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Philo’s Jewish Law:
Uncovering the Foundations of a Second-Temple System of Jewish Law

By

Yedidya Y Etzion

A dissertation submitted in partial satisfaction of the
requirements for the degree of

Doctor of Philosophy

in

Near Eastern Studies

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Daniel Boyarin, chair
Professor Erich Gruen
Professor Ronald Hendel

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Abstract

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Uncovering the Foundations of a Second-Temple System of Law

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Yedidya Y Etzion

Doctor of Philosophy in Near Eastern Studies

University of California, Berkeley

Professor Daniel Boyarin, Chair

Among Philo of Alexandria’s many writings, he dedicated quite-a-few treatises to the exposition of Jewish Law. The purpose of this dissertation is to identify *what is distinctive in Philo’s* approach towards Jewish law and to reveal the ideological, hermeneutical and practical considerations behind it.

In addition, I have presented the study of Philo’s Jewish law from a comparative point of view, introducing many Second-Temple --and especially rabbinic texts-- in order to better understand the processes underlying the development of Jewish law in Late-Antiquity and Philo’s place in it. I analyze the relationship between Philo’s own different writings and genres such as law, narrative and allegory, as well. The dissertation deals with five major halakhic subjects: the halakhic implications of both the Septuagint and Speech-Acts, Marital laws, The Sabbath, and the Temple Cult and Priesthood.

My examination of Philo’s law raises the following observations:

1. Philo reflects an internalization of Hellenistic concepts and values while implementing these concepts into distinctively Jewish practices. Occasionally, laws which were shaped by Greco-Roman concepts found their way into other halakhic corpora. This phenomenon attests to a process through which rabbinic traditions were influenced by Greek ideas through the agency of Jews like Philo.

2. At times, Philo shared certain halakhic traditions with other Palestinian corpora, while at others he reflected a totally independent approach. While in certain cases Philo’s independence can be accounted for by his essential, distinctive views in quite a few cases Philo represents an early stage in the development of halakha.

3. Philo’s formulation of Jewish law gives weight to ideological (predominantly Greek), exegetical and practical considerations. Among the exegetical considerations I identify several midrashic interpretations, some of which are similar to other Second-Temple and rabbinic traditions. This does not render Philo as “eclectic” but rather his approach is a typical example for the formulation of Jewish law in Late-Antiquity.

4. Philo indeed reflects certain sentiments, which could be characterized as “Diasporic”, but more than a representative of a Diasporic version of Judaism, Philo should be understood as a representative of Greek-Speaking Jews, a group which was part of the Social reality of Palestine, as well.

5. Philo’s most distinctive feature with respect to Jewish law is his view of Jewish law as a cure against excessive desires (ἐπιθυμίας) through the exercise of self-control (ἐγκράτεια). While Philo lacks a conception of defined measures for the fulfillment of religious obligations, this is consistent with both the early stage Philo represents in the development of halakha and with the view of Jewish law as geared towards self-improvement, rather than appeasing or pleasing God.

"164 Get yourself another century
165 A little frost before sundown
166 It’s the times don’chewknow,
167 And if you’re a Jewish boy, then be your
Plato’s Philo."

Louis Zukofsky, "Poem Beginning 'The.'" (1928)

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My interest in Second-Temple history and culture increased during my undergraduate studies at the Hebrew University, where I was privileged to study with great Scholars like, Isaiah Gafni, Noach Hacham, Menahem Kister, Michael Sigal, and Daniel Schwartz, who was my M.A. advisor. Daniel continued to be a source of support and of original and sound advice during my doctoral studies.

In UC Berkeley, I had the privilege of studying with renowned scholars who are also great teachers and, above all, inspiring individuals: Robert (Uri) Alter, Daniel Boyarin, John Ferrari, Erich Gruen, and Ron Hendel. In the Graduate Theological Union, I had the opportunity to study with David Balch and Annette Weissenrieder.

A group of graduate students, many of whom were avid participants in Daniel Boyarin's graduate Seminar in Talmud, became my partners, sharing ideas and, occasionally, the agony of the Greek language: Daniel Fisher, Noah Greenfield, Yoseph Rosen, Eli Rosanbaltt, Lena Salaymeh, and Mira Wasserman.

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Erich Gruen gave me close guidance, first in preparation for the final examinations, and then in the writing of my dissertation. As a mentor, Erich has taught me how to focus my writing, paying attention to the small details without giving up on the big ideas. Equally important, I have also learned from Erich how to maintain high standards while giving uncompromising feedback which builds confidence, instead of lowering it.

I studied Bible with Ron Hendel, and he has supported me throughout, always willing to give sound advice whenever I approached him. Ron was always there with a good word, and besides benefiting from his great scholarship, it was from him that I learned how to keep things in proportion.

My hours with Robert (Uri) Alter, whether in his Seminars or in his office while engaging in independent study, were an edifying experience. For me, the art of poetry is not only one field of Uri Alter's expertise, but it is also a reflection of the thoughtfulness and inspiration in the way he teaches.

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I am also indebted to the administrative staff at the Near Eastern Studies Department, Deanna Kiser-Go, Shorena Kurtiskidze, and Erik Nelson, who took care of every request or problem, promptly and thoughtfully.

The last two years of my writing were conducted in Israel. Here I have had the opportunity to consult with one of the leading Philo Scholars, Maren Niehoff. I have shared many of my ideas and ruminations with several old friends who are all currently PhD students in Israel: Nadav Berman, Na’ama Ofer-Golan, Hillel Mali and Moshe Yagur. Although a scholar of modern Jewish history, Richard Cohen from the Hebrew University has been a source of support from my days as an undergraduate student to this very day.

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Finally, this dissertation is dedicated with love to my wife Michal Rivlin and my children David, Naomi, Miriam and Itai. It is but one fruit of the long journey we share. I hope that Michal and our children take the same pride in its completion that I take in Michal’s achievements, which are all the result of an outstanding work ethic and brilliance from which I can only learn. As the Talmud puts it: בחביבותא תליא מילתא – “the matter all depends on love.”

Introduction

The main goal of this study is to determine how Philo's legal writing can shed light on our view of Philo as the first Jewish Philosopher, and a representative of Second-Temple Hellenistic Judaism. In addition, with respect to the second-to-none scope of Philo's writing, and the fact that Philo belonged to a crucial period in the development of Jewish law, his significance as a representative of Second-Temple Hellenistic Judaism is unequivocal. Thus, an analysis of his legal writing sheds light on the question of the development of Jewish law. The premise of this study, as I will qualify later on, is that the corpora of Second-Temple and rabbinic literature is an appropriate context for the study of Philo's law, as it proves to share many interpretive, ideological and practical traits with Philo.

The last comprehensive study dedicated to Philo's law was conducted by Samuel Belkin and was published in 1942. Since then, the field of study of the development of Jewish law has undergone extensive changes, especially thanks to the discovery of the Dead Sea Scrolls. There are two main contributions of the Scrolls to our study: first is the discovery of a whole library of an otherwise virtually unknown school contemporary to Philo, and second is the realization that although there is at least a two-century gap between rabbinic literature and Philo, much of the rabbinic literature reflects traditions which may very well have been in existence at the time of Philo, and therefore must be part of any discussion of the development of Jewish law in Philo's time.[1]

Previous studies of Philo's law can be characterized as either attempts to prove the influence of Greek conceptions devoid of any Jewish context on Philo's law, or on the other hand, as attempts to determine the influence of Palestinian traditions on Philo's law, with the rabbinic law serving as a measure for Philo's awareness of Jewish law.[2] In my study of Philo's account of Jewish law, I will offer an alternative view of Philo and argue that, when we read his works in the context of Second Temple and Rabbinic literature, we gain the following insights on Philo and on Second-Temple Jewry:

a. In many cases Philo demonstrates the internalization of Hellenistic concepts while implementing these concepts in laws which can be understood only within the context of Jewish traditions and the observance of Jewish law. Moreover, these Philonic traditions can sometimes be found in later rabbinic traditions far from Alexandria. This attests to a process according to which the encounter of Greek-speaking Jews with Hellenistic culture and values affected the way Jews (like Philo) formulated their laws, and, in turn, this affected Jewish law in other Jewish circles, such as those of the early Rabbis. Thus, instead of seeing every Philonic resemblance to Palestinian traditions as evidence of the influence of Palestinian traditions on the Diaspora, I see it rather as a process of an exchange of ideas and traditions which shaped Jewish law in the crucial period of Philo's time.

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[1] For the significance of the Dead Sea Scrolls to the study of Jewish law see Y. Zussman, "The Research of the Development of Halakha and the Dead Sea Scrolls – Preliminary Reflections in Light of 4QMMT", *Tarbiz* 68 (1989): 11-76. (Hebrew). Since Zussman's seminal lecture, a great number of studies have been published, qualifying and questioning many of Zussman's examples, several of which will be related to in this study. However, the thrust of Zussman's argument seems to stay intact, and thus it should serve as a guideline for the study of early Jewish law.

[2] To be discussed below.

b. While Philo shared many laws with Palestinian traditions, in many other cases his writing reflects original or distinctive traditions. Although Philo can generally be characterized as rather strict in his legal views, he seems to reflect an earlier stage in Jewish law rather than representing an essentially different approach towards Jewish law. This is demonstrated by his affinity with rabbinic figures like Rabbi Eliezer, who, himself, represents an earlier version of rabbinic Judaism in rabbinic traditions.[3]

c. In trying to uncover Philo's sources for his Jewish law we may find Biblical interpretation, Philo's predominantly Hellenistic values, and common practice. This is not different from any other system known to us from other sources, such as Qumran or rabbinic literature. Thus, the fact that we may not find one consistent organizing principle behind Philo's law does not render him as "eclectic," but rather as a typical representative of his time and place. This supports the hypothesis according to which halakhic differences were not such a dividing force as we could imagine it to be at the end of the Second-Temple period.[4]

d. More than serving as a representative of Diasporic Judaism, i.e. a Judaism reflecting a different geographic and socio-political setting from Palestinian Judaism, Philo reflects the reality of Greek-speaking Jews. Thus, instead of speaking of Philo in terms of Diaspora vs. Palestine or Judea, I argue that Philo may have been closer to Jews living in Caesarea or Acre than the sect living in the Judean desert was. This does not mean that there was no such thing as Diasporic Jews who shared certain traits. It does mean, however, that Jews like Philo cannot be reduced to “Diasporic Judaism.” The distinctive social reality of Alexandria, and the Hellenistic culture within which he dwelled, were only part of Philo’s identity, just as proto-rabbinic, pre-Christian or sectarian identity should not be reduced to the context of Judea or Galilee and a predominantly Aramaic-speaking culture.

e. Finally, all the above does not mean that Philo does not reflect a distinctive and original approach towards Jewish law. I would argue that what characterizes Philo as a unique philosopher of Jewish law is the view that the laws of the Torah are intended first and foremost in order to improve one's ability to overcome his desire (ἐπιθυμία) and lead a rational life dedicated to philosophy. This clearly Hellenistic ideal marks an essential difference between Philo and other Jewish approaches of Philo's day and age.[5] Philo lacks the concept of fulfilling religious obligations according to certain criteria, such as quantifiable measures, as a means of gaining profit, or as part of an eschatological scheme. For Philo, Jewish law is geared primarily towards the people observing it - not toward God.

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[3] I.D. Gilath, *R. Eliezer Ben Hyrcanus: A Scholar Outcast* (Ramat-Gan: Bar-Ilan University Press, 1984).

[4] For a similar approach towards Second-Temple Judaism, but with no reference to Philo see A.I. Baumgarten, "'But Touch the Law and the Sect will Split': Legal Dispute as the Cause of Sectarian Schism," *Review of Rabbinic Judaism* 5,3 (2002), 301-315. For the view of Philo (and Josephus) as “eclectic” with respect to his halakhic traditions see E. Regev & D. Nakman, “Josephus and the Halakhah of the Pharisess, the Sadducess and Qumran,” *Zion 67* (2002), 422-433. [Hebrew], E. Regev, “From Qumran to Alexandria and Rome: Qumranic Halakhah in Josephus and Philo,” in: A.I. Baumgarten et Al (eds.) *Halakhah in Light of Epigraphy,* (Göttingen: Vandenhoeck & Ruprecht, 2011), 43-63.

[5] To some extent, with the exception Josephus, who emphasizes the purpose of the laws είς σωφροςύνην. However Josephus was very likely to have used Philo as his source for this aspect of his writing. See A. Kasher, *Against Apion, A New Hebrew Translation with an Introduction and*

In my dissertation I will dedicate each chapter to a different body of laws in Jewish law. Through a comparative reading of Philo's law, I try to uncover the Hellenistic conceptions behind Philo's formulation of Jewish law on the one hand, and the relationship between Philo's traditions and other Second-Temple or rabbinic options on the other. I try to identify whether Philo's law is based on a midrashic reading, on his ideology, or merely on the common practice known to Philo. Is Philo's formulation of a certain subject in Jewish law a reflection of a coherent and consistent conception of Jewish law, or a scattered collection of ideas. I hypothesize on whether Philo's description of Jewish law reflects his work as an interpreter of the Torah, or as a preacher, or as a jurist. The following considerations led me to focus on the subjects examined in this dissertation:

a. Length - I chose issues that were treated rather extensively by Philo, in order to be able to reconstruct his general approach towards the halakhic matter at hand.

b. Extra-Biblical traditions - in order to be able to reconstruct what considerations shaped Philo's traditions, I focused on subjects containing a large number of extra-Biblical traditions, as these traditions offer the opportunity to examine both how and why Philo (or his traditions) actively altered the simple meaning of Biblical law, and to compare them to other Second-Temple and rabbinic traditions, as well.

c. Dualism - all of the chapters deal, to some extent, with the question of Philo's dualistic approach. In some chapters Dualism serves as a central theme which serves as a measure for the relationship between Philo's Hellenistic views and Philo's Jewish traditions. In some chapters the question of Dualism is related to in a less prominently manner.

The structure of this dissertation is as follows: Although containing some halakhic material, the first and last chapters focus more on thematic issues and less on Philo's practice, as I will soon elaborate. The rest of the chapters focus on standard legal issues.

In Chapter I, I examine Philo's approach towards his main textual source for the Jewish tradition, i.e. the Septuagint (LXX). This chapter examines how Philo's portrayal of LXX reflects his conceptions of language, especially the duality between language and meaning. It also demonstrates how the portrayal of LXX justifies relying on a translation as the main textual source for Jewish law, as well as for engaging in various types of interpretation, namely halakhic midrash and allegory. In

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Commentary (Jerusalem: Zalman Schazar Center, 1996), 12-14; G.E. Sterling, "'A man of Highest Repute': Did Josephus Know the Writings of Philo?" *The Studia Philonica Annual* XXVI (2013), 101-113. On Philo's and Josephus' similarities in the context of Jewish law and Roman influence see also G.E. Sterling, "Universalizing the Particular: Natural Law in Second Temple Jewish Ethics," *The Studia Philonia Annual* XV (2003), 64-80; C. Termini, "Taxonomy of Biblical Laws and φιλοτεχνία in Philo of Alexandria: A comparison with Josephus and Cicero," *The Studia Philonica Annual* XVI (2004), 1-29.

addition, I point to the affinity between Philo's tradition and rabbinic traditions on the Septuagint, and suggest that this attests to the influence of Greek-Speaking Jews' traditions on rabbinic Judaism, and to a social reality in which Greek-speaking and Aramaic/Hebrew oriented Jews were part of essentially the same cultural and geographic sphere.

Chapter II continues the theme of language, moving from the written text as discussed in Chapter I, to laws pertaining to speech. In this chapter I discuss two halakhic subjects which were treated elaborately by Philo: 1) Blasphemy and the laws pertaining to mentioning the Tetragrammaton, and 2) The Laws pertaining to binding forms of speech, namely oaths and vows. I identify the midrashic basis of a number of Philo's laws, as well as his shared and his distinctive traditions with respect to Second-Temple literature. I also discuss how modern theories of speech-acts might help us identify a Philonic theory with respect to issues like the phenomenology of speech, the relationship between intention and speech etc. I find that Philo was very much concerned with the irreverent potential of many of the speech-acts, and the implication that this irreverence has on society much more than with a phenomenology of speech.

In chapter III I deal with marital laws, which express even more vividly Philo's vision of Jewish law, the purpose of which is to maintain the integrity of the society. In this case, that would be carried out by adhering to the requirement to handle sexual desires rationally and prudently through the exercise of self-control (ἐγκράτεια). I demonstrate that Philo indeed uses a terminology which is heavily influenced by a Hellenistic, dualistic view of the body, according to which there is a division between body and soul: the body is a prison to the soul, and bodily desires are a threat to the philosophical ideal. However, from a practical point of view, this terminology is used in order to formulate a very Jewish version of the proper way to address sexual desires. I show that although Philo's approach is a stricter one than that of the Rabbis, he shares quite a few extra-Biblical laws with rabbinic literature. It is my contention that some of the differences between Philo and the rabbis are not essential, but rather have to do with Philo's earlier stage in the development of Jewish law.

In chapter IV I continue with the issue of Philo's dualistic approach towards the body, and demonstrate how this approach affects Philo's formulation of the Sabbath, especially with respect to terms like "rest" or "delight" (*עונג*), which play an important role in rabbinic halakhic traditions. I offer several reconstructions of Philo's midrashic readings of Biblical law which support his extra-Biblical laws, and argue that although Philo's Sabbath seems very far from the rabbinic Sabbath, Philo's Hellenistic oriented approach did, in fact, make its mark on some rabbinic traditions such as those of Rabbi Eliezer.

In chapter V I continue to examine the role dualism plays in Philo's formulation of Jewish law, in the context of the cultic laws. This chapter focuses less on the distinctive Philonic formulation of the actual cultic practice, and more on the way Philo theorizes and explains what might be the most problematic aspect of Jewish law for a dualist like himself. I am referring to a very physical set of rituals carried out by members of the Priesthood, who qualified for this position only by virtue of familial descent. I demonstrate how Philo goes to great lengths to emphasize that all the physical aspects of the Temple cult are in fact geared towards both the spiritual and the mental aspect. Here, too, as I have shown in chapter III, the principle of self-control (ἐγκράτεια), serves as a principle without which certain physical aspects of human social and religious behavior would be rendered problematic.

I end the dissertation with an appendix, which includes a table summarizing the analysis of all the Philonic extra-Biblical laws discussed in this dissertation. The Table summarizes the source of every law (Midrashic interpretation, Hellenistic ideology, social reality), the agreement or disagreement with other Second-Temple or rabbinic traditions, and whether the disagreements in question reflect essential diachronic differences or, alternatively, different historical synchronic circumstances.

A Note on the State of Research

This dissertation pertains to two major areas of study: Philo-Studies, and the development of Halakha.

In the context of Philo-studies, two major trends can be identified. The first approaches Philo primarily as a Roman Jew. According to this approach, Philo's detailed observance of Jewish law is not essential to his world-view, which is informed predominantly by Greco-Roman philosophy. Studies coming from this standpoint tend to focus on the Greek conceptions behind Philo's formulation of Jewish law, while avoiding both the details of Philo's law and the relationship between Philo's law and other Jewish sources.[6] Other Philo scholars seem to minimize Philo's significance for the study of Jewish law based on the genre of Philo's writing, namely its exegetical and "apologetic" nature.[7] A different approach, which was prominent during the first half of the 20th century, can be seen in studies which considered Philo's law in the Jewish context, but from the perspective of current scholarship, these studies suffer from two main shortcomings: the first is that it is not up to date with the discoveries from Qumran and with the great advances which followed in the field of the development of Halakha. The other is the tendency of those sources to see rabbinic literature as the *telos* of Jewish tradition, focusing on Philo's accordance with rabbinic law instead of focusing on Philo's own, independent, view of Jewish law.[8]

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[6] J.W. Martens, *One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law* (Boston: Brill, 2003), 176. In accordance with his approach, Martens refers to *no* Jewish sources throughout his work. For another study of Philo's law from the Greek perspective, see H. Svebakken, *Philo of Alexandria's Exposition of the Tenth Commandment*, Atlanta: Society of Biblical Literature, 2012). On the Roman nature of Philo's exposition see M.R. Niehoff, "Philo's Exposition in a Roman Context," *The Studia Philonica Annual* XXIII (2011), 1-22.

[7] See P. Borgen, *Philo of Alexandria: An Exegete for His Time*. Supplements to Novum Testamentum v. 86. (Leiden; New York: Brill, 1997). For instance, with relation to Philo's account of circumcision Borgen asserts that it is "devoid . . . of anything which might be constructed as halakhic distinction." (p. 159); cf. P. Borgen, "Philo – a systematic Philosopher or an Eclectic Editor?," *Symbolae Osloenses* LXXI (1996); E. Birnbaum, *The Place of Judaism in Philo's Thought: Israel, Jews, and Proselytes*. Studia Philonica Monographs 2 (Atlanta: Scholars Press, 1996).

[8] For this approach see Y. Heinemann, *Philons Griechische Und Jüdische Bildung; Kulturvergleichende Untersuchungen Zu Philons Darstellung Der Jüdischen Gesetze* (Hildesheim: G. Olms, 1962); S. Belkin, Philo and the Oral Law, Cambridge, Mass.: Harvard University Press, 1940), pp. 1. pp. 3; Cohen, Naomi G. *Philo Judaeus: His Universe of Discourse*. Beiträge Zur Erforschung Des Alten Testaments Und Des Antiken Judentums Bd. 24 (Frankfurt am Main ; New York: P. Lang, 1995). For a critique on viewing

In the context of the development of Jewish law, the discovery of the Dead Sea Scrolls has transformed the field immensely. This is especially true with regard to the publication of 4QMMT, which is a letter authored by the Sect, listing halakhic differences between the Sect and its counterparts in Jerusalem. In a seminal lecture dedicated to 4QMMT and rabbinic literature, Jacob Zussman argued that quite a few of the halakhic differences listed in 4QMMT reflected disagreements documented in rabbinic traditions.[9] More notably, in several cases these disagreements were portrayed in rabbinic literature as disagreements between the Rabbis' forefathers i.e. the Pharisees, and the priestly-oriented sect of the Zadokites. The consequences of such a finding were dramatic: if the rabbinic views were in existence when the Sect decided to leave Jerusalem for the isolated Judean Desert, the best explanation for the differences between rabbinic literature and the Dead Sea Scrolls should be that each corpus represented an essentially different ideology, hermeneutics etc., rather than reflecting different stages of Jewish law and Biblical interpretation.

Following Zussman, different scholars offered far-reaching explanations for the differences between the Rabbis and the Sect/Priests/Zadokites. Daniel Schwartz argued that the Rabbis had a "nominalsitc" approach, while the Priests had a "realistic" approach.[10] As the field progressed, both Zussman's assumptions and Schwartz's suggestions were challenged. One by one, many of Zussman's examples for equivalents between 4QMMT and rabbinic traditions were problematized. Schwartz's theory was problematized both with respect to the possibility to easily define a specific ruling as "nominal" rather than "realistic," and with respect to the question regarding whether the differences between Qumran and the Rabbis are really essential. Thus, Scholars have argued that whereas in some cases the traditions in Qumran seem to be loaded with ideological or hermeneutical considerations, in other cases the traditions from Qumran seem to reflect in early, less developed stage of halakha as we know it from rabbinic literature, or ad-hoc exegetical differences.[11] Aharon Shemesh has suggested that certain pre-rabbinic sources indeed represent an essential difference from rabbinic perceptions in some cases, while in other cases anticipate the more developed, later, rabbinic formulations.[12]

Following Aharon Shemesh with respect to Qumran and the rabbinic literature, my approach in this dissertation is that rabbinic literature should definitely be part of any discussion on halakha during the first century B.C.E. I suggest that this approach is true in Philo's case, as well, thus reinforcing Shemesh's approach. First, Philo shares some of his traditions with the Rabbis, others with Qumran. Second, while some of

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rabbinic literature as the *telos* in Jewish studies see H. Najman, "The Vitality of Scripture Within and Beyond the 'Canon'," *Journal For the Study of Judaism* 43 (2012), 497-518.

[9] Zussman, "Preliminary Reflections," above.

[10] D.R. Schwartz, "Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law," in D. *Contesting Conversion* & U. Rappaport, *The Dead Sea Scrolls: Forty Years of Research, STJD* 10 (Leiden: Brill, 1992).

[11] Y. Elman, "Some Remarks on 4QMMT and the Rabbinic Tradition, Or, When is a Parallel not a Parallel?," in: J. Kampen and M. Bernstein (eds.), *Reading 4QMMT: New Perspectives: On Qumran Law and History, SBLSymS* 2 (Atlanta: Scholars Press, 1996), 124-125; J.L. Rubinstein, "Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment," *Dead Sea Discoveries* 6,2 (1999), 157-183. For Schwartz's response see D.R. Schwartz, "*Kel VaChomer* as a Sadduccean Realism", *Massechet* 5 (2006), 145-156 [Hebrew].

[12] A. Shemesh, *Halakhah in the Making, The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California Press, 2010).

Philo's differences seem to be rooted in an essential view of Jewish law, others reflect an earlier stage in the development of Jewish law.

Chapter I: Philo's Torah – The Septuagint: Translation and Hermeneutics

As I will demonstrate throughout my study, Philo's account of Jewish law was shaped by several factors, namely by Philo's Biblical interpretation, his philosophical views, and his social reality. Accordingly, my discussion on Philo's halakhic writing will begin with Philo's textual sources, from which he drew his interpretations. Philo's main textual source for the Jewish tradition was the Septuagint translation of the Torah. My discussion on the Septuagint will highlight several points which will become crucial in order to understand just how significant Philo's work is when studying the development of Jewish law:

a. From the perspective of tradition-history, my analysis leads me to propose that not only were rabbinic traditions *influenced* by traditions coming from the Jewish-Hellenistic world, but, in fact, some of the rabbinic traditions *originated* in those circles. This fits into a larger picture in which rabbinic traditions and conceptions originated in a Greek-speaking, and, perhaps more importantly, a "Greek thinking" Jewish environment.

b. From the perspective of the social-history of the Second-Temple period, my analysis leads me to propose close relations between Greek-speaking Jews and Aramaic-speaking Jews, as the *Sitz im leben* of the rabbinic traditions point to a predominantly Greek-speaking Jewish society. This accounts for the fact that the legal discussions focusing on translations which seem to be preoccupied specifically with Greek translations to the Torah, and which attribute a special halakhic status to translations in Greek in comparison to other languages.

According to Philo, the Septuagint was used not only for studying the Torah, but for ritualistic reading in the synagogues as well.[1] Clearly, he himself relied exclusively-- or almost exclusively-- on the Septuagint for both. In the context of Jewish law, the use of a translation raises several halakhic dilemmas. The debate over these dilemmas is documented both explicitly and implicitly in sources from the centuries following the production of the Septuagint, and the issues discussed included such questions as 1) Is it at all permissible to translate the Torah? 2) Is it permissible to use a translation as a source for Jewish law, as it is by nature merely a paraphrase of the original text? 3) More specifically, can a translation be used in order to engage in *midrash halakha,* given the nature of this type of hermeneutics? 4) Can a translation be used for ritual-reading? 5) Can a translation be used as a ritual object?

As I will show, Philo does not directly address all of these questions, but those that he does, he answers with an adamant Yes. Philo makes an effort to affirm the authority of the Septuagint as a paradoxical "identical copy," and, therefore, suitable in every context which requires the original, sacred, Biblical text.

Finally, the question of translation is heavily associated with the theoretical basis of hermeneutical approaches which played a role in halakhic disputes in Late-Antiquity. The debate over the appropriate approach to the Biblical Text was also part of a larger debate over legal authority (although this question does not seem to occupy Philo). Thus, we find alternative hermeneutical perceptions with arguments on the binding force of tradition vs. text, and human authority vs. the claim of Divine Inspiration[2]. As I will show, some of these hermeneutic dilemmas have left their mark in Philo's writing. However, as already noted, with respect to Philo, we are faced with an even greater problem, as unlike his contemporaries in Palestine, Philo relies on a translation for his teachings. As Yehoshua Amir states:

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[1] Philo, *Moses* 2.215-216.

[2] For the view that the Dead Sea scrolls Sect based its authority on Divine Inspiration, see for

> This would make Philo the only interpreter in the two-thousand-year history of Jewish Bible exegesis whose hermeneutics were not – or at the very least not constantly – based on the Hebrew text.[3]

Thus, as part of our quest for Philo's view with respect to questions like the source of law, the purpose of law, literalism vs. *midrash* etc., we must examine Philo's view on matters like language and translation. From a theological perspective, the implication of Philo's approach towards the Greek translation of the Torah, i.e. the Septuagint, goes beyond the question of translation, as the very Torah itself may be perceived as a translation. That is to say, the Torah itself is a representation of the Divine Words into a human, "material" language. As Francesca Calabi puts it, in the context of Philo's own exegetical approach:

> To a great extent, comprehension difficulties are probably ascribable to the impossibility of translating, in terms comprehensible to man, a truth which, by definition, is beyond him.[4]

Thus, the need arises to theorize on and justify the authority and authenticity of the Torah as a true representation of the Word of God, or as a Divine Code of Law.

The Making of the Septuagint According to Philo

When Philo discusses the historical account of the making of the Septuagint, he makes several assertions which, as I will suggest below, are significant in the context of our study for several reasons: (1) They affirm the legitimacy of the Septuagint as a source for Jewish law, as well as a source for *Midrash,* even though it is a translation. (2) In including several themes which found their way into a rabbinic tradition, they support a model according to which rabbinic traditions were sometimes influenced by, and even originated in, Hellenistic/Alexandrian traditions, and not the other way around. (3) They imply that the Septuagint is a "sacred text", and therefore should be considered "holy" and as such fit to be used for ritual purposes. 4) They shed light on Philo's hermeneutical approach in the context of other hermeneutical approaches from Late-Antiquity.

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[2] For the view that the Dead Sea scrolls Sect based its authority on Divine Inspiration, see for instance S. Fraade, "Looking for Legal Midrash at Qumran," In: M. E. Stone & E. G. Chazon (eds.), *Biblical Perspectives; Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls* (Leiden: Brill, 1998), 59-79. For the view that the Sect based its authority on its interpretive methods see A. Shemesh & C. Werman, *Revealing the Hidden: Exegesis and Halakha in the Qumran Scrolls* (Jerusalem: Mosad Bialik, 2011), 72-83. On the dispute within the rabbinic circles on the power of interpretation vs. tradition see D. Boyarin, *Border Lines: the Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), 171-182.

[3] Y. Amir, "Scripture in the Writing of Philo" in: M.J. Mulder, *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early* Christianity (Philadelphia: Fortress Press, 1988), pp. 441.

[4] F. Calabi, *The Language and the Law of God: Interpretation and Politics in Philo of Alexandria* (Atlanta: Scholars Press, 1998), pp. 91.

The Septuagint as the Word of God

Philo's main source for his account of the making of the Septuagint is, most likely, the Letter of Aristeas, but Philo makes several interesting additions and alterations. The most notable one is that whereas Aristeas describes the translation as a result of rigorous academic work, Philo attributes the translators' achievement to Divine Inspiration. As we will see later on, this idea will be adopted in the rabbinic versions of the Septuagint tradition:[5]

> They, like men inspired, prophesied, not one saying one thing and another, but every one of them employed the selfsame nouns and verbs, as if some unseen prompter had suggested all their language to them. . . . these translators [were] not mere interpreters but hierophants and prophets to whom it had been granted in their most honest and guileless minds to go along with the most pure spirit of Moses.[6]

After describing how the translations of all seventy translators were identical, Philo concludes:

> who is there who does not know that every language, and the Greek language above all others, is rich in a variety of words, and that it is possible to vary a sentence and to paraphrase the same idea, so as to set it forth in a great variety of manners, adapting many different forms of expression to it at different times. But this, they say, did not happen at all in the case of this translation of the law, but that, in every case, exactly corresponding Greek words were employed to translate literally (κύριον)[7] the appropriate Chaldaic words, being adapted with exceeding propriety to the matters which were to be explained for just as I suppose the things which are proved in geometry and logic do not admit any variety of explanation, but the proposition which was set forth from the beginning remains unaltered, in like manner I conceive did these men find words precisely and literally corresponding to the things, which words were alone, or in the greatest possible degree,

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[5] For a comprehensive account of the different versions of the Septuagint tradition throughout history, see A. Wasserstein and D. J. Wasserstein, *The Legend of the Septuagint from Antiquity to Today* (Cambridge: Cambridge University Press, 2005). See also S. Honigman, *The Septuagint and Homeric Scholarship in Alexandria: A Study in the Narrative of the Letter of Aristeas* (London and New York: Routledge, 2003).

[6] *Moses* 2.36-37 (All the quotations from Philo are according to the Loeb Classic Library edition, unless noted otherwise). On the theme of Moses as a source of authority in Second-Temple literature, see H. Najman, *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (Leiden: Brill, 2003).

[7] For the translation of κύριον as "literal", see F.H Colson *Philo VI*, (Cambridge: Harvard University press, 1935), 206.

> destined to explain with clearness and force the matters which it was desired to reveal.[8]

As Adam Kamesar has noted, whereas Stoic notions of language distinguish between "words" (ὀνόματα) and "concepts" (σεμάινομενα/δελούμενα), and between words and "things"/"external realities" (πράγματα), Philo claimed that this did not apply to the Septuagint: "Philo says that the version has been admired as one and the same 'in both matter and in words', he sums up his view in Stoic terms: the translation is both sense-for-sense and word-for-word!."[9] Kamesar asserts that Philo's view "allows us to understand quite easily why he treats the Greek text as if it were the original, and dispenses with the Hebrew".[10] Philo's treatment of the Translation of the Torah is analogous to his treatment of the Torah itself, as he states that the Torah is a perfect copy of nature: "thinking his laws the most fruitful image (εἰκόνα) and likeness of the constitution of the whole world."[11] Thus, just as it is indeed possible to fully communicate the word of God through the Mosaic Torah, it is possible to communicate, accurately, without alteration, the Hebrew Mosaic text, through a translation. In fact, as Hindy Najman and Benjamin G. Wright argue, for Philo the Septuagint is a perfect copy of the Laws of nature, just as the Hebrew text is. Thus, in a sense, the origin of the Septuagint is not the Hebrew text at all, but rather has the same origin as the latter.[12]

Philo did not rely on the Septuagint merely to comment on general themes or ideas in the text, but relied on it for his interpretation which was heavily based on single terms and expressions in the translation. As Y. Amir puts it: "Philo's allegorical interpretation is, [...] entirely founded on a sensitive investigation of the formal, of whose precise and deliberately-chosen rightness the interpreter is convinced, and whose fine nuances often have far-reaching exegetical consequences."[13]

Of all the different exegetical techniques we find in Philo, the claim that the Greek text does not fall short of the Hebrew text seems most significant for the possibility of engaging in *Midrash Halakha,* as opposed to interpretations which are thematic or theoretical by nature. At least in theory, the use of a translation would limit one's ability to interpret the text using methods which rely heavily on specific terms, the use of enclitic words etc. This is because in the case of a translation one can never know if syntax, figurative speech, redundancy, similar terms, or other textual markers which are so central for *Midrash* are a result of the paraphrasing nature which is intrinsic in any translation.[14] Thus, it seems very significant that Philo makes the case that in fact the translation is *not* a paraphrase, and that the Greek language is able to express the exact original meaning.[15]

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[8] *Moses* 2.38-40.

[9] Kamesar A., "Biblical Interpretation in Philo", in: *The Cambridge Companion to Philo*. Cambridge ; New York: Cambridge University Press, 2009. Pp 68-69.

[10] *Ibid,* pp. 71.

[11] *Moses* 2.51

[12] H. Najman & B. G. Wright, "Perfecting Translation: The Greek Scriptures in Philo of Alexandria" (forthcoming).

[13] Y. Amir , Above, 440.

[14] Naturally this depends heavily on how we define "midrash"- an endeavor which is impossible in this context. For our purposes, "midrash" is interpreting a text in an un-literal way, based on certain markers in the text. I also acknowledge the fact that the question of whether a certain reading of a text is literal or not is subjective.

The Septuagint as an Authentic Representation of the Jewish Tradition

In addition to Philo's assertion that the Mosaic Torah is perfect copy of the laws of nature, and that the Septuagint has the same qualities, Philo reflects the idea that the exclusiveness of the Torah depends on the fact that it preserves the immovable, *original laws* given to Moses by God:

> But the enactments of this lawgiver are firm, not shaken by commotions, not liable to alteration, but stamped (σεσημασμένα), as it were with the seal of nature herself, and they remain firm and lasting from the day on which they were first promulgated to the present one.[16]

Similarly, when Philo relates to the need for a translation he asserts that,

> In olden time the laws were written in the Chaldean language, and for a long time they remained in the same condition as at first, not changing their language as long as their beauty had not made them known to other nations.[17]

Although Philo does not relate here to the textual tradition of Torah, but rather to its practices and language, it might be significant that in the context of his account of the Septuagint he stresses that the Torah has remained unchanged. In a different place, Philo makes another claim which is significant to engaging in Midrash, saying that he has given his interpretation, knowing very well that "the law is here adding no superfluous word."[18] It is possible that Philo's awareness that the fact that a text may have been altered over time may sometimes cast doubt on its integrity reflects the cultural environment in Alexandria at that time, where scholars engaged in the critical reading of Homeric texts.[19]

Accordingly, Philo is probably the first source known to us which asserts that the Biblical text is authentic and is never redundant. Although Philo does not state this explicitly, these principles might have been perceived by him as crucial for the engagement in *Midrash,* just as they were to the Rabbis. Indeed, the idea that the Torah has kept its integrity and that it is not redundant is central to the rabbinic world.[20]

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[15] For Philo's use of various midrashic methods see I. Heinemann, *Darkeh Ha-Hagadah* (Jerusalem: Magness Press, 1970). Heinemann even provides examples for Philo's use of alternative accentuation in order to offer a new interpretation, which is analogous to the rabbinic use of the fact that that Biblical text did not include vowels. See for example p. 126.

[16] *Moses* 1.13.

[17] *Moses* 1.26.

[18] *De profugis* 54

[19] On *the* influence of Homeric Scholarship on Biblical interpreters in Alexandria see M. Niehoff, *Jewish Exegesis and Homeric Scholarship in Alexandria* (Cambridge: Cambridge University Press, 2010).

[20] On the principle that every word in the Torah, or even lack of words has a midrashic significance both in rabbinic literature and in Philo, see Heinemann, above, 96-102. This principle

The Question of Canonization

Suggesting that Philo could have conceived the idea that the Biblical text, or at least the Pentateuch, was a defined, accurate text, also has a bearing on the question of canonization. Lately, Hindy Najman argued that Philo was very far from such a view. According to Najman, Philo represents a period in Jewish history when people like himself and, for instance, the authors of some of the literature found in Qumran, saw themselves as taking part in the creation of scripture rather than in engaging in the interpretation of a collection of authoritative, canonized, texts.[21] Other scholars of early midrash, like Menachem Kister[22] and Bilha Nitzan[23] find in Qumran the beginning of a midrashic interpretation which is based either on the perception of a distance between the text and the interpreters, or on a canonization of Biblical texts as worthy of exegetical scrutiny. Since in Qumran we find a variety of textual versions of the Bible, we can understand that in the Sect's view, the possibility of engaging in Midrash did not depend on a belief in a finite and binding textual tradition of the Holy Scriptures.

I agree with Najman that as scholars we should take extra caution with regard to making anachronistic assumptions while relating to ancient texts as "canonical" (or their authors as "marginal"). In fact, one of the main theses of this study is that Second-Temple Jewry offered an array of possibilities with respect to the observance of Jewish law, not confined to the "Three Schools" picture presented by Josephus.[24] Nonetheless, I would argue that Philo’s insistence on the accuracy and authenticity of both the Hebrew text and the Septuagint support the notion that Philo did see the Septuagint, or at least the Pentateuch, as a definable “holy text” or “scripture.” This does not necessarily mean that he rejected the possibility of the creation of additional new, holy and authoritative texts.

Literal and Inner Meaning

As noted, Philo himself expressed ambivalence towards the possibility of words accurately representing what they stand for. Thus, even though Philo thought that the Septuagint—as a translation-- qualified for engaging in Midrash, it remains to be determined in what way Philo thought that Biblical interpretation should be a sufficient source for determining Jewish law. Scholars have already noted that Philo’s

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is echoed, for example, in BT *Kiddushin* 30a: “and why were they (the scribes/sages) called “counters” (*sofrim*)? because they used to count all the letters of the Torah.” See also I. Rozen-Zvi. “A Philosopher Meets the Rabbi: a Review of Three New Books on the Philosophy of Halakha," *Theory and Criticism* 15 (2000), 109-126 [Hebrew]. According to Rosen-Zvi, the main motivation behind the rabbinic Midrash is not merely to solve textual problems, or use the Bible as a proof text, but rather to exhaust all the possible meanings embedded in what is, and even what is not, in the text.

[21] H. Najman, “The Vitality of Scripture Within and Beyond the ‘Canon’ “, *Journal for the Study of Judasim* 43 (2012), 497-518. For a list of recent studies dedicated to the question of canonization see p. 499 f.n. 5.

[22] M. Kister, "A common Heritage: Biblical Interpretation at Qumran and its Implications", In: M. E. Stone & E. G. Chazon (eds.), *Biblical Perspectives; Early Use and Interpretation of the Bible in Light of the Dead Sea Scrolls* (Leiden: Brill, 1998), 101-111.

[23] B. Nitzan, B. Nitzan, "The biblical Canonization process during the Second Temple Period According to the Evidence of the Judean Desert Scrolls," *Te'uda* 23 (2009), 83- 98. [Hebrew]

[24] *Antiquities* 18.1.

linguistic approach was influenced by Platonic ideas, according to which there is a gap between words and the thing they represent. Thus, Philo writes that “the name (ὄνομα) always stands second to the thing (πράγματος) which it represents as the shadow (σκίαι) which follows the body (σώματι).”[25]

The notion that there is a gap between words and the reality they represent is echoed in a remark Philo makes in his introduction to the Ten Commandments. According to Philo, the Torah says that when the Ten Commandments were given “All the people saw the voices” (Exodus 20.14), because everything God says is “not words (ρήματά) but deeds (ἔργα).” According to Winston, Philo had a “deep distrust of language”, deriving from Platonic thought.[26] However, this mistrust can potentially undermine the premise that the Torah’s words are an accurate representation of the word of God. Moreover, it can undermine the practical implications of the literal meaning of the text. Thus, Philo makes an effort to explain that Moses had the ability to transcend the limits of human language.[27]

As I will elaborate below, there is a correlation between the Christian and rabbinic approach towards the UR-Text, i.e. the Hebrew Bible and the approach towards the appropriate way to translate the original text.[28] Thus, Aqilah’s translation, which according to the rabbinic tradition was done under the supervision of R. Akiva, is celebrated in rabbinic literature for its literal accuracy. It is interesting that Christians attacked this translation for the very same reasons, since they were promoting an allegorical reading of the text, seeking the “inner meaning”. Philo declares that both types of reading necessary:

> There are some who, regarding laws in their literal sense (νοητῶν πραγμάτων) in light of symbols (σύμβολα) of matters belonging to the intellect, are over- punctilious about the latter, while treating the former with easy-going neglect. Such men I for my part should blame for handling the matter in too easy and off-hand a manner: they ought to give attention to both aims, to a more careful and exact investigation of what is not seen and what is seen to be stewards without reproach**.**[29]

In this text Philo directly confronts the threat that allegorical interpretation - of which he himself was an emblem - poses to the observance of Jewish law. If through allegorical interpretation it is possible to uncover the symbolic, hidden meaning of the text, why is it necessary to continue with the observance of the laws, which represent a literal meaning of the text? Philo insists that both understandings are necessary: Just as the soul cannot exist without the body, so must the allegorical preserve the literal meaning of the Torah:

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[25] *Decalogo* 82.

[26] D. Winston, “Aspects of Philo’s Linguistic Theory”, *The Studia Philonica Annual* III (1991), 124.

[27] On Hellenistic and Christian views on the limits of language and Philo's view of Moses' unique ability to transcend the limits of human language see D. Boyrain, *Intertextuality and the Reading of Midrash* (Jerusalem: Hartman Institute, 2011), 255-260. [Hebrew edition].

[28] See J. Dan, “The Sanctitiy of Language and Form”, in: E.D. Bilski & A. Shinan (eds.), *Borders of Sanctity* (Jerusalem: Keter, 2003), 74-85. As Dan notes, Christianity’s abandonment of the literal meaning is expressed strongly in that the NT is a translation in itself, as all of Jesus’ sayings (except for two) are brought in Greek instead of the original Aramaic.

