

Not ‘Natural Law’: [The] Law(s) of Nature ([ὁ/οἱ] νόμος/νόμοι φύσεως) in Flavius Josephus

Carson Bay*

1. Introduction

The variegated notions attached to the term “law” (usually νόμος) in Josephus’ corpus comprise a perennially thought-provoking sphere of inquiry. Scholars have long been interested in Josephus’ treatment of the Jewish Law, ὁ νόμος as Torah.¹ Important work has also appeared in more particular inquiries, drawing conclusions from Josephus’ orientation toward laws (plural),² (Jewish or otherwise), and/or examining his engagement with laws pertaining to particular

* Dr. Carson Bay, Postdoctoral Researcher in the Institute for Jewish Studies at the University of Bern, Switzerland, and part of the SNF research project *Lege Iosephum! Ways of Reading Josephus in the Latin Middle Ages*. Author’s Note: I owe many thanks to Jan Willem van Henten for providing helpful feedback on this article in an earlier form, and I owe a special thanks to Steve Mason for his careful, detailed, and indeed brutal critique of this essay as well; many footnotes below stem from the suggestions made by these two scholars. Before that, I owe my thanks to David Levenson and Chris Seeman for including the paper on which this article is based in the Josephus Seminar of the 2020 Society of Biblical Literature Annual Meeting (December 7, 2020 via Zoom). Most recently, I would like to thank the anonymous reviewer(s) for *JSIJ* who offered helpful feedback on this article.

¹ See the foundational discussion in Mason, *Flavius Josephus on the Pharisees*, 97–105. His critical point is that “although Josephus identifies the νόμοι of the Jews with the Mosaic Law, he evidently sees that Law only through the filter of post-biblical tradition and current practices familiar to him, which he finds already implicit in the law” (100). Mason also notes the important point that Josephus “seems to use ὁ νόμος, οἱ νόμοι, τὰ ἔθνη, οἱ ἔθισμοί, τὰ νόμια, τὰ πάτρια, and various combinations of these phrases as practical equivalents.” See further Bons, “Das Gesetz als Maßstab für Israel und seine Bedeutung für die Völker bei Flavius Josephus,” 157–70; and Fraade, “Nomos and Narrative before *Nomos and Narrative*,” 81–96, at 86–87; also Vermes, “A Summary of the Law by Flavius Josephus,” 289–303, argues that Josephus’ interest in the Law was “in providing a religious explanation and moral justification of the Jewish way of life” rather than “detailing what was licit or illicit” (290). For the bibliography up to 1984, see Feldman, *Josephus and Modern Scholarship*, 492–527. For a recent overview of the Torah/law as Halakha in Josephus (arguably an anachronism, as the term “Halakha” postdates Josephus by many decades), see Nakman, “Josephus and Halacha,” 282–92.

² Almost one hundred years ago, for example, Bernard Revel read Josephus’ idiosyncratic treatment and omission of certain laws as indicative of “anti-traditional interpretations” which reframed biblical law in a “desire to gain the approval and admiration of . . . Gentile readers.” See Revel, “Some Anti-Traditional Laws of Josephus,” 293. See also Gerber, *Ein Bild des Judentums für Nichtjuden von Flavius Josephus*, §11.

themes.³ Recent studies have plumbed Josephus' take on Sabbath laws;⁴ laws regarding marriage and family;⁵ laws pertaining to diet and hygiene;⁶ and other spheres as well. On a more conceptual level, some have dealt with laws to which Josephus refers which are not legal entities per se, but rather broader rules or norms.⁷ Paradigmatic of research on more abstract notions of 'law' in Josephus is Jonathan Price's short article on the "law of history" invoked at *BJ* 1.11 and 5.20 (see below).⁸ It is within this latter, more notional domain of 'law' that the current article proceeds.

This article's thesis is simple: it maintains that when Josephus uses the language of *the* laws or *a* law "of nature" ([ὁ/οἱ] νόμος/νόμοι φύσεως), he is not gesturing to the often vague notion of universal principles that have, since antiquity, been referred to as 'natural law.'⁹ Rather, Josephus cites the "law(s) of nature" as more or less technical terminology with a specific, restricted sphere of reference. This article demonstrates this by surveying the five passages in which Josephus employs this exact terminology: 1) *BJ* 3.370; 2) *BJ* 3.374; 3) *BJ* 4.382; 4) *AJ* 4.323; 5) *AJ* 17.95. Starting from this philological base, it then views the 'law of nature' according to Josephus through ancient Mediterranean eyes. That is, first I show that Josephus' explicit reference to 'law(s) of nature' always relates to the moment or process or experience of death. As such, I suggest that one can read Josephus' law(s) of nature as a rule (or rules) that govern the border

³ Indeed, Josephus claims at several places (*AJ* 1.25; 4.198) that he is in the process of writing another work (or works) on the Mosaic Law, that is "On Customs and Causes" (Περὶ ἔθων καὶ αἰτιῶν); see Altshuler, "The Treatise ΠΕΡΙ ΕΘΩΝ ΚΑΙ ΑΙΤΙΩΝ 'On Customs and Causes' by Flavius Josephus." For a brief overview of Josephus' treatment of the laws of Moses in *AJ* 3–4, see Spilisbury, *The Image of the Jew in Flavius Josephus' Paraphrase of the Bible*, 111–13.

⁴ See McKay, *Sabbath and Synagogue*, 61–88 (in comparative relief); more comprehensively, see Doering, *Schabbat*, 479ff; see also Weiss, "The Sabbath in the Writings of Josephus."

⁵ Bons, "Marriage and Family in Flavius Josephus's *Contra Apionem* (II, § 199–206) against its Hellenistic Background;" Kasher, "Josephus in Praise of Mosaic Laws on Marriage (*Contra Apionem*, II, 199–201)."

⁶ See Kottek, *Medicine and Hygiene in the Works of Flavius Josephus*, 73–80 *et alibi*.

⁷ See Marmor, *Philosophy of Law*, 1–2.

⁸ Price, "Josephus and the 'Law of History': A Note." At *BJ* 1.11 Josephus identifies an emotional outburst on his part, as historian, as being "contrary to the law of history" (παρὰ τὸν τῆς ἱστορίας νόμον); at *BJ* 5.20 Josephus again correlates restraining one's emotions as being "according to the law of (history-) writing" (τῷ νόμῳ τῆς γραφῆς). Cf. Herodotus 1.5.3–4. Price concludes that "Josephus seems to mean in both places that a historian is professionally bound to eliminate bias or partisan involvement in his subject, and consequently avoid any emotional outburst in his writing" (10).

⁹ On the term from the later Roman Republic onwards, see the early but good article by Pollock, "The History of the Law of Nature: A Preliminary Study."

between the realms of the living and the dead. In any case, this study highlights Josephus' creative engagement with ideas and vocabulary developed within the Hellenistic world, yet consonant with a Jewish worldview. The distinctive features of Jewish Hellenism and *Romanitas* are on display in Josephus' idiosyncratic and unusual use of language when he refers to a (or the) law (or laws) 'of nature.'

2. *Law, Nature, and Natural Law in Josephus*

As with so many ideas in Josephus' oeuvre, when one approaches the concept of law (νόμος) or laws (νόμοι) therein,¹⁰ one is faced with a complex interplay between distinctively Jewish notions of Torah with the complementary ancestral laws *and* the multiform discussion of law(s) that circulated within Greco-Roman antiquity.¹¹ Steve Mason has warned against "any attempt to read νόμος in Josephus as a technical term for an exclusively Jewish concept."¹² Jonathan Price has identified within Josephus' notion of a 'law of history' "a concept he learned from Western (Greek) historiography while at the same time giving it a second, Jewish significance."¹³ Thus, in addition to the law or laws of the Jews or of other particular peoples or places, Josephus speaks about "the common law of all people" (ὁ πάντων ἀνθρώπων νόμος ὡμῶς; *BJ* 1.378) in reference to the diplomatic immunity generally granted to ambassadors in war. More broadly, Josephus will refer to a "law of war" (νόμος πολέμου), which he apparently expects his readers to understand as a consensus guideline governing wartime behavior and policy.¹⁴ Josephus refers frequently to different kinds of laws, usually with the structure of νόμος/νόμοι + genitive. These range in their apparent meanings from actual rules to vague norms.¹⁵ Suffice it to say that 'law' for

¹⁰ See Rengstorff, *A Complete Concordance to Flavius Josephus*, 3.151–55 (νόμος).

¹¹ "There is no questioning the importance of law for the Jews of antiquity or the basic equivalence of the terms 'law,' νόμος, and πρῶτος. But in the Hellenistic period, whenever Jewish thinkers began to consider the law of Moses, the ancestral law of the Jewish people, philosophical questions that emerged first among the Greeks and the Romans came to the fore. There is no way to avoid it: once one begins to think about law in the midst of Hellenism, issues related to the law's particularity and universality naturally emerge." Martens, "The Meaning and Function of the Law in Philo and Josephus," 27.

¹² Mason, *Flavius Josephus on the Pharisees*, 105.

¹³ Price, "Law of History," 9.

¹⁴ Usually in the dative construction νόμῳ πολέμου and usually, but not always, without the definite article: *BJ* 2.90; 3.363; 4.260; 4.388; 6.239; 6.346 ("laws of war" plural); 6.353; *AJ* 1.315; 6.69; 9.58; 12.273; 14.304; 15.157.

¹⁵ For example: the "law of capture" (νόμος καταλήψεως; *BJ* 4.117); the "laws of the service" or "laws of the soldier" (οἱ τῆς στρατείας νόμοι; *BJ* 5.123); "the law of the lot" (ὁ κλήρου νόμος; *BJ* 7.396); "the law of the festival" (ὁ νόμος τῆς ἑορτῆς; *AJ* 17.241).

Josephus could represent everything from the Jewish Torah to much broader notions of law.¹⁶

Josephus' use of the term φύσις ("nature") is, similarly, very broad and appears with extreme frequency throughout his work.¹⁷ The spectrum of definitions provided by Rengstorf is helpful for establishing its range of meaning in Josephus' writing:

nature — of things: natural condition, original nature; (natural) individuality, quality, characteristic, peculiarity, (favourable, unfavourable) situation — of persons: innate character, nature, disposition, individuality, temperament, mentality; also of the essence or nature of God; ... — producing (creating) force: nature — nature as produced (created): natural creation, creature, mortal (frail) nature; ... ἀνθρωπίνη φύσις = creaturely character of man, natural quality of man, human condition, human nature; παρὰ φύσιν ... = beyond the limits of nature (?) — nature as a given order: nature, natural order, **natural law**; ties of nature; ties of blood; natural rights; genus; ... nature, types (?), modes of action (?); ἐκ φύσεως ... = unnatural (?); παρὰ φύσιν ... = unnatural — adverbial phrases: φύσει: by nature, naturally; according to one's nature (character, disposition); given by nature, in an inherited (innate) manner; originally; according to nature; according to the natural

¹⁶ See Gutbrod, "νόμος," summarized in Feldman, *Josephus and Modern Scholarship*, 811: "... in his usage of νόμος Josephus combines Jewish, that is Pharisaic, thought with a strong apologetic strain founded in Hellenistic rationalistic and spiritual qualities." Feldman (1970) also notes that Holladay, *Theios Aner in Hellenistic Judaism*, "remarks that Josephus' symbolic interpretation of the Tabernacle reflects the Stoic view of νόμος as the expression of the κόσμος," whereby Josephus maintains "that Judaism follows not a provincial but a cosmic law code" (*Ant.* 3.180–187). As a starting point for νόμος in Josephus, see a paper recently presented by Jan Willem van Henten: "Nomos in Flavius Josephus: The Appeal of the Jews Law to Josephus's Roman Readers in his Prologue to the Antiquities." delivered at the international conference *Law: Textual Representation and Practices in the Ancient World*, Martin-Luther-Universität Halle-Wittenberg, Germany, May 27, 2022. The entire proceedings of this conference are salient for the subject matter of this paper; of particular interest might also be the paper presented by Annette Weissenrieder and Kosta Gligorijevic on "Natural Law in Philo of Alexandria" at the same conference on May 28. Van Henten's paper, which lays out some of the core tenets related to law in Josephus' oeuvre, constitutes new material, but reflects his past work, for example his 2020 essay "Herod's Law Against Theft."

