

# ‘Go Out and Study the Land’ (Judges 18:2)

Archaeological, Historical and  
Textual Studies in Honor of Hanan Eshel

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JOSEPHUS AND EARLY HALAKHAH: THE EXCLUSION OF  
IMPURE PERSONS FROM HOLY PRECINCTS\*

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הא מני? חנן היא (כתובות קח ע"א)

To Hanan  
With deep friendship and esteem  
And with gratitude for your rare generosity,  
as a person and as a scholar

In this paper I wish to demonstrate the contribution of Josephus' writings to the research of early halakhah. The legislative system reflected in Josephus' writings is not identical with its counterparts in other Jewish corpora; but nonetheless, his depiction of Jewish law may enable the exposure of an ancient halakhic infrastructure, shared by divergent Jewish groups in late antiquity.

*Exclusion of Impure Persons According to Josephus*

In the third book of *Antiquities of the Jews*, Josephus supplements his description of the Temple and its vessels with "some few of the regulations pertaining to the rites of purification and types of sacrificial ceremonies."<sup>1</sup> He opens with a discussion on sacrifices (*ibid.*, 224–257)

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<sup>1</sup> Josephus, *A.J.* 3.224; Louis H. Feldman, *Judean Antiquities 1–4* (vol. 3; ed. Mason; Leiden: Brill, 2000), 291. Josephus' treatment of the laws of purity is cursory and particularly superficial, far from exhausting the full scope of the subject as presented in the Bible itself, and all the more its range during the Second Temple era. David Nakman, "The Halakhah in the writings of Josephus" (Ph. D. diss. Bar Ilan University, 2004), 200–3 (Hebrew), surmised that the entire paragraph treating the subject of purity was motivated primarily by Josephus' desire to describe the Torah's strict attitude towards lepers, and to refute the gentile vilification of Moses as having been a leper. As such, his discussion of all the other forms of impurity is only parenthetical background material. See also Gohei Hata, "The Story of Moses Interpreted within the

followed by a *quasi* synopsis of the laws of purity (258–269). This section also deals with the exclusion of impure persons from certain domains:

(261) He (Moses) expelled from the city both those whose bodies were attacked by leprosy and those with spermatorrhoea.<sup>2</sup>

He segregated until the seventh day women whose secretion occurs for them in accordance to nature, after which he permitted them, as already pure, to associate with the community.<sup>3</sup>

(262) Similarly, it is prescribed by law for those who have buried the dead<sup>4</sup> to associate with the community after as many days. [...]<sup>5</sup>

(264) He banished lepers completely from the city—associating with no one and in no way differing from a corpse [...].

Scripture mandates the sending of lepers “outside the camp” (Lev 13:46, 14: 3). Similar to the Qumran literature<sup>6</sup> and tannaitic halakhah,<sup>7</sup> Jose-

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Context of Anti-Semitism,” in *Josephus, Judaism, and Christianity* (eds. L.H. Feldman and G. Hata; Detroit: Wayne State University Press, 1987), 190–2.

<sup>2</sup> This is the interpretation evidenced by all of the manuscripts. Research literature has suggested an amended reading, which would group “those with spermatorrhoea” (τους περι τὴν γονὴν ῥεομένους) with the menstruating women (τὰς γυναῖκας δ’ αἷς ἢ τῶν κατὰ φύσιν ἐκκρισις ἐπίοι), and distinguish them syntactically from the lepers (τοὺς λέπρα τὰ σώματα κακοθέντας). This would equate the rules applying to them with that of the menstruants: separation for seven days without being sent away from the city, a practice closer to the rabbinic legislation. However, this proposal is not supported by any manuscript, and its rationale is not probable in view of Num 5:2 regarding the sending away of the *zab* from the camp, and in view of 11QT<sup>a</sup> xlviii:15, which similarly mandate his sending away. This subject in its entirety is dealt with by Silvia Castelli, “Josephus *Halakhah* and the *Temple Scroll*: Questions of Sources and Exegetic Traditions in the Laws of Purity,” *Henoah* 24 (2002): 334–5.