[29] *De migratione Abrahami*, 89-90.

> Nay, we should look on all these outward observances as resembling (ἐοικέναι) the body, and their inner meanings as resembling the soul. It follows that exactly as we have to take thought for the body, because it is the abode of the soul, so we must pay heed to the letter of the laws."[30]

Whereas in the *Decalogo* Philo relates to the dualism of "words" and "deeds" or "things", here Philo treats two ways of understanding the Torah - "spiritual"/ "symbolic" and "practical". Here, too, Philo seems to express a dualistic/Platonic approach, making a clear distinction between words and their meaning. This would reflect a Jewish-Hellenistic approach, as opposed to the Palestinian or Rabbinic hermeneutics. As Boyarin puts it:

> The congruence of Paul and Philo suggest a common background […] their allegorical reading practice and that of their intellectual descendants is founded on a binary opposition […] in a dualistic system in which spirit precedes and is primary over the body. Midrash as a hermeneutic system seems precisely to refuse that dualism, eschewing the inner-outer, visible-invisible, body-soul dichotomies of allegorical reading.[31]

However, some distinctions should be made. While Paul holds that there is a gap between the "body" and the "soul"-- with the latter considered superior-- according to Philo, neither the simple meaning nor the practical implications of the text are to be dismissed. In fact, the Body/Soul metaphor suggests that the allegorical interpretation cannot exist without the simple meaning. This was perceived by some readers of Philo as an inconsistency, an example of the internal tension between "Philo the Philosopher" and "Philo the Jew".[32] However what Philo says about the translation of the Torah and what he says with respect to the Torah itself seem to imply that there is, in fact, no tension at all, as Philo's commitment to the observance of the Torah is well grounded in his theory of language: Just as the written Torah was able to bridge the gap between the word of God-- or the eternal laws of nature-- and human language, so did the translation of the Torah bridge the gap between the original language and its representation in the form of the Septuagint. Thus, it is indeed possible through the interpretation of these texts to learn how, in truth, we ought to act.

Finally, for Philo, the symbolic interpretation of the Torah was an allegory for external, universal truths, rather than a spiritual truth, although it may teach a spiritual lesson. To illustrate this distinction, a spiritual understanding of the Sabbath would mean that the idea behind the Sabbath is, for instance, rest. Thus, spiritualizing the Sabbath could mean resting in whatever way one finds it apt, regardless of the halakhic definition of "rest".[33] An allegorical interpretation would strive to unfold what the Sabbath can teach us about the soul, about God etc. In a sense, the fact that the allegorical interpretation is more distant from the practical meaning than from the spiritual interpretation, allows Philo to keep the practical meaning intact.

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[30] *Ibid* 93.

[31] D. Boyarin, *A Radical Jew – Paul and the Politics of Identity* (Berkeley: University of California Press, 1994), 14.

[32] See above in the introduction.

[33] Cf. Philo's allegorical interpretation to Adam's "Sleep", Allegories 2.19-39.

As to the literal meaning, neither the Rabbis nor Philo thought that the practice of the Torah should be based on a literal meaning of the Torah. In fact, the most common rabbinic form of Midrash is hyper-literal, i.e. interpreting figurative forms of speech, literally. Thus, in rabbinic Midrash, "raising a hand against" someone, i.e. acting in defiance, could mean literally raising a physical hand.[34] Moreover, the most hyper-literal form of Midrash, i.e. the Kabbalistic Midrash in the Zohar, has little-to-no normative significance, or practical application. Thus, the question is not whether to read the Torah literally or not, but rather, how to expose both the symbolic and the practical messages concealed in the characters of the Torah. Hence, if Philo claims that the Septuagint is identical to the Hebrew Bible both "in matter (πράγμασι) and words (ὀνόμασι)", this means that in addition to preserving the literal meaning, the Septuagint preserved the validity of deducing the law from the text.

In sum, Philo's claim that the translation was Divinely inspired, and also the claim that (as a result) the translation bridges the gap between meaning and its representation in the form of words, seems to be original to Philo. Moreover, Philo's insistence that the translation preserves both the words and the inner meaning of the words sheds light on (and is analogous to) the way Philo insists one should read the Torah, i.e. paying attention to both the immediate meaning of the words and to the inner meaning of the words equally.

Philo's account of the making of the Septuagint includes several other themes that are particularly significant, due to their resemblance to rabbinic traditions: These, for example, include Philo's claim with respect to the supremacy of the Greek language, as well as his claim that the Hebrew version of the Torah and the Septuagint share a relationship of "kinship". These themes will be discussed below, as we compare Philo and rabbinic traditions with respect to the Septuagint.

Philo's Septuagint Tradition in the context of Second-Temple and Rabbinic Literature

The origin of the tradition relating to the creation of the Septuagint was Hellenistic Jewry, most probably the Letter of Aristeas. Significantly, several themes in rabbinic traditions on the Septuagint seem to come from the Philonic version of this tradition. Furthermore, in this case, Philo's tradition seems to be his own creation, thus attesting to a genuine Philonic tradition in rabbinic literature.[35] Although Philo's tradition on the making of the Septuagint may be classified as "Aggadic", it has halakihc implications. As we shall see, the Talmud attributes the special hallakhic status of the Septuagint to the "Aggadic" themes found in Philo.

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[34] Cf. BT *Sanhedrin* 45b.

[35] In the course of our discussion we will focus on the rabbinic traditions primarily with respect to Philo. For an analysis of the development of the different rabbinic traditions of the Septuagint legend and the relationship between these traditions and the Letter of Aristeas and Philo, see M. Simon-Shoshan, "The Tasks of the Translators: The Rabbis, the Septuagint, and the Cultural Politics of Translation," *Prooftexts* 27 (2007), 1-40.

The Exclusiveness of the Greek Language and the Kinship of Jews and Greeks in Rabbinic Traditions on the Septuagint

In addition to Philo's assertion with respect to the uniqueness of the Septuagint in terms of its ability to represent the original text so accurately, two more themes original to Philo are significant. While praising the great achievement of the Septuagint, Philo adds that the Greek language is especially suited for the purpose of translation, although he does not explicitly argue that Greek is exclusive in this respect.[36] This somewhat resonates with the halakhic ruling in Mishnah *Megilla* 1.3 which takes this point further, stating in the name of Rabbi Simeon the son of Gamliel, that it is permissible to translate the Torah *only* into Greek. Moreover, the Bavli on this Mishnah offers two different explanations as to why it was permitted to translate the Torah in the first place, which imply that the Jewish-Hellenistic traditions with respect to the Septuagint were internalized in rabbinic circles:

> R. Judah said: even when our sages permitted (translating into) Greek, they did not permit it but in the case of a Torah scroll, because of the case of King Ptolemy. As it is taught: It happened that King Ptolemy gathered seventy-two elders and he confined them in seventy-two houses and did not reveal to them why they were gathered, and he came to each and every one of them and told him 'translate the Torah of your Rabbi Moses for me', God then prompted each one of them and they all translated identically with each other and wrote (the translation) for him.[37]

The Midrash goes on to list twelve instances where the translators used identical variations in order to prevent the Torah from being portrayed as irrational, or offensive towards the Ptolemais. It seems that this source justifies translating the Torah into Greek, since the making of the first Greek translation involved miraculous events which saved the Jews from potential disaster, and since it was Divinely inspired, the translation was obviously accurate (with the important exception of the 12 intentional "mistakes").[38] As we have seen, the assertion that the translation was the product of Divine Inspiration is present in Philo as well, and differs from our earliest source for this tradition, "The letter of Aristeas".[39]

Moreover, as Simon-Shushan notes, although the rabbinic tradition asserts that the Septuagint contains "mistakes", attributing these mistakes to Divine Intervention reflects an even greater power attributed to of the authority of the Septuagint in the eyes of the Rabbis. Thus, instead of seeing these "mistakes" as evidence of the inferiority of the Septuagint, the rabbinic tradition supports Philo's tradition with respect to the Divinity of the Septuagint. As Simon-Shushan puts it: "To the extent that this tradition expresses a positive attitude toward the Septuagint, the Rabbis are merely passing on the conventional wisdom of the time."[40]

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[36] *Moses* 2.38.

[37] BT *Megila* 9a.

[38] Although, ironically, according to the Talmud, the miraculous nature of the translation is reflected in its intentional mistakes rather than in its accuracy.

[39] According to the Letter of Aristeas the translators would meet every evening to consult on the most appropriate translations.

[40] Simon-Shushan, Above, 20-23.

However, following this narrative, the Talmud asks again why it was permitted to translate the Torah into Greek:

> R. Yohanan said, what is Rabbi Simeon's reason (for permitting Greek)? That it says (Genesis 9:27) "yaft elohim l'yafet,v'yishkon b'ohalei shem" (may God enlarge Japheth that he will dwell in the tents of Shem) which means that the words of Japheth will be in the tents of Shem.[41]

According to this Midrash, Japheth, forefather of the Greeks, is blessed that he will have a close relationship with his brother Shem, the forefather of Israel. The Talmud then asks why of all the languages of the descendants of Japheth, (i.e. the Europeans), only the language of the Greeks, and not of the other descendants of Japheth listed in Genesis (such as Gomer and Magog) was selected for the fulfillment of this blessing.

> Then let it be Gomer and Magog! R. Hiyya son of Abba said: this is the reason - that it says 'yaft elohim l'yafet' (*יפת אלהים ליפת*). (This means) let the beauty of Japheth dwell in the tents of Shem**.**

Whereas the Midrash uses the phonetic similarity between the Hebrew name *יפת* and the verb *יפת* to the Hebrew word יופי i.e. beauty, what concerns us is the theoretical roots of this Midrash.[42] Clearly, according to R. Hiyya, the Greek language represents the beauty of the Greco-Roman world and is superior to all other languages. The exclusiveness of the Greek language with respect to its permissibility as a tool to translate the Torah is even more explicit in the Palestinian Talmud: "They examined the matter and concluded that the Torah can only be adequately (כל צורכה) translated in Greek."[43]

Moreover, Philo relates to the kinship of Japheth and Shem in the context of the Septuagint as well, claiming that anyone who had command of both languages and read the two versions, "the Chaldean and the translation (ἑρμηνευθείσῃ)," will regard the Hebrew and the Greek translations as "sisters" (ἀδελφάς).[44] We should note, however, that Philo relates to the two versions of the Torah, and not to the two languages or peoples, as sisters. The use of kinship with regard to languages, especially with respect to the Greeks, may have to do with other Second-Temple traditions.[45] Thus, even if, as Niehoff has argued, Philo had not only a sense of affinity but also one of superiority over Greek culture, it was this very culture that served as his measure to reaffirm the greatness of Jewish culture. The degree of Philo's conviction in this matter was so great that he argued that, in fact, Plato "imitated our legislation" and that Zeno derived his ideas from the Hebrew Bible.[46] At the same time, this reflects a great appreciation for the Greek culture and might explain why it was important for Philo to speak of kinship with the language in which Homer's and Plato's writings had been produced. According to Najman and Wright, the purpose of the sister imagery is to emphasize that the Septuagint is not a mere translation, secondary to the Hebrew original, but rather that both the Hebrew and the Greek text stem from the same origin.[47]

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[41] BT *Megilah* 9b.

[42] The Greek translation does not allow this midrashic interpretation. The Hebrew word *יפת* was translated into the word πλατύναι, which means "enlarge" and has no phonetic resemblance to Ιαφεθ or the Hebrew word יופי i.e. beauty. In *Moses* 2.26 though, before his account of the translation, Philo does remark that the "*beauty* and dignity of the legislation of Moses is honored not among the Jews only" and that "In olden time the laws were written in the Chaldean language […] not changing their language as long as their *beauty* had not made them known to other nations". Nonetheless, this hardly provides enough evidence to speculate that Philo was aware of this midrashic tradition in order to talk of the Torah in terms of "beauty". The (Aramaic) *targums* are divided in their translation. The *Yonatan* translates in accordance with the Septuagint--"enlarge". Conceptually, it understands "let him dwell in the Tents of Shem" as a sign of subordination, as it translates "and may his sons convert and dwell in the tents of Shem". Onchelos, on the other hand, punctuates differently from the other sources. According to Onchelos, the verse has nothing to do with kinship of Shem and Japheth, as it should be read "may God enlarge Japheth, and may God's presence/*shekhinah* dwell in the tents of Shem".

[43] YT *Megilah* 9:1. It should be noted, though, that in this context the Greek translation is that of Akilah, not the Septuagint.

[44] *Moses* 2.40.

To sum up, Philo's description of the Septuagint resonates very strongly with the rabbinic tradition, a tradition which, like Philo, speaks of a Divinely-inspired translation, the unique quality of the Greek language, and the use of terminology of kinship with respect to the two languages/versions of the Torah.

The Torah as a Translation of the Word of God

As noted above, the question of translation of the Divine Words into a finite text was not a challenge faced by Philo alone, but was, in fact, a challenge for anyone who shared the belief that the Torah is a representation of the infinite Word of God, and, at the same time, a text that can be reduced to a meaning discernible by human beings.[48] All major Late-Antiquity Jewish literature corpora seem to provide a solution to the problem, even if they don't spell out that this is the issue that they are addressing. Thus, in this context, Philo is a participant in an ongoing discussion in Second-Temple and Late-Antiquity Judaism.

The writings from Qumran express the notion that the Righteous-Teacher, or the Sect, as a group, have the exclusive ability to interpret the Torah, and to unveil the meanings (*נסתרות*) hidden therein. Although not all scholars agree on whether the Sect believed that their interpretations were Divinely-inspired or, rather, primarily an intellectual process made possible by their unique practices, it is clear that they thought that they had a direct--and exclusive--access to the infinite Word of God, and that they perceived the process of interpreting the Torah as having a spiritual component.[49] Hence the Qumranic solution to the problem of the finite nature of the Biblical text is that the Biblical text is not open to an objective, intellectual scrutiny, but, rather, it requires a constant spiritual process through which to unravel its Divine meaning.

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[45] A more explicit claim of kinship is of course the famous tradition in I Maccabees 14. 20-23. According to the letter from the Spartans to the Judeans they were both sons of Abraham. On traditions of the kinship of the Jews and the Greeks see M. Stern, *The Documents on the History of the Hasmonean Revolt with a commentary and introductions* (Tel Aviv: Hakkibuz Hameukhad, 1965). 115-116 [Hebrew]; E.S. Gruen, "The Purported Jewish-Spartan Affiliation," in R.W. Wallace & E.M. Harris (eds.), *Transitions to Empire: Essays in Greco-Roman History, 300-146 B.C. in Honor of E. Badian* (University of Oklahoma Press, 1996), 254-269. On the theme of Kinship between the Jews and other nations in Second-Temple traditions see E.S. Gruen, "Kinship Relations and Jewish Identity," in: L.I. Levine & D.R. Schwartz (eds.), *Jewish Identity in Antiquity*, *Studies in Memory of Menahem Stern* (Tübingen: Mohr Siebeck, 2010), 100-116, esp. 110-112.

[46] M. Niehoff, *Philo on Jewish Identity and C,ulture* (Mohr Siebeck: Tübingen 2002), 135-141.

[47] H. Najman & B. G. Wright, above.

Elling?)[48] D. Boyarin, Above, 261-270. According to Boyarin, although Origen shared the rabbinic skepticism in this respect, the Christian and the rabbinic solutions were different. Whereas the Rabbis saw the solution in the concentration in the attachment to the words, in the form of Midrash, Origen thought that the truth of the words should be traced in the *logos* hidden in the text.

With regard to rabbinic literature, the picture is somewhat complex, but it is fair to say that the Rabbis promoted the notion that the revelatory nature of the Torah is expressed through the human ability to derive countless meanings embedded in the text.[50] The written finite Torah is complemented by many additional channels to the Word of God, such as *הלכה למשה מסיני*, or the claim that the sage is an embodiment of the Torah.[51]

Moreover, the notion that the Dıvine and Infinite nature of the Torah is related to its translatability is reflected in several rabbinic traditions. According to a Genizah fragment published by Schechter from the Mekhilta Deuteronomy, the Torah was translated before the People of Israel entered the land of Israel:[52]

> On that day the Children of Israel crossed the Jordan and took the stones and carried them across and erected them and wrote on [the rocks] “all the words of [this] Teaching (= Torah) [most distinctly] (Deuteronomy 27:8). Rabbi Ishmael says: they wrote in seventy languages. Rabbi Shimon ben Yochai says, they wrote [only the copy of the] Teaching of Moses, as it is written “And there, on the stones, he inscribed a copy of the teaching that Moses had written for the Israelites” (Josh 8:32).

In his analysis of rabbinic parallels to this tradition, Azzan Yadin has convincingly shown how the tradition about the translatability of the Torah ("polyglossity"), evolved into a tradition about the polysemy of the Divine Word, resulting with the Midrash substituting "seventy languages" with "several meanings:"[53]

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[49] See for instance M. P. Horgan. *Pesharim: Qumran Interpretations of Biblical Books*. Catholic Biblical Quarterly 8 (Washington: Catholic Biblical Association of America, 1979). See also S.D. Fraade, “Looking for Legal Midrash at Qumran.” *Biblical Perspectives* (1998): 59–78. According to Fraade the interpretation of the Torah (*מדרש התורה*), was viewed by the Sect as an esoteric activity, granted by God on the merit of the Sects’ unique observances and practices. Fraade's views were challenged lately by A. Shemesh and C. Werman, “The Hidden Things and Their Revelation”, in: *Tarbiz 66* (1997), 471-482. Shemesh and Werman reject the notion that the term *פשר* has a distinct meaning which is connected to Divine Inspiration, and argue that the Sect viewed its interpretations as a primarily intellectual process. Similarly see M.Z. Kister, “A Common Heritage: Biblical Interpretation at Qumran and Its Implications.” *Biblical Perspectives* (1998), 101-111.

[50] There are multiple examples for this principle. See my discussion below on the polyglossity and translatability of the Biblical text in rabbinic literature. For several illustrations of this principle see R. Kasher, “The interpretation of Scripture in Rabbinic Literature,” in: M.J. Mulder, *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early* Christianity, Philadelphia: 1988, 572-573

[51] As the famous pericope quotes R. Eliezer before his death (*Bavli Sanhedrin* 68a.): “he carried his two arms, and put them down on his chest and said: woe to you! my two arms are like two scrolls rolled up”.

[52] Solomon Schechter, “The Mekhilta Deuteronomy, Pericope Re'eh“, in: M. Brann and J. Elbogen (eds.) *Tiferet Yisrael: Festschrift zu Israel Lewy_s siebzigsten Geburtstag* (Breslau: Marcus, 1911), 187–192. [Hebrew]. The English text follows Azzan Yadin's work, below.

> It was taught in the School of Rabbi Ishmael: “Behold, My word is like fire-declares the Lord-and like a hammer that shatters rock” (Jeremiah 23:29). Just as this hammer produces [literally: divides into] many sparks, so a single verse has several meanings.[54]

Thus, at least one rabbinic tradition about the nature of the Biblical text with respect to hermeneutical questions-- i.e. the possibility of several legitimate meanings-- stemmed from a tradition about the translatability of the Biblical text. In this, Philo seems closer to the Rabbis than to Qumran. Philo frequently offers more than one interpretation of his own for the same verse, or alternatively introduces an interpretation and adds, ‘but I say…’ However, Philo also testifies that at least some of his interpretations were a result of Divine Inspiration, expressing a unique view according to which Divine Inspiration does not necessarily mean ultimate authority.[55] We might wonder whether this idea was not perpetrated by a reality which involved the existence of the Torah in two different languages. If it is possible to have two different texts of the Torah representing the same Divine Word, it follows that it is possible to conceive of two different interpretations to those words.

A later Midrash relates to the problematic aspects in translating the Torah with a direct reference to the Greek translation:

> Rav Judah the son of Shalom said: Moses requested that the Mishnah/Oral Torah be written as well. The Holy One foresaw that the nations would translate the Torah and read it in Greek, and they will say: We are Israel! Therefore, the Holy one said to him: let me write for him (only) the principles of my Torah (*רובי תורתי*). But then they (the teachings of the Mishna/the Oral Torah) “were counted as a strange thing”! (Hosea 8.12) and why so? For the Mishna is God’s secret (*מיסתורין*) and God does not reveal his secrets but to the righteous (*צדיקים*).’[56]

One obvious aspect of this text is its polemic against Christianity.[57] According to this Midrash, whereas the Christians use the Greek translation of the Torah, and claim that *they* are the real Israel, i.e. Israel “according to the spirit”, without the Oral Torah they have no ability to grasp the Divine Message in its entirety, as God purposely gave a "limited" written Torah.[58] But besides the Judeo-Christian aspect, we have a clear connection between the finite nature of the written Torah and its translatability, as opposed to the infinite, and therefore esoteric, nature of the Torah. In this midrashic source, as in Philo, the claim is that the Torah is not untranslatable. But unlike Philo, the premise here is that the written Torah itself is only a partial representation of the Word of God. Even if the Torah were to be accurately translated, the outcome would be limited and incomplete. In other words, according to this tradition, without Midrash, the Torah is incomplete.

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[53] A. Yadin, "The Hammer on the Rock: Polysemy and the School of Rabbi Ishmael", *Jewish Studies Quarterly* 10 (2003), 1—17.

[54] BT *Sanhedrin,* 34a.

[55] See Y. Amir, Above, D.M. Hay, “Philo’s View of Himself as an Exegete: Inspired, But not Authoritative,” *The Studia Philonica Annual* III, 40-52

[56] Tanhuma, *Va-yera*, 5. Cf. Tanhuma, *Ki Tissa,* 34: “The Holy One said to the nations (=Christians): You say that you are my sons? I know only those who possess my mysteries to be my sons. And what is it? It is the Mishnah, which was given orally.”

[57] On different versions of this rabbinic tradition and the Judeo-Christian polemic see F. Dreyfus, “’The Scales Are Even’ (Tanḥuma, Ki Tissa, 34),” *Trabiz* 52 (1983) 139-142 [Hebrew]; Cf. M. Bergman, “The Scales Are Not ‘Even’. A Textual Note on Tanḥuma, Ki Tissa, 34,” *Trabiz* 53 (1984), 282-289. According to Bergman, the term “mysteries” is a polemic against Paul, who claimed that the Christian gospel is a “mystery” (Ephesians 6.19). On the Judeo-Christian polemic on rabbinic culture and the formation of rabbinic texts see also I. J. Yuval, *‘Two Nations in Your Womb’, Perceptions of Jews and Christians in Late Antiquity and the Middle Ages* (Berkely: University Of California press), 2006, esp. 1-91; D. Boyarin, *Border Lines,* Above.

Unlike the *Tanhuma*, and more obviously in contrast to the Philonic view, the following tradition reflects the notion that not only is the use of a translation as one's main source problematic, but the more we have to talk about this sentence possibility of producing a legitimate translation of the Torah is at least equally so. In a reference to the translation of the Torah into Greek, *Masekhet Sofrim* gives a short account:

> It happened that five elders translated the Torah into Greek for King Ptolemy, and that day was severe for the people of Israel like the day of the Golden Calf, as it was impossible that the Torah be translated amply (*כל צורכה*).[59]

This text in the form cited is dated as late as the 8th century, but nonetheless reflects a sentiment that touches upon the difficulty of any attempt to translate a text which is believed to be the Word of God.[60] The comparison to the Golden Calf seems to express the idea that just as the attempt to reduce God's presence into a material representation was in vain, so, too, is translating the Word of God. Thus, the text follows with the statement that it was not (and it is implied that it still is not) possible to translate the Torah in a way which will convey the full meaning of the Torah. This view, though, is paradoxical, as the very existence of the Torah as a written text is possible only under the premise that the Divine Message can be reduced into permanent, material, immovable and finite words. In this context, it seems that the solution to this problem lies in the exclusiveness of the Hebrew language.[61] The notion that the question of translatability and the question of language are connected leads us to a more general discussion on translation and language which is reflected in sources from late-antiquity.

Attitudes towards Translation in Philo's Time

In order to put Philo into a proper context, we should consider various attitudes towards translation which can be traced to Philo's general time and place, which is to say, the views of the Greeks, the Christians, and the Rabbis.

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[58] See B. Levi, *Le logos et la letter: Philon d'Alexandrie en regard des pharisiens* (Verdier: Lagrasse, 1988), 176. Levi suggests that the Greek translation is depicted here as the corporal representation of the Torah. This would speak directly against the Christian argument of "Israel according to the flesh."

[59] *Masekhet Sofrim* 1.7

[60] The possibility of a much earlier tradition cannot be ruled out. Nonetheless, a context of a Judeo-Christian polemic context is just as likely.

[61] J. Dan, "The Sanctity of Language and Form", in: E.D. Bilski and A. Shinan (eds.), *Borders of Sanctity. In Art, Society and Jewish Thought* (Jerusalem: Keter, 2003), 76. [Hebrew]

It seems that the Greeks had little to no interest in the question of translation. In fact, there is no specific word in Greek that exclusively denotes "translation". Philo, for example, uses the term *ἑρμηνεία* to denote "translation" just as his probable source for the Septuagint tradition, i.e. the Letter of Aristeas, does. However, this term (ἑρμηνεία) is rarely used in this sense, and usually means "interpretation" or "explanation".[62] In our context, the Christian approach towards translation is significant, since as Daniel Boyarin asserts, the dualistic views, with their hermeneutic implications, (namely allegory) were most likely present in Philo's time among Alexandrian Jewry.[63]

In her study of Christian and Jewish attitudes towards translation, Naomi Seidman marks the beginning of critical thinking about translation with Roman writers such as Cicero, Horace and Quintilian. These writers advocated for "sense for sense," as opposed to "word for word" translations.[64] The divide between "sense for sense" and "word for word" translation was later manifested in the debate between Jews and Christians, or at least in the rhetoric used in this debate. As Seidman shows very persuasively, there is a strong connection between the Christian and Jewish approaches towards translation and their theology. Thus, for example, as the Christians were promoting the Pauline theology that distinguishes between "Israel according to the body" and "Israel according to the spirit,"[65] they accordingly criticized Aquila's "Rabbinic-approved", literal, "word for word" translation. As far as the Christians were concerned, this literal translation reflected the Jewish attachment to the letter (body) instead of the sense (soul).[66]

The Rabbis, on the other hand, held Aquila's translation in great esteem, as its subordination of the Greek language to the Hebrew text was seen as a manifestation of Noah's blessings to his sons "May God enlarge Japheth (the father of Greece), and he shall dwell in the tents of Shem (father of Israel)."[67] This does not mean that the portrayal of Rabbinic Judaism as "corporal" and early Christianity as "spiritual", is historically valid. As Seidman stresses, this type of divide is both anachronistic and heavily shaped by Christian polemics against Judaism throughout history. Nonetheless, it is true that the rabbinic understanding of how one observes and how one interprets the Torah (i.e. through midrash) is based (in part) on an understanding of the physicality of the text, such as its graphic representation, or the sounds made when it is chanted.[68]

Philo's view on the Greek translation of the Bible reflects an essentially different view of all the approaches discussed above. Unlike the Rabbis, Philo definitely did not view the Greek translation as subordinate to, or dependent on, the Hebrew Bible.

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[62] Liddell, Henry George. *A Greek-English Lexicon* (Oxford: Clarendon Press, 1968), 690. Another term used for "translator" is *μεταγρᾶφεύς* , which means transcriber or copyist.

[63] D. Boyarin, *Carnal Israel*, 3-4.

[64] Seidman, Naomi. *Faithful Renderings: Jewish-Christian Difference and Thepolitics of Translation*. Afterlives of the Bible (Chicago: University of Chicago Press, 2006), 74.

[65] I Corinthians 10.18.

[66] Seidman, *Translation*, 81.

[67] Genesis 9.27

[68] As Heinemann, *Darkhei Ha-Agadah,* 97, puts it, the Rabbis had a great appreciation for "the words' physicality" (גוף המילים), which could be perceived through the senses." For the rabbinic views on whether to utilize midrashic methods on how the Torah sounds as it is read, or how the words are graphically written, see also S. Naeh, "Did the *Tannaim* Interpret the Script of the Torah Differently From the Authorized Reading?" *Tarbiz* 61 (1992), 401-448. [Hebrew].

Paradoxically, although the translators used the Hebrew text as their source, their great achievement was, according to Philo, the ability to manufacture a Greek version which is a perfect copy of the origin of the Hebrew text, i.e. the Laws of Nature.[69] But, unlike the Christians, Philo thought that this great achievement was exhibited in the meticulous work of matching an identical Greek cognate for every Hebrew word. As noted above, this reflects Philo's concern for the preservation of both the literal and the practical meanings of the Torah as a Book of Laws.

The Septuagint as Holy Scripture

Thus far my discussion has focused on the Torah as a text which conveys a certain message. The main dilemma was how Philo justified the use of a translation to properly represent the meaning of the original text, and to serve as a source for exegetical creativity.

However, the Biblical text was treated not only as holy literature but also as a holy, physical object. For example, when a scroll is used in a *מזוזה* or Phyalcteries (*תפילין*), no one is ever expected to read the actual letters of the scroll. Hence, translating the sacred texts not only raises interpretive and theological dilemmas, but has ritualistic implications as well: It is one thing to say that it is permitted to translate a sacred text in order to learn from it, but an entirely different thing to approve the use of a translation in a ritual context, and/or, to approve that scrolls written in a foreign language are to be considered holy. Notably, the practice of abstaining from touching a Biblical scroll with one's bare hands has nothing to do with reading or comprehending the text. On the other hand, the use of the Biblical text as a holy object is based on the notion that it is an exact representation of the Word of God. That is why, if a scroll contains scribal errors, the entire scroll is rendered un-holy. Even the ritualistic reading of the Bible reflects the perception of the Torah as a holy object rather than as holy literature, as it does not necessarily require that the listeners actually comprehend the text as it is chanted.[70] We are left with the question of whether a translation of the Torah has the same sanctity as the Torah itself.

Philo does not directly relate to this aspect of the Septuagint. However, interestingly, the main theme we find in rabbinic literature with respect the possibility of translating the Torah, i.e. the exclusiveness of the Greek translation, is found in the context of the discussion of translations functioning as holy objects. Arguably, the social reality reflected in the rabbinic texts seems to evolve out of circles whose most articulate spokesman would have been Philo. Thus, notwithstanding the speculation involved,[71] and leaving aside the question of whether Philo himself referred to the observance of *תפילין* (phylacteries) in his writings, it is very possible that some Jews in Alexandria not only observed this practice, but also used the Septuagint for their scrolls. As L. Levine has shown,[72] Second-Temple Judean society seemed to use Greek more than Hebrew, and thus it is possible that the Alexandrian practice made its way to Palestine and became so common that the Rabbis were inclined, perhaps reluctantly, to permit it. This is more likely than the possibility that using the Septuagint as a "holy-text" originated in Palestine. For the purpose of our discussion this is quite significant, because Philo's account of the Septuagint provides the theoretical basis for both using the Greek translation as a trustworthy source for the Jewish tradition, and for treating the physical text as holy as well, as it was Divinely inspired. The fact that both aspects made their mark on Palestinian and Rabbinic Judaism is a telling example of an Alexandrian, and perhaps to some extent – Philonic, influence on rabbinic law and literature.

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[69] *Moses* 2.14. See Najman & Wright, above.

[70] See for example the dispute in BT *Berachot* 13b with regards to the verses which one must recite while thinking about the meaning of the words i.e. "intent", *כוונה,* in order to fulfill the obligation of reciting the *shema* paragraphs. As part of the discussion the Talmud also addresses the question of reciting a translation.

[71] According to BT *Megilah* 8b, although phylacteries and *מזוזות* were permitted to be written only in Hebrew script, in all other aspects the Greek translation, unlike other translations did have a physical holiness aspect. Later in the discussion the Talmud quotes a different Tannaitic source going a step further, asserting that, in fact, the Greek language does qualify even for the writing of Phylacteries and *mezuzot*: "as it is taught, *tefilin* and *mezuzah* scrolls are to be written in Hebrew only, but our Rabbis permitted (*התירו*) Greek." This is significant for two reasons. First, it affirms the special status of the Greek translation. Second, the term "permitted" (*התירו*) implies

Conclusions

I introduced my discussion on Philo's Jewish Law by raising the question of how Philo's use of the Septuagint-- and what Philo says about the Greek translation of the Torah-- shed light on his hermeneutical and *halakhic* approach. The main difficulty with applying what Philo says about the text to what Philo says about halakha is that, unlike Rabbinic and Qumran literature, Philo himself rarely makes an explicit connection between a specific text and a specific practice. As already noted, in Philo's writings, when talking about the laws of the Torah, the practice is a given, and what is under discussion is the theoretical basis of the practice. However, it is possible to make several observations. By way of analogy between the Septuagint and the Hebrew text, we learn what it was that Philo thought made the text what it is--: both Moses' Torah and the Septuagint are products of Divine Inspiration: the Torah is an exact copy of the laws of Nature, and the Septuagint is an exact copy of both the Torah and of the laws of Nature. It is also evident that from a purely halakhic perspective, the Septuagint was considered to be a sacred text for a wide range of rituals, as well as for engaging in extensive interpretation.

Unlike most of the texts we will examine throughout the rest of our discussion, the main Philonic tradition in this chapter was not a legal text. However, its content (coming from Philo or a different origin) may well have been the source for several halakhic traditions found in rabbinic literature.

Whether Philo intended to or not, he provided a theoretical basis for using the Septuagint as a source for Jewish law. In the following discussions I will demonstrate how, in fact, Philo's laws are occasionally based on a close reading of the text, similar

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that the practice in question had already existed, and that the rabbinic authorities decided to give their consent and yield to an already existing practice, rather than to oppose it.

[72] L.I. Levine, *Judaism and Hellenism in Antiquity: Conflict or Confluence*. The Samuel & Althea Stroum Lectures in Jewish Studies (Seattle: University of Washington Press, 1998), 76-80. Based on archaeological and epigraphic evidence, Levine concludes that "The use of Greek in Jerusalem appears to have been far more widespread than either Latin or Hebrew".

to *Midrash,* which leads to the notion that Philo shared exegetical and hermeneutical views with his contemporary Jews in Second-Temple Palestine.

Chapter II: Oaths, Vows, and Curses – "How to Do Things with Words?" According to Philo

Introduction

In a hilarious scene from Monty Python's "Life of Brian," the Jews during Jesus' time are portrayed as stoning to death a Priest, an attendee of the "stoning ceremony" and an "accused felon", all for mentioning the Tetragrammaton. As I will show, this grotesque description of Second-Temple Jewish society might not be very far from the reality at that time.

Indeed, Jewish law contains a rather large number of laws pertaining to speech, the regulation of oaths, vows, testimonies, and prayer, as well as rebukes, curses and slander, to name a few. Having dealt with words as Scripture, in this chapter I will examine Philo's approach with respect to the legal aspects of words, both uttered and heard, in different social and religious contexts. My goal is to determine what Philo thought happens when we either say or hear something. Do Philo's "speech ethics" reflect metaphysical aspects, or only social and/or educational ones?

I will address these questions using the theoretical tools developed from the middle of the 20th century in order to understand and theorize upon the way words function in society. I will determine whether terms like "speech-acts" and "performative", or the distinction between "descriptive" and constitutive", can contribute to our understanding of Philo's law with respect to oaths, vows and other utterances. My analysis brings me to the following observations:

1. In his account of the laws pertaining to speech, Philo reflects not only the social reality of a Jew living as a member of a minority, but also midrashic readings of the Biblical text. Philo's approach towards mentioning the Tertragrammaton reflects a particularly cautious and restrictive approach in comparison to other Jewish sources. Philo seems to base his approach on both his interpretation of the Third Commandment as pertaining to an unwarranted mention of the Tetragrammaton, and also on his interpretation of Leviticus 24, according to which the mere mention of the Tetragrammaton is a capital offence.

2. As for oaths and vows, these are the two main forms of speech which are distinctive with regard to their binding force. Throughout this chapter I will use these two terms in the following manner: the term "oath" will be used as the English term for the Hebrew שבועה and the term "vow," for נדר. Whereas Philo posits that vows can be annulled quite easily, oaths, at least according to one possible reading of Philo, must be kept at any cost.

3. In addition, Philo shares the rabbinic concept of incomplete utterances or substitutes as valid speech-acts, but he does not go so far as to accept nonsensical expressions as the Rabbis do.[73] In this respect, Philo represents an earlier stage of Jewish-Law, rather than an essential difference in the

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[73] An example for this phenomenon will be discussed below.

perception of speech acts. The use of alternative formulae suggested by Philo reflects his Hellenistic environment, and given the affinity of Philo and the Rabbis in this respect, it provides an example for the influence of the Hellenistic society on rabbinic law.

4. As to the question of intention vs. action, unlike the Rabbis, Philo views speech-acts in the same way as he views any other action (i.e. physical actions), and does not consider one's state of mind at the time of the act as significant, or at least not as decisive. Thus, for instance, according to Philo, speaking out impulsively is binding in the case of oaths, and constitutes a capital offense in the case of blasphemy.

a. Written Texts and Speech-Acts

During my discussion of the Septuagint, I attempted to learn from various Philonic texts whether Philo thought that the essence of the words of the Torah lies solely in their literal meaning, or whether there is some greater significance in their original form, i.e. the actual wording of the Torah as a specific text which was given by God, in a particular language, using specific words. I have shown that although Philo relies on a translation, he goes to great lengths to show that, in fact, the specific translation, i.e. the LXX in the Greek language, does not fall short of the original text of the Torah.[74]

Dealing with the legal and ethical aspects of speech raises additional, albeit different, dilemmas: Speech-acts create new realities; unlike written texts, they cannot be taken back, or rephrased or reshaped. Philosopher Shalom Rosenberg emphasizes the aspects of speech that have to do with the relationship between the speaker's intention and his words:

> The dynamics between the heart and the mouth have many legal consequences in the areas in which we commit, decide, and promise with our words. That is in the areas where language affects the world. Thus, the duality of heart and mouth forces us to define clear rules and guidelines. The resolutions that we make in our hearts have three main problems: A. Our heart is filled with fleeting plans, fruitless thoughts, options, deliberations and desires over which we have no control. B. The decisions made in our hearts are private and personal, and inaccessible to others. The first problem affects the "whole-hearted" decision (גמירות דעת) - when is a plan or decision considered final? The second problem has to do with the public aspect of the commitment […]. C. Finally, privacy allows for error and deceit. One taking a vow may explain his words retroactively, adding restrictions, and baselessly explaining his words, whether intentionally or mistakenly.[75]

To be sure, written texts as well may be subject to interpretation and to speculation regarding the actual, genuine, intention behind them. Nonetheless, there is something much more temporal and fluid about speech than about writing. The solemnity with which one authors a written text is far greater than that of the spontaneity with which one utters speech. As Rosenberg notes, this leads to greater ambiguity with respect to the question of the finality of the spoken word.[76]

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[74] See above. See also H. Najman and B.G. Wright, *Perfecting Translation*, above.

[75] S. Rosenberg, "The Force of Error: Rabbinic Concepts of Language and Interpretation", *Akdamot 12* (2002), 155-156 [Hebrew – My translation].

b. Philo's Potential Intellectual Context

As early as Plato's Cratylus, we find Socrates' argument as to the nature of words, as Socrates argues that "speaking" is equal to "doing." Dealing with the question of the coherence of names and what they represent, Plato describes the following dialogue:

> *Socrates*: Now naming is a part of speaking, for in naming, I suppose people utter speech.
>
> *Hermogenes*: Certainly.
>
> *Socrates*: Then is not naming also a kind of action, if speaking is a kind of action (*πρᾶξίς τις*) concerned with things?
>
> *Hermogenes*: Yes.[77]

Socrates does not stop at claiming that speech is an action, but goes on, arguing that false statements are not to be considered speech, just as if one crafted an object which does not contain all the characteristics of the object it is intended to be, he did not in fact create that object. In this, Socrates addresses a central issue in different performative acts of speech, i.e. the question of accuracy vs. intent:[78]

> *Socrates*: But we saw that actions are not merely relative to us, but possess a separate nature of their own?
>
> *Hermogenes*: True.
>
> *Socrates*: Then in naming also, if we are to be consistent with our previous conclusions, we cannot follow our own will, but the way and the instrument which the nature of things prescribes must be employed, must they not? And if we pursue this course we shall be successful in our naming, but otherwise we shall fail.[79]

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[76] J. Derrida does not accept this distinction, and argues that written texts as well have an open-ended and ambiguous quality. See, for instance. J. Derrida, *Writing and Difference, Translated, with an Introduction and Additional notes, by Alan Bas,* (London and New York: Routledge, 2001). This does not mean, however, that Derrida denies the existence of performative speech-acts. See, for instance, Derrida's view of prayer, D. Shapiro, M. Govrin, J. Derrida, *Body of Prayer* (New York: Irwin S. Chanin School of Architecture, 2001).

[77] Plato, *Cratylus* 387

[78] This issue is in the locus of the halakhic dilemma regarding the usage of inaccurate wording, even gibberish, in the context of oaths and vows (for ex. the rabbinic term (ידות). Thus, the major question is, what happens if one uses wording that is not appropriate or does not make sense from a literary point of view but expresses a clear message to whoever hears the speaker in a specific context. This issue will be elaborated on and developed below.

[79] *Ibid.*

Socrates claims that words must be accurate in order to convey something. In order to prove his point, Socrates makes a tireless effort to prove that names have an internal logic, which is independent of social agreements and conventions. In other words, the validity of statements according to Socrates' argument here is dependent on the words' supposed nature, regardless of what they communicate. Socrates likens the art of name-giving to the artistry of great and wise craftsmen.

In this vein, Philo himself describes Adam's naming of the animals (Gen. 2.21) as proof of his great wisdom, which enabled him to grant the appropriate name to each animal, claiming, as Socrates does, that the appropriate names are not a question of social conventions, but of an objective truth:

> We must, however, also suppose that the giving of names was so exact that as soon as he gave the name and the animal heard it, it was affected as if by the phenomenon of a familiar and related name being spoken.[80]

Moreover, Philo follows in Socrates' footsteps and includes a large number of interpretations to names in his writings, based on their etymology.[81]

"The Cratylus" is loaded with philosophical issues which have implications on questions we ought to ask with respect to the ontology of oaths and vows as well as of other speech-acts in the Jewish-religious context: Are the halakhic implications of uttering words (oaths, vows, prayers, benedictions, chanting of Biblical paragraphs etc.) dependent on what one says, or on what one means to say? Is it necessary to understand what is said, or, alternatively, is it the exact formula that has been uttered that has a binding force, rather than what happens in the speaker's or in the listener's mind? Another related issue is the question of intention vs. action, i.e. what happens when one says one thing but means something else (the rabbinic *כוונה ומעשה*).

c. "How to do things with words?"

In his series of lectures, published under the title "How to Do Things with Words" (1953), Philosopher J.L. Austin laid down the principles of many studies on the function of language in different social settings. Austin drew attention to the fact that making statements about reality is only a small part of the role which words play in society. Hence, In addition to "descriptive" statements, which can be rendered as "right" or "wrong", there are "constitutive" statements, which have the power to create new realities. In fact, one of Austin's first examples for a constitutive statement, such as taking marriage vows or making a bet, is, following Plato's Cratylus, "naming" a ship.[82]

Several studies have attempted to use the principles laid down by Austin to define how the function of words in Jewish tradition corresponds to Austin's model. For instance, Yuval Harari applied Austin's theory to the understanding of magic in general, and more specifically, to the understanding of Jewish magic. Michael Satlow applied this theory to rabbinic texts that deal with sexual regulations.[83]

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[80] Philo, Q&A on Genesis, 1.20. cf. Philo, *De Opificio Mundi* 148-150.

[81] For instance, Philo's interpretation of the name "Israel", as the people who see God (*Legatio ad Caium.* 4)

[82] J.L. Austin, *How to Do Things With Words* (Oxford: Oxford University Press, 1962), 5.

Indeed, Harari's caution with respect to applying modern theories to such ancient texts is appropriate.[84] However, Austin's theory is modern only in the sense that historically it was thought of and formulated during the modern era. The truth is that the arguments Austin makes about language may well apply to ancient times and, arguably, may be even more applicable to times during which the belief in the power of words was stronger than it is today. This is so even if in a specific case, as Harari argues with respect to Jewish magic, this is not the case.

