

**THE SUPERFLUTY OF THE LAW IN PHILO AND PAUL:  
A STUDY IN THE HISTORY OF RELIGIONS**

**THE SUPERFLUTY OF THE LAW IN PHILO AND PAUL:**

**A STUDY**

**IN THE HISTORY OF RELIGIONS**

By

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## ABSTRACT

This thesis looks at two seminal Jewish thinkers of the 1st century C.E., Philo of Alexandria and the Apostle Paul, and compares their distinct views of the Mosaic law with Graeco-Roman discussions of law. Specifically, it asks how Graeco-Roman discussions of "higher" law - the law of nature (nomos physeōs), the unwritten law (agraphos nomos), and the living law (nomos empsychos) - influenced, or might have influenced, Philo and Paul in their attempts to understand the Mosaic law in an Hellenistic environment.

Each of these forms of Graeco-Roman law implied a depreciation of the written, or civil, law. Did Philo, who adopted each of these forms of law, imply such a depreciation of the Mosaic law? Did he intend, as a number of scholars have argued, to claim that the Mosaic law was a second best choice for the truly wise person? This thesis sets Philo squarely in the context of these Graeco-Roman discussions, in order that not only his dependence but also his uniqueness may be seen in his adoption of these ideal forms of law.

The case of Paul is somewhat different. Paul did claim that the law of Moses was abolished for the Christian. His radical response to the Torah has no precedent in Jewish thought, yet for the most part his view of the law seems not to be dependent upon Hellenistic thought. Was he nevertheless influenced by these Graeco-Roman discussions in his extreme reaction to the

continuing validity of the law of Moses for the Christian? Was he influenced, particularly, by the law of nature, which claimed that the sage was not bound by the written law, or by the living law, which replaced the written law with the king, the living law? This thesis compares Paul's thought on the law to these Graeco-Roman discussions of the "higher" law.

The thesis begins with an overview of the concepts of "higher law," and then moves to a study of law in Philo and in Paul. It finishes with a comparison of Philo and Paul and their responses to the Mosaic law. It contends that in their views of the Mosaic law Philo remains true, even in the face of Hellenism, while Paul rejects the law, because of his experience of Jesus Christ and the present eschatological reality in which he lived.

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## ABBREVIATIONS

<u>AJP</u>	American Journal of Philology
<u>ANRW</u>	Aufstieg und Niedergang der römischen Welt
<u>BevT</u>	Beiträge der evangelischen Theologie
<u>CBQ</u>	Catholic Biblical Quarterly
<u>CQ</u>	Classical Quarterly
<u>EQ</u>	Evangelical Quarterly
<u>EvT</u>	Evangelische Theologie
<u>HTR</u>	Harvard Theological Review
<u>HUCA</u>	Hebrew Union College Annual
<u>JBL</u>	Journal of Biblical Literature
<u>JHI</u>	Journal of the History of Ideas
<u>JHS</u>	Journal of Hellenic Studies
<u>JJS</u>	Journal of Jewish Studies
<u>JSNT</u>	Journal for the Study of the New Testament
<u>JSS</u>	Journal of Semitic Studies
<u>JTS</u>	Journal of Theological Studies
<u>LCL</u>	The Loeb Classical Library
<u>MGWJ</u>	Monatsschrift für Geschichte und Wissenschaft des Judentums
<u>NovT</u>	Novum Testamentum
<u>NTS</u>	New Testament Studies
<u>Phil Rev</u>	Philosophical Review
<u>SJT</u>	Scottish Journal of Theology
<u>SR</u>	Studies in Religion \ Sciences Religieuses
<u>TAPA</u>	The Transactions and Proceedings of the American Philological Association
<u>TDNT</u>	G. Kittel and G. Friedrich (eds.) Theological Dictionary of the New Testament
<u>ZNW</u>	Zeitschrift für die neutestamentliche Wissenschaft

## ABBREVIATIONS FOR PRIMARY SOURCES

CIL	Corpus Inscriptionum Latinarum
FPG	Fragmenta Philosporum Graecorum ed. Mullach
LXX	Septuagint
Stob.	Stobaeus, <u>Anthology</u> eds. C Wachsmuth and O. Hense
SVF	Stoicorum Veterum Fragmenta ed. H. Arnim

### Philo of Alexandria

<u>Aet.</u>	De Aeternitate Mundi
<u>Abr.</u>	De Abrahamo
<u>Agr.</u>	De Agricultura
<u>Cher.</u>	De Cherubim
<u>Conf.</u>	De Confusione Linguarum
<u>Congr.</u>	De Congressu quaerendae Eruditionis gratia
<u>Contemp.</u>	De Vita Contemplativa
<u>Decal.</u>	De Decalogo
<u>Det.</u>	Quod Deterius Potiori insidiari solet
<u>Ebr.</u>	De Ebriatate
<u>Fug.</u>	De fuga et inventione
<u>Gig.</u>	De Gigantibus
<u>Her.</u>	Quis Rerum Divinarum Heres
<u>Hypoth.</u>	Hypothetica
<u>Ios.</u>	De Iosepho
<u>LA 1-3</u>	Legum allegoria I, II, III
<u>Legat.</u>	De Legatione ad Gaium
<u>Mig.</u>	De Migratione Abrahamo
<u>Mos. 1-2</u>	De vita Moysis I, II
<u>Mut.</u>	De mutatione nominum
<u>Opif.</u>	De Opificio Mundi
<u>Plant.</u>	De plantatione
<u>Post.</u>	De posteritate Caini
<u>Praem.</u>	De praemiis et poenis, De execrationibus
<u>Prob.</u>	Quod omnis probus liber sit
<u>QE</u>	Questions in Exodus
<u>QG</u>	Questions in Genesis
<u>Quod</u>	Quod Deus immutabilis sit
<u>Sacr.</u>	De sacrificiis Abelis et Caini

<u>Sobr.</u>	De Sobrietate
<u>Somn.</u> 1-2	De Somniis I, II
<u>Spec.</u> 1-4	De specialibus legibus I, II, III, IV
<u>Virt.</u>	De virtutibus

### A NOTE ON TRANSLATION

All translations from the Bible are from the RSV (The New Oxford Annotated Bible with the Apocrypha. RSV Translation. Edited by Herbert G. May and Bruce M Metzger. New York: Oxford University Press Inc., 1965, 1977).

All translations from ancient texts, unless otherwise noted, are from editions of the LCL.

## INTRODUCTION

Two Jews of the first century C.E. -- the Apostle Paul and Philo of Alexandria -- challenge history-of-religion scholars by their distinct but comparable views of the law of Moses. One cannot claim that the views of Philo of Alexandria and the Apostle Paul were at all representative of the Judaism of the time, nor can one even claim that they were kindred spirits; but they did have a common interest, and for all of their differences both accepted the Mosaic Law as divine in origin, charged with historic meaning, and yet, in its material form, apparently superfluous to moral behaviour in certain cases.

Philo affirmed that the law in its material form is unnecessary for people who are themselves "unwritten laws" (agraphoi nomoi), for those who have become "embodiments of the law" (nomoi empsychoi), or for those who follow the law of nature. For these people the law of Moses is dispensable for by their nature they obey its precepts. Paul affirmed that Christ signals "the end of the Law" (Rom.10:4), so that Christians "are discharged from the law, dead to that which held us captive, so that we serve not under the old written code but in the new life of the Spirit" (Rom.7:6). Nevertheless, Paul

claims that "the just requirement of the law might be fulfilled in us, who walk not according to the flesh but according to the Spirit" (Rom.8:4).

The idea that the law in its material form is superfluous is not standard fare in Judaism. The normal assumption is that the law was given by God so that his people would study and obey it. How do Paul and Philo therefore come to see the law as fulfilled in other ways by some people? The purpose of this study to examine whether Greek conceptions of law impinged on the diverse reasoning of Paul and of Philo.

#### I) "Higher" Law in Greek Thought

There is no one Greek conception of the law; one strong strain running through some Greek discussions of law, particularly Stoic, is the idea that there is a law of nature, a law which transcends written codes of law. The law of nature is an immutable law which human beings can perceive through study and reason, and which guides them by nature, not by codification, to do all that is right and to avoid all that is wrong. This law is unchangeable and can be realized and known without material forms of law. This leads to a second strain of thought found in Greek conceptions of law: some people are capable of the knowledge of this law and possess thereby such virtue as to render material forms of law superfluous to them. They keep the law through their very nature.

Two other forms of what might be called "higher" law are related to the Stoic view of the law of nature: the idea of unwritten law; and the concept of the king as the living law. The idea of an unwritten law, or laws, is a vague, but prevalent conception in Greek sources. In its most important manifestation the idea of unwritten law speaks of immutable, eternal, or divine laws beyond the codified, or positive law which must be obeyed.

The living law is a concept which took form in the Hellenistic period, specifically in a number of fragments attributed to students of Pythagoras. These fragments, unique as they are, draw upon Greek traditions about the king as the most just man and the wise man who transcends the law. In the nomos empsychos ideal the just and wise king himself becomes the law and replaces the codified law for his subjects. To obey the law, the king's subjects must follow the king.

This study is an attempt to understand the role of these three Hellenistic conceptions of "higher," or uncoded, law in shaping the beliefs of two Jewish thinkers of the first century. The aim of the study is to determine how Philo and Paul were influenced by Hellenistic conceptions of "higher" law and the "ideal man" in their rethinking of the law, and so to determine whether Hellenistic notions represent common ground for their thought on the law of Moses.

The study should act as a corrective of modern studies of Paul and the law by reference to possible Hellenistic influences on Paul's conception of the law. It will also allow a better-based comparison of Philo with one of his Jewish contemporaries, as well as a fresh appraisal of the originality in his thought on the law; it will also facilitate the effort to place him in the history of Greek and Jewish thought on law.<sup>1</sup> Much of the current debate regarding Jewish law has ignored Greek law and what it can add to our understanding of early Christianity and Judaism in the Graeco-Roman period.

## II) Philo and The "Higher" Law

Many have noted Philo's reliance on Greek philosophical conceptions in general. This general reliance on Greek philosophy finds its formulation in specific concepts and terms. One of these concepts is Philo's idea of a law of nature (nomos physeōs) and the related concepts of the unwritten law and the living law.

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<sup>1</sup> Little appears to have been written on Philo and his view of natural law, unwritten law, and the ideal man. The topic does deserve a thorough restatement in and of itself regardless of its use in a comparison. One notable exception is the work of André Myre of the Université de Montreal whose work on Philo and the law appeared in the journal Science et Esprit from 1972 to 1976. Especially pertinent is his article "La Loi de la Nature et la Loi Mosaique selon Philon d'Alexandrie" in Science et Esprit 28/2 (1976). At the same time, Philo has too often not been considered as a "Jewish" interpreter of law; his use of Greek language has obscured his loyalty to the Mosaic law.

The law of nature was a Stoic idea which found new meaning in the hands of Philo. Helmut Koester has gone so far as to strip the Greeks of the credit for the creation of the concept and hand it to Philo.<sup>2</sup> We will not follow Koester, but there is much left to be said about Philo's use of the concept and his alteration of it. Particularly distinctive are Philo's description of the relationship between the Mosaic law and the law of nature, and the close ties he creates between the law of nature, unwritten law, and the living law.

Certain connections, however, have been overlooked by studies of Philo and the law, connections Philo draws between the law of nature and the general idea of the superfluity of material law for certain people and the specific idea of who fulfills the law. The Stoics always maintained the ultimate transcendence of the law of nature over written codes of law. The reality of the law of nature in Philo's work means that certain people have fulfilled the law of nature and, theoretically, others are capable of fulfilling the law of nature. The fulfillment of the law of nature, without recourse to the Mosaic law, would seem to be a higher way. The law of nature would be the true law, and lend credence to Helmut Koester's claim that Philo's theory "produces the extremely momentous insight that a true law of nature

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<sup>2</sup> Helmut Koester, "Nomos Physeos: The Concept of Natural Law in Greek Thought" in Religions in Antiquity: Essays in Memory of E.R. Goodenough (Leiden: Brill, 1968), 522, 532, 540.

is in fact an ultimately superior criterion for the life of the truly wise man."<sup>3</sup> What then of the Mosaic law? Is it not only a copy of the true law? Is the law of Moses in some fundamental way second best in Philo's scheme? Philo also connects the law of nature to the concepts of the living law and the unwritten law, both of which are altered in his work. Both of these ideals seem to subvert the high standing of the written law too. What becomes of the law of Moses?

I will examine this tension between the higher forms of law and the law of Moses in depth. To this end, I will attempt to clarify Philo's views regarding law and nature, the relationship between the Mosaic law and the law of nature, his view of the "living laws" and "unwritten laws" and their relationship to the ordinary person, and his view of the possible superfluity of the Mosaic law. Finally, I will evaluate his status once again on these important questions as a Jewish and Greek thinker.

### III) Paul, Law, and Nature

Not much has been written concerning Paul's view of nature; the same cannot be said of his understanding of law. The first task is to examine Paul's limited but important statements on nature. The Greek idea of nature (physis) finds no equivalent concept in Hebrew thought. Paul's writings on nature, therefore, will be closely compared to the Greek views, in order to determine what connections they have to Greek conceptions of

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<sup>3</sup> Helmut Koester, "Nomos Physeos", 535.

higher law, specifically the law of nature. Does Paul in some way see a law of nature or nature itself as guide for Christian ethics without law?

The next stage is the study of Paul's view of law, particularly as it relates to Christ as the telos ("end", or "goal") of the law (Rom 10:4) and to Christians as those who fulfill the law. We will compare these concepts to Stoic (and other Greek and Hellenistic) conceptions of the wise or ideal man, and how he is said to fulfill the law, in order to ascertain if Paul's view of the Christian's relationship to the law is based upon Greek discussions of the wise man's transcendence of the law.

Finally, we will examine the Christian life under Christ, a life without law. Especially significant will be Paul's view of why Christians do not need the law and why they are nevertheless said to fulfill it. We will compare these concepts with the concept of the living law and the accompanying claims that the king becomes the law for his subjects. The subjects of the nomos empsychos are lawful because they follow the king who is most lawful, not because they follow a codified law.

Paul's conception and understanding of the law at its most basic level stems from Judaism. What drove Paul to deny its basic role in the life of Christians? This radical solution is, even in retrospect, breathtaking. Paul has his own rationale regarding the end of the law, concerned with the eschatological realities of the age, particularly the giving of the Spirit, but

much of what Paul says about the law may be clarified by Hellenistic discussions of law, particularly with regard to the superfluity of the law and its fulfillment. Paul's concern is with the Mosaic law, but if we compare Paul's thought to Greek legal discussions, we will come to understand more fully Paul's thought on the law and possibly find connections to Greek discussions.<sup>4</sup>

#### IV) Philo, Paul, and the Law

Both Paul and Philo had to come to terms with the law of Moses. To do so they both looked to Hellenism in varying degrees. This has been acknowledged in Philo's case, but not studied properly, and largely ignored in Paul's case. Yet, shared by the two of them is the understanding that the material law may be in some cases superfluous. For Philo, the Mosaic law, a copy of the law of nature, seems to be second best, but meant to be kept because only rarely did anyone achieve the true law of nature. For Paul, Jesus was the goal of the law, so that the true law could be kept by all who had faith in him. What has been lost in the study of Philo's law of nature are his changes to the Greek law of nature: God is above nature; natural law has its particular manifestation in Judaism; and the various

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<sup>4</sup> Some work, of course, has been done on Paul and Hellenistic concepts of the law. Most notable are J.B. Lightfoot, "St. Paul and Seneca" in St. Paul's Letter to the Philippians (London: Macmillan and Co., 1881); Max Pohlenz, "Paulus und die Stoa" in ZNW 42 (1949); and E.R. Goodenough, "Paul and the Hellenization of Christianity" in Religions in Antiquity. None of these scholars has done exactly what I propose to do, and it is time for a fresh assessment of the evidence.

manifestations of higher law are united in his work. What has been lost is his Judaizing of a Greek concept. For all of his Greek language, Philo remains true to Judaism. But did he, in borrowing these Greek concepts of law, subvert the law of Moses?

Paul presents a different case. Paul declares that the law of Moses has yielded its place to the living Spirit of Christ. That the law should be eliminated is not a standard Jewish ideal; that it led to sin and unrighteousness is not a normal Jewish view. Paul's reasons as to why the law is superfluous are a response to Jewish concerns, but that the law became superfluous because of Jesus and the arrival of the eschaton was perhaps suggested by Greek conceptions of the law. It does not follow for Judaism that the coming of the Messiah means the end of the law. In his claim that the abolished law is fulfilled by Christians, Paul may be borrowing Stoic ideas. In his understanding that all can partake in the dikaiosynē of the fulfilled law, Paul may be influenced by the living law ideal. It is also possible, of course, that these connections are no more than tenuous, and that Paul's thought on the law is once more seen to be Pauline.

The coming of Jesus meant for Paul that the law was superfluous but fulfilled: Christ had made the law superfluous for all who had faith. For Philo, the law of Moses would seem to be rendered superfluous by those

who could follow the law of nature. The questions which will guide us as we explore the connections between two Jewish thinkers and Greek legal discussions in the Graeco-Roman era are as different as the two authors themselves. For Paul, since he spoke of the end of the written law, but still believed Christians fulfilled the law, was he influenced by Greek concepts of higher law which render the written law superfluous? For Philo, since his use of the concepts of higher law is ubiquitous, did he in some way render the law of Moses superfluous in his adoption of these concepts?

The treatment of Paul and Philo must, of course, await a study of the concepts of higher law in the Greek literature. The following discussions of nomos physeōs, agraphos nomos, and nomos empsychos are intended to see in what way these forms of law were considered "higher," how their proponents claimed they were based in eternal concepts of truth and justice, and in what way they could potentially undermine the material or written law. They are not intended to be exhaustive discussions on the history and meaning of these important concepts. The following chapter is meant to provide enough background information and sense of development to render the discussion on the law and its superfluity in Philo and Paul intelligible.

**CHAPTER ONE: "HIGHER" LAW**  
**AND THE SUPERFLUTY OF THE LAW IN GREEK THOUGHT**

Most scholars seem to agree that in spirit, at least, concepts such as agraphos nomos, nomos physeōs, and nomos empsychos go back beyond their first explicit formulations in the extant literature to something deeply ingrained in the Greek spirit: a belief in the divine ordering of the world.<sup>1</sup> The divine ordering of the world was apparent in early Greek thought,<sup>2</sup> more than that, authors such as Heraclitus show us that the divine order of the world extended to human law.<sup>3</sup> The foundation of Greek society, its legal systems, was supported by the gods. How this was so was not clear,

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<sup>1</sup> Victor Ehrenberg, Sophocles and Pericles (Oxford: Basil Blackwell, 1954), 35-36,48; James Luther Adams, "The Law of Nature in Greco-Roman Thought" in JR 25 (1945), 97; M.T. McLure, "The Greek Conception of Nature" in Phil Rev 23/63 (1934), 115; W.C. Greene, Moirā: Fate, Good, and Evil in Greek Thought (Gloucester, Mass.: Peter Smith, 1944), 226-227; Werner Jaeger, Paideia. Vol.III (New York: Oxford University Press, 1944), 241; Rudolf Hirzel, Agraphos Nomos (Leipzig: B.G. Teubner, 1900), 27.

<sup>2</sup> Greene, Moirā, 17,36; W.K.C. Guthrie, History of Greek Philosophy. Vol.III (Cambridge: The University Press, 1962-1981), 55.

<sup>3</sup> See G.S. Kirk, The Cosmic Fragments (Cambridge: University Press, 1954), 48 for fragment B114 which speaks explicitly, if not clearly, of this connection; see also F. Heinemann, Nomos und Physis (Darmstadt: Wissenschaftliche Buchgesellschaft, 1965), 66.

however, and as long as the Greeks had faith in the law it was not necessary that it be clear. The knowledge that the divine order supported the law somehow was enough. The 5th century brought a change into this relationship, among others, that led people to ask why their law was worth following and in what way it reflected truth and justice and not simply arbitrariness and convention. The relativism of the Sophists struck a responsive, if dissonant, chord.

The law, said the Sophists, was not that which made the Greeks moral and just; instead, law was to be seen in a negative light, as "convention," something imposed upon humankind arbitrarily by those who had power and with no true basis in morality or justice.<sup>4</sup> Some Sophists, indeed, spoke of a "law of nature," by which they meant, "might is right": this was true law, which no amount of talk about the goodness of law could disguise. Other Sophists spoke of law as true and good, but since there was no chance of this true law being practised by the majority of men, why should one pretend to follow the law? Still others found the law a useful device for social control, necessary for the maintenance of a civilized society; they nevertheless agreed that if the opportunity to break the law presented

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<sup>4</sup> See Guthrie's "The Nomos-Physis Antithesis" in History Vol.III, 55-134 for an outline of the rise of the Sophists and their thought. Guthrie also provides references to the other secondary literature. This material was later reprinted as The Sophists (Oxford: University Press, 1971).

itself, without the fear of punishment, one should break the law, for the law had no status in questions of truth and justice.

These challenges rocked the foundations of Greek society and philosophic thought. If the law was not based on truth and eternal standards of justice, but was only the expression of societal convention, arbitrariness, or power, why should one obey the law?<sup>5</sup> It was the struggle to answer these challenges to the material law, the codified law of a people or city, that led to the creation of Greek concepts of what one might call "higher" law: law whose support came not from the shifting sentiments of human convention and the selfish dictates of power, but from divine standards of truth and an eternal sense of justice.

An odd effect of Greek thought on "higher" law was, ironically, that the material law which these concepts were to support were rendered, in various and limited senses, superfluous. The basis for human law was sought in the eternal and unchangeable, and while "higher" law theorists agreed that there was an ideal law, or laws, they were forced to admit that the material law fell short of the ideal in many cases. And if the material

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<sup>5</sup> Guthrie, History Vol.III, 55-134 discusses the variety of Sophistic arguments used to undermine the written law.

law fell short of the ideal, of the truth, it could, in fact it should, be replaced by the true law.<sup>6</sup>

### I) Agraphos Nomos: Unwritten Law

The term unwritten law generally refers only to a group of specific laws, not to a concept which defines a general system of "higher" law. Unwritten law could mean many things, sometimes even in the work of the same author. Victor Ehrenberg gets to the heart of the matter when he says,

it would really be a mistake to connect the idea of unwritten laws with any definite rules beyond the fact that they were not put down in writing.<sup>7</sup>

There is, he continues, no real "definition or limitation" and, as a result, "the agraphoi nomoi could even express almost contradictory philosophies of life."<sup>8</sup>

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<sup>6</sup> The discussions of "higher" law are careful not to preach antinomianism. Such care is probably a result of reflection on the real dangers to which "higher" law could lead and in fact antinomianism was an unwanted byproduct of such legal thought. Ludwig Edelstein, The Meaning of Stoicism (Martin Classical Lectures XXI; London: Oxford University Press, 1966), 83 says that the antinomian characteristics of the law of nature were never denied by the Stoics.

<sup>7</sup> Ehrenberg, Sophocles, 47.

<sup>8</sup> Ehrenberg, Sophocles, 48.

We are able, however, to distinguish the main strands of Greek thought on unwritten law and, thereby, to come to some general conclusions about the contours of the discussion in the primary literature. There are three major meanings of unwritten law in the Greek literature: unwritten law could mean laws which were literally not written in a code of law;<sup>9</sup> it could refer to custom, customs, or social mores - "laws" which had no official status, but the breaking of which led to social sanction or some other type of community punishment; or it could refer to divine, or eternal law which was incumbent upon everyone, even though not written.

#### A) Laws Which Were Not Written

This, in at least two senses, meant "unwritten" law in a rather concrete way. It could mean that a law or laws in the course of a revision of a city's law were omitted and, hence, "unwritten"; or it could mean that certain laws were "unwritten" for certain people, that is, they were not intended for or not binding upon these people.

The first meaning is found in Andocides, On the Mysteries, 85f. In this case, he refers to the revised laws of Athens. Some of the old laws were not written in the revised laws; nevertheless, some people had been

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<sup>9</sup> Generally these laws were at one time a part of the written, law of a city, but a revision of the law codes omitted them; they are, therefore, "unwritten." See Douglas Maurice MacDowell, Andocides (Oxford: Clarendon Press, 1962), 125-126.

charged on the basis of these old laws. These old laws, however, were no longer valid because they were agraphos, "unwritten."<sup>10</sup>

The second meaning is found in the work of an African author from the 3rd century C.E., Pomponius Porphyry. In his commentary on Horace, Satires, 2.3,188, he records a Greek proverb.<sup>11</sup> Horace tells the tale of a commoner who is told by the King not to bury a comrade. When the commoner asks why, the king answers, "Because I say so." The commoner answers, "That is enough for me". Porphyry adds a proverb, embedded in Greek in his Latin text, which he believes is pertinent to this passage: morōi kai basilei agraphos nomos, "for the fool and the king the law is not written." The sense of this passage is clear: for differing reasons the law is not binding upon or not intended for the king and the fool. Somehow, they elude the law.

This proverb was preserved in a third century text, but we may suspect that it is quite a bit older; how old, however, is impossible to determine. That it had a wide and popular audience in the ancient world is shown by the fact that the proverb, transliterated, but not translated, is

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<sup>10</sup> MacDowell, Andocides, 125-126; E.C. Marchant, Andocides: De Mysteriis and De Reditu (London, 1906), 152; Hirzel, Agraphos Nomos, 37.

<sup>11</sup> See Alfred Holder's (ed.) edition Pomponi Porfyriionis: Commentum in Horatium Flaccum (Innsbruck, 1894), 302 for the passage in question.

found in the Palestinian Talmud. The proverb, found in PT Rosh Hashanah I,3,57a, is altered only in minor respects.<sup>12</sup>

## B) Custom

Most, if not all, communities preserve customs, unspoken and unwritten, which are quietly obeyed by members of society, not for fear of punishment from a legal authority, but because of the fear of outcast status which sometimes accompanies the breaking of an "unwritten law." This sense of unwritten law continues to shape societies around the world today. This was one of the major meanings of unwritten law in Greek thought.

