THE HALAKHA IN JOSEPHUS AND IN TANNAITIC LITERATURE

A Comparative Study*

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There have been many different studies of the halakha in Josephus, all of which however, have one thing in common—the they deal with specific laws. A corpus of the halakha in Josephus as compared to contemporaneous Rabbinical literature has yet to be written. An example of such a work—a block of four halakhot—follows. Besides the comparison of the individual laws between the two sources, a corpus of halakha may reveal some patterns of its own; perhaps something about Josephus’ own legal sources. Furthermore, by a comparison with the Tannaitic literature, new insights can be gained in Josephus’ works. But the most important purpose, and major goal, of such a work is an inquiry into the evolution of halakha.

Regarding the law of returning a lost object, Josephus states, “If anyone find gold or silver on the road . . . Similarly in the case of beasts which one meets straying in a desert place . . .”.1 Gold and silver as lost objects are not mentioned in the Bible nor in rabbinical literature contemporaneous with Josephus. This seems to be a paraphrase of the Scriptures reflecting the changed economic situation. Josephus does the same thing regarding the law of double payment for theft. The Biblical animals there become gold and silver.2

The Bible makes no mention of where these objects are

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1 Ant. IV, 8:29 (274) 'Εξάν δέ τις ἢ χρυσίν ἢ φρύνιον εὑρη καθ’ ὃδὸν . . . ὁμοίος καὶ περὶ βοσκημάτων οἷς ἐν ἐντύχῃ τις κατ’ ἐρημίαν πλανομένους. Translations of Josephus are from the Loeb ed.

2 Ibid. 27 (271).
found such that they are considered lost; it says only that they are “going astray.” Apparently, Josephus felt that a literal translation would not be clear to his readers. He therefore puts the beasts in the desert and the money on the road; i.e., such objects found in such places (wandering around in the case of animals) are clearly lost.

In Tannaitic literature we find also the assignation of place. “An ass or a cow grazing on the road is not considered a lost object . . . a cow running through vineyards is a lost object.”

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Josephus and the Tannaim both add the element of place missing (although inherent) in the Bible. Furthermore, the type of place corresponds. In both Josephus and rabbinic literature, if the inanimate object is found on the road, it is considered lost, which is not the case for animals. This point is particularly worth noting, for it is in direct opposition to the LXX which reads, “wandering on the road.”

Josephus continues, “... after diligent search for the loser and public proclamation of the place where he found it, let him duly restore it.” This “public proclamation,” un-

3 Deut. 22:1...

Ex. 23:4...

4 Mishnah B.M. 2:9 (= Siphere Deut. 222, ed. Finkelstein pp. 255-256)...

5 Tosefta B.M. 2:19 (= B.T., B.M. 30b-31a)...

6 Mekhila de R. I. Kaspa 20, ed. Hor.-Rab. p. 324...

7 Mekhila de RaSHBI on Ex. 23:4, ed. Epstein-Melamed p. 215. ...

8 Deut. 22:1 Mē ḫōdôn tōn ἀλάτω του ἀνθρώπου σου οτι το πρόβατον αὐτοῦ πλησίωμενα ἐν τῇ ὁδῷ . . .

9 Ibid. 29 (274) ἐπιζητήσας τὸν ἀπολωλεκότα καὶ κηρύξας τὸν τόπον ἐν ω εὑρεν ἀποδῆται.
recorded in Scripture, has its rabbinic parallel as already pointed out by others. 10 “There was a stone of (Loser’s) 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 then take it.” 11

The Palestinian Talmud records the same without the last sentence; i.e., there is no mention of proclamation. 12 One would be tempted to say that this sentence was interpolated into the version of the Babylonian Talmud. Were this true it would have been done because of (a) the many times proclamation is mentioned in the Mishnah as the method of returning 13 and (b) the Mishnah’s statement: “If he (the loser) named the object but didn’t identify it, he (the finder) should not give it to him.” 14

However, there does exist a clear rabbinic parallel to Josephus: “Originally they used to make proclamation . . . however, after the destruction of the Temple . . .” 15 There is another Tannaitic parallel; however, its date cannot be ascertained. “Until proclamation is made concerning it.” 16