An important observation made by Rosenberg is that many fields in Jewish law correspond to Austin's model, and all seem to share a similar assumption: in order to create a new reality there is a need for both a combination of "words" (*דיבור*) and for an "intent" (*כוונה*).[85] Thus, in Jewish law, in order for a speech-act to count as performative, there must be a correlation (even if not a full one) between what the speaker says and what he intends to say. In addition, there must be a correlation between what the speaker says and the legal requirements of an utterance in a specific legal context, so as to count as sufficient.[86]

In the following discussion we will deal with several of Philo's references to the laws of oaths and vows. But first, as Austin begins his discussion with "naming names", we will begin with the law that pertains to people who curse God. As we will see, Philo's version of the law of blasphemy reflects a relatively harsh legal approach, and is based on a midrashic reading of the Biblical text.

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[83] Y. Harari, "How To Do Things With Words: Philosophical Theory and Magical Deeds", in: *Jerusalem Studies in Jewish Folklore* 19-20 (1999), 365-392 [Hebrew]. Harari demonstrated how magical speech-acts fit Austin's model especially with respect to the fact that they require a specific social setting, that these speech acts do not require any understanding of the speaker, and that the words have the power to change our reality just by uttering them. Ultimately, Harari points to several differences between Austin's model and Jewish magic and determines that Jewish magic speech-acts are based on fundamentally different assumptions. See also M.L. Satlow, "Texts of Terror: Rabbinic Texts, Speech Acts, and Control of Mores" *AJS Review* 21.2 (1996), 273-297. Satlow used Austin's theory in order to read rabbinic texts that deal with the relationship between the genders in order to constitute the rabbinic abusive approach towards women. According to Satlow the rabbinic use of different halakhic and aggadic material in order to promote and reshape social conventions, render those texts as "Austinian" speech acts. It seems that Satlow's use of Austin's theory is too general, and reduces Austin's model to redundancy, as, arguably, almost every legal, didactic or religious text is intended to have some effect on its readers, and what is true for the texts Satlow deals with is true for almost any other rabbinic text.

[84] Harari, above, 391.

[85] A similar halakhic model is of *מעשה* (i.e. deed), and *כוונה* (i.e. intention).

[86] S. Rosenberg, "Suggestions of Vows", in: M. Beer (ed.) *Studies in Halakha and Jewish Thought* (Jerusalem: Bar-Ilan University Press, 1994), 193-219. [Hebrew] As Rosenberg notes, the prominence of each of these components varies between different legal fields. Generally speaking, religious law is much more concerned with" intent" than civil law is. However, as we have already seen in our discussion on the Septuagint, certain prayers were considered valid even when the speaker did not and could not understand what he was saying, rendering the possibility of having intent limited to the general intent of performing a religious act, as opposed to intending to say specific and discernible words. As we have noted, this issue is highly relevant to someone like Philo, who neither spoke nor understood Hebrew.

Cursing and “Naming Names”

Blasphemy

Biblical law contains many laws pertaining to negative forms of speech such as slandering, cursing, and even gossiping. The law in Leviticus 24.15-16 is but one example of Biblical injunctions against cursing various figures, such as one’s parents[87], tribe-leader[88] (*נשיא*) and God. Transgressing against these laws would be construed as a capital offense. Following the narrative of the blasphemer, the Bible says:

> And speak to the people of Israel, saying: Anyone who curses God shall bear the sin. One who blasphemes (*נוקב*) the name of the Lord shall be put to death; the whole congregation shall stone the blasphemer. Aliens as well as citizens, when they blaspheme the Name, shall be put to death.

The simple interpretation of this text is that the verb noqeb denotes blasphemy, or cursing. Thus, the expression “one who blasphemes” reiterates what has already been said in the previous verse. This meaning is supported by the narrative, which deals with a blasphemer. However, *נוקב* may be understood to mean simply "to mention,” adding to the injunction the ban on any mention whatsoever of God’s Name. Hence, although it seems that the Biblical law pertains only to cursing the Name of God, Philo asserts that, in fact, this law bans any mention at all of the Name: “Whoever curses (καταράσηται) God (θεόν), let him bear the guilt of his sin, but he that nameth (ὀνομάσῃ) the Name of the Lord (κύριου) let him die.”[89]

This very strict view is different from that reflected in LXX, but can be supported by the Onkelos Aramaic translation.[90] In this, Philo seems to reflect a unique and rather harsh legal view with respect to mentioning the Name of God, in comparison to most Second-Temple sources, with the Onkelos being a possible exception. But this raises, as Philo soon notes, an interpretational difficulty: How is it that one who curses God, “shall bear the sin” (presumably without capital punishment) whereas one who merely mentions the Name would be put to death?

> Well hast thou said, thou wisest of men (πάνσοφε) who alone hast drunk deep of the un-tempered wine of wisdom […] (Moses) hast held *the naming to be worse than the cursing* […].[91]

Responding to this question, raised by a supposed ignoramus whom Philo sarcastically calls *πάνσοφε*, Philo contends that, in fact, in these verses the Bible bans the cursing of any of the gods, even false ones, and not only “the One God:”

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[87] Exodus 21.17

[88] Exodus 22.28

[89] *Moses* 2.203.

[90] The LXX is in accordance with MT reading: ὀνομάζων δὲ τὸ ὄνομα Κυρίου, θανάτῳ θανατούσθω· Philo alters ὀνομάζων from the participle modifying καταράσηται i.e. “cursing” in the previous verse into ὅς δ ἄν ὀνομάσῃ τὸ ὄνομα κυρίου, thus having the verb ὀνομάσῃ i.e. “naming”, stand alone as a different injunction. See Daniely-Nataf’s comment in the Hebrew edition of the writings of Philo, part I p. 311, comment 254.

[91] *Moses* 2.205.

> No, clearly by “god” he is not here alluding to the Primal God, the Begetter of the Universe, but to the gods of the different cities who are falsely so called, being fashioned by the skill of painters and sculptors.

From where, then, do we learn that it is not permitted to curse God? Even though Philo does not state this explicitly, we may deduce it from the fact that even mentioning God's name is a capital offence:

> But if anyone were, I will not say to blaspheme against the Lord of gods and men, but were even to dare to utter His Name unseasonably (ἀκαίρως), he must endure the punishment of death.[92]

Philo’s respect for pagan deities is found in other Philonic texts. As Niehoff has demonstrated, Philo's somewhat unexpected respect for pagan deities has an exegetical, political and theological basis. According to Niehoff, Philo thought that tolerance towards pagan gods is crucial for reciprocity of the same tolerance towards the Jews and their God. Moreover, Philo’s own theology actually recognizes the possibility of the existence of deities, inferior to the One God. Finally, Philo recognized the possibility that the pagans worshiped the same god as the Jews, but in a different way, calling their deity by a different name.[93]

As Niehoff notes, Philo’s ban on cursing other gods may simply be based on the LXX version of Ex. 22.27: “θεοὺς οὐ κακολογήσεις,” reading “gods” in the plural. However, the interpretational dynamics in the blasphemer narrative are classically midrashic: A perceived redundancy in the verse (“Anyone who curses God shall bear the sin. One who blasphemes (*נקב*) the name of the Lord shall be put to death”), calls for an interpretation which differentiates between curses and blasphemy. Both the Greek and the Hebrew allow substituting “blasphemy” with “names” or “calling out”; this solves the problem of redundancy but creates a new problem: a lesser offense (i.e. naming) seems to result with a harsher punishment (stoning). Thus the next midrashic move is to substitute “God” (*Κύριος*), with “gods” (*θεοὺς),* in general, and in so doing, introduces a surprising non-Biblical innovation: Jewish law bans cursing even false-gods which were fashioned by sculptors.

It is indeed possible that the halakhic tradition attested to in Philo was known to the Rabbis, as the Babylonian Talmud raises-- and rejects-- the possibility that merely mentioning the Name of God is a capital offence.[94] It is worth noting that in this case, Philo's stringency in comparison to the Rabbis does not reflect literalism. On the contrary – Philo's law reflects a Midrash, which justified an extra-Biblical law, and is well-grounded in Philo's social reality as part of a Jewish minority in Alexandria.

In addition, the writings of the Dead Sea Scrolls Sect reflect an abstention from writing the Name of God, but, even more important, according the Sect’s rule, there is a severe injunction against the mere utterance of the Name of God.[95] As we have seen in Philo's version, the injunction against mentioning the Name of God is adjacent to the injunction against cursing God, distinguishing between two distinct (albeit related) laws. Similarly the Community Rule (1QS) reads:

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[92] *Moses* 2.206.

[93] M.R. Niehoff, *Philo on Jewish Identity and Culture*, 77-78.

[94] BT *Sanhedrin* 56a.

[95] For the most elaborate study on this issue see P.W. Skehan, “The Divine Name at Qumran, In the Masada Scroll, And in the Septuagint,” *Bulletin of the International Organization for Septuagint and Cognate Studies 13* (1980), 14-44. According to Skehan, the scribal practices in Qumran with respect to the Divine Name were driven by the fear that one might accidently pronounce it. For

> [An]yone who speaks aloud the M[ost] Holy Name of God, [whether in] or in cursing or as a blurt in time of trial or for any other reason { }, or while he is reading a book or praying, is to be expelled, never again to return to the party of the Yahad.[96]

Thus, it is clear that the Sect banned any mention of the Tetragrammaton, although the punishment imposed on the offender is expulsion from the Sect – not death. As for Philo's own practice, we should note that according to Skehan, LXX manuscripts, which predate Philo, used a Greek transliteration of the Tetragrammaton (such as ΙΑΩ), and later – surprisingly-- Aramaic or Hebrew letters.[97] Royce has made quite a convincing case for the argument that although Philo uses the Greek term κύριος instead of the Tetragrammaton, his version of the LXX, unlike the version we have today, did, in fact, include the Hebrew (or Aramaic) letters of the Tetragrammaton. Hence, following his very own rules, Philo never pronounced what he read,[98] reflecting his agreement with Qumran: whereas the Tetragrammaton may be inscribed, one must not pronounce the Divine Name.

Thus, just as in Qumran the Tetragrammaton was inscribed in such a way that marked it as "not-to-be-pronounced," so was Philo cautious never to pronounce (or even transliterate) the Divine Name. This might be yet another example of Philo's agreement not only with the Dead-Sea-Scrolls Sect's law, but with the textual basis for this shared legal tradition as well: Just as Philo's source for this law (i.e. the LXX) interprets Leviticus 24.15-16 as referring to two different laws, this interpretation could have been the Sect's source too. It is also worth noting that in this case, Philo's agreement with the Sect's strict law is not a result of literalism, but rather seems to reflect a general stringent approach. It is true that Philo's law is grounded in his interpretation, but it would be difficult to characterize it, at least in this case, as a literal reading of the Torah.

Philo does not explain why the offence of mentioning the Divine Name is so grave, nor does he provide a phenomenology of precisely what happens when one does mention the Divine Name. Philo's silence seems to reflect the fact that the ban on mentioning the Name of God was so common a practice, albeit not the only socially

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an analysis of the different scribal practices, and a similar approach to Skehan, see A.M. Wolters, "The Tetragrammaton in the Psalms Scroll," *Textus* 18 (1995), 87-99.

[96] 1QS 6.27- 7.2. The translation is according to M. Wise et al. as given in D.W. Perry & E. Tov, *The Dead Sea Scrolls Reader: Texts Concerned with Religious* Law (Leiden & Boston: Brill, 2004) pt. 1, 28-29. The translation may not fully communicate the fact that cursing God is disconnected from the ban on mentioning God's name as the Hebrew text reads ואם קילל i.e. "*and* if he cursed*.*" According to F. Shaw, 'The Emperor Gaius' Employment of the Divine Name," *The Studia Philonica Annual* XV (2005), 33-48, the term ΙΑΩ was known to Gentiles and was used by Gaius in the episode described by Philo in his *Legatio.*

[97] Skehan, above, 28-34. On the evidence from the LXX scrolls in Qumran see G.W. Buchanan, "Some Unfinished Business With the Dead Sea Scrolls", *Revue de Qumran* 13 (1988), 413-419. According to Buchanan, the evidence from Qumran shows that Jews knew the pronunciation of the Tetragrammaton.

[98] J.R. Royce, "Philo, Κύριος, and the Tetragrammaton," *The Studia Philonica Annual* III (1991), 167-183. According to Royce, since the use of κύριος in the LXX is later than Philo, the best explanation of his use of κύριος is that Philo read the Tetragrammaton and pronounced κύριος.

accepted behavior, that Philo takes it for granted. Instead, Philo likens using God's name to using the name of one's parents, and claims that since one should not address his own parents using their given names, how much more should it be the case when addressing the "parent of the universe."[99] Thus, in this case, Philo's reasoning seems didactic rather than metaphysical.

As for the penalty, Philo claims that whoever mentions the Divine Name in vain is punishable by death. Goodenough speculates that the death penalty was to be exacted by lynch, and explains this by saying that "the Jewish feeling against this sin was so deep, that lynch law is more likely to have been called out in its defense than for almost any other law of the Jews."[100] Even though Philo frequently writes as an interpreter of the Torah rather than as a jurist, I agree with Goodenough that we should not rule out the possibility that Philo is reflecting the reality of his time and place.[101] However, there are still several considerations to bear in mind, which may negate this position:

First of all, in the case under discussion, the Torah is very explicit with respect to the verdict of the blasphemer. This leaves less room for flexibility on Philo's part once he interpreted the law as pertaining to a person who mentions the Divine Name. Thus, since the Biblical narrative explicitly states that God ordered Moses that the blasphemer be stoned to death, it is not surprising that Philo asserted the very same thing. But to speculate that lynching was common practice seems to be going too far. In this, I agree with Birnbaum that Philo is first and foremost an interpreter of the Torah.[102]

In other words, even though the Biblical text prescribes stoning the blasphemer (but not anyone who mentions the Tetragrammaton), once Philo alters the original meaning and interprets an ambiguous expression i.e. *נוקב*, differently from the simple meaning of the Biblical text, he is bound to the unambiguous punishment prescribed by the Bible, i.e. stoning, to anyone who mentions the Name. Thus, in this case, Philo's move is an exegetical one.

To sum up, we can speculate that during Philo's time it was held by some Jews that mentioning God's name was forbidden, and that this view was grounded in an interpretation of the law following the narrative of the blasphemer in Leviticus. We can probably also argue that although the Bible stipulates that this was a capital offence, it is very unlikely that capital punishment was actually enforced, as, besides the fact that Philo seems to reflect an interpretation to the law rather than a social reality, we have no proof that this extreme interpretation of Biblical law was consensual.

Secondly, like many others of Philo's teachings, his treatment of this law is very didactic in nature. Although this is not an objective criterion, it is arguable that the more didactic Philo seems in his writing, the more cautious we should be with the practical aspects we attribute to this writing. Having said that, comparing Philo to

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[99] *Moses* 2. 207-208.

[100] E.R. Goodenough, *Jewish Jurisprudence of the Jewish Courts in Egypt* (New Haven: Yale University Press, 1929), 48

[101] Goodenough, above, 12-15

[102] E. Birnbaum. *The Place of Judaism in Philo's Thought: Israel, Jews, and Proselytes.* Studia Philonica Monographs 2 (Atlanta: Scholars Press, 1996).

Qumran still leaves room for the postulation that Philo indeed thought that a blasphemer who mentions the Divine Name in vain, even without cursing, is punishable by death.

Finally, Philo's didactic tendencies also bear on the possibility of applying this law to a larger, comprehensive theory of Philo's speech-acts. On the one hand, the more Philo attributes a didactic function to a certain law, the less we might be inclined to think that Philo thought that this law has a metaphysical significance, or that it "does” something. If a speech-act is forbidden because it reflects bad manners or behavior, there is no need to claim that it "does" something, or that it is "performative." On the other hand, putting Philo's blasphemy law in the context of his general caution with respect to words, which I will discuss below, supports the notion that Philo, indeed, thought that "Saying" is equivalent to "Doing".

Blasphemy and Intention

In addition to Philo’s narrative of the blasphemer in his *Moses*, Philo refers to the sin of cursing God in his *Hypotetica* as well. In an attempt to demonstrate the piety of the Jewish people and the supremacy of their code of law, Philo reiterates the Torah’s uncompromising judgment for different actions, which, according to Philo, are capital offences. In this case too, Philo reflects a harsh halakhic approach. Almost in passing, Philo makes an interesting comment about the state of mind of the blasphemer:

> Do we find any of these things or anything similar among the Jews? […] anything which permits of legal proceedings or extenuations or postponements or assessments of penalties? […] nothing at all. Everything is clear and simple. […] So too with larceny of things profane and sacred, so too with impiety not only of act but even of a casual word (τῷ τυχόντι) and not only against God himself (may he forgive the very thought of such a thing […]), but also against a father or mother or benefactor of your own, the penalty is the same, death and not the common ordinary death: the offender in words only must be stoned to death.[103]

There are two non-Biblical details in Philo’s version of the Biblical law. The first is the assertion that cursing one’s “benefactor” (εὐεργέτην) is a capital offence. This seems to be Philo’s version to the Biblical law against cursing a leader or a prince (ἄρχοντας according to LXX) in Exodus 22.27. This may be a diasporic version which substitutes the term “prince”-- which reflects political independence-- with “’benefactor”—which reflects the reality of a minority dependent on the good will of patrons for protection. This reality is very well attested to in Philo’s “embassy to Gaius

The second non-Biblical assertion is that even a word uttered "by chance" (τῷ τυχόντι), counts as blasphemy. The Babylonian Talmud rejects this possibility. In a text dealing with different gestures which may fall under the category of idolatry, Rabbi Johanan makes a distinction between bodily gestures and speech. The Talmud attributes an explanation to the Babylonian sage Rabbah according to which blasphemy does, indeed, require intention:

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[103] Hypothetica 7.1-7.2.

> Now, as for R. Johanan, why does he maintain that in the view of the Rabbis the bending of one's body [in prostration] is an action, whilst the movement of the lips is not? — Raba said: Blasphemy is different, since the offence lies in the intention.[104]

In comparison to the Rabbis, Philo reflects the view that uttering words is essentially "doing." Thus, the action of speech is just as explicit as physical actions in order to bear the same consequences. The rabbinic assertion that blasphemy requires intention is not only consistent with the rabbinic divide between intention and action, which is absent in Philo, but reflects the rabbinic attitude towards forbidden speech-acts. In *Torat-kohanim* (or *Sifra*), most probably the earliest collection of Halakhic Midrash, the midrash excludes unintentional forbidden speech-acts from the requirement of bringing a sin-offering. The midrash rejects the possibility of including sinful speech-acts in the same category as idolatry with respect to the sin-offering:

> What then do I include (in the same category of idolatry), he who curses his father and mother, who incites to idolatry, who persuades to idolatry, the wizard, the false prophet, and witnesses who conspire to give a false-testimony? But when the scripture says "[if anyone sins unwittingly] …*and does*…", it excludes those who do not perform an actual deed.[105]

According to this midrash, a host of sinful speech-acts fall into a category which is different from other capital sins, even though quite a few of them are essentially sins involving idolatry (which is a capital offense) because they are not considered actual "deeds."[106] As we shall see later on as well, it is typical for Philo to emphasize that one's words have consequences even when they are spoken inadvertently.[107]

This would seem to render Philo's speech-theory as one based on the notion that words are, in fact, deeds. In fact, according to Austin, one of the characteristics of performative speech-acts is that even though there is an expectation that a speech-act would be accompanied by the appropriate feelings or intentions, a lack of such intentions does not render these acts as void or without effect.[108]

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[104] BT, *Sanhedrin* 65a.

[105] Sifrah, *dibura de'khova* a.2-3.

[106] For more on the rabbinic distinction between "words" and deeds" see E. Berkowits, "Speech, Voice, and Deed, in Jewish-Law," in: M. Benayahu (ed:), *Studies in Talmud, in Memory of the Rishon Le-Zion R. Yitzhak Nissim* (Jerusalem: Yad Ha-rav Nissim, 1985), II, 81-91. [Hebrew]

[107] On inadvertent speech-acts in rabbinic thought, see S. Rosenberg, above. According to Rosenberg, as early as the Tannaitic stratum of rabbinic literature, the dispute with respect to the legal status of inadvertent speech reflects different views of the legal aspects of intention (כוונה) and action (מעשה).

[108] Austin, above, 16.

Blasphemy, Oaths, and the Third Commandment

As I have shown, both Philo and the Sectarians reflect a similar reading of Leviticus 24.15-16 as relating to two different prohibitions. It is possible, however, that their interpretation was based on, or altered by, their understanding of the third commandment "You shall not take the Lord's name in vain […]."[109] This commandment is ambiguous, as it can be interpreted as an admonition against lying in the name of God, or as banning any unwarranted mention of the Divine Name. The latter interpretation might support Philo's and the Sect's understanding of Leviticus 24, as it provides the basis for the view that any mention of God's name, unless justified, is-- in effect-- blasphemy.

It is noteworthy that Leviticus 19, which is considered to reflect a version of the Ten Commandments or an internal interpretation of the Decalogue, explicitly states: "And ye shall not swear by my Name falsely, so that thou profane the Name of thy God: I am the Lord,"[110] equating, "in vain" (שווא) with "falsely." (שקר).[111] Thus, Leviticus 19 supports a reading of the Third Commandment as banning *false* oaths, rather than *unwarranted* oaths.

Indeed, in his Decalogue, Philo seems to struggle between the two interpretations of the term "in vain" (i.e. falsely/unjustifiably) stating that "to swear not at all is the best course and most profitable to life, well suited to a rational nature which has been taught to speak the truth […]." Philo continues by saying that one should take an oath only "if necessity be too strong (ἀνάγκη βιάζοιτο) for him,"[112] implying that the Third Commandment requires one to be very cautious when taking an oath, seemingly because of the danger involved in mentioning the Divine Name.

However, later in the passage, Philo continues with a lengthy rebuke of those who take a false oath, and concludes with directions that correspond to both considerations, reiterating the solemnity with which one should consider whether to take an oath or not. Thus, according to Philo, an oath must both attest to the truth and be warranted as well:

> (therefore) one who is about to take an oath should have made a careful and most punctilious examination, *first of the matter in question,* whether it is of sufficient importance, whether it has actually happened, *and whether he has a sound apprehension of the facts.*[113]

The oath Philo mentions has an additional aspect i.e. the commitment involved in some oaths to act or avoid acting in a certain way. This brings us to the second part of this chapter and next type of speech-acts, oaths and vows.

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[109] Exodus 20.6

[110] Leviticus 19.12.

[111] On the relationship between Leviticus 19 and the Decalogue see J. Milgrom, Leviticus, *A New Translation with Introduction and Commentary*, The Anchor Bible Series (New York: Doubleday, 2000), 1596-1602. More specifically on the 3rd commandment, see 1632-1635. Milgrom concludes that, in fact, the two verses are not equivalent but it is very possible that they were understood as equivalent in ancient times.

[112] Philo, *Decalogo,* 84-85.

[113] Philo, *Dacalogo*, 93.

Oaths and Vows

Biblical law differentiates between several types of binding utterances. In the following we will discuss the two major types – which are both central in Philo's writings, and--more broadly--in Qumran and Rabbinic literature: i.e. oaths and vows. In the Bible, an oath (*שבועה*) is a practice that ensures that, under threat of a curse, the speaker is truthful either with respect to something he says, or with respect to something he says he will or will not do. A vow (*נדר*) is taken in order to dedicate something or someone to God, frequently conditionally.**[114]**

Philo's Oath

Our discussion of blasphemy led us to the Third Commandment, which, in turn, led us to discuss Philo's oath, which will be our main focus in the following.

As mentioned above, it is unclear whether the locus of the Biblical Third Commandment lies in the danger of mentioning the Divine Name without justification, or, rather, in committing an act of lying while invoking God as a witness. Either way, it does not relate explicitly to the Biblical oath. In the Bible, the term *שבועה*, i.e. oath, is closely related to the word *אלה* i.e. curse.[115] Thus, the Biblical oath was a curse one invoked upon oneself when lying.[116] It should be noted that it was possible to take an oath without mentioning the Divine Name.[117]

In Qumran and rabbinic literature, the Third Commandment was understood to mean either that one may *never* mention the Divine Name, or that one may not take an oath on something that is "factually" wrong, i.e. contra to the reality,[118] nonsensical,[119] or against the law of the Torah;[120] or that one may not mention the Divine Name when it is unnecessary.[121] Philo seems to reflect all of these understandings at the same time.[122] This could be accounted for by Philo's general approach towards Biblical interpretation, namely that there is not one possible exclusive, true, interpretation, which we have noted in the chapter on the Septuagint. Although Philo does not spell it out, the multiple interpretations of the Third Commandment reflect a notion of a plurality of interpretations which characterizes the rabbinic world, as opposed to the Dead Sea Scroll Sect, for instance. It may also reflect the fact that all of these interpretations were part of the practice of Philo's Jewish social environment as well as halakhic conventions.

In the opening lines to his treatment of the Third, Fourth, and Fifth Commandments, Philo explicitly says that "the first of three forbids us to take God's name in vain: the good man's word, it means, should be an oath, firm, unswerving, utterly free from falsehood, securely planted on truth."[123]

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[114] For a comprehensive study of oaths and vows in Biblical, Second-Temple and rabbinic law see M. Benovitz, above. For a brief summary of the different types of votive acts see pp. 3-16.

[115] Cf. Deuteronomy 30.

[116] Benovitz, above, 6. See for instance Numbers 5.21.

[117] M. Azar, Expressions *of Commitments in the Old Testaments and in the Mishna* (Haifa: Pinat Hasefer, 1981), 14.

[118] Mekhilta D'Rabbi Ishmael, *Be-Shalakh, a.*

[119] BT *Shevu'ut* 19b. This text differentiates between a nonsensical oath which is forbidden based on the Third commandment and a lie which is forbidden based on Leviticus 19.

[120] Mishnah *Nedarim* 2.2 to be discussed below.

[121] BT *Berakhot* 33a.

[122] Belkin, above, 140.

According to many Second-Temple and rabbinic writings--and Philo is a typical example--taking an oath, even a truthful one, was considered to be an extreme measure, and one to be avoided.[124] At the same time, the power of the curse involved in the practice was taken very seriously, and so the oath was used in order to solve legal disputes.[125] In effect, this was true of the Greco-Roman culture at Philo's time, and fits the Austinian model. As Bonnie MacLachlan puts it, with respect to oaths in the Greek world:

> Oaths consisted of words empowered to act; the spoken words validated a claim or facilitated a judicial decision. Like prophecies, pledges, curses and prayers, oaths were speech-acts, utterances that did not so much describe the world as become part of the world.[126]

Using Alternative Formulae According to Philo

Philo's rather lengthy discussion on oaths, fraught with preaching on the dangers in their misuse, most likely testifies to the popularity of the practice of oath-taking. As part of Philo's caution in this respect, he suggests using alternative formulae to mentioning the Divine Name, like swearing on the health or on the honor of one's parents, or swearing in the name of other deities like the sun or the moon. Lieberman viewed these alternatives as a reflection of Greek influence, whereas Benovitz proposes a Roman influence and suggests that Philo reflects the reality of his day and age.[127]

As Lieberman notes, the widespread use of oaths and vows most likely resulted in new formulae which would avoid mentioning the Divine Name.[128] This was true for oaths as well as for vows. One interesting possibility that Philo raises is to take an oath by uttering incomplete expressions:

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[123] Philo, Laws 2.2.

[124] CD 15,12-13. Cf. QS, 7.1. See J. Licht's comment in his edition to the Rule Scroll, J. Licht, *The Rule Scroll, A Scroll from the Wilderness of Judaea* (Jerusalem:Mosad Bialik, 1965), 160. fn. 9. For rabbinic literature see comment below.

[125] See, for instance, Mishnah *Bava Matsia* 2.1: 'Two persons, who hold a garment, and each of them claims that he has found it, or that the whole belongs to him, (in such a case) each of them shall take an oath that no less than a half belongs to him, and then its value shall be divided.' This Mishnah seems to express both concepts *pari passu.* On the one hand, the oath is believed to be powerful enough in order to ensure that no one is lying knowingly, but, on the other hand, it is considered an extreme measure, and thus, according to the Mishnah, if there are witnesses, the oath is not taken. Moreover, if we assume that the Mishnah is dealing with a case where, in reality, only one person can be the rightful owner of the disputed object, but both adversaries truly believe that they own the whole object, the fact that each plaintiff takes an oath only for a half of the garment seems to reflect an attempt to reduce the usage of the false oath.

[126] B. MacLachlan, "Epinician Swearing," in A.H. Sommerstein, J. Fletcher (eds.) *Horkos, The Oath in Greek Society* (Exter: University of Exeter Press, 2007), 91.

[127] S. Lieberman, *Greek in Jewish Palestine* (New York: Feldheim, 1965), 124-125. M. Benovitz, above, 140-141

[128] Lieberman, above, 116.

> Those persons, too, deserve praise whose unwillingness, tardiness and shrinking, if they are forced to swear, raise qualms (δέος) not only in the spectators but even in those who are administering the vows: such people are in the habit of saying 'yes, by' – or 'no, by' – and add nothing more, and by thus breaking off suggest the clear sense of an oath without actually making it (οὐ γενόμενον). But also a person may add to his "Yes" or "No" if he wishes, not indeed the highest most venerable and most primal cause, but earth, sun, stars, heaven, the whole universe.[129]

Above, we have seen that in addition to the Biblical proscription against blasphemy, Philo advocated a ban on cursing any of the gods, even false ones. I have suggested that this was due both to interpretational reasons, namely the LXX version, as well as to Philo's social reality in the Diaspora. In this case, perhaps even more surprisingly, Philo boldly suggests taking an oath in the name of different deities as a means of avoiding the mention of the Tetragrammaton. This suggests that Philo's religious tolerance, at least in this respect, was not only a result of a cold calculation of the most prudent way to handle a Jewish life in a diasporic, potentially hostile, environment, but was essential to his theology.

Although it is beyond the scope of my discussion to examine Philo's theology, I should point out that this law marks an essential difference between Philo, and Qumran or the Rabbis. The origin of this difference may very well stem from the same world-view which is expressed in Philo's appreciation for Plato or Homer, as Philo expresses a positive, immanent status to entities other than God.We should note, however that Philo's ban on cursing other gods is not totally equivalent to positively taking oaths in the name of various entities. Philo does not assert that one can take an oath in the name of false-gods, but does attribute an immanent existence to cosmic powers other than God.

In addition, it cannot be ruled out that this Philonic world-view was not merely a diasporic ideology, but perhaps a Greek-oriented ideology. Thus, it is possible that Jews living in Ptolemais (Acre), on the northern shore of the Galilee or Scythopolis (Beth She'an) in the Jordan valley, shared the same views, as we can learn from iconographic findings from various sites in Palestine.[130]

As for its halakhic status, it is unclear whether Philo thought that this type of oath-- which omitted the Divine Name-- has the same binding power as a conventional oath, or whether it was merely a partial solution to the problem: a "weaker", albeit sufficient, oath. According to Philo, even those who "administered these oaths", probably the judges, were taken aback by this formula. I have quoted Colson who translates *δέος* as "qualms" i.e. doubts, suggesting that the legal status of this type of oath was unclear. In other words, according to Colson's translation, Philo did not really think that alternative oath formulae were as strong as the standard oaths.

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[129] Philo, *Laws* 2.4

[130] As early as the second-century B.C.E we find pagan motifs in Jewish art, even in religious settings. See for instance, Z. Weiss, "Between Rome and Byzantium: Pagan Motifs in Synagogue Art and Their Place in the Judeo-Christian Controversy", in: L.I. Levine & D.R. Schwartz (eds.), *Jewish Identity in Antiquity, Studies in Memory of Menahem Stern* (Tübingen: Mohr Siebeck, 2010), 367-390.

However, the context suggests that it is possible to translate *δέος* as "reverence,"[131] as it seems that Philo’s general thrust is the piety of such people who use these formulae--a piety that struck the judges with a certain respect for the person taking the oath. Otherwise, why would Philo praise a practice that complicates the legal procedure and puts its participants at odds with respect to its legal status? If this reading is correct, then, according to Philo, this type of oath, i.e. an oath taken by an incomplete expression, was valid.

Philo's Incomplete Expressions in the Context of Rabbinic Literature

The acceptance of incomplete utterances as valid and binding resonates strongly with rabbinic concepts of “substitutes”. However, as I will show, Philo, unlike the Rabbis, did not go so far as to accept nonsensical expressions as valid alternative formulae, a practice which was probably a development of halakhic conventions, and one which Philo was well aware of.

One of the most developed discussions in rabbinic literature with respect to oaths and vows is the issue of “handles” (*ידות*) and “substitutes” (*כינויים*). According to the *Bavli*, “handles” are abbreviations, or incomplete utterances, which, according to rabbinic law are deemed sufficient in order to convey the full meaning of the speaker. For example, the Mishnah *Nazir* begins with the following statement:

> All the substitutes for the Nazirite vow are equivalent to Nazirite vows. If a man says ‘I shall be,’ he becomes a Nazirite. [If he says] ‘I shall become handsome’ [he is a] Nazirite. A Nazik, a Naziah, he becomes a Nazirite.’[132]

The standard formula for taking the vow of a Nazirite is to say ‘let me be a Nazirite,” According to the Mishnah, someone who says, “l shall be,” providing only an incomplete message of his intent, should be considered as someone who is committed to the oath of a Nazirite. A different type of defective but valid utterance is one which uses the full formula but in a distorted way. For example, if one says “I shall be a Nazirike.”[133]

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[131] For *δέος* as reverence see Aeschylus, *Persians*, 703.

[132] Mishnah *Nedarim* 1.1.

[133] The simple meaning of this *Mishnah* seems to be that even though the speaker used meaningless words, the real intent of the speaker is revealed either by the context of his speech or by the proximity of his speech to a discernable valid speech. The BT creates two distinct categories of these defective speech acts: incomplete ones (*ידות*), and distorted or inaccurate ones – “substitutes” (*כינויים*). In addition, the Talmud plays down the *Mishnah* by claiming that all the examples in the *Mishnah* are in fact formulae which were accepted by the rabbinic authorities as equivalent to the original vow formulae. For an analysis of this issue in the Talmud see A. Weiss, “Substitutes, Incomplete Vow Formulae, and Ambiguous Vow Formulae” (the title is my translation of terms that are almost untranslatable), in: *The Jubilee in Honor of Rabbi Professor Chanoch Albeck* (Jerusalem: Mosad-Harav-Kook, 1963), 211-237. According to Weiss, the Talmudic conceptualization differentiating between substitutes and incomplete vows belongs to the latest strata of the Talmud. In the Mishnaic strata, incomplete vows are considered as substitutes. Weiss is supported not only by the textual evidence but by Philo as well: The fact that Philo uses incomplete expressions as valid seem to reflect a reality of a common usage of

The difference between the two types of examples in the *Mishnah* is that "incomplete vows" use sensible words, but do not follow the formulae used in taking such vows, and thus the context serves as a substitute for the missing words. The "distorted sayings," on the other hand, make no sense. They use "gibberish," but their resemblance to the correct formulae renders nonsensical expressions as meaningful.

The Mishnah reflects an awareness of the importance of the two components of "speech-acts:" the utterance, and the intention. On the one hand, the Mishnah lists expressions that are close enough to the standard formulae in order to count as substitutes. On the other hand, it seems that the Mishnah assumes that the proximity of these utterances to the standard formula is sufficient in order to reveal the speaker's true intention, even if the words mean nothing.[134] Spoken words can rely on context much more than written words can.

Arguably, Philo correlates with the Mishnah on two accounts: the possibility of using incomplete formulae as valid, as well as legal, and the awareness (albeit implicit) of the state of mind of the speaker performing the speech-act. This latter aspect of speech-acts is apparent in several instances in Philo, although his own view with respect to the legal significance of the speaker's state-of-mind is somewhat ambiguous. In the *Hypothetica*, Philo contends that "if he has merely made a chance verbal promise (ὑποσχέσθαι προσπέσοι),"[135] one's vow is valid. Hence, according to this statement, even a vow made on an impulse, without full intention, is binding. In *The Laws*, Philo warns against taking an oath under "savage tempers," but leaves it unclear whether such oaths are binding:

> But if anyone has been absolutely compelled (ἐκβιασθεὶς) to swear on any matter whatever, so long as it is not forbidden by the law, he should use all his strength and every means in his power to make good his oath, and allow nothing to hinder him from carrying out his decision, particularly when he has taken the oath in a reasonable and sober frame of mind, not distorted by savage tempers or yearnings or uncontrollable desires (ἐπιθυμίαι ἀκάθεκτοι) so that he does not know what he says or does.[136]

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such alternative expressions. Nonetheless, as S. Rosenberg notes, the "incomplete vows" and substitutes in the Mishnah are equivalent to metonyms and metaphors, thus even if from a Tannaitic point of view the Mishnah lists different types of alternative formulae – their resemblance to the original formulae is not all of the same nature. Hence the Bavli's insightful distinction.

[134] This is not the only possible reading of the Mishnah. It is possible to read the Mishnah as expressing the idea that the defective formulae listed in the Mishnah are valid, since they are close enough to the standard formulae regardless of the speaker's intention. As Rosenberg (above 196-199) notes, in rabbinic literature there is a dispute with respect to the extent to which a total correlation between the utterance and the intention is required. For instance, the Mishnah says (Nazir 5.1): "The house of Shammai say: '[An act of] consecration done in error is binding [consecrated],' and the house of Hillel say, 'It is not binding [consecrated].'" For more on the issue of error in speech in rabbinic literature, see S. Rosenberg, "The Force of Error, Rabbinic Concepts of Language and Interpretation, *Akdamot 12* (2002), 153-207. [Hebrew]

[135] Philo, *Hypothetica* 7.3. It should be noted that the Greek term προσπέσοι from προσπίπτο conveys chance or acting without prior thought, even accidently (Liddel and Scott, Large edition [1948] vol. ii, 1523). This is very significant in the context of oaths and vows as one of the main issues we are discussing is the role of intention in the speech-act.

[136] Philo, Laws 2.9.

Philo begins by saying that if one was compelled to take an oath, he must do everything in his power to fulfill it. It is unclear what it was exactly that compelled the oath-taker to take this oath: was it an external force such as a plaintiff or a judge who was not content with the alternative, "soft," formulae, and insisted on a standard oath, or perhaps an internal force, such as "uncontrollable desire"?

In addition, it is unclear what Philo means by "every means". Should this be understood literally, as an equivalent to the Dead-Sea scroll Sect's command to fulfill oaths even at the price of one's life, or should we understand it merely figuratively? Finally, Philo continues by saying that an oath taken with a sober mind should particularly be observed. This is all the more puzzling. An oath is either binding or not binding. How can an oath be particularly binding?

These questions illustrate the difficulty in attempting to reconstruct Philo's legal system, particularly since the genre in which Philo wrote was far from legal but was rather didactic or apologetic in nature. Nonetheless, it is possible to suggest answers to some, and let other questions remain unresolved. We have already seen that Philo thought that mentioning the Tetragrammaton is a capital offense. Similarly, Philo states that the penalty for perjury is death, and that this, according to Philo's own testimony, opposed the prevailing halakhic view:

> The penalties given by men are different, death or lash. The better kind whose piety is extra fervent maintain the penalty of death, while those whose feelings of indignation are not so stern have the offenders scourged by order of the State in a public place and in sight of all.[137]

It seems that Philo reflects a consistent approach, which can be summarized as follows: it is a capital offense to mention the Name of God without a very good reason, such as being compelled to take an oath, because if involves the mention of the Tatragrammaton. That is why Philo is so vehement against taking oaths in general, and offers alternatives. However, Philo does acknowledge the fact that sometimes oaths are in fact necessary, and so asserts that if one does take an oath or a vow, it is a capital offense to take a false oath, or to violate the vow.[138]

With respect to intention, Philo posits that standard expressions of blasphemy or oaths and vows do not require full intention. It is possible that Philo's call for the use of alternative formulae is based on the assumption that in these cases the intention of the speaker is still clear enough, and, thus, binding as well. Philo's reference to such practices may offer insights into other issues such as the historical reality of Philo's time, and Philo's own speech theory. First, we will address the historical issue.

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[137] Laws 2.26-28.

[138] See B. Revel, "The Karaite Halakha," *JQR* III (1912/3) 369-374. Revel argued that Philo was the source for the halakhic view that false oaths were to be considered blasphemy, and punishable by death. See also L.H.. Schiffman, *Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code.* Brown Judaic Studies series (Chico, CA :Scholars Press, 1983), 138-139 As Schiffman notes, according to Tannaitic halakha desecrating the name of God is punishable by death. In addition, the connection between profanation of the Divine Name and false oaths is made in CDC as well.

The Historical Question

The dilemma of the validity of alternative formulae in oaths and vows brings into the fore the historical question of the development of vows as a halakhic institution. As Lieberman puts it:

> The question arises: were these "substitutes" and "handles" artificial inventions of the Rabbis for the purpose of preventing the people from abusing the sacred formulas, or were they expressions used by the people, which the Rabbis had only to select, to regulate and to sanction?[139]

Given the Philonic portrayal of the convention of alternative formulae, it seems that the possibility of using such formulae supports the view that, in fact, oaths and vows are first and foremost a social institution, dependent on popular social practices. Unlike the Mishna, Philo's list seems like a scattered (and we may add, not as systematic as the rabbinic) group of various examples of things Philo was familiar with in Alexandria.[140] Supposedly, the assumption is that even if one utters a defective expression, as long as those who hear him understand his intention, his statement is considered valid.

Indeed, the formulae listed both by Philo and the Rabbis seem to reflect an ad hoc validation, or regulation, of common practice, rather than a Philonic or a rabbinic-initiated attempt to avoid the use of the Divine Name.

As I will show later on, Philo often reflects an earlier stage of Jewish law, rather than a fundamentally different one. Moreover, Philo reflects an internalization of Greek practices of oath taking into the Jewish practice, which was then developed by the Rabbis. Thus, instead of attempting to determine the extent to which Philo was influenced by Palestinian Halakha, we must accept that the model seems to show the opposite: Greek and Roman practices had a strong influence on the Jewish practices of oath and vow- taking which most likely spread first from Hellenistic-Jewish hubs like Philo's Alexandria, and were ultimately regulated and limited by the Rabbis. This would indicate that Alexandria and Palestine must have operated as a single geographic and cultural society of Second-Temple Judaism. In this society, Hellenistic Judaism functioned as a channel through which non-Greek speaking Jews were susceptible to Greek ideas and practi

The Phenomenology of Speech-Acts and Alternative formulae

Having dealt with the possibility of using alternative formulae in speech-acts both in Philo and in rabbinic literature, I will now offer an explanation for how these speech-acts function, according to Philo.

There are two major ways to understand the function of speech-acts. The first is to see speech-acts as bona fide actions, which, assuming that they are used according to given rules (such as a social setting) or according to specific formulae, have the power to create new realities.[141] The second way is to see speech-acts first and foremost as acts of communication, depending on what transpires between the speaker and the listener/s. According to the latter possibility, the power of speech-acts lies in the actual message they convey, rather than in the specific way that they convey that message. As we have seen, Philo's reference to alternative formulae reflects the understanding that speech-acts are primarily dependent on the social context, which is to say that the way people *understand* what they have heard determines their status. This may arguably reflect a phenomenology in which, different from what we have seen with respect to blasphemy, speech is not an act that stands alone. Speech in and of itself does not create new realities, but rather plays a crucial role in events which transpire between people.

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[139] Lieberman, above, 116.

[140] Lieberman, above, 124-125. Benovitz, above, 140-141.

The Prohibitive Vow

In addition to the Oath and the Vow, rabbinic literature brought into the fore a sub-type of the vow, i.e. the prohibitive vow, which likens property to offerings or to sacred objects, and thereby renders this property prohibited to the person or persons included in the vow. The existence of sub-type is documented in Qumran and the Gospels,[142] as well.

An additional important observation which will be useful during our analysis is that in both Second-Temple and rabbinic sources, an oath relates to the person taking an obligation upon himself, whereas a vow relates to consecrating an object or a person other than the subject himself who is actually taking the vow.[143] But perhaps the most important difference between oaths and vows is that an oath is an assertion that *the speaker is truthful now*, whereas the vow is not a true/false statement but rather a commitment about the future. This would explain the possibility, already mentioned in the Bible, to annul vows, as opposed to oaths.[144]

Annulling Oaths and Vows

As we turn to the question of the possibility of being able to take back one's words it is important to note that, as Belkin notes, Philo does not use different terms to denote "oath" or "vow", but uses *εὐχή* and *ὅρκος* interchangeably.[145] For this reason we will base our distinctions between the two on the context in Philo rather than on the term Philo himself uses.

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[141] This, in a nutshell, is Austin's main argument: Different speech-acts function differently, and it is their function which determines the "requirements" sufficient to count as functional, or in Austin's jargon "happy." Austin, above, 14.