Why it was called "unwritten" law is obvious: these "laws" were not codified, sometimes they were only apparent if broken. They carried with them, if broken, only the odium of the society in question. That they existed in a middle ground, between law and opinion, is clear from the many formulations of the term. Sometimes it was called agrapha nomima, other times agraphon ethos, but the term adopted by most writers was agraphos nomos.

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<sup>12</sup> The Talmud citation adds para, "for," and the definite article before nomos. See Saul Lieberman, "How Much Greek in Jewish Palestine?" in Texts and Studies (New York: Ktav Publishing House, 1974), 221-222; Greek in Jewish Palestine (New York: P. Feldheim, 1965), 37-38; 38,#51; 144,#2. See also Heinrich Lewy, "Philologische Streifzüge in den Talmud.4. Ein griechisches Sprichwort" in Philologus 52 (1893), 567-568 for a discussion of the Talmudic passages.

Plato discusses unwritten laws as custom in Laws 793a-793d.

Various suggestions have been made by Plato regarding the raising of infants; he believes that these suggestions should not be placed in the written law, but neither should they be passed over unmentioned. They inhabit a middle ground, and Plato calls them agrapha nomima or patrioi nomoi; they are customs which should be done habitually and so buttress the order brought by the written laws.<sup>13</sup>

These "laws" are not considered eternal, but are seen to grow from concrete historical situations and communities.<sup>14</sup> They are something less than written law, but not arbitrary additions to a community's law. This is borne out by Plato's further discussion in Laws 822d,835e,838b, and 839a. He implies, at least, that unwritten law, which is made manifest in custom, is based on a higher standard than arbitrary community standards, namely, nature.

Nevertheless, unwritten law is valid for certain communities, not humankind in general. When Plato speaks of these unwritten laws, such as

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<sup>13</sup> The difference between nomima and nomos with the modifier agraphos becomes slight, but it is clear that nomima does not occupy the same status as nomos. It appears that authors such as Plato wanted to use nomima to distinguish between written law (nomos) and unwritten custom. This distinction ultimately fell by the wayside.

<sup>14</sup> Cf. also Laws 773e; 841b; Rep. 425b; States. 295a-e, 298d; Hirzel, Agraphos, 19-20.

the proper choice of a marriage partner (Laws 773e), the control of sexual practices and the passions (Laws 835e,839a), and the silence of children among parents or the cut of one's hair (Rep. 425a-e), he maintains that they need not be inscribed in a written code. Their relative lack of importance does not justify their inclusion in a code of law (Laws 822d; Rep. 425a-e). They are ancestral customs (Laws 793a-d; States. 295a-296c,298d), but it is not necessary that they acquire legislative force.

Demosthenes, in Against Aristocrates 70, speaks of the agrapha nomima as a branch of city law, in this case of Athens. The dictates of these unwritten laws had been contravened by a certain Athenian jurist. Demosthenes lets us know that unwritten law is not simply a matter of theory, but a part of the law of a city, under which people, whether officially or not, are judged.<sup>15</sup>

Thucydides, 2.37,2 gives us perhaps the best definition of unwritten law as custom and the effect of its transgression. He names fear as a restraint on lawlessness. This "reverent fear" is found both in laws "ordained for the succour of the oppressed and those which, though unwritten, bring upon the transgressor a disgrace which all men recognize."

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<sup>15</sup> Hirzel, Agraphos, 26; W.W. Goodwin, Demosthenes: On the Crown (New York: Hildesheim, 1973), 169 believes that agrapha nomima here refers to unwritten law's "eternal" meaning, but this does not seem to be the case, as Aristotle's division in the Rhetoric 1368b ff. makes clear.

The laws ordained for the "succour of the oppressed" are certainly the written laws. As to the unwritten laws, this is the classic formulation of the power which unwritten law contains, though officially having none.

Aristotle, whose combined writings on the unwritten law are the most extensive, also has a section in the Rhetoric on unwritten law as custom. In Rhetoric 1.1374a,18f he groups agraphos nomos under idios nomos; the unwritten law is a particular component of the city law.<sup>16</sup> Here it is taken to mean the customs of a people.<sup>17</sup> Unwritten laws are "the notions, habits and practices prevailing in any given society," as Cope explains it.<sup>18</sup> It is, in this sense, in "excess" of the written law and is defined by community standards. Unwritten law as custom may also be based on "equity" (epieikeia); so defined, it modifies "deficiencies of the special and written law."<sup>19</sup> This definition of unwritten law does not describe unwritten law as universal law, even though based on "equity";

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<sup>16</sup> Idios nomos is opposed to koinos nomos, which is law valid for everyone, in Rhetoric 1.1373b,4. Elsewhere, however, agraphos nomos is opposed to idios nomos as a part of the koinos nomos. This will be taken up in the following section.

<sup>17</sup> Hirzel, Agraphos, 3-11, especially his summary statement on page 11; E.M. Cope, An Introduction to Aristotle's Rhetoric (London, 1867), 242-243.

<sup>18</sup> Cope, 243.

<sup>19</sup> Cope, 243; cf. also Hirzel, Agraphos, 11.

rather, it still is law based on application to a particular code of law by a given community.<sup>20</sup>

Later authors, too, are well aware of this sense of unwritten law as custom. Dio Chrysostom defines custom (ethos) as unwritten law:<sup>21</sup>

custom is a judgement common to those who use it, an unwritten law of tribe or city, a voluntary principle of justice, acceptable to all alike with reference to the same matters, an invention made, not by any human being, but rather by life and time (76.1).

Dio is not, however, the only writer to have read and digested the writings of his predecessors. Plutarch reports that dolphins are protected by an "unwritten law" that nobody hunt or injure them purposely (Sept. Sap. Conviv. 163a).<sup>22</sup> Plutarch also relates that laws in regard to bravery were unwritten (Apoph. Lacon. 221b).

The idea of unwritten law as custom is a major component of the concept of unwritten law, but the most important component, and probably the oldest, is the idea of the unwritten law as eternal or divine law. Though

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<sup>20</sup> Aristotle speaks further of unwritten law in Pol. 3.11,6; 3.6,5; E.N. 10.9,4. See Hirzel, Agraphos, 13.

<sup>21</sup> Hirzel, Agraphos, 18.

<sup>22</sup> Hirzel, Agraphos, 18-19.

these two senses of unwritten law, custom and eternal law, often became confused, the distinction is clear.<sup>23</sup>

### C) Unwritten, but Eternal

The earliest existing reference to agraphos nomos is found in Sophocles' Antigone 450f.<sup>24</sup> In this passage the unwritten laws refer to what may be called religious law. According to Ehrenberg, "they were the rules of the divine order of the world."<sup>25</sup> They are valid for everyone everywhere: they transcend human boundaries.<sup>26</sup> This sense of unwritten law begins to approach what was later called the law of nature, specifically in the universality of the laws, but there are some differences: there was no attempt to systematize unwritten law and to draw from it a way of life;<sup>27</sup> and it is not clear from what or whom these laws draw their authority - sometimes the gods, sometimes Nature. The unwritten laws are generally only a group of laws; they are rarely, if ever, considered a code of law. As in Sophocles, they often are concerned with religious law. They are not

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<sup>23</sup> Hirzel, Agraphos, 29-31; MacDowell, 125-126.

<sup>24</sup> Ehrenberg, 28-29.

<sup>25</sup> Ehrenberg, 30; cf. also with Cope, 240 and Hirzel, Agraphos, 24.

<sup>26</sup> Ehrenberg, 37.

<sup>27</sup> Ehrenberg, 48.

specifically opposed to the written law, but if a written law undermined the unwritten law, the unwritten law should take precedence.

In Xenophon, Memorabilia 4.4,19f, Socrates speaks of agraphos nomos as law which comes from God. He raises the issue of unwritten law to counteract the relativism of the Sophist Hippias. The laws of which Socrates speaks are certainly considered eternal and binding upon all people.<sup>28</sup> These laws transcend racial borders and human borders; they are meant to be obeyed by all people. Socrates actually names some unwritten laws; hence some scholars have argued that there was a code of unwritten law. Ehrenberg has successfully shown that there is no certain content which is intended whenever the term appears, though some laws, it is true, appear more frequently under the heading of unwritten law.<sup>29</sup>

Demosthenes, too, knows of the unwritten law which is binding upon all. In On the Crown 274-275, Demosthenes tries to make a distinction between someone who sins wilfully and someone who sins unintentionally. The person who fails in an action, while attempting to act in the common interest, should not suffer vilification. This course of judgement is found "not only in the laws" (here read as "written"), "but even nature herself prescribes it in the unwritten laws (agraphois nomois) and in human

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<sup>28</sup> Hirzel, 23-24; Cope, 240.

<sup>29</sup> Ehrenberg, 167-172.

practices."<sup>30</sup> Here is the idea at its height: the idea of unwritten law is that of a law which is borderless, inherent, and natural.<sup>31</sup> It is, in fact, taught by the morality inherent in man. Whether or not the written law is in agreement with it, it is the law.

There are a number of other passages where Demosthenes seems to play with the idea of unwritten law; here one must tread more carefully. In Against Stephanus 1.53 he claims that one who bears false witness "violates not the written laws alone, but also the ties of natural relationships." Unwritten law is not mentioned here, but it may be implied. In Against Aristocrates 61, Demosthenes advocates his right to defend himself against violence. To be denied this right is

manifestly contrary to law,- I do not mean merely to the statute law (ton gegrammenon nomon), but to the unwritten law of our common humanity (alla kai para ton koinon hapanton anthropon).<sup>32</sup>

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<sup>30</sup> My translation. cf. K.J. Dover, Greek Popular Morality in the Time of Plato and Aristotle (Oxford: Basil Blackwell, 1974), 82. He understands this passage to demonstrate "those forces which make for mutual love and social cohesion." He seems, however, to accept the universal scope of these unwritten laws (83).

<sup>31</sup> W.W. Goodwin, Demosthenes, 169.

<sup>32</sup> This translation is taken from Demosthenes, Vol.III in the Loeb Classical Library, trans. J.H. Vince. It points to a problem with the translation of the concepts of higher law, and it is not Vince's problem alone. The terms are often only implied, or not fully stated in the primary text; translators often "flesh" out the terms. For instance, physis is often rendered as the law of nature. Sometimes, the additions can be correct, but it is probably wise not to let years

Again, unwritten law does not appear in the text, but the opposition to written law implies it. Whatever the situation in these two cases, Demosthenes is familiar with the idea of an eternal, unwritten law (On the Crown 274-275).

Thucydides, who like Demosthenes speaks of unwritten law as custom, also discusses the unwritten law as eternal law. Thucydides, in 5.105,1-2, states that men are like gods in one respect, namely, if they have power, they rule. This is a type of law for Thucydides, though

we neither enacted this law nor when it was enacted were the first to use it, but found it in existence and expect to leave it in existence for all time.

Though Thucydides does not use the term "unwritten law" here it underlies his discussion of an always existing law.<sup>33</sup>

Parts of Archytas of Tarentum's treatise on the law and righteousness, Peri Nomou kai Dikaiosynēs, are preserved by John Stobaeus

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of accumulated interpretation haze our understanding of these terms.

<sup>33</sup> Hirzel, 21-22.

(4.1,132,135).<sup>34</sup> In it he speaks of the unwritten law in a most comprehensive and clear fashion.

The unwritten laws of the gods, which are opposed by the laws of wicked custom, inflict an evil lot and punishment on those who do not obey them, and are the fathers and guides of the written laws and teachings which men enact (Stob. 4.1,132).<sup>35</sup>

He attributes the unwritten laws to the gods, and calls them the fathers and guides of the written laws. Though the relationship between the written and unwritten law is not spelled out in full, two important elements of the relationship are apparent. The unwritten laws are divine and higher than the written law. There is also a relationship between the two forms of law. Archytas is the first witness to state that the unwritten law guides the written law, implying that the unwritten law is either a code of some kind

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<sup>34</sup> The genuineness of most of the Pythagorean texts from the Hellenistic period is generally doubted. See Holger Thesleff, An Introduction to the Pythagorean Writings of the Hellenistic Period (Åbo: Åbo Akademi, 1961). This text, however, is considered early, not only by Thesleff (114), but also by J.S Morrison, "Pythagoras of Samos" in CQ 6 (1956), 155 and A. Delatte, Essai sur la politique pythagoricienne (Bibliothèque de la Faculté de Philosophie et Lettres de l'Université de Liège, 1922), 121-124. Louis Delatte, Armand's son, is silent regarding Archytas in Les Traités de la Royauté d'Ecphanté, Diotogène et Sthenidas (Bibliothèque de la Faculté de Philosophie et Lettres de l'Université de Liège 97, 1942) which is a surprise. Louis rejects his father's dating for Ecphantus, Sthenidas, and Diotogenes in no uncertain terms, so his silence with respect to Archytas is interesting and, perhaps, revealing. The question of date will be discussed in depth later in the chapter.

<sup>35</sup> E.R. Goodenough, "The Political Philosophy of Hellenistic Kingship" in Yale Classical Studies 1 (1928), 59.

or divine legal guidance.<sup>36</sup> The unwritten laws are not simply laws which exist beyond the written law, they exert an influence on the written law. Whether or not Archytas exercised influence with his view of the unwritten law, he shows that in at least one instance the unwritten law was considered to be the pattern by which people should guide their lives. The written law was a copy, so to speak, of a higher law.

This takes us to the most important discussion, namely, that of Aristotle. Aristotle, as we have seen already to some degree, wrote about agraphos nomos in a nuanced, and complex, manner. He distinguished between two forms of law in the branch of unwritten law concerned with custom alone. He also spoke of unwritten law as a branch of koinos nomos, or "common" law, by which he meant common to all humankind.<sup>37</sup>

This sense of unwritten law is particularly clear in Rhetoric 1368bf. The koinos nomos is described here as unwritten laws (hosa agrapha) which are recognized universally. These unwritten laws are

the great fundamental conceptions of morality, derived  
and having their sanction from heaven, antecedent and

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<sup>36</sup> There are great differences with Heraclitus' conception of divine guidance of the law. See A. Delatte, Politique pythagoricienne, 81.

<sup>37</sup> There is, indeed, a fourth category of higher law, that of "common law." It not only appears in Aristotle, but is also attributed to many of the early Stoics. The common law in the context of the early Stoics will be taken up in the section on natural law.

superior to all the conventional enactments of human societies, and common alike to all mankind.<sup>38</sup>

These common or unwritten laws are laws that are superior to the written laws of any given society; they are the laws whose claims ought to be first in the minds and hearts of people. While Aristotle more often speaks of the unwritten law as custom, in this case the unwritten law is considered according to nature (kata physin) and recognized universally. Here, as in Archytas, the unwritten law seems more a code than a few commands or prohibitions.<sup>39</sup>

The pseudo-Aristotelian Rhetorica ad Alexandrum 1421b,35f talks also of universal, unwritten laws.<sup>40</sup> What is just, says the author, is "unwritten custom" (ethos agraphon). He names a number of such customs, such as honouring one's parents, and repaying favours to benefactors. These are not based upon written laws, but on unwritten custom and common law. Here, too, the unwritten law is tied to the common law, probably under the influence of Aristotle. Because the unwritten custom is separated from the

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<sup>38</sup> Cope, 240.

<sup>39</sup> See Hirzel, Agraphos, 3-14, for the full discussion of the tension between the two views of unwritten law in Aristotle and the various attempts to ease the tension. With Hirzel, I agree that both views are Aristotle's (11-13).

<sup>40</sup> See my comments supra, 74-75 and n.136,137 for a discussion of the date and authorship of the pseudonymous Rhetorica ad Alexandrum.

law of the city (1422a), it seems that the author indeed envisions these laws to be held universally.<sup>41</sup>

Dionysus of Halicarnassus speaks too of a universal law as an unwritten law. Agraphos nomos can mean custom in Dionysus' work, but it also means universal or common law.<sup>42</sup> In Ant. Rom. 7.41 he mentions an unwritten natural right that all may receive equal treatment before the law. In 7.52 he states again that there is an unwritten natural right (although in this case agraphos does not appear). Cicero, too, in at least one passage (Pro Milone 10) refers to unwritten law, not as custom but as a product of nature.

#### D) Conclusions

This short survey should point to the problems of the concept of unwritten law. It can mean various things, even in the same author's work. The terminology is not always common, and it is unclear how different terminology alters the meaning of the concept in general.<sup>43</sup> Even this quick overview warns us against making hasty conclusions.

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<sup>41</sup> Hirzel, Agraphos, 23-24.

<sup>42</sup> Hirzel, Agraphos, 18.

<sup>43</sup> The term agrapha nomima appears, as does agraphon ethos, agraphoi nomoi and agraphos nomos. Does nomima always imply something less than nomos? Does agraphos nomos imply a code of law and agraphoi nomoi a group of laws? When agraphon ethos appears it oddly does not refer to custom but to eternal law.

Nevertheless there are places in which the unwritten law is clearly a law, or code of law, which is seen to be eternal or divine and higher than the written law. It is law which transcends the written law, or guides the written law. The superfluity of the written law is not spoken but it is an implication of the concept. If the law comes from God, it is eternal and true; if it is universal, it is valid whenever it contradicts other, written law codes. It is a form of law which has the first claim on the lawful actions of men.

Of course, the unwritten law never did become the moving force that the law of nature did. What could be said about it? It was not clear whence its authority came. Its content was difficult to outline, though this can be said of the law of nature too. Without a developed theory of unwritten law, it was difficult to guide one's life by it. It generally involved statements of morality so vague that it could not be codified.

It was an attempt, however, to ground morality in a divine order. As such, it had a measure of success, as it fought to maintain law as guide which did not bend to arbitrariness and power. Yet, its vagueness could not guarantee it support. Such support was given to another form of higher law: the law of nature.<sup>44</sup>

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<sup>44</sup> One must be careful not to join injudiciously the concepts of the law of nature and unwritten law. Though the similarities are sometimes strong, they are different concepts. Hirzel often considers the two concepts synonymous in

## II) Nomos Physeōs: The Law of Nature

The law of nature, a concept whose origin lies with the Stoics, has had a long and turbulent history. The concept was early on adopted by Christian theorists and had a large role to play in European religious, philosophical, and political history. It has been used to support the whims and perversions of dictators.<sup>45</sup> But it has also been used to protect the rights of all human beings. It continues to be discussed in learned law journals even today.<sup>46</sup>

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his book Agraphos Nomos. This is really putting words in the ancients' mouths. Only one ancient author, Philo, joins these concepts together in a programmatic way.

<sup>45</sup> For the history of the concept in Europe and modern times in general see Otto Friedrich von Gierke's Natural Law and the Theory of Society (trans. and Intro. by Ernest Barker; Cambridge: The University Press, 1934); see also J.P. Mayer, Political Thought: The European Tradition (London: J.M. Dent & Sons, 1939); Leo Strauss, Natural Right and History (Chicago: The University of Chicago Press, 1953); Ernst Bloch, Natural Law and Human Dignity (trans. Dennis J. Schmidt; Cambridge, Mass.: MIT Press, 1986); Michael Bertram Crowe, The Changing Profile of the Natural Law (The Hague: Martinus Nijhoff, 1977); John Finnis, Natural Law and Natural Rights (Oxford: Clarendon Press, 1980); Lloyd L. Weinreb, Natural Law and Justice (Cambridge, Mass.: Harvard University Press, 1987).

<sup>46</sup> See for example Anton-Hermann Chroust, "On the Nature of Natural Law" in Interpretations of Modern Legal Philosophies (New York: Oxford University Press, 1947) and Max L. Laserson, "Positive and 'Natural' Law and their Correlation" in Interpretations of Modern Legal Philosophies.

Given the long history of the concept, one must tread carefully in an historical study, making sure that the path that is followed is the path blazed by the ancient Greek authors, not by later trailblazers.

#### A) Origins

There is not as much information on the law of nature in ancient Stoic sources as one might believe. English translators of Greek texts, for example, often translate kata physin, according to nature, as "according to the law of nature". However valid this may be in some cases, it is often an addition dependent on later developments and does not always reflect the intent of the author in question. It blinds the modern reader to the fact that until Cicero (writing in Latin, but dependent upon Greek sources) and later Philo, the term only appears six times.<sup>47</sup> This has led to the question who the originator of the law of nature concept was, a question which has generally been answered with the Stoics. Today new answers abound.

Almost everyone or every school who could be has been claimed as the originator of the law of nature concept at one time or another. Some have claimed the pre-Socratics, specifically Heraclitus.<sup>48</sup> A great number

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<sup>47</sup> Helmut Koester, "Nomos Physeōs" in Religions in Antiquity (ed. Jacob Neusner; Leiden: E.J. Brill, 1967), 523.

<sup>48</sup> Anton-Hermann Chroust, "On the Nature of Natural Law," 80-81,#5; Raghuvver Singh, "Heraklitos and the Law of Nature" in JHI 24 (1963), 458. This conclusion is especially based on frag.B114 of Heraclitus. Singh says that the "traditional conception of Natural Law as embodied in the writings of

have supported Plato as the founder of the concept.<sup>49</sup> Some have opted for Aristotle.<sup>50</sup> Others, naturally, have stuck with the Stoics.<sup>51</sup> The choices, however, do not end here. Cicero, long considered only as a bearer, not as a

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Roman jurists and Christian thinkers appears to be an elaborate footnote to Heraklitos", 461. Elaborate indeed!

<sup>49</sup> R.F. Stalley, An Introduction to Plato's Laws (Indianapolis: Hackett Publishing, 1983), 33; W.C. Greene, Moira, 277; Joseph P. Maguire, "Plato's Theory of Natural Law" in Yale Classical Studies 10 (1947), 152f; Jerome Hall, "Plato's Legal Philosophy", 183,202f; Friedrich Solmsen, Plato's Theology (Ithica, N.Y.: Cornell University Press, 1942), 167-168,184; Rudolph Hirzel, Themis, Dike, und Verwandtes: Ein Beitrag zur Geschichte der Rechtsidee bei den Griechen (Hildesheim: Olms, 1966; repro. of 1907 Ed., Leipzig), 390f; Glenn Morrow, Plato's Cretan City (Princeton, N.J.: Princeton University Press, 1960), 565; and the star of the firmament, the thorough study by John Wild, Plato's Modern Enemies and the Theory of Natural Law (Chicago: University of Chicago Press, 1953). How can so many claim for Plato the origination of this concept? It probably depends on a slight difference of terminology. Plato did indeed see law as based in the eternal forms of justice and right, but is this the same as law of nature? I think it is quite different, as will be argued shortly.

<sup>50</sup> E. Barker in the Introduction to Gierke's Natural Law and the Theory of Society, xxxv; Sir Frederick Pollock, "History of the Law of Nature" in Essays in the Law (London: Macmillan and Co., 1922).

<sup>51</sup> The list is too long to itemize, but most recently, and very persuasively, Gisela Striker, "Origins of the Concept of Natural Law" in Proceedings of the Boston Area Colloquium in Ancient Philosophy Vol. II (Boston: University Press of America, 1987); Paul Vander Waerdt, The Stoic Theory of Natural Law (Diss. Princeton, 1989). An important article, also arguing for the Stoics, and breaking down the components of the law of nature, is Gérard Verbeke, "Aux Origines de la Notion de 'loi naturelle'" in La Filosofia della natura nel medioevo. Atti del 3 Congresso internazionale di filosofia medioevale. Posso della Mendola (Trento), 31 agosto - 5 settembre 1964 (Milano, 1966), 164-173.

creator of tradition, has won support.<sup>52</sup> Helmut Koester has chosen Philo as his unlikely hero.<sup>53</sup>

It is, indeed, not apparent initially that the Stoics were the originators of the law of nature. The term appears infrequently, and not in many early Stoic writers. Yet, the concept and its origins are not as muddled as might first appear. The problems point not only to a paucity of sources, but to questions of definition. It was only with Philo and Cicero that the term nomos physeōs (lex naturae) found currency, but it is rare that someone argues for one of these two as the originator of the concept. What one must argue for the Stoics is that the idea of the law of nature was present, but in the early sources that remain, specifically for pre-Roman Stoic sources, the term itself is missing. But if only the idea of a nature which guides is present in the early Stoics, why can one not argue for Heraclitus or Plato as the originators of the concept? Do they too not share these ideas? Not exactly, and this is the problem of definition.

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<sup>52</sup> Gerard Watson, "The Natural Law and Stoicism" in Problems in Stoicism (London: The Athlone Press, 1971).

<sup>53</sup> Helmut Koester, "Nomos Physeōs". Koester says that the Stoics never managed to solve the antithesis between law and nature, but that Philo did (523). See Richard Horsley's refutation in "The Law of Nature in Philo and Cicero" in HTR 71 (1978). He believes the idea might have come to both of them through Antiochus of Ascalon, but he supports Stoic provenance of the idea in general (39-40). Cf. Vander Waerdt, Natural Law, for the claim that Cicero's view of the law of nature is, indeed, from Antiochus, esp. 231-263, but the claim is made throughout the dissertation.

As Gisela Striker puts it,

the reason for the dispute seems to me to lie in the lack of distinction between the thesis that there is such a thing as natural justice on the one hand, and the thesis that there is a natural law on the other.<sup>54</sup>

The concepts, while closely related, do not imply each other.<sup>55</sup> The reality is that with the exception of the Sophists, all Greek thinkers saw some kind of divine or eternal support for law and justice.<sup>56</sup> It is wrong to move quickly from "natural justice" (or divine justice, or eternal justice) to "natural law."<sup>57</sup>

If we speak of immutable nature as the guide for law, as law itself, only one group of philosophers can truly be considered: the Stoics. Only Stoicism claimed that nature supported justice and law in a systematic way, even before the widespread use of the term nomos physeōs.<sup>58</sup>

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<sup>54</sup> Striker, "Origins", 80.