¹⁷ Rengstorf, *Concordance*, 4.337–39.

condition; κατὰ τὴν φύσιν, τὴν φύσιν (of persons) = according to (one's) character (nature).¹⁸

The semantic breadth, and the semantic ambiguity (note the preponderance of question marks) of the term φύσις in Josephus are easy to see in this entry. Also noteworthy is the extent to which this snapshot sets Josephus apart from the Greek Jewish Scriptures. In the latter, the term φύσις only appears in three of the latest ('apocryphal') works, namely 3 Maccabees, 4 Maccabees, and the Wisdom of Solomon.¹⁹ However, Josephus is in line with the Jewish Hellenistic thought of his time,²⁰ writing as he did the generation after Philo, who employed the term φύσις liberally throughout his corpus.²¹ Still, it must be stated that φύσις, a term

¹⁸ Rengstorf, *Concordance*, 4.337 (bolding mine). It should be noted that Josephus' usage of the term φύσις within his different works is not necessarily consistent. In *BJ* the dative φύσει is prevalent, appearing in 26 of 49 uses in Books 1–6 (usually doing the work of something like a 'dative of disposition,' so-and-so being x *by nature*). In Book 7 of *BJ*, the dative appears only twice in 19 appearances of the term, and in that book the nominative (5x) and accusative (8x) are somewhat disproportionately represented relative to other sections. In *AJ*, which evinces a great diversity of usage and where the term φύσις appears some 166 times, one finds the term used in prepositional phrases that never occur in *BJ*: for example, κατὰ φύσιν appears in *AJ* to describe the natural growth of animals (1.54), female menstruation (1.322; 3.261; 3.275), natural childbirth (2.292; 3.88), the Nile's naturally potable waters (2.295), the basic human need to urinate (6.283), a normal bodily disposition of health (7.164), the usual five fingers of each human hand (7.303), and the natural use of the human hand when unimpeded (8.234). See *CA* 2.199, where Josephus states that the Jewish law permits sex (μίξις) only κατὰ φύσιν, i.e. 'with women' (τὴν πρὸς γυναῖκα). The phrase παρὰ φύσιν appears twice (*AJ* 12.54; 19.88) to describe negatively a group's or individual's 'natural' disposition/ability; παρὰ φύσιν also appears twice in *CA* at 2.273 and 2.275. In both cases it describes the 'unnatural' laws of other nations vis-à-vis the Jews (thus the phrase appears to carry different valences or implicit spheres of application in *AJ* and *CA* respectively). Josephus' use of the phrase κατὰ φύσιν has some conceptual proximity to the phrase under study in this article.

¹⁹ 3 Macc 3:29; 4 Macc 1:20; 5:8; 5:9; 5:25; 13:27; 15:13; 15:25; 16:3; Wisd 7:20; 13:1; 19:20. The phrase νόμος φύσεως appears in none of these works. Predictably, φύσις becomes a more common term in Hellenistic Jewish literature thereafter, as witnessed, *inter alia*, by the Greek texts of the New Testament: Rom 1:26; 2:14; 2:27; 11:21; 11:24; 1 Cor 11:14; Gal 2:15; 4:8; Eph 2:3; Jas 3:7 (x2); 2 Pet 1:4. This latest reference has been used to argue that the author of 2 Peter knew Josephus, on which see Callan, "The Second Letter of Peter, Josephus and Gnosticism" and Starr, *Sharers in Divine Nature*, 83–92.

²⁰ This is not, of course, to say that the Greek Jewish Bible was not thoroughly conversant with aspects of Hellenistic thought, though perhaps in a less-developed form than we find in Josephus. Indeed, Josephus and the LXX both introduce Hellenistic forms into Jewish subtexts, just in terms and at times that often vary. See further here Feldman, "The Septuagint: The First Translation of the Torah and Its Effects," 58–60.

²¹ See Borgen, Fuglseth, and Skarsten, *The Philo Index*, s.v. "φύσις" (and c.f. s.v. "νόμος"). It is unfortunate that this resource, though useful, does not have the format of Rengstorf's

much-loved by Josephus, is scarcely present in the Greek Jewish Scriptures, and therefore has no clear antecedent in the Jewish biblical tradition. Its presence in Josephus is largely a testament to his Hellenism. As such, it is worth noting that Josephus uses the term in certain constructions, with precedents in earlier Greek literature, that appear to signal something like a universal norm or “natural law” (as in Rengstorf above).²² However, the actual Greek phrase “law of nature,” created by fusing φύσις in the genitive to the term νόμος/νόμοι, is not widely attested in the Greek tradition standing behind Josephus but is in fact Philonic. As we will see, Josephus’ usage of the individual terms φύσις and νόμος/νόμοι provides only a little help in interpreting what is for him a technical Greek phrase: “law of nature” (νόμος/νόμοι φύσεως).

When νόμος and φύσις are put together, with the latter modifying the former, this creates a sort of paradox for the ancient Greek way of thinking.²³ As Louis Feldman once explained, “[t]he word *nomos* ... was by the Greeks traditionally contrasted with *physis*, ‘nature.’”²⁴ Indeed, Aristotle himself, perhaps most important for the codification of a Hellenistic cultural understanding of νόμος and φύσις respectively, explicitly distinguishes in the *Nicomachean Ethics* between τὸ φυσικόν as a notion of justice (τοῦ πολιτικοῦ δικαίου) that transcends geographical and national borders, and τὸ νομικόν, the particularized, more properly ‘human’ construal of δίκαιος.²⁵ His teacher, Plato, also distinguishes between the two.²⁶ A simple articulation of the distinction later appears in

Concordance to Flavius Josephus. Even in a time of unprecedented access to texts via resources like the *TLG*, the online Loeb library, Perseus, etc., Rengstorf’s *Concordance* is the scholarly tool that makes a study like the present one practicable. A similar tool for Philo would be of inestimable utility.

²² Compare other constructs with the genitive of φύσις, such as τὸ τῆς φύσεως δίκαιον at *BJ* 1.507, which there means something like “right action according to nature” as it relates to brotherly affection.

²³ The classic work is Heinemann, *Nomos und Physis*.

²⁴ Feldman, “Torah and Secular Culture,” 489, citing Herodotus 3.38 and Sophocles’ *Antigone* as illustrations (in the latter, Antigone “espouses the cause of *physis*, the unwritten law of nature, which, she says, transcends *nomos*”).

²⁵ Aristotle *Nic.* 5.7.1.

²⁶ Plato *Gorg.* 482e–483a. In 483e Callicles states that the right of the stronger exists κατὰ νόμον τὸν τῆς φύσεως. In the Loeb edition of W. R. M. Lamb, the note on the former passage reads: “The distinction between ‘natural,’ or absolute, and ‘conventional,’ or legal, first made by the Ionian Archelaus who taught Socrates in his youth, is developed at length in the *Republic* (i.388 foll.), and was a constant subject of discussion among the sophists of Plato’s time” (383). Cf. Theophrastus fr. 152. See further Adams, “The Law of Nature in Greco-Roman Thought.” However, note the argument that “Aristotle’s partition of the natural and conventional parts of political justice does not ... map neatly onto the *physis* and *nomos* distinction” which was “familiar from the mid to late fifth

Diodorus Siculus' *Library of History*, placed into the mouth of the Scythian sage Anacharsis. The latter states that while wild animals live according to nature (κατὰ φύσιν), humans living according to laws (κατὰ νόμους). He then explains: “for nature is a work of God, while law is an ordinance of man” (εἶναι γὰρ τὴν μὲν φύσιν θεοῦ ποίησιν, τὸν δὲ νόμον ἀνθρώπου θέσιν).²⁷ At a basic lexical level, therefore, νόμος φύσεως would almost seem to be a contradiction in terms within the conceptual universe of Classical and Hellenistic Greek. This makes it somewhat less surprising that “[t]here is, in fact, very little evidence for the occurrence of the term ‘law of nature’ (νόμος φύσεως) in classical Greek texts.”²⁸ Yet it is certainly this Greek lexical-conceptual milieu with which Josephus is largely engaging when he references the idea of a ‘law of nature.’ Indeed, it has been pointed out that Josephus’ “translation of Torah by *nomos* is utterly misleading”²⁹—i.e., is a Hellenistic and not a ‘native Jewish’ notion. Moreover, his use of φύσις is indicative of an endemically Greek semantics, even if, as Josephus states somewhere, the Jewish way of life “is in all things arranged in symphony with the nature of the universe.”³⁰ The constituent concepts of the phrase νόμος φύσεως in Josephus are, therefore, quite Greek; but, as we shall see,

century BCE Greek thought and associated most readily with the sophistic movement.” See Duke, *Aristotle’s Legal Theory*, 131 (with notes 4–5).

²⁷ Diodorus Siculus *Bibl. Hist.* 9.26.4 (trans Oldfather, LCL).

²⁸ Koester, “NΟΜΟΣ ΦΥΣΕΩΣ,” 522. See 521–23 and, along with the sources mentioned elsewhere in the present article, Ocellus Lucanus *On Nature* 49.23.8 and Dionysius of Halicarnassus 3.11.3 (mentioned on 523). On the ethnographic implications of the juxtaposition of nature and law in ancient Greek writers, see 524–26.

²⁹ Feldman, “Torah and Secular Culture,” 490: “and yet, so far as we can tell, the translation was never challenged in Hellenistic Jewish literature.” Feldman sees this as contributing to a situation where Paul could then “refer to Judaism as a purely legalistic religion and could speak of the abrogation of the *Nomos* and of its displacement by the religion of the spirit.”

³⁰ πάντα γὰρ τῆ τῶν ὄλων φύσει σύμφωνον ἔχει τὴν διάθεσιν (*AJ* 1.24). Here Josephus is effectively conflating the work of the lawgiver (ἡμέτερος νομοθέτης) Moses and his own work (λόγος) as a historian. At 1.18, Josephus distinguishes between writing “on laws and historical facts” (περὶ νόμων καὶ πράξεων ἔχων) and that devoted to “natural philosophy” (φυσιολογία), again drawing upon Moses’ work (i.e. the Torah) to define his own. The latter term, φυσιολογία, is a *hapax legomenon* in Josephus’ corpus (Rengstorff, *Concordance*, 4.337). Schimanowski, “Propaganda, Fiktion und Symbolik,” comments, in relation to this passage, that “Der Begriff der φύσις wird aber bei Josephus durchaus auch kritisch—und in Spannung zur Mosegesetzgebung—eingesetzt” (325n61). The idea that the Law of Moses reflects the natural universe is most closely associated with Philo. At the beginning of his *On the Creation*, he states that the law of Moses and the cosmos harmonize, literally “sing together,” with one another: “the world is in harmony with the Law, and the Law with the world” (καὶ τοῦ κόσμου τῷ νόμῳ καὶ τοῦ νόμου τῷ κόσμῳ συνᾶδοντος). Moreover, this cosmic-legal framework comports “with the will of nature” (πρὸς τὸ βούλημα τῆς φύσεως; *Opif.* 3).

the phrase itself turns out to be quite Jewish. It is, in fact, apparently a hallmark of the Hellenistic Judaism, or Jewish Hellenism,³¹ of which Josephus is a paragon.

Whether or not the idea of natural law existed at all within pre-Hellenistic Judaism (i.e. in the Hebrew Bible) is debatable.³² The answer one gives depends in large part on how one understands or defines 'natural law.' In fact, the correlation between the broad, modern notion often referred to as 'natural law' and whatever an ancient Greek-writing author (particularly a Jewish one) might mean by the phrase νόμος φύσεως is by no means obvious. Thus, when modern commentators speak of a notion of "natural law" in Josephus—or, indeed, when a modern translator like Thackeray translates a phrase like κατὰ φύσιν as "in accordance with natural laws"³³—this is a less-than-literal reflection of Josephus' Greek, however notionally appropriate it might seem. However, as we will see, Josephus' restricted notion of a "law of nature" does jibe with certain aspects of an ancient Jewish understanding of the world, if not a notion endemic to the traditional language of the Jews, Hebrew (or Aramaic). The upshot of all this is that we must distinguish between modern concepts and those deduced from ancient language usage. This article therefore does not focus on Josephus' notion

³¹ Both phrases are used in scholarship, "Hellenistic Judaism" being much more prevalent, though neither is without its problems. I still think that both phrases are helpful, however, inasmuch as I take "Hellenistic Judaism" to refer to a form or forms of Judaism directed by influences stemming from the Hellenistic Greek world, whereas "Jewish Hellenism" might be used to refer to one of many forms of Hellenism characterized by a Jewish core, or Jewish influences. My thoughts on this issue are inspired by conversations with and the writings of René Bloch, such as Bloch, "Show and Tell."