<sup>3</sup> The original term is ἐνδημεῖν, which literally means “to remain in a place,” see Feldman, *Judean Antiquities*, 308, nn. 781–2. Notice that Feldman’s translation in the following section (A.J. 3.262, *ibid.*, 308) is “to associate with the community” as well. See also his translation of section 264 (*ibid.*, 309). H. Thackeray, *Josephus, Jewish Antiquities, Books I–IV* (vol. 4; London and New York: Heineman and G.P. Putnam’s Sons, 1930), 445 translated: “To return to society.”

<sup>4</sup> Literally: Who have taken care of the dead (κηδεύσασσι νεκρὸν). Thackeray, *Jewish Antiquities*, has: “who have paid the last rites to the dead.”

<sup>5</sup> The passage I skipped over requires those who remain in a state of defilement beyond seven days to bring a special sacrifice. This sacrifice is not mentioned in the Pentateuch. See Feldman, *Jewish Antiquities*, 308–9, nn. 784–5 and the literature cited there. For a detailed discussion and literature, see: Nakman, *Halakhah*, 211–8. The methods of purification and atonement for the corpse defilement exceed the scope of my discussion in the current framework. The paragraph also refers to the duty of bringing a sacrifice by people afflicted with spermatorrhoea.

<sup>6</sup> See e.g. 11QT<sup>a</sup> xlviii:14.

<sup>7</sup> *m. kelim* 1:7.

phus understood the biblical “camp” as a place bearing the geographical features of a permanent settlement—“a city.” Nonetheless, he omits mentioning whether the city is specifically Jerusalem or any other city as well. However, in so far as Josephus attributes the act of exclusion to Moses, we may conclude that it was a general enactment, not directed specifically at the concrete Jerusalem, where Moses never was. This may also be concluded from his comments in another context, dealing with the subject of the lepers’ exclusion from every city and village.<sup>8</sup>

Regarding those with spermatorrhoea—the central Scriptural passage concerning the impurity of the *zab* (Lev 15:1–16) makes no mention of an obligation to send him away from the camp. This directive, mentioned by Josephus, as well as his juxtaposition of leprosy and spermatorrhoea, are presumably based on another Scriptural passage:

The Lord spoke to Moses, saying: Instruct the Israelites to remove from camp anyone with an eruption [*zarua*] or a discharge [*zab*] and anyone defiled by a corpse. Remove male and female alike; put them outside the camp so that they do not defile the camp of those in whose midst I dwell. The Israelites did so, putting them outside the camp, as the Lord had spoken to Moses, so the Israelites did. (Num 5:1–4).<sup>9</sup>

The remarkable point here however is that whereas the verses stipulate three categories of impure persons, *zarua*- leper, *zab*—one with discharge and corpse contaminated, in the first paragraph cited above (261) Josephus deals exclusively with the leper and the one with discharge, deferring his treatment of the corpse impurity to the following paragraph (262). Robert P. Gallant explained this phenomenon as stemming from Josephus’s tendency to distinguish between distinct categories. Leprosy and discharge both require the offering of a sacrifice following purification, which is not the case for corpse impurity.

<sup>8</sup> C. Ap. 1.281–282; John M.G. Barclay, *Against Apion* (vol. 10; ed. Mason; Leiden and Boston: Brill, 2007), 151, see Nakman, *The Halakhah*, 70, 205–7. I find it difficult to accept the view presented by Castelli, “Josephan *Halakhah*,” 335, 337, to the effect that Josephus’ interpretation of the “camp” referred to in Num 5:2 refers specifically to Jerusalem. Concededly, *B.J.* 5.227, refers specifically to the distancing of the people afflicted with gonorrhoea and the lepers from Jerusalem, but the paragraph as a whole is intended as description of Jerusalem. The evidence from the *Temple Scroll* too (xlvi:16–18) is unsatisfactory. The context is admittedly that of sending away from the City of the Temple, but another paragraph in the *Temple Scroll* (xlvi:14–17) states explicitly that the lepers and those afflicted with gonorrhoea are to be sent away from every city, see the discussion below.

<sup>9</sup> According to *JPS Hebrew-English Tanakh* (Philadelphia: The Jewish Publication Society, 1999), 289–90.