<sup>55</sup> See Vander Waerdt, Natural Law, 123-143.

<sup>56</sup> Werner Jaeger, "Praise of Law: The Origin of Legal Philosophy and the Greeks" in Interpretation of Modern Legal Philosophies (New York: Oxford University Press, 1947), 372.

<sup>57</sup> Victor Ehrenberg, "Anfänge des griechischen Naturrechts" in Archiv für Geschichte der Philosophie xxxv Band, Neue Folge xxviii (1923), 112-143, considers agraphos nomos as the equivalent of nomos physeōs, which mars his otherwise excellent article.

<sup>58</sup> Maryanne Cline Horowitz, "The Stoic Synthesis of the Idea of Natural Law in Man: Four Themes" in JHI 35(1974), 3-5; Striker, "Origins", 90-92; Brad Inwood, "Commentary on Striker" in Proceedings of the Boston Area

Philosophically, one can see the connections between Plato and the Stoics, but the demands of history and philology are more narrowly defined. The Stoics alone depend on immutable nature as their guide; and if the term "law of nature" is missing among the early Stoics, Cicero, among others, allows us to fill in the missing pieces.

#### B) Nature

Long before nature had been called a "law" it had been opposed to law as "reality" or "truth" to convention.<sup>59</sup> The history of nature (physis) in Greek thought, like the history of most such powerful concepts, is not clear-cut or one-dimensional. Scholars of early Greek philosophy have discussed, and argued, at length whether physis meant first, and most importantly, genesis, "becoming" or "growth", or whether it first signified the "true character" of a thing.<sup>60</sup> Wherever the truth may lie, the direction in which

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Colloquium in Ancient Philosophy Vol.II, 96.

<sup>59</sup> See the still classic work of Heinemann, Nomos und Physis for the complete history of the antithesis.

<sup>60</sup> For "true character" see John Burnet, "Law and Nature in Greek Ethics" in Essays and Addresses (London: Chatto and Windus, 1930); and A.D. Lovejoy, "Meaning of Physis" in Phil. Rev. 18 (1909), 369-383; for "becoming" see F.J.E. Woodbridge in Phil. Rev. 10 (1901), 359-374 ; for both see Heinemann, Nomos und Physis, 92f; W.C. Greene, Moiras, 410, App.27. Even at the earliest point in the word's development, there were secondary meanings. Hans Leisegang, "Physis" in Pauly-Wissowa Real Encyclopadie 20.1, 1130-1164 gives the best overview of the historical development of the term and its variety.

the word developed was that of "true character" and physis became the norm against which the Sophists judged what was real and what was conventional or artificial.<sup>61</sup> But the physis which some Sophists - Hippias, Antiphon, and Callicles -<sup>62</sup> took as their guide, brutal, cold, and opposed to the law, became the guide which the Stoics saw as orderly, purposeful, and the creator of law.

If the Sophists struck a blow against conventional morality and law - claiming it arbitrary and ultimately meaningless - the Stoics sought to base morality on something unchanging and eternal. That the Stoics chose nature as their guide implies not a universe of disorder, but one with order as its very character and essence. It may be, in fact, that the Stoics took the Sophists' criticisms of conventional morality to heart, including the limited character of the written law; but then they turned the tables: indeed, nature is the true law, but instead of being chaotic and meaningless, it embodies meaning and truly grounds law in the purposeful and eternal.

According to Diogenes Laertius 7.87, Zeno, the founder of Stoicism, was the first to call the goal (telos) of life a life according to nature. A life according to nature is a virtuous life; and it is nature which leads to virtue. Diogenes goes on to state that the Stoic leaders who

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<sup>61</sup> Heinemann, Nomos und Physis, 125.

<sup>62</sup> Guthrie, History Vol.III, 136-143; Greene, Moirai, 232-244.

followed Zeno claimed the same "goal". Men such as Chrysippus, Cleanthes, Posidonius, and Hecato all claimed nature as the guide to a virtuous life.

Early on, according to Diogenes, this life according to nature became linked to an eternal or divine law. It was a life in which we refrain

from every action forbidden by the law common to all things, that is to say, the right reason which pervades all things, and is identical with Zeus, lord and ruler of all that is. (7.88)

Important in this passage are the links between nature, God, right reason (orthos logos), and law (here called the common law). As we will see, these are synonymous in Stoic thought.

Cicero, too, clearly dependent on Middle Stoic sources,<sup>63</sup> says that the only true end, or goal, for humanity is following nature (De Fin. 20-26). The "root of justice" he says is found in nature (De Leg. 20). Cicero on

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<sup>63</sup> Vander Waerdt, Natural Law, esp. 245-263 has argued that Antiochus of Ascalon is responsible for Cicero's theory in specific and fundamental revisions to the early Stoic theory of natural law. This, I will argue later - while suggesting certain modifications of Vander Waerdt's thesis - must be the case, but he too admits that "all we can say is that Antiochus' reinterpretation of the theory of natural law was prepared, perhaps in crucial respects, by certain developments in Stoic ethics already taking place under the influence of Panaetius and Posidonius" (234). Vander Waerdt is also right to stress that Cicero is not simply acting as a scribe: "there is no reason to assume that Cicero is simply copying out of one of his [Antiochus'] books" (236-237).

numerous occasions makes the link between nature and law. In De Legibus 18-19 he calls the law the highest reason implanted in nature.<sup>64</sup>

It is nature as reason, God, even law, which the Stoics took as their guide to the virtuous life. That the guide for the virtuous life of the Stoic came to be called the law of nature is not odd in light of their connections between the two concepts; it was odd, however, in light of the long antipathy in Greek thought between the concepts of law and nature.<sup>65</sup> The Stoics resolved this antithesis by tinkering both with the meaning of law and with the meaning of nature. Law was not truly the written law, but law based in unchanging nature: its commands and prohibitions therefore were not mere convention.<sup>66</sup> Nature was reasonable, purposeful, even Zeus; far from being chaotic, it was the storehouse of order.<sup>67</sup>

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<sup>64</sup> For other examples in Cicero, only a sampling, see De Leg. 1.34; 2.13; 3.2-3; De Rep. 3.33; Parad. Stoic. 14; Nat. Deor. 34, 82, 86; De Off. 1.98-100.

<sup>65</sup> Gerard Watson, "The Natural Law and Stoicism", 218, says "we find it difficult at first to realize just how paradoxical such a close juxtaposition of physis and nomos must have sounded even at the time of the first Stoics."

<sup>66</sup> Rudolf Bultmann, "The Stoic Idea of the Wise Man" in Primitive Christianity (Cleveland and New York: Meridian Books, 1956), 137, says "the law of nature does not depend on human whims and fancies, but is the norm of society, on which all positive law must be based. Positive law is never actually identical with natural law."

<sup>67</sup> Against Koester, "Nomos Physeōs," 523, who believes that the Stoics never resolved the tension between law and nature.

### C) The "Common" Law

The early Stoics, as already mentioned, spoke of the link between nature and law. Before this was developed into the evocative phrase nomos physeōs, the Stoics talked of a koinos nomos, as did Aristotle. That the "common law" was an important concept for the early Stoics has not been duly noted, but the phrase appears in connection with every major Stoic thinker.<sup>68</sup> It seems that the common law existed as a concept beside nature, closely related, but not yet fully integrated with it.

Zeno, for instance, in Plutarch's Fort. Alex. 329a-b (SVF 1.262), contends that there should be one way of life and order for people. The human family should be like that of a herd, being nurtured by a common law (nomōi koinōi). Chrysippus makes the connection between nature and one law even clearer. In Diogenes Laertius 7.87-89, already examined, it was Chrysippus who added that the life according to nature meant that one should not transgress the koinos nomos, which is the orthos logos and identical to Zeus. When Chrysippus speaks of law as king of all things, following Pindar frag.69, in his On Law (SVF 3.314) it should be obvious that he is speaking of a common and divine law. Chrysippus argued further in his On the Morally Beautiful (Diogenes Laertius 7.128) that law exists by nature. Cleanthes, in his famous Hymn to Zeus (SVF 1.537), writes of the

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<sup>68</sup> Vander Waerdt, Natural Law, 82 notes the presence of the nomos koinos but does not, it seems to me, grant it the importance it deserves.

law of Zeus (line 2) and later of the theou koinon nomon, the common law of God (line 24).

In all of these cases, the law is seen to be something more than simply the written law of the city. It is connected with nature or God. Clearly, the way to the law of nature was being prepared, even if the term itself was not present. The law of nature was close at hand.

#### D) The Law of Nature

The law of nature would have been considered a "jarring" phrase, even contradictory.<sup>69</sup> It was the bringing together of opposites, and not only in the eyes of the Sophists.<sup>70</sup> The attempt to loosen the antithesis was made before the Stoics,<sup>71</sup> but it is only with the Stoics that the opposition was dissolved in unity.<sup>72</sup> Law, as the two previous sections have stressed,

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<sup>69</sup> For further discussion of the antithesis cf. also Max Pohlenz, "Nomos und Physis" in Hermes 1953 (81); W.K.C. Guthrie, History Vol. III, 55-134. Vander Waerdt, Natural Law, 83 admits the "jarring" nature of the phrase, but believes that the reason the law was not referred to as the "law of nature" was because it was "a singularly inappropriate term to describe their theory" (83). Why? Because it referred to the right reason of the sage, not a code of praecepta. This does not explain, however, why the early Stoics spoke of a "common law," as they all did. They had no specific content in mind, save the sage's right reason, but this did not dissuade them from using the term. For this reason, I am inclined to believe the standard explanation that the "law of nature" was not initially used because of its "jarring" character.

<sup>70</sup> Heinimann, 85-89, 115-125.

<sup>71</sup> Heinimann, 153-154.

<sup>72</sup> Heinimann, 169; Hirzel, Agraphos, 98.

became that order and justice which was inherent in nature. Far from being arbitrary, the law was eternal. The fact that there existed many laws of many peoples did not alter the reality of true law; rather it meant that the true law was not being followed.

The law inherent in nature, sometimes considered the nature of humankind, but generally the nature of all or the universe itself,<sup>73</sup> is due to the reason in nature.

In following reason, man acts in accord with the right reason of the universe, which, for Stoics after Chrysippus, is identical with nomos koinos, universal law.<sup>74</sup>

That right reason, orthos logos, is considered the bedrock of the law is seen in the early Stoic sources. It is especially clear in Cicero. Cicero states what others continue to hint at: right reason is law which is in agreement with nature (De Rep. 3.33). The connection is made as well by Epictetus,<sup>75</sup> Seneca,<sup>76</sup> and Marcus Aurelius.<sup>77</sup>

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<sup>73</sup> The nature of humankind and the nature of all is ultimately the same thing. Humanity, as a product, and a reasonable product, of nature, shares in eternal nature and does not disagree with its dictates.

<sup>74</sup> Horowitz, "Four Themes", 4; cf. also Inwood, "Commentary", 99.

<sup>75</sup> 1.29,19; 4.3,11-12.

<sup>76</sup> Epist. 30, 45, 48, 66.

<sup>77</sup> 1.17,6; 4.4,1-4; 7.9.

The missing link, of course, is the link between the early Stoics and Cicero, who used the phrase lex naturae without explanation. The earliest use of the term lex naturae (nomos physeōs) on a regular basis in a Stoic sense of the concept, implying right reason and a connection between eternal law and purposeful nature, is by Cicero. Cicero is certainly dependent on the Middle Stoics, Panaetius and Posidonius, and Antiochus of Ascalon, in many respects - though source work on Cicero is a knotty problem <sup>78</sup> - and the idea of a nomos physeōs as formulated in Cicero almost certainly came from these thinkers.<sup>79</sup> The Roman student Cicero is, however, the preserver of the idea of the law of nature, and happily, he was an excellent student.

Much of what Cicero reports is not much different from what the early Stoics reportedly said. "Law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is Law" (De Leg. 1.18-19).<sup>80</sup> The difference between Cicero, or the Middle

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<sup>78</sup> See, for example, on the question of source work in general, Olaf Gigon, "Cicero und die griechische Philosophie" in ANRW I.4, 226-261.

<sup>79</sup> Elizabeth Rawson, "The Interpretation of Cicero's 'De Legibus'" in ANRW I.4, 340-342 believes that by the time of Cicero it was common Stoic thought.

<sup>80</sup> See Vander Waerdt, Natural Law, 81-142 for the definitive statement of the early Stoic provenance of what Cicero comes to call lex naturae. There can be no doubt, in light of his study, that Cicero follows, through his sources, the

Stoics, and the early Stoics, is that Cicero gives us a systematic view of law, comprehensively developed, and with the title firmly entrenched: the law of nature.<sup>81</sup> Cicero also gives it to us often; he was, after all, a lawyer. The law of nature, however, is simply that true law, equal to God, the right reason of nature, which is incumbent on everyone, and of which the early Stoics also spoke.

That such a law existed is one thing, but what was the content of this law? What was its relationship to the written law? And who actually practised this law?

#### E) Where Does One Find the Law of Nature?

The law of nature was not to be located in any existing written code of law, at least not in its ideal or complete form. Cicero himself said that the law of nature placed Roman civil law in a "small and narrow corner" (De Leg. 1.17). It was a foolish notion, he said, to consider that everything which every nation considers law is just (De Leg. 1.42). There are, in fact, evil statutes which should not be called laws (De Leg. 2.13). A code of written law was to the law of nature "a mere outline sketch" (De Off. 3.69). Philo says that some written laws are not law in the true sense of

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early Stoics.

<sup>81</sup> cf. infra, 180-181, n.209 for the possible influence of Cicero himself on the formulation of the law of nature.

the word at all. Epictetus, likewise, writes of the laws which come from God as worthy of following, not those from human legislators (4.3,11-12).

The law of nature transcended human laws, rendered them superfluous in some cases. The law of nature was reasonable, just, and according to nature. As a result, it was possible for one to do the higher law while transgressing the written law.<sup>82</sup> Diogenes Laertius claims that the Stoic sage had all authority (exousia) over the law (7.125). Brad Inwood believes that the authority to transgress the written law is representative of early Stoic views. He says,

morality for the Stoics is emphatically not a matter of obeying fixed specific rules,<sup>83</sup>

and,

in breaking rough and ready but rigid rules of morality, the sage is obeying the law of nature in a higher, but more flexible, sense.<sup>84</sup>

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<sup>82</sup> Edelstein, Meaning, 83, says "here the daring of Stoic ethics is conspicuous. No member of the school denied that a positive law is morally right or good only if it agrees with the law of nature and that otherwise it must be regarded as an aberration." Cf. Vander Waerdt, Natural Law, 85, 95-98.

<sup>83</sup> Inwood, "Commentary," 97-98.

<sup>84</sup> Inwood, "Commentary," 101; For the unfixed nature of Stoic morality see I.G. Kidd, "Moral Actions and Rules in Stoic Ethics" in The Stoics (Berkeley and Los Angeles: University of California Press, 1978), 247-258.

The true law is not a matter of written codes, for written codes often do not reflect true law.

The true law, the law of nature, is available through reason, though most people are unable to harness reason and follow nature. As Dio Chrysostom says, if all men were good, there would be no need of laws (76.4). And Cicero contends that Socrates and Chrysippus could break certain laws because of their virtue (De Off. 1.148). Was the wise man to obey all the laws? Even when they were not really law? This, according to Cicero, is nonsense (De Rep. 3.18). For the wise man only the law of nature was truly law.<sup>85</sup>

#### F) Who Follows the Law?

The law of nature was that law which the wise man followed by the reason inherent in him; it came naturally to him.<sup>86</sup> Because reason is common to all people, though, everyone has the ability to follow the law of nature. This is a pleasant thought, but reality is much grimmer. The seeds of success lie within each person, but if the law of nature is in each of us potentially, and in the wise man certainly, our chances of success are

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<sup>85</sup> There is tension between my claim and Socrates' unwillingness under any circumstances to abandon the written law in the Crito (cf. 46b,50b). The laws, however, do give Socrates a choice: he can either obey them or persuade them to follow universal justice (51b,52a). The Stoic sage, it seems, who knew the universal law of nature, was obligated to follow it.

<sup>86</sup> Horowitz, "Four Themes," 16.

dimmed by the fact that very few people if any are truly wise. It was hard to find one who lived according to nature.

Sextus Empiricus never tired of mocking the Stoics on this score. He repeatedly states that it is impossible to find a wise man.<sup>87</sup> This might be tossed aside as mere sniping on the part of a critic, but in fact it formed a real problem for the Stoics. Cicero was not certain if there had been a wise man. He vacillates between saying there were none (De Off. 3.16; De Rep. 3.7) and saying that there were a handful (De Nat. 1.23).<sup>88</sup> At any rate, there were not many, and had never been many, wise men. Nevertheless, the Stoics did not think of the wise man in theoretical terms: they believed he could exist.<sup>89</sup>

What would the wise man be like? In this they were not unlike other Greek thinkers who also imagined a wise man; they were part of a long Greek tradition. Plato stated that those adequate in their own nature would not need laws (Laws 9.875a-d). In this they would be like the first

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<sup>87</sup> Sextus Empiricus, Outlines of Pyrrhonism, 2.38-42; Against the Logicians, 1.432; Against the Physicists, 1.133; Against the Ethicists, 1.181. Or Horace, Epist. I.1,106-108: the Sage is "second only to Zeus: rich, free, honoured, beautiful, king of kings, especially while he is healthy and not troubled by a cold."

<sup>88</sup> This is discussed by Kerferd, "What Does the Wise Man Know?", 126-127; Eduard Zeller, Stoics, Epicureans, Sceptics (London: Longmans and Green, 1870), 294; J.M. Rist, The Stoics, 267.

<sup>89</sup> Edelstein, Meaning, 11-12.

men (Laws 3.679e-680a). For Plato, though, this was a dream, or at most, a hope. Aristotle called the wise man a god among men (Pol. 3.8,1-2), perfect (E.E. 4.2,34), and above the law (Pol. 1.1,9; E.N. 4.8,10). Aristotle, too, though, held out little hope of finding such a man. So while the views of Plato and Aristotle blend easily with those of the Stoics, the Stoics spent much more time developing the concept and, more importantly, their philosophical system to a large degree was built around the Sage.

The Sage was all things. According to Diogenes Laertius the wise man is free from passions (apathēs); he only feels proper emotions (7.116). He never feels, for instance, vanity or grief (7.117-118). The wise man also never has an opinion, that is, he always knows the truth and does not agree to the false (7.121). The wise man does all things well (7.125) and is in fact infallible (7.122). A Stoic paradox claimed that the wise man alone is free (7.121) and that only the wise are kings (7.122). For between virtue and vice, there exists no intermediate position: only the wise are wise; all others are foolish (7.127). It is no surprise then that Diogenes tells us that wise men were godlike (theious) (7.119).

Cicero shares much the same understanding. The wise man is the true king (De Fin. 3.75). He never is wrong and he never hurts anyone (De Fin. 3.71). True goodness or "right" is only attainable by the wise man (De

Off. 3.15). Given all this, one ought not be surprised that the wise man is always happy (De Fin. 2.104).

Plutarch gives us interesting information on how the Sage becomes wise. It happens in an instant (Virt.Sent.Prof. 75d); overnight the wise man becomes virtuous (Stoic.Repug. 1057e). One does not necessarily know, however, that the wise man has become wise: it simply happens (1061e). It is possible that even the Sage does not know it himself. Plutarch also draws a distinction between the reason of the wise man and the law, by which he means the written law (1038). The reason of the Sage, the law of nature, is different from the written law.

Seneca has preserved perhaps the most information on the wise man. The wise man does not "feel" his troubles, he simply overcomes them (9.45). He also does not feel pain, or if he does, it does not bother him at all (66.18). He is always joyful (59.513). The completely wise man is not in ethical "motion" at all, for he is perfect (35.245). The wise man also benefits others, according to Seneca. He enjoys giving more than a recipient enjoys receiving (81.2). The wise man can tame vice, too, and presumably that of others (85.41).

The wise man lives, of course, according to nature (17.115). He comes to know truth and nature and the law of life (99.36). He is like a god because he becomes wise through perfect reason and obedience to nature

(87.19). He is as happy as a god (73.14). And though Seneca argues that the wise man remains only a man (71.27), Marion Altman has pointed out that in some ways the wise man in Seneca is an equal of the gods.<sup>90</sup>

The idea of the godlike, perfect wise man makes it clear why they were so rare. Unfortunately, a consequence of this idea of the wise man was the notion that the rest of humanity was foolish.<sup>91</sup> It meant, in practice, that everyone was foolish. This, too, was cause for laughter on the part of critics. Taken to its absurd extreme, or logical end, Plato was no better than a common criminal ( Plutarch, Stoic.Repug. 1048e; Virt.Sent.Prof. 76a). Later Stoics, particularly Seneca (eg., 35), devised a system of progress to give hope to the great mass of fools, but it was not very successful in bridging the gap between the wise and the fools. Those who were progressing were still on the side of the fools. Seneca argues that those who are progressing are a long way from the fools (75), but they are still on the wrong side of happiness. As Plutarch put it in Against the Stoics (1062a), the Stoics considered that one was drowning, whether five hundred fathoms under the sea or one arm's length from the surface.

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<sup>90</sup> Marian Altman, "Ruler Cult in Seneca" in Classical Philology 33 (1938), 202.

<sup>91</sup> Rist, Stoics, 260; A.A. Long and D.N. Sedley, The Hellenistic Philosophers (Cambridge: University Press, 1987), 384-385.

The situation was clear, if not pleasant. The law of nature would be done by the sage, if he could be found. Only he, however, would know the law of nature. This leads to the problem of content. What was in the law of nature? No one knew for sure, although people made attempts at defining individual laws. But apart from a smattering of individual laws here and there in the works of various writers, the law of nature was contentless. As Lapidge put it:

one looks in vain for how man was to live in harmony with universal nature.<sup>92</sup>

There was no answer. Wisdom was what the wise man thought.<sup>93</sup> Only he could know the natural law.<sup>94</sup> Marcus Aurelius said that it was possible to be extremely godlike and not be recognized (7.67); so if the wise man existed, he did not tell how he did the law of nature or what was in this law.<sup>95</sup>

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<sup>92</sup> Michael Lapidge, "Stoic Cosmology" in The Stoics, 162.

<sup>93</sup> Kerferd, "The Image of the Wise Man in Greece before Plato" in Images of Man in Ancient and Medieval Thought: Studia Gerardo Verbeke (Leuven: University Press, 1976), 27.

<sup>94</sup> Rist, Stoics, 267.

<sup>95</sup> Vander Waerdt, Natural Law, 235-263 claims in an important discussion that Antiochus, followed by Cicero, knows of a code of laws, or officia, which contain the content of the law of nature (253). Antiochus replaces, therefore, the katorthōmata of the sage with the kathēkonta, which even the ordinary person could follow. This is an important distinction, and the result of fine scholarship. But while I think it is true that Antiochus made this move, I do

## F) Conclusions

The law of nature was the universal, divine law that was also known as the right reason of nature. It was known to the wise man through his reason and his understanding of nature. Because of the higher status of the law of nature, it transcended the written laws of cities and peoples.<sup>96</sup> Civil law, even at its best, did not reflect the entirety of the law of nature, as Cicero (De Leg. 1.17,42,44; 2.13; De Off. 3.69; De Rep. 3.18), Seneca (Epist. 30), and Epictetus (1.26,1-2; 4.7,34) attest. The law of nature, located in its entirety only in the reason of the sage, gave the sage "complete

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not think that he had a code of officia. I also do not think that the wise man's ability to follow the law of nature completely falls by the wayside. In a passage significant for his claim that there was a code of officia (De leg. 2.8-11) it is still admitted that "divine mind is the supreme Law, so, when [reason] is perfected in man, [that also is law; and this perfected reason exists] in the mind of the wise man" (De leg. 2.11). Cicero also says in De Off. 3.69 that we have no true representation of the law of nature. How do we determine which laws are just? By referring them to the standard of nature, says Cicero (De leg. 1.44). This implies that one can "determine" how to act according to nature in individual circumstances, but it does not imply to me that it had been accomplished and set down in a code of officia, nor does it imply that anyone but the sage could do this perfectly and so truly follow nature. If all this seems to undercut Vander Waerdt, I still agree in general that the move had been made by Antiochus to try and find in general rules to guide the ordinary person; I do not believe that such rules had been codified or that the role of the sage had been cast aside.

<sup>96</sup> Seneca, Epist., 95,40; 66,40; Kidd, "Stoic Intermediaries," 164-167; "Moral Actions and Rules," 247-257; Inwood, "Commentary," 97-101.

authority to violate the duties or laws when appropriate."<sup>97</sup> The sage who knew the law of nature was able then to "break" various written laws if in so doing he was actually fulfilling the law of nature.<sup>98</sup>

Obviously none of the precepts which guide the conduct of ordinary human beings govern the wise man's conduct, since he has the rational disposition for which these precepts are supposed to provide a practical substitute.<sup>99</sup>

The only true law was the law of nature (cf. Epictetus 4.7,34).

Cicero, according to Watson,<sup>100</sup> and Antiochus, according to Vander Waerdt,<sup>101</sup> attempted to ground the law of nature on a code of precepts, perhaps even on a model much like Roman civil law, rather than on the reason of the sage. Cicero continued to maintain, however, the elusiveness of the law of nature; its fixity in a code of written law was not a fait accompli but a continuing project (De Leg. 1.42,44; 2.13; De Rep. 3.18,33). The law of nature exists in full, according to Cicero, in the perfected reason of the wise man alone (De Leg. 2.11).

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<sup>97</sup> Vander Waerdt, Natural Law, 34. His claim is based upon Diogenes Laertius 7.125.