³² Begin with Novak, *Natural Law in Judaism*, 27–61. "From antiquity to the present, Jewish theologians have argued whether Judaism has a concept of natural law or not" (27).

³³ Which he does at *AJ* 1.54, in regard to parts of the natural world that grow by themselves: see trans. Thackeray, LCL, 26–27. See also 290–91 where Thackeray renders κατὰ φύσιν as "after nature's law" (*AJ* 2.292), referring to natural childbirth. See also *AJ* 19.305 (trans. Feldman, LCL), where the phrase τοῦ φύσει δικαιοῦντος is translated "by natural law," referring to proper claims to and controls of appropriate spheres of power for leaders of different kinds. Using the phrase "natural law" to translate a Greek or Latin phrase which is in fact not a construction of the two terms "nature" and "law" is not uncommon. Taking the Loeb collection as an example, consider the following renderings: φύσει as "by natural law" in Lucian's *Wisdom of Nigrinus* 26 (trans. Harmon) where also, interestingly, νόμος and φύσις are more or less directly juxtaposed; *accept mundus legem* as "the universe submitted to natural law" in Ovid's *Halieutica* (trans. Mozley); φυσικῶς as "by a law of nature" in Plutarch's *Natural Phenomena (Moralia)* 41 (trans. Pearson); πέφυκε μεταβάλλειν as "by a law of nature changes" in Plutarch's *The Principle of Cold (Moralia)* 19D (trans. Cherniss); φύσει as "by the law of nature" in Plato's *Phaedrus* 30.249E (trans. Fowler). These are just a few examples, and could be extended with little effort. The actual Greek phrase "law(s) of nature" are also often translated more literally as such across the Loeb corpus.

of what *we might call* ‘natural law,’ but rather on *what Josephus apparently meant* in using the phrase “law of nature” (νόμος φύσεως). By this phrase, it shall be argued, Josephus means something specific, something which resonates with both of his backgrounds in Hellenistic culture and Jewish tradition.

3. νόμος φύσεως in Hellenistic Judaism/Jewish Hellenism (i.e., in Philo)

Before proceeding to the texts, one last framing matter must be attended to: namely, the emergence and use of the phrase νόμος φύσεως within the Greek-language Jewish texts of the Hellenistic Age. As noted above, a “law of nature” would have been to Classical Greek ears an odd notion. But to some Jewish-Hellenistic ears, the construct seems actually to have solved the task of reconciling the specific commands of the one God and (observable) universal realities which were not necessarily codified in writing.³⁴ Helmut Koester put it this way:

For the first time in Greek literature the term “law of nature” is liberally employed in the writings of Philo of Alexandria. The question arises, thus, whether the thought of this Jewish philosopher from the first century A.D. was the melting pot in which the Greek concept of Nature as a universal power and the Jewish belief in the universal validity of the divine Law coalesced and were amalgamated into the new concept of a “Law of Nature.”³⁵

In terms of ancient Greek thought, therefore, the “law of nature” as such turns out to be a distinctly Jewish notion, at least initially.³⁶ For this reason, it is worth

³⁴ Najman, “A Written Copy of the Law of Nature.” On “natural law” as something of apologetic and rhetorical utility for a Jew writing in a Hellenistic context, see Beekman, “Apologetics against the devaluation of the Mosaic Law in early Judaism?”

³⁵ Koester, “ΝΟΜΟΣ ΦΥΣΕΩΣ,” 522. Koester does note, however, “that the Latin equivalent *lex naturalis* occurs even before Philo, and seems to have risen independently of the formulation of the Greek term νόμος φύσεως.” Cicero marks the Sophistic distinction between φύσις (*natura*) and νόμος (*instituto*) in his *Topica* (90), though elsewhere (*Tusc.* 1.13.30) he refers to the *lex naturae* precisely as that which the *leges* of all peoples have in common (*omni autem in re consensio omnium gentium*). See further Horsley, “The Law of Nature in Philo and Cicero.” Against the notion that the “law of nature” as such was a central Stoic tenet is the fact that Cicero and Philo do not really agree in their usages of the term and that “all evidence for the concept of ‘natural law’ in Stoicism comes from Cicero or from Philo” (Koester, ΝΟΜΟΣ ΦΥΣΕΩΣ,” 529). Cf. Pliny the Elder, who in his *Natural History* (2.47.122) refers to the *lex naturae* as that which governs the actual elements of nature, i.e., the wind and the seasons.

³⁶ As with all cultural moods and commonplaces, the distinction between νόμος and φύσις did not remain uncontested within Greek literature. In the third century CE, for example,

asking whether or not the usage of the term as we will find it in Josephus corresponds neatly with other Jewish Hellenistic texts.

It does not.

Philo of Alexandria is, rightly, the ancient author most closely and commonly associated with the “law of nature.”³⁷ Philo is explicit, and broad, in sketching his overall definition of a law/laws of nature. Perhaps most programmatic is his statement at the beginning of *De Opificio Mundi* to the effect that (Jewish) νόμος and κόσμος are mutually reflective and that to live according to them is to align with “the will of nature” (τὸ βούλημα τῆς φύσεως; *Opif.* 3). Elsewhere, however, Philo betrays an understanding of the law of nature as a kind of *de facto* order of things in the universe, an inevitable or proper way things are (or should be), a kind of broader reality, at which the Jewish νόμος points. Thus, in his *On the Life of Moses* (2.245), Philo calls it a νόμος φύσεως that “sons are heirs of their fathers and not fathers of their sons.”³⁸ Elsewhere still he calls it “nature’s incontrovertible law, that the place of creation is in all things lower than that of the Creator.”³⁹ The implication of both these passages, that the anthropic sphere corresponds normatively to the natural order of the physical world, is even more directly claimed in *On Providence*, where Philo avers that “it is a law of nature that our bodily feelings correspond to the annual changes of the season.”⁴⁰ Philo frequently speaks of the law of nature as a norm established outside of the human sphere and thus appropriate for gauging the rightness or appropriateness of human activity.⁴¹ The systematicity of Philo’s conjoining the natural world’s

Philostratus undertakes a discussion explicitly reconciling the two: “But to me custom and nature not only do not seem opposed but actually most closely akin and similar and permeating each other” (ἐμοὶ δὲ νόμος καὶ φύσις οὐ μόνον οὐκ ἐναντίω φαίνεσθον, ἀλλὰ καὶ ξυγγενεστάτω καὶ ὁμοίω καὶ διήκοντε ἀλλήλοις). See the entire discussion of *Discourse 2* in trans. Rustin and König, LCL.

³⁷ See in general Martens, *One God, One Law*; Najman, “A Written Copy of the Law of Nature.”

³⁸ Text and trans. Colson, LCL.

³⁹ *Plant.* 132: νόμος φύσεως ἀνεπίληπτος, ὥστε κἄν, εἰ τῶν δευτερείων ἀντιλαμβανοίμεθα, καὶ θαυμαστὸν ἠγεῖσθαι. This passage characteristically explains how Moses’ law comports with this larger mandate. Text and trans. Colson and Whitaker, LCL.

⁴⁰ *Prov.* 2.23: ταῖς γὰρ ἐτησίσις τροπαῖς τὰ σώματα συμπάσχειν νόμος φύσεως. Text and trans. Colson, LCL.

⁴¹ See *Abr.* 135, where drunkenness, lasciviousness, and homosexuality are activities indicating the ‘throwing off’ of the law of nature as a yoke: ... ἀπαυχενίζουσι τὸν τῆς φύσεως νόμον. At *Abr.* 249 sexual procreation is presented as “fulfilling nature’s inevitable law” (νόμον δὲ φύσεως ἐκπιμπλᾶς ἀναγκαῖον). Cf. *Contempl.* 59. Text and trans. adapted from Colson, LCL.

norms and Jews' ancestral customs is codified in *On the Special Laws*.⁴² Once therein he asks:

ἐπει δὲ δικαιοσύνη καὶ πᾶσα ἀρετὴ νόμος ἐστὶ πατριος καὶ θεσμὸς ἀρχαῖος· νόμοι δὲ καὶ θεσμοὶ τί ἕτερον ἢ φύσεως ἱεροὶ λόγοι τὸ βέβαιον καὶ τὸ πάγιον ἐξ αὐτῶν ἔχοντες, ὡς ὄρκων ἀδιαφορεῖν;

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?

Spec. 1.13⁴³

Neither is Philo's philosophy limited to one singular 'law' of nature; rather, he speaks of murder being tantamount to "subverting the laws *and statutes* of

⁴² *Spec.* 1.58 puts a "custom of nature" in service of Philo's sophisticated theological numerology, where six and seven are portrayed as "the sources of generation according to the immutable customs of nature" (ἐξ ὧν εἰσιν αἱ γενέσεις κατὰ φύσεως θεσμοὺς ἀκινήτους); cf. *Mos.* 2.81. *Opif.* 13. *Spec.* 1.150 effectively equates the Jews' particular way of life (ὁ ἴδιος) and the universal (ὁ κοινός) as ways of viewing Jewish custom, and the latter is described as "following the lead of nature, and in agreement with the general cosmic order" (κατὰ φύσεως ἀκολουθίαν καὶ τὴν τοῦ κόσμου παντὸς ἀρμονίαν). *Spec.* 1.155 equates following the Torah and "compliance with the laws of nature" (τὸ δὲ ἔπεσθαι τοῖς τῆς φύσεως νόμοις), both of which hold great reward (ὠφελιμώτατον) though they may be difficult in the moment. At 1.205 Philo speaks of the broadly applicable principle that things which are able to be associated (τὰ δυνάμενα κοινωνεῖν) should be conjoined, and those who cannot should not, because to bring the homogenous (ὁμογενῆ) into association is 'natural' but to bring the heterogenous (ἑτερογενῆ) into an "abnormal companionship" (ἐκθέσμονος ὁμιλίας) is not right (ἄδικος) because it "upsets a law of nature" (νόμον φύσεως ἀναίρων) by blending the "unblendable and inassociable" (ἄμικτα καὶ ἀκοινώνητα). This may be related to the statement at 3.176 where men seeing women naked or women seeing men naked "disregards the statutes of nature" (ἀλογοῦσαι φύσεως θεσμῶν) and, later, the 'will of nature.' At 1.213 excessive taxation due to avarice is described as that which "overturns the laws of nature" (τὰ φύσεως ἀνατρέπεται νόμιμα). At 3.32 abstaining from sex during a woman's menstrual cycle is portrayed as a way of "respecting the law of nature" (νόμον φύσεως αἰδοῦμενος). At 3.38 (as at 1.325) Philo says that "turning a man into a woman...violates the law of nature" (τὸ φύσεως νόμισμα παρακόπτοντα) and merits death. At 3.112 cutting children off from one's inheritance is equated with "breaking the laws of nature" (νόμους φύσεως καταλύοντες). At 3.189 God is portrayed as the Father and begetter (ὁ γεννήσας πατήρ) of all things in the cosmos by a law of nature (νόμῳ φύσεως), of the whole and the parts (τοῦ ὅλου καὶ τῶν μερῶν). Texts and trans. adapted from Colson, LCL.

⁴³ Text and trans. Colson, LCL. Cf. *Spec.* 1.202, which says basically the same thing about ritual sacrifice; see also 1.306.

nature” (νόμους φύσεως καὶ θεσμούς ἀνατρέπων; *Dec.* 132).⁴⁴ Just as the Jewish Law (Torah) was made up of many laws, so the “natural law” which Moses’ Law(s) reflected could be spoken of in the plural as well; ‘law’ or ‘laws,’ Mosaic and natural legislation were for Philo two sides of the same God-minted coin.⁴⁵

This latest reference of Philo’s to a plurality of laws (and statutes) of nature comes close to Josephus in that the passage addresses murder specifically. There are also several other places where Philo’s use of the notion comes close to that of Josephus. But my analysis below will elucidate a much more restricted (specialized?) meaning in Josephus’ conception of a law of nature. Philo and Josephus share certain characteristics in their reference to a/the νόμος/οι φύσεως: both refer both to a law (singular) and laws (plural) of nature; both use and omit the definite article at times; and both see such law(s) as transcending the anthropic sphere yet being directly applicable to it. Both authors also associate such law(s) with particular themes, though what they have in common here constitutes a tiny minority of what the term can mean in Philo’s corpus (but not in Josephus’). Whereas Philo may be said to have invented the term,⁴⁶ Josephus makes scant use of it. A survey of the phrase in Josephus’ *oeuvre* makes clear that the notion as he used it was much more specific than what we find in Philo’s almost all-encompassing conceptualization.⁴⁷

4. “The Law of Nature” as Technical Terminology in Josephus

In what follows, Josephus’ five uses of the expression “law(s) of nature” are examined in sequence. In each case, analysis shows that this expression always deals with the experience of dying.