Additionally, corpse impurity lasts for seven days, thus distinguished from the two other forms of impurity that are dependent upon bodily phenomena, the duration of which is unknown in advance.<sup>10</sup>

However, Josephus did more than just classify the categories of biblical impurity. His presentation deviates extensively from the Bible itself both in the interpretative and the literary senses.

On the literary level, in paraphrasing the biblical verses, Josephus deleted corpse defilement from the biblical list of the three categories of impurity whose bearers are distanced from the camp. He then adjoined corpse defilement with the impurity of menstruating women. From a contextual perspective this classification is surprising because Leviticus enumerates menstrual impurity together with a series of genital impurities and the various forms of leprosy, whereas corpse defilement is described separately in the chapter dealing with the Red Heifer, in Numbers (19).

The halakhic aspect is even more interesting. In total contradiction to the verse in Numbers 5, Josephus equates the law of corpse defilement with the law of the menstruating woman, who according to his testimony *was not* sent away from the city, only being isolated from the community.<sup>11</sup>

Indeed, according to the simple meaning of the verses depicting menstrual impurity (Lev 16:19–24) menstruants were not sent away from the camp. In this context Nakman pointed out the difference between the verb referring to the exclusion of lepers and gonorrhoeics: ἀπήλασε—expelled, and the verb referring to the isolation of menstruant women and those defiled by the dead: μετέστησε—excluded.<sup>12</sup>



<sup>10</sup> Galant, cited in Feldman, *Jewish Antiquities*, 308, n. 778.

<sup>11</sup> Compare also to *B.J.* 5.227; H. Thackeray, *Josephus, The Jewish Wars, Books IV–VII* (vol. III; Cambridge, Massachusetts and London: Harvard University Press and William Heinemann LTD, 1979), 268–9: “Persons afflicted with gonorrhoea or leprosy were excluded from the city altogether; the temple was closed to women during their menstruation.” However, in that context no mention is made of persons defiled by contact with corpses.

<sup>12</sup> Nakman, *The Halakhah*, 203. See also: Gedalyahu Alon, *Jews, Judaism and the Classical World: Studies in Jewish History in the Time of the Second Temple and Talmud* (trans. Abrahams; Jerusalem: Magnes Press, 1977), 227. On the choice of the verb ἀπήλασε, as opposed to the verb utilized in this context in the Septuagint, see Galant, cited by Feldman, *Jewish Antiquities*, 308, n. 776. Note also the expression used by Josephus below (264) εἰς τὸ παντελῆς, meaning [banished] completely, regarding lepers.

Josephus' distinction between the laws of corpse defilement and other impure persons who are removed from the city, which contradicts Numbers 5, is probably anchored in another biblical section, namely the central pericope dealing with corpse defilement, that of the red heifer (Numbers 19) from which it emerges that those defiled by death are not removed from the community and the camp, but rather only from the sacred domain, as Jacob Milgrom has shown in detail.<sup>13</sup> Evidently, Josephus had a tradition which preferred the Scriptural passage in Numbers 19, which was lenient with regard to the exclusion of those defiled by a corpse, as opposed to the more stringent tradition in Numbers 5.

### *Exclusion of Impure Persons in the Temple Scroll*

Sectarian law likewise distinguished between the impurity of the leper and the one with discharge (*zab*) on the one hand, and that of corpse defilement on the other, and it was likewise more lenient with the latter. The *Temple Scroll* states: וכול טמא לניש לוא יבואו לה עד אשר יטהרו "And anyone unclean through contact with the d<sup>ead</sup> shall not enter it (the city) until he cleanses himself" (xlv:17).<sup>14</sup> The word "it" [=לה] refers to "the city of the Temple" mentioned earlier.<sup>15</sup> As noted

<sup>13</sup> Jacob Milgrom, *Leviticus: A New Translation with Introduction and Commentary* (vol. 3, 3a, 3b; New York: Doubleday, 1991–2001), 276–7; idem, "Studies in the Temple Scroll," *Journal of Biblical Literature* 97 (1978): 515. See also Cana Werman, "The Price of Mediation: The Role of Priests in Priestly Halakhah," *Meghillot V–VI* (2008): 85–108, at 87.