<sup>98</sup> Inwood, "Commentary," 101.

<sup>99</sup> Vander Waerdt, Natural Law, 95.

<sup>100</sup> Watson, "Natural Law," 231-236.

<sup>101</sup> Vander Waerdt, Natural Law, 231-263.

What was the wise man to do when confronted with "bad" laws? Or when reason led him against the dictates of the civil code? The sage is told to obey the laws and customs of civil society (Cicero, De Off. 3.63; Seneca, Epist. 14; Epictetus 3.24,107), but there is a clear sense in which these strictures are provisional.

The law of nature is the superior law for Cicero (De Leg. 1.18-19) and for Epictetus (4.3,11-12). According to Cicero, the law of nature is the only true law (De Off. 1.100). Epictetus states that the laws which matter are not those of Masurius and Cassius - jurists of the 1st century C.E. - but those of God (4.3,11-12). The civil law desires to follow the law of nature (Cicero, De Off. 3.69; Seneca, Epist. 30), but it has not achieved this goal (Cicero, De Leg. 1.44; Epictetus 1.11,15).<sup>102</sup>

The wise man, as a result, can "break" laws which do not agree with nature or which oppose reason. Though the ordinary person is bound by a civil code, the sage is not (Cicero, De Off. 1.148; Plutarch, De Stoic. Rep. 1038a; Diogenes Laertius 7.125).

In some cases...he [the sage] has no choice but to violate the precepts or rules by which his fellows live in order to remain consistent with the higher law of Zeus.<sup>103</sup>

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<sup>102</sup> cf. I.G. Kidd, Posidonius. Commentary. Vol.II. part II, 654-656.

<sup>103</sup> Vander Waerdt, Natural Law, 96.

The Stoics are saved from antinomianism or, worse, anarchy on two counts. Not every written law is opposed to the law of nature. The Sage is often warned to keep the customs of the people with whom he lives, and some laws, perhaps most, agreed with the law of nature. Also, the wise man was extremely rare, perhaps he never even existed, and only the wise man has the authority over law which allows him to disobey written law.

Nevertheless, the Stoics never backed off from their position that the true law, the law which had priority, was the law of nature; and the reason of the sage would not allow him to ignore this higher law.

### III) NOMOS EMPSYCHOS: THE LIVING LAW<sup>104</sup>

In the famous fragment of Pindar (169), the law is called king of all, living and dead.<sup>105</sup> This was the pride of most Greeks: they were ruled

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<sup>104</sup> I have yet to run across a discussion on how empsychos ought to be translated in this phrase. Some scholars have chosen "animate" and others "embodiment", as in "embodiment of the law"; both of these have their virtues. Most scholars, however, have opted for "living" and this seems to capture the nuances of both the word and the idea. Archytas contrasts the king as empsychos with the written law which is apsychos (Stob.4.1,135). Of the three possibilities, "living" seems to me to get to the heart of the contrast. As we shall see, the king is the law. He is not simply the law's embodiment. Animate is possible, but living seems more appropriate for a person. In E.N. 8.10-11, and elsewhere, Aristotle refers to a slave as an empsychon organon, a "living tool"; the same translation seems appropriate for the nomos empsychos, namely, the "living law."

<sup>105</sup> This piece of Pindar's work influenced a great number of writers: Herodotus, 7.104; Lysias, Funeral Oration, 18-19; Plato, Gorgias, 484b; Cleanthes, Hymn to Zeus (SVF 1.537), Dio Chrysostom 75.1; Marcian 1 (SVF 3.314).

equally by the law, not by the whims of a tyrant. In this section, we want to discover how it is that this commonplace, which underpinned the democratic polis, came to be formulated in the Hellenistic period in a way that would have sent, perhaps would still send, shivers down the spines of democrats: the switch of words, from "the law is king" to "the king is law," leads us from a concept which underpins democracy to one which underpins an absolutist monarchy.

The Greeks, perhaps more than most ancient peoples, feared tyranny, even monarchy itself.<sup>106</sup> Yet, even the Greeks from early in their history, written at any rate, accepted the authority of the kingship of Zeus and recognized his influence upon earthly kings. Werner Jaeger says of Homer's kingship conception:

the kings received their sceptre and with it the themistes from their pattern in heaven, Zeus, the king of the gods, whom Homer conceived as the divine source of all earthly justice.<sup>107</sup>

Before democracy, then, there was kingship, and ideally this kingship was just because the kings followed the pattern of perfect justice in heaven, Zeus. Be this as it may, in the centuries which intervened between Homer and Hellenism, law came to be king of the Greeks. Law did not choose

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<sup>106</sup> E. Barker, Greek Political Theory (London, 1951), 205 says monarchy was "most unpopular in the Greek world."

<sup>107</sup> Jaeger, "Praise of Law", 353.

favourites: it did not tyrannize the poor and favour the rich. By the time of Hellenism, the concept of law as king was well established.

Yet, from the time of the Sophists, at any rate, the law itself was not always a straightforward matter. Questions of the relativity of law, the origin of law, true law, and higher law were all debated. And alongside the dominant stream of thought, "the law is king," lay another trickle, which never really ran dry and which came to the fore during the Hellenistic period, "the king is law."

The trickle, which seemed to gain force from the time of Alexander the Great's ascendancy, was the idea of a just or perfect king who ruled virtuously and wisely. At its height, it opposed the king to the written law and called the king the "living law." That is, it gave a philosophic basis to a powerful reality: the king whose law was his word. The demands, of course, were not light; not any king with horrible power was the living law. The king must be perfect, truly just, and like a father to his subjects if he was to be the living law.

#### A) Early Greek Forerunners of the Living Law Ideal

The nomos empsychos ideal at its full flower, whether with the title or not, is not found in early sources. The centre of the ideal, however, the opposition between the king on one side and the written law on the other, is found, even if undeveloped, in a number of Greek authors whose

influence on the living law ideal is probable. Even here, though, one must be careful not to claim too much: a king can be the law in deed without needing to defend his claim philosophically. With this in mind, these are the early Greek forerunners of the nomos empsychos ideal.

Xenophon presents us with the first clear opposition between the written law and the king, and he seems to be dependent upon Eastern sources. At any rate, we are presented with the Persian king Cyrus. Cyrus attempted to set before his subjects "a perfect model of virtue in his own person" (Cyropaedia 8.1,21). What was the purpose of this? Xenophon tells us that Cyrus

seemed to understand that even through the written laws man became better, but he believed that the good ruler was a law keeping watch on behalf of men (Cyropaedia 8.1,22).<sup>108</sup>

Cyrus in fact believed that the king was superior to the written law, perhaps because he was able to respond to the individual subjects in his kingdom. Whatever the case, the contrast is clear. The men-de formulation sets up the contrast, and the choice of verbs fulfils it. Cyrus "understood" that written law made one better, but he "believed" that the good ruler was a better law. The written law and the king are two options for a people.

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<sup>108</sup> Author's translation. The translation of Walter Miller, Cyropaedia II in the LCL does not fully bring out Xenophon's contrast between the law and the king.

This is why Cyrus needed to be a "perfect model of virtue": he was the law.<sup>109</sup>

The text goes on to sing the praises of Cyrus, describing his lasting legacy and his virtues. It adds that from the first the Persians imitated him (8.1,24), a concept which becomes significant in the developed living law ideal.

Plato, too, at times, considered the idea of an absolute rulership which implied that the king, or ruler, was the law. In the Republic (473c-e), the rule of the philosopher-king is "absolute - absolute in the sense that they are untrammelled by any written law."<sup>110</sup> The same is true of the Statesman (293b-d,301d,302e), in which Plato has built a system wherein the written law is unnecessary for the true philosopher-king.<sup>111</sup> The antithesis, as in Xenophon, is between the "personal rule of a wise sovereign and the impersonal rule of law."<sup>112</sup>

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<sup>109</sup> Sextus Empiricus, Against the Rhetoricians, 2.33 records the story that when the king of the Persians died the people practised five days of anomia so that they would perceive the worth of the king, who was also the law.

<sup>110</sup> Ernest Barker, Greek Political Theory, 205. They are not, however, free from basic principles of justice (421e; 423c-d; 424b-c).

<sup>111</sup> L. Delatte, Les Traites, 131-132; E. Barker, Greek Political Theory, 271-287.

<sup>112</sup> E. Barker, Greek Political Theory, 280.

In the Laws, it is true, Plato moves somewhat away from the absolutism of the Republic and the Statesman, but he does not abandon his earlier views entirely. He still speaks of "those who have no need of laws" (644b) because they are capable of ruling themselves (875c-d), but he does seem to rule out an absolutist monarchy, in which the king was sovereign over the laws. Plato seems finally to opt for the laws being sovereign over the king.<sup>113</sup>

Aristotle, however, presents a powerful case for the authority of the king as the law. In a discussion of humour - not necessary for a king, but definitely necessary for his subjects - Aristotle says that the cultivated man "will therefore regulate his wit, and will be as it were a law to himself" (E.N. 4.8,10). This is not directly to the point, but it does give us a taste of Aristotle's view on the ability of man to govern himself. More to the point is E.N. 5.4,7 in which Aristotle describes the ideal magistrate as "living justice" (dikaion empsychon). The magistrate not only practices the law, he becomes justice itself.

It is in the Politics, though, that we find the expression of these ideas in their political dress. Aristotle has said that a man can be a law to himself and the magistrate "living justice," but what of the king? In Politics

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<sup>113</sup> E. Barker, Greek Political Theory, 310-311 sees this backstep on Plato's part as influenced by contemporary Persia, which had fallen into disarray.

1.1,9 Aristotle gives his famous description of man as a "political animal" by nature. If one is, therefore, beyond the bounds of the polis, he is either below common humanity or he has transcended it. It is the man who transcends the city who is of concern to us, and whom Aristotle describes in Book 3 of the Politics.

One cannot number among the members of a state people who are outstanding in virtue. They are gods among men. As a result, legislation is not directed towards these people: they are themselves law (3.8,1-2). Aristotle in this passage is content to state only their transcendence over and freedom from the state. Later, though, he discusses absolute monarchy and the case against it (3.11,1-9). Aristotle acknowledges that it is not just to have a king who himself takes the place of the law (auton hōs onta nomon), but he adds that one king is unjust only among people who are equal. If one man, or a whole family, transcends the other citizens in virtue to a great degree, this man, or family, should not be ostracized or banished, nor should he, or they, be subjected to the rule of others. The community should obey such a man "not in turn but absolutely" (3.11,11-13). The community should treat him as the law.<sup>114</sup>

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<sup>114</sup> Aristotle's discussion on kingship in E.N. 8.10-11, while not discussing the king as law, displays many of the same attributes as the nomos empsychos texts. The king is a father to his subjects (8.10,4). the king benefits his subjects (8.11,1-2). These are, though, general kingship attributes, not found only in the living law ideal.

The idea of the king as the law is also present, albeit negatively, in a section of Euripides' Suppliants. Theseus, speaking in favour of the nomoi koinoi, which in this case means the laws belonging to all the members of the state, declares that with a tyrant the law is kept in private hands and is no longer public property. This is, probably, only a reflection of the sad truth of tyranny, and not a statement, even negatively, of a nascent nomos empsychos ideal. Nevertheless, it presents to us once again the idea of the king as the law.<sup>115</sup>

The best example of the living law ideal, indeed, its first statement is found in the Peri Nomou kai Dikaiosynēs tractate of Archytas the Pythagorean. Archytas as a forerunner of the Hellenistic Pythagorean fragments may strike some as odd. He is gathered with the other pseudonymous Pythagorean texts in John Stobaeus' anthology and E.R. Goodenough considered Archytas' writings Hellenistic forgeries with the name of an ancient attached, as with Diotogenes and Sthenidas.<sup>116</sup> Could

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<sup>115</sup> See also Isocrates, Ad Demonicum, 36; cf. Goodenough, "Hellenistic Kingship", 62-63.

<sup>116</sup> E.R. Goodenough, "Hellenistic Philosophy", 60-61. Goodenough, too, admits to having some doubts about whether Archytas' tractate is a Hellenistic production (101). It was dated as pre-Platonic by A. Delatte in Essai sur la Politique Pythagoricienne. This was disputed by Willy Theiler in a review which appeared in Gnomon 2(1926), 147-156. Theiler opted for a Hellenistic date (150-151). He considered that it postdated both Plato and Aristotle. Holger Thesleff, who has made a special study of all the Hellenistic Pythagorean texts in An Introduction to the Pythagorean Writings of the

his texts be genuine? It is not an easy decision. Holger Thesleff, however, has argued convincingly for the early character of the writing, and he will be followed in one respect. Whether or not the text is a genuine writing of Archytas, it seems to be a forerunner of the living law fragments because of its less developed ideas of absolute kingship.

Archytas is not a thorough-going monarchist, or at least not a supporter of an absolute monarchy. He sees the written law, which is nourished by unwritten law, as in some way god-given (Stob. 4.1.132).<sup>117</sup>

It is only in relation to these god-given laws that the king is just (Stob. 4.1.135). The king is just (nomimos) with reference to this law of God. This

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Hellenistic Period, dates most of the kingship fragments to the early Hellenistic period, but considers this work of Archytas' earlier (109,114). This is an important decision, for Thesleff considers much of the work attributed to Archytas pseudipigraphal.

Interestingly, L. Delatte's late dating of the kingship fragments in Les Traités de la Royauté, disputed by Thesleff in An Introduction, 65-71, does not include Archytas. He does not say that Archytas is genuine, but he clearly believes he is earlier than the other texts with which he deals. Walter Burkert, in the discussion which followed papers given by Thesleff ("On the Problem of the Doric Pseudo-Pythagorica: An Alternative Theory of Date and Purpose") and Burkert ("Zur geistesgeschichtlichen Einordnung einiger Pseudopythagorica") on the dating of the Pythagorean fragments, Fondation Hardt: Pour L'Etude de L'Antiquité Classique Entretiens: Tome XVIII - Pseudipigrapha I (Geneve: Fondation Hardt 1972), 100 agreed that much of the pseudepigraphal material is based upon genuine material from Archytas.

Given the general scholarly consensus, it seems right to consider the tractate of Archytas genuine, or if not genuine, of an earlier date than the other Hellenistic discussions.

<sup>117</sup> Where page and line references are given to material cited from Stobaeus the edition of C. Wachsmuth and Otto Hense is followed.

law is the law which, as we saw earlier, is unwritten and nourishes the written laws. It can, however, also nourish the king. For the king, not only the written laws, can serve as the law:

but the law is the living king (empsychos basileus) or the inanimate written law (apsychon gramma) (Stob. 4.1.135,20-21).<sup>118</sup>

The king is an alternative to the written law. The written law is not bad, and the king is not better, but they both fulfil the same function for Archytas and only one is necessary.

The phrase Archytas uses is evocative, empsychos basileus, the living king, as opposed to the inanimate (apsychos) written law. This is the first statement of the living law ideal, or at least the earliest literary record. It is from this statement, which recognizes two types of "just" law, and carries the seeds of the living law ideal and phrase itself, that we move to the classic formulation of nomos empsychos, which is concerned with really only one type of law, the king. Archytas seems to be the link between the earliest Greek formulations and the development of the full-blown ideal.

Archytas' tractate contains other reminders of the living law ideal as found in the pseudepigrapha, as we shall see. The comparison of the law with harmonia (Stob. 4.1.135,15) and the description of the well-ruled state as harmonious (Stob. 4.1.135,7-13) remind us of the living law fragments.

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<sup>118</sup> Author's translation.

So, too, does the description of the king who acts only out of concern for his subjects (Stob. 4.5.61). The king must love his subjects to be a true king.

Archytas gives this expression:

And the true ruler must not only be understanding and powerful in ruling well, but he must also be a lover of men, for it would be strange for a shepherd to be a hater of sheep and ill disposed toward his own flock...He would do nothing in his own interest, but only for the sake of his subjects, just as the law exists not for its own sake but only for those subject to it.<sup>119</sup>

The goal of the king is to serve his subjects. More specifically, one can point to terms which later came to be commonplaces in the general concept of Hellenistic kingship, terms such as philanthrōpia (Stob. 4.5.61,13) and euergētēs (Stob. 4.5.61,19) which are found in this passage.

Goodenough has actually stressed the differences between the other Greek sources, such as Xenophon and Aristotle, and Archytas.<sup>120</sup> Clearly Archytas presents a new concept in many ways, but there are a number of similarities and some continuity between their formulations. The decision seems to hinge on the degree to which one attributes Eastern influences and the degree to which one believes the ideas are indigenous to the Greeks. While there are impulses from the East, Egypt and Persia, which have influenced this conception, especially in its earliest stages, it

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<sup>119</sup> Goodenough, "Hellenistic Kingship", 59.

<sup>120</sup> Goodenough, "Hellenistic Kingship", 61-64.

seems to me highly likely that in fact it finally took root in Greek soil because it was a development of Greek needs and desires at the time. The Greeks were no strangers to despots and tyrants, and, like most people, they hated them. In light of their great hatred of tyranny, and their love of freedom, it seems inexplicable that they could have adopted the idea of absolutist monarchy without having an indigenous need for it. A tyrant may be imposed and there is little a people can do about him, until they gain the force to remove the tyrant. That a people who despised tyranny were able to consider absolutist monarchy, aware of the dangers to which such rule could lead, suggests that the desire for the perfect ruler who brought justice and peace sometimes overwhelmed the fear of tyranny and spoke to needs found in the people themselves. What is finally astounding about the idea is that so many thinkers considered it in the Greek world. Their consideration led to something far more serious: the idea of the king as the true law.

#### B) The Pythagorean Fragments of the Hellenistic Period

The texts which contain the nomos empsychos ideal are contained in the anthology of John Stobaeus and attributed to Sthenidas of Lokri, Diotogenes, and Ecphantus, three followers of Pythagoras. It is agreed by all scholars, with the exception of A. Delatte, that these texts are not genuine. There is less agreement as to the date of these texts. As a result these texts cannot be discussed without an overview of the knotty and bedeviled topic of

their date. To ensure that the important question of the date of these texts does not distract from the ideas, the problem of dating will be carried out in an Appendix. These are the authors and their ideas.

Ecphantus, of the three Hellenistic Pythagorean sources, produced the most thorough statement of the living law ideal.<sup>121</sup> Both Diotogenes and Sthenidas, though, contain important material, some of which is not duplicated in Ecphantus.<sup>122</sup> At any rate, all three comprise the most important material for the development of the living law ideal.

Ecphantus calls the king a copy of god (272,14f). Since the king is most like god (274,1f), the ordinary person should make himself like him in order to purify himself when he sins. Ecphantus says that the subject should do so, whether the ruler is the king or the law (274,4-9). The contrast between the king and the law is known already from Archytas; here the contrast is complete: one's ruler is either the law or the king. They are equal, but discrete choices: one does not need both. The other important information is the closeness, the nearness of the king to god. He is, in fact, a special being.

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<sup>121</sup> These texts are found in Stob. 4.7,64,65,66; lines 271,13 - 274,20.

<sup>122</sup> The work of all three authors, however, will only be treated here to the extent that it contributes to our understanding of the idea of the superfluity of the law; where important in the study of Paul's or Philo's view of the law, these texts will be taken up again.

Ecphantus stresses as well the virtue of the king, who imitates the virtue of the heavenly king. The king's virtue is so great, that one might think it came from God (274,20-275,5). The close relationship between the king and God is seen in the king's virtue and in his relationship with his subjects.

He who rules in accordance with virtue is called, and is, the king, for he has the same love and communion with his subjects as God has with the universe and the things in it (276,2-9).<sup>123</sup>

The idea of the king as law appears here again. Perhaps surprising is the warm feeling these subjects are said to have for their "law"; but, then, their law is perfect and just.

Their "law," the king, loves them and enters into "communion" with them, an important concept in the kingship fragments. He loves them as God loves his creation, because he imitates God in his role as their king. The imitation of God is an important concept, and appears more than once in Ecphantus.

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<sup>123</sup> Translation of E.R. Goodenough, "Hellenistic Kingship," 84. Unless otherwise noted, all translations of the Hellenistic Pythagorean authors are from "The Political Philosophy of Hellenistic Kingship" by E.R. Goodenough.

The king is like the rest of humankind bodily, "but he is fashioned by the supreme Artificer, who in making the king used himself as an Archetype."<sup>124</sup> The uniqueness of the king is of paramount importance:

Accordingly the king, as a copy of the higher king, is a single and unique creation, for he is on the one hand always intimate with the one who made him, while to his subjects he appears as though he were in a light, the light of royalty.<sup>125</sup>

The king functions as a mid-point between God and humanity, inferior to the one, but towering over the other.

The king possesses a secondary position between humanity and God through his imitation of God. As a result, he is not only an example for his subjects, but he is able to drive evil out of them and replace it with good. In two passages Ecphantus describes how the king brings virtue to his subjects and allows them to participate in this virtue:

And there must exist complete good will, first on the part of the king toward his subjects, and second on their part toward the king, such as is felt by a father toward his son, a shepherd toward his sheep, and by a law toward those who use it (276, 4-9).<sup>126</sup>

The king's subjects need only accept him to receive virtue:

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<sup>124</sup> Goodenough, "Hellenistic Kingship," 76.

<sup>125</sup> Goodenough, "Hellenistic Kingship," 76-77.

<sup>126</sup> Goodenough, "Hellenistic Kingship," 84.

The king alone is capable of putting this good into human nature so that by imitation of him, their Better, they will follow in the way they should go. But his logos, if it is accepted, strengthens those who have been corrupted by evil nurture as if by drink, and who have fallen into forgetfulness; it heals the sick, drives out the forgetfulness which has settled upon them as a result of their sin, and makes memory live in its place, from which so-called obedience springs.<sup>127</sup>

The virtuous king, a law for his subjects, allows his subjects to lead virtuous lives through participation in his virtue; this participation is a direct result of imitation of and obedience to the king.

To Sthenidas of Lokri is attributed a short kingship fragment.<sup>128</sup> The king is an imitator of God and zealous for him (270,13-14).<sup>129</sup> The king, for all of his greatness, is only a copy of the true king, God, says Sthenidas. According to L. Delatte, who has made a number of textual changes, the contrast between the king and God is even clearer:<sup>130</sup>

For he [God] is the first king by nature (physei) and being (ousia), but the other by birth and imitation (270,14-16).

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<sup>127</sup> Goodenough, "Hellenistic Kingship," 89.

<sup>128</sup> Sthenidas' fragment on kingship is found in Stob. 4.7,63; lines 270,12 - 271,12.

<sup>129</sup> L. Delatte, Les Traités, 275-276.

<sup>130</sup> L. Delatte, Les Traités, 276-277 adds ousia and physei, which he believes to have been lost in the transmission of the texts. My translation accepts these additions.

The king, therefore, takes his example from God and is called to imitate God in all things, especially in acting like a father to his subjects (270,20-21). For God is recognized as God by acting like a father; so, too, the true king is recognized as the king by his behaviour toward his subjects (271,1-2). God is also called the lawgiver (271,6-7), and it follows that as a perfect imitator of God the king too has the role of lawgiver for his subjects.

Diotogenes, however, gives us our most straightforward account of the living law and the first usage of the term nomos empsychos.<sup>131</sup> He calls the king most righteous and most lawful (263,15-16). Without justice there is no law, and without law there is no justice, says Diotogenes. The king, however, is the living law (nomos empsychos) or most lawful leader (nomimos archōn), so he is indeed most just and lawful (263,16-20).<sup>132</sup> The king is the law for his subjects because he meets the standards of justice.

The king is also the saviour of his people (264,9), a common designation of kings in the Hellenistic period. Through his role as their

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<sup>131</sup> Diotogenes' fragments are found in Stob. 4.7,61; 263,14 - 270,11.

<sup>132</sup> Delatte, Les Traités, 248 takes these two descriptions of the king, as either the living law or the most lawful leader, as a mitigation of the absolute character of kingship as found, for instance, in Ecphantus. Diotogenes, it seems to me, is simply looking for the right phrase. The living law is lawful; he does not rule without guidance by external standards. By what law he is lawful is not explained, but the standard is probably the law of God. At any rate, in this passage, Diotogenes considers the king the law. He does not follow a written law. The king is said again to bring his life in order with the law in 266,19-23.

king, he brings them into harmony and acts as their benefactor (euergeten) (264,12-265,1). Diotogenes expresses clearly how the king benefits and affects his subjects and leads them to lawful and virtuous lives:

So he will succeed in putting into order those who look upon him, amazed at his majesty, at his self-control, and his fitness for distinction. For to look upon the good king ought to affect the souls of those who see him no less than a flute or harmony (265f).<sup>133</sup>

The very presence of the king affects the souls of those subject to him. He is like a god to them. The function of creating harmony, already seen in Archytas, is a common Pythagorean theme. The function of the king as benefactor is arguably the most common of all the titles of Hellenistic kings.

Diotogenes, too, calls the king an imitator of God, who through his act of imitation creates a microcosm of the kosmos in his state (265,1-10). This act of imitation of God's role in the kosmos means that the king brings order and harmony to his kingdom (265,10-12). Diotogenes says that

on the one hand, in public matters the king is to bring the whole kingdom into harmony with his single rule and leadership, while private matters of detail must be brought into accord with this same harmony and leadership.<sup>134</sup>

Diotogenes also calls the king an imitation of God, and the state an imitation of the cosmos. The king brings harmony to the state, just as God

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<sup>133</sup> Goodenough, "Hellenistic Kingship", 72.

<sup>134</sup> Goodenough, "Hellenistic Kingship", 67.

brings it to the universe. As in Diogenes, the role of the king on earth is that of God in the cosmos.