The interesting point in this latter quote from the Mekhilta

11 B.T. B.M. 28b
12 P. T. Ta'anit 3, 9; 66d (end).
14 B.M. 2:7
15 Tos. B.M. 2:17 (Quoted with variants in B.T. B.M. 28b and P.T. B.M. 8c)
16 See next note.
is the way it parallels Josephus: “... after diligent search for the loser and public proclamation.” Not only is the proclamation missing in Scripture, so too is the search. The Mekhilta in explaining “until your brother’s inquiry” reverses the subject and object and says: “Until you search for your brother or, another explanation, until proclamation is made concerning it.” 17

Regarding Josephus’ statement that the proclamation consisted of naming the place where the object was found, there is no Tannaitic parallel. The only reference to such proclamation is Amoraic, and the meaning of that reference is debated by the commentators.18 We know from rabbinic sources that it was the Palestinian custom to make proclamation of a lost object. We can therefore assume that the rest of Josephus’ statement—the content of this proclamation—was also a custom in Palestine.

“But if your brother is not nearby to you or you don’t know him then bring it (the lost object) into your house and let it be with you until your brother searches (or inquires) for it.” 19 Josephus’ paraphrase is: “but if the owner be not found forthwith, let him keep them at his home, calling God to witness that he has not appropriated the goods of another.” 20 This translation of Josephus is ambiguous due to (a) the double meaning of the English word “keep,” (b) the fact that Josephus did not record “until your brother searches

17 Mekhilta de R.I. _ibid._

18 B.T. B.M. 22b

19 Deut. 22:2

20 _Ant._ _ibid._ μη εὑρεθέντος [δὲ] τοῦ κυρίου παραχρήμα παρ’ αὐτῷ φυλάττει το μαρτυράμενον τὸν θεὸν μὴ νοσφρίζεσθαι ἄλλοτε.
for it,” and (c) the fact that Josephus adds “calling God to witness . . .” These facts give the unmistakable impression that “if the owner be not found forthwith,” the finder may keep the object for himself although God knows he has not “appropriated” it for, after all, he did search for the owner. This is an impression Josephus did not mean to convey. He uses the verb φυλαττετω, let him watch over (them), which clearly means he may not keep them.

The word of interest here in Josephus is παραχρημα, translated “forthwith.” This adverb, not found in the Biblical version, might have been part of Josephus’ paraphrase of ἁμα λα κριναι, if your brother is not nearby you; i.e., so that the owner cannot be immediately found.21 If this is so, however, then Josephus is clearly contradicting the Tannaitic sources. The Tosefta reads: “Originally they would make proclamation during the three festivals and after the last festival for another 7 days. After the destruction of the Temple they decreed that proclamation be made for 30 days. From the time of danger and thenceforth they decreed that it is enough for him to make his find known to his neighbors, relatives, acquaintances and fellow town dwellers.” 22 A time span of three festivals plus an additional seven days does not translate into παραχρημα. Neither does 30 days, nor the variant reading, 3 days. Aside from the fact that סכנת, time of danger, probably refers to the Hadrianic persecutions—events postdating Josephus—Josephus’ παραχρημα could not refer to this last decree for another reason. This decree says nothing of the length of time of the proclamation. The 30 days (or 3) was probably continued. What was changed was the

21 Such is the meaning connotated in Thackeray’s translation and also in Weill’s: si le maître n’en est pas trouvé sur-le-champ, on devra les garder chez-soi . . .

22 Tos. B.M. 2:17: בראשהנת וית מכריםriel שלשה רלטים ולאחר היה עליה שלשה האוחורים שאינן ימי משחרב בית המקדש ויהיה מכריין עליה שלשה יל基石 ילכין של פייתוapel長い קורות לידועיות לאención ר貓ם נאכי. יוסי ודיתי

See above n. 15.
place of the proclamation; it was no longer public. This has nothing to do with the time element παραχρήμα.

Is, then, Josephus’ paraphrase representative of an “anti-traditional law”? I think not. The word παραχρήμα has another related meaning: “the present.” Understood this way Josephus would read: “but if the owner be not found, let him for the time being watch over them.” In other words, for the moment (the present time) until the owner will come inquiring after them at which time the finder returns the objects.