<sup>14</sup> Yigael Yadin, *The Temple Scroll, Text and Commentary* (3 vols.; Jerusalem: The Israel Exploration Society, The Institute of Archeology of the Hebrew University of Jerusalem and the Shrine of the Book, 1983), II, 194. For a detailed discussion of the degrees of exclusion of different impurities in the *Temple Scroll* see Werman, "Mediation".

<sup>15</sup> The term "עיר המקדש"—the Temple City—was interpreted differently by different scholars. Nearly a century ago, Louis Ginzberg, *An Unknown Jewish Sect* (New York: The Jewish Theological Seminary of America, 1976) already wondered regarding its occurrence in CD 12:1–2, whether it meant the entire city of Jerusalem or just the Temple Mount. Yadin, *Temple Scroll*, I, 279–85, believed that in the Temple Scroll it meant the whole of Jerusalem, and this seems to be Jacob Milgrom's opinion as well, see: Milgrom, "Temple Scroll", 512–8, but Baruch A. Levine, "The Temple Scroll: Aspects of its Historical Provenance and Literary Character," *Bulletin of the American Schools of Oriental Research* 232 (1978): 14–17 preferred the minimizing interpretation. Lawrence H. Schiffman, "Exclusion from the Sanctuary and the City of the Sanctuary in the Temple Scroll," *Hebrew Annual Review* 9 (1985): 301–20, suggested that the term Temple City denoted an expanded *temenos*. It seems that a paragraph

by Yadin, the wording of this rule stems from the wording of the verse cited above: וַיִּשְׁלַחוּ מִן הַמַּחֲנֶה כָּל צָרוּעַ וְכָל זָב וְכָל טָמֵא לְנֶפֶשׁ “Instruct the Israelites to remove from the camp anyone with an eruption or a discharge and anyone defiled by a corpse” (Num 5:2). In its enumeration of persons forbidden from entering the Sanctuary and the city of the sanctuary, the same column in the *Temple Scroll* includes a man who “has a nocturnal emission” (line 7) and a man who “lies with his wife and has an emission of semen” (line 11) as well as the blind person (line 12), the *zab* (line 15–17) and the leper (line 17–18). On the other hand, column xlvi which deals with the sending away of the impure from *all the cities* states the following:

And in every city you shall allot places for those afflicted with leprosy or with plague or with scab, who may not enter your cities and defile them, and also for those who have a discharge, and for women during their menstrual uncleanness and after giving birth, so that they may not defile in their midst with their menstrual uncleanness. (*Temple Scroll* xlvi:14–17).<sup>16</sup>

Notably, this section only mentions those with leprosy, the *zab*, and women during menstrual impurity and after childbirth. All the other categories of impure persons mentioned above, among the ones forbidden to enter the City of the Temple—corpse contamination, nocturnal discharge, and seminal discharge from intercourse—are omitted. A very clear distinction thus emerges. The latter three—corpse contamination, nocturnal discharge, and seminal discharge—are only prohibited from entering the City of the Temple, whereas the others (*zab* and leper, the menstrual woman and woman after childbirth) are prohibited from entering all of the cities.

In other words, the author of the Scroll, just like Josephus, relied on the verse in Num 5:2, which echoes in his words: “remove from the camp anyone with an eruption [*zarua*] or a discharge [*zab*] and anyone defiled by a corpse.” Nonetheless, he removed the “defiled by a corpse” from among the three grave forms of impurity mentioned in the verse, relocated him among the lighter forms of impurity, such as the seminal discharge, and allowed his entry into all regular cities—

in 4QMMT<sup>a</sup> which explicitly identifies the biblical camp with Jerusalem is a central argument in favor of Yadin’s position, as noted by the editors (4QMMT<sup>a</sup> B:29–31, John Strugnell and Elisha Qimron, eds., *Qumran Cave 4.V: Miqsat Ma’ase Ha-Torah* [DJ<sup>D</sup> 10; Oxford: Clarendon, 1994], 48–50. For discussion see *ibid.*, 144–5). However, this problem is not fundamental for our purpose here.

<sup>16</sup> Yadin, *Temple Scroll*, II, 209–10.

“your cities,”<sup>17</sup> as opposed to God’s city, the City of the Temple. He did this despite the particular severity attached by Scripture to corpse defilement, and despite the fact that with respect to being sent away from the camp the category of corpse defilement is mentioned in the same breath as the *zab* and leper.