(1) The first mention of a ‘law of nature’ in Josephus’ corpus comes during the famous climax at Jotapata in Book 3 of *BJ*.⁴⁸ There, facing impending defeat at the hands of the Romans, Josephus—the still-active Jewish general—finds

⁴⁴ *Dec.* 137 says that ἔθος (“custom”) is (over time) stronger than nature: διότι ἐγγρονίζον ἔθος φύσεως κραταιότερόν ἐστι.

⁴⁵ See Najman, “Written Copy.” See also Najman, “The Law of Nature and the Authority of Mosaic Law.”

⁴⁶ Koester, ΝΟΜΟΣ ΦΥΣΕΩΣ,” 540, speaking of “the development of the theory of natural law:” “Most probably, Philo was its creator, at least insofar as the evidence from the Greek literature is in question.” Koester ends his study for calling for an examination of the idea in early Christianity, which he thinks will confirm his conclusions.

⁴⁷ In addition to the references listed in notes above, for the “law of nature” and associated ideas in Philo see *Aet.* 59; *Agr.* 31; 43; *Contempl.* 3; *Ebr.* 37; 57; *Legat.* 67; *Migr.* 105; *Post.* 185; *Praem.* 42; *Prob.* 30; 37; 62; 79; *Prov.* 2.3; *Sobr.* 25; *Somn.* 174; *Virt.* 132.

⁴⁸ None of the Greek ‘law of nature’ phrases in *BJ*, treated here and below, have textual variants according to the standard critical edition of Niese and Destinon, *Flavii Iosephi Opera, Vol. VI: De Bello Iudaico Libros VII*, 323, 397.

himself in a cave with forty other “men of distinction” (τῶν ἐπισήμων ἄνδρας; *BJ* 3.342). Eventually, Josephus is discovered and offered safe passage and clemency in return for his personal surrender (3.344–46). Unsure at first, Josephus recalls past dreams and eventually decides to surrender (3.350–54), yet “not as a traitor” (οὐ προδότης), but as a “minister” (διάκονος) of God (3.354).⁴⁹ Highly offended at this, Josephus’ comrades express incredulity at his unwillingness to die for his country rather than capitulate; they threaten to kill him, either willingly, as a “general of the Jews” (Ἰουδαίων στρατηγός), or unwillingly, as a προδότης (3.355–60). In response, Josephus opts to “reason philosophically” (φιλοσοφεῖν) with his countrymen (3.362). Within his speech, Josephus identifies that which his fellows are depicting as a patriotic death as tantamount to suicide. And suicide, he argues, is wrong:

ἀλλὰ μὴν ἢ αὐτοχειρία καὶ τῆς κοινῆς ἀπάντων ζῶων φύσεως ἀλλότριον καὶ πρὸς τὸν κτίσαντα θεὸν ἡμᾶς ἐστὶν ἀσέβεια. τῶν μὲν γε ζῶων οὐδὲν ἐστὶν ὃ θνήσκει μετὰ προνοίας ἢ δι’ αὐτοῦ· φύσεως γὰρ νόμος ἰσχυρὸς ἐν ἅπασιν τὸ ζῆν ἐθέλειν.

“No; suicide is alike repugnant to that nature which all creatures share, and an act of impiety towards God who created us. Among the animals there is not one that deliberately seeks death or kills itself; for **a law of nature** is strong in [or among] all of them—the will to live.” *BJ* 3.369–70⁵⁰

Readers of Josephus have paid considerable attention to his treatment of suicide generally.⁵¹ Here this question is tied up in the perennially difficult issue of assessing the form and function of Josephus’ recorded speeches.⁵² Close attention

⁴⁹ See further Kelley, “The Cosmopolitan Expression of Josephus’s Prophetic Perspective.”
⁵⁰ Text and trans. Thackeray, LCL. It is also possible to translate the key phrase in this passage differently: e.g., “the will to live is a powerful law in all of them by nature.”

⁵¹ Indeed, this is one of numerous topics for which Josephus has received attention from outside of the scholarly guild. See, e.g., Hankoff, “Flavius Josephus: Suicide and Transition;” idem., “Flavius Josephus: First-Century A.D. View of Suicide;” idem., “The theme of suicide in the works of Flavius Josephus.” A good summary discussion of suicide in Josephus is Kottek, *Medicine and Hygiene*, 171–80. A study of the “formal characteristics of the various suicide accounts in Josephus” with the aim of understanding “the function of suicide forms within Josephus’ writings” and assessing “the historicity of these forms” is found in Newell, “The Forms and Historical Value of Josephus’ Suicide Accounts.”

⁵² According to Thackeray, *Josephus: The Man and the Historian*, 42, speeches such as that quoted above are “set speeches ... purely imaginary and serve the purpose of propaganda.” See more recent discussions in, e.g., Mason, “Speech-Making in Ancient Rhetoric,

to what “law of nature” implies here, however, requires a trip down neither of these rabbit holes.

The simple observation to be made here is that what Josephus calls (a) “law of nature” (φύσεως νόμος) apparently refers to a norm which applies to all living things, and which constrains them to desire, i.e. to opt/choose, to continue living.⁵³ A law of nature regulates against living creatures choosing to die (ἢ αὐτοχειρία) via a built-in mechanism which controls their willing (a φύσις that is common to all sentient beings). Another way of thinking about this is to say that a law of nature polices the boundary between life and death by forestalling an inappropriate, in this case an intentional, crossing of that boundary. We return to a fuller discussion of this view later.

(2) The second time “law of nature” is mentioned in Josephus comes shortly after the reference above. Moments later, within the same speech, Josephus takes a new tack: he presents God as the author, and thus owner, of life, thereby arguing that suicide equates to scorning and offending the maker and master of all, inasmuch as it constitutes a misuse of the deposit (παρακαταθήκη) which God gives to creatures in granting them life (*BJ* 3.372). To so abuse God ‘the lender’ marks one as “evil” (πονηρός) and “faithless” (ἄπιστος). Josephus continues:

ἄρ’ οὐκ ἴστε, ὅτι τῶν μὲν ἐξιόντων τοῦ βίου **κατὰ τὸν τῆς φύσεως νόμον** καὶ τὸ ληφθὲν παρὰ τοῦ θεοῦ χρέος ἐκτινύντων, ὅταν ὁ δοῦς κομίσασθαι θέλῃ, κλέος μὲν αἰώνιον, οἴκοι δὲ καὶ γενεαὶ βέβαιοι, καθαραὶ δὲ καὶ ἐπήκοοι μένουσιν αἱ ψυχαί, χῶρον οὐράνιον λαχοῦσαι τὸν ἀγιώτατον, ἔνθεν ἐκ περιτροπῆς αἰώνων ἀγνοῖς πάλιν ἀντενοικίζονται σώμασιν.

“Know you not that they who depart this life **in accordance with the law of nature** and repay the loan which they received from God, when He who lent is pleased to reclaim it, win eternal renown; that their houses and families are secure; that their souls, remaining spotless and obedient, are allotted the most holy place in heaven, whence, in the

Josephus, and Acts: Messages and Playfulness, Part 1;” idem, “Speech-Making in Ancient Rhetoric, Josephus, and Acts: Messages and Playfulness, Part 2;” Price, “The Failure of Rhetoric in Josephus’ *Bellum Judaicum*;” Saddington, “A Note on the Rhetoric of Four Speeches in Josephus.”

⁵³ And indeed, Josephus portrays choosing death as ridiculous, tantamount to a ship’s pilot who proves an “arrant coward” by deliberately sinking his ship before the storm (*BJ* 3.369). Even if one were to read the phrase differently—“a powerful law resides by nature ...”—the referent would still be a universally applicable norm.

revolution of the ages, they return to find in chaste bodies a new habitation?”

BJ 3.374⁵⁴

Here Josephus presents the positive side of “the law of nature” (ὁ τῆς φύσεως νόμος), now with a definite article and as part of a prepositional phrase (with κατὰ) that specifies what it is to act in accordance with that law. The context of the speech helps clarify what this means.

Before making this statement, Josephus discusses how those who attempt suicide are treated as enemies and punished (*BJ* 3.370). On the contrary, the right way to die involves leaving to God, who initially gives life, the decision of when to take it away again (3.371). This, then, is death “according to the law of nature”: simply waiting to die. Death is something we must allow to happen to us, rather than something that we make happen to ourselves. But this is not the only thing this passage can tell us about what Josephus means by the “law of nature.”

As in the first example given above, so here also Josephus presents ὁ τῆς φύσεως νόμος as a law governing the border between life and death. The licit way of making that crossing is to wait for God to effect it. But note that, in this case, Josephus accompanies this discussion with an almost visual presentation of that borderline: those who depart physical life (τοῦ βίου) the right way—κατὰ τὸν τῆς φύσεως νόμον—are allotted “the most holy place in heaven.” By the same token,

ὅσοις δὲ καθ’ ἑαυτῶν ἐμάνησαν αἱ χεῖρες, τούτων ἄδης μὲν δέχεται τὰς ψυχὰς σκοτεινότερος, ὁ δὲ τούτων πατὴρ θεὸς εἰς ἐγγόνους τιμωρεῖται τοὺς τῶν πατέρων ὑβριστάς.

...as for those who have laid mad hands upon themselves, the darker regions of the nether world receive their souls, and God, their father, visits upon their posterity the outrageous acts of the parents. *BJ* 3.375–76⁵⁵

The “law of nature,” as used by Josephus here, pertains to passage between life (τοῦ βίου) and the afterlife, the latter of which itself contains different domains, whether ‘holy’ places in ‘heaven’ or ‘the darker part of Hades.’ Josephus goes on to describe how various nations legislate the treatment of dead bodies (νεκροί)

⁵⁴ Trans. Thackeray, LCL. For a contextualized discussion of this passage in a broader work on death and dying in Josephus, which does not however get into the Greek phrase “law of nature,” see Swoboda, *Tod und Sterben im Krieg bei Josephus*, 317–18.

⁵⁵ Trans. Thackeray, LCL. See further Swoboda, *Tod und Sterben*, 321, 384–85.

post-suicide, whether by leaving them unburied until sunset,⁵⁶ or cutting off their right hand (*BJ* 3.377–79). The latter, Josephus avers, reflects the understanding that a hand so severed from the body symbolizes the body's improper separation from the soul.⁵⁷ (Josephus defined humans as having mortal bodies and immortal souls earlier at *BJ* 3.372.)⁵⁸

Josephus' metaphysical anthropology is indeed interesting, and implicit in his discussion of death, suicide, and rewards, punishment, and life after death.⁵⁹ The point here is that, in the two passages cited so far, Josephus refers to [ὁ τῆς] φύσεως νόμος as a or the law which governs the right and wrong way to die, i.e. the licit and illicit methods of crossing the threshold between the realms of life and of the afterlife. In the passage cited in this section, Josephus even explicitly identifies the 'far side' of this border, the world of the dead (i.e., of disembodied 'souls') comprised of both 'heaven and hades,' as it were. Implicitly, then, this borderline is *always* in view when Josephus invokes the "law of nature."

(3) In the next book of *BJ*, Josephus has occasion to deplore the actions of the Zealots during increasing unrest in Judea. At one point, he states with incredulity:

οἱ δ' εἰς τοσοῦτον ὠμότητος ἐξώκειλαν, ὡς μήτε τοῖς ἔνδον ἀναιρουμένοις μήτε τοῖς ἀνὰ τὰς ὁδοὺς μεταδοῦναι γῆς, ἀλλὰ καθάπερ συνθήκας πεποιημένοι τοῖς τῆς πατρίδος **συγκαταλῦσαι καὶ τοὺς τῆς φύσεως νόμους** ἅμα τε τοῖς εἰς ἀνθρώπους ἀδικήμασιν συμμαῖναι καὶ τὸ θεῖον, ὑφ' ἡλίῳ τοὺς νεκροὺς μυδῶντας ἀπέλειπον.