Through his virtuous acts he will come to be loved by the multitude; through his superiority he becomes close to the gods (267,1-268,12). This closeness to God, as in Ecphantus, allows him to affect the souls of his subjects when they only so much as look at him (268,12-14). Yet, he also takes an active role in the lives of his subjects. He is just, he helps the needy, and aids all those in distress (268,14-269,17). He is like the gods in his virtue, especially like Zeus, for royalty is an imitation of God (270,1-11).

In these fragments, the outline of a "living law" concept begins to emerge. For all the work which has been done on the concept no one has yet defined how the king embodies the law. The concept can be divided into four major sections: the king as the living law; the king's closeness to and imitation of God; the king's love for his subjects; and the justness and virtue of the king.<sup>135</sup> Included in these sections are specific concepts such as "harmony" (harmonia) between the king and his subjects, "communion" (koinōnia) between the king and his subjects, the love of men which the

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<sup>135</sup> More specific manifestations of the living law ideal, including specific terms, will be discussed in the comparison of Paul's view of the law with the living law ideal.

king displays (philanthrōpia), and his desire to benefit his subjects (euergetēs).

Some of these concerns are not unique to the living law ideal, especially the claim that the king is just and the best man, but these are the elements which, it seems to me, must be present for the living law ideal to be present. The ideal is not only found in these fragments. It continued to exercise influence on a number of authors. All the concerns found in the Pythagorean fragments are echoed in the work of the followers.

### C) The Followers

The idea continued to have influence, although it is unlikely that the influence comes directly from these fragments. Perhaps the influence did come from Middle Platonism, although this is not certain. From wherever the influence came, the nomos empsychos ideal influenced a wide range of work which comprises a remarkably unitary witness to the ideas expressed in the fragments.

The earliest witness following the Pythagorean tractates is the Rhetorica ad Alexandrum. The treatise, once attributed to Aristotle, has long been considered a forgery.<sup>136</sup> It is usually dated to around the

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<sup>136</sup> E.M. Cope, Introduction to Aristotle's Rhetoric, 410f; W.S. Hett and H.Rackham, Aristotle, Vol.16 in LCL, 258-262; E.S. Forster (trans.), The Work's of Aristotle Translated into English: Vol.11 (ed. W.D. Ross; Oxford: Clarendon Press, 1908-1952), preface; Goodenough, "Hellenistic Kingship", 91-92; Paul Wendland, "Die Schriftstellerei des Anaximanes" in Hermes 39 (1904),

beginning of the 3rd century B.C.E. Paul Wendland, followed by Goodenough, believed that the letter was an original of Anaximenes, reworked to conform to Hellenistic kingship models.<sup>137</sup> Whether this is so, or whether the whole treatise goes back to the 3rd century, it is apparent that the influence of the Pythagorean kingship models is prevalent.

The contrast between the written law and the king appears early in the treatise. For those whose political constitution is democracy, the subjects appeal for justice is to law. For those who are under a king, the subjects appeal for justice is to his reason (logos) (1420a,20-23). The king's reason performs the function of law in a democracy (1420a,23-25). The author stresses the contrast again:

you must realize that the model set before most men is either the law or else your life and the expression of your reason (1420b,12-14).<sup>138</sup>

This is the choice of the kingship fragments: the king or the law. Though the phrase nomos empsychos is not used here, logos empsychos (1420a,22-25) is used, and the terms are synonymous. The king performs the functions of the law for those who are subject to him. The model of the king who

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419-443; 499-542.

<sup>137</sup> Wendland, "Anaximenes," 500f; Goodenough, "Hellenistic Kingship", 93-94.

<sup>138</sup> The translation of E.S. Forster in The Works of Aristotle in English: Vol.11 is used for the Rhetorica ad Alexandrum.

brings virtue to his subjects is found here as well. The Rhetorica ad Alexandrum exhorts Alexander to

exert yourself to the utmost, so that those who spend their lives in these pursuits, using the elements of virtue in them to produce a beautiful copy of the model set before them, may not direct themselves toward ignoble ends but make it their desire to partake in the same virtues (1420b, 15-19).

The king, through the reason embodied in him, is to guide his subjects "along the path of their advantage" (1420a, 22-25). The king is the guide to the good life.

The idea appears in the writings of Cicero, in a number of places. The concept was, therefore, widely known, even in the Latin world in the 1st century B.C.E.. It appears in De Legibus 3.2-3, in a slightly altered form. Cicero calls the magistrate a "speaking law" (legem loquentem). The law governs the magistrate and he governs the people. The magistrate is the law, but he is not separate from the law. Elsewhere Cicero speaks of the virtuous ruler as the best form of government. This ruler puts his "own life before his fellow citizens as their law" (De Rep. 52). In De Off. 41-42 Cicero states that the reason for making laws was the same for making kings; laws were invented only because of a lack of just kings. Though Cicero may not have held out any hope for such a king, he knows the concept of the nomos empsychos and of the contrast between law and kingship.

In regard to the relationship between god and the King, Cicero has Scipio Africanus speak of it in the context of a discussion of the king as law (De Rep. 52-56). One God rules in heaven and this Scipio takes as precedent for the rule of a king on earth. The imitation of God by the king is here discussed, and the relationship between the subjects and the king described as that between a father and his children.

Cicero calls the good king a father to his subjects (De Rep. 1.54). He is eager to protect them. Those who were ruled by such a king "thought that life, honour, and glory had been granted to them through the justice of their king" (De Rep. 1.62). Cicero is too much of a realist to leave unsaid that the king "often becomes a despot" (De Rep. 2.43), but he knows of the concept of the king who "shielded the weaker classes from wrong" (De Off. 2.41).

Then there is the case of Musonius Rufus. Musonius Rufus contains perhaps the oddest, and also one of the clearest, of the examples. Odd, because it is not at all clear who his source is; but clear, because the idea is expressed in its fullness. It is the king's duty to arbitrate justice among his subjects and so he himself must be just.<sup>139</sup> The good king must

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<sup>139</sup> The text is found in Stob. 4.7,67. A Greek text and English translation are provided by Cora Lutz in "Musonius Rufus: The Roman Socrates" in Yale Classical Studies 10 (1947). The particular text is "VIII: That Kings Also Should Study Philosophy", 60-67. All English translations are from Lutz's translation.

be faultless and perfect, a "living law" "effecting good government and harmony, suppressing lawlessness and dissension, a true imitator of Zeus and, like him, father of his people."<sup>140</sup> Musonius also claims that the king is the best man. Musonius supplies a ready example when he says that the king must be "faultless and perfect in word and action."<sup>141</sup>

There are a number of connections with the Hellenistic Pythagorean fragments, but Musonius, who adds this paragraph on the nomos empsychos without discussion, seems to have copied it from an existing text. The language is formal and the concept seems set. Musonius' claim that the king should be "zealous for Zeus" (zelōtēs tou dios) is directly comparable to the passage in Sthenidas, though the language is somewhat different. So when A.C. Geytenbeek says that "the content of Musonius' discourse is so general, it is difficult to prove influence by any special school of thought,"<sup>142</sup> one must disagree in respect to these passages: the influence of the Pythagorean living law ideal is clearly seen.

Finally, there is Plutarch's important treatise To an Uneducated Ruler (779d-782f). For Plutarch also, the king is the "living reason," or logos

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<sup>140</sup> Lutz, 65.

<sup>141</sup> Lutz, 65.

<sup>142</sup> A.C. Geytenbeek, Musonius Rufus and Greek Diatribe (Assen: Van Gorcum, 1963), 127.

empsychos. The king is not ruled by law in books, or on tablets, but by the reason embodied in him (780c). The king becomes the law for his subjects, because law "is the work of the ruler" (780e). The ruler who must form himself in the image of God is also forming himself in the image of the true law, for Zeus is "himself justice and right and the oldest and most perfect of laws" (781b). The king, in molding himself in the image of God, copies the true law, embodies reason, and becomes law for his subjects.

Plutarch also considers the king's effect on his subjects at the core of his mission. He says,

Just as a rule, if it is made rigid and inflexible, makes other things straight when they are fitted to it and laid alongside it, in like manner the sovereign must first gain command of himself, must regulate his own soul and establish his own character, then make his subjects fit his pattern (780b).

The king is the rule by which the subjects become lawful and virtuous.

None of these followers exhibits all four aspects of the living law ideal, but most of them contain two or three elements of it and show the influence of the ideal clearly.<sup>143</sup> Especially clear is the contrast between the law and the king, the living law, which forms the core of the contrast.

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<sup>143</sup> Philo, who presents the ideal par excellence, will be studied separately. Later authors, such as Clement of Alexandria (Stromata, 5.5,29.2-3) and Themistius (ed. Wilhelm Dindorf, Themistius. Lipsiae: C. Cnobloch, 1832) (3.16,212d, p.259; 26.19,228a, p.277; 2.34,38, p.455; 17, p.76; 23, p.141) who present the ideal as well cannot be discussed.

The next section, however, is concerned not so much with literary evidence of the theory, but with literary, and other, evidence, which may show that the idea was actually applied in the Roman world in the 1st century B.C.E. and the 1st century C.E. How far did the influence of the living law extend?

D) The King as Law: Roman Evidence

The influence of the nomos empsychos ideal was widespread and appeared in a number of literary sources. That the influence of the literary sources extended to the 1st century C.E. is clear from the expressions of the idea in Philo and Musonius Rufus. But did this influence spread from theoretical and philosophical discussions to use in actual forms of government? Did it influence the cult of the Caesars? Many have claimed a wide range of influence for the concept.

Claims such as W. Richardson's regarding the influence of the nomos empsychos ideal in Luke-Acts and E.R. Goodenough's regarding the O.T. cannot be sustained, but there are other, more serious propositions.<sup>144</sup>

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<sup>144</sup> W. Richardson, "Nomos Empsychos: Marcion, Clement of Alexandria and St. Luke's Gospel" in Studia Patristica. Vol.VI (vol.81) (ed. F.L. Cross; Texte und Untersuchungen zur Geschichte der Altchristlichen Literatur; Berlin: Akademie, 1964); "A Motif of Greek Philosophy in Luke-Acts" in Studia Evangelica. Vol.II (vol.87) (ed. F.L. Cross; Texte und Untersuchungen zur Geschichte der Altchristlichen Literatur; Berlin: Akademie, 1964); E.R. Goodenough, "Kingship in Early Israel" in JBL 48 (1929), 169-205. What Goodenough sees as the nomos empsychos ideal in the O.T. is related to Near Eastern and Persian kingship in general; what Richardson claims is evidence

Some have seen in the living law ideal the core of Hellenistic kingship. Lester Born says that in Cicero's use of the idea he

is employing the terms of Hellenistic political theories, whose Greek equivalents are not only illustrated in the fragments to which frequent reference has been made, but are often found in the actual titles of the kings themselves.<sup>145</sup>

Kenneth Scott makes the same claims in his study of the living law in Plutarch.<sup>146</sup>

More important to us, and our study of Paul, are claims that the living law ideal was current in Rome in the 1st century not only as a philosophical ideal, but as a support for Roman imperial claims. Dvornik says that Musonius' use of the living law ideal

proves that the concept of animate law as applied to kings must have been current in the first century of our era and had been in use for a long time during the Hellenistic period.<sup>147</sup>

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of the nomos empsychos ideal in Luke-Acts is simply common Graeco-Roman language regarding the Sage.

<sup>145</sup> Lester Born, "Animated Law in the Republic and Laws of Cicero" in TAPA 64 (1933), 136; cf. also, Francis Dvornik, Early Christian, 474-477, 494; and Glenn Chesnut, "The Ruler and the Logos", 1310.

<sup>146</sup> Kenneth Scott, "Plutarch and the Ruler Cult" in TAPA 60 (1929), 129; Cf. also Dvornik, Early Christian, 272-273; and Chesnut, "The Ruler and the Logos", 1324.

<sup>147</sup> Dvornik, Early Christian, 247-248.

Glenn Chesnut adds that the idea of the king as the embodiment of the law was further developed in Roman political theory.<sup>148</sup> The Pythagorean fragments, he says, are "an extreme version of the official political philosophy which formed the intellectual underpinning for the Romano-Hellenistic ruler cult."<sup>149</sup> He concludes:

the notion of the emperor as the embodied Law or Logos of God, which appeared in a variety of contexts, both pagan and Jewish, was therefore a widespread and quite commonplace idea in the Roman world during the period of the Early Empire. It was simply a part of the general intellectual atmosphere.<sup>150</sup>

If this is true, the question whether or not Paul knew the idea would be quite straightforward. In what way was the living law the official political philosophy?

In fact the living law ideal, as distinct from Hellenistic kingship in general, does not appear that often in our sources. The term itself appears only three times before Philo, and then three times in Philo's work. This is the extent of the appearance of the term nomos empsychos, though the concept appears in a number of other contexts. But the grand claims for

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<sup>148</sup> Chesnut, "The Ruler and the Logos", 1310.

<sup>149</sup> Chesnut, "The Ruler and the Logos", 1315; Goodenough, "Hellenistic Kingship", 100 also classifies it as "the official philosophy of kingship in the period".

<sup>150</sup> Chesnut, "The Ruler and the Logos", 1329.

the living law ideal seem to be made on the basis of a conflation between the specific concept and notions of Hellenistic kingship in general. Such a conflation is invalid. The general idea of Hellenistic kingship does not allow us to assume that the specific idea of the king as the living law was present. What is the evidence that the living law ideal supported Roman monarchical policy?

We know that from the time of Alexander the idea of a deified king became more and more prevalent, taking root with the Diadochi, and coming to full flower with Augustus and the Roman emperors. There would seem to be a link between the Hellenistic kingship ideal in general and Roman imperialism.<sup>151</sup> The implicit assumption, however, is that this means there is also a connection between Roman imperialism and the living law ideal. This is the evidence that such a connection existed.

#### 1) Inscriptional Evidence

Before or during the 1st century C.E. there is little evidence to suggest that the Roman emperor was considered the living law from the inscriptional evidence. The only pertinent inscription dates from 69 C.E. In this inscription the Emperor Vespasian is released from the laws and decrees of the Roman people (C.I.L. 6.930). This is obviously a special status

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<sup>151</sup> Lily Ross Taylor, Divinity, chaps.7,8,9; Gertrud Herzog-Hauser, "Kaiserkult" in Pauly-Wissowa Real Encyclopädie. Supplement IV, 806-853.

granted to Vespasian, however, and, moreover, he neither replaces the law nor renders it superfluous; he simply does not have to follow it.

## 2) The Historians

Roman historians offer a number of passages which are worth comparing with the living law ideal.

### a) Philo

Philo, whose general portrayal of Gaius does not differ often from the Roman historians, offers us the only outright claim that a Roman emperor considered himself the law. Gaius, according to Legatio ad Gaium 119, thought he himself was law. This evidence has been accepted as factual.<sup>152</sup>

The only consideration speaking against its factuality is the negative portrait of the living law ideal given in this tractate. Both Wayne Meeks and Goodenough have pointed out that Gaius is presented in this tractate as the perversion of the nomos empsychos ideal.<sup>153</sup> This antithetical portrait may then simply be a bit of propaganda. Given Philo's overall fair portrait, however, it is possible that he also reports the truth:

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<sup>152</sup> Anton von Premerstein, Vom Werden und Wesen des Principats (Abhandlungen der Bayerischen Akademie der Wissenschaften. Philosophisch-historische Abteilung. Neue Folge. Heft 15. München, 1937), 177.

<sup>153</sup> Wayne Meeks, The Prophet-King (Leiden: E.J. Brill, 1967), 49-51; E.R. Goodenough, The Politics of Philo Judaeus (New Haven: Yale University Press, 1938), 101-108.

Gaius considered himself the living law. Our final consideration is that, though dressed in Philo's philosophical clothing, the portrait of Gaius as the living law may be based upon Gaius' own claims.

b) Pliny (23 C.E.- 79 C.E.)

Pliny's evidence is somewhat late, but it is sometimes considered as evidence for the Hellenistic kingship ideal and so ought to be briefly considered here. There are two passages of interest.

Pliny reports that the Emperor Tiberius controlled the Senate, allowing only some legislative responsibility to trickle down to the Senate (Letters 3.20). He also seemed to be able to make any legal decision, as evidenced by his use of the decreta in response to a question of Pliny's (Letters 10.56).<sup>154</sup> Though the Emperor has the power to make law, he is not the law, and the apparatus of the justice system remains in place, even if not often considered.

c) Suetonius (c.70 C.E.- c.120 C.E.)

Suetonius records that Julius Caesar considered his own word law (1.77). This appears to be close to the nomos empsychos ideal. Though Suetonius is not always a reliable source, the evidence is good that Caesar actually made the statement. Suetonius claims that it was a public

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<sup>154</sup> W.W. Buckland, A Textbook of Roman Law from Augustus to Justinian (Cambridge: The University Press, 1963), 18, says, "where they {the decreta} did make new law, they had the force of law."

statement and records Titus Ampius as the source for the statement.<sup>155</sup>

Suetonius regards the statement as arrogant, but if it is genuine, and there seems to be no reason to doubt it, it may conceivably show that Caesar was conversant with the living law ideal.

Suetonius also records a number of statements concerning or by Gaius which may have some connection with the nomos empsychos ideal. Gaius had full and absolute power given him by the Senate (4.14). He reportedly said, "I have the right to do anything to anybody" (4.29). Again, though, the power given Gaius by the Senate did not render the laws of Rome null and void. Gaius did have the power to make law, but he was not the law himself. That he had the right to do anything need not imply a philosophical basis; it implies a lust for power. That he was de facto the law need not be argued - this is one of the perquisites of tyranny - but he seems to be driven by megalomania - he considered himself the equal of Plato (4.34) and Alexander (4.52) - and not by ideology.

d) Dio Cassius (c.155-164 C.E.- c.230 C.E.)

According to Dio Cassius, Julius Caesar founded a monarchy (52.1,3), and became a king, whether he admitted it or not (52.40,1-2). Caesar was advised to take control of the law and make law in collaboration

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<sup>155</sup> On Titus Ampius see E. Klebs, "Ampius" in Pauly-Wissowa Real-Encyclopädie I.2, 1978-1979. Titus Ampius is known through a number of sources, such as Josephus and Cicero, and would be a reliable source.

with the best men in Rome (52.15,2). In reality, whatever pleased Caesar would be law (52.15,3). This power, according to Macaenas, who advised Caesar to adopt the monarchy, would not be a license to act with impunity (52.34,1), but a chance to do good, in order that the Romans might consider Caesar a father and a saviour (52.39,3).

There are connections to Hellenistic kingship in terms of the justness which Caesar should possess, and in how his subjects would regard him, but it is the claim that his word would be law which reminds us of of the nomos empsychos ideal. It also reminds us of Suetonius' claim about Caesar. Caesar is in some ways to be the law; the force of this is muted somewhat by the fact that Julius would still make law in conjunction with others, and that the legal system would still be in operation (52.34,6-8), but it hints at the ideal and the genuineness of Suetonius' report.

Dio also reports that Augustus, as Emperor, was in possession of the laws of Rome. When Augustus considers giving up his rule, he refers to his adopted father Julius and the power his deified father held:

As for immortality, we could not possibly achieve it; but by living nobly and by dying nobly we do in a sense gain this boon. Therefore, I, who already possess the first requisite and hope to possess the second, return to you the armies and the provinces, the revenues and the laws (53.9,5).

Augustus does this under the pretence of returning Rome to democratic rule, but the important information is that the emperor possessed the laws. This does not truly impinge upon the living law ideal, though, for the possession of the laws differs from the king actually being the law.

Augustus, too, though he made a show of a return to democracy, attained autocratic power and the stature of a king (53.11,4-12,1). He was as such freed from the laws and written ordinances of Rome (53.18,1-2). Again, however great his power was, the laws are not abolished and Augustus is not the law; he simply has power over them and need not obey them.

Gaius, who had the same power as Augustus, used it, apparently, only to break the law (59.10,2;14,3;15,1) not to become the law.

### 3) Philosophers and Poets

This mixed group provides a mixture of historical truth and proverbial wisdom, which can, of course, also contain truth.

#### a) Pomponius Porphyry

This African of the 3rd century C.E. preserves a kingship proverb in his commentary on Horace. In Horace Ad Sat., 2.3,188 a king forbids the burial of a certain Ajax. When asked why, the king replies: "I am the king." To which the questioner, a commoner, replies that this answer satisfies him.

In his commentary, written in Latin, Porphyry adds to this a proverb in Greek: "for the fool and the king the law is not written."

This proverb, also preserved in Hebrew, may indeed be ancient, and certainly precedes Porphyry, but its usefulness for the living law ideal is minimal. It does not seem to reflect any official kingship philosophy, but, as the reference to the fool makes clear, a measure of, perhaps bitter, reality.

#### b) Seneca

Seneca speaks in two places of the power of the Caesars and reflects the reality, not the philosophy, of the Roman monarchy. In Ad Poly., 7,2 he speaks of Caesar who is able to do all things (cui omnia licent). In De Clem., 1.8,5 he refers to Nero as omnipotent. In both of these cases Seneca seems to be relating statements of fact and not philosophy, apart from which the ideal of the living law is not really under consideration.

#### 4) The Lawyers

This evidence is often cited, but it is quite late and its usefulness for our purposes is doubtful; it is also not as clear as it initially seems.

#### a) Gaius

In his Institutes, Gaius, a lawyer, speaks of the emperor as taking the place of the law (legis vicem obtinet) (1,4-5).

## b) Ulpian

Ulpian, preserved in Justinian's Digest, speaks once of the Princeps not being bound by the laws (1.3,31) and of the emperor as the law (1.4,1).

The first case in Ulpian does not really enter into the picture; it is a common expression of the idea that the Roman emperor is released from certain laws. Both the other passages do recall the nomos empsychos ideal. They are from the 3rd century C.E., though, and most authorities agree that they are taken out of context and refer to an individual case and not the idea of law in general. Nevertheless, the language of the living law is here, and was of course finally adopted by the Romans; the problem we face is not being certain that the idea was being put into practice in the 1st century C.E.<sup>156</sup> These statements do reflect the development of the role of the Emperor in Rome, but they are, for our purposes, too late.

5) Comments: The Historical Evidence

Our conclusions are mixed. Only in two or three cases can we see the influence of the living law ideal on the development of Roman monarchical claims in the 1st B.C.E.-1st C.E. This is something. It is far

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<sup>156</sup> The concept was a commonplace in the 6th century C.E. if Justinian's usage in his Novellae is any indication. In Novella 105, 4 (lines 7-15) he refers to the emperor as the "living law" (nomos empsychos) in the context of a discussion of the hypateia, or "consular governor". The king is given to his subjects as a special honour, says Justinian, and God counsels him regarding the laws. He becomes, therefore, a "living law".

from the official theory of Roman political policy. It is important to bring some perspective to the reality of the situation; the influences of Hellenistic kingship do not necessarily imply the influence of the nomos empsychos ideal.

#### E) Conclusions

The living law ideal is a powerful concept. More than in any other concept of "higher" law the entire written law is replaced. The king substitutes himself for the law. The written law is indeed superfluous. Of course, the king must be lawful and just and act only out of compassion for his subjects, but the dangers inherent in the concept are obvious. It was perhaps not a ubiquitous concept, but it was present, and, moreover, it was dynamic. It may well be that it was the danger of the concept which caused it to be mentioned so rarely; tyrants hardly need philosophical justification to legitimize their doings.

As the living law, however, the king was to be "lawful", to bring himself in line with divine or eternal law, though this is stated clearly only once or twice, and bring about virtue in the lives of his subjects. The "higher" quality of the living law seems to rest on his imitation of God, his perfect justness, and, especially, his ability to be the law for his subjects in such a way that they desire to follow the law.

#### IV) The Task

These complex and powerful ideas have come down to us not only as ancient history, as the survey here indicates, but as living concepts in modern life. The ideas have lasted because they speak to the need to root law in something other than convention and arbitrariness: surely there is truth?

These ideals seek to root the essence of law, a norm for moral behavior, and its function, the insurance of justice, in sources which transcend the mundane and the arbitrary. Law may be intrinsic, written in the nature of the world and of humankind, or extrinsic, living in the true king, or enshrined in the heavens as eternal norm, but these concepts affirm that law is not subject to whim.

Our purpose in studying these concepts is to return to the ancient world and to apply them to the thinking of Philo and Paul. What are the connections between two Jewish thinkers and philosophic thought on the superfluity of the written law in the Graeco-Roman era?

## CHAPTER TWO: PHILO AND PHYSIS

In a study of "higher" law in the Graeco-Roman world, Philo presents to us a picture unlike any other. He weaves a tapestry of complexity and beauty. This tapestry reveals to us not only the patterns of Philo's thought on Greek law, but, indeed, as much, or more, information on agraphos nomos, nomos physeōs, and nomos empsychos as is found in most other ancient sources. Indeed, Philo is the only ancient author who explicitly discusses all three of these concepts. Philo is not simply an object of study in terms of how he uses these sources, he is a source himself.

The goal of this study is narrowly defined but wide in its scope. Did Philo in his use and adoption of these concepts somehow render the Mosaic law superfluous for some people? Does the presence of ideas of "higher" law reduce the Mosaic law in Philo's writing to something which is less than necessary for certain, gifted people? The concepts with which Philo works are susceptible to such interpretations, if only - as with the Greek authorities he follows - for a small group of people.

Because of the importance of physis in understanding the law of nature and the related forms of higher law in Philo, and for understanding the place and role of God and humanity in the cosmos, our study will begin with an overview of nature in Philo's work. This overview is significant

because Philo's view of nature differs from the Stoic view, and because Philo's view of the world, a united whole, is important for understanding his view of law.