Clearly, there is no interdependence between these halakhic approaches. As opposed to Yadin’s suggestion<sup>18</sup> and as already noted by a number of other scholars, it is difficult to assume sectarian influence upon Josephus or to assume that he was familiar with the *Temple Scroll*.<sup>19</sup> This is evidenced not only by the difference in the laws of corpse defilement as recorded by Josephus and the *Temple Scroll*, but also by the entire system of excluding the impure persons, such as in the laws of the menstrual woman or of the nocturnal discharge.

	Josephus	<i>Temple Scroll</i>
Leper, discharge	Outside the city	Outside every city
Menstrual woman	Isolation inside the city	Outside every city
Defiled by corpse	Isolation inside the city	Outside the City of the Temple

### *Exclusion of Impure Persons in Rabbinic Legislation*

We will now proceed to rabbinic halakhah. The midrash extrapolates the verse in Num 5:2 as follows:

[...] Instruct the Israelites to remove from the camp—(Num 5:2). This is a warning to all those who are impure not to enter the Sanctuary in their impurity (Sifre Numbers 1).<sup>20</sup>

This midrash radically narrows the purview of the rule prescribed in the verse. The “camp” of Scripture is interpreted as referring to “Temple”. Now, according to the Sages, this narrowing interpretation is only applicable to cases of corpse defilement, whereas the *zab* and the leper are subject to the more stringent law, and the “camp” from

<sup>17</sup> 11QT<sup>a</sup> xlvi:15: לעריבמה.

<sup>18</sup> Yadin, *Temple Scroll*, I, 293, 399.

<sup>19</sup> For a review and bibliography regarding the relations between Josephus and the *Temple Scroll* see: Castelli, “Josephan *Halakhah*.” See also Nakman, *Halakhah*, 205.

<sup>20</sup> Hayim S. Horowitz, *Siphre D’Be Rab* (Jerusalem: Wahrman Books, 1966), 1.

which each of them is sent is given a broader construction. Rabbinic legislation distinguishes between different forms of “sending away” of three categories of unclean persons referred to in the verse (*zab*, *mezora*, and corpse defilement), based on a hierarchical continuum of sacred precincts. To the extent that the impurity is more severe, the sending away is of greater extremity, and the exclusion applies even to places of lesser sanctity. This principle is referred to as “divisions”—גזירות.

Can you say that they (=leper, *zab*, death defiled) are all sent outside the same camp? Scripture says: “Instruct the Israelites to remove from the camp” (Num 5:2)—the verse refers to one camp. “Put them outside the camp” (Num 5:3)—the verse includes two camps; “So that they do not defile the camp” (*ibid.*)—the verse includes three camps. Can you say that all persons are to be sent outside of the three camps, perhaps they are divided so that one person is sent to this place, another person to that place and the third one to another place?

The most serious of them all is sent out of all three camps—this is the leper (*mezora*); and the one with discharge (*zab*) goes out of two camps and the corpse defiled goes out of one camp. From this the Sages created divisions [...] (*Sifre Zuta* 5:2)<sup>21</sup>

The last part of the midrash emphasizes the variant degrees of removal of the different impurities and refutes the idea that “all persons are to be sent outside of the three camps...divided so that one person is sent to this place, another person to that place and the third one to another place.” This idea is clearly the approach represented in the *Temple Scroll*, which claimed that the *degree* of exclusion for most of the severe categories of impurity is equal, though the different kinds of impurity should be sent to separate places:

And you shall make three places to the east of the city, *separated one from another*, into which shall come the lepers and the people who have a discharge and the men who have had a (nocturnal) emission (*Temple Scroll* xlvi:16–xlvii:1).<sup>22</sup>

The meaning of the three rabbinic “camps” transposed from the desert reality to the reality of Jerusalem, is expressed as follows in the *Tosefta*:

And just as in the wilderness there were three camps, the camp of the *Shekhinah* (Divine presence), the camp of the Levites and the camp of

<sup>21</sup> Horovitz, *Siphre*, 228.