The Zealots, however, carried barbarity so far as to grant interment to none, whether slain within the city or on the roads; but as though they had covenanted **to annul the laws of nature** along with those of their country, and to their outrages upon humanity to add pollution of Heaven itself, they left the dead putrefying in the sun.

BJ 4.381–82⁶⁰

⁵⁶ Josephus attributes this "to the sagest of legislators" (παρὰ τῷ σοφωτάτῳ νομοθέτῃ), i.e. Moses, i.e., it is the Jewish/biblical custom (3.377).

⁵⁷ This separation is described as "strange, foreign" (ἄλλότριον), a term which Thackeray, interestingly for our purposes, renders as "unnaturally."

⁵⁸ In this, Josephus aligns with Hellenistic-Roman views more broadly: Swoboda, *Leben nach dem Tod*, 72ff.

⁵⁹ On Josephus' views on the afterlife, see Mason, *Flavius Josephus on the Pharisees*, 158–59.

⁶⁰ Trans. Thackeray, LCL.

Here Josephus finds common ground with the law of nature according to Philo, as outlined above: he refers to a plural “laws of nature,” as Philo sometimes does, and also places οἱ τῆς φύσεως νόμοι in close proximity to οἱ τῆς πατρίδος νόμους, paralleling if not conflating Moses’ (national/Judean) and nature’s respective laws.⁶¹ However, Josephus has something much more specific in view. To wit, the laws of nature which the Zealots broke in this case were those which mandated the burial—i.e. forbade the non-burial—of the slain dead (ἀναιρούμενοι, νεκροί).⁶² The clear implication is that not just human custom, but even superhuman legislation insists that the dead be granted interment.

(4) Of all his works, νόμος/οι φύσεως are referenced most frequently in Josephus’ *BJ* (3 of 5 times). They also emerge in *AJ*, albeit infrequently, namely once each in the first and last pentads respectively. In the first instance, the phrase comes just prior to Moses’ death. Warned of his impending demise, Moses delivers one final speech to the people. The response to this is related as follows:

Μωυσέος δὲ ταῦτα πρὸς τελευτῇ τοῦ βίου φήσαντος καὶ μετ’ εὐλογίας ἐκάστη τῶν φυλῶν προφητεύσαντος τὰ καὶ γενησόμενα τὸ πλῆθος εἰς δάκρυα προύπεσεν, ὡς καὶ τὰς γυναῖκας στερνοτυπούμενας ἐμφανίζειν τὸ ἐπ’ αὐτῷ τεθνηξομένῳ πάθος. καὶ οἱ παῖδες δὲ θρηνοῦντες ἔτι μᾶλλον, ὡς ἀσθενέστεροι κρατεῖν λύπης, ἐδήλουν ὅτι τῆς ἀρετῆς αὐτοῦ καὶ μεγαλοουργίας παρ’ αὐτὴν τὴν ἡλικίαν συνίεσαν. ἦν δὲ κατ’ ἐπίνοιαν τοῖς τε νέοις καὶ προηβηκόσιν ἄμιλλα τῆς λύπης· οἱ μὲν γὰρ εἰδότες οἴου στεροῖντο κηδεμόνος περὶ τοῦ μέλλοντος ἀπεθρήνουν, τοῖς δὲ καὶ περὶ τούτου τὸ πένθος ἦν καὶ ὅτι μήπω καλῶς τῆς ἀρετῆς αὐτοῦ γεγευμένοι ἀπολείπεσθαι συνέβαινε αὐτοῦ. τὴν δ’ ὑπερβολὴν τῆς τοῦ πλῆθους οἰμωγῆς καὶ τῶν ὀδυρμῶν τεκμαίροιο ἂν τις ἐκ τοῦ συμβάντος τῷ νομοθέτῃ· καὶ γὰρ πεπεισμένος ἅπαντι τῷ χρόνῳ μὴ δεῖν ἐπιμελλοῦσιν τελευτῇ κατηφεῖν, ὡς κατὰ βούλησιν αὐτὸ πάσχοντας θεοῦ καὶ **φύσεως νόμῳ**, ἐπὶ τοῖς ὑπὸ τοῦ λαοῦ πραττομένοις ἐνικῆθη δακρῦσαι.

When Moses, at the close of life, had thus spoken, and, with benedictions, had prophesied to each of the tribes the things that in fact were to come to pass, the multitude burst into tears, while the women,

⁶¹ The following parallel of “outrages upon humanity” and “pollution of heaven” corresponds nicely with the two types of laws here cited and further cements the complementary binary.

⁶² This is the only place where ‘law of nature’ language appears among Josephus’ many charges against the Zealots; cf. *BJ* 4.330–36, 360; 5.512–18, 531–32, 568; cf. 4.317.

too, with beating of the breast manifested their emotion at his approaching death. Aye, and the children, wailing yet more, in that they were too feeble to suppress their grief, displayed an understanding of his virtues and grand achievements even beyond their years. Yet in the thoughts of their hearts there was conflict between the grief of the young and of their seniors. For these, knowing of what a protector they were to be bereft, lamented for the future; while those, beside that cause for grief, had the sorrow that, ere they had yet right well tasted of his worth, it was their lot to lose him. How extraordinary this outburst of weeping and wailing of the multitude was may be conjectured from what befell the lawgiver. For he, who had ever been persuaded that men should not despond as the end approached, because this fate befell them in accordance with the will of God and **by a law of nature**, was yet by this conduct of the people reduced to tears.

AJ 4.320–22⁶³

Here, as in the previous passage, we find νόμος φύσεως standing parallel to a related idea: death is portrayed as natural inasmuch as it occurs “by [a] law of nature” (φύσεως νόμῳ) and “according to the will of God” (κατὰ βούλησιν θεοῦ). In this context, the “law of nature” seems to refer to the inevitability of death, whereas “the will of God” may signal God’s active participation in planning and effecting it. It is tempting to see here a dualistic framework combining the impersonal, mechanistic norms governing all things on the one hand, and the personal, intentional actions of divinity on the other. Whatever the case, we see that the pattern which began to emerge in the three surveyed passages from *BJ* holds in *AJ* as well.

As with the three passages examined above, the common denominator is impossible to miss. In each case, the νόμος (or νόμοι) φύσεως appears as a norm with a specific application to death. Similarly here, the “law of nature” informs

⁶³ Text and trans. Thackeray, LCL; cf. Swoboda, *Tod und Sterben*, 123. Of all five instances of “law(s) of nature” in Josephus examined here, this is the only occurrence of the phrase to have textual variants, and it has many per Niese, *Flavii Iosephi Opera, Vol. I: Antiquitatum Iudaicarum Libri I–V*, 289. This is the only place where Niese records the Latin equivalent (as *legis natura*)—which appears to be grammatically confused—and variants include the omission of φύσεως and, elsewhere, the rendering of νόμος in the genitive (singular and plural) and the accusative. It may be that the lack of textual variants in the other volumes of Niese pertaining to the other four passages (see footnotes above) do not represent an actual lack of variants in the manuscripts, but a lack of thorough representation of said variants in the critical apparatus.

Moses' stoic outlook on the end of life. The fifth and final example of the phrase "law of nature" in Josephus will reinforce this pattern.

(5) Toward the end of *AJ*, Josephus describes the intrigues of the Herodian household. A crux in this drama comes at the trial of Herod's son Antipater overseen by the king himself and Varus (*AJ* 17.93ff). Amidst the woes Herod recounts during this council, he claims that, despite the care and education which he had bestowed upon his progeny,

ὧν οὐδὲν ἐπ' ἐμποδίσµατι γενέσθαι τοῦ µὴ οὐκ ἐπιβουλῇ τῇ ἐκείνων
κινδυνεῦσαι τελευτᾶν ὑπὲρ τοῦ θᾶσσον δυσσεβῶς τὴν βασιλείαν
παραλαβεῖν ἢ φύσεως νόµῳ μεταστάντος εὐχῇ τε τοῦ πατρὸς καὶ δίκῃ.

None of these benefits had prevented his being in danger of death when they plotted against him in order to take over his royal power impiously before their father should give it up **by the law of nature** and in accordance with his wish and with justice.

AJ 17.95⁶⁴

The modern reader, with the benefit of retrospect, will find it difficult to sympathize with Judea's notoriously murderous first-century king. Nevertheless, what matters here is the point Herod tries to make. Herod's complaint is that his sons have tried to usurp the throne rather than waiting for a proper succession to take place in the natural course of time. How the latter is understood is a matter of Greek syntax. One way of reading the final clause of the sentence would put νόµῳ in apposition to εὐχῇ and δίκῃ, all three datives in this case modifying the verb παραλαβεῖν ("to receive"). In this reading Herod's sons attempted to "receive" the throne impiously (δυσσεβῶς), "rather than according to a law of nature and according to the wish of their father-who-had-given-way and according to justice." However, one can also read φύσεως νόµῳ as modifying the genitive participial phrase μεταστάντος τοῦ πατρὸς, which itself modifies the dative εὐχῇ. In this case the sentence at the end reads: "rather than according to the will of their father, who had given way according to a law of nature, and according to justice."

Regardless of how one reads this clause, the "law of nature" here is understood as regulating succession and inheritance. The question is how it does so. Yet both approaches allow the inference that the phrase φύσεως νόµῳ refers to Herod's

⁶⁴ Text and trans. Marcus and Wikgren, LCL. There are no textual variants of the phrase in Niese, *Flavii Iosephi Opera, Vol. IV: Antiquitatum Iudaicarum Libri XVI–XX et Vita*, 87.

death (and the larger course of succession of which it constitutes a 'natural' part). In the first reading, "to receive the kingdom (τὴν βασιλείαν παραλαβεῖν) according to a law of nature" ostensibly means to succeed Herod after his death, thus following the 'natural order' of things. In the second reading, to receive the kingdom according to the will of Herod "after he had given way according to the law of nature" (φύσεως νόμῳ μεταστάντος), again translates to receiving the kingdom after Herod had died. Indeed, the verb μεθίστημι can carry the specific meaning of 'to remove by killing [oneself], i.e. by dying.'⁶⁵ Josephus uses the term in just this way and in just this kind of context at *AJ* 18.187.⁶⁶ Thus, whether φύσεως νόμῳ modifies the infinitive παραλαβεῖν or the aorist participle μεταστάντος, it refers to the death of the current king, Herod. The "law of nature" here is therefore a reference to a kind of ineluctable universal rule whereby (regal) succession is initiated by and revolves around the death of the current monarch.⁶⁷ Or perhaps here Josephus has in mind the more basic rule of order-of-death and succession between parents and children generally. Philo also refers to the law of nature as something which dictates the proper administration of succession, and he also has the death of the inheritance-giver in view.

That the "law of nature" in *AJ* 17.95 prescribes a 'natural death,' as opposed to murder, appears not only from syntax and vocabulary, as we have seen above, but also from narrative context. The trial scene in which the phrase φύσεως νόμῳ appears, within a speech of Herod (related in *oratio obliqua*), is explicitly about Herod's death. Antipater is brought up on charges "as a parricide and a plot of his father's destruction" (ἀδελφοκτονίαν ... καὶ βούλευσιν ὀλέθρου τοῦ ἐπ' αὐτῷ; *AJ* 17.91). He had killed his brothers and was suspected of plotting against his father's life as well. Thus, in the passage quoted above, Herod claims that he himself is "in danger of death" (κινδυνεῦσαι τελευτᾶν) at Antipater's hands. During the debate, Antipater's self-made defense includes a reference to legitimate succession (17.102), mirroring a similar sentiment voiced just before by Herod (17.96). The entire scene hinges upon Antipater's imputed plot to seize the royal succession by murdering his father, rather than receiving the kingdom "according to the law of nature," i.e. after his father had died of old age. While

⁶⁵ See *LSJ* sv. μεθίστημι A.II.2.

⁶⁶ I.e., also in the context of discussion about the removal of one king and his replacement with a newer, younger one; there the verb is likewise an aorist active participle: "...Agrippa said to Gaius: 'I hope that the day will at length arrive when this old man will leave the scene (μεταστᾶς) and appoint you ruler of the world.'" Trans. Feldman, LCL.

⁶⁷ Unless, that is, Josephus has some conception of a world in which a king like Herod might give up the reigns to the kingdom before he died, or he at least is in this passage allowing Herod to present himself this way. I think this unlikely. At *AJ* 17.96 it is all but specified that Herod's successor would come to power not before, but after, his death.

couched within the discursive context of trial, court intrigue, and debates about proper methods of kingly succession, the phrase νόμος φύσεως at *AJ* 17.95 at its most basic refers to a natural death as a component of proper succession, the way a monarch (or parent) is ‘supposed to’ die before passing on the reigns.