In the next halakha—assisting a fallen animal—there are differences between Josephus’ account and that found in the Bible. Firstly, however, in conformity with Deut. 22:4, Josephus’ halakha is to help a fallen beast arise again. Neither account mentions the burden upon the animal’s back. This is true no matter which of the variants we accept for the decree after the Temple’s destruction. See Alon, "המלחמה החרדית וpanion תקיפות המשנה התקהלית הנשים" Vol. II, p. 44.

Liddell & Scott, Lexicon, s.v. παραχρήμα.

It is, of course, possible to translate παραχρήμα as “immediately” and yet attach it to the following clause. The meaning would then be: “After making search and proclamation (for whatever extended period was the custom) then the finder immediately takes the object home for watching.” This, however, while grammatically possible, is contextually superfluous.

See the translation of M. Hadas to IV Maccabees 2, 14 (ed. Dropsie University) where τά δὲ τῶν ἡκτιβῶν τοῖς ἀπολέσσας διασώζων is rendered as referring to lost objects. Note that both IV Macc. and Josephus use the same participle designating the “loser”: ἀπολολεκτα-ἀπολέσσας. I believe that the use of the compound διασώζων as opposed to simple σώζων in IV Macc. has a temporal quality so that the proper translation of the clause would be, “one must preserve the things of enemies for those who lost them.” That the use of the compound was deliberate is clearly seen in 4, 12 and 14 (σωθεσ-διασωθεσ) although the quality there is one of completion and not time.

Deut. 22:4. Thou shalt not see thy brother’s ass or his ox fallen down by the way, and withdraw thyself from them: thou shalt surely help to lift them up again. לָא תראו את הַמָה אַחְיָךְ אוֹ הָעִזְבֵּךְ אַחְיָךְ אַל שָׁלוֹם נְפָלֵם נָרֵךְ הַחְיָלִיתָתָהּ מְפָהֲקָן יִמָּן.

Jos. Ant. IV, 8, 30 (275). It is not permissible to pass by unheeding when a man’s beasts of burden, buffeted by tempest have fallen in the mire; one must help to rescue them and lend aid as though one labored for oneself. Μη ἔξεσαι δὲ παριέναι κτηνὸν τινι κακοπαθοῦντον ὑπὸ χειμώνος πεπτωκότων ἐν τῇλῷ, συνιασὼς δὲ καὶ τὸν πόνον οἰκείου ήγησάμενον βοηθεῖν.
is important insofar as in rabbinical literature Ex. 23:5 27 and Deut. 22:4 came to refer to unloading and loading an animal respectively. 28 As I have shown eleswhere 29 Josephus has recorded the halakha as it was at his time; the new interpretation of Deut. 22:4 was accomplished shortly after Josephus completed Antiquities.30

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

Josephus ends this halakha with another addition to the Biblical statement: “as though one labored for oneself.” The Tannaitic literature has it that under certain conditions one need not help the man and his beast, nor must one return a lost object.31 The Mishna repeats one of these conditions; i.e.,

27 If thou see the ass of him that hateth thee lying under his burden, and wouldest forbear to unload him, (thou must not do so, but) thou shalt surely unload with him. 
28 So also IV Macc. 2, 14 τὰ πεπτωκότα συνεγέρων. See note 25. Cf. LXX Ex. 23, 5; πεπτωκός . . . συνεγερείς.
29 Mekhilta de R.I., Kaspa 20, ed. Hor.-Rab. p. 326: שומכ תושב שומכ תוים זמו ושתינה.
30 See ibid. for parallel sources.
31 See ibid. for parallel sources.
32 Josephus completed Antiquities in 93-94 C.E. The interpretation of Deut. 22:4 was accomplished by Judah ben Bathyra with R. Josiah differing (Mekhilta, ibid.). The conflict, therefore, occurred within the first half of the second century.
if it is beneath the dignity of the finder to bother with the object.\textsuperscript{32} This condition is generalized in the Tosefta, “This is the principle: If he would bother were the object his, he must trouble himself now that it is not.” \textsuperscript{33} The law is, thus, equal whether the object found is lost or a burdened animal; the Mishna refers to the former case, the Tosefta to the latter. This general principle applied to both cases is repeated by the Amora Raba: “If he would retrieve the lost object were it his, he must return it; if he would unload and load the animal were it his, he must unload and load.” \textsuperscript{34}