[142] Matt. 15:3-6; Mark 7:9-13

[143] Benovitz, 3-16.

[144] This issue will be discussed below. In the Bible (Numbers 30.2-16), the possibility of annulling a vow is restricted to a woman who is either immature and is thus legally under the responsibility of her father, or is married and so is under the responsibility of her husband. However, since the Bible relates to prohibitive oaths in the same vein as prohibitive vows it seems that in the Bible this does not reflect a difference between oaths and vows but rather the legal dependence of women at different stages of their lives. Thus ,it should be noted that the possibility of annulling a vow does not seem to have anything to do with the specific phenomenology of the vow, but rather with the specific and unique legal status of women at certain stages of their lives in a patriarchal society.

[145] Belkin, above, 157.

When is an Oath Invalid?

Thus far we have dealt with the question of what constitutes an oath or a vow, as well as the role of intention and formula in determining their status. But when dealing with the possibility of invalidating the speech-acts, we may add one additional component: Truth.

Indeed, one way to annul an oath or a vow is, of course, to claim that the oath is defective for reasons other than the initial intention or formula. That is to say that it contains something which is "factually" impossible, rendering is nonsensical,[146] like vowing to dedicate all 6-legged lambs to the Temple. As Belkin notes, the idea that an oath is a false one when it contradicts the laws of nature or the law of the Torah is conspicuous in rabbinic law, and is a concept shared by Philo as well.[147] This is equivalent to Austin's requirement that a performative utterance ought to be "accepted." Thus, according to Austin the statement "I divorce you" in "a Christian country," is void.[148] Explaining why oaths committing to wrongdoing should not be kept, Philo says:

> […] Justice and every virtue are commanded by the law of our ancestors and by a statute established of old, and what else are laws and statutes but the sacred words of Nature, possessing intrinsically a fixity and stability which makes them equivalent to oaths (ὅρκων)?[149]

Thus, the laws of Nature and the laws of the Torah are by definition oaths as well. Once again, we see how the laws of Nature and the laws of the Torah are equivalent.[150] Similarly the Mishnah states:

> If he said qonam (קונם)that I may not make a booth (סוכה), that I may not take the Four-Species, that I may not tie the phylacteries, in the case of oaths he is permitted (to violate the vow), (but) in the case of vows he is not permitted (to violate the oath), as it is not possible to take an oath to transgress the laws.[151]

In the Mishnah the word *qonam* (קונם) denotes a specific type of vow, namely a dedication of an object, or an animal the Temple, which, once taken, forbids the use of the consecrated object. As noted above, in the Bible, the oath and the vow are not equivalent. However, while the Mishnah, too, clearly differentiates between vows and oaths, at the same time it creates a parallel between the two. The reason for their different legal status is not that they can't be used similarly (i.e. in the same contexts), but that they function slightly differently. According to this Mishnah, if one using an oath wishes to create a new reality which precludes his performing the law, his utterance is considered invalid, untruthful, and certainly not genuine. The vow, on the other hand, relates only to specific objects with which one is supposed to perform the law and therefore, this sort of vow is not considered as contradicting the law.[152] That oaths to violate the Torah are not valid is in agreement with Sectarian law which forbids such oaths,[153] although the state of such oaths is unclear.

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[146] Albeit in a different way than the nonsensical expressions mentioned above. Some substitutes are deemed nonsensical because of social reasons i.e. what is agreed in society to mean something. Here we use nonsensical to denote statements opposing and contradicting reason.
[147] Belkin, above, 157-158.
[148] Austin, above, 27. That is as opposed to a Muslim country, in which “I divorce you” is an effective speech act, while in non-Muslim countries, it isn’t.
[149] Philo, laws 2.13.
[150] The idea that the laws of Nature are “oaths” might be based on an interpretation to Genesis 1, where God is described as creating the world through speech.
[151] Mishnah *Nedarim* 2.2. The term *qonam* is a standard formula of taking a vow in Tannaitic literature. It substitutes "I vow to…".

It is possible to explain the rabbinic view of oaths and vows as reflecting the categories of *גברא,* i.e. obligations that have to do with the subject performing the religious obligation, and *חפצא,* i.e., obligations that relate to the object, as Belkin and Lieberman, for instance, have done.[154] However these abstractions were formulated in the 19th century, and do not necessarily reflect the rabbinic, and, needless to say, the Second-Temple conceptual world. According to Schiffman, the explanation is simpler. The Second-Temple view was that since the people of Israel swore to fulfill the Torah, one may not take a contradictory oath. A vow, on the other hand, is simply a declaration of an individual forbidding himself to perform a certain action.[155]

Perhaps Philo may help us to better understand the conceptual and phenomenological difference between oaths and vows. Philo describes the structure of the oath in different, even contradictory ways, claiming that when one takes an oath, the deities serve as judges and *exacters of punishments* in case of a lie, and also claiming that God, or any of the other deities Philo suggests to invoke, serve as *witnesses* together with the speaker: “for an oath is an appeal to God as a witness on matters in dispute […].”[156]

This latter understanding of the essence of the oath is significantly different from the Biblical oath. It resonates with the rabbinic understanding of the oath as a substitute for witnesses’ testimony.[157] It also best explains why invalidating an oath is different from the question of annulling a vow which was considered valid at some point: Since the oath is a statement about what is true or not true, it is quite understandable why both Philo and the rabbis cannot conceive of annulling it; one cannot annul a statement, which is either true or false.[158]

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[152] Maimonides, for instance, in his interpretation to the Mishnah, explains why, unlike the oath, the vow is valid: “*in the case of vows he is not permitted*: this is because he banned the object itself, without which it is not possible to perform the religious obligation” (Maimonides' Interpretation to the Mishnah, *Nedraim* 2.2. [my translation]). In fact there is a halakhic consensus that the main difference between oaths and vows is that oaths affect the subject taking the oath (*גברא*), whereas vows affect the object (including a person other than the one taking the vow) included in the vow (*חפצא*). Although this is true for the vast majority of oaths and vows mentioned in Qumran and rabbinic sources, there are quite a few “subjective” vows mentioned in rabbinic sources. See M. Azar, above, 56-61.

[153] L.H. Schiffman, “The Law of Vows and Oaths (Num 30, 3-16) in the *Zadokite Fragments* and the *Temple Scroll*,” *Revue de Qumran* 15 (1991), 199-214.

[154] Belkin, 158. Lieberman, 117 (these terms appear only in Lieberman’s Hebrew edition, 88-89). Lieberman notes that this might explain the Mishnah, but that the terms oath (*שבועה*), and vow (*נדר*), are often used in rabbinic literature interchangeably. Because of the complexity of the evidence in rabbinic literature, Lieberman does not attempt to provide one explanation for the rabbinic conceptualization of oaths and vows, but suggests that this may have to do either with mentioning the Divine Name, or, in some cases, with swearing directly or by proxy. For instance, swearing “by the king” (oath) or “by the king’s life” (vow).

[155] L.H. Schiffman, “The Law of Vows and Oaths,” above, 202.

[156] Philo, *Decalogo* 86.

[157] Mishnah, *Bava Mazia* 1.2: “if they both confirm (that they have an equal share), or have witnesses, they share (the disputed object) without taking an oath.”

A vow, on the other hand, looks into the future. It is an obligation to do (or not do) something, sometime, between the immediate and the distant future. Indeed, even if an oath is taken in order to validate a future commitment, the purpose of this type of oath is to assure and insure that the person taking the oath is both truthful and sincere in his declaration about what he is committed to do or not to do. Thus, according to the Mishnah as well, using an oath to say something that contradicts reality (assuming that the laws of the Torah are part of that "reality") is not possible, whereas vowing how one plans to act in that reality is possible indeed. Thus, one cannot be truthful if he takes an oath not to observe certain laws, as these laws are considered to be "truth." But it is possible to declare that one will not make use of a certain object used to perform a halakhic requirement.

From a phenomenological point of view, Philo's statement that the laws of Nature and the laws of the Torah are oaths might reflect a metaphysical perception according to which the laws of the Torah's "truth" is identical to the "truth" of the laws of Nature.[159] This is somewhat different from the basis for this law in the rabbinic literature, which seems to have a social aspect, namely that such oaths contradict the oath taken by all the people of Israel at Sinai (assuming that Sinai is an historical event – not a metaphysical one).[160]

Can Vows and Oaths Be Annulled According to Philo?

Having dealt with invalid oaths, we will now turn to the question of whether, in Philo's view, it is possible to annul valid vows or oaths. Indeed, one of the main differences between oaths and vows in Biblical and rabbinic law is that oaths cannot be annulled, whereas under certain circumstances, it is possible to annul vows.

As I will show, according to Philo, it is, in fact, possible to annul both oaths and vows. According to Albert Baumgarten, Philo represents the most lenient view among other Second-Temple approaches, ranging from the sectarians' insistence on keeping vows at any cost, to the Pharisees, who were open--albeit to a very limited degree-- to releasing one from a vow.[161] In fact, the Rabbis, the Pharisees' supposed successors, in a rare, self-reflective, albeit famous saying, contend that the possibility of annulling vows has no Biblical grounds and is, in effect, a rabbinic innovation: “Dissolving vows flies in the air, there is no basis for it.”[162]

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[158] Cf. Bernard Williams, *Truth and Truthfulness: an Essay in Genealogy* (Princeton: Princeton University Press, 2002). Williams suggests that "truth" can be separated into "sincerity" and "accuracy". Arguably, "sincerity" is an aspect that would be closer to the vow in the sense that it may be questioned.

[159] This has to do with Philo's view of the Mosaic Torah as a "perfect copy" of the laws of Nature. See J.W. Martens, *One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law* (Boston: Brill, 2003); H. Najman, "A Written Copy of the Law of Nature: An Unthinkable Paradox," *The Studia Philonica Annual* XV (2003), 54–63.

[160] Mishnah *Shevu'ot* 3.6.

[161] A.I. Baumgarten, "Korban and the Pharisaic Paradosis,*" The Journal of Ancient Near Eastern Society* 16-17 (1984-1985), 12-13.

Annulling Vows

As for vows, Baumgarten’s main source for the assertion that Philo represents a lenient approach is Philo’s *Hypothetica*, where Philo suggests two ways of releasing vows:

The chief and most perfect way of releasing dedicated property is by the priest refusing it, for he is empowered by God to accept it or not. Next to this, that given by those who at the time have the authority may lawfully declare that God is propitiated so that there is no necessity to accept the dedication.[163]

However, it is difficult to rely on this text in order to formalize Philo’s view with respect to oaths. First of all, as noted above, Philo does not use different terms to denote “oath” or “vow”, but uses *εὐχή* and *ὅρκος* interchangeably.[164] Moreover, in the *Hypothetica,* Philo mentions neither of these terms but speaks of someone who “names the name of God” (*θεόν γε ἐπιφημίσαντα*) over his property, or in a case of a man “has devoted […] to a sacred purpose” (*ἐπιφημίσῃ τροφὴν [...] ἱερὰν εἶναι*).

In addition, together with the seeming leniency with respect to the possibility of annulling vows, Philo seems to represent a very strict view regarding the punishment which awaits one who fails to fulfill his promise, even if he has accidently uttered the binding words. Thus, Philo contends that a dedication of possessions made carelessly and without thought is binding:

> A chance word of dedication spoken unawares deprives him of them all and if he repents or denies his promise his life is forfeit also.[165]

As Benovitz has convincingly shown, a similar perception of this type of speech-act, i.e. the "prohibitive vow" is reflected in early Tannaitic sources, as well as in the Gospels and in the Damascus Covenant. According to Benovitz, although the *qorban/qonam* used the language of vows, the utterance was, in effect, closer to a restrictive oath than to a votive vow, as it did not actually dedicate anything to the Temple. Instead, it determined that the dedication was effective only the moment one violated the vow by benefiting himself from the supposed dedication, as it consecrated only what the votary used.[166]

Benovitz’s reading of the *hypothetica* as speaking of the *qorban/qonam* vow, or a "prohibitive vow" which was neither a standard vow nor an oath, may solve several difficulties. First of all, Philo’s surprising leniency with respect to annulling the vow may be explained by the fact that the case in the *hypothetica* is not of a standard vow, but rather has to do with the laws of dedications. According to Philo, since the priest is the representative of God in the Temple, he may reject a gift dedicated to the

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[162] Mishnah, *Chagiga* 1.8.
[163] Philo, *Hypothetica* 7.5.
[164] Belkin, Above, 157.
[165] *Hypothetica* 7.4.
[166] M. Benovitz, *Kol Nidre,* 9-40.

Temple. In fact, other Second-Temple sources such as the Gospels reject the validity of this type of vow altogether, or, as in the case of CDC, ban their very use,[167] rendering the question of Philo's leniency more nuanced. After all, rejecting the validity or the practicality of these oaths altogether is more lenient from the perspective of the votary.

As for the seeming inconsistency in Philo's willingness to annul this type of vow quite easily while prescribing death for one who fails to fulfill his commitment, perhaps this punishment does not have to do with the laws of oaths but rather to the laws of dedications, equivalent to the rabbinic laws of *הקדש* (i.e. dedications) and *מעילה* (trespass). As Benovitz notes, according to one opinion in Tannaitic literature, trespassing against the Temple property is a capital offence.[168]

Perhaps one of the most significant aspects of Philo's account of dedicatory oaths in the *Hypothetica* is that not only does it resonate with other Palestinian halakhic traditions, but its whole *Sitz im Leben* seems to reflect a Palestinian Temple-centered social setting. I would speculate that this an example of the way halakhic practices found their way to Alexandria. As I have shown in my discussion on the Septuagint and as we shall see in our discussion on the Sabbath, sometimes the opposite was just as true, namely, that practices which originated in a Jewish-Hellenistic context made their way into other parts of Jewish society.

It is worth noting that although Philo is close to early Tannaitic traditions in some aspects of the prohibitive vow, some of the details of Philo's law are unique. Perhaps there was a Palestinian tradition we are not aware of from which Philo drew his entire law. However, as we have seen in this chapter and shall see throughout this study of his legal writings, Philo‘s writings attest to the fact that while many of his laws may resonate with other traditions form Qumran or from rabbinic literature (i.e. usage of alternative formulae, the *qorban* etc.) he cannot and should not be identified with any of the schools known to us.

Annulling Oaths

Thus far we have characterized the difference between an oath and a vow with, among other things, the following observation: an oath is a statement about what is objectively true or not true at the present, whereas a vow is a commitment that whatever the votary declares at the present will prove to be fulfilled in the future. According to this distinction, it would seem impossible to fathom a way to annul an oath, as it is either true or false. Indeed, according to Benovitz, the motivation behind the development of the Second-Temple *qorban* was (besides abstention from mentioning the Divine Name) to avoid the consequences of using oaths. Still, some scholars suggest that Philo was open to some sort of releasing oaths. As mentioned above, Baumgarten relates to Philo's view that oaths to transgress against the law, or oaths sworn in a fit of passion, may not be valid, as part of a relative leniency with respect to releasing oaths and vows.[169] However, in both cases it seems that Philo's view may not have anything to do with the question of annulling oaths, but rather with the question of what is considered a valid oath to begin with.

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[167] Benovitz, above, 16-26;

[168] Tosefta *Zevahim* 12:17. See Benovitz, above, 10 note 8.

[169] Baumgarten, above, 9.

It is true that Philo asserts that if one takes an oath to transgress against the law of the Torah, he should not keep it, but ask for forgiveness for not fulfilling his commitment. This may mean that the oath is valid but shouldn't be kept. However, as argued above, Philo may have thought that an oath to transgress against the law of the Torah is nonsensical, and, therefore, invalid to begin with. In that case a person taking such an oath must ask for forgiveness for taking the Name in vain, not for violating the oath.

As for taking an oath in a fit of passion, indeed it is questionable whether Philo thought that such an oath is not binding. But even if that is indeed what Philo thought, this might not reflect Philo's approach towards releasing oaths, but rather his approach towards the significance of intention in speech acts. And so, according to this assumption, Philo did in fact think that an oath taken in a moment of passion does not meet the minimal requirements of intention in the process of taking an oath. All of the above would ultimately render Philo's speech-theory as differentiating between "words" and "deeds".

Conclusions

Generally speaking, when it comes to speech-acts, Philo reflects a restrictive approach. This is significant because unlike other halakhic issues this has nothing to do with asceticism or a dualistic approach towards the body. Philo can be characterized as a cautious philosopher who prefers moderation even when it comes to speech.

With regard to Philo's speech-theory, while it is not easy to uncover a systematic and comprehensive approach towards speech, it is possible to identify two main Philonic concerns.

A. The potential irreverence involved in offensive speech in a religious context, i.e. in blasphemy, mentioning the Tetragrammaton, or lying while invoking God as a witness. In the case if these types of violations Philo does not seem to be concerned about intention, as the offense lies in the very action of a display of irreverence and disrespect towards God.

B. The demand that one fulfills the obligations he commits to. Relating to laws having to do with this demand, Philo is more ambiguous with respect to the significance of intention. From a comparative point of view, while some of his laws agree with those of the Sectarians, and others with the (much later) Rabbis, Philo reflects an independent and original formulation of Jewish law.

Philo reflects an extra-cautious approach towards mentioning the Tetragrammaton. According to Philo, such an action, even if unintended, is equivalent to blasphemy. But this probably does not mean that Philo thought that mentioning the name of God actually "does" something (as the Austinian model suggests). Rather, Philo's law is likely to be based on a Biblical interpretation, shared by the Sectarians. As to oaths and vows, it is true that Philo reflects a great respect to the binding power of words. But together with the place of the binding power of words taken in a religious context, which would suggest a metaphysical aspect of speech-acts, an important component in Philo’s speech-laws is the way speech-acts “perform” in both social and legal contexts.

Speech-acts may use different formulae, but must be discernable and appropriate to their social context. Even when Philo argues that words uttered by chance or out of anger do count, and “perform” an action, this may not necessarily mean that Philo viewed speech as actions. Thus, although quite often, Philo’s formulations resonate with Austin’s theory, Philo’s dependency on Biblical interpretation and common practices does not allow us to apply Austin’s model as a measure for Philo’s phenomenology of speech-acts.

Chapter III: Philo and Marital Laws

In the previous chapters, I have dealt with Philo's approach towards language, both written and spoken. I have shown that the gap between words and meaning, and between speech and intent, are significant to the understanding of Philo's law with respect to matters pertaining to language. Philo's approach towards the Biblical text in general, and specifically vis-à-vis the question of translation, was informed by Philo's dualistic approach, which divides and contrasts between body and soul.

As we turn to Philo's marital laws, the question of body and soul becomes even more pivotal. At least in theory, this question is more prevalent in this context than in any other matter of Jewish law. In addition, within the Philonic legal corpus, the issue of marital laws, albeit not an easy matter to quantify, seems to contain the largest number of extra-Biblical laws. During the following discussion I will focus on these laws, and attempt to determine the main considerations which informed Philo as he formulated his version of marital laws. My analysis brings me to the following observations:

1. Somewhat surprisingly, Philo's marital laws are best understood as shaped by a concern for the social and political consequences of sexual desires, and less by Philo's ontological or essential understanding of the issues at hand. However, in this case too, just as what we have seen with respect to language, Philo is a true student of Plato, who emphasized the political aspect of marriage.

2. From a comparative perspective, quite a few of Philo's laws, in this context, reflect an earlier stage in the development of Jewish law rather than an essential difference from rabbinic views. Accordingly, the fact that Philo reflects a law that is both different from and harsher than the rabbinic law can be accounted for by the fact that Philo wrote at a time when halakhic principles of religious obligation and quantified measures for such religious obligations were yet to become a part of the halakhic conventions.

3. As part of his political philosophy,[170] Philo viewed the regulations and limitations of sexual desires as a means for exercising self-control (ἐγκράτεια). Philo believed that a society whose members do not exercise self-control is bound to fall into a state of decadence and, ultimately, of chaos.

4. The relatively large number of extra-Biblical laws in this section of Philo's writings support a model according to which the more civil equivalents a certain section of Jewish law had, the more likely Philo was to remove himself from the literal meaning of Biblical law.

5. There is a thematic consistency within Philo's writing with respect to marital laws which are evident throughout Philo's different genres: legal writings, Biblical narrative, historiography, and philosophy. However, Philo is not

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[170] I use "political" in this context in a broad sense i.e. as a contrast to "essential." Thus "political" means what the philosopher views as good for the integrity of society regardless of the essence of the thing itself.

> bound by his legal writing when he writes his Biblical narrative, and vice versa. An examination of Philo's law in light of his Biblical narrative suggests that Philo did value the connection between a man and a woman not merely as a means of procreation.

In addition to the laws with respect to marriage, I will examine Philo's version of the laws with respect to relationships outside of wedlock, such as homosexuality and prostitution.

Marriage, Sex, and Social Order

It is no secret that Philo's conceptual world was informed by Platonic ideas which reject the body and strive to abandon the bodily aspects of human existence in order to allow the soul to exist in tranquil purity:

> God begins the carrying out of His will to cleanse man's soul by giving it a starting-point for full salvation in its removal out of three localities, namely, body, sense-perception, and speech. "Land" or "country" is a symbol of body, "kindred" of sense-perception, "father's house" of speech.[171]

In this text, Philo interprets Abraham's migration as an allegory to leaving the physical aspects of human life behind. Among these are those aspects mentioned above: carnality, sense-perception and even speech. According to Yehoshua Amir, Philo follows the stoic ideology, which utterly rejects passions, rather than following the Aristotelian ideology of prudence and self- control.[172] However, the extent to which these views informed Philo's approach towards the institution of marriage has been a source of scholarly debate. In his study of sexuality in rabbinic culture, Daniel Boyarin contrasted Philo's (as well as Paul's) negative attitude towards sexual pleasure with that of the Rabbis. He argued that Philo's portrayal of the celibate sect of the *therapeutae* in his *On the Contemplative Life* reflects Philo's ideal, which was shaped by the Platonic division of body and soul, and the rejection of the body.

> The tone of his depiction of this sect and its practice makes clear that he considers it an ideal religious community. The fellowship consisted of celibate men and women who lived in individual cells and spent their lives in prayer and contemplative study […].[173]

In response to Boyarin as well as other scholars, David Winston challenges this view on two main accounts. Firstly, Winston argues that Platonic thought is more nuanced with respect to body than its portrayal by Boyarin and others. Secondly, Winston argues that although Philo's legal approach towards sexual relations is stricter than rabbinic law, he nonetheless holds a positive view towards this institution, as part of his nuanced view of the material world:

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[171] Philo, *De Migratione Abrahami.* 2.

[172] Y. Amir, *Philo of Alexanria, Writings* (Jerusaelm: Bialik Institute, 2012), Vol. V, 3. [Hebrew]

[173] D. Boyarin, *Carnal Israel*, 39.

> Philo's view that marriage is more than merely a procreative necessity and that it can be the occasion for genuine love and mutuality is thus intimately connected to his positive evaluation of the material world.[174]

Indeed, the question of the purpose of marriage is pivotal to our discussion, as it has several halakhic implications. Issues like divorce, bigamy, celibacy and sexual relations with no procreative potential or outside of wedlock are all, in one way or another, a reflection of this issue. In the following discussion we will suggest that Philo's marital laws are shaped more than anything else by the concern for the integrity of political and social order, rather than by the belief in a Biblical requirement to procreate, or by a rejection of the human body. In this sense as well, Philo is a true follower of Plato. As Plato remarks before he unfolds his own ideal regulations of marriage:

> Everything that takes place in the State, if it participates in order and law, confers all kinds of blessings; but most things that are either without order or badly-ordered counteract the effects of the well-ordered.[175]

In other words, whereas Boyarin and Winston disagree with respect to Philo's ontological or essential point of view, I suggest that with respect to marital laws, Philo was driven less by the questions regarding the essence of the body, passions, or the relationship between man and woman, and more by the question of how the relationship between man and woman affects the integrity of the human society. In this respect I concur with Maren Niehoff's work on Philo's approach towards sexuality, where she argues, concerning Philo's approach to adultery that:

> Philo does not dwell on the inherent wickedness of pleasure. He is rather concerned with its right measure, which will insure order and harmony in the individual person as well as in society at large.[176]

Niehoff demonstrates the centrality of self-control (ἐγκράτεια) in Philo's sexual ethics. According to Niehoff, in constructing a Jewish identity, self-control serves Philo as a measure for positioning the Jews on the right side of society, together with the Romans, and in deep contrast to other nations such as (some of) the Greeks, the Persians and especially the Egyptians.[177]

To illustrate this distinction between "ontological" or "essential", and "political", I point to Philo's explanation of the law in Leviticus 15.16-18. This law requires married couples to bathe after having intimate relations. Josephus provides an ontological explanation to this law:

> […] For there is a defilement contracted thereby both of soul and body, as though they had traveled into a different country.[178]

Philo's explanation, however, seems to belong to the realm of social order. According to Philo, the purpose of the requirement to bathe after intimate relations is to keep the integrity of the marriage by reducing the possibility of adulterous behavior as well as any suspicion of adultery:

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[174] D. Winston, "Philo and the Rabbis on Sex and the Body", *Poetics Today* 19 (1998), 55.

[175] Plato, Laws 6.780.

[176] M.R. Niehoff, *Philo on Jewish Identity and Culture*, 96.

[177] Niehoff, above, 95-104.

[178] Josephus, *Contra Apionem* 2.29.

> And the law takes such exceeding pains to prevent any irregularity taking place with respect to marriages, that even in the case of husbands and wives who have come together for legitimate embraces, in strict accordance with the laws of marriage, after they have arisen from their beds it does not allow them to touch anything before they have had recourse to washings and ablutions; keeping them very far from adultery and from all accusations referring to adultery.[179]

Philo does not explain how the requirement to bathe serves the purpose of preventing adultery. It seems that he thought that such a requirement would reduce the engagement in intimate relations to a minimum, and accordingly, would restrain sexual desire, which ultimately, leads to adultery. A different possibility is to understand this requirement according to Philo as preventing casual sex. However, it is questionable whether Philo thought that a couple who are indifferent to the ban on adultery would be extra cautious because of the requirement to bathe. Obviously, Philo's law is aimed towards normative couples, who, according to Philo, might slip into excessive engagement in sexual relations.

As noted by Belkin, Philo is closer (albeit not identical) on this issue to the rabbinic explanation for this law than to Josephus.[180] According to Bavli Berakhot, whereas marital relations might seem to have an actual defilement associated with them, in fact the "real" reason for the requirement of self-purification after intimate relations has to do with the social order. In this case, by "social", we mean the very small milieu of the rabbinic school: "so that Torah scholars shall not be with their wives like cocks".[181] Thus, according to this explanation, the purpose of the halakhic requirement is to prevent the rabbinic sages from engaging in excessive sex, instead of occupying themselves with that which defines the rabbinic milieu as such, i.e. the study of Torah. This principle is conspicuous in Aggadic sources, which highlight the erotic aspect of the study of Torah, and has its roots in the Bible itself,[182] as illustrated in the famous rabbinic saying:

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[179] Philo, Laws 3.63.

[180] Belkin, *Philo*, 223.

[181] BT *Berakhot* 22a. Interestingly, the Talmud reflects an awareness of the fact that sometimes what seems to have an ontological basis is really grounded in normative motivations. After the assertion that, contrary to the popular view, the Rabbis permitted indulgence in the study of Torah after having intimate relations even without a ritualistic bath, the Talmud presents a dispute with respect to the question of whether this halakhic leniency was publicized, or whether it was transmitted secretly to selected students: "[...] R. Akiba *whispered* it to Ben 'Azzai, and Ben 'Azzai *went forth* and repeated it to the disciples in public. Two a*moraim* in *Ma'arava* (Palestine) differed with regard to this [...] One taught 'he repeated it', and one taught 'he whispered it' so that scholars might not always be with their wives like cocks.' This is consistent with Philo's portrayal of corpse-impurity, which according to Philo, first and foremost has an educational purpose, so as to prevent murderous violence (as a result of fear of impurity) as well as an ontological-theological one. On this analogy see V. Noam, *From Qumran to the Rabbinic Revolution, Conceptions of Impurity* (Jerusalem: Yad Yizhak Ben-Zvi, 2010), 204-205 [Hebrew]. According to Noam, Philo's view of the social purpose of corpse-impurity is consistent with the ideas expressed in writings of the Dead Sea Scroll Sect, such as the Temple Scroll.

[182] Boyarin, *Carnal Israel,* 134-166. See also D. Biale, *Eros and the Jews: From Biblical Israel to Contemporary America* (New York: Harper Collins, 1992), 46-48. On the Hellenistic context of this

> “if this vile creature (מנוול) encounters you, drag him to the house of study; If he is stone he will dissolve, and if of iron he will be shattered.”[183]

This rabbinic text equates the bad inclination to a vile creature. According to rabbinic anthropology the sexual drive belongs to this vile creatures’ realm, and in this text it stands in contrast to the positive erotic drive behind the study of Torah. Thus, the rabbis recommend that in order to subdue the vile potential of the erotic drive, one should use it for the purpose of the study of Torah.

It is worth noting that it is in the course of his discussion of the law of a "suspected woman" that Philo discusses the requirement to purify oneself after intimate relations. In rabbinic literature as well, the context of *sotah* is used to make a statement about the potential danger in the excessive consumption of wine:

> Rabbi [Judah the Prince] says: Why does the section of the Nazirite adjoin that of the suspected woman? To tell you that whoever witnesses a sotah in her disgrace should withhold himself from wine.[184]

Thus, although they are not fully comparable, Philo sees it apt, in the context of *sotah*, to remind his readers of the danger in excessive attachment to bodily pleasures, and the Rabbis warn against a different type of lack of moderation. In both cases (as in the law requiring purification before engaging in the study of Torah), the focus is not on the ontological aspect of physical pleasure, but, rather, on the effect that the lack of moderation has on the social order. As we shall see, Philo emphasizes this principle in a wide range of genres in his corpus.

Sexual Self-Restraint and Social Order

In Philo's account of Joseph, we find another example of a statement which seems to make an assertion about the nature of marriage, but which is actually a normative statement. In this text, Philo rejects the possibility of non-procreative intimate relations. In the context of his narrative of Joseph in Potiphar's house, Philo uses Joseph to expound on the chastity required by Jewish law:

> We children of the Hebrews follow laws and customs which are especially our own […] The end we seek in wedlock is not pleasure but the begetting of lawful children.[185]

Indeed, in this text, Philo reiterates that the only goal of sexual relations is procreation. However, here, too, the strong connection between self-control and political and social order put Philo's words into the appropriate context. In his account of Joseph, Philo focuses on Joseph's acumen as a politician. Joseph's ability to withstand sexual temptation serves as a testimony of his self-control (ἐγκράτεια):

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concept see also Y. Libes, “Eros and Anteros on the Jordan,” in S. Arzy, M. Fachler & B. Kahana (eds.), *Life as a Midrash, Perspectives in Jewish Psychology* (Tel Aviv: Miscal, 2004), 152-167.

[183] *Sifre Devarim,* 45.

[184] BT *Sota* 2a.

[185] *Philo, Joseph* 43.

> Moses has now set before us three characteristics of the statesman, his shepherd craft, his household-management, his self-control (κρατερικόν) […] while in all affairs of life, self- mastery (ἐγκράτεια) is a source of profit and safety, it is particularly so in the affairs of the state (τὰ πόλεως) […] for the majorities of wars, and those the greatest, have arisen through amours and adulteries and deceits of woman.[186]

Excessive and Irrational Desire

As mentioned in the introduction, in his monograph on the Tenth commandment, Hans Svebakken demonstrates how Philo transforms the commandment not to covet what belongs to others into an injunction on excessive non-rational desire (ἐπιθυμία). Svebakken demonstrates the major role of self-control (ἐγκράτεια) and practice (ἄσκεσις) in Philonic thought:

> And how is the tenth commandment observed? Essentially, obedience to the tenth commandment requires the exercise of ἐγκράτεια, since regular enforcement of the dictates of the λόγος over and against ἐπιθυμία (when the two conflict) both precludes the sort of passionate desire prohibited by the injunction οὐκ ἐπιθυμήσεις and eliminates the risk of tyrannical desire.[187]

According to Svebakken, the core of the observance of the tenth commandment is in the practice of the dietary laws, rather than laws which have to do with sexual desire. However, an examination of Philo's use of the term ἐγκράτεια, as well as the strong connection Philo makes between social order and moderation, demonstrates that although Svebakken is right in identifying the centrality of the dietary laws with respect to the tenth commandment, the centrality of marital law is pivotal to the understanding of the place of the term ἐγκράτεια in Philo's thought. As I will demonstrate in the chapters on the Temple cult and the Sabbath, ἐγκράτεια is central to Philo's formulation of Jewish rituals, as well.

In fact, this term is central for the understanding of Philo's legal theory as a whole, and not only with respect to marital or dietary laws. Examining the place of ἐγκράτεια in Philo's marital laws provides us with several interesting observations as to Philo's uniqueness with respect to the Bible as well as to Late-Antiquty sources. It emphasizes Philo's view of Jewish law as a didactic tool for internalizing Greco-Roman values such as moderation and rationality, essential to creating a well-ordered society.

The Sixth Commandment

In an attempt to define Philo's approach towards Jewish Law, Peder Borgen argued that Philo's formulation of Jewish law lacks a coherent view of Jewish law, but is rather an essentially editorial work which organizes Jewish law under different categories with some editorial comments inserted between what Borgen sees as rewritten Bible.[188] However, as I will demonstrate, Philo's choice here does not reflect merely a literary or a pedagogical choice, but rather reflects his general and consistent approach towards sexual desire. Philo chose to discuss the issue of marital laws under the category of the sixth commandment, "Thou shall not commit adultery". According to Philo, both legitimate and illegitimate relations are potentially destructive to the social order, as, if sexual desires are unchecked, they lead to a lack of self-restraint which is essential for keeping both the laws and the integrity of the social-order intact. For this reason, Philo finds it appropriate to treat issues like adultery and rape, as well as the regulations of marriage, under the same category.

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[186] *Philo, Joseph* 54-56.

[187] H. Svebakken, *Philo of Alexandria's Exposition of the Tenth Commandment* (Atlanta: Society of Biblical Literature, 2012), 185.

Thus, Philo begins his account by explaining that sexual desire is a mighty force, and so, an effort should be made to prevent "immoderate" (ἀμέτρως) and insatiable (ἀκορέστως) sexual pleasures - even legitimate ones. Although Philo treats all marital laws under the category of "adultery", he makes a distinction between a man who engages in immoderate sex, and an adulterer. Whereas, according to Philo's terms, the former is affected more by a diseased body (σώματός) rather than a diseased soul (ψυχῆς), the latter becomes a menace to society and thus:

> being afflicted with an incurable disease of the soul, must be punished with death as common enemies to the whole race of mankind, in order that they may no longer live in perfect fearlessness so as to be at leisure to corrupt other houses, nor become teachers of others who may learn by their example to practice evil habits.[189]

Here, Philo's emphasis is on the destructive nature of adultery. Similarly, when Philo explains the injunction against incest, he provides an "historical example" in the story of Oedipus of Thebes as proof of the destructive nature of this sin with respect to the political and social order.[190] The danger in adultery is the chaos it brings to society, as well:

> Accordingly, adultery exhibits the destruction of three houses by its means […] And if their connections and families are very numerous, then by reason of their intermarriages and the mutual connections formed with different houses the iniquity and injury will proceed and infect the whole city all around.[191]

Although Philo makes a distinction between adultery and excess in his exposition, in his account of Gaius Caligula, Philo alludes to excessive "appetites" (ἐπιθυμίαι) as a disease with a destructive potential to the integrity of society. Philo contrasts the peace and prosperity of the Roman Empire before Gaius took power with the rapid change in the course of history during Gaius' reign :

Although Philo makes a distinction between Adultery and excess in his exposition, in his account of Gaius Caligula, Philo portrays excessive "appetites" (ἐπιθυμίαι) as a disease with a destructive potential to the integrity of society as well. Philo contrasts the peace and prosperity of the Roman Empire before Gaius took power with the rapid change in the course of history during Gaius' reign:[192]

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[188] P. Borgen, "Philo – a systematic Philosopher or an Eclectic Editor?," *Symbolae Osloenses* LXXI (1996), 115-134.

[189] Philo, Laws, 3.11.

[190] Philo, Laws 3.15-16.

[191] Philo, *Decalogo* 126-127.

> But in the eighth month Gaius has been struck down by severe sickness (νόσος). He has exchanged the recent more homely […] way of life […] for one of extravagance (πολθτέλειαν) […].[193]

According to Philo, sexual misconduct was but one expression of Gaius' disease, emphasizing the view that in essence, sexual desire is one of the human impulses which, if unrestrained, poses a destructive threat. Here, Philo makes a pause in his account in order to make a statement which resonates repeatedly throughout his writings:

> Self-restraint (ἐγκράτειας) is rewarded by strength and health, incontinence (ἀκρασίας) by infirmity and sickness bordering on death.

As Philo's narrative unfolds, we can immediately see that when a politician in Gaius' position is infected with this disease, the dire consequences affect the whole Roman Empire, as according to Philo everyone understood what a "diseased" ruler meant:

> Thoughts of the many great evils, which spring from anarchy occupied their mind: famine, war, ravaging, devastation of estates, loss of property, abductions […].[194]

More specifically, the injunction against intermarriage with a Gentile women is explained by the danger it poses to observance of the Jewish law. In this case, however, Philo is concerned about the particular Jewish πολιτεία. In this way, Philo still maintains his general thrust (i.e. "law and order"), while avoiding the difficulty of justifying a law which cannot be explained simply as having to do with moderation or self-control. Once again, we should note that Philo treats this issue under the category of "adultery" (μοιχεύσεις), right after the issue of incest. Philo's choice to deal with intermarriage under the category of the sixth commandment is not only a result of his editorial and literary choice to organize most of his account of Jewish law according to the Ten Commandments. It is also consistent with his attempt to emphasize the effect these laws have on the integrity of the Jewish society, as obviously part of this integrity is dependent on the Jews observing Jewish law:

> Moses commands, do not either form a connection of marriage with one of another nation, and do not be seduced into complying with customs inconsistent with your own, and do not stray from the right way and forget the path which leads to piety, turning into a road which is no road […] and so they may be in danger of learning to forget the honor belonging to the one God, which is the beginning and end of extreme unhappiness.[195]

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[192] This is consistent with Peder Borgen's reading of the *Legatio* as an exegetical work. See P. Borgen, "Application of and Commitment to the Laws of Moses," *The Studia Philonica Annual* XIII (2001), 86-101.

[193] Philo, *Legatio* 14.

[194] Philo, *Legatio* 17.

[195] Philo, Laws 3.29

This, of course, is a Biblical idea, as the Bible warns against the threat that intermarriage poses to the observance of the Jewish law.[196] Nonetheless, we know from writings like the book of Jubilees that in Philo's time there were Jewish groups who opposed intermarriage or even conversion because of their belief in a special quality to the Jewish ἔθνος[197] (rather than an opposition based on different norms or beliefs), a Biblical idea as well.[198] Philo goes on to condemn a man who returns to his divorcée if she had already married a different man before they renewed their relationship. Philo emphasizes that such an offense threatens the social order:

> […] as if he had been castrated and deprived of the most useful portion of the soul, namely, that disposition which hates iniquity, by which the affairs both of houses and cities are placed on a good footing (κατορθοῦται).[199]

Self-Control and Celibacy

The centrality of self-control is stressed in Philo's account of the *therapeutae*, as Philo asserts that "they lay self-control (ἐγκράτειαν) to be as it were as the foundation of their soul and on it build the other virtues."[200] In addition to the *therapeuate*, Philo describes the Essenes as Jews who chose celibacy as an ideal way of life, out of their understanding that it was the best way to exercise moderation and self-control:

> […] they eschew marriage because they clearly discern it to be the sole or the principal danger to the maintenance of the communal life, as

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[196] Deuteronomy 7.3-4. See M.L. Satlow, *Jewish Marriage in Antiquity* (Princeton and Oxford: Princeton University Press, 2001), 145-147. According to Satlow, in comparison to other Second-Temple groups, Philo was relatively open to exogamy, at least with respect to marriage between different groups (such as priests and non-priests) within Jewish society. Philo's views against intermarriage were shaped by the law in Deutoronomy.

[197] The Book of Jubilees 30.7-10. According to Jubilees, intermarriage creates an impurity which can be cleansed only by death. According to the Temple Scroll, the impurity of a Gentile woman marrying a Jew lasted for seven years. On intermarriage in the Dead Sea Scrolls Sect, see C. Werman *The Attitude Towards Gentiles in The Book of Jubilees and Qumran Literature Compared With Early Tanaaic Halakha and Contemporary Pseudepigrapha,* Ph.D. dissertation, The Hebrew University of Jerusalem (1995), 222-257 (Hebrew). Naturally, given their approach, the Sect approach was less susceptible to the possibility of conversion as it assumed that Judaism is attached to a biological ethnos. For the view that the Sect totally rejected the possibility of conversion to Judaism see Werman above 272-279. See also D.R. Schwartz, "On Two Aspects of a Priestly view of Descent", in L.H. Schiffman (ed.), *Archaeology and History in the Dead Sea Scrolls,* JSPS 8, JSOT/ASOR 2 (Sheffield: Sheffield Academic Press, 1990), 157-179. For the view that the Sect did not deny the possibility of conversion see J.M. Baumgarten, "The exclusion of Netinim and Proselytes in4QFlor," *Studies in Qumran Law* (Leiden: Brill, 1977), 75-87. According to Baumgarten the Sect did permit marrying proselytes, however the proselytes were forever "disqualified from the messianic sanctuary." See also M. Thiessen, *Contesting Conversion: Genealogy, Circumcision, and Identity in Ancient Judaism and Christianity* (New York: Oxford University Press, 2011), esp. 87-111. Thiessen challenges the view that by the time of the end of the Second-Temple period it was widely accepted that non-Jews can join the Jewish people as equal and full members of the Jewish religion and participate in the Jewish rites.

[199] Philo, Laws 3.31.

[200] Philo, *Vita Cont.* 34.

> well as because they particularly practice continence (ἀσκεῖν ἐγκράτειαν).[201]

In both cases, the choice of a celibate life is not the result of an understanding of the essential quality of married life, but rather of the role of celibacy in achieving self-control through practice.

As noted above, Boyarin asserts that Philo's description of the *therapeutae* implies that according to Philo, celibacy was the ideal way of life. However, Philo portrayed the men of this group as people who abandoned a familial life as they grew old.[202] As for the women in the group, it is unclear whether Philo meant that most of them were "old and virgins" or that they were all virgins, most of whom were old. In other words, although Philo portrayed the *therpeutae* as an ideal, even according to Boyarin, it is doubtful whether he necessarily thought that this ideal stands in contrast with men and women raising a family at some point of their life. In our analysis of Philo's Sabbath, I will suggest that in his portrayal of the *therapeutae,* Philo provides the theoretical basis for the practice of abstaining from food on the Sabbath, but by no means asserts that fasting during the Sabbath is an ideal. Similarly, Philo's account of the *therapeutae* may provide a theoretical basis for celibacy, but this does not mean that Philo thinks that this is indeed the ideal. The issue of celibacy is obviously connected to the question of the value of procreation as a principle, which informs the regulations of sexual desires. The question is whether Philo thought that procreation was a religious obligation.

Procreation

Is Procreation a religious obligation?

It is very clear that, according to rabbinic literature, the main purpose of marriage is to fulfill the halakhic requirement of procreation.[203] This requirement was drawn from Genesis 1. 28: "God blessed them, and God said to them, "Be fruitful and multiply, and fill the earth and subdue it."[204] The implication of this interpretation is to tie the obligation of procreation to marriage, as marriage was seen as the natural setting for fulfilling the obligation.[205] To be sure, as Cohen notes, all the Jewish sources known to us which predate rabbinic literature seem to understand Genesis 1:28 as a blessing which has to do with man’s dominion over the living world, rather than as a Biblical injunction.[206]

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[201] Philo, *Hypothetica.* 11.14.

[202] Philo, *Vita Cont.* 18.

[203] On the religious duty of procreation see D. Daube, *The Duty of Procreation* (Edinburgh: Edinburgh University Press, 1997). See also J. Cohen, *"Be Fertile and Increase. Fill the Earth and Master it": The Ancient and Medieval Career of a Biblical Text.* (Ithaca, N.Y. : Cornell University Press, 1989).

[204] Bavli *Pesachim* 82a.