<sup>22</sup> Yadin, *Temple Scroll*, II, 200.

the Israelites, so there were in Jerusalem [three camps]: From the gate of Jerusalem to the gate of the Temple Mount is the camp of Israel. From the gate of the Temple Mount up to Nicanor's gate is the camp of the Levites [...] From the Nicanor's gate and inward is the camp of the Indwelling Presence of God [...] (*t. Kelim B. Qam* 1:12).<sup>23</sup>

Interestingly, rabbinic halakhah, just like Josephus and the *Temple Scroll*, was surprisingly lenient with regard to the death-defiled in comparison with his two impure companions: the leper and the *zab*. Whereas these two were sent away from the whole area of Jerusalem or from the Temple Mount, respectively, the death-defiled was allowed into the sacred area of the temple mount, which was not allowed even to the mild one-day-impurity of a person with an issue!<sup>24</sup>

As I have shown elsewhere,<sup>25</sup> this tannaitic “glossary” discloses the depth of the revolution initiated by the Sages, as well as the sophisticated method they formulated for concealing it. The terms “Camp of Devine Presence,” namely the Tabernacle, “Camp of the Levites,” and the “Camp of Israelites,” create an illusion of a solid scriptural source for the rabbinic distinction between Jerusalem, the Temple Mount and the Temple regarding the exclusion of impure persons. In reality however, these terms refer to the description of the Israelite camping formation in the desert (Num 1:53, *ibid.*, 3:23, *ibid.*, 23, 22) and are totally unrelated to the laws of sending away the impure persons. The removal of impurity in Scripture itself always relates exclusively to two domains: the sanctuary, including related matters such as sacrifices;<sup>26</sup> and being distanced from “the camp” which in the plain sense means the physical living precincts of Israel in the desert.<sup>27</sup> The halakhic distinction between the sanctuary and the Temple Mount in the context of sending away the impure persons is a clear tannaitic innovation with no scriptural basis.

The additional revolution is the identification of the Camp of Israelites in the desert with Jerusalem. What this means is that the entire

<sup>23</sup> Jacob Neusner, *The Tosefta Tohorot* (New York: Ktav, 1977), 4, revised. Compare to *Sifre Numbers* 1:4.

<sup>24</sup> *Sifre Deut.* 255; Louis Finkelstein, *Sifre on Deuteronomy* (New York: The Jewish Theological Seminary of America, 1969), 280–1; *b. Pesah.* 67b–68a.

<sup>25</sup> Vered Noam, “Stringency in Qumran: A Reassessment”, *Journal for the Study of Judaism* 40 (2009): 5–7.

<sup>26</sup> See, for instance, Lev 7:19–21, 12:4, 21:1–12, 22:1–9; Num 9:6–13, 19: 13, 20.

<sup>27</sup> Lev 13:46, 14:3, 8; Num 5:1–4, 12:14–15 (see also 2 Kgs 7:3, 15:5); on exclusion from the war-camp see Num 31:19–20, 24; Deut 23:11–12.

biblical distinction between domains of sanctity and secularity was compressed by the rabbis to the area of Jerusalem only. Jerusalem outside the precinct of the Temple Mount becomes the embodiment of the biblical “secular” domain—the Camp of the Israelites—whereas all of the other areas of the country, and effectively the entire domain of every day Jewish life, is totally removed from the demands of purity. Accordingly, the laws of exclusion from the Israelite Camp do not apply to them at all, not even regarding the lepers, contrary to the plain precept of Scripture to send them away from all settlements.<sup>28</sup>

### *The Corpse and the Leper*

Notwithstanding the diverse definitions of the domains of holiness and secularity, the lenient construction of the law of corpse defilement is not the only point of agreement between Josephus and other witnesses of early halakhah. Josephus emphasizes that the severity of the law of the leper is such that it is “in no way differing from a corpse.”<sup>29</sup> In this context, Henry Set John Thackeray pointed out in the name of Julien Weill that this is an allusion to the biblical verse that compares the leprosy stricken Miriam to a dead person: “let her not be as one dead [...]” (Num 12:12).<sup>30</sup> However the importance of the comparison of the leper to the corpse extends far beyond that of a linguistic scriptural flourish. Josephus uses the comparison to corpse defilement in order to exemplify the severity attaching to the impurity of the leper. This indicates that he initially took the position echoed in the Mishnah: חמור מכולם המת “[the impurity] of the corpse exceeds all other impurities” (*m. Kelim* 1:4). Josephus naturally ascribes this fundamental conception to his readers too.