To return to Josephus, it is possible that he did mean, as Thackeray translates, “one must help to rescue them and lend aid as though one labored for oneself.” \textsuperscript{35} However, the Greek τὸν πόνον οἰκεῖον ἡγησάμενον is a participial clause and accordingly may allow various adverbial meanings which need not agree with Thackeray’s interpretation. One such meaning could be causal, “since he believed he would have labored for himself,” a meaning which exactly parallels the rabbinic sources.

The next halakha in Josephus reads: “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.” \textsuperscript{36} Before we discuss this halakha per se, the question of juxtaposition must be asked. Why did Josephus list this halakha after the halakha of assistance to beasts? If the source of this halakha is as Thackeray presumes, why did Josephus, after listing Deut. 22:1-3 (Ex. 23:4, lost

\textsuperscript{32} B.M. 2, 8 (referring to a lost object)

\textsuperscript{33} B.M. 2, 24

\textsuperscript{34} B.T. B.M. 30b

\textsuperscript{35} Following Weill: comme si on travaillait pour soi.

\textsuperscript{36} Ant. IV, 8, 31 (276, p. 609). Μην γάλαξαν δὲ καὶ τὰς οἰκείας τοῖς ἁγνοοῦσι, καὶ μὴ γέλοια τὴν ἡγησάμενος ἀντοῦς ἐμποδίζειν πλάνη τὴν ἐτέρου χρείαν. Also mentioned in Apion II, 29 (211, p. 378).
object) and Deut. 22:4 (Ex. 23:5, assistance to beasts) jump to Deut. 27:18 (Lev. 19:14)? 37 Thackeray believes this halakha to be Josephus’ own generalization of the biblical prohibition of causing the blind to wander on the road and of putting a stumbling block before the blind. Thus did Josephus refute the accusation recorded by Juvenal that the Jews did not show the road to noncoreligionists. 38

Firstly, exactly what Juvenal says is open to question. Some scholars feel that the satirist referred to a Jewish custom of not showing “the commonest offices of humanity ... to any but co-religionists”, 39 of neither giving directions nor a drink to a non-Jew. However, in context the via of Juvenal leads to the fountain, ad fontem. 40 And this fountain could just as well refer metaphorically to the source of the Judaic faith: the Torah. 41 On the other hand, even were Juvenal referring to a drink of water, it is possible that his statement reflects an isolated incident which once occurred and that “quand le mal est l’exception, il paraît la règle. Cette illusion, dont la plupart des moralistes sont victimes, a souvent trompé Juvénal ... il part d’une anecdote réelle, d’un fait précis et particulier, et les généralise.” 42

Secondly, whether or not Josephus meant to refute the above claim, it is unlikely that the Tannaim did. For they, too, state that one must show the road to one who has lost his way. 43 Furthermore, the biblical source of this law is not

37 Deut. 27:18. Cursed be he that causeth the blind to wander out of the way...  
Lev. 19:14. Thou shalt not curse the deaf, nor put a stumbling block before the blind...

38 Note ibid. following Weill.

39 J. D. Duff, ed. Satires, note ad loc.

40 Juvenal, Satires, XIV, 103-4: non monstrare vias eadem nisi sacra colenti/quaesitum ad fontem solos deducere verpos.

41 For Juvenal’s use of fons as ‘source,’ see Satire VI, 286.

42 G. Boissier, La Religion Romaine etc., 5th ed., II, 155.

43 Siphre Deut. 223 (p. 254) with Rashi; B.T. San. 73a-74b.

(Although the Amoraim, ibid., believed the term to
'the blind man' (Deut. 27:18, Lev. 19:14) but 'the lost object.' 44 One must return a lost object to its owner whether that object is a possession of the owner or the owner himself. Josephus, therefore, did not produce here his own exegesis (and did not thereby intend to refute the claim recorded by Juvenal) but followed an already established halakha. Moreover, the source of this halakha in the Tannaitic literature makes it quite clear why Josephus put it after 'the lost object'; that is precisely where it appears in the Tannaitic literature.45

