees with Josephus. See Goldenberg, "Halakhah," PhD diss., 132–35, and Goldenberg, "Ant. 4.277 and 288 Compared with Early Rabbinic Law," 204.
106. *J.W.* 2.139; Targum to Eccles. 3:8. For Qumran, see Goldenberg, "AJ 4.277 and 288 Compared with Early Rabbinic Law," 205–6.
107. *T. BM* 10:3; *Sifre Deut.* 278 (Finkelstein, *Sifre on Deuteronomy*, 295–96); *B. BM* 111a; *Midr. Tan.*, at Deut. 24:15 (Hoffman, *Midrash Tannaim*, 158). See also *Spec. Laws* 4.196.
108. Cf. *Tg. Ps.-J.* to Deut. 24:14, which understands the second verse as explanatory of the first.