Each of the five passages above, in dealing with death, carries clear and often overt implications for human behavior. Josephus’ “law of nature” addresses how one is supposed to die (or ‘become dead,’ to put it passively). While I suggest that this notion pertains to a unique realm of human behavior in Josephus’ thinking, it should be noted that Josephus does speak of other actions that are ‘natural’ (in terms of φύσις) or unnatural for humans.⁶⁸ At the most basic level of biology, Josephus remarks that pooping is a “natural function.”⁶⁹ In the social sphere, Josephus recognizes only one form of marriage (μῆξις) as being “according to nature” (κατὰ φύσιν), i.e. that with a woman (τὴν πρὸς γυναῖκα), although in *CA* 2.199 this is referenced in terms of what the Jewish law (ὁ νόμος) recognizes (οἶδεν).⁷⁰ He also mentions a notion of “natural affection” (φυσική οικειότης) as parallel to “friendship” or “friendly disposition” (εὔνοια), which envy (φθόνος) and calumny (διαβολή) are particularly wont to disrupt (*AJ* 13.310). This latter notion is perhaps as much dispositional as behavioral, as is the statement made in a speech by Ananus at *BJ* 4.175 that “desire for freedom” (ἐλευθερίας ἐπιθυμία) is “the most honorable and most natural of the passions” (τὸ τιμιώτατον τῶν παθῶν καὶ φυσικώτατον). One can track both human behavior and human ontology according to Josephus along the spectrum of what accords with φύσις (or not). Yet nowhere but in the five passages mentioned above is any kind of ‘law of nature’ ever mentioned. For Josephus, (the) law or laws of φύσις certainly speak to correct and incorrect human behavior, but this language for him signals something far more specific than just right/wrong and/or natural/unnatural behavior. We may thus infer that it has no exact cognates within the realm of human behavior, but that it does have a definable range. It also correlates to theology.

5. *A Theology of (the) Law(s) of Nature*

It should not be missed that all of the five passages examined above may be read to correlate (the) law(s) of nature in one way or another with the divine design or

⁶⁸ My thanks to an anonymous reviewer for suggesting this as a way of contextualizing my argument.

⁶⁹ At *BJ* 2.149 “the discharge of excrement is a natural function” (φυσικῆς οὔσης τῆς τῶν λυμάτων ἐκκρίσεως ἀπολούεσθαι).

⁷⁰ While not a ‘law of nature’ per se, this is an instance of something natural which the (Jewish) law recognizes, an interesting correlate to the broader notion. See Barclay, *Against Apion*, 282–83.

God's will. In *BJ* 3.369 Josephus calls suicide "an act of impiety towards God who created us" (πρὸς τὸν κτίσαντα θεὸν ἡμᾶς ἐστὶν ἀσέβεια). To Josephus, the νόμος φύσεως within every living creature rebels against this urge (3.370). *BJ* 3.374 speaks of death as the repayment of a loan to God, and God (θεὸς) punishes those who repay it wrongly (3.375–76). At *BJ* 4.382, the Zealots are said in their barbarity not only to have done injustice to humanity (εἰς ἀνθρώπους), but also to have stained or polluted (συμμιᾶναι) τὸ θεῖον, "the Heaven" (as Thackeray translates it), but better rendered as "the Divinity" or "the Divine" or "the Divine realm." The point is that both human and superhuman arenas are negatively affected by the Zealots' not burying the dead. At *AJ* 4.322, Josephus portrays Moses correlating dying "according to the will of God" (κατὰ βούλησιν θεοῦ) with dying "according to the law of nature" (κατὰ φύσεως νόμῳ)—'God's will' = 'nature's law.' Finally, in *AJ* 17.95, Herod accuses his sons of attempting to usurp his power "impiously" (δυσσεβῶς), rather than allowing him to pass the torch according a law of nature. The conclusion one must come to is that, for Josephus, any law of nature, whatever that means, stands in direct relation to God's desire, design, and action. To abide by a/the 'law of nature' is to obey God, to fail to do so to disobey him.

Josephus universalizes and sacralizes his "law of nature," while also restricting it to the process of death. This raises questions as to why, questions to which we can only proffer educated guesses, not definite conclusions. Perhaps the multicultural nature of Josephus' social location and therefore intellectual milieu had fitted him with the recognition that very few laws could garner consensus as being truly universal. Yet no one could disagree that death comes to all people. The Preacher of Qohelet got it right: "there is one fate for everyone" (Eccl. 9:3). Did Josephus' cosmopolitan perspective, his position as a historian and his cognizance of a (at least partially) non-Jewish readership lead him to restrict specific "law of nature" language to refer to death, something that every ancient Mediterranean person would acknowledge as both universal and related to divinity?

A related question addresses the connection between "law(s) of nature" and Mosaic law. Surely Josephus would have agreed with Philo that both Moses' Law (Torah) and the 'laws' that regulated the created world were both instituted by God and that the former accounted for and in large part reflected the realities of the latter. But again, here we come up against the wider notion of 'natural law,' whereas Josephus' "law(s) of nature," as I have now shown, does not enter this broader conceptual arena. Such questions therefore remain compelling but not fully answerable. The only positive thing we can say about Josephus' use of

“law(s) of nature” language is revealed in his writings: the “law(s) of nature” have to do with how, when, and whether one passes from life to death.

The theological aspect of (the) law(s) of nature in Josephus constitutes the core similarity between his use of the term and idea and what we find in Philo of Alexandria and Cicero. This connection is important because, as we noted above, in Cicero and then especially in Philo (in Greek) is where the advent of this language and notion seem first really to appear. By appreciating the ‘theological’ side of Josephus’ idea of a/the law(s) of nature, we can better situate him within the thinking and discourse of his age as well as the critical preceding era.

Engaging with Helmut Koester’s important article on the Greek phrase νόμος τῆς φύσεως, mentioned above,⁷¹ Richard Horsley pushes the idea’s historical gravitational center back from Philo to Cicero a generation earlier. However, he thinks the parallels between Cicero and Philo “suggest that both were part of a broader movement of eclectic social-political philosophy in the first century B.C.E.”⁷² In particular, Horsley argued that both writers developed their thinking “from a Stoic tradition on universal law and right reason” which had itself been “reinterpreted by a revived and eclectic Platonism” by the key figure of Antiochus of Ascalon, the head of the Academy in the early first century. What is important for us here is that, from Antiochus through Cicero and Philo (according to Horsley), a Platonic-then-Stoic notion developed which located a “transcendent basis [for the law of nature] in the mind of God, who is the Lawgiver.” In other words, the philosophical multiculturalism that immediately preceded Josephus, fueled by Platonic and Stoic ideas and given voice by well-known intellectuals both Roman and Jewish,⁷³ came to articulate a kind of *consensus opinio* whereby ‘natural law’ was seen as an extension of a lawgiving divinity (naturally). Josephus clearly assumed the same. Yet his “natural law” is not the same as what we find in Cicero or Philo, as discussed above.

The fact of a divine dimension within Josephus’ rather restricted notion of law(s) of nature helps us situate him in a framework of intellectual history within which he nevertheless stands out like a sore thumb. The very idea of a/the ‘law of nature’ was a product of Josephus’ time, having become common coin in the formative century before his lifetime. In engaging the idea at all, Josephus shows

⁷¹ Koester, “NΟΜΟΣ ΦΥΣΕΩΣ.” Another important interlocutor for Horsley here is Watson, “Natural Law and Stoicism.”

⁷² Horsley, “The Law of Nature,” 36.

⁷³ As Josephus was an author both Jewish and Roman himself, and in some ways beholden to the Latin traditions of Roman culture *and* to the Greek traditions of Jewish Hellenism, it is hardly insignificant that the two apparent originators of the ‘natural law’ movement in philosophy, with which Josephus must be in some way engaging, epitomize these two intellectual-cultural spheres.

himself to be *au courant*. At the same time, Josephus' linking the notion to divine will and design signals his debt to the Ciceronian-Philonian ideological lineage. Nevertheless, Josephus' law(s) of nature, so far as we can tell, apply to only one sphere of action and experience: namely, the realm of death.

6. Josephus' 'Law of Nature' through Mediterranean Eyes: Contexts and Comparisons

The above five passages constitute all the places in Josephus' extant corpus where the phrase (ὁ) νόμος φύσεως or (οἱ) νόμοι φύσεως appears. In each case, the phrase refers to contexts of death. By deduction, we have come to see that, whether or not Josephus held a broader *notion* of the law of nature, his use of the phrase "[the] law(s) of nature" always pertains to a particular sphere of application: the passage from life to death. In this section, I sketch a picture of what such a sphere might have looked like in Josephus' mind as part of a broader ancient cultural imagination. In so doing, we seek to read Josephus' "law of nature" through ancient Mediterranean eyes.

All laws, even universal ones, have a particular domain: they apply to a specific number of people and/or to specific places. This would have been, perhaps, particularly easy to appreciate in the ancient world (Aristotle's world), in which νόμοι were almost always specific to a particular race/ethnicity/nation/region and φύσις almost always carried universal connotations. It is somewhat fitting, therefore, that Josephus' conjunction of the terms contains both particular and universal aspects: particularly, Josephus' "law(s) of nature" apply to the borderline between the realms of the living and the dead; they regulate people's actions on or around that borderline and legislate interactions that approach or touch upon that boundary. Universally, such law(s) applies to everyone, for everyone must cross this barrier in one way or another. To be clear, Josephus does not overtly articulate the idea of such a realm, or of this way of framing his "law(s) of nature." Instead, I am here putting in conversation the broad reference to which Josephus' "law(s) of nature" is always attached (the process of death) and ancient commonplaces regarding death and where/how it occurs, the latter of which Josephus alludes to in mentioning the realms of the afterlife alongside οἱ τῆς φύσεως νόμοι in *BJ* 4.381–82. The realms of life and death and the crossing of the border in between *are* the domain in which "law(s) of nature" à la Josephus are applicable, even if Josephus does not say so in so many words; likewise, Josephus would and must have therefore understood his "law(s) of nature" in reference to such a site of passage, and it behooves us modern interpreters to try and imagine how that sphere would have appeared in the ancient Mediterranean mind.

The reason for adopting this imaginative approach to understanding Josephus' "law of nature" is that, while his use of the phrase conjures a sphere of reference which is intelligible enough—rules or norms regarding how to deal with death—this does not mean that its meaning will be easy to discern for modern readers. For, even while Mediterranean antiquity birthed and cultivated many perspectives on and reactions to death which have become benchmarks of the modern West, death in the ancient Mediterranean world was seen very differently from how it is often perceived today.⁷⁴ On the basis of that truism, the present section seeks briefly to situate Josephus' law of nature within an ancient frame.

The first item to be sketched out here is the domain of death in the ancient world. More or less across ancient Mediterranean cultures there were understood to exist a realm of the living and a realm of the dead, with death understood as a one-way passage from the former to the latter. In this vein, at *BJ* 3.374, *AJ* 4.322, and *AJ* 17.95 Josephus speaks of an unsought death (i.e. untimed, awaited, passive) as according with the law of nature, the 'legal' way of moving across the life/death *limen*. How treacherous, and indeed, complicated a task it was to cross it otherwise is established at the very beginning of the ancient Greek literary canon.

In Book 11 of Homer's *Odyssey*, the so-called *Nekyia*, the companions Odysseus, Perimedes, and Eurylochus undertake an elaborate (and dangerous) ritual of blood and steel in order to enable passage between Hades and the land of the living (*Od.* 11.23–50). At first the border with the realm of the dead must effectively be created by these protagonists through the digging of a pit (11.24–25). Sometime thereafter, "Hades opens up, and Odysseus is offered a glimpse of the topography of the realm of the dead." Yet even so, "Odysseus' journey does not really constitute a visit to Hades as he does not go down and come back up again."⁷⁵ Rather, his interaction with the dead takes place at or near the *limen*.