The major strands of Greek thought on physis are found in Philo. These include physis as the power of life and growth; physis as the particular characteristic of any thing or being; and physis as the inherent order and reason of the cosmos, seen par excellence in the nomos physeōs, but manifesting itself in every living thing.<sup>157</sup> Philo's thought also includes the idea of the physis of God, separate from and towering over the created nature.<sup>158</sup>

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<sup>157</sup> See Hans Leisegang, "Physis" in Pauly-Wissowa Real Encyclopädie 20.1, 1130-1164; W.C. Greene, Moirā, 223-228; 410,413; F. Heinimann, Nomos und Physis. Nature as the reason inherent in the cosmos includes under its rubric the two first categories. This points to the difficulties of these divisions. There is great unity in Philo's universe and it is manifested throughout the cosmos. The character of a plant, for instance, is specific, but insofar as it fulfils its specific nature, it shares in the nature of the universe.

<sup>158</sup> A number of commentators over the years have argued that physis and God are synonymous in Philo; I hope to demonstrate that this is not so. See Hans Leisegang, "Physis," 1160-1161. He is most emphatic: Physis = God; E.R. Goodenough, By Light, Light, 31-54; James Drummond, Philo Judaeus or the Jewish-Alexandrian Philosophy (Amsterdam: Philo Press, 1969; repr. of London, 1888 ed.), 62,167; Gerhard Delling, "Wunder-Allegorie-Mythus bei Philon von Alexandrie" in Studien zum Neuen Testament und zum hellenistischen Judentum (Göttingen: Vandenhoeck & Ruprecht, 1970), 72-129. See also Adele Reinhartz, "The Meaning of nomos in Philo's Exposition of the Law" in SR 15/3 (1986), 341-342.

## I) PHYSIS: THE POWER OF GROWTH AND LIFE

This is perhaps the earliest Greek view of nature.<sup>159</sup> Nature as the power of growth and life is clearly evident throughout Philo's work (Deus 37-38). Seeds and fruit are the works of nature, not culture (Her. 121). The ability of a plant or an animal to bear fruit is determined by nature (Congr. 4). A vine is a piece of nature's handiwork (Mut. 162). Nature's work is to be seen everywhere. Though transformed by technē, food is also a gift of nature (Spec. 2.158-159). Nature also divides the seasons (Legat. 190) and establishes the equinoxes (QE 1). Nature bestows on humanity "all gifts" (Sacr. 98-102; Agr. 7-8; Post. 103-104).

Nature also gives life to human beings. Nature is the common mother of all humankind (Decal. 41-43; Agr. 30-31; Somn. 2.262; Legat. 126). The sense-perceptions are created by nature (Somn. 1.27). The tongue is a gift of nature (Spec. 2.6). Nature has also formed the marriage union (Abr. 248-249), presumably to foster life, for on numerous occasions Philo refers to the womb as the workshop of nature (e.g. Legat. 56-57). The course of nature is active until the birth of the child, after which nature no longer

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<sup>159</sup> There are a great many articles dealing with this, and many have been discussed in Chapter Two. An argument for this view is provided by F.J.E. Woodbridge, "The Dominant Conception", 359-374; an argument against by A.O. Lovejoy, "The Meaning of Physis", 369-383.

participates in its development (Abr. 193-195). The course of nature also contains death, which is simply a part of the process of life (Mos. 2.281).

The creative force of nature, the force of growth and life, comes to us too in the shape of needs and longings, to which our bodies must respond. There is a course of nature for each thing (LA 1.107), for nature has created all things in a unique and particular way (LA 3.64). The need to eat, as well as other bodily needs and functions, was appointed by nature (LA 3.145-147).

The opposite of the existence of natural drives is the limits which nature sets upon all things (Mos. 1.26-28; Decal. 41-43). These limits must be obeyed. Nature "intends" for all things "something" specific (Spec. 2.48). Each living thing, given the power of growth and life by nature, strives to become, and to maintain, what it truly is (Aet. 35-37).

This view of nature is probably the most common view of nature even today: nature is the inherent growth and life found in each living thing. What is different is the idea that each living thing has a role proper to itself which it ought to fulfil to be truly itself. This touches already upon the view of nature as the inherent character of things.

## II) PHYSIS: THE INHERENT CHARACTER OF THINGS

The unique, characteristic nature of each living thing is a powerful component of the Greek view of nature. It is found throughout

Philo's writings. The specific nature which all living things contain is a part of the greater nature of the whole. It is the "stuff" of any thing or being, that which characterizes and defines it. Philo can therefore speak of the "nature" of the Good, and on the other hand speak of people who are "by nature" combatants: in both cases Philo is speaking of the inherent character of the thing in question.<sup>160</sup> Both a human being (Opif. 82-85) and a number (Opif. 95-97) have characteristic natures. Important for us, however, are Philo's discussions of human nature. The nature of a number, for instance, is not in doubt; but when it comes to human nature, the true nature of humankind is open to question.

Not every human "nature" is positive. Philo can speak of people whose personal nature is contrary to light (LA 1.18). Other human natures though reject pleasure, and so are wholesome (LA 2.105). It is no surprise then that Philo can speak of natures which are mutually hostile (LA 3.7). It is God who has made some natures evil and some good (LA 3.75).<sup>161</sup>

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<sup>160</sup> It can also mean they share in "nature" writ large, that is, they are what they are by virtue of nature, as well as by their own nature. This ultimately amounts to the same thing in Philo's thought, as is true in Stoic thought.

<sup>161</sup> Here the problem of the creation of evil and the question of free-will and predestination are met. Nature has, after all, its own "character" to fulfil, and this is most certainly to do good. Who creates these evil natures? Why would God create a nature contrary to the "true" nature of man? The question whether one truly has an "evil" nature will be discussed elsewhere, for Philo seems to imply that one can choose his "true" nature. See Wolfson's discussion, Philo Vol.1, 426-456.

Though the true nature of humanity is to partake in the good, there are contending natures of good and evil which may be present in each person (Sacr. 4).

Noah had an excellent nature from birth (LA 3.77-78; cf. Somn. 1.171-172 for Isaac). Others are said to have generously gifted natures (Deus 61-63). Elsewhere, Philo points out rational (Mig. 68; Somn. 1.106) and logical (Mig. 78) natures. There are also imperishable (Mut. 14) and happy (Mut. 84-86) natures. The wise man, who is born good, like Isaac, has a nature which acts as a light to all who have rational natures (Somn. 1.176). There are great "natures" (Jos. 118; Mos. 1.21-22, 59-60). The greatest nature of all belonged to Moses, who perfected his "nature" (Mos. 2.58).

Philo can also speak about "fleshly" natures, which are opposed to spiritual, or good, natures (Det. 83-84; Gig. 30). Some, says Philo, are altogether dull in their natures (Somn. 1.236). Philo says that even Joseph could not direct irrational natures (Agr. 56; Somn. 1.109-111), and that "Egypt" - which almost always connotes the baser elements of humankind<sup>162</sup> - cannot rise above its own nature (Mut. 117).

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<sup>162</sup> Alan Mendelson, Philo's Jewish Identity (BJS 161; Atlanta, GA.: Scholars Press, 1988), 117.

While Philo affirms what most anyone can observe, namely, some people are good and other people are bad, he roots these tendencies in human nature. On the other hand, Philo affirms that all human beings have the same nature (Post. 160). Philo speaks as well of the true nature of mankind (Det. 274). Good is conformable to man's nature, claims Philo, but evil is not (Mut. 197-199). Does Philo contradict himself? Is there in fact a true nature of humanity, as there is a true nature of the sun, or of salt? What is the true character, the inherent character of humankind? Or are there many?

Philo does not enter into contradiction, if the shades of meaning in Philo's understanding of the nature of humanity are maintained. Philo speaks both of the ideal nature of humankind - the true, or inherent nature - and the observable facts of man's nature - people are different and some are bad.<sup>163</sup> This tension is not unique to Philo in the ancient world; it was almost inevitable given the common view of each thing having its own particular nature. This was an easy view to maintain until human beings were added to the equation. For while cats and dogs seemed to have no trouble fulfilling their animal natures, humans stumbled far from the ideal. How should we account for it?

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<sup>163</sup> That Philo maintains a distinction in natures based on observation is clear from his claim that children imitate their father's nature (Sacr. 68-69).

Cicero, too, stressed that people are different and unique (De Nat. Deor. 2.34,39). Not every good person has the same nature, and not every person is good (De Rep. 3.33). One is supposed to maintain one's own individual nature, if it does not involve any transgression of the universal nature, but a "bad" nature is to be rooted out. Those who have "bad" natures are still able to share in their true nature, but the way is much more difficult than for someone whose nature is good at birth (De Off. 1.106-113).

In Philo's thought, we can distinguish among a number of levels of human nature. At one level, some of Philo's natures are simply "types" or "characters." These can be, potentially, cast off and transcended. Though changing one's "character" is no light task, these "natures" have, finally, no true significance.

For above the "character" of a person, however difficult it is to alter, are our fleshly and spiritual natures, or rational and irrational natures, which all humankind shares (Gig. 30). The reason why there are evil people, who partake in less than ideal natures, is that the soul can be shaken from its proper nature (Decal. 142; cf. QE 2.106; Legat. 118). Humans are created and corruptible, and if thrown off course a person shares more in the fleshly, or irrational, than spiritual nature of humanity

(cf. LA 3.104).<sup>164</sup> These categories both have real meaning, and existence, but the fleshly nature is not the true nature of humankind. The true nature of humankind is the spiritual nature.

There is, indeed, only one true human nature (Ebr. 164-167; Congr. 122; Mut. 46,225; Jos. 25; Legat. 75). The true nature of humankind is to partake in the good; the problem is, of course, that human beings, alone among created beings, can say no to their true nature. As Wolfson says, "All men have a knowledge of the good, but some, notwithstanding that knowledge, choose by their own free will to follow the base."<sup>165</sup> The

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<sup>164</sup> Mendelson, Secular Education, 48-51 discusses a three-pronged typology of human beings which is located in a number of places (Heres 45-46; LA 1.92-94; Gig. 60-63; QG 4.243). Mendelson indicates that the lowest of these types, the phauloi, have chosen the way of wickedness instead of the way of the mesos. Once they have chosen the way of wickedness, they are not at liberty to change their lot (59-60).

Free will, therefore, is a limited option. "It would seem that the less gifted the individual (at the start), the less successful he will be in any endeavour to lift himself" (59). The person, like Moses, who is by nature good, is good by the grace of God. The person who occupies the middle ground can choose the good or the bad, but he can not choose to be Moses. "There can be no progress without the active aid of God" (59). Nature is a gift of God, and choice is not unlimited. "Philo was not thinking in terms of a concept of absolute free will when he charted these courses" (60).

<sup>165</sup> Wolfson, Philo Vol.1, 437. Mendelson, Secular Education, 58-59.

good is the goal, however, to which human nature ultimately strives, for nature in each case strives to maintain its true nature (Aet. 35-37).<sup>166</sup>

We can sum up our findings thus far. There is a true, inherent nature, in which all men are meant to share, and a fleshly nature, having many manifestations, in which we do share, because humanity is corruptible. Below these categories are types of human natures, some of which are good, some of which are bad, but none of which are truly decisive. A type of nature which is more suited to evil, for instance, can be led upon the path to goodness, if the right choices are made, and with the help of God; the predisposition of a person's character need not be decisive for the life which a person leads. With the proper teaching and training anyone can lead a virtuous life, for the true nature of humanity is to lead a virtuous life.

The achievement of the true nature of humanity is not a simple thing, but this does not mean one cannot improve. Everything partakes in a true nature. It is simply easier for an animal or plant to achieve its true

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<sup>166</sup> The ability to choose the good is, as we have seen, limited to some degree by birth and nature. The real choice for the lowest category of human beings, the phauloi, is the choice made to descend to the basest of natures from the level of the mesos; once this occurs there is little chance for improvement. The choice of the mesos, however, can also be to choose good. This is where free will enters the picture. "A member of this class alone has the free will to determine the shape of his life for good or for evil" (Mendelson, Secular Education, 67).

nature than it is for a person.<sup>167</sup> Each passion, for instance, has a true nature (LA 3.157). So, too, does a square have a true nature (Conf. 87). The same is true of the soul (Conf. 46). The list could be extended indefinitely.<sup>168</sup> But the specific nature of salt, for instance, is not unconnected to nature as a whole. Nature means not simply the natural world, but the nature of all things, namely, nature as the order of the cosmos. Every particular nature shares in the nature of the whole.<sup>169</sup>

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<sup>167</sup> Wolfson, Philo Vol.1, 445 claims that God also helps those who seek the good: "he will not have to rely upon his own power, that is to say, that power of free will with which God has endowed all men, for, if he proves himself worthy, God, through his thoughtfulness, will aid him". Some people, of course, are lucky; to them virtue came by nature: Noah (LA 3.24,77); Melchizedek (LA 3.25,79-81); Abraham (LA 3.27,83-84); Isaac (LA 3.28,85-87); Jacob (LA 3.29,88-89). Moses, as we will see, has an even higher nature. Of these people Mendelson, Secular Education, 52 says, "the grace of God...is an essential element in the original constitution of the sage." See Mendelson, Secular Education, Chapter Three, 47-65, for the typology of human beings and their ability to achieve virtue.

<sup>168</sup> Philo speaks of the true nature of almost everything: good (Sobr. 53); benedictions (LA 3.210); self-conceit (LA 1.52); knowledge (Somn. 1.6; Gig. 25); mind (Mig. 206-207); heaven (Somn. 1.27; Mut. 71); air (Somn. 1.20); maleness (Spec. 2.50-52); texts (Cont. 28); salt (QG 4.62), etc.

<sup>169</sup> Since creation is the work of God, carried out by nature, which also includes the activity of the Logos, all created beings and things share in nature as a whole, as well as having their specific natures to fulfill (Opif. 3,16,19-22, 44,46,73,130,145; Post. 4-5). The connection is also seen in the creation of the Forms which have their copies on earth. These copies adhere to the purpose established for them by God, whose active force in the world is the Logos. "Universal Nature...brings forth no finished product in the world of sense without using an incorporeal pattern" (Opif. 130). The connection between individual human natures and universal nature was especially relevant to the Stoics. Cicero, De Off. 1.106-13 says that humans share in universal nature as well as human nature, as does Diogenes Laertius 7.43. Cf. Goodenough, By Light, 393-94, and Long and Sedley, The Hellenistic Philosophers Vol.1, 266-

When Philo speaks of things physei, by nature, he speaks not only of things which fulfil their individual nature, but which in so doing participate in the order of the cosmos. Immoderate eating, for instance is "by nature" deadly according to Philo (Opif. 159). The sense is not only "inherently," by its own nature, deadly, but "by the order of nature" deadly. It is the relation of the microcosmic to the macrocosmic, in the literal sense of these terms.<sup>170</sup>

Philo is also directly under the influence of Greek thought on nature when he contrasts things which are by nature and things which are by habit (Her. 142).<sup>171</sup> He maintains the common Greek distinction between natural and conventional. The natural is the "stuff" which makes a thing what it is, the conventional is an unnecessary addition to nature (Somn. 1.167-169; 2.90; Abr. 52-55; QG 4.184). For Philo, the greatest goal for anyone, or anything, is that it "strives to maintain and conserve the

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268, section 43; 395, section 63. This was a concern of Philo's too, but for special reasons: God's provident creation. Philo says, "God willed that Nature should run a course that brings it back to its starting-point, endowing the species with immortality, and making them sharers of eternal existence" (Opif. 44). Universal nature endows its creations with purpose, and these purposes share in the whole.

<sup>170</sup> There are numerous examples of things "by nature": LA 3.71,3.130; Post. 31-32,109; Conf. 49,52; Mig. 26; Her. 49; Congr. 71; Fug. 120,172; Mut. 108,167; Somn. 1.114,150; 2.79,136; Abr. 21; Jos. 81-83; Mos. 1.97; Decal. 64; Spec. 2.122-124; QE 1.16; etc.

<sup>171</sup> Guthrie, History Vol.3, 55; F. Heinemann, Nomos und Physis, 106-108.

thing of which it is the nature" (Aet. 35-37). This is true of the cosmos, too, for there exists a nature of all existence (Post. 182) and a nature of all things (Agr. 1; Jos. 142; Mos. 2.100,133-134,142; Fug. 14,34; Mut. 266).

### III) PHYSIS: THE ORDER OF THE COSMOS

Because the creation of nature was the act of a provident God, all creation, in the work of Philo, has a place in the cosmic order. Nature is purposeful and intentional. Each specific thing has purpose and intentionality, as has already been touched upon, as does nature in its entirety. Nature is not only the force of life or growth, it is the order and the purpose inherent in life.

Nature, therefore, is able to prompt people to do certain things (Cher. 90-92). To follow nature is the sign of strong reason (Ebr. 55). It is nature itself which gives us the means to follow nature by granting us the instruments of judgement (Ebr. 169). Nature trains people (Ebr. 211-212). The purpose of conforming to reasonable nature and the goal to which nature leads is the best possible life. Conformity with nature is equal to justice (Her. 95). It teaches us (Fug. 171-172) and reveals knowledge to us (Somn. 1.11).<sup>172</sup> Nature has an intended purpose for humankind (Spec. 2.48).

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<sup>172</sup> Cf. Jos. 129; Mos. 1.39; Spec. 2.239-241.

The Stoic colouring of Philo's view of nature is readily apparent. This is nature which guides people into reasonable and virtuous lives. This is a nature which is purposeful and moral. This is the nature of the Stoics, with one distinct difference: God created nature. God is not, as with the Stoics, the reason, the order of nature; he is not simply physis, he transcends his creation.

Philo does not alter the Stoic view of a world shot through with reason; he does not even alter the terminology; but he does bring to this view the Hebraic notion of the one, true God who towers over his creation. Within his creation, things often seem rather Stoic. The heart of nature is truth (Sobr. 46-48; Her. 71). Nature has a never-failing wisdom (Spec. 2.100). It provides for humankind a champion in reason (Cher. 39). Right reason, orthos logos, calls us to follow in the steps of nature (Ebr. 34). Right reason, in fact, is an infallible law created by nature (Prob. 46).

As with the Stoics, right reason, which is also considered the order of nature itself, manifests itself as the law of nature. The commandments are given according to nature (Det. 52). The ordinances of the Bible are consistent with nature (Abr. 5). Nature itself is the most venerable statute (Abr. 6). The world itself, described by the Stoic term megalopolis, has a single law: the logos of nature (Jos. 28-31).

Philo follows the Stoics in his formulations, especially in adopting the description of the order of nature as the orthos logos. Reason guides nature. Philo gives us more: he is the first writer in Greek, whose work is extant, to speak so clearly and often of the nomos physeōs. While Philo has clearly adopted Stoic terminology, he provides the missing link: the term itself. To follow the logos of nature is to follow the nomos physeōs. It is Philo who first gives us the formulation on a consistent basis.<sup>173</sup>

The cosmos is ordered by laws, the manifestation of reason in the world. Although E.R. Goodenough has argued that Philo operates with two kinds of natural law, one governing the natural world, and one governing the moral world, Philo in fact makes no such distinction.<sup>174</sup> The world, its

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<sup>173</sup> Philo cannot be the originator of the concept, as we argued in Chapter Two against Helmut Koester, "Nomos Physeōs". We need not, however, adopt W.L. Knox's attitude, Some Hellenistic Elements in Primitive Christianity (London: Oxford University Press, 1944), 34 who speaks of Philo's "total lack of original thought" and the "slovenliness with which he incorporates his material." While Philo is not an originator of this concept, his treatment, we will shortly argue, is quite original and far from slovenly.

<sup>174</sup> Goodenough, By Light, 52-57. Goodenough distinguishes between the "Law of God, or the Law of Nature" and the "natural law of matter" in the work of Philo (54). Philo makes this distinction, according to Goodenough, to escape the attribution of the creation of evil to God (53-54). When Philo turns to the problem of evil, there is "mention of a law of material nature which seems at enmity with God's law" (54). Philo's discussion of the problem of theodicy may indeed seem an anomaly in his thought, but it does not appear that Philo has created a second form of "natural law of matter". It seems from Philo's account of creation that God is responsible for the creation of matter and the laws which govern it. If Philo has difficulty explaining the role of irrational tendencies, or evil in this creation, he is not alone, either in the

physical and ethical components, is one. There is an immutable law of nature (Mos. 2.5-7). One can live a harmonious life by following the laws and statutes of nature (Spec. 1.202). The laws of nature were indeed determined by God from the beginning of creation (QG 4.42). Nature, therefore, is governed by laws, and is itself a law. God's creation imbued the world with purpose, not only physical, but ethical.

The fact of purposeful nature means, as pointed out in the discussion of human nature, that one can act contrary to and according to nature. One can, and most people do, contravene these laws of nature (Decal. 150). There are activities which defy nature (Conf. 68). The ownership of slaves is against nature (Cont. 70). Someone who kills another

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ancient or in the modern world. In his "Appendix: Law in the Subjective Realm", Goodenough argues more convincingly that the "law of the nature of the whole" and "the law of the nature of the part" are sometimes in conflict (394). What a body desires, therefore, is sometimes in conflict with what reason demands. This, it seems to me, carries us back to the problem of theodicy, for the reasonable person knows, for instance, that sex is for procreation; the person who slavishly follows sexual desires without checking them with the reason inherent in him is a slave to irrational desires and, so, to sin. This is not another law of nature, though; it is a perversion of nature. The Stoics faced the same problem, in a different way. Because of their monistic view of the world and especially of the human soul - it was only reasonable - how could they explain the existence of "irrational" desires or "wrong judgements"? This they must explain, however, with a different view of the soul than Philo and without the presence of a transcendent God. See Martha Nussbaum, "The Stoics on the Extirpation of the Passions" in Apeiron 20\2 (1987), 129-177; Michael Frede, "The Stoic Doctrine of the Affections of the Soul" in The Norms of Nature: Studies in Hellenistic Ethics (eds. Malcolm Schofield and Gisela Striker; Cambridge: Cambridge University Press, 1986), 93-110; Brad Inwood, Ethics and Human Action, 127-181.

person undermines the laws and statutes of nature (Decal. 132). Impiety subverts the laws of nature (Spec. 2.170-173). Cutting off a part of the human body, cross-mating, and cross-breeding are all against the decrees of nature (Fug. 112; Spec. 3.45-48). In general, those who

presume to lay hands upon nature and transform the works of nature by their own undertakings defile the undefiled. For the things of nature are perfect and full (QE 2.1).

While there may be no punishment for breaking the law of nature in a human court of law, one may be condemned in the court of nature (Spec. 3.121).

There are actions, too, which not only contravene nature, but "add" to it. The result is the same. Nature needs nothing but itself. There are no superfluities in nature (Post. 4-5; Mos. 1.117). Bad laws are "additions" to the right reason of nature (Jos. 28-31; QG 4.90,184). Homosexuals, says Philo, debase nature not only because they contravene it, but because they "add" to nature (Spec. 1.325). Slavery, too, is an "addition" to nature (Spec. 2.58; Cont. 70).

The order of the cosmos, shaped by the right reason of nature, and manifesting itself in laws of nature, is not able to be altered. Nature has clear and well-defined limits (Aet. 57-59). Nature, the whole cosmos, is charged with reason and purpose. This is the nature of the Stoics, with one

important difference: as a creation of God, it bears his ethical imprint.

Above Philo's orderly and reasonable nature hovers its creator.

#### IV) PHYSIS: THE NATURE OF GOD

E.R. Goodenough in By Light, Light argued that physis can sometimes mean God for Philo; he has been followed or preceded by a number of other commentators.<sup>175</sup> Yet, as Goodenough himself acknowledges, God operates in the world through the workings of his reason, the logos. God transcends his creation, but controls it through his Logos. The nature of God is removed strictly from the workings of the cosmos. God has a perfect, unique nature.

God is prior to the universe: monos, hen, physis huple (LA 2.1-3). He is uncreated and therefore his nature transcends human nature which is created and composite (Legat. 118). The transcendent nature of God means that it is unknown to humankind and that no positive assertion may be made about it (LA 3.206-207; Cong. 61). Philo perhaps breaks his own injunction when he claims God's nature is most perfect (Cher. 86), but generally Philo is true to his word.<sup>176</sup> Beyond the knowledge that God "is,"

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<sup>175</sup> See my comments in this chapter n. 158.

<sup>176</sup> Philo slips up a few other times, but this is due one must suspect to enthusiasm. He calls God's nature good (Conf. 180-181), unchangeable (Somn. 1.232), and sublime (L.A. 3.252). God is without passion of any kind (Abr. 202). He is, says Philo, the "best nature", hē aristē physis.

his nature is inapprehensible (Det. 89). Even Moses, the greatest of men, was rebuffed when he tried to have God reveal his nature to him (Post. 13).

He has driven created being far away from His essential Nature, so that we cannot touch it even with the pure spiritual contact of the understanding (Post. 20).

Moses could never have caught a glimpse of the pure, eternal, never-fading, never-changing nature of God (Mut. 7,14,140; Plant. 91).

There is some tension in Philo's thought on God's nature. Philo finds the chasm between humanity and God hard to accept, though he stresses it (Mut. 184). He often tries to blur the lines separating humanity from God. This attempt at "blurring" the separation between humanity and God occurs not only with the "borderline" nature of humanity, but when Philo introduces natures between ordinary human nature and God's nature.

Philo speaks often of the tension between human and divine nature. The mind, nous, of humans has a brilliant and god-like nature (LA 2.10). There are some men who can converse with intelligible, incorporeal natures (Deus 55). A heavenly soul can dwell with theioi physeis, or divine natures (Deus. 151). Philo goes so far as to say on one occasion that the worthy man shares God's nature (Post. 26-28), while chastising those who believe that their nature is more than human (Post. 115).<sup>177</sup>

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<sup>177</sup> Cf. with A. Mendelson, Secular Education, 52. Cf. Heres 84.

Humanity exists on the border of mortal and immortal nature (Opif. 133-135). There are human natures which are closer to God (Mut. 219). The High Priest has a nature midway between humanity and God (Somn. 1.188-189). Philo often speaks of great natures (Jos. 118; Mos. 1.2-7) and natures higher than merely human (Spec. 1.116). Just as man seems to be the only being who can pervert his nature, so he seems to be the only being who can rise above it and better it.