refer to one who is in danger of losing his life, it is clear from B.T. B.K. 81b, cited below, that the reference is to one who is lost. Cf. Finkelstein's note, Siphre, p. 257); B.T. B.K. 81b nor the 'blind man' (Deut. 27:18, Lev. 19:4) but 'the lost object.' One must return a lost object to its owner whether that object is a possession of the owner or the owner himself. Josephus, therefore, did not produce here his own exegesis (and did not thereby intend to refute the claim recorded by Juvenal) but followed an already established halakha. Moreover, the source of this halakha in the Tannaitic literature makes it quite clear why Josephus put it after 'the lost object'; that is precisely where it appears in the Tannaitic literature.45

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44 Kohler, ibid., states that the Talmud derives the laws of showing strangers the road and not misleading others from Lev. 19:14, “Thou shalt not . . . put a stumbling block before the blind.” His source escapes me. See further note 47.

45 So also in Tosefta B.M. 2, 29, after discussing a lost object and assistance to beasts (the two topics are treated together in rabbinic literature):

Incidentally, it appears that the text here is corrupt. It is clear that the phrase connects the preceding statement (הרב לברק') with the succeeding one (הרב לברק'). However, it is clear from ... that a parallelism is intended and that, therefore, should connect as well with what follows. To meet these requirements, the following reading is suggested: ...
How is Lev. 19:14 treated in Rabbinic literature? From an examination of the sources, it becomes evident that originally the verse was interpreted to mean responding truthfully to a question of fact or responding righteously to a request for advice. The one asking the question or requesting the advice is considered to be unenlightened, blind to the answer. Beginning in the Tannaitic period and continuing throughout the Amoraic period, the verse is interpreted to mean providing the opportunity for one to sin.

The above cited Siphra does not give the example of misleading a lost wayfarer because the verse in Lev. refers to 'stumbling blocks.' It is Deut. 27:18 that refers to 'misleading.' But the Siphra, as we have seen, does interpret 'blind' = blind to the facts. This interpretation was incorporated into the Palestinian Targum to Lev.: “Before a stranger who is compared to a blind man do not put a stumbling block.” Although not in Talmudic literature, the same interpretation of blind man was given in the Palestinian

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47 B.T. Pes. 22b (= A.Z. 6a-b, giving wine to a Nazirite or ‘torn flesh’ to a non-Jew—R. Nathan); M.K. 5a (to mark gravesites so that a priest does not inadverantly become impure—Abaye); Ibid., 17a (honoring one’s father—Tannaitic); Kid. 32a (honoring one’s father—R. Huna); Ned. 62b (idolatry—Rabina); B.M. 5b (stealing—Amoraic); Ibid., 75b (interest—Mishnah 5, 11); Ibid., (default on a loan—R. Judah in Rav’s name); Ibid., 90b (castration—R. Papa); A.Z. 14a (idolatry—Abaye); Ibid., 22a (Sabbath observance—Amoraic); Hul. 7b (selling dangerous animals—Pinhas ben Yair); Nid. 57a (becoming impure—Amoraic); Cf. also Hul. 3a with Rashi (ritual slaughter) and Hag. 25b with Rashi (selling demai); See also Siphra above note (unlawful marriage). The only case of those mentioned that might be equivocal is Hul. 7b, an aggadic passage. Nevertheless, it certainly doesn't belong to the category of responding to a question. To Hul. 7b cf. Ant. IV, 8, 34.

Targum to Deut. 27:18, “Cursed be the man who misleads a stranger on the road for he is compared to a blind man.” 49

It is this interpretation of Deut. that Josephus used when he spoke of misleading one who is ignorant of the road.

Josephus adds to this law, “for the purpose of laughing oneself” (γέλωσις θηρομένους). An original flourish? The above cited Siphra ends, “perhaps you will say: ‘I gave him good advice.’ God knows what was in your heart.” 50 The meaning of this is that if one meant to give good advice but it turned out to be bad, he is not held accountable. It all depends on the intent. If the intention was solely “for the pleasure of laughing oneself,” he is held accountable.