[205] We should note that according to this text not only is procreation a blessing, rather than an obligation, but the Bible provides an alternative reason for marriage. According to Genesis 2.24, marriage, or marital relations are rooted in the mythic creation of man and woman, a reunion of two parts of one whole: "Then the man said, 'This at last is bone of my bones and flesh of my flesh; this one shall be called Woman, for out of Man this one was taken.' Therefore a man leaves his father and his mother and clings to his wife, and they become one flesh."

That Philo thought that the only legitimate type of intimate relations are those which have a procreative potential can clearly be seen in several texts which will be discussed below. Furthermore, in some instances it seems that Philo thought that procreation is, in fact, an obligation. For instance, when Philo describes Sarah's initiative to let Abraham have a child with his servant Hagar, he quotes Sarah as saying that Abraham's union with Hagar will be "not for lust, but in fulfillment of nature's necessary (ἀναγκαῖον) law."[207] Several scholars have argued that this reflects the influence of Greco-Roman concepts, which affected the Jewish tradition so as to assert that procreation is the only justification for sexual relations.[208] This is another example for a Greco-Roman influence on the development of halakha, and here, too, as I will demonstrate, Philo reflects a less developed version of halakha while sharing quite a few of the assumptions underlying the halakha with the Rabbis.

However, it is one thing to assert that the only justification for sexual relations is their procreative potential, and an entirely different thing to argue that one is obligated to procreate. In the following, I will provide several examples for the emphasis that Philo puts on the irrationality of violating bans and restrictions on various sexual relations. This seems indicative of Philo's focus on the social implications of his law, rather than on the religious or moral ones. This principle is equally conspicuous even when Philo uses the harshest rhetoric in reproach of sexual practices.

This last point deserves further attention, as even the Rabbis who argued that procreation is a religious obligation did not go so far as to ban marital relations for the purpose of pleasure or intimacy. On the contrary, the Rabbis asserted the value of such relations.[209] In the following discussion we will demonstrate that, in fact, Philo’s treatment of non-procreative intimate relations is very consistent with his general view of marriage.[210]

In addition, using terms like religious obligation, or "fulfillment of family requirements" (as Belkin does) with respect to Philo, cannot be as natural and self-explanatory as, for instance, the rabbinic *mitzvah*. Arguably, one of the Rabbis’ greatest innovations with respect to Biblical law was formulating the Jewish practices into a system, including clear-cut criteria for fulfilling the religious requirements, and consequently, allowing the possibility of one being absolved from these practices once having met these criteria. However, it would be very difficult to find a Philonic equivalent to the notion that a religious obligation has a certain measure according to which one fulfills - or fails to fulfill - his obligation. Thus, if there is no way to answer the question of how, according to Philo, one actually fulfills a "religious obligation", we are compelled to either refrain from using the term , or to redefine it.

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[206] Cohen, above, *67-76.*

[207] *De Abrahami,* 249.

[208] Belkin, Above*,* 219-222. Although Belkin does not spell it out, and does not dare to argue in favor of Philo's criteria for this practice, he nonetheless seems to imply that Philo thought procreation was an obligation. See also Daube, above. According to Daube, the notion that there is an obligation to procreate circulated throughout Hellenistic world for several centuries, and eventually found its way to Hellenistic Jews' writings like Philo. Philo interpreted this requirement as part of "the law of Nature" (p. 34) see also K.L. Gaca, "Philo's Principles of Sexual Conduct," *The Studia Philonica Annual* VII (1996), 21-40. Gaca argues that Philo's marital laws were shaped primarily by "the procreationist principle" and that in this Philo was directly influenced by the Pythagoreans. In addition, according to Gaca, Philo was troubled by the possibility of "sexual apostasy."

[209] Boyarin, *Carnal Israel*, 44-49; 53-56.

[210] J.A. Taylor, *Jewish Woman Philosophers of First-Century Alexandria: Philo’s ‘Therapeutae’ Reconsidered* (Oxford: Oxfrod University Press, 2003), 234.

Non-Procreative Sex is Irrational - Homosexuality

If procreation as a religious obligation is not the core of Philo’s resentment of non-procreative sex, then what is? To answer this question I will examine Philo’s different treatments of various types of non-procreative sex. Of all transgressions, there is no practice that seems to draw more disgust and apprehension from Philo than homosexuality.[211] Philo's treatment of homosexuality is fraught with ethical and esthetic language. In Philo's treatment of the story of Sodom, Philo asserts that trouble came with "the excess of goods" (τὰ λίαν ἀγαθά),[212] and that the people of Sodom who engaged in homosexual relations "threw away from their necks the law of Nature (Φύσεως νόμον) and so eventually "saddled them with the formidable curse of female disease (νόσον)."[213] But in addition to these aspects of the Sodomites' sin, Philo puts an emphasis on its irrationality, and how this conduct poses a threat to society. According to Philo, the people of Sodom realized that their behavior yields no fruit from their seed but "the discovery (ἔλεγχος) availed them not, so much stronger was the force of lust (ἐπιθυμίας) which mastered them". Philo warns that if other cities were to follow the Sodomites' example, they would become desolate, and accordingly the punishment of Sodom was that "in one day populous cities became the grave of the inhabitants."[214]

Philo’s treatment of the Sodom narrative allows us to take a glimpse into Philo’s work as an interpreter of the Torah, and to appreciate the role of law and narrative in Philo’s interpretation. The Biblical narrative does not provide an explicit reason for the destruction of Sodom. Before God shares his edict with Abraham, He states very generally that there was a “great outcry” and “sin” coming from Sodom. Similarly, when the angels urge Lot to flee from the city, they tell him that: “the outcry against its people has become great before the Lord, and the Lord has sent us to destroy it.”[215] The narrative does, in fact, provide one example of the city’s cruelty as the people of Sodom urge Lot to give them his “angel-guests”, so they may rape them.[216] It seems, however, that this very subtle reference to homosexuality in Sodom, which demonstrates its violence, is not intended to be the sole basis for God’s judgment. In fact, the book of Ezekiel provides an alternative explanation:

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[211] H. Szesnat, "'Pretty Boys' in Philo's De Vita Contemplativa," *The Studia Philonica Annual* X (1998), 87-107. Szesnat emphasizes Philo's extreme view of homosexuality, in the context of the Greco-Roman world, as the cause for what Philo calls "the female disease".

[212] Philo*, Abraham* 135. Cf. the *Barayta* in BT *Sanhedrin* 109a: "Our Rabbis taught: The men of Sodom waxed haughty only on account of the good which the Holy One, blessed be He, had lavished upon them."

[213] *Abraham* 136.

[214] *Abraham* 139.

[215] Genesis 19.13.

[216] Genesis 19.5. The LXX reads: “so that we may be with them” (ἵνα συγγενώμεθα αὐτοῖς).

> This was the guilt of your sister Sodom: she and her daughters had pride, excess of food, and prosperous ease, but did not aid the poor and needy.[217]

It is possible that when Philo asserts that the utter destruction of Sodom is a punishment for sodomy, he is making a connection between the Biblical law (Leviticus 20.13) condemning those who indulge in homosexual relations to death, and the Divine retribution meted out in Sodom. In keeping with this, Philo categorizes homosexuality under the sixth commandment, and condemns men who "habituate themselves to endure the disease of effemination," pursuing "unnatural pleasure" (παρὰ Φύσιν ἡδονὴν),[218] to death. In addition to these acts deemed as debasing "the sterling coin of nature", and a "disgrace", Philo stresses that death is an appropriate punishment, as such offences result in rendering "cities desolate and uninhabited by destroying the means of procreation." Thus, Philo's treatment of the Sodom narrative and of homosexuality demonstrates how, as an exegete, Philo read the Biblical narrative and the Biblical law as complementary, and, at least in this case, kept his own account consistent in both genres.

Non-Procreative Sex is Irrational - Menstrual Defilement (*נידה*)

An additional example for the theme of sexual relations, which are forbidden because they are “unnatural” or “irrational,” is Philo’s account of the law of *נידה* in Leviticus which forbids marital relations during a woman’s menstrual period: “You shall not approach (*תקרב*) a woman to uncover her nakedness while she is in her menstrual uncleanness.”[219] That the Biblical law forbids only marital relations and does not ban any other form of physical contact is evident from the context in Leviticus, which deals with forbidden sexual relations (otherwise, since the list in Leviticus contains many other forbidden “approaches”, we would be compelled to assume that Biblical law forbids all physical contact between a man and, for instance, his mother or his cow…) However, *in rabbinic law,* the term *תקרב*, which can mean “approach” or “come near”, was understood, in the case of *נידה*, to mean, “touch”:[220]

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[217] Ezekiel 16.49. Of all Second-Temple traditions, Josephus seems to the closest to Philo. According to Josephus, the Sodomites’ lust for Lot’s guests was punished first by blindness, and later by the destruction of the city (Antiquities 1.11.3-4). The Book of Jubilees does not mention this incident explicitly, but relates to the Sodomites as “wicked and sinners exceedingly, and that they defile themselves and commit fornication in their flesh, and work uncleanness on the earth.” (Jubilees 16.5, Translation: R.H. Charles). Following Ezekiel, several rabbinic traditions focus on Sodom’s cruelty towards the poor (*Genesis Rabba* 49.6, BT *Sanhedrin* 109a) In addition to the portrayal of the Sodomites as licentious and murderous, the Rabbis seem to read the narrative in Genesis as an illustration of the Sodomites’ cruel behavior towards guests and strangers (BT Sanhedrin 109b): "Now, they had beds upon which travelers slept. If he [the guest] was too long, they shortened him [by lopping off his feet]; if too short, they stretched him out."

[218] Philo, *Laws* 3.37-39

[219] Leviticus 18.19.

[220] “You shall not uncover the nakedness of your father's brother, that is, you shall not approach his wife” (Leviticus 18.14) Evidently, the reason for the rabbinic interpretation of “approach” as “touch” is normative rather than exegetical. In other words, this law is based on a “supporting” *midrash* (*מדרש מקיים*), i.e. a *midrash* which supports an existing norm rather than on a “creating“ *midrash* (*מדרש יוצר*), which creates a new norm.

> What fence did the Torah make to its own words? The verse says ‘You shall not approach a woman to uncover her nakedness while she is in her menstrual uncleanness (Leviticus 18.19)’ Is it permitted to hug her, and to kiss her, and to have an intimate conversation with her? Infer it from that it says ‘do not approach’." [221]

From an exegetical point of view, since the Hebrew word *תקרב* can be read as “come near”, the rabbinic interpretation forbidding touching is rooted in the text. Moreover, the Hebrew allows us to understand the verb either as denoting an action i.e. to come near, or a certain status i.e. being in the state of closeness.

In accordance with the Hebrew Bible, the LXX seems to reflect the view that this law forbids only marital relations: “And thou shalt not approach (προσελεύσῃ) a woman under separation for her uncleanness, to uncover her nakedness.” The verb προσελεύσῃ,[222] usually denotes motion towards something — i.e. approaching - not touching something. However, similar to the rabbinic practice, Philo asserts that, “Whenever the menstrual issue occurs, a man must not touch (ψαυέτο) a woman.”[223] Thus, Philo is consistent with the rabbinic law, even though his text does not provide the same interpretive possibilities.

Philo’s law may be a result of the common practice in Palestine and in Alexandria. But is it possible to find an interpretive motivation behind Philo’s law, similar to that of the Rabbis? The midrash in *Avot DeRabbi Natan* reflects the notion that intimacy includes a broad spectrum of gestures. This is not a view that should be taken for granted, and might provide the theoretical basis behind the understanding of “coming near to” as including any expression of affection, even “an intimate conversation”. Philo, on the other hand, does not raise the possibility of any expression of intimacy devoid of sexual relations between a married couple. For Philo, “do not touch” and "do not have sexual relations" might mean the same thing, as Philo might not have conceived of any type of intimacy which is not aimed at procreation. This interpretation is consistent with Philo’s explanation for the reasons behind the law of *נידה*.

The Biblical laws with respect to the menstrual period i.e. *נידה*, reflect the notion that it is a matter of impurity. However, Philo’s explanation of the injunction against intimate relations during a woman's menstrual period is consistent with Philo’s attempt to explain the Biblical law as rational in and of itself, and more importantly, as preventing irrational behavior. Thus, Instead of providing an explanation in the context of defilement as the Biblical text does, Philo once again calls for respecting the laws of Nature rather than yielding to "a gross and untimely (ἀκαίρου) pleasure". To illustrate this, Philo likens this behavior to a farmer who in drunkenness (μέθες) and madness (φρενοβλαβείας) sows wheat in a barren field. Such a man is acting with total disregard of the laws of Nature (νόμον φύσεως). Clearly, such an act renders the farmer, first and foremost, irrational, rather than immoral. However, it would be simplistic to claim that Philo thought that a transgression against the laws of Nature is devoid of any ethical implications, since, as I will show below, rationality does play a role in Philo’s ethics. Nonetheless, the thrust of Philo’s argument, as we have seen in many examples above, is that irrational behavior poses an actual threat to social order.

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[221] *Avot De’Rabbi Natan* a, 2.

[222] According to Rahlfs edition. Other versions read εἰσελεύσῃ, which literally means “go in to.”

[223] Philo, *Laws* 3.32.

Infertile Marriage

Philo’s emphasis on the irrationality of non-procreative sexual relations brings us to additional laws which offer us a fruitful discussion from a comparative point of view, as rabbinic literature relates to the issue of the halakhic implications of infertility in detail. While in the case of *נידה* Philo’s reasoning is original, he is consistent with the practical aspects of Biblical law. However, in the case of a childless marriage, Philo assumes an unequivocally strict approach from a practical point of view as well. According to Philo, one is not permitted to marry a woman who is known to be infertile. Here, too, the agricultural metaphor serves as an illustration for how such an act should be judged:

> They, too, must be branded with reproach, who plough the hard and stony land. And who should they be but those who mate with a barren woman? For in quest of mere licentious pleasure ,like the most lecherous of men, they destroy the procreative germs with deliberate purpose.[224]

The Mishnah is very clear that once one has fulfilled his obligation to procreate, he may take a second wife, even if she is barren:

> A Priest is not permitted to marry a sterile woman, unless he already has a wife and children. Rabbi Judah says, even if he has a wife and children, he is not permitted to marry a sterile woman. Such a woman is (if married) a harlot according to the Torah.[225]

In this case, Belkin's attempt to reconcile Philo and rabbinic law is far from compelling. The simple meaning of the Mishnah is that only a priest is not permitted to marry a sterile woman. Furthermore, although the Talmud interprets the Mishnah as relating to non-priests as well, the Mishnah originally *s*eems to imply that one may marry a sterile woman even before he has fulfilled his obligation to procreate (probably under the assumption that it is possible for him to marry another woman at some later time). However, even if we follow the Talmud's interpretation, we are still left with the notion that if one did, in fact, fulfill his obligation, he is permitted to marry a sterile woman. This is very far from Philo's harsh approach. Moreover, it might prove that Philo did not think that there is an obligation, in the rabbinic-halakhic sense of the word (i.e. an obligation well defined, quantified and measurable), to procreate.

In other words, the rabbinic willingness to allow a non-procreative marriage is related to their notion that the obligation to procreate can be fulfilled under certain, quantified conditions. Ironically, the rabbinic tendency to regulate and define allows more flexibility when it comes to allowing actions which are not directed towards the end-goal of fulfilling the obligation.

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[224] *Laws* 3.34.

[225] Mishnah *Yebamot* 6.5. According to one opinion in Tosefta *Yebamot* 8.2, the Hillelites thought that one boy or one girl was sufficient.

Infertile Divorce[226]

Notwithstanding my last comments, I should note that as in many other cases, rabbinic literature reflects an array of approaches, and in the following case, one rabbinic law strikes as particularly similar to Philo's approach.

In the case of a couple who has been childless for a very long period, although Philo expresses an understanding towards such a couple's choice not to divorce, he clearly thinks they ought to end their marriage:

> Those who marry maidens in ignorance at the time of their capacity or incapacity for successful motherhood, and later refuse to dismiss them when prolonged childlessness shows them to be barren, deserve our pardon.[227]

The extra-Biblical notion that a childless marriage is illegitimate is strikingly similar to the Mishnah, stating:

> If a man married a woman and remained with her for ten years, and had no children, he is not permitted to refrain (from procreation).[228]

Indeed, both Belkin and Boyarin have interpreted this to mean that the couple must divorce.[229] Thus, Philo and the Mishnah agree, in principle, that a couple is not permitted to remain married indefinitely when there are no children. This interpretation is consistent with the Tosefta, which explicitly states that "he is not permitted to refrain from procreation, but he should divorce her and give his wife her dowry (*כתובה*).[230] It is possible that the Mishnah does not require divorce, but merely states that this is a valid reason for divorce. Although Belkin rules out this interpretation on the grounds that taking a second wife was not a viable option from a rabbinic perspective, this is clearly not the case. As seen above, the Mishnah states that a priest may not marry a sterile woman "unless he *has a wife* and children".

Philo's law is clearly diametrically opposed to rabbinic law in one different important detail. Unlike the Mishnah, Philo provides a criterion for what is considered a sterile woman whom it is forbidden to marry, i.e. a woman "whose sterility has already been proved with other husbands."[231] However, the Mishnah states that a woman who has been divorced because she did not bear children for ten years is allowed to remarry at least once more. The difference between the Rabbis and Philo in this case might be a result of Philo's failure to acknowledge male infertility, which is consistent with the Biblical view, according to which infertility is a feminine phenomenon. However, this might be yet another example for how Philo's failure to provide measurable criteria for the norms he chooses to promote results in a relatively harsh legal approach.

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[226] Having used the term "infertile marriage" to relate to a marriage which had no procreative potential to begin with, we use "infertile divorce" to relate to a divorce, which is instigated by childlessness.
[227] *Above.* 35.
[228] Mishnah *Yebamot.* 6.6.
[229] Belkin, *Philo and the Oral law*, 221. Boyarin, *Carnal Israel*, 54.
[230] Tosefta *Yebamo*t 8.3.
[231] *Laws* 3.36. Philo defines a sterile woman on an empirical basis. This is impossible according to the *Mishnah* as it states that it is possible for a woman to bear children with a different spouse. It seems that the rabbinic sterile woman (*איילונית*) is defined according to her physiology.

Without a clear-cut definition of when a marriage is considered infertile, Philo felt that it would be draconian to determine that a childless marriage should come to an end, with no exceptions.

The Rabbis might feel that it is possible to allow for an infertile woman to remarry because they had a clear idea of how long this second chance would last – ten years at most. Moreover, as noted above, the Rabbis allowed non-procreative marriage, if the husband had already fulfilled his obligation. As Daniel Boyarin has shown, in the Babylonian Talmud the Rabbis' approach towards marriage and intimacy is that they have value even when detached of any procreative purposes. This approach reflects a gradual ideological development in rabbinic culture.[232] However, even if in its earlier stages rabbinic culture was much closer to Hellenistic culture with respect to the approach towards marriage and intimacy, we can see that there are several differences reflected as early as in the Mishnah, which might have anticipated the later developments.

Abraham, Sarah and Hagar – Another case of Law and Narrative

The Bible contains quite a few narratives dealing with infertility, and with the dilemmas and obstacles it raises for married couples. The Abraham narrative provides us with another test case for the relationship between law and narrative in Philo's writing through the subject of infertility. If in the case of homosexuality we examined Philo's treatment of Biblical law and Biblical narrative, here we are focusing on the relationship between Philo's own law and narrative. The Biblical narrative seems to overwhelmingly contradict Philo's stance on preserving a childless marriage. The story of Abraham and Sarah, as well as those of the other Patriarchs, proves that a woman can never be deemed infertile, as, ultimately, all of the Matriarchs were both infertile and "mothers", at different stages. Moreover, the solution to infertility is never a divorce, but rather taking a second wife (or concubine).

Although it seems impossible to reconcile the Biblical narrative and Philo's version of the law, Philo makes several "adjustments" which help bridge the gap. According to Philo, Sarah was afraid that Abraham would remain childless because of his affection (ευνοιας) for her. Sarah emphasizes that her concubine will be given to Abraham 'not for unreasoning (ἄλογον) lust but in fulfillment of Nature's inevitable law.'[233] Philo later describes Abraham as admiring Sarah's 'wifely love' (φιλανδρίον).[234] This resonates with Philo's statement that whoever does not divorce his barren wife because of his 'old affection' (φίλτρα ἀρχαῖα) ,[235] deserves pardon. In addition, Philo introduces a tradition which he says is 'truest', according to which after Abraham impregnated Hagar, he never came near her again, expressing his 'natural self-control' (φυσικὴν ἐγκράτειαν).[236]

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[232] Boyarin, above, 53-57. According to Boyarin, early rabbinic concepts with respect to the body were much closer to Judeo-Hellenistic approaches than the approach reflected in later rabbinic sources. Boyarin argues that a significant force behind the development of rabbinic ideology with respect to marital laws was the rabbinic response to the centrality of Judeo-Hellenistic conceptions of the body in Christian theology and anthropology. On the affinity between Palestinian, Judeo-Hellenistic and Stoic approaches towards marriage see M.L. Satlow, above. Unlike Boyarin, Satlow puts an emphasis on the different economic and social circumstances in Palestine and Babylonia as the main factors behind the different approaches.

[233] *De Abrahamo,* 249.

[234] *Above*, 253.

[235] *Laws* 3.35.

To sum up, Philo makes a few subtle adjustments to the Biblical narrative which blur the differences btween Philo's law and the Biblical narrative. According to Philo, Abraham abstained from taking another woman and refused to divorce Sarah because of his feelings towards her. His goal in taking Hagar was not lust, but procreation, and having reached that goal he abstained from intimate relations, consistently expressing self-control. In both cases - the Abraham narrative, and the law, Philo admits, even if reluctingly, that love and affection certainly do play a role in marriage.

What is a Religious Obligation?

Above, I have introduced Philo's attitude towards procreation as a religious obligation which informed the way he formulated his law. I have argued that Philo's approach reflected a gap between him and the Rabbis. Perhaps the question of whether procreation is the only legitimate context for intimate relations reflects a more fundamental difference between Philo and the Rabbis than the halakhic status of procreation. With respect to non-procreative sex, even though Philo never defines procreation as a religious obligation, the fact that he nonetheless seems to be stricter than the Rabbis is incoherent only if we assume that "religious obligation" means the same thing for both Philo and for the Rabbis. However, it seems that this is yet another example of how Philo did not share the Rabbis' understanding of religious obligations i.e. *mitzvoth.* In other words, Philo did not share the rabbinic notion that positive Biblical laws may be regulated and quantified in the sense that one can perform a religious practice, and if he meets certain defined requirements regarding time, place, or quantity, he is no longer obliged to carry it out.

Several studies have demonstrated that, in fact, early rabbinic halakha reflects the same approach as Philo, and that introducing measurements into Jewish law was a gradual, historic development.[237] Thus, in this aspect too, Philo is a representative of "early halakha". In fact, the Rabbis disputed whether the measurements in Jewish law were a rabbinic creation, or part of the oral tradition which was handed down from Moses in Sinai.[238] According to Moses Halbertal, "halakha", by definition, includes a rigorous engagement in questions of measures and criteria.[239]

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[236] *Abraham* 254.

[237] See for instance I.D. Gilath, *Studies in the Development of the Halakha* (Ramat Gan: Bar-Ilan University Press, 1192), 63-71. *Above*, R. *Eliezer Ben Hyrcanus: A Scholar Outcast*. Bar-Ilan Studies in Near Eastern Languages and Culture (Ramat-Gan: Bar-Ilan University Press, 1984), 29-43. See also A. Shemesh, *Halakhah in the Making*, 99-105.

[238] Gilat, *above.*

[239] M. Halbertal, "The History of Halakhah and the Emergence of Halakhah," *Dinei Israel, Studies in Halakha and Jewish Law* 29 (2013), 1-24. [Hebrew].

Marriage in Qumran

Thus far, our main context from the comparative point of view was rabbinic literature. In order to be able to appreciate Philo's views in their historical context, it is necessary to take into account the various concepts of marriage in Philo's day and age. In his studies on marital laws in Qumran, Aharon Shemesh suggested that Qumran laws were mainly informed by the notion that the story of Creation is a paradigm for every relationship between Man and Woman. According to Shemesh, the Sect's interpretation of Genesis 2 was that sexual relations create an eternal bond between a man and a woman, rendering any second marriage essentially impossible.[240]

That the notion of a religious obligation to procreate was not at the core of Qumran marital laws should not come as surprise, as part of the Sect lived in celibacy.[241] Neither the Sect nor Philo viewed procreation as an obligation, but rather as a blessing. And yet, they still forbade intimate relations during non-procreative periods.

Although the differences between Philo and the Rabbis cannot be detached from the ideological background of their proponents, it is possible that they are also the result of a meta-halakhic question, i.e. to what extent Jewish law should be regulated and quantified. As noted in the introduction, the historical gap between Philo -- as well as other Second-Temple sources -- and the Rabbis, challenges our ability to determine whether halakhic differences are a result of ideological, exegetical or theoretical differences (a "synchronic" explanation), or merely a reflection of different stages in the development of Jewish law (a "diachronic" explanation).[242]

In the case of the halakhic implications of the link between marriage and procreation, we have a combination of ideological and historical forces shaping Jewish law. Both Philo and the Rabbis reflect independence with respect to Biblical law, which by no means links marriage and an obligation to procreate. It is very plausible that this principle was received by the Rabbis through the channels of Hellenistic Jewry; indeed, differences between Philo and the Rabbis reflect different stages of Jewish law, yet, as noted above, these developments did not simply occur, but rather reflected real, fundamental, ideological changes. Arguably, the fact that Philo seems to be so independent with respect to the Bible, and at the same time is so strongly influenced by Hellenistic concepts, rules out the possibility that Philo's law is different from rabbinic law because Philo is "Biblical" or "less developed".

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[240] A. Shemesh, "Two Principles of Qumranic Matrimonial Law," in: G. Brin and B. Nitzan (eds.), *Fifty Years of Dead Sea Scrolls Research* (Jerusalem: Yad Ben Zvi Press, 2001), 181-203.

[241] The question of celibacy and the sect is related to the question of the identification of the Sect with the Essenes portrayed by Philo, Pliny and Josephus, as well as to the question of whether the site found in Qumran was in fact a monastery. We will not discuss these much debated questions in this context. Suffice it to say that the doubts which have been raised against these identifications and the Archaeological evidence seem to be not nearly as convincing as the evidence which affirm these assumptions. On the question of celibacy and the Sect see M. Broshi, "Was Qumran, Indeed, a Monastery," *Fifty Years of Dead Sea Scroll Research, above*, 95-109 (Hebrew). More specifically on the identification of the Essenes and the Scroll Sect in the context of marital laws and celibacy, see J.E Taylor, "Woman, Children, and Celibate Men in the *Serekh* Texts," *Harvard Theological Review* 104:2 (2011), 187-189.

[242] See the introduction above for a summary of the scholarly debate on whether the halakhic differences between Qumran and the Rabbis reflect different approaches towards the law, or different stages in the development of the law. see Shemesh, *above*, 129-139.

An Essential Approach After All – Irrationality as a Transgression Against the Law of Nature

Thus far I have made the case for reading Philo as a political philosopher rather than as an ontological or ethical one. Indeed, Philo stresses the great calamities which irrational and excessive behavior brings to society. However, even if Philo does not have an essential, negative, approach towards sexuality, he definitely does have one towards irrationality. As noted in the chapter on the Septuagint, according to Philo, the laws of Nature are perfectly shaped by reason, and, in turn, the laws of the Torah, as given by Moses, are a perfect copy of these laws. For example, when Philo wishes to explain why the Torah includes narrative in addition to law, he asserts:

> He who would observe the laws will accept gladly the duty of following Nature and live in accordance with the ordering of the universe, so that deeds are attuned to harmony with his words and his words with his deeds.[243]

Philo emphasizes that one cannot follow the laws of the Torah while acting against the laws of Nature. As David Runia puts it:

> Philo denies any contrast or conflict between revelation and reason. Reason and revelation are effectively identical, as he never ceases to attempt to demonstrate in his long series of commentaries.[244]

Consequently, acting against reason is effectively a transgression of the laws of the Torah. As Philo asserts time and time again, the measure for what is rational and what is not, is the law of Nature. Thus, Philo's approach towards sexuality is best understood as part of his general view of desires. According to Philo, following the Stoic notions of the soul, "desire" (ἐπιθυμία) and "pleasure" (ἡδονή) belong to the bad passions. The origin of these desires is irrationality, and the way to overcome them is to let rationality govern them.[245] This notion is conspicuous in Philo's condemnation of the harlot, who, according to Philo: "casts shame upon the undying beauty of the mind (διανοίας) and prefers in honor the short-lived comeliness of the body."[246]

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[243] *Moses* 2.48.

[244] David Runia, *Philo of Alexandria, and the Timaeus of Plato* (Leiden: Brill, 1986), 540. According to Runia, though, Philo believed that in order to attain full understanding of the law of Nature one cannot rely solely on philosophical contemplation. Rather, philosophical truths are best attained through the exegesis of the laws of Moses. See also D. Winston, "Philo's Ethical Theory" *ANRW* 21.1 (1984) 381-388. See also J. Martens, *One God, One Law,* above. According to Martens, Philo was the first to claim that the written laws of Moses were a "perfect copy" of the Laws of Nature, as opposed to other stoic notions of an inevitable breach between the law of Nature and any written law.

[245] On the Stoic view of "Pleasure" and "Desire", see A.A. Long, *Stoic Studies*, Cambridge University Press: Cambridge 1996, 224-249; With respect to Philo see C. Levy, "Philo's Ethics," in: A. Kamesar (ed.), *The Cambridge Companion to Philo* (New York: Cambridge University Press, 2009), 156-159.

[246] Philo, *Laws* 3.51.

Philo's Independence

Thus far, I have shown several examples for Philo's originality and independence with respect to Biblical law, and as I have noted, this is more characteristic of Philo's formulation of marital laws than any other subject he treats in his exposition. Another very obvious example of this phenomenon is Philo's law with respect to a husband who slanders his wife, claiming that she was not a virgin on their wedding night. According to Biblical law (Deuteronomy 22.17), in order to support his case, the husband must provide his bride's unstained wedding-night gown as proof of her unchasteness. Most notably, the Rabbis[247] as well as the Dead-Sea Scrolls Sectarians reject the literal meaning of this law, and interpreteit figuratively. Similarly, Philo avoids any reference to the wedding gown, but, instead, asserts that "the whole body of elders will assemble to try the matter, and the parents will appear to plead the cause."[248] As Belkin noted, Philo's interpretation is even more abstract than that of the Rabbis, who require at least some evidence (such as witnesses), whereas Philo focuses merely on the punishment that awaits the false-accuser.[249]

Another original Philonic law is the assertion that a harlot is worthy of death. Philo emphasizes this point both in his account of Joseph, where Joseph is portrayed as saying that unlike the Gentiles " with us a courtesan (ἑταίρᾳ) is not even permitted to live."[250] Similarly, in his *Laws* concerning the case of a harlot, Philo asserts, "let her be stoned to death."[251] Although Belkin might be correct in speculating that Philo's intentions were polemical and rhetorical rather than practical, Philo, nonetheless, expresses a view unparalleled either in the Bible or in rabbinic literature. It is needless to say that prostitution was not a capital offense in Roman law,[252] and that Philo's view towards prostitution with respect to Roman law pales in comparison with his harsh words regarding homosexuality. It is significant, however, that in both cases Philo has no problem promoting a law which would seem excessive and irrational in Roman terms.

Thus far, I have demonstrated many cases of Philo's independence with respect to other Jewish sources on one hand, and to Roman law, on the other. Interestingly,

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[247] *Sifrei Devarim,* 237: " 'her parents shall display/spread-out the cloth before the elders of the town' (this means) the matter should be clarified as a cloth." According to this interpretation, the cloth is to be understood figuratively as having been spread out and unfolded, just as the evidence should be presented in its full scope. However, typically, Rabbi Eliezer maintains the literal understanding. On Qumran, as well as the different rabbinic views see C. Werman & A. Shemesh, *Revealing the Hidden,* above, 157-158. According to Shemesh, whereas R. Akiva interpreted the Biblical lawin the same way that Philo did, in the abstract, Qumran and perhaps also Rabbi Yishmael, interpreted the term "the cloth," in a slightly more literal, or physical sense, as referring to the bride's body. See also M. Kister, "Studies in 4QMiqsat Ma'ase Ha-Torah and Related Texts: Law, Theology, Language and Calander," *Tarbiz 68* (1999), 332-333 n.69. According to Kister, the term "display/spread-out the cloth", was understood by the Sect as an instruction to pull the cloth in order to inspect the bride's body.

[248] Philo, *Laws* 3.80.

[249] Belkin, *Philo* 264-265.

[250] Philo, *Joseph* 43.

[251] Philo, *Laws* 3. 51.

[252] T.A.J. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome* (New York: Oxford University Press, 1998). According to McGinn, Roman law regulated, taxed, and, to some extent, tolerated prostitution even though "the law situated prostitutes and pimps at the margin of society through the imposition of a series of civic and legal disabilities whose function was to place practitioners outside the pale of the community of honor … ." (p. 341).

Philo seems inconsistent in his loyalty to the literal meaning of Biblical law, as well. For instance, the law of *סוטה* -- the theatrical ordeal used to try a woman suspected by her husband of being unfaithful -- is loaded with symbolism, which one would expect to be exploited by such an astute and creative preacher as Philo. However, in this case, Philo remains surprisingly attached to the letter of the Biblical law.[253]

Perhaps this last observation marks a difference between the Rabbis and Philo. Whereas the Rabbis used un-practiced laws such as the Temple cultic laws as an opportunity to create--if not to fantasize about—a virtual rabbinic world, for Philo, un-practiced laws were left in their Biblical, "raw" status. But when it came to the Jewish law which were practiced by his community in Alexandria, Philo felt it was his mission to explain and promote the practices which were part of what he knew to be the Jewish Code of Law. Thus, it is arguable that the more Philo seems to be independent of Biblical law, the more plausible it is that this was the actual law that was practiced, or at least, from Philo's point of view should have been practiced.

Philo as an interpreter of the Torah

As noted in the introduction, a lot of scholarly attention has been given to the question of the genre and the purpose of Philo's writings. Although I argue that the significance of this question is somewhat overestimated, the genre of Philo's writings should not be overlooked. Philo's marital laws illustrate how, while he adopted Hellenistic concepts such as self-control and rationality in his legal writing, Philo uses these very same concepts in order to attack Greco-Roman social conventions, using the harshest of rhetoric. This complicated and multi-faceted picture can serve as an illustration of the true nature of Philo's undertaking. In this, I follow Ellen Birnbaum's view of Philo as an interpreter of the Torah:

> Philo's philosophical interests run deep and one might indeed characterize most of his exegesis as philosophical. In viewing him primarily as a Scriptural interpreter rather than a philosopher, however, I am assuming that he uses philosophical notions to explicate the Bible rather than using the Bible as a springboard to present some kind of unified philosophy.[254]

Indeed, in the case of marital laws, we have seen how Hellenistic concepts like self-control, practice, rationality etc. were used as Philo's primary interpretive tools. However, when it came to the actual practice, Philo's version of the law —from a practical point of view -- was influenced by these concepts only insofar as they did not contradict Biblical law, according to Philo's understanding. Thus, for example, if Philo asserts that only procreative sex is legitimate, it is because his Greek conceptual world led him to interpret his Jewish tradition in this way, even though Philo knows that this Greek world had very different practical conventions.

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[253] It is indeed very doubtful whether the ***סוטה*** ordeal was practiced in Palestine during Philo's time, and even if it was, it certainly was not practiced in Alexandria. Regarding the evidence for the existence of the practice of ***סוטה*** during the Second-Temple period both in general and with respect to Philo see I. Rosen – Zvi, *The Mishnahic Sotah Ritual: Temple, Gender and Midrash* (Leiden: Brill, 2012). Rosen-Zvi speculates that if this rite was practiced during this period it was performed in accordance with the Biblical, rather than the Mishnaic, version.

[254] E. Birnbaum, *The Place Of Judaism in Philo's Thought*, 16.

Conclusions

By and large, Philo thought that the only legitimate context for marital relations was fulfilling procreative purposes. But the significance of Philo's formulation and reasoning of these laws go far beyond the specific issue of marital laws, or even of Philo's view of Body and Soul. Philo's conceptualization of the Jewish law in Greek terms and formalizing the actual Jewish practice as part of a distinctively Jewish set of norms is a telling example of the nature of the Philonic project. Philo uses the Greek concepts of *ἐγκράτεια* and rationality as the leading values in defining both illicit and legitimate sex. At the same time, Philo uses *ἐγκράτεια* in order to justify distinctively Jewish practices while vehemently denouncing practices such as prostitution or homosexuality that would count as tolerable, if not legitimate, from a Greco-Roman point of view.

As to the question of the development of Jewish law, although Philo clearly represents a dualistic approach essentially different from that of the Rabbis, in some cases, rather than representing a fundamental difference, he seems to reflect an earlier stage than that which we would find in rabbinic law; Philo substantiates the centrality of procreation as pivotal to legitimate marital relations, occasionally referring to it as a religious obligation, while representing a very limited, unquantifiable, concept of what this religious obligation (i.e. procreation) actually meant. Since the concept of procreation may have come from the Greco-Roman world, we might see Philo's treatment of marital laws as attesting to the stage in Jewish law when the idea of procreation has already shaped Jewish practices, but in a preliminary, relatively undefinable way.

Chapter IV: The Sabbath

In the former chapter I discussed the issue of marital laws, and demonstrated that Philo's formulation of these laws was informed by his view of the danger in submitting excessively to bodily desires. The laws of the Sabbath provide a different angle on the question of the relationship between body and soul. As we shall see in the Bible, as well as in Second-Temple and rabbinic literature, the Sabbath is associated with such terms as "pleasure" or "delight", "rest", and "work", each of which inherently has both physical and spiritual/mental aspects. Given that the Sabbath is so central in Philo's writings as well as to his Jewish identity, a study of the Sabbath in his works will provide us the opportunity to touch upon matters with implications on broad issues such as Jewish identity, universalism vs. particularism, etc. In this way we will be able to gain insights into Philo's intellectual world as well as an understanding of his legal system. My examination of Philo's Sabbath brings me to the following observations:

1. I find that Philo does indeed represent a Hellenistic approach insofar as he creates a clear divide between body and soul, describing the Sabbath as a day dedicated exclusively to the soul. However, just as we have seen in the previous chapters, here, too, while Philo does not necessary reflect the consensus in rabbinic sources (if such a consensus exists), neither are his views alien to the Rabbis' world.

2. My study reveals not only a textual basis similar to *Midrash,* but also a theoretic foundation for Philo's Sabbath which is deeply rooted in Hellenistic concepts propounding that one should dedicate his life to spirituality and philosophy, as opposed to fulfilling his bodily needs.

To be sure, even though Philo was definitely influenced by Roman and Greek ideas, ideas which are reflected in his account of the Sabbath, I will demonstrate that his rendition is an integral part of Jewish law during Late-Antiquity. The similarities I find between Philo and other halakhic corpora strongly suggest that the Greek-speaking Jews were part of the Jewish cultural world of their time.

3. As I have shown in the previous chapter, even though Philo's Sabbath reflects the influence of Greek concepts of Dualism, pleasure, philosophy etc., Philo saw in the Sabbath a distinctively Jewish practice, one which singled out the Jews as a people who celebrate their festivals in accordance with the philosophic ideal of a life of contemplation and study, as opposed to excessive drinking and eating.

The Place of Sabbath in Philo's Jewish Law – Is There a Philonic Orthopraxy?

The Sabbath is probably the most discussed practice in Philo's writings. In his work on Philo's Jewish identity, Alan Mendelson argues that according to Philo there are five main Jewish practices which are central in defining one's identity as Jewish. These include the observance of the Sabbath, the Day of Atonement, the dietary laws, and circumcision, and refraining from intermarriage. According to Mendelson, these practices are the basis of Philo's "orthopraxy". The violation of these laws would thus render an individual to be considered divorced from the Jewish community.[255] Mendelson is right in identifying the centrality of these practices in Philo's writing and thought. However, he fails to provide us with coherent and consistent criteria which will enable us to examine why *these* specific laws and not others constitute this "orthopraxy".

In a work dedicated to the Sabbath in Philo's writing, Weiss rejects Mendelson's argument relating the centrality of Sabbath observance in Philo's thought. He argues that: "It would seem that such a "cornerstone" would require a sizable treatise."[256] However, in my opinion, there is no reason to question the centrality of Sabbath observance for the Jews in Alexandria, as Philo refers to the Sabbath probably more than any other practice throughout his writings. Weiss, himself, asserts that Philo was very adamant in advocating for the Sabbath for both communal and other reasons, reasons which Weiss seems to regard as external and not essential to Philo's thought.[257]

Perhaps rather than talking about a systemized Orthopraxy, we should consider the practices which Mendelsson identifies as markers of Judaism, simply because they were perceived as such by both Jews and Gentiles. In other words, the great prominence of these practices is not necessarily the result of an internal belief in their essential intrinsic value, but rather in the acknowledgment both internally (by Jews) and externally (by Gentiles) that these practices are unique to-- and commonly observed by-- Jews.[258] Thus, in order to understand Philo's motivations and rhetoric in describing Jewish Law, it is important to examine what he was likely to have known about how Gentiles perceived these Jewish practices, regardless to their appreciation or lack thereof off these practices

In order to find out what practices were perceived as distinctively Jewish in Philo's day and age, we can turn to Philo's own testimony. For instance, the perception of dietary laws as a marker of Judaism is emphasized by Philo's testimony when Philo and the Jewish delegation met with Gaius Calligula, and Gaius mocked the Jewish delegation asking, "Why do you refuse to eat pork?"[259] Thus the first thing that comes to Gaius' mind as he sees the Jewish delegation is that Jews have distinctive, peculiar, dietary laws. As to the Sabbath, earlier, in *The Embassy*, Philo demonstrated that Augustus, like other Gentile leaders, was very cautious not to abuse the Jewish institutions. He claimed that Augustus knew that the Jews "have houses of prayer and meet together in them, particularly on the sacred Sabbaths"[260] and that when the authorities in Rome would distribute grain to the local population, Augustus was cautious not to prevent the Jews from receiving their share because it was the

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[255] A. Mendelson, *Philo's Jewish Identity* (Atlanta: Scholars Press, 1988), 51-76.

[256] H. Weiss, "Philo on the Sabbath," *The Studia Philonica Annual* III (1991), 88.

[257] Weiss, *Above,* 85-86.

[258] The most distinctive norms are not necessarily those who are the most important in terms of the hierarchy within a certain system of law. One can imagine a system which has clear rules of defining one as part of the group but having other beliefs or practices at the center. For example, in every army there is a set of symbolic practices which serve as markers of the army as a group or society, such as uniform, flags etc. However, one would not define the army as a system which places the observance of these practices as its end goal. Similarly, the fact the certain practices are perceived as markers of Judaism does necessarily mean that the practices are the most important ones.

[259] *Legatio ad Gaium,* 361.

[260] *Legatio ad Gaium*, 156.

Sabbath.[261] Elsewhere, in an attempt to demonstrate the great admiration of the Gentiles towards the Jewish code of law, Philo notes the Sabbath and the Day of Atonement (*Moses* 2, 20-24). Similarly in his account on Jewish Law in *contra apionem,* Josephus singles out the Jewish practices which seem to be the most known to Gentiles:

> For there is not any city of the Grecians, nor any of the barbarians, nor any nation whatsoever, whither our custom of resting on the seventh day hath not come, and by which our fasts and lighting up lamps, and many of our prohibitions as to our food, are not observed.[262]

What is just as important for our purposes, is that the main Jewish practices which Philo and Josephus underline as familiar to, and, as they argue, admired by, Gentiles are quite similar to those pointed out by Gentile writers themselves. Thus, when Greek or Roman writers describe the Jewish practices, they by and large focus on observing the Sabbath, the dietary laws, and circumcision, and abstention from intermarriage.[263] Therefore, it is not surprising that Philo would put a special emphasis on these practices, making an apology for their rationale, their ethical value, and their centrality for the Jewish people. If Philo wrote for a Gentile audience, this would have served as a defense for the practices for which Jews were not uncommonly mocked and scorned. And, if Philo wrote for Jews, it would have made perfect sense to focus on the practices which both Jews and Gentiles recognize as markers of the Jews' "otherness". After all, most of these practices, by their very practical nature, could have created a barrier between Jews and Gentiles, making social connections more difficult to achieve. Thus, it is clear to see that Jewish identity is shaped both internally and externally by these practices.