⁷⁴ This is not to say that there were not differences between, say, Greek, Roman, and Jewish perspectives on death, and of course these broad categories could easily be further subdivided and problematized in their mutual connections. The best place to start on death in the Greek world may still be Garland, *The Greek Way of Death*, especially Chapter 1. More recently see Mirto, *Death in the Greek World*. On the Roman side, Edwards provides a helpful study of "the significance Romans attached to the act of dying," which shows via analysis of select Latin authors that Romans often saw dying as "fundamentally an active rather than a passive process" and one which constituted "an act of communication with the living" (evincing a "perception of death as a privileged moment which has the capacity to reveal the true character of the dying subject") (see her *Death in Ancient Rome* [quotes at 5]).

⁷⁵ This distinguishes Odysseus' underworld experience with other heroes who did enter in there, like Heracles, Theseus and Peirithous, and Orpheus. See Ekroth, "Hades, Homer, and the Hittites," 37–38.

Just as Homer's portrayal of the realm of the dead influenced the Greek perspective, the Roman outlook took inspiration from Vergil's *Aeneid*, where in Book 6 the hero Aeneas seeks "the doorway of the nether king" (*infernī ianua regis*; 6.106).⁷⁶ Vergil stresses the threshold between Hades and the land of the living. Aeneas seeks the way to the "hallowed portals" (*sacra ostia*; 6.109), already at the thresholds (*limina*) of the cave of the Cumaean Sibyl (6.115). The latter explains the process of descending into the netherworld:

... facilis descensus Averno:
noctes atque dies patet atri ianua Ditis;
sed revocare gradum superasque evadere ad auras,
hoc opus, hic labor est. pauci, quos aequus amavit
Iuppiter aut ardens evexit ad aethera virtus, 130
dis geniti potuere ...

... easy is the descent to Avernus: night and day the door of gloomy Dis stands open; but to recall one's steps and pass out to the upper air, this is the task, this the toil! Some few, whom kindly Jupiter has loved, or shining worth uplifted to heaven, sons of the gods, have availed.

Aen. 6.126b–131a⁷⁷

In the Roman mind, passage to the underworld is a one-way ticket—only exceptional individuals, with the help of God or demi-gods themselves, have come back. Nevertheless, Aeneas makes the venture, which necessitates a ritual just as elaborate as Odysseus' (*Aen.* 6.236–63). Famously, Vergil must negotiate with the "grim ferryman" of Acheron, one of the rivers flowing through the underworld, to cross the final threshold (6.295ff).

The idea of separate realms of the living and the dead, and the taboo associated with crossing between, was not merely a Greco-Roman notion: ancient Jewish tradition held such a perspective as well. The most prominent such idea in the Jewish Scriptures is embodied in the locale of "Sheol" (שְׁאוֹל), a place to which, like Hades in the Greek and Roman traditions, one "descends" (יָרַד).⁷⁸ (And

⁷⁶ Texts and translations adapted from Fairclough, LCL.

⁷⁷ Trans Fairclough, LCL.

⁷⁸ Gen 37:35; 42:38; 44:29,31; 1 Kgs 2:6,9; Psa 30:3; Isa 57:9; Ezek 31:15–17; 32:27; cf. Deut 32:22; 2 Sam 22:6; Job 11:8; 14:13; 17:13,16; 21:13; 24:19; 26:6; 33:18 (the Book of Job has one of the more robust philosophies of Sheol in the entire Jewish Scriptures); Psa 6:5; 9:17; 16:10; 18:5; 31:17; 49:14–15; 86:13; 88:3; 89:48; 116:3; 139:8; 141:7; Prov 1:12; 5:5; 7:27; 9:18; 15:11; 15:24; 23:14; 27:20; 30:16; Song 8:6; Isa 5:14; 7:11; 14:15;

indeed, Sheol becomes Hades in the Greek translation of the Hebrew Bible.) Likewise, the Hebrew Bible shares with Greco-Roman thought the idea that the underworld is a place to which the living (usually) cannot go. A striking exception to this rule comes in Numbers 16, where Dathan, Abiram, Korah, and others rebel against Moses and Aaron, and by proxy against Yahweh, the source of authority for the Jewish leaders. The supernatural response to such insurrection is spectacular, and is interpreted by Moses:

Moses said, “By this you shall know that the LORD has sent me to do all these deeds; for this is not my doing. If these men die the death of all men or if they suffer the fate of all men, then the LORD has not sent me. But if the LORD brings about an entirely new thing and the ground opens its mouth and swallows them up with all that is theirs, and they descend alive into Sheol, then you will understand that these men have spurned the LORD.” As he finished speaking all these words, the ground that was under them split open; and the earth opened its mouth and swallowed them up, and their households, and all the men who belonged to Korah with their possessions. So they and all that belonged to them went down alive to Sheol; and the earth closed over them, and they perished from the midst of the assembly.

Numbers 16:28–33 (NASB)⁷⁹

The exceptionality of this way of crossing into Sheol is made explicit when Moses refers to it as God “doing an entirely new thing” (בריאה יברא) or, as the Greek has it, ἐν φάσματι δείξει, as opposed to “the fate/death of all men” (θάνατος πάντων ἀνθρώπων/מות כל-האדם). For the ancient Hebrew mind, to descend alive into Sheol was not normal.

28:15,18; 38:10,18; Ezek 31:17; 32:21; Hos 13:14; Amos 9:2; Jon 2:2; Hab 2:5. A dated and basic, but still useful introductory discussion of the Jewish (-Christian) treatment of Sheol and then Hades is provided in Pearson, “Sheol and Hades in the Old and New Testament.” More recently see Bar, “Grave Matters: Sheol in the Hebrew Bible,” which provides a helpful summary discussion and analysis of scholarly positions, concluding that the Bible has no conception of descent to (and subsequent ascent from) the nether regions, “a familiar characteristic of Mesopotamian and Ugaritic literature.” Yet, despite its lack of afterlife philosophy, “the concept of a netherworld, a place reserved for the wicked and the prematurely deceased, certainly exists in the Bible” (152). However, the scene with Saul and the witch of Endor, discussed in what follows, shows this conclusion only to be generally applicable, not an airtight rule of Jewish Scripture.

⁷⁹ Cf. Psa 55:15 on the idea of coming alive down into Sheol.

Another passage that comes to mind as an illustration of the rules governing passage between death and life is Saul's interaction with the witch of Endor in 1 Samuel 28.⁸⁰ There it is shown that it is possible for one to "bring up" (ἀναγάγω/עלה in the Hiphil) a deceased person—in this case the prophet Samuel is brought up "out of the earth" (ἐκ τῆς γῆς/מִן-הָאָרֶץ; 28:13)⁸¹—though this is manifestly illicit.⁸² Once the witch has conjured Samuel, he "comes up" (ἀναβαίνω/עלה in the Qal) out of the earth and immediately asks Saul: "Why have you disturbed me by bringing me up?" (28:13–15).⁸³ The question, and the implicit moral of the passage, indicate that death is a one-way journey, that the realm of the dead is cut off from the realm of the living, and that manufacturing a reverse crossing of the border—not unlike the strange 'live' crossing of Dathan, Abiram, Korah, etc.—overturns the usual way of things. In Josephus' extensive expansion of this passage in *AJ* 6.329–42, now catalogued in detail by Christopher Begg, he specifies that it was Samuel's soul (ψυχή) that came up out of the ground.⁸⁴ In general in the Jewish Scriptures, "he who goes down to Sheol does not come up" (Job 7:9b) and, as a rule, it is Yahweh who "brings down to Sheol" (1 Sam 2:6b).

The Jewish Scriptural worldview shares with the broader Greco-Roman tradition the idea of two realms, those of the living and the dead, and a more or

⁸⁰ See generally the comparative treatment of Trencsényi-Waldapfel, "Die Hexe von Endor und die griechisch-römische Welt." More recently it has been argued that, while the author of 1 Sam 28:3–25 "shares the Deuteronomic attitude toward divination and condemns necromancy," he nevertheless "accommodates the idea of invoking the dead which was an integral part of ancestor cult." See Kim, "Why is the Woman of Endor Portrayed as a Heroine?"

⁸¹ Euripides *Heracl.* 352 also speaks of "the dark region of the dead in the earth" (τὸν γῆς ἐνέρον τ' ἐς ὄρφναν). Aeschylus *Pers.* 625–46 may be an even more apt point of comparison to the witch of Endor episode. For interaction around the boundary between the dead and the living in Greek tragedy, see now Martin, *Harmful Interaction Between the Living and the Dead in Greek Tragedy*, especially the first 20 pages.

⁸² 1 Sam 28:9–10,12,21. Note that the root of the Hebrew word for "ascend" (עלה) appears to be present in the nomenclature used for "witch," or, in the KJV, the woman "that hath a familiar spirit" (בעלת-אוב). Mitchell, "Patristic Rhetoric on Allegory," translates this "woman who has mastery of necromancy/divination pits" in an article discussing early Christian interpretation of the passage, for which the LXX translation of this Hebrew term as ἡ ἐγγαστρίμουθος (the "belly-myther") is the "crucial step" (421). More fully see Greer and Mitchell, *The "Belly-Myther" of Endor*.

⁸³ Interestingly, the author feels the need to state that Saul recognized Samuel, apparently something not to be taken for granted (1 Sam 28:14), and at 28:13 the witch refers to him as a "divine being coming up out of the earth."

⁸⁴ Begg, *Judean Antiquities*, 190–94, here 192 (with n 1224).

less inviolable border in between.⁸⁵ This perspective is complicated by questions of resurrection and afterlife,⁸⁶ and of body and soul (and/or spirit) dichotomies.⁸⁷ These issues, however, only illustrate the notion's existential significance and theoretical sophistication.⁸⁸ As a baseline, ancient Greek, Roman, and Jewish cultures had a notion of death, often spatially construed, presupposing different realms, as well as a borderline between them (and an orderly means to pass from one to the other). This provides a helpful framework for reading the "law of nature" in the works of Josephus.

All νόμοι, for Josephus or any other Greek/Roman author, apply to particular people in particular places. Josephus' "law(s) of nature" applies to the particular place of death and the particular people who might find themselves there at any given moment in time (which includes all people, eventually). Every reference to the "law(s) of nature" in Josephus can be intelligibly defined in terms of such a domain. Assuming that Josephus had a concept of such a domain helps explain several of his discussions surrounding the "law of nature." For example,

⁸⁵ The Jewish Scriptures come closest to a Homeric-Vergilian view of the underworld, where once-great men have become shells of their former selves, at Isa 14:9, which addresses the king of Babylon: "Sheol from beneath is excited over you to meet you when you come / it arouses for you the spirits of the dead / all the leaders of the earth / It raises all the kings of the nations from their thrones / They will all respond and say to you / 'Even you have been made weak as we / You have become like us.'" I cannot tell that the parallels between this passage and Homer/Vergil have received adequate attention in the scholarship. An interesting later twist on related ideas, presented in a text basically contemporary with Josephus and also influenced by both Jewish and Greco-Roman conceptions, comes in the Gospel of Luke. At Luke 16:26–31 we find in a parable discussion of an afterlife which itself has two realms and a "great chasm" (χάσμα μέγα) between (16:26).

⁸⁶ For a thorough survey of afterlife ideologies in antiquity, see now Harrison, *Imagining the Afterlife in the Ancient World*. For Josephus in particular (and Philo), see von Ehrenkrook, "The Afterlife in Philo and Josephus."

⁸⁷ These issues have been oft-debated, sometimes cultivating a view in which Greco-Roman thought held to a non-bodily resurrection, while Judaism held to a bodily resurrection, though this has been challenged. Indeed, the argument is effectively reversed in, e.g., Finney, *Resurrection, Hell and the Afterlife*. For a recent discussion of Philo's notions of afterlife and death vis-à-vis Greco-Roman culture, see Burnett, "Going Through Hell." Philo, of course, is more allegorical and symbolic in his treatment of death, dying, and the fates of the dead, philosophizing more than recording history as Josephus does. See Yli-Karjanmaa, *Reincarnation in Philo of Alexandria*, at (e.g.) 24, 65–70, 172. By contrast, consult Yli-Karjanmaa, "The New Life of the Good Souls in Josephus."

⁸⁸ These issues also speak to Josephus' hybridization of Jewish and Greco-Roman worldviews and ideas, sometimes via the passage discussed above. For example, Bietenhard, *Die himmlische Welt im Urchristentum und Spätjudentum* argues regarding War 3.372–74 that Josephus combines the Greek doctrine of immortality with the Jewish hope of resurrection of the dead as found in the Talmud.