Now, the *Temple Scroll* combines the duty to assign a separate burial plot for the dead with the duty of distancing the lepers from the city:

For you shall set apart places within your land (in) which you shall bury your dead; between four cities you shall allot a place to bury in them. And in every city you shall allot places for those afflicted with leprosy (*Temple Scroll* xlvi: 12–15).<sup>31</sup>

<sup>28</sup> See e.g. Lev 13:46; 2 Kgs 7:3.

<sup>29</sup> Josephus, *A.J.* 3. 264 (Feldman, *Jewish Antiquities*, 309).

<sup>30</sup> Thackeray, *Jewish Antiquities*, 444 n. c. In his wake, see Feldman, n. 791.

<sup>31</sup> Yadin, *Temple Scroll*, II, 209–10.

And the Mishnah teaches that:

The walled cities [of the Land of Israel] are still more holy [than the Land of Israel], in that they must send forth the lepers from their midst; moreover they may carry around a corpse therein wheresoever they will, but once it is gone forth [from the city] they may not bring it back (*m. Kelim* 1:7).<sup>32</sup>

In these two sources as well, the corpse is mentioned together with the leper, and both are excluded from the cities (though the rabbis reduced this obligation to the anachronistic category of “walled cities”). This view is evident from the Josephus narrative in other places too, such as his testimony regarding the Jewish reluctance to live in Tiberias, in the proximity of graves.<sup>33</sup>

### *The Rabbinic Revolution*

Before conclusion, we must relate to a radical reversal of this hierarchy of impurities which occurred in one tannaitic source. In the Tosefta we read the following:

One who is unclean by reason of corpse impurity may enter the Temple mount, and not one unclean by corpse uncleanness alone have they said, but even the corpse itself, as it is said, “And Moses took the bones of Joseph with him” (Ex 13:19), “with him”—into the camp of the Levites (*t. Kelim B. Qam.* 1:8)<sup>34</sup>

The Tosefta represents a breakthrough without precedent in the other sources: not only is the person contaminated by the corpse permitted into the Temple Mount, “but even the corpse itself”.

How did the corpse, which exceeded all impurities in severity, both in the Bible and in the Mishnah, become the most lenient of them? How are we to understand the permission granted to bring a dead corpse into the Temple Mount, in view of its categorical exclusion, even from walled cities, as mandated by the Mishnah *Kelim*, where its laws are equated with those applying to the leper? How was the corpse permitted into the precincts that were prohibited to all of the serious

<sup>32</sup> Herbert Danby, *The Mishnah, Translated from the Hebrew with Introduction and Brief Explanatory Notes* (London: Oxford University Press, 1933), 605, revised.

<sup>33</sup> Josephus, *A.J.* 18: 37–38.

<sup>34</sup> Neusener, *Tosephta Tohorot*, 3.

subjects of impurity, and even to the milder impurity of nocturnal discharge?

The amazing proximity of the ultimate agent of impurity—the corpse—with the sacred realm, is supported in the Tosefta by the story of the removal of Joseph’s bones from Egypt at the time of the Exodus. The same juxtaposition also finds expression in the following remarkable Tannaitic legend:

[...] with Joseph there went up the ark, the Shekinah, the priests, the Levites, all Israel and the seven clouds of glory. Furthermore, the coffin of Joseph went alongside of the ark of the Eternal. And the passersby would say to the Israelites: What are these two chests? And they would respond to them: The one is a coffin with a body inside it and the other is the ark of the Eternal. And they would then say to them: What is the importance of the dead that it should go alongside the ark of the Eternal? And they would say to them: the one lying in this coffin has fulfilled that which is written on what lies in that ark [...] <sup>35</sup>

The Mechilta audaciously connects the ark of the Eternal, the ultimate source of holiness, to the coffin of a corpse—the ultimate source of impurity. This radical line of thinking is the antithesis of the accepted halakic system. Can we search for a link between the haggadic defiance of norm and the halakic revolution embodied in the Tosefta? And if so, which of them spawned the other?