In other words, my discussion of the Sabbath is based on the premise that this practice were perceived by both Jews and non-Jews as markers of Judaism, while leaving open the question of hierarchy, if such a hierarchy existed, in Philo's judicial system.

The Sabbath According to the Bible

Although the Sabbath is mentioned in the Bible many times, the details provided for its observance are quite limited. Generally, the Sabbath is characterized positively by "resting", or, negatively, by abstaining or ceasing from performing "work" (*מלאכה*). The Pentateuch is more specific in two legal texts. According to Exodus 35.3, it is prohibited to light a fire on the Sabbath. A more general prohibition is found in Exodus 34.21, which forbids agricultural activities: "Six days you shall work and on the seventh day you shall cease. In plow time and in harvest you shall cease."

In addition, there are two different narratives in the Bible which can be understood as reflecting two different prohibitions. Exodus 16.19, which tells the story of the

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[261] *Legatio ad Gaium*, 158.

[262] *Contra Apionem* 39.

[263] On the allegations against the Jews with respect to the Sabbath, circumcision, dietary laws, and separatism see for instance L.H. Feldman, *Jew and Gentile in the Ancient* World, New Jersey: 1993, pp. 125-167. See also E. Gruen, *Rethinking the Other In Antiquity* (Princeton: Princeton University Press, 2011), 183. J.J. Collins, *Between Athens and Jerusalem* (Grand Rapids & Cambridge: Erdmans, 2000), 8.

Manna, includes the prohibition “let no one go out from his place on the seventh day”.[264] Numbers 15.32-36 relates the narrative of a man guilty of gathering wood on the Sabbath was stoned to death, following God’s direct orders. Apparently, the prohibition of gathering wood in the narrative is strongly connected to the specific prohibition of lighting fire.

In addition to the Pentateuch, there are other references to the observance of the Sabbath in the Bible which could have been used as a source for formulating the Sabbatical norms. Indeed, as Kamesar writes: “as far as canon is concerned, Philo’s Bible is essentially the Pentateuch. Philo comments on Pentateuchal books only, and even his citations of books from other parts of the conventional canon are proportionately few.”[265] Yet, this does not mean that we should rule out any influence of these sources, directly or indirectly, on the formulation of Philo's Jewish law.

The Concept of *שבות* and Other Second-Temple Innovations

In addition to the practical instructions in the Pentateuch, one reference to the Sabbath made a significant mark on Second-Temple concepts of the Sabbath. This is the statement in Isaiah 58.13:

> If you refrain from trampling the Sabbath, from pursuing your own interests on my holy day; if you call the Sabbath a delight and the holy day of the Lord honorable; if you honor it, not going your own ways, serving your own interests, or pursuing your own affairs; then you shall take delight in the Lord, and I will make you ride upon the heights of the earth.

This source does not give a clear description of the ideal way in which one should observe the Sabbath, and thus requires interpretation if one wishes to derive any practical norms from it. The Amoraic tradition interpreted Isaiah 58.13 as the source for the rabbinic concept of *שבות*, which during the Tannaitic period pertains to actions forbidden on the Sabbath because they are considered day-to day activities.[266] This category (albeit not the term) is reflected in the writings of Philo's contemporaries from the Judean desert.[267]

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[264] In its original context this prohibition seems to be part of the prohibition to collect the *manna* on the seventh day, and the instruction to collect a double portion on Friday instead. However, as early as the Second Temple period, it was understood as a restriction on movement during the Sabbath. For instance, the Damascus Document states: “one shall not walk outside of his town (a distance of) a thousand cubits” (CD 10.21). This prohibition is clearly based on an understanding of Exodus 16.19 as a general restriction, rather than a prohibition concerning the gathering of the *manna* which was exclusive to the period of wandering in the desert.. See L. H. Schiffman. *Law, Custom and Messianism in the Dead Sea Sect* (Jerusalem: Yad Ben Zvi Press, 1993), 99. [Hebrew]

[265] Kamesar A., “Biblical Interpretation in Philo,” in: *The Cambridge Companion to Philo* (Cambridge ; New York: Cambridge University Press, 2009), 71-72.

[266] Later defined as *עובדין דחול* i.e. "every-day deeds”, and forbidden, even though they do not fall into the category of "work" forbidden on the Sabbath, i.e. *מלאכה*. According to the Damascus Covenant, this principle dictated abstaining form wearing day-to-day garments but rather wearing fresh, clean, clothes on the Sabbath. Schiffman, *above* pp. 114, suggests that the source for the Sect's requirement to wear clean garments on the Sabbath might in fact be Isaiah 15. This requirement appears in the *bavli* as well, and is explicitly based on Isaiah 15:”*If you honor it, not going your own ways” (this means) let your Sabbath clothing be not like your weekday clothing* (BT *Shabbat* 113a).”

This is significant for several reasons. First, the idea of *שבות* reflects the notion that not all the Sabbath ordinances derive from the injunction against performing work. In addition, they reflect the notion of hierarchy within the system of Sabbath laws; according to this system some laws belong to the more important category of "work", and so the consequence of violating these laws is death, while other laws are of lesser weight, and so the implications of violating them are not as harsh. When I turn to examine Philo's account of the Sabbath, I will consider to what extent these Second-Temple categories apply to Philo, as well.

Another prohibition which was later categorized as *שבות* in Tannaitic literature is the injunction against commercial activities. Unlike the vague statement in Isaiah noted above, this prohibition is explicit. Amos 8.5 tells that even the poor would refrain from commercial activity on the Sabbath but would cry: "When will the new moon be over so that we may sell grain; and the Sabbath, so that we may offer wheat for sale?[268]

Philo's version of the Sabbath

Particularism and Universalism

Philo discusses the Sabbath in several contexts, and underscores its centrality in the Jewish practice of his time. He introduces the Sabbath in his overview of the Decalogue with a peculiar statement:

> The fourth commandment deals with the sacred seventh day, that it should be observed in a reverent and religious manner. While some states celebrate this day as a feast once a month, reckoning it from the

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[267] The term *שבות* is first used in the Talmud (ex. BT Shabbat 95a) although the principle behind it is widely found in Tannaitic and even Qumran literature. See V. Noam and E. Qimron, "A Collection of Sabbath Laws from Qumran and its Contribution to the Study of Early Jewish Law", *Tarbiz* 74.4 (July 1, 2005) 521–522 (Hebrew). On *שבות*, see Y.D. Gilat, "The Development of the Shevuth Prohibitions on Sabbath," in: *Proceedings of the Tenth World Jewish Studies Congress*, Jerusalem: 1990, pp. 9-16.

[268] Similarly, in Nehemia 13.15-22 we are told of Nehemia's brawl with those people who were involved in commercial activity in Jerusalem during the Sabbath. As in the episode narrated thereafter, i.e. dealing with Nehemiah's targeting of intermarriage, it is unclear whether his opponents were consciously-- and purposely-- transgressing against Biblical law, or whether they simply adhered to a different, more lenient, version of that law. Although any (late) Second-Temple reader of the text noted above would infer from it that commercial activity is strictly forbidden on the Sabbath, just as in the episode dealing with the *manna*, it seems that these offences are not perceived as deeds which should warrant capital punishment. Therefore, it could be argued that even in the Bible itself there is a category of Sabbath observances of lesser weight to which the decree "those who profane it are doomed to die" (Exodus 31.14) does not apply. However, as late as the Amoraic period, there is still a dispute as to whether injunctions which would not warrant capital punishment in case of violation are to be considered part of Biblical law, or as an addition by rabbinic authorities. See Gilat, *Studies.* pp. 254.

> commencement as shown by the moon, the Jewish nation never ceases to do so at continuous intervals with six days between each.[269]

In this text, Philo, in fact, makes a bold statement according to which the Sabbath is a universal holiday. What is particular to the Jews is only in the special details of their Sabbath. Of course, we do not know of any "Sabbath" celebrated in other religions of his time. The question is, what is Philo referring to, and in what sense do these festivals correspond to the Sabbath? We do know that the Greeks used to hold monthly festivals; as Plato testifies:

> There are twelve feasts to the twelve gods who give their names to the several tribes: to each of these they shall perform monthly sacrifices and assign choirs and musical contests, and also gymnastic contests, as is suitable both to the gods themselves and to the several seasons of the year.[270]

However, if this is what Philo has in mind, what is the purpose of making this connection between what seem to be two very different practices? The difference between the Sabbath and the Greek monthly celebration becomes even clearer as Philo continues to describe the Jewish practice:

> He bade those who would live as citizens under this world-order follow God in this as in other matters. So he commanded that they should apply themselves to work for six days but rest on the seventh day, and turn to the study of wisdom, and that they thus had leisure for the contemplation of the truths of Nature, they should also consider whether any offence against purity had been committed in the preceding days, and exact from themselves in the council-chamber of the soul-- with the laws as their fellow-assessors and fellow examiners-- a strict account of what they had said or done in order to correct what had been neglected, and to take precaution against repetition of any sin.[271]

This description of the Sabbath as a day of contemplation and repentance hardly resonates with the monthly festival described by Plato. In fact, in his account of Jewish festivals, Philo does include a monthly Jewish holy day, although he does not provide many details as to the nature of this festival. Indeed, the only connection between the two festivals (i.e. the Sabbath and the Greek monthly festival) seems to be that they are both fixed in the calendar in a way which is disconnected from (or at least does not primarily depend on) the agricultural year, historical events, or life-cycle events, which are frequently the basis for many festivals in all religions and cultures.

In no way does Philo try to obscure the difference between the Jewish holiday and the Greek one. Before his account of the laws of the Sabbath in "The Special Laws", Philo describes "the daily festival" which is enjoyed by all those who adhere to a life of prudent philosophers. Such men, according to Philo, "in the delight of their virtues, naturally make their whole life a feast."[272] Philo contrasts this "feast" with the Greek and Barbarian style of celebration. It is the fate of the "wicked man" to always be miserable:[273]

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[269] *De Decalogo* 96.
[270] *Laws,* 2.82.
[271] *De Deacalogo* 98.

> He whose every plan is for evil, whose life-mate is folly, with whom everything, tongue belly and organs of generation, is against what is seasonable. For with the first he blurts out matters of secrecy which call for silence, while in his greed he fills second with viands unlimited and strong drink in great quantities, and as for the third, he misuses them for abominable lusts and forms of intercourse forbidden by all laws.[274]

In this description Philo is clearly critical of the manner in which the Greeks celebrated their festivals in order to contrast it with the Jewish practice, a theme found in Josephus' *Contra Apionem* as well,[275] which he probably based on Philo.[276] The extreme differences between practices explain why Philo compares the Sabbath to the Greek monthly festival in the first place. The difference between the two festivals adds to the universal significance of the Sabbath and underlines the superiority of the Jewish practice. Having a day of rest is not unique, Philo would claim. Many cities have a day of rest, a festival. What is unique is the way in which the Jews celebrate their festival.

Another aspect of the Sabbath as a universal holiday is rooted in the Bible's own words. The Pentateuch provides two explanations for the requirement to rest on the Sabbath. According to the more universal Decalogue in Exodus, it attests to the fact that God rested on the seventh day of Creation. However, according to the particularistic version of the Decalogue in Deuteronomy, the reason is that "you shall remember that you were a slave in the land of Egypt, and the Lord brought you out from there with a strong hand and an outstretched arm […]."[277] Philo's incorporation of the two different versions reflects an attempt to universalize the Sabbath, as I will show below. Philo's universal approach towards the Sabbath has practical implications as well, and stands in deep contrast to other Second-Temple views in that the Sabbath was frequently perceived as an exclusively Jewish practice, a view which continued to exist later in rabbinic sources.[278]

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[272] *Laws* 2.46.

[273] It should be noted that Philo does not rule out the of Greeks' or Barbarians' ability to distance themselves from the crowds and live a contemplative life as "the closest observers of nature" (*Laws* 2.45). His critique is of what Philo describes as the typical manner of celebrating festivals in the Gentile world.

[274] *Laws* 2.49-50.

[275] *Contra Apionem* 2.24, although not in relation to the Sabbath but in relation to the Temple cult, in general. This theme will be elaborated on in the chapter on the Temple cult.

[276] See Sterling, Above.

[277] Deuteronomy 5.14.

[278] Jubilees 2.71-21. See Y.D. Gilat, "The Sabbath and its Laws in Philo's Writings," *Beit Mikra* 38.3 (1992), 281-220 [Hebrew]. As Gilat notes, Philo emphasizes the universal aspect of the Sabbath not only with respect to Non-Jews but even with respect to animals and plants.

A Day of Rest for the Slave

An additional difference between the two versions of the fourth commandment is that in Deuteronomy there is a strong emphasis on the servants of Jews enjoying a day of rest as their masters did. We see this through the addition of the sentence "so that your male slave and your slave girl may rest *like you*".[279] It is not surprising that Philo chose the more universal version, saying that the Sabbath "may properly be called the birthday of the world, as the day on which the work of the Father, being exhibited as perfect with all its parts perfect, was commanded to rest and abstain from all works."[280] But what is striking is that when Philo describes the actual laws of rest, he takes a very restrictive approach towards the "use" of servants during the Sabbath (*banning any use of slaves whatsoever*), which seems to be based on Deuteronomy, rather than on Exodus.

According to Philo, during the Sabbath it is not permitted to have a servant perform a service, even if the master is permitted to perform the same action by himself,[281] "to teach the masters and men an admirable lesson. The masters must be accustomed to work themselves without waiting for the offices and attentions of their menials […]."[282]

The use of slaves during the Sabbath was a halakhic issue addressed by various Late-Antiquity sources, and so provides us with an opportunity for a comparative analysis underlining Philo's unique approach. Belkin argued that Philo's practice is in dispute with Tannaitic law and in agreement with "Zadokkite law".[283] Today we know that the "Zadokkite Law" Belkin was referring to was, in fact, the Damascus Document from Qumran which reads as follows: "Let a nurse not carry an infant [to go out or come in on the Sabbath. Let no one contend?] with his slave or his maidservant on the Sabbath".[284] Belkin, and lately Lutz Doering,[285] understood this law to reflect a Qumranic law which bans the use of servants, just as Philo does. However, the context of the law in CD suggests that it does not relate to the issue of the use of servants during the Sabbath, leaving Philo's law, to my knowledge, unique and unprecedented.[286]

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[279] Deuteronomy 5.13.

[280] Laws 2.59.

[281] It seems unlikely that Philo is referring here to forbidden work. See H. Weiss," Philo on the Sabbath," above, 87-89. I agree with Weiss that Philo's description of the day of rest for the slave is consistent with Philo's ideas about the Sabbatical, but as I will argue below, there is also a textual basis for this practice.

[282] Laws 2. 67.

[283] S. Belkin, *Philo and the Oral Law,* 203-204.

[284] 4Q270 Fragment 6 Col. V lines 16-17 (translation by A.J. Baumgarten). The Hebrew reconstructed text and translation are based on D. Perry & E. Tov, *The Dead Sea Scrolls Reader* (Leiden; Boston: Brill, 2004) v. 1. The different textual variants including the fragments from the *genizah* are almost identical in this context.

[285] L. Doering, *Schabbat, Sabbathalacha und –praxis im antiken Judentum und* Urchristentum (Tübingen: Mohr Siebeck: 1999), 188-193.

[286] Belkin could not have been aware of the real origin of what Solomon Schechter called "the Zadokkite Document", as Belkin's work preceded the discovery of the Dead Sea Scrolls, but regardless, it seems that his reading of the originally Qumranic law in the context of the prohibition against making servants work during the Sabbath is very questionable. Reading the laws which precede clarifies that the law forbidding the nurse to carry an infant has nothing to do with the fact that the servant is performing work for her master, but rather it is part of the

Before we turn to Philo and the midrashic exegesis behind his law, it is worth noting that not only is Philo's stringent law (in its restrictive approach towards using Gentile slaves) not parallel to other sources, but it seems to be in tension with the way Philo describes the very purpose of the Sabbath. In a paragraph which seems to be an apologetic response to non-Jewish accusations according to which the Sabbath reflects a Jewish laziness, Philo states:[287]

> On this day we are commanded to abstain from all work, not because the law inculcates slackness … its object is rather to give men relaxation … Further, when He forbids bodily labor (διαπονεῖν τοῖς σώμαςι) on the seventh day, He permits the exercise of the higher activities … For the law bids us take the time for studying philosophy and thereby improve the soul (ψυχὴν) and the dominant mind (ἡγεμόνα νοῦν).[288]

Clearly, in this paragraph, Philo reflects a division between body and soul. But if the whole purpose of the Sabbath is to rest in order to be free for Philosophy and self-reflection, why, when it comes to the use of slaves, take a legalistic approach that does not allow for absolute rest on this day? I would argue that this is based on an interpretation of the version of the Decalogue in Deuteronomy. As noted above, the Deuteronomy version is more elaborate in describing the resting of different members of the household: children, slaves, aliens and even the livestock. The text compares the slaves to the master: "so that your male slave and your slave girl may rest *like you*."

What appears to be a Deuteronomic addition to the version in Exodus is documented in the LXX version as well: "ἵνα ἀναπαύσηται ὁ παῖς σου καὶ ἡ παιδίσκη σου *ὥσπερ καὶ σύ*". If there is an exegetical basis to Philo's law in this context, it seems to lie in the expression "like you (*ὥσπερ καὶ σύ*)". The literal meaning seems to convey a general moral principle such as -- "the servant should rest just as the master should".

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regulations limiting the carrying of different objects from private spaces to public spaces and vice versa. This action is known in rabbinic literature as *הוצאה*. Indeed, before the reference to the nurse, the document lists different objects, such as spices, which are forbidden to be carried from one space to the other, and different spaces which are considered distinct spaces, such as a house (*בית*) and a booth (*סוכה*). See *above*, Lines 13-15:" [let him] not bring it out of his house. [Let] no one [carry (things) from the house to the outside and from outside into the house; and if] he be in [a Sukkah,] let him not carry out of it nor bring [into it.] Let him not open a scaled vessel on the Sab[bath. Let him not move rocks or earth in a dwelling house." Moreover, the list of prohibitions which includes the restriction against a nurse carrying a baby seems to consist primarily of actions that belong to the category mentioned above, i.e. *שבות*. Hence, for instance, line 18 in this fragment states: "Let no one desecrate the Sabbath for the sake of property and profit on the Sabbath". There is one law which seemingly does not belong to the realm of *שבות* in this text ,and that is the prohibition from sacrificing an offering which is not the daily offering on the Sabbath (line 20-21). However, this law appears at the end of this list, a fact which makes the categorization of the other laws as *מלאכה* as well-- rather than as *שבות*-- less likely, although not impossible.

[287] Such as the accusation made by Seneca, that the Sabbath wastes a seventh of every Jew's life. On Philo's response against the accusations made by pagans that the Sabbath reflects foolishness, idleness and misanthropy see D. Boesenberg, "Philo's Description of Jewish Sabbath Practices," *The Studia Philonica Annual* XXII (2010), 156-158.

[288] *Laws* 2.60-61.

Such a principle is strongly connected to the next verse "And you shall remember that you were a slave in Egypt […]".[289]

As the Pentateuch does not provide practical instructions for this remembrance, Philo chooses to read the expression in a "hyper-literal" manner, which conveys a practical-- rather than a moral-- idea.[290] The slave should rest "*just* as you do" i.e. in *the same way* that you do. And so, just as the master does not perform services for his servant, it is prohibited to request that the servant do any service for his master. At this point I do not wish to claim that Philo himself is the source of this interpretation, but I would argue that the practice Philo is promoting is based on a midrashic reading of the text.[291]

To sum up, although Philo bases his overall description of the Sabbath on the Universal, Exodus, version of the Decalogue, his actual practice is shaped by Deuteronomy. Since, as argued above, this practice seems to contradict the main purpose of the Sabbath according to Philo, i.e. to focus on the study of Philosophy and introspection, it seems that this is an example for an interpretation which shapes the practice (*מדרש יוצר*) rather than an interpretation which supports an existing practice (*מדרש מקיים*).[292] The combination of Exodus and Deuteronomy demonstrates Philo's work as an interpretation of the Bible similar to what we see in Midrash, i.e. scripture is not read linearly, but rather verses from one place interpret and alter the meaning of verses located in different parts of the Bible.

As noted above, although we do not have a parallel example for Philo's law in other Second Temple sources, we do have the following Tannaitic source that bases its *Midrash* on the same interpretive methods. Moreover, in both cases, the Exodus Decalogue serves as the context for interpreting the Deuteronomy Decalogue:

> "and your slave and your slave girl" is it possible that the scripture refers to a Hebrew slave and slave girl? It says "so that your male slave and your slave girl may rest like you" (this means that) there is a slave

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[289] See for instance Nachmanides on Deut 5. 14 (my translation): "… to clarify that during the Sabbath he is obligated to let his slave rest because "you were a slave and God has relieved you, and so will you relieve your slave", and the reason is that "when your slave and slave girl will rest like you, you will remember that you yourself were a slave […]."

[290] Similarly, although the constitution of the United States has remained almost unchanged for centuries, the practical implications of its general principles are constantly challenged and occasionally changed by the Supreme Court, perhaps especially in issues regarding equality.

[291] And by this I am not claiming that there was a "pool of *midrashim"* from which both rabbinic traditions and Philo himself drew their teachings. My argument is about the nature of the reading, and not the historical origin of the reading.

[292] For a summary of the different views on whether *midrash* was used in order to determine the *Halakha* see M. Halbertal, *Interpretive Revolutions in the Making, Values as Interpretive Considerations in Midrashei Halakha* (Jerusalem: Magness Press, 1997), 13-15 [Hebrew]. This distinction is also dependent, in this case, on whether this law is "Philonic" in origin as well, or is merely an expression of an existing hallakhic tradition. If the latter is the case, it is definitely possible that this reading of the text merely supported a practice which originated from considerations other than interpretive ones. However, it is still likely that whatever the origin of this law, it was influenced by this midrashic reading of *כמוך*.

> or slave girl who is not like you, and who is that? A (Gentile) slave and slave girl dwelling (with you).[293]

According to this midrash, the expression “like you” (כמוך) comes to emphasize that not only are Jewish slaves to rest on the Sabbath, but also those who are not “like you”, i.e. Gentiles, should be “like you” on the Sabbath. This interpretation is very similar to the interpretation reflected in Philo, as they are both based on a hyper-literal reading of the words “like you”. The fundamental difference is that the *Mekhilta* reads “like you” as referring to the ethnic identity of the subject, whereas Philo (or Philo’s tradition) reads “like you” as referring to the type of work the subject is allowed to do.[294] It is plausible that for Philo, or Philo’s source for this law, it was obvious that Gentile slaves deserved a day of rest on the Sabbath, and so he was able to learn a different message from this hyper-literal reading of the Biblical text. The fact that Philo uses the same interpretive method as the rabbinic Midrash but reaches a very different halakhik conclusion emphasizes Philo’s distinctive conceptions and values. Thus, the rabbis rely on the more universal Decalogue in Deuteronomy in order to underline that although the Sabbath pertains to Jews only, Gentile slaves who are part of the Jewish household have a share in the Sabbath. Philo, however, uses the same text, using the same method in order to prove that the Sabbath applies even to slaves in the same way is applies to their masters regardless of their ethnicity, reflecting an awareness to social class rather than ethnic or religious identity .[295]

The emphasis that Philo puts on the Sabbath as a day of equality is also reflected in Philo’s short reference to the Sabbath in *De Praemis et Poenis*. In a paragraph discussing the future Redemption, Philo asserts that this redemption will come only after the sinners pay the price for their offences, “making the tasks which they impose continuous and unbroken […] instead of granting to men who are in absolute truth were their brethren, children of one mother, their common nature, the appointed holiday after every six days.”[296] Thus, according to this passage, violation of the Sabbath is a failure to grant other people (probably slaves) a day of rest because of particularistic views which deny Gentiles the right to rest on the Sabbath.

Forbidden work

My previous discussion highlighted two Philonic traits in his legal writing, namely the emphasis on the universal quality of the Sabbath, as well as Philo’s use of interpretive methods which were shared with his Palestinian Hebrew-speaking contemporaries, i.e. Midrash. Now I will turn to exploring Philo’s Sabbath in relation to other aspects which define Halakha as distinct from Biblical law, namely, the tendency to categorize and create a hierarchy of Biblical law. This kind of legal thinking is often categorized as “formalistic”. As I will show, Philo reflects a formalistic thinking which, albeit quite limited and undeveloped, nonetheless anticipates the rabbinic conceptual world. This is another example for Philo’s place in Jewish law as a reflection of an early stage of the development of halakha.

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[293] *Mekhilta of Rabbi Simeon ben. Yohai, Yitro* 20, 20. According to Y.N Epstein & E.Z Melamed, *Mekhilta D’rabbi Shimon Bar Yohai, According to Manuscripts from the Genizah and Midrash Hagadol,* (Jerusalem: Yeshivat Sha'areh Rachamim, 1970), pp. xxv. Epstein asserts that this is the latest of Tannaitic *midrash hallakha*.

[294] In fact, the next question later in the *midrash* is: what are the restrictions on slave-work during the Sabbath, and all the different views cited assume that the master’s restrictions and the gentile-slave restrictions are not identical.

[295] In fac,t a famous rabbinic saying asserts that “A Gentile who observes the Sabbath deserves death.” (BT *Sanhedrin* 58b).

[296] De Praemiis et Poenis 153-155.

The restrictions on relying on servants were, obviously, a very minor part of the Sabbath observance, which had to do mainly with actions one is not allowed to perform during this day. Compared to other Second-Temple and rabbinic sources, Philo’s account of the practical implications of the prohibition of performing any work on the Sabbath is very sparse. However, it could provide us with valuable observations on the theoretical basis of Philo’s legal system. In *De Vita Mosis* 2.211, in the context of the narrative of the sin of “the wood collector” (Num. 15.32-36), Philo gives a general description of the laws of the Sabbath:

> Abstaining from work, and from profit-making crafts and professions and business pursued to get a livelihood, and enjoying a respite from labor, released from weary and painful care.

Later on Philo explains why the “wood collector” was sentenced to stoning:

> […] He often forbids the lighting of a fire on the seventh day, regarding it as the primary activity; and, if this ceased, he considered that other particular activities would naturally cease also. But sticks are the material of fire, so that by picking them up he committed a sin which was brother to and of the same family as the sin of burning them. And his was a double crime; it lay first in the mere act of collecting, a defiance of the commandment to rest from work, secondly in the nature of what he collected’ being materials for fire which is the basis of the arts.[297]

In this explanation, Philo addresses a difficulty which arises from the fact that, as mentioned above, throughout the Pentateuch the obligation to cease from working on the Sabbath is described very generally. It includes the prohibition of lighting fire in addition to a general prohibition on agricultural work, expressed both explicitly in a legal text, and implicitly in the narrative of “the wood collector”. Philo offers an interpretive solution to the lack of detail: The Pentateuch puts an emphasis on lighting fire because, in essence, all tools with which one performs work are either produced by using fire or are fashioned by using tools which were made by fire.[298] Thus, all types of work are forbidden, as they involve the use of tools. In this way, Philo also equates lighting fire with other types of work. Moreover, Philo asserts that in collecting kindling, one performs two transgressions: performing an act that is connected to fire, as well as “collecting what should remain unmoved”.

There are several possibilities as to which Biblical prohibition Philo has in mind here, and each has other Second-Temple parallels: The prohibition against plucking on the Sabbath, which would easily be considered an example of the Pantateuchal injunction against agricultural work (Exodus 34.21);[299] the prohibition against handling tools which are used to perform forbidden work;[300] or perhaps Philo is referring here to the prohibition against moving any object from place to place, known in rabbinic literature as *טלטול*.[301] Another possibility is that this is forbidden as part of the general requirement to abstain from work on the Sabbath.

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[297] *Moses*, 2.219-220.

[298] Similarly in *Laws* 2.60. Philo explains that the use of fire is specifically prohibited “being the beginning and seed of all the business of life; since without fire it is not possible to make any of the things which are indispensably necessary for life, so that men in the absence of one single element, the highest and most ancient of all, are cut off from all works and employments of arts, especially from all handicraft trades, and also from all particular services.”

One of the characteristics of rabbinic law is the tendency to formulate Jewish law into categories. This approach can be defined as "formalistic," as it looks at the category a certain action falls into rather than its practical aspects or implications. Arguably, in his version of "the wood gatherer" narrative, Philo shows signs of a formalistic perception of Jewish law. That is, instead of understanding the practice of the Sabbath literally as the requirement to abstain from work and from kindling fire, Philo thinks in categories: "moving what is not to be moved," has nothing to do with the effort involved in the action, or the way it is effectively "work". Thus, the very physical and practical concepts of "rest" and "work" are transformed by Philo into formal categories which do not necessarily reflect the original Biblical Sabbath to which these concepts pertain.

Another example of this formalistic thinking is Philo's "slave-law" discussed above. According to this law, "rest" is not defined as a lack of physical exertion, as Philo himself describes this day as a day which might be the most exhausting to some masters, a day during which the masters need to do things on their own, rather than rely on others, i.e. his slaves:

> The masters must be accustomed to work themselves without waiting for the offices and attentions of their menials […] but, use the different parts of their body with more nimbleness and shew a robust and easy activity.[302]

Thus, "work" and abstention from work are not a matter of effort versus rest; work is what we do to gain "external profit", whereas rest is what we do in order to improve our character. As I will demonstrate below, this view of the Sabbath is emphasized in Philo's portrayal of the Sabbath as a day of introspection and learning.

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[299] Targ. Yona. *Aqar gisiin.* Also BT Shab. 96b.

[300] Belkin, 198-199. According to Belkin, Philo is in agreement here with the pre-Tannaitic Halakha which forbade handling tools which are used for forbidden types of work as a Biblical prohibition, as opposed to rabbinic Halakha, which considered this to be merely a rabbinical prohibition. However, Belkin's textual basis for this understanding of the historical context is problematic. Belkin understands the abstention from fighting on the Sabbath in I Mac. 2.33-38 as a result of the "Zealous people's" preference to die rather than to block their cave with stones or throw stones at their enemies. However, this seems simply to reflect the view that any martial activity is prohibited on the Sabbath. Belkin also relies on the BT (*Shabbat*. 123b, see also Tosefta *Shabbat*. 1.14): "In former days only three utensils were permitted to be handled on the Sabbath […] subsequently more were allowed". The Amora R. Hanina is quoted as saying that this law is from the days of Nehemia. The use of the term "mishna" in the context of Nehemia is ironic in itself, as it refers to a "Mishnah" i.e. a rabbinic injunction in a Biblical context. Thus it is impossible to any draw conclusions from these texts other than that according to the Tosefta, sometime before the Tosefta's time, there were more restrictions on carrying utensils on the Sabbath.

[301] BT *Shabbat* 96b.

[302] *Laws* 2.67.

Hierarchy within the laws of Sabbath

Having discussed Philo's formulating Jewish law into categories, I will now turn to exploring Philo's formulation of the Sabbath with respect to another characteristic feature of halakha, namely hierarchy. Rabbinic law makes distinctions between different levels of obligation within the system of law. Often, but not always, these different levels are determined by the authority of the source of the law, such as Biblical vs. rabbinic etc. Is it possible to identify this line of thought in Philo?

Before moving to the "Slave-law", Philo continues by making quite a surprising remark according to which "it would seem that His further enactments were given for the sake of the more disobedient who refused to pay attention to His commandments".[303] It seems that this statement expresses the notion that the laws of the Pentateuch have some sort of hierarchy; in this case, the Sabbath includes not only rules which are at the core of the practice, but, in addition, also involves rules which are intended to address the problem of the weakness of human nature, for those who are "more disobedient."

Indeed, rabbinic literature reflects a very developed notion of hierarchy. It makes a distinction between *גדרה* or *גדר*, "fence", i.e. laws which are necessary only in order to prevent transgressions of more important laws, and the laws which are at the core of Jewish law either because their source is more authoritative (e.g. Biblical law) or because they are the *telos* of the law. Obviously these "fences" do not have the same weight as the more basic laws. Is it possible to find the same distinctions in Philo? In *Moses*, Philo explicitly states that not all types of work have the same weight during the Sabbath, although they are all prohibited:

> A special distinction was given to the sacred seventh day, for, since it was not permitted to do anything on that day, abstinence from works great or small being expressly enjoined [...].[304]

However, even if we were to draw generalizations from Philo's remark, the outcome would still be quite distant form the rabbinic conceptual world. Let's use the slave-resting-law as an example. First of all, as I have argued, this law is based on an interpretation of the text, whereas in rabbinic sources, "fences" are usually the result of rabbinic decrees rather than part of Biblical law.[305] Second, it is unclear how refraining from using the aid of servants would help to avoid the violation of other sabbatical observances. It seems that the purpose here is to achieve the purpose of the Sabbath in a different way. According to Philo, the purpose of the Sabbath as I will emphasize below, is to allow a time dedicated to introspection and repentance. The main practices associated with this goal are learning the lessons of the Pentateuch and focusing on the study of philosophy. But for those who are incapable of achieving this goal through these practices, Philo offers another way to learn the lesson of the Sabbath, namely. taking responsibility for different tasks, especially on the Sabbath.

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[303] *Laws*, 2.66

[304] *Moses* 1.205

[305] This is represented for instance in *Mishnah Avot* 1.1." they said three things – be moderate in your rulings, train many disciples and make a fence for the Pentateuch". However, there are also rabbinic traditions which attribute the "fence" to the Pentateuch itself (*Avot De'Rabbi Natan* a.2): "What fence did the Pentateuch make for its own words? The verse says 'You shall not approach a woman to uncover her nakedness while she is in her menstrual uncleanness (Leviticus 18.19)' is it permitted to hug her, and to kiss her, and to have an intimate conversation with her? Infer it from that it says 'do not approach'."

Philo’s emphasis on the didactic role of the Sabbath is consistent with Philo’s admiration when portraying ascetic groups such as the Therapeutae and the Essenes in his *De vita contemplativa* and *Quod omnis probus liber,* who, according to Philo, lead a life of self-restraint (ἐγκράτεια). This aspect leads us to our next subject in Philo’s version of the Sabbath.

Sabbath as a Day of Contemplation and Study

Notwithstanding the discussion above, the most distinctive practical feature in Philo's portrayal of the Sabbath is that it is a day dedicated to intellectual activity. This highlights how Philo’s formulation of Jewish law reflects his Hellenistic world-view. Many scholars have already noted the agreement between Philo’s rather lengthy account on the practice of going to synagogues and learning Pentateuch and other texts like the Gospels, Qumran and also rabbinic literature.[306] Both in Qumran and in rabbinic literature, the custom of gathering at the synagogue in order to engage in communal learning was so strong as to result in the prohibition against reading scripture in solitary.[307] However, there is one aspect in Philo’s description of the Sabbath which perhaps deserves further attention. Along with the focus on philosophy and learning, Philo emphasizes time and time again that the Sabbath is a day of introspection and repentance, an aspect mentioned by Philo in virtually every reference that he makes to the Sabbath. Hence, in his account of “the wood gatherer” in the desert (based on Num. 15.32-37), Philo underlines the purpose of intellectual activity on the Sabbath:

> […] expounding and instructing the people what they should say and do, while they received edification and betterment in moral principles and conduct […].[308]

In the *Decalogue*, Philo is even more explicit:

> […] they should also consider whether any offence against purity has been committed in the preceding days, and exact for themselves in the

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[306] Gilat, *Studies*, pp. 350-351. It is noteworthy, however, that as scholars have pointed out, in most of Philo’s descriptions of the Sabbath the contents of the communal learning is Philosophy, whereas only in *Legatio ad Gaium* and *Hypothetica* does Philo speak of the study of “the laws”. See D. Boesenberg, "Philo’s Descriptions," above, 158-159, where he suggests that the difference might have been the result of a different intended audience. According to Boesenberg, a Roman audience might have been more susceptible to the idea of the study of law than to the study of Philosophy. On *nomos* as Pentatuch see N.G. Cohen, “Context and Connotation, Greek Words for Jewish Concepts in Philo,” in: J.L. Kugel (ed.) *Shem in the Tents of Japhet, Essays on the encounter of Judaism and Hellenism* (Leiden-Boston-Köln: Brill, 2002), 33-34.

[307] Noam & Qimron, *Collection*, 530-537. As Noam and Qimron note, this understanding of Qumran and rabbinic law is based on an interpretation of a very difficult Mishnah (*Shabbat* 16.1), which generated many different interpretations as early as the Talmud. However, it is overwhelmingly understood that the basis of the *Mishnah* is the motivation to preserve the communal activity of learning in the synagogue. For our purposes it is less important whether the nature of this custom was to read form the Torah/Prophets or to engage in “Oral Torah”.

[308] *Moses* 2.215.

> council-chamber of the soul, with the laws as their fellow-assessors and fellow-examiners, a strict account of what they had said or done in order to correct what had been neglected and to take precaution against repetition of any sin.[309]

Philo's emphasis on the Sabbath as a day of repentance, which appears in his "exposition of the laws" as well, comes with the notion that the six weekdays are dedicated to the body, whereas the seventh day is dedicated to the soul:

> So each seventh day there stand wide open in every city thousands of schools of good sense, temperance, courage, justice, and other virtues […] But since we consist of body and soul, he assigned to the body its proper tasks and similarly to the soul […] Thus while the body is working, the soul enjoys a respite, but when the body takes its rest, the soul resumes its work, and thus the best forms of life, the theoretical and the practical, take their turn in replacing each other […].[310]

In his account of "the wood gatherer" as well, Philo juxtaposes the soul with the bodily senses:

> But this leisure should be occupied ,and devoting their leisure, not as by some in bursts of laughter or […] through the dominant senses of sight and hearing reduce to slavery their natural queen, the soul, but by the pursuit of wisdom only.[311]

The Sabbath as a Day of Fasting

Perhaps this aspect of Philo's Sabbath, i.e. the Sabbath as a day of repentance which is based on the dualistic notion of the separation of body and soul, may shed light on an historical question which has been the subject of several studies. While a number of non-Jewish sources describe the Jewish Sabbath as a day of fasting, the Jewish sources seem to overwhelmingly reject such a practice. This rejection is found in many Second-Temple sources, including the Dead Sea Scrolls.[312] Josephus testifies that this prohibition on fasting was strictly observed, and so when the people of Tiberias were assembled in the synagogue on the Sabbath in order to decide how to react to the existing political turmoil, they dispersed at noon-- before reaching a decision-- in order to avoid the prohibition against fasting.[313]

In rabbinic literature, there is an explicit prohibition against fasting on the Sabbath until mid-day, which was probably based on an understanding of Isaiah 58.13: "if you call the Sabbath a delight". However, the strong rhetoric against such a practice suggests that it did, in fact, exist, and as Gilat points out, there is extensive evidence of the existence of such a practice among the Rabbis, which he assumes was based on two different alternatives for understanding the term, *עונג* in Isaiah i.e. “delight”, as either a corporal or as a spiritual pleasure.[314]

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[309] *De Decalogo* 98.

[310] *Laws* 2.62-64.

[311] *Moses* 2.212.

[312] For a survey of both Jewish and non-Jewish sources see Gilat, *Studies.* Pp. 109-111

[313] *Joseph*, 279.

Interestingly, Gilat shows that in many cases, the spiritual approach which favors fasting is consistent with the notion that what is in question is whether to spend time eating and indulging in other corporal pleasures, or in the intellectual learning of Torah, as this saying in the name of R. Eliezer explicitly states: “R. Elizer says: on holidays one can only either eat and drink or sit and learn”.[315] This aspect of learning as opposed to corporal pleasure is very much emphasized in Philo’s account as well.

Perhaps it is significant, in this context, to note that the Day of Atonement is described in the Pentateuch as *שבת שבתון* (Leviticus 16.31 and 23.32). This term might literally mean something like a “Sabbath of rest”, or a "Sabbatical", but at the same time, the use of this emphatic form of “Sabbath” also implies that the Day of Atonement is an “ultimate Sabbath”. Possibly, the practice of fasting on the Sabbath, as well as Philo’s notion that the Sabbath as a day of introspection and repentance, were also influenced by an understanding of this term as bearing practical implications. Although there is no reason to believe that this was perceived by anyone as a Biblical requirement, it might have been perceived as an ideal practice beyond the minimal requirements.

I would suggest that although Philo does not mention fasting explicitly, it seems that his portrayal of the Sabbath fits into the conceptual framework of the Sabbath as a potential “mini day of Atonement” very well. Indeed, Philo himself makes the connection between the Sabbath and the Day of Atonement. Expressing his resentment towards those who think that a festival should be celebrated through corporal pleasure and ask: “What sort of a feast is this where there is no eating and drinking”? (*Spec*. 2.193). Philo asserts that: “Moses saw with the most sharp-sighted eyes and so proclaimed the fast - a feast, and named it the greatest of feasts, which in our ancestral language is "a Sabbath of Sabbaths” […].”[316]

Perhaps Philo did not mention fasting explicitly since, whereas going to the synagogue and engaging in Torah study was most likely a common practice, this was simply not the case with regard to extending a greater effort and fasting. Hence, while Philo lays down a theoretical framework which may lead to the notion that fasting on the Sabbath is an ideal, he does not advocate for a practice which he knew was not very common: Philo’s purpose is to lay out, explain, and theorize on the common Jewish practice, and not to advocate a severe version of it. In this, I disagree with Weiss, who argues that the ascetic aspect of the Sabbath “seems to be a particular

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[314] See M. Williams, “Being a Jew in Rome: Sabbath Fasting as an expression of Roman-Jewish identity," In J.M. Barclay (ed.) *Negotiating Diaspora: Jewish Strategies in the Roman Empire* (London-New York: T. & T. Clark, 2004), pp. 8-18. Williams argues that this practice was distinctively Jewish-Roman. She suggests that the practice evolved out of the special circumstances which led to the existence of the community, namely the Jews’ reluctance to fight against the Romans on the Sabbath. However, this suggestion seems very unlikely for various reasons. Among these, as noted above, is the evidence for such a practice amongst the Rabbis, the strong rhetoric against it, and, as I will argue below, the fact that this practice has a textual and theoretical basis.

[315] *Bavli P’sachim* 68b. This applies to the Sabbath as well; see Gilat pp. 111 n. 18. It is noteworthy that the same R. Eliezer is portrayed as having a negative attitude towards sex. On negative rabbinic approaches towards sex see D. Boyarin, Carnal Israel, 47-52.

316 Laws 2.194.

Philonic contribution to the benefits of Sabbath observance."[317] I see this, rather, as another example of a practice which has a textual basis (Leviticus 16.31, 23.32 – "*שבת שבתון*"), and a specific Jewish historical context (i.e. Jewish ascetic groups, who were a source of inspiration for Philo and his like).

Understanding Philo's Sabbath in this rather nuanced way is consistent with what Steven Fraade called "ascetic tension" in Philo's writing. According to Fraade: "although Philo's dualistic ideal leads him to idealize virginity […] and to claim that wise persons [...] have no need for […] food and drink […] the reality of active life necessitates all this, moderated […]".[318] That Philo did not see fasting as a requirement is evident from his account on the Therapeutae, according to which they would fast during the weekdays, but:

> looking upon the seventh day as one of perfect holiness and a most complete festival, have thought it worthy of a most especial honor and on it, after taking due care of their soul, they tend their bodies also, giving them, just as they do to their cattle, a complete rest from their continual labors; and they eat nothing of a costly character, but plain bread and a seasoning of salt […].[319]

Although the practice of the Therapeutae contrasts with the practice of fasting on the Sabbath, as they did, in fact, eat on the Sabbath, it reflects the same line of thought, according to which healing the soul requires a negative approach towards the body:

> having first of all laid down temperance as a sort of foundation for the soul to rest upon […] and no one of them may take any meat or drink before the setting of the sun […] but that the care for the necessities of the body is suitable only to darkness, on which account they appropriate the day to the one occupation, and a brief portion of the night to the other.[320]

Moreover, if the "feast" which Philo describes at great length, and which occurred every seven days, is an indication of the Sabbath meals, it reflects a very different view of the term *עונג* i.e. "delight", as it consists of:

> only the clearest water; cold water for the generality, and hot water for those old men who are accustomed to a luxurious life. And the table, too, bears nothing which has blood, but there is placed upon it bread for food and salt for seasoning.[321]

In any event, with respect to the Sabbath, Philo makes no reference to meat, but he does note that for their Sabbath meals, the *Therapuetae* eat nothing of a costly character, but plain bread and a seasoning of salt, which the more luxurious of them further season with hyssop; and their drink is water from the spring.[322]

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[317] Weiss, Philo on *the Sabbath,* 90.