Josephus' speech at Jotapata—the only passage in Josephus' works where the νόμος φύσεως is mentioned twice (at *BJ* 3.370 and 3.374)⁸⁹—refers to the consequences of dying according to the “laws of nature” in spatial terms, referencing “the most holy place in heaven” (χῶρον οὐράνιον ... τὸν ἀγιώτατον) and its “new habitation” (implied in the verb ἀντενοικίζονται) on one hand and “the darker regions of the nether world” (ἄδης ... σκοτεινότερος) on the other (in this we see that Josephus' realm of the dead is not one-dimensional). The “law of nature” legislates at the border between life and death and how it is crossed (see further 3.378–79). At *BJ* 4.381–82, Josephus condemns the Zealots for breaking the laws of nature (συγκαταλῦσαι καὶ τοὺς τῆς φύσεως νόμους) by refusing to bury the slain dead. The unmistakable connotation in Josephus' Hellenistic context of writing is that such a crime affects, among other things, how and when someone crosses from life to death and what that person's lot is in the realm of the latter. Such thinking was established, again, already in Homer. In the *Iliad* (23.71) Patroclus bids Achilles “bury me so I can cross the gates of Hades as soon as possible” (θάπτε με ὅτι τάχιστα πύλας Αἴδαο περήσω).⁹⁰

Nor was the correspondence between burial and the situation of the dead a necessarily Greek speculation: ancient Israel cultivated similar ideas⁹¹ which came to find expression in Philo and Josephus. Intriguingly, Hugo Grotius, in the book that largely founded modern discussions of natural law—his 1625 *On the Law of War and Peace* (*De iure belli ac pacis*) 2.19.1.1—cited the right to burial of the deceased as a *ius naturae* according to both Philo and Josephus (citing *BJ* 4.381–82 in the latter).⁹² In portraying non-burial as ‘illegal,’ Josephus implies that it damages those already dead, again illustrating his twin engagement with biblical and Greco-Roman thinking.

In the passage on Moses' death (*AJ* 4.320–22), Josephus references the “law of nature” as that which, alongside the will of God, guarantees death for every person at some point. In other words, a “law of nature” enforces mortality, making sure that every person crosses the border from life to death. This idea of

⁸⁹ This is also the passage the mentions the “law of war” (*BJ* 3.363), discussed by Price, “Law of History.”

⁹⁰ Text and translation borrowed from the recent Gazis, *Homer and the Poetics of Hades*, 65. In general, Hades and the underworld are associated with gates, borders, and crossings in the *Iliad*: see 5.646; 8.10–16, 367–68.

⁹¹ See Olyan, “Some Neglected Aspects of Israelite Interment Ideology.”

⁹² *Ex iure gentium quod ex voluntate ortum habet, debetur et corporum mortuorum sepultura. ... Naturae id ius appellant Hebraei Philo ac Iosephus.* (“From the law of nations, as something which arose voluntarily, it is held that there ought to be burial for dead bodies. ... the Hebrews Philo and Josephus call this a ‘law of nature’”); Latin from Molhuysen, ed., *Hugonis Grotii*, 344 (translation mine). I found my way to this passage via Jones, “Philo Judaeus and Hugo Grotius's Modern Natural Law,” also at 344.

someone/something policing the boundary between life and death in line with divine will is something which ancient Greek authors found various ways to express. Homer, for example, in both the *Odyssey* and the *Iliad*, finds ways to emphasize, as Bray writes, “the idea that the hero, embodying the boundaries of destruction, becomes the enforcer of divine will.” These “the boundaries of destruction,” Bray continues, “can be fastened only on a mortal and only with the consent of the gods.”⁹³ This Homeric feature shows that ancient Greek thought very early on had an idea of death that envisioned the crossing of liminal life-to-death space and which placed mediating or cooperating forces in line with divinity as facilitators and guarantors of that movement. For Homer, sometimes this role was filled by heroes; for Josephus, sometimes it was filled by the “law of nature.” In putting the “law of nature” beside divine will as the guarantor, or enforcer, of death, Josephus plugs into ancient Greek understandings of death as actively enforced, an idea which always had in view the boundary-line between the realms of life and death. At the same time, Josephus might be seen to present the inevitability of death from a perspective that mediates between a Jewish and more universalistic norms, inasmuch as his mentions of law(s) of nature all apply to Jewish people and contexts, theological moorings, even to the Jewish lawgiver himself. Josephus’ treatment of the “law of nature” not only aligns his work with broader ancient Mediterranean assumptions, but illustrates his multicultural perspective as inheritor of both Judaism and Hellenism.

Finally, we can note that while the final mention of the νόμος φύσεως in Josephus—cited in the speech of Herod at *AJ* 17.95—does not in itself intentionally conjure the realms of life and death and their borderlands, the broader context of the scenario in which the phrase appears recalls one of the most graphic depictions of the realms of life and death, and interactions across the *limen* in between, in the entire Josephan corpus. Herod mentions the “law of nature” within an accusation against his son, part of an ongoing series of murders and intrigues within Herod’s family, particularly among his would-be heirs, successors, and inheritors. This narrative subplot evinces a remarkable dead-to-living interaction where the post-mortem selves (δαίμονες) of Aristobulus’ mother and brother ‘conspire against him’ by causing Aristobulus’ servant, who was carrying a bucket of blood the ill Aristobulus had vomited, to spill that bucket *on the very spot at which Antigonus, Aristobulus’ brother, was killed on his*

⁹³ Bray, “Limits of Dread:” “The formula ὀλέθρου πείρατα, which can be provisionally translated as “boundaries”, “bonds”, or “limits of destruction”, appears in both the *Iliad* and the *Odyssey*. ... [Referring to *Il.* 6.143, Diomedes to Glaucus, and 20.429, Achilles to Hector] ... in each case the hero is identifying himself with the boundary between life and death as the deliverer of their adversaries’ fated ends.” See also Brockliss, “Abject landscapes of the *Iliad*.”

orders (AJ 13.314–17; cf. BJ 1.82).⁹⁴ Here Josephus describes a particular place that becomes a borderline between the living and the dead as the dead exercise exceptional agency within the world of the living. This is not to say that Josephus has such a site in mind when he has Herod mention the νόμος φύσεως at AJ 17.95. It is to affirm, however, that the domain to which Josephus' "law of nature" implicitly applies at AJ 17.95 is a sphere that Josephus knew well and not infrequently included in his narratives, the spatially-construed sphere of the living/dead divide. A survey of νόμος φύσεως-language throughout Josephus' corpus shows that this is the 'place' where such law(s) applied. For this reason, the space where the realm of life meets the underworld constitutes a cultural lens for viewing the "law of nature" in Josephus 'through ancient Mediterranean eyes.'

7. Conclusion

It has not been uncommon for scholars to refer to "natural law" or a/the "law(s) of nature" in Josephus.⁹⁵ However, almost always such references correspond not to the actual Greek phrase νόμος φύσεως, but rather to the broader notion of a natural law qua universal norm. These references speak to an idea that may be deduced from Josephus' writing rather than to any consistent feature of Josephus' Greek language usage. As this essay shows, the actual language of a/the "law of nature" in Josephus is technical terminology corresponding specifically to the experience of dying. This semantic realm maps onto broader ancient Mediterranean notions of life, death, and the dividing line between them. This suggests that modern scholars be more circumspect about speaking of Josephus in terms of 'natural law.' One remedy might be to speak of a "law of nature" as that which corresponds to νόμος φύσεως, as the Greek νόμος καὶ φύσις are almost invariably translated "law" and "nature" in any context. Correspondingly, "natural law" should be used to refer to ideas present in Josephus consistent with

⁹⁴ Also the δαίμονες of Alexander and Aristobulus are said to have "patrolled the palace from end to end, detecting and disclosing all the mysteries, and dragging to judgment persons who seemed farthest removed from suspicion" (BJ 1.599). By attributing Herod's murderous investigations and trials in part to daemons, Josephus here again presents a scene where the realms of the living and the dead come into contact at a particular place. For further discussion of these passages see Bay, "Demons in Flavius Josephus," 207, 214.

⁹⁵ Such a habit is epitomized in the references to Josephus in Grant, *Miracle and Natural Law in Graeco-Roman and Early Christian Thought*, at (e.g.) 91, 106, 183, 187, 223. A recent essay by Steve Mason begins: "Philo and Josephus were fluent in the common cultural discourse of their world. They explained Judaeon laws and customs in ways that resonated with the highest Graeco-Roman values. For both, the laws of Moses embody the very laws of nature (φύσις) and so provide the finest human constitution (πολιτεία)." Mason, "Stranger Danger! *Amixia* among Judaeans and Others."

that broader philosophical category more or less defined by Philo and developed up through the present day. It may be that scholarship has already adopted this habit incidentally, at least in some cases. Andrew Krause, citing Steve Mason, claims that “the constitutional Law of Moses in *Antiquitates* represents both a malleable set of customs ... and a fixed entity, which represents for Josephus the Natural Law.”⁹⁶ This does not appear to signal a phrase in Josephus’ Greek per se but rather is a way of talking about how Josephus’ viewed Mosaic Law vis-à-vis universal norms. In any case, the interpreter of Josephus should be aware that the only thing “literally” referred to in Josephus as a/the “law(s) of nature” is a rule or set of regulations governing the life-to-death transition.

This article’s primary thesis has been that a/the “law(s) of nature” in Josephus is technical terminology which pertains to dying, i.e. the transition from life to death. This does not mean that Josephus might not have had a broader notion of a ‘natural law,’ but rather that the only places he uses this verbatim Greek phrase in his extant writings are explicitly centered on death. Nor does this mean that Josephus always uses this terminology in the same broader syntactical constructions (though the grammatical construct νόμος-noun + φύσις-genitive is consistent). This article has also suggested that a helpful way for the modern interpreter to read Josephus’ “law of nature” is to try to envision the *type of place* in which Josephus must have imagined that law to apply, namely, a domain where a borderline separates the realm of the living from the realm of the dead. The argument is not that Josephus (always) overtly points the reader to such a realm; rather, Josephus would already have shared with his original readers an understanding of such a ‘place’ and moment of transition. A brief and broad spatial and cultural reconstruction of such an imagined site is a helpful heuristic by which we today can read Josephus’ “law(s) of nature” through ancient Mediterranean eyes. In antiquity, as today, all ‘laws’ claim certain spheres of influence, even those that were theoretically ubiquitous. Here we have suggested

⁹⁶ Krause, *Synagogues in the Works of Flavius Josephus*, 109, citing Mason, “The Importance of the Latter Half of Josephus’ *Judaean Antiquities* for His Roman Audience,” 136–37. There Mason says that “[a]lthough Josephus happily situates the Judaeans in the ethnographic map assumed by his audiences ... the most remarkable feature of *Antiquities*’ prologue is his connection of Moses’ constitution with the very laws of nature, with the result that observance of them or failure to do so brings rewards or punishment to all, *without ethnic distinction*” (136). Mason is apparently talking about *AJ* 1.14, where the Law of Moses is presented as constituting a universal set of rules that can be used to lead a good or bad life and which inevitably result in positive or negative results accordingly. Josephus’ statement is arguably applicable to Josephus’ outlook, but not to any language of “natural law” per se. Mason’s comment could be used to describe Philo’s actual use of Greek, however. Krause again refers to Mosaic Law in Josephus as “the Creational or Natural Law” at 146, again a nod to Josephus’ thought, not his language.

that the sphere to which Josephus' "law of nature" applies may be partially recaptured by noting a few salient ancient texts that will have helped form Josephus' multicultural *habitus*.

In the end, we may mark this idea of 'multiculturalism' in Josephus as one of the larger take-aways of this study. While the present analysis provides helpful new ways for understanding Josephus' writings and language, it also points to the fact that Josephan texts witness a remarkable marriage of Greek, Roman, and Jewish language, conventions, ideologies, and perspectives. Just so with the "law of nature," an odd Greek construction which Josephus creates out of multiple traditions: Jewish monotheism, Mosaic legislation, Greek philosophy, and an ancient Mediterranean *koinê* regarding how the life-to-death transition should and can look, implicitly denoting where it happens and how it should happen along the way. Once again, Josephus' Greek shows itself a powerful linguistic testimony to the overlapping cultural worlds within which Josephus' himself lived, thought, and wrote. Josephus' conception and use of νόμος φύσεως is unique in the ancient world, but it certainly must be understood as a product of that world. He simply uses the phrase in a very confined way, always referring to death and dying. Thus, Josephus' "law(s) of nature" is nothing like the broad-spectrum commonplace often denoted under the umbrella of "natural law."

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