On what side does Philo finally land? Finally, it seems that Philo maintains the separation between God and mankind. The tension arises because of Philo's intense desire to see God, and his unwillingness to close the door on that possibility. When pushed, however, he is forced to admit that God is beyond the grasp of even the greatest mortal. Moses, the greatest of all, a god to men (Mos. 1.158), was denied a vision of God.

Philo also muddies the waters by introducing the idea of divine natures. The gulf between human and divine natures is wide; at times it seems to be bridged. In Fug. 163, Philo points out that divine natures are separate from human natures (cf.Somn. 1.135-137,143).<sup>178</sup> It is possible for a person to actually rise above human nature into the realm of the

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<sup>178</sup> Mendelson, Secular Education, 51.

Logos.<sup>179</sup> The way beyond, however, is closed. There is no entrance to God himself. For nothing mortal can be made in the likeness of the most high One and Father of the universe but only in that of the second God, who is His Logos (QG 1.62).

This is the ultimate. Certain people do have a kinship with the Logos, because the human mind is a likeness and image of it. Those people who perfect their natures, a perfection which all people theoretically could accomplish, are able to form a relationship with the Logos and the divine natures which reside in the realm of the Logos.

God's nature, however, is set apart: it is unknowable, simple, and indivisible. The gulf between divine natures, those of the potencies and the angels and special human beings, and the nature of God is too great to be bridged.

#### V) PHILO'S SCHEME OF NATURE

Philo's scheme may be reconstructed in light of this study. There is God, whose simple nature transcends the cosmos, its order, and reason. Universal nature, the cosmos, is home of the Logos, the reason which guides and orders universal nature. Reason, the Logos, is also manifested as the

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<sup>179</sup> There is a difference between human and divine natures, however, because the human nature is partially material; a divine nature, an angel or some such being, is immaterial. Even the sage still shares in the human body.

law of nature.<sup>180</sup> Reason is also manifested in the realm of universal nature where divine natures find their home. Below universal nature is the natural world, which is ordered by the Logos. The natural world is made up of individual beings and things whose individual natures partake in the universal nature. The nature of humanity is unique in that it can bridge the gap between the natural world and the realm of universal nature, that is, humans can transcend the natural world and rise to the realm of universal nature. Human beings are alone among creatures in being able to sink below their nature and pervert it.

#### VI) NATURE AND LAW

This study of nature in the work of Philo is an attempt to situate the following discussion of law in its proper context, both in the work of Philo itself and in the broader Stoic, and Graeco-Roman, context. Philo differs from the Stoics in important essentials in his view of nature: there is a transcendent God who guides his creation; and human beings, though able to perfect their nature, remain distanced from God by virtue of his transcendence.

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<sup>180</sup> The relationship of the law of nature to the Logos is difficult. Goodenough claims they are interchangeable terms. Andre Myre, "La loi dans l'ordre cosmique," 224-225, however, argues that the law of nature is not "le tout-près-de-Dieu." But, he does claim that the origin of the law of nature is in the Logos (223).

The law of nature, therefore, acts as a bridge through which humanity can come to know God and his workings. Purpose and intention are found in every aspect of creation, and to understand the law of nature is to come to know the purpose and intention of God and humanity's role in the cosmos.

The place of law, created from the beginning, informs Philo's thought throughout his work; the relationship of nature to law is necessary to understand the goal of the human quest and the goal of law itself. The role of written law especially plays a fundamental role in human lives, but what is its relation to nature and the laws inherent in nature? What is the purpose of the Mosaic law if nature itself contains the laws of God? How do the two relate in Philo's cosmic, and personal, scheme? How do the law of nature and the Mosaic law function in relation to human nature?

### **CHAPTER THREE: PHILO AND THE LAW**

The study of nature in the preceding chapter serves to demonstrate the close relationship between law and nature. An understanding of nature also allows us to understand more properly the function of law, in all its manifestations, and to understand law in Philo's larger scheme. Specifically, a study of nature allows us to place not only the law of nature and the law of Moses in their cosmic scheme, but it also allows us to understand the place of humanity in God's creation and humankind's relationship to law, nature, and God.

As with physis, our study of nomos will reveal a variety of meanings and shades of meaning. This is to be expected. Yet, as with physis, the multiplicity of meaning in Philo's use of nomos ultimately yields to a concept which is notable for its overarching unity. This unity of law stems not only from Philo's eclectic tendencies, the eclectic tendencies of his age, and his ability and desire to pull together a variety of Greek thought on the law, but to the very real presence in Philo's work of the one, true God, from which all true law emanates.<sup>181</sup>

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<sup>181</sup> I use "eclectic" in a positive sense. For the rehabilitation of the term, see Pierluigi Donini, "The History of the Concept of Eclecticism" in The Question

### I) Nomos Physeōs: The Law of Nature

Nature is the creation of God. It operates according to certain laws and ordinances, both physical and ethical, which God gave as unalterable (Opif. 61). Moses' account of creation, says Philo, gives clear evidence that the world is in harmony with the law and that the one who observes the law is regulating his actions according to the purposes and will of nature (Opif. 3). In De Iosepho, Philo states that the world is the megalopolis, or great city, which has a single "polity" or rule, the logos of nature (Jos. 29). The law of nature, which is reason, or the Logos, is also the law of God, for the law of God is adjusted to the standard of nature (Spec. 2.37). The laws of nature, therefore, have a more solid foundation than those created by people (Prob. 37).

These laws of nature were determined from the beginning (eks arches), when the world itself was created (QG 4.42). True law is that which is revealed by the orthos logos and is an invention of nature not man (QG 4.90; Ebr. 142; Sobr. 33).<sup>182</sup>

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of "Eclecticism": Studies in Later Greek Philosophy (Berkeley-Los Angeles: University of California Press, 1988), 15-33; for its use in a positive sense for the philosophy of Philo's time, see John M. Dillon, "'Orthodoxy' and 'Eclecticism': Middle Platonists and Neo-Pythagoreans" in The Question of "Eclecticism", 103-125.

<sup>182</sup> Andre Myre, "La loi dans l'ordre moral selon Philon d'Alexandrie" in Science et Esprit 24 (1972)", 95.

The constitution (politeia) of this world is the right reason of nature (ho tēs physeōs orthos logos) (Ebr. 80). Philo can also claim that virtue is a law for each person (LA 3.245), because elsewhere he reveals that virtue is the law of nature (Post. 185). There is a deathless law engraved in the nature of the universe (Ebr. 141; Spec. 2.13). Nature was the law (thesmos) which Abraham followed; any person who properly uses the reason with which they were endowed knows the laws and statutes of nature (Decal. 132).<sup>183</sup>

Philo, too, is more willing to spell out what exactly the law of nature contains than any other ancient writer. The problem of a law of nature was, and is, always the same: what is its content? Philo makes a number of attempts at defining it. Laws of nature guide the ordering of the planets, of numbers, and of music (Opif. 13,54,70). A herd needs a governor according to the law of nature (Agr. 31). The law of nature prohibits sleeping with a menstruating woman (Spec. 3.32). Passions between the sexes are recognized by the law of nature (Conf. 59). Philo gives many more

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<sup>183</sup> This brings us to the question of the relationship between nomoi and thesmoi. There is an acknowledged difference, though it is not clear how the terms differ. There has been no study which compares the use of the two terms or the possible differences between the two terms in Philo's usage. Again, Philo is something of a gold mine when compared to other ancient sources and this vein of thought has not been exploited. According to Colson, Philo Vol.9 in the LCL, 509 thesmos "is more divine" than nomos and "has a wider scope and is like a general principle." I am not certain that the distinction always holds, however, and at times the terms are interchangeable.

examples and, if his examples seem unconvincing, they nonetheless demonstrate the extent to which in his view the law of nature influences every aspect of life.

Nothing is free from the constraints and guidance of nature. Nature guides the ethical and physical world (probably Philo would not even make this distinction: where there is life, there is law). The orthos logos guides human beings no less than the planets and the moon.

In these passages Philo has given to us more explicit statements regarding the law of nature than any previous ancient author, in Greek. This ought to explain Helmut Koester's great hopes for Philo as the originator of the concept of the law of nature.<sup>184</sup> There is a more mundane explanation though. Philo's law of nature is the profoundly meaningful and ethical nature of the Stoics, which guides humankind with its reason, which unites humanity in one common family, and whose laws cross the borders of any given land. The only difference, and it is major, is that nature, and reason, are not the ultimate end: the ultimate end is God. Though nature is said to have invented its laws, God is the ultimate lawgiver.<sup>185</sup> The laws he gave cover the whole of nature's activities.

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<sup>184</sup> Helmut Koester, "Nomos Physeōs: The Concept of Natural Law in Greek Thought".

<sup>185</sup> Spec. 1.279. Myre, "La loi dans l'ordre moral," 95; Barraclough, "Philo's Politics," 512-514.

The links with the Stoic view of natural law are abundant. It is clear that Philo has adopted this view, perhaps from the Middle Platonists, while altering it in a number of ways.<sup>186</sup> Whether these alterations are the work of Philo remains to be seen. Whatever the case, Philo has not simply adopted this view of law haphazardly; he has made it his own. The law of nature forms an integral part of his view of nature, nature's relationship to God, and nature's relationship to other forms of law. Philo employs a view of the law of nature because Philo believes in a law of nature.

God, of course, is Philo's addition.<sup>187</sup> The idea of God, transcending and guiding his creation, is central to Philo's thought. Neither God, nor the Stoic ideas of right reason, the law of nature, and the

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<sup>186</sup> See Richard Horsley, "Law of Nature in Philo and Cicero" for the view that Philo and Cicero adopted this view of the law of nature from Antiochus of Ascalon. John Dillon, The Middle Platonists (London: Duckworth, 1977), 80-81 concurs that the law of nature discussion in Cicero, De leg. 1 is probably from Antiochus. I am less willing to put a name to the source of Philo's view of the law of nature. If this was Antiochus' view it could very well have been borrowed from the Middle Stoics, Posidonius and Panaetius. I would like to designate Philo's, and Cicero's, view of the law of nature in general as the common view of the Middle Stoics. I do accept Horsley's contention, however, regarding the close relationship of Philo's and Cicero's views on the law of nature.

<sup>187</sup> Horsley argues in "Law of Nature in Philo and Cicero" that Cicero employs the same idea of a transcendent God, but on this point I am not convinced. Dillon speaks of the difference between the Stoics and the Middle Platonists lying in the difference in the telos they chose. For the Stoics, one conformed to nature; the Middle Platonists sought after God. There is no sense of this search for God in the work of Cicero. The mens divina from which the law of nature came forth does not suggest a provident, transcendent God.

megalopolis clash in Philo's thought. Philo finds that the Stoic ideas properly explain God's work in nature, without contradicting Jewish creation accounts, and he believes that the Jewish idea of the transcendent God supplies missing information for the Stoic view of nature.

He also preserves something else: accounts of people who have fulfilled the law of nature.<sup>188</sup> This is interesting not only because these accounts are lacking in Stoic sources, but because of how Philo describes these wise men.<sup>189</sup> He differs not in his description of the reason which guides the wise man: like the Stoic sage, Philo's wise men perceive the law of nature through their unique gifts. But in his description of these wise men, he links them to other Greek forms of higher law. In so doing, Philo adds something new to Greek thought on law.

## II) Agraphos Nomos: The Unwritten Law

A second form of higher law is the unwritten law. This is, in Greek thought, a vague and fluid concept, given less to definition than even the law of nature. Philo, as is customary, preserves much ancient evidence

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<sup>188</sup> See W. Richardson, "The Philonic Patriarchs as Nomos Empsychos" in Studia Patristica: Texte und Untersuchungen zur Geschichte der altchristlichen Literatur Vol.1 (eds. K. Aland and F.L. Cross; Berlin: Akademie, 1957), 515-525.

<sup>189</sup> Emile Bréhier, Les Idées, 25-26 seems to claim that Cicero (De Rep. 2.4) preserves accounts of Roman heroes who did the law before it was written; Cicero's passage regarding Romulus is not at all clear however. It does not speak of the law of any stripe, only Romulus ruling because of his superiority.

regarding this concept, in addition to information not extant in other sources.

As the study of unwritten law in the Greek tradition showed, there are two dominant concepts of unwritten law: it can refer to the unwritten customs of a people, or to a law, or laws, which are considered universal, but unwritten. The category of universal unwritten law is our major concern, but we will deal initially with unwritten law as custom.

Not only does Philo speak of unwritten law as custom, he defines it for us as such. Philo says that ethē, customs, are agraphoi nomoi, which are in turn the decisions made or approved by the men of old (Spec. 4.149f).<sup>190</sup> They are mores, customs, unspoken and unwritten rules, which

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<sup>190</sup> I. Heinemann, "Die Lehre vom ungeschriebenen Gesetz" in HUCA 1928, 149-171; and "Hellenistica" in Monatsschrift für Geschichte und Wissenschaft des Judentums 74 (1929), 441; Sandmel, "Philo's Place in Judaism" in HUCA 25 (1954), 226. As to whether Philo speaks of the Jewish "oral law" in this passage, the position of Heinemann and Sandmel is most convincing. (See Wolfson, Philo Vol.1, 188-194 for the position that Philo here refers to the Jewish oral law. More recently Naomi G. Cohen, "The Jewish Dimension of Philo's Judaism - An Elucidation of de Spec. Leg. IV 132-150 in JJS (1987), 165-186 takes up Wolfson's position. She points out that "unwritten law" in this passage cannot be "natural law," but seems not to be aware of the Greek discussions regarding "unwritten law" as custom.) Philo speaks here of unwritten laws in a general sense, not specifically of Jewish oral law. Certainly Philo knows of Jewish customs, Heinemann, "Die Lehre," 159, and he may even have had them in mind at times (see Legat. 115); but Sandmel, "Philo's Place", 226, is right to point out that in Spec. 4.149 Philo speaks specifically of ethe. Is this strong enough to stand for halachot? It seems not. When Philo is clearly referring to the customs of the Jews, he speaks of the agrapha ethē (Legat. 115; cf. also with Hypoth. 7.6). This is a phrase Philo uses perhaps with the specific intent of referring to Jewish customs. But I am still not convinced that

may or may not bring punishment if broken, but which would incur for one the status of outcast. According to Philo, the observance of these customs brings praise (Spec. 4.150).<sup>191</sup>

In Her. 295, Philo again speaks of the unwritten law as custom. In this passage Philo defines it as a part of the law of a city; here, too, he reflects the same view as Aristotle.<sup>192</sup> Philo calls the instructors to sin legion, and includes among these instructors the laws of cities, gegrammenoi and agraphoi. This division was defined by Aristotle, and the presence of the division in this passage removes this mention of unwritten law from consideration as universal law, as does, quite obviously, Philo's claim that these unwritten laws lead to sin.<sup>193</sup>

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Philo is referring to Palestinian custom and not Alexandrian custom. See also E. Mary Smallwood, Philonis Alexandrini: Legatio ad Gaium (Leiden: E.J. Brill, 1961), 208-209.

<sup>191</sup> Sandmel, "Philo's Place," 227, points out the close connection to Aristotle, Rhet. 1.14,7. Philo seems to be reliant on this passage. Sandmel seems to be off track, though, when he claims that Philo is here speaking of the law of nature; he is still discussing the ethe of the previous passage.

<sup>192</sup> Aristotle, Rhetoric, 1.14,7; cf. also Rhetoric, 1.10,8, 1.13,1-7, 1.13,18.

<sup>193</sup> I doubt that it ever even crossed Philo's mind that the Mosaic law could lead to sin, yet it remains interesting that Philo claims that law in general could lead to sin. Is it only coincidence that Paul and Philo claim that law leads to sin? Or was this a topos in the Graeco-Roman legal tradition? In the same passage Philo lists paidagogoi as a cause of sin. Paul links the paidagogos and the law when he discusses the sin which the law leads to. Was he the first?

On two occasions Philo speaks of the agrapha ethē (Legat. 115; Hypoth. 7.6) as a part of the law by which the Jews are guided.<sup>194</sup> These may indeed be the oral laws of the Jews, but it is doubtful that Philo has in mind particular Rabbinic or Palestinian laws. He is most likely referring to Alexandrian Jewish customs, or Jewish customs in general. His intention in both these passages is probably apologetic, namely, he wants to demonstrate that the Jews too follow the customs of their elders. Philo uses the term ethoi in both passages and it is not an accident; had Philo intended to state that these practices were the equivalent of law he would have designated them as nomoi (or perhaps thesmoi). Custom may not contradict nature (Ebr. 18), though it can (Decal. 136), but it does not occupy the same level as law.

Philo does use agraphos nomos to denote eternal, or divine law, but his uniqueness in this respect has not yet been fully noted and stressed. Philo is unique in two major respects: he links the unwritten law directly to the law of nature; and he claims, in an idiosyncratic use of the term, that certain people are unwritten laws. Though scholars today, beginning with Rudolph Hirzel, often connect the law of nature with the unwritten law, and it is clear there are connections between the two concepts, only Philo did so

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<sup>194</sup> Cf. supra, 24. The Rhetorica ad Alexandrum also contains the phrase agraphon ethos, but there it refers to eternal law.

explicitly in the ancient world. He, too, is the only one who designated people as "unwritten laws."

The patriarchs followed the law of nature (Quod. 62; Abr. 5-6,276; Mos.2.13). This is the highest and the best law. They followed this law without need of instruction: they relied upon reason. Following Aristotle (Pol. 3.8,1-2) and the Stoics (Diogenes Laertius 7.125), Philo claims that there is no reason to give laws to the perfect man (LA 2.94).<sup>195</sup> Virtue is a law itself (LA 3.245). These perfect men are basically laws themselves. Philo, however, gives them a title: those who have followed the law of nature are agraphoi nomoi. They follow the unwritten law, but more than that, they become the unwritten law. An "unwritten law" is the product of following the law of nature. De Abrahamo is called the first book on unwritten law, that is, on Abraham himself (Abr. 1-5).

Men such as Abraham are the originals of which the laws are copies (Abr. 3); in the same way, Philo calls the written laws copies of the law of nature (Mos. 2.13,51). Abraham is the law of nature, for which Philo uses the term unwritten law in a unique way. The enacted laws are memorials to these men, these agraphoi nomoi or physical representations

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<sup>195</sup> cf. Dio Chrysostom, 76.4.

of the law of nature (Abr. 5-6).<sup>196</sup> By following agraphōi tē physei,<sup>197</sup> Philo says that Abraham became a nomos autos and a thesmos agraphos (Abr. 276).<sup>198</sup> In two other passages Philo concentrates on this sense of unwritten law. In De Decalogo Philo introduces the tractate by stating that he will now concentrate on the written laws, since he has already discussed the patriarchs, or unwritten laws (Decal. 1). Philo describes the lives of those who follow virtue, elsewhere described as the law of nature (LA 3.245), as unwritten laws (Virt. 194).

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<sup>196</sup> Hirzel, Agraphos, 17, is the only one who mentions the oddness of Philo's usage of agraphos nomos. He believes it may stem from Stoic influence, but it is not clear how. Perhaps he intimates that the Stoic sage embodied the law of nature, but it is not clear how this leads to a similarity with Philo's designation.

<sup>197</sup> This is an odd phrase, "unwritten nature"; it is probably influenced by agraphos thesmos later in the passage. It may parallel the "law of nature" = "nature" conception, namely, "unwritten law" = "unwritten nature."

<sup>198</sup> Thesmos agraphos, which can only be translated as "unwritten law," deserves a word. Victor Ehrenberg, Sophocles and Pericles, 169 has said that one never sees this phrase because of the divine connotations of thesmos, yet here it is. Philo uses thesmos often, and often to refer to divine laws, or laws from God (Quod 3; Quis 168; Congr. 120). Horsley claims that the use of thesmos at this historical juncture was influenced by the Middle Platonists. Was this phrase borrowed from the Middle Platonists? Or is this Philo's creation? Either way this is the only appearance of this phrase known to me. It is hard to imagine that it can mean anything more than agraphos nomos. The same is true of thesmos physeōs (eg., Legat. 68; Jos. 30; S.L. 1.202; 2.233), the phrase must be the equivalent of the nomos physeōs. While Philo seems on occasion to observe distinctions between thesmos and nomos, in terms of the higher law the distinctions must have been broken down.

Philo gives to us the second meaning of unwritten law in De Abrahamo too. He says that there are those who are led to hopefulness by unwritten law, a law which is given by nature, not by written law.

Great indeed are the efforts expended both by lawgivers and by laws in every nation in filling the souls of free men with comfortable hopes; but he who gains this virtue of hopefulness without being led to it by exhortation or command has been educated into it by a law which nature has laid down, a law unwritten yet intuitively learnt (Abr. 16).

Philo makes clear the obvious implications from other passages: the unwritten law is not only the physical representative of the law of nature, but it is the law of nature itself. Of course, a physical representation of the law of nature is the law of nature, but here the connection is made explicit.

Philo has given a number of twists to the concept of the unwritten law. He ties unwritten law directly to the law of nature; by describing the patriarchs as unwritten laws he makes the connection even tighter. These two forms of higher law seem to make sense together, at least to us, but they were developed discretely and no one in the ancient Greek world found a way of bringing them together. Of course, it may simply be that no one in the Greek world had a need to bring these two concepts together. Philo did have a need, which we will argue more explicitly in the next chapter, and he found a way.

The law of nature remains the dominant concept, unwritten law becomes an adjunct to it. Unwritten law, a vague concept which usually denotes one or two eternal laws in Greek discussions, becomes a concrete idea, whose content is determined by the law of nature. An unwritten law is the law of nature, but more importantly for Philo, a person who has followed the law of nature. Two discrete concepts have subtly overlapped: when Philo speaks of men who are unwritten laws or of eternal unwritten law, the content of these laws is determined by the law of nature.

### III) Nomos Empsychos: The Living Law

There is a third category of higher law which may also undermine the ascendant character of the law of Moses, or material law in general; this is the concept of the nomos empsychos. This Hellenistic Pythagorean ideal contrasts the king, the friend of God, with the written law. For his subjects, the king replaces the law and becomes the law himself. Philo is, again, both a source and an originator. As a source, he gives us much information on the living law concept; as an originator, he again draws the concepts of higher law together, in this case connecting the unwritten law and the law of nature with the living law ideal.<sup>199</sup>

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<sup>199</sup> Archytas (Stob. 4.1.132) makes at least one connection which Philo may have drawn upon through intermediaries. He speaks of the unwritten law influencing the law on earth, which may either be the written law or the king. In this case, however, the unwritten law and the living law are not the same concept.

Nomos empsychos appears in De Abrahamo 5. This passage makes clear the close relationship between all forms of higher law in Philo's work. The patriarchs have already been described as unwritten laws and men who live according to nature, when Philo describes them as empsychoi kai logikoi nomoi (Abr. 5). By living in conformity with nature, that is, by following the law of nature, one becomes a nomos empsychos.<sup>200</sup> The terms of higher law have become in the hands of Philo almost interchangeable.

There is another result. Whereas Philo gave the unwritten law more form by connecting it to the law of nature, by connecting the living law ideal to the law of nature, Philo drains the powerful kingship concept of most of its power. The king, who was once the unique creation of God, becomes in Philo's hands the one who follows the law of nature.

Yet the concept of the living law has all the implications it has in the Hellenistic fragments, at least in the case of Moses. The "kingly" and unique aspects of the ideal are not lost on Philo. Moses was a king, and more specifically, he was the nomos empsychos.<sup>201</sup> Long before he became a lawgiver, he was a nomos empsychos kai logikos (Mos. 1.162). He was a

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<sup>200</sup> This connection could have been influenced by the Stoic conception of "every good man is king," which was then adopted to the Pythagorean model of kingship. Whether this connection was first made by Philo remains to be seen.

<sup>201</sup> Goodenough, Politics, 90-100; Brehier, Les Idées, 18-19; Wayne Meeks, The Prophet-King, 109-111.

king because of his goodness (eunoia) (148); he hated evil (misoponēria) (149) and his goal was to benefit his subjects (151). He enjoyed, too, a close relationship with God. The kingly office was an office which God bestowed upon him (148). It was bestowed because of his justness (dikaiosynē) (154). He was a partner (koinon) of God (154). The elements obeyed him because he was a friend of God (156). His closeness to God made him a model for other men (158), for the worse imitate (mimeisthai) the better (159). His subjects also are said to emulate (zelōtai) him (160).<sup>202</sup>

The passage in Mos. 1.148-62 is Philo's greatest example of the Hellenistic kingship ideal. Every element of the nomos empsychos ideal, but one, is present in Philo's portrayal, as well as a smattering of what may be categorized as Cynic-Stoic kingship traits.<sup>203</sup> The only thing missing is the contrast between the king as law and the written law. This is no accident.

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<sup>202</sup> On another occasion Philo calls Moses theos (Sacr. 9). This is probably inspired by the designation in the Hebrew Bible. Meeks, The Prophet-King, 104-105 claims that in this passage Moses appears to share consubstantiality with God. Goodenough, Politics, 99-100 rightly insists that Moses is not the supreme being and likens Philo's view to Ecphantus. I would liken it to Diotogenes' (and Aristotle's) view that the king is a "god to men". Meeks does later say that Moses' "godhood" appears to be only figurative (105). Cf. Mos. 2.288-292; Virt. 73-75; Det. 161-162. See also Mendelson, Secular Education, 54.

<sup>203</sup> Ragnar Höistad, Cynic Hero and Cynic King, 181-201.