In summary, we find in this halakha of Josephus rabbinic parallels. The first part of the halakha, directing a lost wayfarer, is found in Tannaitic sources based on the halakha (and occurring with it) of a lost object. The second part, deliberately misleading a lost wayfarer, is exactly paralleled in the Palestinian Targum. However, we saw the background upon which this Targum is based: the interpretation of “blind” in the Siphra. The connection in word and thought between Lev. 19:14 and Deut. 27:18 is perfectly clear. The idea of intention found in Siphra on Lev. is applied by Josephus to Deut.

I am not saying that Josephus made this application himself; nor that he incorporated into one halakha two separate rabbinic sources (directing one lost and deliberately giving a misleading answer to one who requested advice). I am saying that the two halakhoth are closely related (eventually the Targum on Deut. combined them) and that viewed thus, the Tannaitic parallels to Josephus are obvious. Whether Josephus

49线条פיבורו דרשמא דקנסא באראא באראא דהאא דאחא דמלסא (Cod. Vat. ed. Ginzburger: דמשא) (quoted by J. Levy, Chaldäisches Wörterbuch über die Targumim etc. s.v. דמלסא).

50 Ibid.
himself did the alterations and incorporation or whether he copied from a source no longer extant remains to be seen.

The remainder of the verse just discussed deals with the halakha which follows in Josephus, “Similarly, let none revile the sightless or the dumb.”51 As Thackeray has pointed out, the text here is doubtful. Most Mss. have ἀποντα, “the absent one,” while the reading preferred by Thackeray is ἔσπυτον, which he translates “the sightless.” However, this latter word “in its one occurrence elsewhere means ‘unseen’ (not ‘un-seeing’).” 52

The Bible here speaks of reviling only the deaf;53 the blind is not mentioned in connection with cursing or blasphemy.54 The parallelism in the Bible is clear. One is not to put a stumbling block before a blind man which he cannot see, and one is not to revile a deaf man with a curse which he cannot hear. Josephus, however, expands the meaning of ‘deaf’ to one who does not hear the curse whether he be deaf or not; i.e., one absent, ἀποντα.55 Josephus would then read: “Led none revile the absent person or the deaf person (even if he be present).” This expansion of the meaning of ‘deaf’ in the Bible is found also in a Midrash compiled during the Middle Ages but based on early sources, not all of which are extant: “(Deaf) includes even one (i.e., who is able to hear but) who does not hear you.” 56

In summary, we have examined a block of four halakhoth in Josephus. The law of ‘lost object’ agrees with the Tannaitic literature in the following points: assignation of place; type of place; proclamation; search for the loser. In addition, παραχρήμα is not contrary to Tannaitic tradition. The law of ‘assistance to beasts’ agrees with the Tannaitic law of Josephus’ time. Also, the phrase τὸν πόνον οἰκεῖον ἡγησάμενον is in agreement with the Tannaitic literature. The law of ‘showing the road’ is not only paralleled by the Tannaim but also follows the law of ‘assistance’ in their literature as it does in Josephus. ‘Misleading one ignorant of the road’ is directly paralleled in the Palestinian Targum, where it is based on an interpretation given in Tannaitic literature. Also, the phrase γέλωτα θηρωμένους agrees with the Tannaitic literature. The law of ‘reviling the deaf’ is paralleled in a Midrashic compilation of the Middle Ages which is based on earlier compositions.

Addendum to n. 41: Cf. J. Lewy, “Tacitus on the Origin and Manners of the Jews” (Hebr.) in Zion, VIII, 2, (1943), pp. 83-84. Cf. also Proverbs 5:15-18

... μὴ μετασχέτω (LXX: μὴ ὑπερεχέσθω) μὴ μετασχέτω (καὶ μηδὲς ἀλλότριος μετασχέτω σοι) ἵνα λέοντας ἄνω λυρίματα ἀντίλθῃ μὲν καὶ μερίζῃ (ἡ πηγὴ σου τοῦ ὀδοτοῦ ἔστω σοι ἵδια)