[318] S. Fraade, "Ascetical Aspects of Ancient Judaism," in A. Green (ed.): *Jewish Spirituality: From the Bible through the Middle Ages*, World Spirituality: an Encyclopedic History of the Religious Quest 13 (New York, 1986), 265.

[319] Da Vita Contemplativa 35-36. According to Philo, some of the Therapeutae would fast for three days, while others fasted for six days.

[320] Da Vita Contemplativa 34.

[321] Da Vita contemplativa 73.

This, too, is part of a larger discussion regarding the attitude towards corporality within Late Antiquity Judaism. The dualistic approach towards the body supports the idea that nurturing one's soul also means neglecting the body, whereas the alternative view is that nurturing the body appropriately supports the soul as well. As noted above, at this point in Jewish history, the divide between the "dualistic" approach and a more accepting approach with respect to the body was not necessarily a divide between "Hellenistic" Judaism and "Palestinian" or "Rabbinic" Judaism.[323] Philo's view in this context is quite consistent with what I have shown with respect to the Septuagint, and especially marital laws. Philo clearly expresses a dualistic point of view, favoring the soul over the body on the one hand, but at the same time, without totally rejecting the body, on the other.

Conclusions

In the course of our discussion I have identified different elements in Philo's description of the Sabbath, which were unique in some of their aspects, while they shared other elements with other Second-Temple and rabbinic sources. I have identified Philo's use of exegetical methods that can be defined as *Midrash*; a beginning of a hierarchical thinking of Jewish law which distinguishes between those parts of the law which are the essence of law, and other parts which play a more didactic role, or which reflect different levels of obligation. These methods and conceptions will be significantly developed in later, rabbinic, traditions.

Finally, the incorporation of the Hellenistic conceptual world into the portrayl of the Jewish practice is telling, especially in cases with other Late-Antiquity parallels. Thus, for instance, Philo's Sabbath slave-law, or his portrayal of the Sabbath as a "mini-Day-of-Atonement," and at the same time as a day dedicated to philosophy, reflect both a midrashic reading of the Bible and his Hellenistic conceptual world. These observations strengthen the argument that through the study of Philo, attempting to determine the degree of awareness of the Jews of Alexandria of Palestinian Halakha, or the influence that Palestinian Halakha might have had on the Jews in Alexandria, misses the mark. Perhaps in some cases, Palestinian-- and later on, rabbinic-- laws were the result of a process through which Hellenistic ideas trickled down to, and affected, Jewish practices in primarily Greek-speaking Jewish areas, ultimately having an effect on rabbinic Judaism.

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[322] Da Vita contemplative 36.

[323] D. Boyarin, *Border Lines*, above.

Chapter V: Body, Soul, and Self-Restraint (ἐγκράτεια) in Philo's Temple Laws

I will conclude my dissertation with a chapter dedicated to Philo's formulation of the laws pertaining to the Temple and the Priests. I have suggested above that regarding issues which were part of the daily civil life of Philo's community, Philo was more liable to reflect a law which does not follow Biblical law. In contrast, when it comes to the cultic laws, Philo, by and large, does follow Biblical law. Hence, this chapter is somewhat different from the previous ones, as it is difficult to engage in a comparative study attempting to define what is "Philonic" in Philo's law, when this is identical –or almost identical to the Biblical law. Instead, I will focus on the way that Philo formulates and rationalizes the cultic laws. In truth, as I will soon argue, for a thinker like Philo, the rationalization of the cultic laws poses the biggest challenge in terms of being able to translate the Jewish practice into a Philosophic, universal and rational language. Thus, although I will occasionally introduce other Second-Temple and rabbinic approaches, this chapter focuses less on Philo's unique or extra-Biblical laws from a comparative point of view, and more on Philo's rationalization of Jewish law.

Throughout my dissertation, I have focused on halakhic subjects that raise the issue of body and soul. A consideration of the Temple cult, and especially with respect to priesthood and sacrifice, presents an opportunity to gain an additional perspective insight on this issue.

For Philo, the entire concept of the Jewish Temple is problematic on multiple levels. It involves a physical building in a specific and permanent location. The priests presiding over the sacrifices are qualified to do so by exclusively coincidental qualities, among which were the lack of bodily impairments or physical traits, or proper genealogical descent. In the course of conducting the sacrifice, the priests perform a series of physical actions which include slaughtering, butchering, and sprinkling the animal's blood, and they partake in a never-ending feast of meat, which as I have noted in my discussion on the Sabbath, was far from reflecting Philo's views on religion and spirituality.

In this chapter, I demonstrate how Philo maintains his Philosophy without abandoning the simple, practical implications of the Biblical cultic laws. Since Philo wrote extensively about the priesthood, this chapter is divided into two main parts: the first discusses the Temple rituals, and the second, the Priests themselves. My analysis leads me to the following observations:

1. Philo's formulation of cultic laws reflect his notion of body and soul, conspicuous in the requirement that the act of sacrifice involve a certain intention on the one hand, and additionally ,in the power of the ritual to transform the person offering the sacrifice, on the other. Indeed, in his description of the Temple and the cultic laws, Philo makes a great effort to spiritualize the Temple, Jerusalem, the Priests and the sacrifices, without detracting from their practical and physical existence. Philo's solution to the problem of the physicality of the Temple cult is to complement it by presenting the appropriate mental or spiritual aspect of every practice, while emphasizing the supremacy of these aspects over the physical.

2. At the same time, Philo’s treatment of this category of Jewish practices emphasizes how far his dualism was from other Jewish-Hellenistic, and, later, Christian concepts, which tented to spiritualize the Temple cult altogether. [324] Even as early as Qumran, Jews were challenging the old paradigms, namely that the core of the religious practice is the Jerusalem Temple and the cult which was carried out there by the priests.[325] At least to some extent, this type of new criticism came hand in hand with a dualistic approach.[326] The criticism of the Temple at the end of the Second-Temple period ranged from a rejection of the contemporary practices in the Temple, and especially the behavior of the Priests, to, in later generations, an overall rejection of the legitimacy of a man-made physical Temple. Philo never raises the possibility that there is something intrinsically wrong with the concept of a Temple.

3. Finally, as noted above in previous chapters, the principle of self-restraint (ἐγκράτεια) plays a key role in Philo’s formulation of the laws regulating sexual relations, dietary laws, and the laws of the Sabbath and the festivals.[327] With regard to the Temple cult as well, Philo finds it fitting to use self-restraint as an organizing principle for quite a few of the laws. This is especially significant, since cultic laws are essentially different from those laws previously mentioned insofar as cultic laws do not regulate human physical desires, thus suggesting that Philo was indeed troubled by the predominantly physical aspect of the Temple cult.

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[324] The term “Dualism” is fraught with meaning in Greek philosophy in general, and specifically in Philo. In this chapter, I refer to dualism in the sense of the physical and the spiritual or symbolic (which are not totally interchangeable) qualities of different phenomena in the material world. For our purposes, I will use Boyarin’s definition of Philo’s basis for his hermeneutics: ‘a dualistic system in which spirit precedes and is primary over the body’. D. Boyarin, *Carnal Israel,* 9.

[325] This is reflected not only in the Sect’s abandonment of Jerusalem, but in the creation of liturgy like the *The Song of the Sabbath Sacrifice,* which was intended to substitute the Temple cult, together with developing a notion of both a spiritual, heavenly Temple, and an Eschatological Temple, in Jerusalem. On the Sect’s attitude towards Jerusalem and the Temple see L.H. Schiffman, “Jerusalem in the Dead Sea Scrolls,” In: M. Poothuis & C. Safrai (eds.), *The Centrality of Jerusalem: Historical Perspectives* (Hag: Kok Pharos, 1996), 73-88; M. Kister, “Jerusalem and the Temple in the Writings of Qumran,” in: M. Kister (ed.), *The Qumran Scrolls and their World* (Jerusalem: Yad Ben-Zvi Press, 2009), 477-479.

[326] D.R. Schwartz, “Qumran between Priestliness and Christianity,” in: M. Broshi et al (eds*.), The Scrolls of Judaean Desert, Forty Years of Research* (Jerusalem: Mosad Bialik, 1992), 176-181. Clearly, even if the Sect’s rift with the Jerusalem Temple had its political and/or halakhic reasons, the Sect’s theology reflects the potential for at least some ambivalence towards Temple worship. Cf. the synoptic tradition of the cleansing of the Temple (Mark 11:17, Matt. 21:13, Luke 19:45), or Qumranic texts critical of the Jerusalem Temple (4QMMT, 4Q390). In Philo’s time early Christians and the Sect did not totally reject the idea of the Temple, but rather criticized the way it was run. See J.H. Charlesworth, “The Temple and Jesus’ Followers,” in: J.H. Charlesworth (ed.), *Jesus and the Temple, Textual and Archaeological Explorations* (Minneapolis: Fortress Press, 2014), 183-212. Cf. D.R. Catchpole, who similarly contends that the early Christians did not reject the existence of the Temple in their time, but rather saw the abandonment of the Temple as relating to a Messianic future. D.R. Catchpole, “Temple Traditions in Q,” in: W. Horbury (ed.), *Templum Amictiae, Essays on the Second Temple presented to Ernst Bammel, JSNT.S* 48 (1991), 305-329.

[327] Above and see also M. Niehoff, *Philo on Jewish Identity and Culture*, 94-110.

Philo and the Temple Cult: Different Scholarly Approaches

Before I begin my examination of Philo's cultic laws, I will put my approach to this issue in the context of recent scholarship. Of the many studies dealing with Philo's approach towards the Temple, some have focused on Philo's allegorical and universal approach towards the idea of a Temple and priesthood,[328] while others focus on what we can learn from Philo on diasporic and Hellenistic sentiments towards Jerusalem and the Temple as actual geographic places.[329]
According to Daniel Schwartz, Philo:

> Was perfectly able to attack the notion that the Temple, or the City of God, could be anything on earth built of wood and stones. Rather, he argued, they are wholly spiritual.[330]

But this is only part of the picture. Philo believed that the only appropriate location for the Temple was in Jerusalem. His first-hand narrative of his pilgrimage to Jerusalem on the one hand, and his silence with respect to the Onias Temple on the other, is telling, and has been cited by different scholars as an important source for speculating on the status of the Jerusalem Temple among Egyptian Jewry.[331] In addition, Philo's lengthy and detailed discussion on the Temple, relating to numerous practical aspects of Temple rituals, does not support the view that Philo was indifferent to the Temple in Jerusalem. Indeed, Philo's inconsistency with respect to the Jerusalem Temple can be accounted for, at least partially, through a consideration of genre. Thus, in his allegorical and philosophical writing.s Philo is more prone to express a spiritualistic approach than is his *exposition of the laws*. Since my main interest in this study is Philo's version of Jewish law, it will suffice to note that in Philo's exposition of the laws, his approach towards the Temple is consistent with his general approach towards Jewish law. In his view, the actual, physical practice of Jewish law is detrimental to an internalization of the philosophical concepts behind the law.

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[328] For a most comprehensive survey of scholarship on Greco-Roman authors and Philo's conceptualization of Temple cult, see A. Botica, *The Concept of Intention in the Old Testament, Philo of Alexandria and the Early Rabbinic Literature* (New Jersey: Gorgias Press, 2001), 242-281. On Philo's view of the universe as a Temple see J. Deniélou, "La Symbolique du temple de Jérusalem chez Philon et Josephe," in *Le symbolism cosmiquedes monuments religieux,* Serie Orientale Roma 14, (1957), 83-90; M. Barker, "Temple Imagery in Philo: An Indication of the Origin of Logos?" in: W. Horbury (ed.), *Templum Amictiae, Essays on the Second Temple Presented to Ernst Bammel, JSNT.S* 48 (1991), 70-102. Barker argues that Philo's Temple and priesthood imagery is the main basis for Philo's description of the *logos*, and might be a philosophized version of ancient Israel mythic beliefs; See also T. Seland, " 'The Common Priesthood' of Philo and 1 Peter: a Philonic Reading of 1 Peter 2:5, 9," *Journal for the Study of the New Testament* 57 (1995) 87-119.

[329] On Philo's approach towards Jerusalem and the Temple See, I. Heinemann, "The Relationship Between The Jewish People and Their Land in Hellenistic-Jewish Literature", *Zion* 13 (1948), 1-9 [Hebrew]; S. Safrai, *Pilgrimage at the Time of the* Second Temple (Tel Aviv: Am Hassefer, 1965), esp. 62-63 [Hebrew]; A. Kasher, "Jerusalem as a 'Metropolis' in Philo's National Consciousness," Cathedra 11 (1979), 45-56 [Hebrew].

330 D.R. Schwartz, "Temple or City: What did Hellenistic Jews See in Jerusalem?" In: M. Poothuis & C. Safrai (eds.), The Centrality of Jerusalem: Historical Perspectives (Hag: Kok Pharos, 1996), 120. See also D.R. Schwartz, "Humbly Second-Rate in the Diaspora? Philo and Stephen on the Tabernacle and the Temple," in: R.S. Boustan et al (eds.), *Envisioning Judaism, Studies in Honor of Peter Schäfer on the Occasion of His Seventieth Birthday* (Tübingen: Mohr Siebeck, 2013), 81-89. Along the same lines, Schwartz argues that comparing Philo's description of the Tabernacle to that of the Temple reflects Philo's general resentment of cities, and in that respect, an ambivalent attitude towards the Temple.

[331] On the relationship between Philo's portrayal of the pilgrimage to the Temple of Jerusalem and his allegorical descriptions of the *metropolis* see Y. Amir, "Philo's Version of the Pilgrimage to Jerusalem", in: A Oppenheimer et al (eds.) *Jerusalem in the Second Temple Period, Abraham Schalit Memorial Volume* (Jerusalem: Yad Ben-Zvi, 1980), 154-165. For an approach that limits the significance of the Temple in Philo see D.R Schwartz, " The Jews of Egypt between the Temple of Onias, the Temple of Jerusalem, and Heaven," *Zion* 62 (1997), 5-22 [Hebrew]. According to Schwartz, the silence regarding the Onias Temple in Jewish-Alexandrian sources might reflect an indifference towards temples in general.

Many scholars have pointed to the influence of Platonic and stoic ideas on Philo's conceptualization of the Temple cult,[332] and in this respect Philo's account of the Temple laws might be the "best typical example" of this feature of Philonic law. As Valentine Nikiprowetzky argued, Philo's allegory and spiritualization did not reject the actual practice of the Temple cult, but rather lent it an ethical-religious interpretation.[333] Similarly, Jutta Leonhardt-Balzer emphasized Philo's attempt to show that the "Jewish rites have a universal relevance beyond the particularistic cults in the Hellenistic world,"[334] and that at the same time, the universal or spiritual understanding of the Temple comes with deep emotions and commitment to the Jerusalem Temple.

In his work on intention in Philo, Aurelian Botica characterizes three main elements in Philo's approach towards the Temple cult: spiritualization of the Temple, the Priesthood etc.; applying cultic acts such as purification to spiritual entities (such as the soul); and emphasizing the significance of intent in the physical, cultic act.[335] My study will focus on the latter two aspects of the cult, as I am primarily interested in Philo's account of the actual practice of Jewish law. As Nijay Gupta demonstrated, Philo's account of the Temple and the priesthood reflect coherence and consistency,[336] which I would like to unfold in the following discussion.

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[332] A. Botica, above, 242-281.

[333] V. Nikoprowetzky, "La spiritualization des sacrifices et le culte sacrificial au temple de Jérusalem chez Philon d'Alexndrie," *Sem* 17 (1967), 97-116.

[334] J. Leonhardt-Balzer, "Jewish Worship and Universal Identity in Philo of Alexandria," in: J. Frey et al (eds.), *Jewish Identity in the Greco-Roman World* (Boston: Brill, 2007), 29-53.

[335] A. Botica, above, 281-317.

[336] N. Gupta, "The Question of Coherence in Philo's Cultic Imagery: A Socio-Literary Approach," *Journal for the Study of the Pseudepigrapha* 20.4 (2011), 277-279.

Part I: Dualism in the Temple Cult

Space

Pilgrimage

My discussion of Philo cultic laws begins with demonstrating how different aspects of the Temple, such as the physical setting for the Temple cult, reflects Philo's dualistic approach, which in this case applies to space – geographic and architectural-- and to time. Before I begin my brief excursion through Philo's Temple laws, it is necessary to mention that, in a sense, what Philo has to say about the journey to the Temple encapsulates everything he has to say about what happens inside the Temple, which is, of course, my main concern. Thus, when Philo explains why one is forbidden to perform sacrificial rites in houses, but must set out on a journey even "from the ends of the earth," in order to make sure that the purpose of the Temple rites is achieved, he explains:

> In this way he also applies the severest of tests to their dispositions. For one who is not going to sacrifice in purity (εὐαγῶς)[337] would never bring himself to leave his country and friends […] but clearly it must be the stronger attraction to piety (εὐσέβειαν) which leads him to endure separation.[338]

According to Philo, an integral part of the Temple rites is the very journey to the Temple, which involves a journey which separates the "pure and pious" from those who are unworthy of taking part in the Temple rites. Throughout my discussion I will show how Philo's main motivation in his account of the Temple law is to inject religious and spiritual components into what seems to be a predominantly technical and physical cult.

The Jerusalem Temple

In several instances, Philo expresses the idea that the entire universe and the human soul are both God's Temples, and the High Priest – the *logos:*

> For there are, as is evident, two Temples of God: one of them this universe, in which there is also as high priest his first-born, the Divine Words (θεῖος λόγος); and the other the rational soul, whose priest is the real man.[339]

Such statements seem to reject altogether the possibility of a physical building serving as a Temple. But Philo actually expresses a high regard for the actual location of the Jerusalem Temple cult. As Cana Werman notes, in this respect, Philo was much closer to his contemporaries in Palestine than to other Jewish-Hellenistic writers we know of.[340] Thus, when Philo discusses the laws of the Temple cult, he explains why, if God's real, supreme Temple is the whole universe, there is a need for an earthly Temple in Jerusalem in the first place:

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[337] I have replaced Colson's translation of εὐαγῶς from "religious spirit" to "purity", since, as I shall show later, the theme of purity as part of Temple worship is very central in Philo's formulation of the Temple laws. For εὐαγῶς as pure or "free from pollution" see Liddel & Scott , above, 705.

[338] *Laws*, 1.68.

[339] *On Dreams*, 1.215. Cf. *On Flight and Finding* 108, where Philo relates to the idea of High Priest as *logos.*

> For is it right that no check should be given to the forwardness of those who pay their tribute to piety and desire by means of sacrifices either to give thanks for the blessings that befall them or to ask for pardon and forgiveness for their sins. But He provided that there should not be temples built either in many places or many in the same place, for He judged that since God is one, there should be also one Temple.[341]

Philo contends that the reality of an earthly Temple has two purposes. The first is to channel natural and common religious impulses—namely, to pay homage or to ask for pardon-- into an appropriate religious setting. The other purpose is to internalize a philosophical principle, i.e. that God is one, by limiting the cult to one central place of worship. Thus, a religious practice, i.e. a sacrificial cult which seems to negate a philosophical idea i.e. that God is one, and His Temple is the entire universe and the human soul, is explained by Philo as a practice which actually promotes that same notion, i.e. is that God is one.

In Philo's famous passages in "the Migration of Abraham", in defense of observing the laws of the Torah even if their allegorical meaning is apparent, Philo uses a broader, more general justification for the Temple cult. Obviously, this is due to the fact that the context is a general apology for the observance of Jewish law, yet the general thrust is consistent. The physical practices have an essential role in the internalization of the inner meanings:

> Why, we shall be ignoring the sanctity of the Temple and a thousand other things, if we are going to pay heed to nothing except […] the inner meaning of things. […] It follows that exactly as we have to take thought for the body, because it is the abode of the soul, we must pay heed to the letter of the law. If we keep and observe these, we shall gain a clearer conception of those things of which these are symbols.[342]

Two Altars

Having discussed the Temple as a defined and limited geographical space, we "zoom in" to the building of the Temple as an architectural space. Philo is very brief in his description of the Temple as a building. However, when Philo relates to the people who wish to offer a sacrifice, saying that "the law would have such a person pure in body and soul,"[343] he uses the two alters as testimony for his case:

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[340] C. Werman, "God's House: Temple or Universe," in: R. Deins, K.W. Niebuhr (eds.), *Philo und das Neue Testament* (Tübingen: Mohr Siebeck, 2004), 309-320.

[341] Laws 1.67.

[342] *Migration* 92-93.

[343] *Laws* 1.257.

> That what I have said above is true […] also by the law which commanded two altars to be constructed differing in materials and situations and in the use to which they were applied […]. For one of them was built of stones […] it was set in the open air […] to be used for blood offerings. The other was formed of the purest of gold; it was set in the inner shrine […] not to be seen by any except such priests […] to be used for frankincense-offerings.[344]

To be sure, Philo does not only describe two different altars with different functions. Rather, Philo makes it clear that one altar, and the rituals performed on it, is far superior to the other:

> This clearly shows that even the least morsel of incense offered by a man of religion (ἀνδρὸς ὁσίου) is more precious in the sight of God than thousands of cattle sacrificed by a man of little worth.

According to Philo, the two altars symbolize two types of people offering a sacrifice. The superiority of the altar used for the relatively spiritual ritual demonstrates the superiority of intention over action, and of spirituality over animal sacrifice. Similarly, as Boyarin has lately shown in *The Worse Attacks the Better,* Philo contrasts proper worship (εὐσέβεια) which involves the movement and inner dispositions of the soul (ὁσιότης), with indulgence in excessive sacrifice which is external and disingenuous worship (θρεσκεία).[345] That Philo does not merely mean to make a statement about the significance of the intention accompanying the ritual, but rather to express the superiority of the ritual that symbolizes spirituality as opposed to the carnal sacrificial practices, becomes clear, as Philo continues by saying that:

> For it is not permitted to bring the victim of the whole-burnt-offering outside until the incense has been offered inside, at the first glimpse of the day […] what is precious in the sight of God is not the number of victims immolated but the true purity of a rational spirit (πνεῦμα λογικόν) in him who makes sacrifice.[346]

In addition to the different locations and the different materials of which the altars were made, Philo uses an additional argument in order to prove the superiority of the altar used for incense. According to Philo (and as I shall soon show, this was not the consensual halakhic view), the incense offering preceded the ritual of the daily sacrifice of the lamb in the Temple. This brings us to the next dimension in Philo's portrayal of the Temple cult – time.

Time

An additional dimension in the Temple cult, which reflects Philo's dualism, is time. Obviously, the division between sacred time and non-sacred time is rooted in the Biblical festivals, which naturally are part of Philo's account of the Temple rituals.

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[344] *Laws* 1.273-274.

[345] D. Boyarin, *Imagine*, (forthcoming). Though it should be noted that according to Boyarin, as well, this does not mean that Philo rejected the external performance of sacrifices, but rather emphasized the significance of the soul in worship.

[346] *Laws* 1.276-277

But Philo goes beyond the Biblical account. First, Philo makes a distinction between night and day. Tannaitic sources seem to disagree on the exact time for burning the incense which accompanied the daily morning and evening sacrifices. According to Mishna *yoma* (3.5), the incense was burnt as part of the ritual of the daily sacrifice. According to Mishna *tamid* (5.4-5), the incense followed the sacrifice, and according to Tosefta *pesachim* (4.2) the incense preceded the sacrifice in the morning and followed it in the evening. As Belkin notes, Philo agrees with the Tosefta:

> Twice, too, every day the perfume of the most fragrant kinds of incense is exhaled within the veil at sunrise and sunset, both before the morning and after the evening sacrifice. Thus, the blood offerings serve as thanksgivings for the blood elements in ourselves and the incense offerings for our dominant part (τοῦ ἡγεμονικοῦ), the rational spirit-force (λογικοῦ πνεύματος) within us […].[347]

It would be impossible to determine whether Philo's agreement with the Tosefta reflects anything historical, either with respect to the actual practice or with respect to the question of the sources and the traditions behind the different texts.[348] For our purposes, it is significant that from a literary point of view, Philo's account creates an image that perfectly corresponds to his conceptual world. According to Philo, the daily sacrifices contain two elements: The day begins and ends with the sacrifice of a lamb, whose blood atones for our sins. Their blood substitutes for our blood, which would have been required were it not for the atoning power of the sacrifices. Thus, the day corresponds to our physical aspect. The night, on the other hand, begins and ends with the much more spiritual burning of incense, symbolizing gratitude for our spiritual aspect, our *λογικοῦ πνεύματος*.

An additional division between day and night is reflected in the lighting of the ***מנורה*** or "sacred candlestick" (ἱερᾶς λυχνίας) in Philo's own words. According to Philo, in addition to the prosaic fact that the lamps lighted the Temple during the dark hours, their purpose was to serve as a night ritual: "That at night time also some rites of the same kith and kin as those of the day time should be performed."[349] Philo adds that while the daily sacrifices are offered in acknowledgement of the blessings of our waking hours, the lighting of the *menorah* is an expression of gratitude for the gift of rest: "[…] the body is released from the labors of the day, the soul relaxes from its anxious cares and retreats into itself […]."[350]

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[347] *Laws* 1.171

[348] We should note that Mishnah *Tamid* seems very much like a literary text rather than a legal text. See for instance J.N. Epstein, *Introduction to Tannaitic Literature* (Jerusalem: Magness Press, 1957), 27-33 [Hebrew]. *Tamid* describes in a very theatrical manner the daily routine at the Temple. See A. Walfish, "Conceptual Ramifications of Tractates *Tamid* and *Midot," Judea and Samaria Studies* 7 (1997), 79-92 [Hebrew]. In addition, as Wolfish has suggested, one of the conceptual frameworks behind *Tamid* is the idea that the daily ritual in the Temple has no beginning or end and occurs day in and day out. Lately, Z. Safrai has published a series of studies on the issue of the literary aspects of Tannaitic descriptions of the Temple cult. See for instance Z. Safrai, "The Memory of the Temple," *New Studies on Jerusalem* 16 (2010), 255-301 [Hebrew]. All this should grant some credibility to the Tosefta over *Tamid.*

[349] *Laws* 1.297

[350] *Laws* 1.298

It should be noted, however, that there is a difference in Philo's division of day-and-night in the Temple with respect to the incense on one hand, and with respect to the *menorah*, on the other. While in both cases, the lighting of the fire stands in contrast to the sacrifice of animals and functions as the night rituals, the incense symbolizes our mental existence as opposed to our physical, bodily existence, whereas with respect to the *menorah*, the division seems to be between "active" and "passive" with respect to both body and soul.

An additional Philonic dualistic allusion to time in the Temple has to do with the Biblical law which requires that the *shelamim* sacrifice be consumed within two days from the time of its sacrifice (Leviticus 22.30):

> The preservation offering is in-fact made on behalf of two, namely soul (ψυχῆς) and body (σώματος), to each of which he assigned one day for feasting on the flesh. For it was meet that an equal space of time should be appointed for those elements of our nature which are capable of being preserved [...].[351]

Thus, Philo's division of time in the Temple does not always correspond to day-and – night. In this case, for example, it is the division between body and soul that creates a different division in time which does not exist in the physical world, but rather is imposed on the physical world by Philo's philosophical idea.

The Sacrifices

Every act of sacrifice involves the person offering the sacrifice, the animal being offered, and the priest performing the rite. Philo relates to all three, expressing the idea that the laws relating to them are not merely symbolic of external philosophical truths, but, rather, are practical tools for achieving moral and spiritual benefits. The first issue we will address is the rites which have to do with purification of body and soul.

Cleansing Before Entering the Temple

In Biblical law, touching a dead corpse required a person to be purified through the Red Heifer cleansing water. In Qumran and rabbinic literature, we find an expansion of the circumstances which render one impure. Thus, according to the laws in Qumran, a dead corpse does not only defile a person who is in the same room with the corpse, but who is in any part of that house, as well. According to Tannaitic law, leaning over a dead corpse or being under a dead corpse, even without having any direct contact, renders a person as impure, even in an open space.[352] Philo's main discussion on impurity is in the third book of his *Laws*. Although Philo's account is a rewriting of the laws in Numbers 16, the context Philo chooses for the rewriting of the laws of this type impurity is the passage regarding a man-slaughterer in Exodus 22.

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[351] *Laws* 1.222. A different aspect of this law, i.e. פיגול will be discussed below.

[352] For a comprehensive study in the development of the laws of purity in Qumran, Philo, Josephus and rabbinic literature see V. Noam, *From Qumran to the Rabbinic literature, Conceptions of Impurity* (Jerusalem: Yad Ben-Zvi Press, 2010).

Similar to what we have seen with respect to marital laws, i.e. the requirement to bathe after any sexual intercourse,[353] Philo interprets the defilement incurred by contact with a corpse as a measure intended to reduce the possibility of causing an unnatural death.[354] Philo then continues by saying that "Indeed He did not permit even the fully cleansed to enter the Temple within seven days, and ordered them to purge themselves on the third and seventh," which essentially means that Philo applies the same measures which Biblical law requires with respect to corpse-defilement.to anyone who wishes to enter the Temple.

This unique law is unparalleled in other Second-Temple sources. Several scholars speculate that this might be a reflection of a practice which required only pilgrims coming from the Diaspora to cleanse, either as a precautionary measure against corpse-defilement, or because of the view that any land outside the land of Israel was immanently defiled.[355] Vered Noam suggested that Philo might not have been aware that this requirement applied exclusively to Jews coming from the Diaspora. The resulting misunderstanding shaped the way Philo formulated the laws of purity in the context of the Temple, as he focused on the Temple rather than on corpse-impurity.

Whatever reason Philo had to take such a strict approach in demanding anyone entering the Temple to be treated as if corpse-impure, the way Philo formulates this requirement is consistent with his general approach towards the Temple cult, namely that every ritual must have a component that addresses both the soul and the body. Thus, Philo begins his account of those who offer sacrifices by asserting that: "the law would have such a person pure in body (σῶμα) and soul (ψυχήν)."[356] This "double purity" is to be achieved through two different practices:

> For each it devised the purification which befitted it. For the soul it used the animals which the worshiper is providing for the sacrifice, for the body sprinklings and ablutions.[357]

A few passages later, Philo repeats the demand to purify both body and soul when approaching the Temple, but gives an additional, different, recipe for cleansing the soul, saying that "the mind is cleansed by wisdom and the truths of wisdom's teaching which guide its steps to the contemplation of the universe."[358]

Spiritualism and Allegory are not One and the Same

Philo's explanation for the purification process of sprinkling the Red-Heifer water is a good example for the difference between Philo's allegorical interpretation and his spiritual understanding of the laws of the Torah.[359] Although both rely on a symbolic understanding of texts or actions, they are essentially different. Philo gives a detailed explanation for the symbolism behind the Red Heifer, but insists that this symbolism must be discernible to whoever takes part in the ritual, as it must yield a mental recognition: "that a man should know himself and the nature of the elements of which he is composed […]."[360] The symbolism of the Red Heifer is intended to teach the participants a lesson which is the goal of the ritual itself, namely, that man is composed of the simplest elements, and is worthless in comparison to God.

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[353] *Laws*, 3.63.

[354] *Laws*, 3.205.

[355] I. Heineman, *Philons Griechische und Jüdische Bildung: Kulturvergleichende Untersuchungen zu Philons Darstellung Der Jüdischen Gesezte* (Breslau: M. & H. Marcus, 1932), 24-26; Leonhardt-Belzer, *Jewish Worship*, 266; V. Noam, *From Qumarn to the Rabbinic Revolution,* 212-213.

[356] *Laws*, 1.257.

[357] *Laws* 1.258.

[358] *Laws* 1.269.

[359] I introduced this distinction above during my discussion on the Septuagint.

Thus, while allegorical interpretation may expose the symbolism which points to some external Truth-- be it universal, anthropological, or other-- the symbolism in the spiritual understanding of the law is internal, and essential to the fulfillment of the law itself. Indeed, after his interpretation of the symbolism behind the Red-Heifer ritual, Philo comments that: "what these things symbolically indicate has been described in full elsewhere where we have expounded the allegory," which was probably in one of his lost commentaries. This would indicate that Philo had an allegorical understanding of this practice in mind, as well.

In summary, Philo sees the purification of both the mind and the body as a prerequisite for the act of sacrifice, and at the same time the *telos* of the act. Now I will turn to examine how Philo formulates the laws of the specific sacrifices.

"Laying the Hands Upon"

According to Leviticus, part of the sacrificial ritual included "laying the hands" upon the animal's head, symbolizing the transference of the sin from the person offering the sacrifice, to the animal. This applied to private offerings as well as to sacrifices carried out on behalf of all the Israelites, such as Public-Sin Offerings, or the sacrifices on the Day of Atonement. According to Leviticus, it was only on the Day of Atonement that the Sin-Offering's "laying the hands upon" was accompanied by confessional prayer. Thus we see that Biblical law reflects the conception that the physical act without any utterance is sufficient in order to perform the ritual. This does not seem to be the case according to Philo or the Rabbis. According to rabbinic literature, every "laying the hands upon"— not only the High Priests'--was accompanied by a confession,[361] and it is conspicuous that both acts were required for achieving repentance.[362]

Philo requires far more than the Rabbis with respect to the spiritual component of the ritual. In fact, in Philo's view, the purpose of the confession is, in a sense, the opposite of that of the Rabbis'. The 'laying of the hands upon' is not a step towards atonement, but rather towards "the clearest type of blameless actions and of life, saddled with nothing that leads to censure, but in harmony of the laws and statutes of Nature."[363] Thus, whereas rabbinic law sees in the High Priest's confession an opportunity for repentance by confessing and enumerating the sins for which the sacrifice is being offered, Philo's confession goes in a very different direction:

> For the law desires, first, that the mind (νοῦν) of the worshiper should be sanctified by exercise in good and profitable thoughts and judgments […]. As he lays his hands on the victim, he can boldly and with a pure conscience speak in the wise: "These hands have taken no

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[360] *Laws* 1.264.
[361] BT *Yoma* 36a.
[362] BT *Zevakhim* 6a.
[363] *Laws* 1.202.

> gift to do injustice, nor shared in the proceeds of plunder or overreaching, nor been soiled with innocent blood […] but have made themselves humble ministers of things excellent and profitable […]".[364]

In this passage, Philo alters the whole purpose of the sacrifice. Instead of achieving atonement by confessing the sins and, symbolically, transferring the supposed punishments to the victim, the ritual is supposed to testify to the fact that the person offering the sacrifice is already sinless and pure. As much as this seems removed from both the Biblical and the rabbinic tradition, it is very consistent with Philo's description of the Temple cult. As we have seen, according to Philo, the cult begins with the embarking on a journey miles away from the Temple, and proceeds with a long process of purification. Thus, by the time the victim is sacrificed, the worshiper is expected to be transformed and "sanctified".

The Temple Cult and Self-Restraint (ἐγκράτεια)

Following Maren Niehoff in my discussion on marital laws, I have demonstrated Philo's emphasis on *ἐγκράτεια* as the leading principle in formulating his marital laws.[365] I have also noted that a similar phenomenon can be identified in Philo's dietary laws.[366] Perhaps this is not all that surprising. After all, sex and food are the primary bodily desires. Thus, for Philo, who describes the body as a prison for the soul, is seems quite appropriate to introduce self-control as the organizing principle for the norms governing these aspects of our physicality. As I have mentioned in previous chapters, Philo uses *ἐγκράτεια* in order to portray the Jewish laws as rational, and as a tool for internalizing essentially Roman values like moderation and prudence, thereby emphasizing the universal quality of Jewish law.

The promin)ence of self-denial in the cultic laws, however, which intuitively have nothing to do with desires, seems far less natural. But it is the cultic laws which, excluding his accounts on dietary and marital laws, include the most mentions of *ἐγκράτεια* in Philo's writings.[367] It should be noted that Philo's use of *ἐγκράτεια* in this section of his laws tends, sometimes, to be symbolic rather than didactic. Thus, in dietary and marital laws *ἐγκράτεια* is taught and, hopefully, achieved through the practice of the laws. However, in the case of cultic laws, the significance of *ἐγκράτεια* is symbolized through various details of the practice in certain cases, whereas in other cases it is the very purpose of the ritual, and achieved through it. Now I will turn to examining how Philo uses the term *ἐγκράτεια* in different contexts of the cultic laws.

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[364] Laws 1.203-204.

[365] Above, see also M. Niehoff, *Philo on Jewish Identity and* Culture, 75-110.

[366] H. Svebakken, *Philo of Alexandria's Exposition of the Tenth Commandment* (Atlanta: Society of Biblical Literature, 2012).

[367] P. Borgen et al, *The Philo Index, A complete Greek Word Index to the Writings of Philo of Alexandria* (Leiden: Brill, 2000), 102. In this assertion I include not only Philo's legal texts, but his narratives, as well.

ἐγκράτεια Determines which Parts of the Sacrifice are Eaten and Which are Burnt

In a discussion of the tithes and other gifts given to the Priests, Philo relates to the law of "animals sacrificed (θυομένων) away from the altars as meat for private consumption."[368] Philo relies on the LXX to Deuteronomy 18:3, which uses *θυόντων τὰ θύματα*, to describe meat slaughtered outside of a religious context. According to Deuteronomy 12:21-22, it is permitted to slaughter animals for the purpose of private consumption, and according to Deuteronomy 18:3, the Priests have a share in such "sacrifices", as well - the shoulder, the cheeks, and "the great intestine."

Philo takes the opportunity to give a long rant against desire (ἐπιθυμίας) which "like a sow rejoices to make its home the mire." Thus, the desire was assigned "the place of leavings and dregs", i.e. the maw, as its home.[369] "But the opposite of desire", continues Philo, "is continence (ἐγκράτεια), the acquisition of which is a task to be practiced and pressed forward by every possible means."[370] Thus, concludes Philo:

> Let continence, that pure and stainless virtue which disregards all concerns of food and drink and claims to stand superior to the pleasures of the stomach, touch the holy altars and bring with it the appendage of the belly as a reminder that it holds in contempt gluttony and greediness […].[371]

According to Philo, the reason the Priest is granted the stomach is as an appreciation for the Priest's continence.[372] Interestingly, in this passage, which deals with non-ritual slaughtering, Philo describes the gifts given to, and consumed by, the Priest as if they are to be burnt on the altar. Thus, Philo equates tithes with sacrifice, and reiterates, as I will show below, that the Priests serve as representatives of God, consequently equating gifts to the Priests with gifts and sacrifices to God.

ἐγκράτεια and the Shewbread

Philo dedicates quite a long discussion to the symbolism of the shewbread. According to Philo, the two groups of six breads which were made only from flour and water, among the other things they symbolize, "are also emblematic of that most profitable of virtues, continence (ἐγκράτεια), which has simplicity, and contentment and frugality as its bodyguard against […] incontinence and covetousness."[373] Philo continues to contrast continence and "the lusts of the wretched belly," saying that the frankincense and salt are placed on the loaves "as a symbol that in the court of wisdom no relish is judged to be more sweet-savored than frugality (ὀλιγοεΐας) and temperance (ἐκγρατείας)."[374]

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[368] *Laws* 1.147. It is worth noting that nothing in this section of Philo's law indicates that he was aware of the Tannaitic view that tithes and other agricultural commandments apply only to Palestine. This seems to reflect Philo's position as a representative of an earlier stage of Halakhah, rather than a disagreement with rabbinic law. On the development of this rabbinic view see A. Shemesh, "The Term '*Mitzva Ha-Teluya Ba-Aaretz*' Reexamined," *Sidra* 16 (2000), 151-177 [Hebrew].

[369] Similarly, Philo asserts that the washing of the stomach in the burnt offering "is highly symbolic. Under the figure of the belly he signifies the lust (ἐπιθυμίας) which it is well to clean (Laws 1.206)."

[370] *Laws* 1.148-149.

[371] *Laws* 1.150.

[372] Danieli-Nataf, *above*, 262, note 219.

[373] *Laws* 1.173.

The final issue through which Philo emphasizes the principle of *ἐγκράτεια* is the Jewish holidays in the Temple. In this issue, achieving *ἐγκράτεια* is the *telos* of the cult rather than the theme, rooted in the symbolism in various details. In other words, instead of explaining how different details ought to teach and remind us how important *ἐγκράτεια* is, they are meant, through the practice, to lead the participants in the cult to internalize a certain behavior.

ἐγκράτεια as an Expression of the Supremacy of the Jewish Holidays

During my discussion on the Sabbath, I noted that Philo emphasizes that the Jewish way of celebrating is fundamentally different from that of the Greeks. Since Temple ritual is a significant part of the festivals, he includes a brief account of the festivals as part of his Temple laws. As in his elaborate account in II *Laws*, Philo singles out the Day of Atonement, which is "carefully observed" not only by the pious but even by those who "never act religiously (εὐαγὲς) in the rest of their life."[375] It is only on this day that "the worse vie with the better in self-denial (ἐγκράτειαν) and virtue ἀρετὴν." Indeed, according to Philo, while the Day of Atonement may be the most distinctive symbol of ἐγκράτεια, ἐγκράτεια is what characterizes the Jewish festivals, in general:

> All this the Lawgiver observed and therefore did not permit his people to conduct festivities like other nations, but first He bade them in the very hour of joy to make themselves pure by curbing the appetites for pleasure. Then He summoned them to the sanctuary to take their part in hymns (ὕμνων) and prayers (εὐχῶν) and sacrifices (θυσιῶν), that the place and spectacles there presented and the words there spoken […] make them enamored of continence (ἐγκράτειαν) and piety (εὐσεβείας).[376]

This passage encapsulates many of Philo's main principles of his formulation of the cultic laws. It includes Philo's emphasis on the cultic laws as an expression of the uniqueness of the Jewish festivals as an antithesis to the Gentile festivals: Instead of a time of gluttony and excess they are a time to both acquire and practice moderation. It also emphasizes the role of prayer, "the words there spoken", in creating a cult which is able to transform its participants and reach the cult's *telos.*

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[374] *Laws* 1.175.

[375] *Laws* 1.186.

[376] *Laws* 1.193.

Part II: Dualism in Priesthood

Having discussed Philo's formulation of the Temple rituals, I now turn to those who were appointed to perform those rituals-- the Priests. Even more than in the case of the Temple, the issue of Priesthood in Philo has rarely been discussed from a legal or practical point of view. Many studies have been dedicated to the figure of High Priest and the doctrine of *logos*,[377] to the universal role of the High Priest, the theme of the People of Israel as a nation of Priests,[378] and also to the relationship of Priesthood to Christian doctrines of *logos* and of sacrifice.[379]
However, Philo also dedicates a significant portion of his account to the actual role of the Priests in Jewish society; their role in the Temple-cult, the share they had in the meat of the sacrificed animals and in the tithes, and their role as teachers of the Torah.[380] I will begin my discussion on the Priests with how Philo's portrayal of the Priesthood and the Priests addresses the problem of a Priesthood which is determined solely by familial descent rather than byother qualifications.

The Priests "According to the Flesh"

Paraphrasing Paul's famous saying "behold Israel according to the flesh",[381] we might imagine an equivalent "behold Priesthood according to the flesh" with relation to the Jewish Priests. Indeed, the question of Priesthood is an excellent example which demonstrates what it means to be a dualist when we talk about Philo. Theoretically, a "pure" dualist (like Paul) would reject the idea of Priestly descent altogether. Why would a Priest "in body" be more qualified to perform cultic rituals than any other Jew, or any other human being, for that matter? In fact, insofar as its status is based on familial descent, the conception of Priesthood is just as problematic as Jewish identity is, given that it is based on ethnicity and descent rather than on spiritual, essential qualifications. Thus we would expect both issues to be delicate from Philo's perspective.

To be sure, this does not seem to concern Philo at all. In fact, some scholars purport that Philo himself was a Priest by descent,[382] and that his Priestly identity informed the way he addressed the issue of the Temple cult. Nor was it a matter of concern for

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[377] Barker above; J.M Scholer, *Proleptic Priests: Priesthood in the Epistle of Hebrews,* JSNT.S 49 (1991), 63-71, J. Laporte, "The High Priest in Philo of Alexandria," *The Studia Philonica Annual* 3 (1991), 71-82; G.L. Coulon, *The Logos high priest: an historical study of the theme of the Divine Word as heavenly high priest in Philo of Alexandria, the epistle to the Hebrews, gnostic writings, and Clement of Alexandria* (diss.), Paris, 1966, 10-33.

[378] T. Seland, "The 'Common Priesthood of Philo and 1 Peter: a Philonic Reading of Peter 2:5-9," *Journal for the Study of the New Testament* 57 (1995), 87-119.