It would be difficult to explain this revolution in the laws of the impurity as characterizing the period in which tannaitic creativity peaked, because that was a time when the Temple lay in ruins, when access to Jerusalem was blocked, and when sectarian struggles were a relic of the past. Why would anyone living then have wanted to permit the entry of corpses into the destroyed Temple Mount? On the other hand, the defiant nature of this permit becomes more plausible in the context of sectarian disputes during the Temple times. Evidently, there was an initial dispute between the Pharisees and their opponents concerning the law pertaining to the corpse contaminee, by force of the more general dispute over the definition of “camp,” as attested also in *MMT*.<sup>36</sup> The Pharisaic approach sought to narrow the definition

<sup>35</sup> Mechilta, Va-Yehi Be-Shalach, Petihta (Hayim Saul Horovitz and Israel Abraham Rabin, *Mechilta D’Rabbi Ismael*, Jerusalem: Shalem Books, 1997<sup>2</sup>, 79. The translation is based on Jacob Z. Lauterbach, *Mekhilta de-Rabbi Ishmael*, 1, Philadelphia: The Jewish Publication Society, 2004<sup>2</sup>, 121, revised). I wish to thank Prof. Steven Fraade for this reference.

<sup>36</sup> *MMT* B: 29–31, 59–62.

of the biblical “camp.” They even permitted the entry of the corpse contaminee into the Temple Mount.

With the passage of time, this polemic produced a radicalization in the Sages’ position, until they defiantly extended the application of their lenient ruling beyond the person contaminated by corpse to the corpse itself. They placed the corpse on a level of impurity lower than what was considered as the mildest degree of impurity, that of the nocturnal discharge, and permitted its entry to the Temple Mount.

If this is the case, then we again see that the Pharisees, boldly and intentionally, uprooted ancient prohibitions, leading to an overt relegation of the status of the impurity that “exceeds all others,” all for the purpose of refuting their opponents. Clearly, this revolutionary conception was not acceptable, or even unknown to Josephus, just as it was to the author of the *Temple Scroll* more than two centuries earlier.

### *Conclusion*

In view of all this, it would seem that there was an ancient halakhic infrastructure shared by the three separate corpuses. Sectarian law, Josephus, and the Sages, all used to attribute excessive severity to corpse impurity and distanced it from Jewish settlements. In spite of that, all the three reflect a common proclivity towards leniency with respect to persons defiled by corpses and the prevention of their overall exclusion from everyday life, in divergence from the letter-and-the-spirit of biblical law. Tannaitic halakhah extended this principle in a revolutionary manner by totally removing everyday life from the domain requiring the removal of impurity, and finally by the surprising permit granting access to source of all impurity—the dead body in all its glory—into the sacred domain.

The discussion above seems to exemplify the dual nature of the contribution of Josephus’s writings to the reconstruction of the development of halakhah. His works expose a layer of pre-rabbinic Jewish practices, common to several Jewish circles. Moreover, the absence of a number of elements that characterized later tannaitic system is also highly instructive. Their nonexistence in Josephus as well as in other contemporaneous Jewish works, such as sectarian literature, points to their Pharisaic–tannaitic origin and as such highlights the innovation and audacity that characterized the rabbinic legislation.

*Appendix: A comparison of the Different Systems of Exclusion of the Impure*

	Josephus	Temple Scroll	Sages— Stage A	Sages— Stage B
<b>Corpse</b>	<b>Outside every city</b>	<b>Outside every city</b>	<b>Outside walled cities</b>	<b>Allowed into the Temple Mount</b>
<b>Leper</b>	Outside every city	Outside every city	Outside walled cities	Outside Jerusalem
<b>Zab (discharge)</b>	Outside the city	Outside every city	Outside the Temple Mount	
<b>Menstruating woman (and after childbirth)</b>	Isolation in the city	Outside every city	Outside the Temple Mount	
<b>Corpse Contaminee</b>	<b>Isolation in the city</b>	<b>Outside the City of the Temple</b>	<b>Allowed into the Temple Mount</b>	
<b>Nocturnal Discharge</b>	Only outside the Temple	Outside the City of the Temple	Outside the Temple Mount	