[379] Most of the above and also R.J. Daly, "Christian Sacrifice: The Judaeo-Christian Background Before Origen," *The Catholic University of America Studies in Christian Antiquity* 18 (1978), 389-422; W. Horbury, "The Aaronic Priesthood in the Epistle to the Hebrews," *JSNT* 19 (1983) 21-29;

[380] J. Leonhardt-Balzer, "Priests and Priesthood in Philo: Could We have Done without Them?" in: D.R. Schwartz et al (eds.), *Was 70 CE a Watershed in Jewish History? On Jews and Judaism Before and After the Destruction of the Second Temple* (Boston & Leiden: Brill, 2012), 125- 152.

[381] Corinthians 10:18.

[382] D.R. Schwartz, "Philo's Priestly Descent," in: F.E. Greenspahn et al (eds.), *Nourished With Peace, Studies in Hellenistic Judaism in Memory of Samuel Sandmel* (Chico: Scholars Press, 1984), 155-171. Against Schwartz, see J. Leonhardt-Balzer, "Priests and Priesthood in Philo," above, esp. 128-129.

Philo with respect to the question of Jewish identity.[383] Even though Alan Mendelson was right in pointing to certain practices as detrimental to Philo's Jewish identity,[384] as Maren Niehoff has shown, the ethnic component was just as central in Philo's construction of Jewish identity.[385] Instead of directly addressing the problem of the significance of descent, Philo characteristically adds the spiritual or mental aspect to his portrayal of the Priests, just as he does to the Jewish identity at large, adding "soul" to "the body." Thus, when it comes to Jewish identity, Philo introduces a midrashic interpretation of the name "Israel," in order to prove that the Jews have a special spiritual quality.[386] As I will now demonstrate, Philo emphasizes that the spiritual component is what qualifies the Priests, as well.

What Qualifies a Priest?

So how did Philo describe the qualifications of Priesthood beyond Priestly descent? In his description of Moses as High Priest, Philo reiterates the significance of the spiritual qualities of the Priests in general. According to Philo, it was not their kinship that led Moses to pick his brother and nephews as Priests in the newly erected Tabernacle:

> He selected out of the whole number his brother as high priest on his merits […] and in this he was not giving precedence to his own family but to the piety and the holiness (εὐσεβίᾳ καί ὁσιότητι), which he observed in their character.[387]

Although Philo, of course, does not deny that once Moses made his choice ,the Priesthood was forever dependent on descent, but he altars the Biblical narrative by adding a normative requirement to the selection of the Priests. In fact, descent is not the only a prerequisite for serving as a Priest, as the Priest must be perfect not only in body —as any physical defect disqualified him for service-- but in soul, as well:

> With regard to the priests there are the following laws. It is ordained that the priest should be perfectly sound throughout without any bodily deformity […] All these seem to symbolize the perfection of the soul. For if the priest's body, which is mortal by nature (θνητὸν σῶμα), must be scrutinized to see that it is not afflicted by any serious misfortune, much more is the scrutiny needed for the immortal soul (ψυχὴν τὴν ἀθάνατον).[388]

In this passage, in fact, Philo makes two assertions with respect to the significance of the soul. First, Philo claims that the Priest's body should be unblemished because the body reflects something about the soul. Thus, we might infer from this that just as the Priest's body reflects something about the Priest's soul, so does the Priest's familial or tribal descent reflect something about the Priest’s mental or spiritual qualities. This is very far from a dualistic approach which rejects the body altogether.[389]

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[383] Philo himself makes an analogy between the Priests and the People of Israel as a nation of Priests (Laws 2.163): "[…] the Jewish nation is to the whole inhabited world what the Priest is to the state."

[384] A. Mendelson, *Philo's Jewish Identity* (Atlanta: Scholars Press), 1988.

[385] M. Niehoff, *Philo on Jewish Identity and Culture*, Esp. 20-33.

[386] *Legatio ad Gaium*, 4-7.

[387] *Moses* 2.141.

[388] Laws 1.80-81.

Second, Philo seems to call for an inspection of the Priest’s qualities with respect to his piety or spirituality. Did Philo have some specific practice in mind, or was he aware of any such practice, when he asserted that “much more is that scrutiny needed for the immortal soul”? Did Philo imagine a scenario in which a Priest could be disqualified on the grounds of a “blemished soul,” just as a Priest suffering from, for instance, leprosy would be?

We know nothing of such a practice. Second-Temple and rabbinic sources seem to reflect different criteria ranging from lottery to adherence to the sectarian laws of the Sect which happened to influence the halakhic practice in the Temple in any given period.[390] These criteria were used to determine who of the Priests would be chosen to carry out the rituals in the Temple. Thus, for instance, the Mishnah tells us of a Priest who was pelted with the *etrogim* in the Temple, supposedly because he followed the Zaddokkite law in the ritual of the water libation of the *sukkot* festival.[391] Priests were also dismissed from their Temple duties if they had been held as captives by pagans, or if they immigrated to foreign lands. Additionally, Priests were disqualified from reading the Torah publicly if they did not have proper pronunciation.[392]

There is no reference in Second-Temple sources of a process that served to inspect the Priest's soul, and it would be hard to imagine such a ritual. Nonetheless, Philo’s message is clear. Juristically, even if not practically, Priesthood depends on the body, but even more so – on the soul.

Priestly Marriage Laws and Dualism

Another very practical aspect of laws concerning Priests has to do with the laws pertaining to marriage. According to Biblical law, it is forbidden for an ordinary Priest to marry a harlot or a divorcée, and it is forbidden for the High Priest to marry a widow, as well.[393] The Bible does not explicitly state what the consequences of such a forbidden marriage are, but according to rabbinic law, while such a marriage is considered valid, it disqualifies the Priest from active Priesthood not only with respect to carrying out Temple duties, but also with respect to the pPriest’s privileges regarding partaking of sacrifices and tithes.[394]

Philo chooses to explain the ban on marrying a harlot by saying that “a harlot is profane in body (*σῶμα*) and soul (*ψυχὴν*).”[395] Indeed, when Philo explains the source for the High Priest's restrictions with respect to marriage he maintains the body-soul language:

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[389] According to Leonhardt-Belzer, “Priests and Priesthood,” 129, Similarly perhaps in 1.117 Philo inserts into the Biblical law Lev. 21.17-18, disqualifying Priests on the grounds of physical impairments, the mental aspect, as well. This is questionable. Colson translates “or suffers from any defect”. The Greek is ἤ καί τινα μῶμον ἐνδέξηται, and does not necessarily imply a spiritual defect as opposed to a bodily one.

[390] Mishnah *Tamid.* see above fn. 18.

[391] Mishnah *Sukkah* 4.8.

[392] J.M. Baumgarten, “The Disqualifications of Priests in 4Q Fragments of the ‘Damascus Document’, A Specimen of Recovery of pre-Rabbinic Halakha,” in: *The Madrid Qumran Congress, Proceedings of the International Congress on the Dead Sea Scrolls Madrid 18-21 March, 1991* (Leiden, New York, köln: Brill, 1992), 503-513. Philo also testifies to the Priest’s role as a reader of the Bible on the Sabbath (*Hypothetica* 7.13): “Some Priest who is present, or one of the elders, reads the holy laws to them and interprets them at each point.”

[393] Leviticus 21.7.

[394] Mishnah *Yevamot* 6.7.

[395] Laws 1.102.

> This is laid down first in order that the holy seed may pass into pure and untrodden soil […] secondly that by mating with souls (ψυχαῖς) entirely innocent and unperverted they may find it easy to mold the characters and dispositions of their wives.[396]

Thus, the High Priest's restrictions have a dual purpose. First, from a physiological point of view, they ensure that the Priest's genealogy remains pure. Second, they make sure that the Priest's wife's soul may be easily influenced by her husband. Indeed, Philo follows this reasoning by implying that when it comes to the High Priest's marriage, virginity is not merely a physical status. This is reflected in Philo's reference to the possibility of a High Priest marrying a widow out of betrothal, i.e. a virgin widow.

Generally, the Torah differentiates between two legal states in marriage-- Betrothal and Marriage. In short, the betrothal has to do with the monetary aspect of marriage (through a transaction between the husband and the maiden's father), and the marriage itself, with all the sexual and familial aspects. In Biblical law this distinction has additional implications, as in the different punishments in case of rape or adultery.[397]

As for pPriests, the Torah does not specify whether a widow (in the case of a High Priest) or a divorcée is restricted for marriage if, in fact, they were only betrothed, and are consequently still virgins. It would logically seem that a betrothed woman should be excluded from the special restrictions pertaining to Priests, as the main issue seems to be sexual purity.[398] But when Philo discusses this law he follows an extra-Biblical tradition:

> Let the High Priest then take a virgin (παρθένον) who is innocent of marriage. and when I say "virgin" I exclude not only one with whom another man has had intercourse but also one with whom any other has been declared to have an agreement of betrothal, even though her body (σῶμα) is that of a maid (ἁγνεύῃ) intact.[399]

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[396] *Laws* 1.105.

[397] Deuteronomy 22.23-24.

[398] The Bible begins the law regarding the High Priest with the generalization "He shall marry only *a woman who is a virgin*" (Leviticus 21.13) and then continues with a detailed list of forbidden marriages: "A widow, or a divorced woman, or a woman who has been defiled, a prostitute, these he shall not marry." Thus it seems that a woman who became a widow while in state of betrothal is permitted to marry a High Priest. As for the ordinary Priests, the Torah merely states, "they shall not marry a prostitute or a woman who has been defiled; neither shall they marry a woman divorced from her husband." Here, too, it seems that the main thrust has to do with sexual behavior and not with the fact that these women have already been "owned" by another man. This interpretation is supported by Deuteronomy 24:1, according to which the Bible connects divorce and inappropriate sexual behavior: "If a man marries a woman who becomes displeasing to him because he finds something indecent about her, (ערוות דבר) and he writes her a certificate of divorce, gives it to her and sends her from his house." The Hebrew term ערוות דבר (indecency) belongs to the semantic field of sexual misconduct.

[399] *Laws* 1.107.

The Mishna follows the same law, and it is plausible that in this case, Philo was following what he knew to be the practical law: “A High Priest should not marry a widow, whether this is a woman widowed out of betrothal or widowed out of marriage.”[400] In this case, both Philo and the Mishna might reflect the notion that virginity is not only a physical trait, but is a mental or at least a social state as well.[401]

Philo expresses an additional extra-Biblical view with respect to the High-Priest, according to which he may marry only a daughter of a Priest:

> so that the bride and bridegroom may be of one house and in a sense of the same blood (αἵματος) and so, harmoniously united, shew a lifelong blending of temperament (ἠθῶν) firmly established.[402]

Once more, Philo reflects the notion that there is a connection between the mental (ἠθῶν) and the physical (αἵματος). Philo’s halakhic view is shared by Josephus,[403] and most probably relies on an interpretation of the LXX version of Leviticus 21:13.[404] As for ordinary Priests, neither Philo nor the Mishna state explicitly whether a divorcée out of betrothal is forbidden for marriage, but this seems to be implied in both Philo and the Mishnah. Philo says: “As for the subordinate Priests, while the other marriage regulations are the same as the highest Priesthood, they are permitted to wed […] widows.”[405] Moreover, noting what Philo says with respect to the rape of a betrothed woman, we might say that Philo is consistent in his approach:

> Some consider that midway between the corruption of a maiden and adultery stands the crime committed on the eve of marriage, when mutual agreements have affianced […] but this too, in my opinion, is a form of adultery, for the agreements […] and the other particulars needed for wedlock are equivalent to marriage (ὁμολογίαι γάμοις).[406]

Thus, for Philo, the formal marriage is no less powerful and binding than the actual, or practical, marriage. In the Mishnah, on the other hand, it is unclear whether this applies to an ordinary Priest, as the requirement to marry a virgin is emphasized only in the case of a High Priest.[407] This, of course, cannot apply to an ordinary Priest, as he is permitted to marry a widow. However, according to the Bavli, it is forbidden for even an ordinary Priest to marry a divorcée out of betrothal.[408]

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[400] Mishanah *Yebamot* 6.4.

[401] This principle might be reflected in the Mishna’s statement in the continuation of the chapter, that “if he betrothed a woman and then was appointed High Priest, he may consummate the marriage.”

[402] *Laws* 1.110.

[403] *Antiquities* 3.277. Josephus, however, does explain the law.

[404] Daniely-Nataf, *Philo* ii, 254 fn. 168. The LXX translation adds ἐκ τοῦ γένους, to the MT which only requires a virgin. According to E. Regev and D. Nakhman, “Josephus and the Halakhah of the Pharisees, The Sadducees and Qumran," *Zion* 67, 426 [Hebrew], Philo's view is parallel to the Temple Scroll according to which a king may marry only a wife of his kin. However, it seems that Philo relies predominantly on his interpretation of his source.

[405] *Laws* 1.108.

[406] *Laws* 3.72.

[407] Thus the Mishnah (*Yebamot* 6.4) posits that the High Priest may not marry an adolescent or any other woman whose hymen may not be in tact even if she has kept her chastity.

[408] BT *Yebamot* 59a.

As for the Sectarians from the Dead Sea, there is no direct reference to this issue in the writings from Qumran. As Aharon Shemesh has noted, the concept of betrothal as a separate stage, distinct from marriage, is missing in the scrolls. According to Shemesh, this should not surprise us, as the texts from Qumran reflect the notion that, following the Genesis "Garden of Eden" narrative, the bond between a man and a woman is physiological, and not a social institution, and once consummated, cannot be annulled.[409] Accordingly, the formal, monetary, betrothal has little, if any, significance at all.

In light of the above, considering the legal significance of betrothal, Philo is closer to rabbinic law than to the Sectarians, although it's worth noting that in this case the Sectarians are the ones who have a more independent approach with respect to Biblical law. More important for our purposes however, is the fact that Philo formulates the law through the concept of body *(σῶμα)* and soul (*ψυχὴν*): Just as the qualifications for Priesthood lie not only in the body, so do the marital laws which pertain to Priests apply not only to the body, but to the soul, as well.

Priests and Ritual Purity

In the discussion above I have shown the significant role purity plays in Philo's formulation of the process of offering a sacrifice, with regard to the worshiper. This is true with respect to the Priests, as well. Biblical law requires that Priests serve in the Temple only when in a state of purity. The High Priest may never defile himself by touching a corpse, even that of a close relative, while ordinary Priests are permitted to defile themselves when handling the corpse of their closest kin for the purpose of their funerary rites. Likewise, the Priests are not allowed to partake of their share in the sacrifices and tithes if they are impure.[410]

Philo first introduces the laws of purity pertaining to the Priests following the laws of marriage, since, as noted, one of the aspects of these laws concerns itself with the fact that a Priest will become impure as part of the mourning and funerary rites, and therefore dictates whom of his deceased kin the Priest may not approach:

> No one shall defile himself for a dead person among his relatives except for his nearest kin: his mother, his father, his son, his daughter, his brother; likewise, for a virgin sister, close to him because she has had no husband, he may defile himself for her. But he shall not defile himself as a husband among his people and so profane himself.[411]

In this aspect, Philo follows the letter of the law, and does not mention the possibility that a Priest's wife is considered "nearest kin". Tannaitic literature, on the other hand, is more lenient. In the *sifra* (most probably the earliest collection of legal midrash), the status of a Priest's wife is divided into two categories:

> "except for his nearest kin" this means nothing other than his wife […] "But he shall not defile himself as a husband" […] how is this? He is

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[409] C. Werman and A. Shemesh, *Revealing the Hidden,* 150-160.

[410] Leviticus 21-22.

[411] Leviticus 21.2-4.

> permitted to defile himself for his lawful wife, but he is not permitted to defile for an unlawful wife.[412]

Thus, according to the *Sifra*, a Priest is permitted to defile himself on account of his deceased legitimate wife, but if he marries, for instance, a divorcée, he may not. It is impossible to determine whether the rabbinic leniency already existed in Philo's time and, if it did, whether he was aware of it. As Vered Noam has shown, the rabbinic laws of purity differ quite significantly from those of Philo, who represents both an earlier, less developed, and an essentially different, concept of purity laws.[413] Philo's formulation of the purity laws pertaining to Priests fits into his general portrayal of the spiritual aspects of the Priests' responsibilities.

When Philo describes Moses' introduction into Priesthood, he asserts that first he had to be clean "as in soul, also in body." This did not involve merely a ritual purification, but required "to have no dealings with any passion, purifying himself from all the calls of Nature, food, and drink and intercourse with woman."[414]

Of course, Philo does not require that any ordinary Priest maintain the same standards of purity as Moses, such as celibacy or fasting. Nonetheless, the purity of body and soul is essential to the Priests. According to Philo, the animals brought for sacrifice were subject to close scrutiny by the most distinguished Priests (δοκιμώτατοι τῶν ἱερέων ἀριτίνδην) "for fear that some blemish had passed unobserved."[415]But the main purpose of this practice was to teach the Priests that any sacrificial act must be preceded by an act of purification. In correlation with what I have shown thus far, Philo links this to the demand that the Priests must be unblemished in body as well as in soul as they approach the Temple:

> When they approach the altar to offer either prayers or thanks they must come with no infirmity or ailment or evil affection of the soul (ψυχῇ), but must endeavor to have it sanctified and free from defilement.[416]

Thus, the act which to us may seem to be the most mundane and least spiritual practice in the Temple, i.e. inspecting the animals' bodies for any blemishes, is redefined by Philo to reiterate his view of the essence of the Temple cult: a series of physical rituals which are dependent on, or intended to affect, the human soul. Philo's spiritualization of the role of the Priests is demonstrated not only by emphasizing that the Priests themselves must be pure and with a perfect soul, but also by portraying their role as mediators, in praying (εὐξόμενοι) or "giving thanks" (εὐχαριτήσοντες).[417]

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[412] *Sifra, Emor* 1.

[413] V. Noam, *From Qumran to the Rabbinic Revolution: Conceptions of Impurity*, 204-217. According to Noam, in rabbinic literature we see an ambivalent approach towards the ontology of impurity. Some rabbinic laws seem to reflect a realistic approach, according to which impurity is "a thing", while other laws reflect a nominalist approach, i.e. that impurity and purity are theoretical legal constructions, imposed on reality. See also, V. Noam, "Is it True that 'A Corpse Does Not Defile'? On Ritual Contamination in Tannaitic Literature," *Trabiz* 78 (2009), 157-188.

[414] *Moses* 2.68. As opposed to Leonhardt-Balzer, "Priests and Priesthood", 131, who quotes this source as if it relates to the Priests, in general.

[415] *Laws* 1.166.

[416] *Laws* 1.167. cf.

[417] Unlike Colson, according to Danieli-Nataf, *Philo of Alexandria Writings*, (265, cc. 240), Philo is not referring here to prayer, but to sacrifices of gratitude or dedication to the Temple. However, Philo is consistent in referring to actual prayer, saying, for instance, that during the festivals "he

Sacrifice and Prayer

As Jean Laporte notes, the emphasis on ritual purification before sacrifice and prayer is not mentioned only in Philo's laws, but is repeated in his narratives, as well.[418] Thus, for instance, Philo relates that the Patriarchs purified both their body and soul before sacrificing, and their lives were filled with prayer and supplication.[419] That the Temple rituals were supplemented and accompanied by prayer is clearly not a Philonic innovation, although the Bible's legal texts concerning the Temple cult contain very little prayer. The book of Leviticus, which is the main Biblical source for Temple-worship, describes a Temple cult carried out in silence, devoid of any moral nature.[420] The Letter of Aristeas testifies that in the Temple, "the most complete silence reigns so that one might imagine that there was not a single person present, even though there are actually seven hundred men engaged in work."[421] In Qumran, prayer is a *substitute* for the "corrupt cult of the Temple,"[422] and in rabbinic literature we find that prayer *replaces* the sacrifices of the now destroyed Temple.[423]

Indeed, Philo's emphasis on the centrality of prayer in the Temple ritual is telling,[424] and as Leonhardt-Balzer comments on one of Philo's references to this issue, "the passage does not refer to prayer and sacrifice as two individual elements, but as designations for the priestly service as a whole."[425]

A significant part of the Priests' role in the Temple has to do with their role as mediators. As part of this role, Philo emphasizes the Priests' state of mind i.e. the purification of the soul, as they perform the Temple rites. According to Philo, the Priests partake in the eating of the sin offering as an assurance that the sacrifice was well received as "none of the Priests is permitted to perform the rites if he is not wholly sound (ὁλόκληρος)."[426]

Inserting Intention into the Temple Cult

Rabbinic literature does not relate to the intention behind the sacrificial ritual as crucial, but does stipulate that the Priest must have the *a priori* intention to perform the ritual and consume the sacrifice at the proper time and in the proper place. More

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summoned them to the sanctuary to take their part in hymns and prayers and sacrifices (ὕμνων καὶ εὐχων καὶ θυσιῶν), Laws, 1.193.

[418] J. Laporte, "Sacrifice and Forgiveness in Philo of Alexandria," *The Studia Philonica Annual* I (1989), 33-42.

[419] *Abraham* 6.51.

[420] I. Knohl, *The Sanctuary of Silence: The Priestly Torah, and the Holiness School* (Minneapolis: Fortress Press: 1995). There is ample evidence that in practice the Temple ritual was accompanied with prayer. See N. Sarna, "The Psalm Superscriptions and the Guilds," in: S. Stein & R. Lowe (eds.), *Studies in Jewish Religion and Intellectual History* (Alabama: University of Alabama Press, 1979), 281-300.

[421] The Letter of Aristeas 95. The translation according to R.H. Charls, *The Apocrypha and Pseudepigrapha of the Old Testament*, Clarendon Press: Oxford, 1913.

[422] B. Nitzan, "The Liturgy at Qumran: Statuary Prayers," in: M. Kister (ed.), *The Qumran Scrolls and their World*, Yad Ben Zvi Press: Jerusalem 2009, 225-250. [Hebrew].

[423] *Bamidbar Rabbah* 18, *Bavli Berkhot* 26

[424] For more on prayer in Philo, see Leonhardt-Belzer, *Jewish Worship in Philo,* 101-141. On prayer in the context of Temple worship, see especially 129-132.

[425] J. Leonhardt-Balzer, "Priests and Priesthood in Philo: Could We have Done without Them?" in: D.R. Schwartz et al (eds.), *Was 70 CE a Watershed in Jewish History? On Jews and Judaism Before and After the Destruction of the Second Temple* (Boston &Leiden: Brill, 2012), 128.

[426] *Laws* 1.242.

accurately, the Rabbis do not require a positive intention when sacrificing, but rather assert that intending to sacrifice in the wrong place, or consume the sacrifice at the wrong time, renders the sacrifice void. Thus, according to rabbinic law, the intention accompanying the act of sacrifice is not intended to add a spiritual component to the technical act of sacrifice, but rather to make sure that the act is performed in the proper state of mind, i.e. with the intention to perform the act for the right purposes and according to the law.[427]

In *Moses,* Philo reiterates that the mental state of mind of the priest is crucial to his ability to perform his duty in the Temple:

> If the worshiper is without kindly feeling or justice, the sacrifices are no sacrifices (ἄθυτοι θυσίαι), the consecrated oblation is desecrated, the prayers are words of ill omen.[428]

Although in this text Philo might be referring to a person offering a sacrifice, it seems more likely that he is referring to the Priest performing the ritual. It should be noted, however, that from a methodological point of view, using this text for comparative purposes is somewhat limited. Whereas clearly, when the Rabbis speak of intentions which disqualify the sacrifice from a halakhic point of view, they mean that the sacrifice is legally void, and it is required to perform a new sacrifice. Philo, however, may be speaking from a religious or moral point of view, arguing that cultic worship must have a moral and mental component. Otherwise, the physical act would be worthless.

We should note that the word the rabbis use in order to proclaim a sacrifice void i.e. *פיגול*, is taken form Lev. 7.17 and Lev.19.7, which commands that the *שלמים* sacrifice must be eaten within two days, otherwise it is rendered an unacceptable "abomination". The Septuagint translates the Hebrew word *פיגול,* in Lev. 7.17 as μίασμά i.e. "defilement" or "pollution", and in Lev. 19.7 as ἄθυτόν i.e. "unfit for sacrifice".[429] Interestingly, Philo uses the same word when he talks about sacrifices which are unfit because of the Priest's spirituality or mentality, calling them ἄθυτοι θυσίαι. But even more interestingly, when Philo rewrites the law in Leviticus, he uses the identical term, saying that if someone consumes the sacrifice after the second day, this sacrifice is ἀθύτων.[430]

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[427] Mishnah *Ze'vachim* 1-4; Mishnah *Menakhot 1-2*. By and large, the standard rabbinic concept of "intention" is having in mind to perform, appropriately, the action one is doing in the appropriate manner, rather than to add some external spiritual meaning to the physical action. In the case of sacrifices, however, the Rabbis do define some "positive" intentions, but, somewhat untypically, they assert that the lack of these intentions do not always void or render the sacrifice unfit (Mishna *Menakhot* 1). According to Gilat, "intention" as a significant component of halakha is a development in Tannaitic literature which marks the difference between figures who represent early halakha like Rabbi Eliezer, and later halakhic traditions. Thus a "strong reading" of Philo in this context would result in an atypical picture, according to which Philo represents a maximalist approach with respect to the significance of intention in religious contexts. Y.D. Gilat, "Intent and Act in Tannaitic Teaching," *Bar-Ilan* 4-5 (1967), 104-116.

[428] *Moses* 2.107.

[429] The Hebrew word *פיגול* is also mentioned in Isaiah 65:4; (where the LXX translates θυσιῶν, i.e. sacrifices); Ezekiel 4:14 (where the LXX preserves the legal meaning ἕωλος, i.e. "out of date" or "obsolete") and three times in the Temple Scroll from Qumran. In the Temple Scroll the term denotes defilement 11QTa XLVII 14;18, 11QTa LII 18, pages 186, 191, in E. Qimron, *The Dead Sea Scrolls, The Hebrew Writings*, (Jerusalem: Yad Ben Zvi Press, 2010).

Since Philo uses the same term both when he talks about a sacrifice that is clearly unfit according to Biblical law, and to determine that a sacrifice is unfit if the Priest does not have the appropriate intentions, we cannot rule out that in this context, Philo was speaking as a "jurist", rather than a "preacher".

Philo Preserves Both Meanings of פיגול

Finally, it should be emphasized that although the Rabbis' concept of "intention" in the context of the פיגול law was rather limited, it was still very radical with respect to the Biblical law in several aspects: (1) It changed the essential meaning of פיגול from an action to an intention (2) It changed the way the law applies - According to Biblical law the פיגול applies retroactively, whereas according to rabbinic law the פיגול disqualifies the sacrifice before the act of sacrifice (3) Biblical law applies to the person offering the sacrifice who must consume it within the limited time,[431] while according the rabbinic law, it applies to the Priest.

If Philo is indeed using the word ἄθυτόν as equivalent to פיגול, he is, in effect, preserving both the Biblical meaning (in Laws 1.223), i.e. a sacrifice consumed after two days, and the meaning we find in rabbinic literature (Moses 2.107). This applies to all three aspects mentioned above. Having said this, there is one fundamental difference between Philo and the Rabbis. Whereas the rabbinic mental component concerns a specific intention that the Priest may or *may not have* when sacrificing, Philo speaks of an absolute requirement to positively have a very specific state of mind when performing the sacrifice. It is because of this adamant position that it is questionable whether Philo uses *ἄθῠτος* in a legal sense, or merely to make a religious or moral statement, as mentioned above. In any case, the possibility that Philo is, in fact, reflecting a practical law, should not be ruled out.

The Priests as Mediators

The Priests' role as mediators is evident not only with regard to their physical purity and their proper state of mind in determining that a sacrifice was properly received, but also in the context of the tithes. Thus, for instance, according to Philo, it is the Priest who recites the canticle mentioned in Deuteronomy 26, rather than the person offering the first fruits, which is actually what is prescribed in the Bible. Philo's testimony predates a similar tradition in the Mishnah,[432] and most probably reflects the actual practice. The portrayal of Priests as mediators also resonates with what we have seen during our discussion on vows. According to Philo, Priests have the authority to annul vows of dedication, as their role as recipients of dedications allows them to either refuse or accept a dedication consecrated to God.[433]

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[430] On the oddity of ἀθύτων in the genitive in this case, see Colson's note, *Philo* XII, 228.

[431] There are, in fact, two additional somewhat minute differences. On the rabbinic self-awareness of the radical concept of פיגול see Y. Sagiv, *Studies in Early Rabbinic Hermeneutics as Reflected in Selected Chapters in the Sifra,* Dissertation: The Hebrew University of Jerusalem 2009, 84-106.

[432] Mishnah *Bikkurim* 3:7. Leonhardt-Belzer, "Priests and Priesthood", 131-133.

[433] Philo, *Hypothetica* 7.5.

To sum up, according to Philo, everything the Priests are and everything they do has both a physical and a spiritual component. Priesthood is determined by familial or tribal descent, but the initial choice of their line was based on their spiritual merits. These requirements demand that the Priests' spirituality, even more than their physical state, which in itself is only a mirror to their spiritual qualities, continue to be under constant scrutiny. Even the restrictions that the Priests are subject to with respect to marriage have to do with the spiritual implications of their spouses' past and present.

As for the responsibilities of the Priests in the Temple--, i.e. inspecting the animals before sacrifice, receiving the first-fruits (ביכורים), slaughtering and sacrificing--, they are all accompanied by prayer, as well as purification of both the body and the soul, all of which ultimately determine whether their actions were successfully carried out.

An Additional Remark: The Law of the First-born Donkey

Since one of my main goals is to examine Philo's law in the context of Second-Temple and rabbinic Judaism, it is appropriate to discuss the law of the first-born tithes, even if this minute issue does not fit into the general theme of this chapter, as it may offer some additional insights, from the comparative perspective.

Biblical law requires that the firstborns of impure livestock should be dedicated to God, and since they cannot be sacrificed they should be ransomed. According to Exodus 13:13 this applies only to donkeys, whereas according to Numbers 18:15 this applies to all species of impure animals. Unlike rabbinic law, Philo chooses the Exodus version and asserts that "the firstborn males of all land animals suitable for the use of men […] he orders to be distributed to the Priests."[434] Belkin refers to this as a case where Philo is "contrary to the halakha", which in Belkin's case means rabbinic law.[435] However, this tradition is shared with Josephus, several sources from Qumran, and, as Aharon Shemesh has demonstrated, even early rabbinic sources.[436] Shemesh argues that Philo's tradition reflects a more elegant and simple solution to the discrepancy in the Torah, and probably the actual law that was practiced at his time.

This is yet another clear example of Philo's place in the development of Jewish law as, first and foremost, a representative of a period during which the law practiced was closer to the simple meaning of the text. Thus, as we have seen in many examples, while some of Philo's laws reflect his distinct thought, interpretation etc. others reflect merely his day and age. It is worth noting that as I have noted in my discussion on

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[434] *Laws* 1.135

[435] Belkin, Philo, 69 n. 7. Generally speaking Belkin argues that when it comes to tithes, Philo followed the letter of the law rather than the actual practice (67-78). Belkin reflects the view that rabbinic literature, even two centuries after Philo, must reflect the reality of the Second-Temple period. However Philo's affinity to Josephus and other Second-Temple sources make it more plausible to assume that indeed Philo is closer to the letter of the law, but at the same time was well aware of the practices of his time, even in Palestine.

[436] A. Shemesh, "The Laws of the Firstborn and the Cattle Tithe in Qumran Literature and Rabbinic Halakhah," *Megilot* 3 (2005), 143-161.

Shabbat, in this case too, the rabbinic figure which seems to reflect the same view as Philo and his contemporaries, is Rabbi Eliezer.[437]

Conclusion

Philo's elaborate account of the Jewish Temple cult expresses a great interest and awareness of the cult in Jerusalem. This is perhaps counterintuitive in several different respects: 1. it reflects an interest in, and, more importantly, an awareness and knowledge of practices that weren't part of Philo's reality. 2. It contrasts with Philo's tendency to allegorize and concrete terms like "metropolis" or "migration."
Clearly, Philo's dualism is reflected in many expressions of contempt towards the body.[438] However, Philo's account of the Temple laws emphasizes that we should not identify these expressions with the Paulin dualism. At least in the context of the cultic laws, for Philo the role of the soul is not to find ways to abandon the physical aspects of life, but rather to insert the physical and give it meaning and value. Thus, every aspect of the cultic laws should be accompanied by a mental or spiritual activity such as prayer, or by an activity which is intended to instigate a spiritual process in the mind of the worshiper or the Priest performing the cultic practice for the worshiper. Philo's dualism as reflected in the Temple laws is more about rejection of the bodily *desires* than skepticism with respect to whether the body has anything meaningful to inform us of. On the contrary, in Philo's view, the body affects and reflects the condition of the soul. In this respect, the centrality of self-restraint *vis a vis* Philo's account of cultic laws is almost natural, as it addresses the real challenge we are faced with both when it comes to the body on the one hand, and with practices which rely so heavily on the physical, such as the Temple cult, on the other.
In this respect, my discussion on the Temple cult may serve as the culmination of all of my discussion above, insofar as that with respect to the cultic laws Philo offers the same remedy he suggests to use whenever bodily desires pose a threat to our soul: that one should perform certain physical actions in order to internalize spiritual truths and exercise self-restraint, and accompany those physical actions with the appropriate state of mind in order to elevate them into meaningful components of a religious and spiritual life. This, in a nutshell summarizes the principles of Philonic Jewish law.

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[437] Shemesh, above, 150-151. With the possible exception of the פיגול law. See above.
[438] Boyarin, *Carnal Israel*, 31-39.

Conclusions: Philo as a Representative of His Day and Age

The goal of this dissertation was to identify what is "Philonic" in Philo's law, and what underlies Philo's special formulation of Jewish law. Throughout my dissertation I demonstrated how a comparative study of Philo's Jewish law locates Jews like himself in the same geographic, interpretive, philosophic and, to some extent, even social sphere as his contemporaries in Palestine. This, of course, does not mean that Philo was in any way identical either to the "Proto-Rabbis," or to the Sect behind the writings from Qumran, or to any other Jews we might imagine were living in Judea or the Galilee during the first century of the common era. Nonetheless, Philo and his contemporaries share many exegetical, practical and ideological views. The picture which arises from my study, is that in Philo's time traditions and ideologies were circulating between Greek-speaking Jews and Aramaic-speaking Jews, and between Palestine and the Diaspora. The nature of this give-and-take can be seen as egalitarian insofar as there is no reason to suppose that any Greek-speaking Jews felt inferior with respect to the Palestinian/Hebrew/Aramaic traditions. This allowed distinctively Hellenistic principles which were internalized and translated into the Jewish context by figures like Philo, to leave a mark on Palestinian Halakha and Midrash. In other cases, Palestinian traditions made their way into the practices of Greek-speaking Jews.

Ultimately, as an historian, I am less troubled by the question of where a certain tradition originated, and who was "influenced" by whom. This kind of discourse would assume a hierarchy between Palestine and the Diaspora, or between rabbinic Judaism and other groups. Any such discourse would be distorted by the vast amount of rabbinic texts and the place these texts have had in the course of the last 1500 years. We can only speculate whether there were additional "Philos", some of whom were probably more like Philo himself, others more like Jesus or the Rabbis. I find it most significant that in Philo's time, Jews asked similar questions and answered these questions using similar exegetical techniques, sometimes reaching the same outcome, and in other instances reaching very different ones.

Thus, for example, the rabbinic portrayal of the Septuagint, reflects a unique status of the Greek language, and specifically of the Septuagint, and seems to stem from the same midrashic, social, and practical context as Philo's. Philo's midrashic methods were emphasized in several of the laws I have discussed in relation to Speech-acts, as well. Since Philo predated the Rabbis, his relationship to rabbinic innovations of, for example, alternative formulae of speech-acts, serve as another model of a possible rabbinic internalization of traditions which originated in Greek-speaking environments.

Although Philo's Sabbath is distinctive with respect to Philo's emphasis on the spiritual and intellectual qualities of the Sabbath, Philo's midrashic and practical traditions do have their parallels in Rabbinic and Qumran literature. In Philo's lengthy formulation of marital laws, I have shown that indeed Philo frames this legal and social issue in purely Greek terms, distinct of rabbinic (especially BT) conceptions of the body. However, from a practical point of view, in manty cases, Philo seems to anticipate rabbinic law, reflecting as earlier, less developed, albeit not essentially different, law. Philo lacks the concept of quantifiable measures for the fulfillment of religious obligations. To be sure, this reflects Philo's stage in the development of Jewish law, but is also consistent with Philo's portrayal of Jewish law as a never-ending quest for self-improvement rather than for the appeasement of God. In more than any other topic this is emphasized in Philo's treatment of the cultic laws. It was in the context of these laws, which have to do with the worship of God through a series of physical actions, that Philo decided to reiterate the significance of the spiritual transformation of the worshiper. Thus, according to Philo, the *telos* of religion is not God but the worshiper, himself.

Indeed, in my dissertation I have identified what is distinctive in Philo's formulation of Jewish law. I have shown how Philo used Greek terminology and ideology in order to justify and rationalize distinctively Jewish practices. Philo saw Jewish law as the best tool to address the weakness of human-nature, which is constantly challenged by its excessive desires (ἐπιθυμίας). This is to be achieved by practices geared either towards the exercise of self-control (ἐγκράτεια) and prudence, or towards an intellectual internalization of these predominantly Greek values, through the symbolic language of these laws. In this, Philo anticipates what Maimonides will write over a millennium later.[439]

As many scholars have noted, our understanding of Jewish history and of the development of Jewish law in Late-Antiquity is limited, and perhaps even distorted, by the specific textual and archaeological evidence available to us. I do not wish to argue that my analysis of Philo's law solves the question of "Jewish history/histories," or even the question of the history of Jewish law, or "Halakha." Nonetheless, I would argue that my reading of Philo identifies him as someone who functioned and created an unequivocally rich and varied version of Judaism. His writings attest to a period, which produced several versions of Judaism, which were not isolated from one another, but, were in fact, part of one singular historical phenomenon. There is no need to "Rabbinize" Philo in order to allow him his rightful place in Jewish history or in the history of Jewish law. My hope is that this dissertation makes a convincing case that Philo deserves a place of honor in the history of his culture and tradition in his own right.

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[439] Maimonides, *Eight Chapters*, 6.

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Appendix: A Summary of Philo's Traditions Discussed in the Dissertation

The purpose of the following table is to demonstrate our findings with respect to Philo's place in the development of Jewish law. All of the traditions included in the table are traditions which are not Biblical, as these traditions offer the possibility to speculate on the processes and motivations behind Philo's law. Here is an explanation of the different categories.

Philo's source – in this rubric we note the source for Philo's law, and his originality with respect to the Bible or to Second Tempe/rabbinic sources: 1. Midrashic reading of the Biblical text, or a very literal reading of the Biblical text. 2. Social reality – this means that Philo seems to reflect what he knew to be the law at his time. In such cases there is not much to learn of his unique philosophy or interpretations. 3. Legal Theory – e.g. Hellenism/Dualism/speech theory – these laws seem to reflect, either by the details of the law or by their rationale, Philo's philosophical beliefs, and the influence of these convictions on the way Philo formulated his law. In some cases it seems that more than one option is a plausible explanation.

Affinity or contradiction – this can mean either that Philo is parallel to or differs from other attested traditions in the details of the law or in the theoretical basis of the law.

Essential or Developmental differences – this is probably the most subjective criterion. It attempts to determine whether Philo's agreement or disagreement with other traditions reflects an essential, (philosophical, interpretational, ideological) difference or agreement, or whether it reflects Philo's historical period in the development of Jewish law. In some cases, both seem to be the case. For instance, Philo's laws with respect to an infertile marriage reflects both an essential view of the purpose of sexual relations and human desires, and, at the same time, an earlier stage in Jewish law which was yet to develop quantified measures for different legal criteria, such as when does on fulfill the obligation to procreate, or when is a marriage rendered infertile.

Philo's Tradition	*Philo's Source*	*Affinity with other Jewish Legal Systems*	*Direct Contra-dictions with other Jewish Legal Sources*	*Essential (Synchronic) or Developmental (Diachronic) Differences with other Legal Systems*
Ban on any work performed by a slave on the Sabbath, even permitted actions. (Laws 2.69)	Midrashic interpretation	Qumran ?	Rabbinic	Essential
The ban on lighting fire represents many other forms of work which rely on fire as the source of all other crafts and tools. (Laws 2.60, Moses 2.219-220)	Midrashic interpretation	Rabbinic and Qumran		Developmental
Sabbath is a day of Social gathering in order to study and read from the Torah (Moses 2.125)	Social reality	Rabbinic		Developmental
Sabbath as a day dedicated to the soul-- a mini Day of Atonement. Rejection of the bodily pleasures as the *telos* of the Sabbath (Laws 2. 62-64, Laws 2.194, Moses 2. 212)	Hellenistic Dualism. Midrashic interpretation.	Rabbi Eliezer	(Main-stream) Rabbinic Josephus	Essential
The Biblical requirement to bathe after sex, social rather than essential (i.e. impurity) reasons (Laws 3.63)	Hellenistic ,Dualistic approach towards sexual desires	Rabbinic?	Josephus	Essential
The *telos* of sexual relations is procreation – not pleasure	Dualistic approach towards sexual desires	Rabbinic Law		Essential

The only justification for sexual relations is procreative potential. Non-procreative sex is forbidden (Abraham 249)	Hellenistic, Dualistic approach towards sexual desires		Rabbinic Law	Essential
Lack of definition of the religious obligation of procreation		Qumran	Rabbinic	Developmental
It is forbidden to touch a woman during her menstrual period (Laws 3.32)	Social Reality or conventions. Midrashic Interpretation?	Rabbinic		Developmental
It is forbidden to marry a barren woman (laws 3.34)	Hellenistic ,Dualistic approach towards sexual desires		Rabbinic	Essential and Developmental
A woman divorced on the grounds of infertility may not remarry (Laws 3.36)	Hellenistic, Dualistic approach towards sexual desires		Rabbinic	Developmental and Essential
A figurative understanding of “wedding-night gown” law of Leviticus (Laws 3.80)	Midrashic interpretation	Qumran Rabbinic		Developmental
Prostitution is a capital offense (Joseph 43, Laws 3.51)	Hellenistic, Dualistic approach towards sexual desires		Rabbinic	Essential
The Greek Language has a special status with regard to the translation of the Torah (Moses 2.38-40)	Social reality. Hellenism. Midrashic interpretation.	Rabbinic		Developmental
It is forbidden to curse even (false) gods of other nations (Moses 206)	The Septuagint. Social reality.			Essential
Mentioning the Tetragrammaton is a capital offense	Midrashic interpretation	Qumran		Essential

(Moses 2.203)				
Cursing one's “benefactor” (εὐεργέτην) is a capital offence (Hypothetica 7.1-7.2)	Midrashic interpretation. Social reality.			Essential
even a word uttered "by chance", counts as blasphemy	Speech-theory View on intention		Rabbinic	Essential
Alternative and incomplete formulae in oaths and vows are valid (Laws 2.4)	Social reality Speech-theory	Rabbinic		Developmental
Oaths which are against the laws of the Torah are not binding (Laws 2.13)	Speech-theory	Rabbinic	Qumran?	Developmental
A dedicatory vow may be rejected by a priest (Hypothetica 7.5)	Speech-theory		Rabbinic Qumran	
Practice of the Oath subtype of a dedicatory vow i.e. *qonam* (Hypothetica 7.4)	Social reality Speech-theory	Rabbinic	The Gospels Qumran	Developmental And Essential
The daily incense preceded the sacrifice in the morning and followed it in the evening (laws 1.171)	Hellenistic Dualism	Rabbinic (some)	Rabbinic (some)	Essential
The priest’s soul should be scrutinized, not only his body (Laws 1.80-81)	Hellenistic Dualism			Essential
A High Priest may not marry a widow out of betrothal (Laws 1.107)	Hellenistic Dualism Social reality	Rabbinic		Developmental And Essential
The High Priest may marry only a daughter of a priest (Laws 1.110)	The Septuagint	Josephus		Essential

A priest may not become impure in order to perform funerary rites for his wife	Literalism		Rabbinic	Developmental And Essential
The law of *pigul* has to do with intention (Moses 2.107)	Hellenistic Dualism	Rabbinic (in principle)	Rabbinic (in detail)	Essential
Anyone entering the Temple should go through the process of cleansing from corpse-defilement (Laws 259-260)	Social reality(?) Hellenistic Dualism		Rabbinic	Developmental And Essential
The first-born of all livestock are to be given as tihes (Laws 1.135)	Social reality The Septuagint?	Early Rabbinic (Rabbi Eliezer)	Rabbinic	Developmental