It is partly due to the fact that Moses has yet to be described as the lawgiver, and partially because Philo has found a way to solve the contrast.<sup>204</sup>

When Philo does describe Moses as the lawgiver in Mos. 2.4 a part of the puzzle which was missing is revealed. Since it is the king's duty to command right and wrong, Philo says, and since this is the function of the law, it follows for Philo, and the nomos empsychos ideal, that

the king is a living law, and the law is a just king.<sup>205</sup>

For Philo, if not for Diotogenes and Plutarch, whose descriptions of the king are similar to Philo's linguistically, this means that the king also fulfilled the law of nature, for the living law lived in conformity with the law of

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<sup>204</sup> Meeks, The Prophet-King, 111,130 points out that Moses as a prophet and mystic are found only in Philo's portrait of Moses as king, and not in Hellenistic portraits. This is certainly true of Moses as a prophet, but I believe the living law ideal paints its kings as mystics. Goodenough, Politics, 97 says Moses as the high priest is also an innovation. We must, however, consider Diotogenes' passages (Stob. 4.7,61 - 264,1; 265,1-12) in which he describes the king, in Doric, as therapeuein theōs (264,1) and therapeuen tōs theōs (265,1). This may be translated as "one who does service to the gods" or "one who worships the gods." The king is referred to in these passages as a therapeuein theōs in the context of a description of his official roles, i.e., military leader and judge, and so one can consider this role as official too. In this case it may refer to the king as priest.

Meeks also points to the contacts between Hellenistic kingship and the Biblical portrait of kings (131). This contact is certainly present, but contacts exist among of all forms of ideal kingship in the ancient world.

<sup>205</sup> Compare this language to Diotogenes in Stobaeus 4.7,61 - 263,15-19 and Plutarch, Letter to an Unlearned Prince 780e. I. Heinimann, Philons griechische, 195 points out the similarity between the portrayals of kingship in Philo and Plutarch.

nature. Even more, as we shall see, there is no contradiction between the living law and the written law because in Philo's unity of law there is only agreement. This is the other part of the puzzle, but it is a piece that cannot yet be put into place.

Philo describes Moses as the true King.<sup>206</sup> Were there any others? It is clear that everyone who fulfilled the law of nature, who was an unwritten law, was classified as a nomos empsychos.<sup>207</sup> In Philo's scheme of the unity of law this was only necessary. The living law as the embodiment of the law of nature was Philo's creation, and there existed

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<sup>206</sup> God of course is the "true" King in Philo's work, as in the nomos empsychos fragments. Cf. Goodenough, Politics, 90-91.

<sup>207</sup> Barraclough, "Philo's Politics. Roman Rule and Hellenistic Judaism" in ANRW II 21.1, 520-521 says that four men are called kings: Moses; Adam (Op. 148); Melchizedek (LA 3.79); Abraham (Virt. 212-218). Only Moses fits the unique role of the nomos empsychos. Abraham is not described by one of the terms of the living law ideal of kingship.

Goodenough has argued that Joseph incorporates the Pythagorean ideal of kingship (see Barraclough, "Philo's Politics," 449), but the entire ideal is certainly not present.

W. Richardson, "The Philonic Patriarchs" is able to uncover very little material that coincides with the Pythagorean ideal beyond Moses. Philo's kingship in general is based upon Hellenistic models (I. Heinimann, Philons griechische, 182-186) and the idea of the Stoic-Cynic sage, who is also the king, is also present (D.L. Thiede, The Charismatic Figure as Miracle Worker (SBLDS 1; Missoula, Mont.: Scholar's Press, 1973), 119-125), but only Moses is the unique living law king. (The superiority of Moses in relation to the other Patriarchs is stressed by Meeks, The Prophet-King, 102-103.) The "living law", which every sage is by definition, is a watered down version of the ideal when it is not applied to Moses: it basically means the one who fulfils the law of nature. Only Moses is the kingly living law.

more than one such embodiment. Nevertheless, when Philo describes Moses in terms of the "living law" ideal, as a king, the specific kingship language he uses is reserved only for Moses. That is, in terms of the full ideal, only Moses meets the requirements of the Hellenistic king, or is described in terms of them.<sup>208</sup>

The living law ideal speaks of a man, a king, a special being existing between man and God: only Moses has this rare status.<sup>209</sup> Only Moses is described according to the full details of the nomos empsychos ideal. Philo seems to maintain a distinction between the living law as the sage who fulfils the law of nature, and Moses as the living law, the true king, the friend of God.<sup>210</sup> This distinction speaks not only of Philo's high

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<sup>208</sup> The special portarit of Moses as the living law, of course, agrees with the portrayal in other contexts of Moses as the most perfect sage (Sacr. 8-9). Moses' special status must in part be due to the fact that he alone was the lawgiver. It is in the context of the discussion of Moses as the lawgiver (Mos. 2.4), that Philo refers to him as the living law. No other Patriarch was a lawgiver. Mendelson, Secular Education, 53 stresses Moses' superiority to the other Patriarchs.

<sup>209</sup> From the fragmentary discussions of Isaac in Philo's work -a treatise on Isaac is not extant - it is clear that Isaac had a special status between man and God. Goodenough, By Light, 153-166, reviews the evidence. Nevertheless the fragmentary discussions do not describe Isaac as a nomos empsychos and it is difficult to argue from silence that his possible status as a nomos empsychos rivals that of Moses.

<sup>210</sup> Abraham is also described in kingly terms, but even he seems to lag behind Moses. In the description of Abraham as the perfect proselyte, he is twice called a king (Virt. 211-219), which the LXX also does. His perfection is more than human (217), and he was granted his sovereignty by God (218), but

regard for Moses, but, more importantly for our purposes, Philo's awareness of how he is using and changing the concepts of higher law.<sup>211</sup> He maintains the distinctiveness of the unique king in his portrait of Moses, but reduces the nomos empsychos to the sense of sage in his portraits of the other patriarchs.

The important additions that Philo has made to the nomos empsychos ideal, apart from casting the "living laws" all in the past,<sup>212</sup> are the connection to the unwritten law and the law of nature, completing his unity of all forms of higher law, the claim that every sage is a nomos empsychos, and his silence on the major component of the living law ideal: the conflict between the written law and the living law.

These considerations obtain at almost a theoretical level, but his thought on the relationship between these higher forms of law and material

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he appears to be less than Moses. Of course, he is in some way a king, and he is a living law; the distinction between Moses and the others lies not with the weakness of the other patriarchs, but with Moses' unique closeness to God. He is the one Philo describes as the nomos empsychos in full and the only one described as king and living law in the same passage. For instance, none of the terms of the Pythagorean kingship ideal appear in this description of Abraham. This ought to be somewhat surprising. Cf. D.L. Thiede, The Charismatic Figure, 120.

<sup>211</sup> One remembers the uniqueness of the living law in the Hellenistic Pythagorean fragments; he is like the rest of humanity only in bodily form.

<sup>212</sup> That is, Philo is not writing for actual or present-day kings. Though he would, of course, desire that all kings follow the example of Moses.

law enters the world of daily practice with a passion. How did higher law relate to the law of Moses? How did the higher law relate to other forms of material law? What was the relationship between the law of Moses and, for instance, the law of Rome? Greek discussions of all these terms implied an inferiority of the written law. Does Philo imply such? Philo is far from only a theoretical thinker when he answers these questions. His answers tell us not only about the theory of law he created, but the practical reasons as to why the unity of higher law is so important to him.

#### IV) The Law of Moses

Law comes from God. God is the true lawgiver (Sacr. 131; Det. 68; Mos. 2.48; QE 1.42; Spec. 2.129).<sup>213</sup> In saying this, Philo claims something no other Greek writer could, or dared to do. The lawgiver of a given city was looked upon with honour and respect,<sup>214</sup> but however highly they

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<sup>213</sup> Myre, "Les caractéristiques de la loi mosaïque," 37, 67; Adele Reinhartz, "The Meaning of nomos in Philo's Exposition of the Law" in SR 15/3 (1986), 340.

<sup>214</sup> There is a sense of divine inspiration in the giving of Greek law, but it does not reach the level of the Mosaic law's divine origin. Lycurgus, for instance, the Spartan lawgiver, was found to be inspired at the Oracle at Delphi and his laws were given divine imprimatur, but they were not given by the gods. In fact, both Plutarch (Life of Lycurgus 4.1) and Herodotus (1.65,66) share the notion that his laws may have come from Crete. Draco's laws were overthrown, except for the law of homicide, by the introduction of Solon's laws (Aristotle, Ath. Const. 7.1). Solon hoped his laws would be obeyed for 100 years (Aristotle, Ath. Const., 7.2; Plutarch, Life of Solon, 25.1). Plutarch says that when someone asked Solon if he had "enacted the best laws for the Athenians, he replied, 'the best they would receive'" (Plutarch, Life of Solon, 15.2). Emile

esteemed their law, and claimed for it even nourishment from the gods, no one would claim divine authorship for their legal code.<sup>215</sup> This allows Philo to claim something else as well: an eternal law, given by God, which was the model for the Jewish written code.<sup>216</sup> This eternal law in its highest manifestation is the law of nature.<sup>217</sup>

The Mosaic law, therefore, as E.R. Goodenough,<sup>218</sup> Samuel Sandmel,<sup>219</sup> Andre Myre,<sup>220</sup> and others have pointed out,<sup>221</sup> seems to exist below the law of nature in Philo's hierarchy of law. The law of nature exists in the realm of the Logos, and is, in some ways, the Logos.<sup>222</sup> This

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Brehier, Les Idées, 16,18.

<sup>215</sup> Myre, "Les caractéristiques de la loi mosaïque", 37,67.

<sup>216</sup> Myre, "Les caractéristiques de la loi Mosaïque", 67. The primary characteristic of the Mosaic law is its divine origin.

<sup>217</sup> Cicero, De leg. 2.10 claims that law came into existence at the same time as the divine mind. In Cicero's view, the law of nature holds equal status with Philo's law of nature. They differ in the relation of the law of nature to written law.

<sup>218</sup> Goodenough, By Light, Light, 73-96.

<sup>219</sup> Samuel Sandmel, "Philo's Place in Judaism," 225-228.

<sup>220</sup> Andre Myre, "Le Loi de la Nature," 176f.

<sup>221</sup> Herman Kleinknecht and W. Gutbrod, "Nomos" in TDNT (Gerhard Kittel, ed.; Grand Rapids, Mich.: Eerdmans, 1964-1976), 1052-1054; Charles Bigg, The Christian Platonists of Alexandria (Oxford: Clarendon Press, 1913), 49.

<sup>222</sup> Myre, "La loi dans l'ordre cosmique et politique selon Philon d'Alexandrie" in Science et Esprit 24 (1972), 222-224.

gives it an ontological status somewhat higher than the law of Moses, for the law of Moses, a written law and a law which exists in corruptible nature, is a copy, albeit a true one, of the law of nature.<sup>223</sup> What this actually means for Philo in practical terms has never truly been determined. What is the place of the Mosaic law? Is it, as Goodenough has argued, among others, a law which is finally to be transcended? A law which is ultimately superfluous? A law which can even be called "bad"?<sup>224</sup>

Two things should be clear: the law of Moses is the only law that the vast majority of people would ever need; and it is the best written law by far. The discussion of the relationship between the law of Moses and forms of higher law is not theoretical, but it is limited. Philo did not foresee a great number of people who could fulfil the law of nature; in this he is at one with his Greek sources. The material law, the law of Moses in this case, is the law which the ordinary person must observe; and in observing it, the ordinary person is performing the best written law that Philo could imagine.

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<sup>223</sup> Myre, "La loi de la nature," 168.

<sup>224</sup> Goodenough, *By Light, Light*, 92-93: "Only in comparison with 'acute and seeing Nature' could Philo have called any great body of racial laws 'bad'. But in contrast with the higher reality, even the Jewish Code would become an impediment, a thing to be run away from, and bad". Goodenough also uses terms such as "inadequacy" (88), "to be transcended" (92), "inferior" (95) to describe the Mosaic law in relation to the law of nature. Even with his qualification of these terms, his choice of words is unfortunate.

In Philo's scheme of law, the performance of the law of Moses means something unique and special. While Cicero complained that the Roman civil law was only an outline sketch of the law of nature (De Off. 3.69), Philo claimed something else: the Jews had an actual copy of the law of nature ( Opif. 3,69,71; Abr. 3; Mos. 2.11,13,48). Not for Philo an outline sketch. Philo's world could admit no such contradictions. God gave the law to Moses; God also created the world and with it the law of nature. The law of Moses, divinely given, could in no way contradict the law of nature, divinely implanted in the world at creation.<sup>225</sup> Philo is thus able to claim more than any Greek or Roman author could or would. Cicero was compelled to say that

the civil law is not necessarily also the universal law; but the universal law ought to be also the civil law. But we possess no substantial, life-like image of true Law and genuine Justice; a mere outline sketch is all that we enjoy (De Off. 3.69)

Philo was given leeway which the Stoics, for instance, did not possess. He was able to argue that the world was in harmony with the law of nature, and the law in harmony with the world. So far, Philo is in line with Stoic claims. Philo could add, however, because of the role of a transcendent God in the giving of the written law something the Stoics could not, namely, that

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<sup>225</sup> Bernhard Lohse, Askese und Mönchtum in der Antike und in der alten Kirche (München: Oldenbourg, 1969), 110.

the law of Moses, a particular written law, is in full agreement with the law of nature.<sup>226</sup> Moses' account of creation in Genesis implies

that the world is in harmony with the Law, and the Law with the world, and that the man who observes the law is constituted thereby a loyal citizen of the world (kosmopolitou), regulating his doings by the purpose and will of Nature, in accordance with which the entire world itself also is administered (Opif. 3).

The law of Moses is, therefore, a written code unlike any other.

Philo's mighty claims for the Mosaic law do not stop here. God's role in giving the law of Moses also allows Philo to place its prominence above other laws.<sup>227</sup> Philo echoes at one point the long-standing debate in Greek circles concerning law and nature. He claims that the current view is that man created laws, that is, that they are conventional, arbitrary, and not based in the real nature of things (LA 3.3). The odd thing is, Philo would agree with this statement in regard to almost any form of material law but one: Moses' law is special. It is stamped with the seals of nature and is, therefore, immortal (Mos. 2.13). Moses' laws are given by the voice of

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<sup>226</sup> Myre, "Les caractéristiques," 67 points to the tension of this claim when he says, "la caractèrè historique de la révélation s'oppose à sa préexistence." This is, indeed, Philo's greatest problem with the relationship between the forms of law, even if we accept, as I will argue shortly, that the greatest difference between the two laws does not rest with the laws so much as with the people who do the law. Cf. Federico Pastor, "Libertad helénica y libertad paulina" in Miscelanea Comillas 37 (1979), 232.

<sup>227</sup> Cf. Mendelson, Philo's Jewish Identity, 130-131,134.

God (Mos. 2.34). His laws are oracles of God (Decal. 15; Legat. 210). The most faithful picture of the world polity (Mos. 2.51), the law of Moses is a law for the whole world (QE 2.42).

Because Philo traces the law directly back to God he can say not only that the Mosaic law is the best law, but in truth the only law worth following.<sup>228</sup> This allows Philo not only to tout the virtues of the law, but to deride other forms of law.

Moses' law, he says, embraces the multitude of particular laws, all other state and city codes (Congr. 120). Anything which is correct about any other code of law, therefore, is already found in the Mosaic law. To put it another way, if it does not agree with the Mosaic code, it is not really law.<sup>229</sup> At the same time, the rules of the Jews run counter to those of other nations (Mos. 1.87). The differences between the law of Moses and other law codes is not a matter of preference, or relative to the culture; only the Mosaic law contains the truth, or the full measure of truth. Philo claims, rather hopefully, that the acknowledged truth of the Mosaic law has won it wide respect.

Moses' laws won fame (Mos. 1.1;2.20) and he was the best of all lawgivers (Mos. 2.12). Almost every other people honours and respects the

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<sup>228</sup> Brehier, Les Idées, 11,16.

<sup>229</sup> Myre, "La loi dans l'ordre cosmique," 233-236.

Mosaic law (Mos. 2.17,43).<sup>230</sup> The law leads those who follow it to be kind to neighbours (Spec. 104). The proselyte who obeys the Mosaic law, much like the Stoic wise man, becomes immediately temperate, continent, modest, etc. (Virt. 182). In short, he obtains the virtues.

Some of these claims certainly answer polemic directed against the Jews, that they are misanthropic for instance (Legat. 353; Contemp. 24),<sup>231</sup> or indulge in apologetic on behalf of his people (Legat. 115-117; Quod 75-87). Who could blame Philo, given the precarious position of the Jews in Alexandria in his day? Yet Philo is not only dealing in a game of philosophical one-upsmanship, an attempt to prove that the Jewish law is better than other codes of law, which was a common enough practice in his day,<sup>232</sup> he is involved in the logical, and necessary outcome of his philosophical thought. The Mosaic law, as the true and reasonable copy of the law of nature, must be necessarily superior to those laws which are not. Now, as Philo says in Legatio ad Gaium 277, all peoples love their own laws; it is just that their own laws fall short of the ideal.

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<sup>230</sup> Philo also knew the truth: in Spec. 4.179 he states that few accepted Jewish law.

<sup>231</sup> A full list of the types of anti-semitic charges brought against the Jews in Philo's day is found in Josephus, Against Apion, 1.223-320, 2.1-296 (esp. 1.309 and 2.148 on the specific charge of misanthropy).

<sup>232</sup> D.L. Thiede, Charismatic Figure, 101.

What Philo claims for the Mosaic law is something special, but it is dependent upon his view of a transcendent God and his role in the creation of nature and law. Philo's grand claims for the law of Moses have far-reaching implications: other law codes are reduced not to Ciceronian sketches, but mere scribbles.

#### V) Other Codes of Law

Philo observes that laws, customs, and ways of life are not regarded universally (Ebr. 193). In De Iosepho 29-31, he goes into some depth explaining the differences among peoples and their laws and notes again that laws among various peoples are not identical. Philo's observances are not great insights. His conclusions, however, are quite distinctive. These law codes are "additions" to nature and inventions. These additions to nature keep people and states apart, for covetousness for their own law leads them to call "laws" whatever is advantageous to them. These laws of various states are additions to the right reason of nature, a copy of which is located in the Mosaic law.<sup>233</sup>

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<sup>233</sup> Myre, "La loi dans l'ordre cosmique," 236-238,245. A law, if it is real law, must agree with the law of nature. All people are subject to this law. Cicero said the same thing, but how could he tell which law was truly law?

Not every single law is an addition, of course, for some single laws agree with the law of Moses.<sup>234</sup> This, however, is the criterion: they must agree with the law of Moses. Zeno, for instance, according to Philo, drew some of his laws from the law of Moses (Prob. 57). So, too, did Heraclitus (QG 4.152) and Socrates (QG 2.6; Spec. 4.61). This kind of claim was common among the Greeks themselves, but it allows us to surmise that a law was only a law to the extent that it agreed with the Mosaic law.<sup>235</sup> This exception shows how far Philo's rejection of the law of others went.<sup>236</sup>

## VI) Conclusions

There is a hierarchy of law which mirrors the hierarchy of nature. Nature is the guide by which we measure law. The law of nature is, in fact, the dictates of nature, otherwise expressed as the Logos or Right Reason. The Logos guides all nature, plants and animals as well as man.

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<sup>234</sup> Cf. Abr. 16. In this passage Philo acknowledges the benefits of law in general.

<sup>235</sup> Goodenough, Jurisprudence, 214; Barraclough, "Philo's Politics," 485. There is no disputing Goodenough's claim that in practice Philo actually borrowed from Gentile law. Even Goodenough admits, however, that Philo himself would have never admitted it (214-215). I doubt he even thought of it consciously.

<sup>236</sup> Mendelson, Philo's Jewish Identity, 27-28 points out the ambivalence Philo had, in fact, for the law of others. He refers specifically to Ebr. 36-37, 80-81 in which Philo seems to accept, or tolerate, for practical purposes other people's laws. Mendelson observes: "this is the reasoning of a man who has made his peace, possibly after a long struggle, with harsh realities".

The one who follows the law of nature is called both a living law and an unwritten law. The unity of all these forms of law is unique to Philo. Also unique are the altered meanings these forms of law have in Philo's hands. Part of the alteration is simply the result of the synonymy of these terms in the work of Philo, but part is the result of his originality and his need for unity among concepts of law.

The law of nature was created before the Mosaic law and it is higher than the written law, although it is still not clear what this means. One may follow nature, guided by reason, and so fulfil the law of nature, or one may follow the law of Moses.

Yet, human beings, alone among the creation, have the ability to "add" to or pervert their nature. Philo is not unique in the ancient world in claiming that this is so, but he is unique in his ability to say what exactly is and is not according to the law of nature. This is because the law of Moses, given by God, is the true copy of the law of nature. As a result, Philo is also able to judge other law codes wrong-headed and misguided on very specific grounds. The yardstick, the Mosaic law, is the rule to which all other forms of law must measure up.

Philo creates his unity of law, first by relating all forms of higher law to one another, and second by connecting the law of Moses tightly to the law of nature. How they relate, what it means in practical terms, is still not

clear. Negatively, it means that any form of material law other than the law of Moses is no law at all, or only law insofar as it agrees with the law of Moses.

The unity, of course, is a result of Philo's use of all three forms of higher law in Greek legal thought. He alters "unwritten law" to signify one who follows the law of nature and who becomes its embodiment. The "living law" comes to mean not only one who is the king, but the one who follows the law of nature. These forms of law find their content in the law of nature.

What becomes of the law of nature? Philo has claimed it is found in the law of Moses. What does this mean in practical terms? Does it mean that the law of Moses is a substitute for the law of nature? That the person who follows the law of Moses observes the law of nature? Or does it in fact reduce the worth of the law of Moses? Does the law of nature become the way to the exclusion of the law of Moses? Should the law of Moses be cast off? Is it finally superfluous?

Philo is, naturally, not explicit on the topic, but he preserves two forms of information which may help to determine the truth. He preserves claims of people who have actually followed the law of nature. This is interesting not only for the claim itself, but because it allows us to study the relation of the law of Moses to the law of nature. If you have one, do you

need the other? He also preserves information on all forms of higher law, which may be successfully compared to the law of Moses. What does it actually mean that the law of nature is "higher" than the law of Moses? Does it imply a change in the law? Or a true understanding of the law of Moses?

## CHAPTER FOUR: THE UNITY OF THE LAW

It is true, many commentators agree that the law of nature is a higher form of law than the law of Moses in the work of Philo.<sup>237</sup> While these commentators admit readily that Philo speaks of the harmony between the law of Moses and the law of nature (Opif. 2-3; Decal. 1; Abr. 4-6; Mos. 2.12,14,48,51-52,211; Spec. 2.163;4.164,179; QE 2.42) and the superiority of the Mosaic law in relation to other human codes of law (Spec. 4.179), they point to other statements, or implicit claims within the statements which reflect the harmony of the law of Moses and the law of nature, which, they believe, reflect its inferiority. The inferiority, or secondary status, of the law of Moses, they say, stems from the superiority of the law of nature (Mig. 94; Abr. 4-6; QG 4.184; QE 2.19), the inherent inferiority of any "copy" of an "original" in the work of Philo (Opif. 130; Mos. 2.11,14,51-52; Spec. 4.164; Praem. 29; Plant. 132; QE 2.42), and the ability of some special people to follow the law of nature without a written code

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<sup>237</sup> There is a long history of this reading in modern Philonic scholarship: Charles Biggs, The Christian Platonists of Alexandria, 49; E.R. Goodenough, By Light, Light, 73-96, esp. 87f; Sidney Sowers, The Hermeneutics of Philo and Hebrews (Richmond, Virginia: John Knox Press, 1965), 44-48, esp. 48; Samuel Sandmel, "Philo's Place in Judaism", 109; Andre Myre, "La Loi de la Nature", 176f; H. Kleinknecht and W. Gutbrod, "Nomos" in TDNT, 1052-1054.

(LA 1.94;3.144; Abr. 4-6; Spec. 2.42-48), an ability which is superior to the act of following the written code (Det. 66-68; Mig. 46-52, 174-175; Somn. 1.191; Virt. 94; QE 2.19). It is also true that the inferiority of the written law is implied in Greek discussions of higher law. Yet, Philo claims, the law of Moses is the true copy of the law of nature. In what way is the law of nature "higher" than the law of Moses? In what way is it different and more desirable? How can commentators claim that the Mosaic law is ultimately to be transcended by the special few? Or that such transcendence is desirable? Such transcendence follows from Graeco-Roman discussions of the law of nature, but how does one transcend the law of Moses?

The question, if limited, is not theoretical: Philo knew of people who fulfilled the law of nature, and the continuing existence of the law of nature and the example of the Patriarchs imply that there could always be more. It is also true that in Greek sources the written law may be discarded if one follows the law of nature; moreover, the "living law" was able to replace the written law. The question, then, bears asking: did Philo consider the law of Moses superfluous for some people in some instances?

#### I) Who Follows the Law?

The Mosaic law was the way for almost everyone; the law was to be observed, its precepts followed. While Philo could soar when he spoke of nature, or God, or even of law, he could also plant his feet firmly on the

ground. In Embassy to Gaius Philo says that penalties are good for the morals of the multitude who (presumably) keep the law because they do not wish to suffer penalties for disobedience (7).

The best reason to follow the Mosaic law, according to Philo, is because one understands the purpose of the law, even loves the law, and realizes that the law dictates what is best according to our nature. The law should be in one's heart, not only on one's lips (Praem. 82). Philo would rather have the law performed because it is good and just, not because observance is compelled. But if worst comes to worst, compulsion is not without merit.

Philo does not reduce the law to one or two commands. He maintains the unity of the Mosaic law:

The legislation is in some sense a unified creature, which one should view from all sides in its entirety with open eyes and examine the intention of the entire writing exactly, truly and clearly, not cutting up its harmony or dividing its unity (QG 3.3)

While Philo is also capable of distinguishing between the letter of the law and the inner meaning of the law (Agr. 157), and the inner meaning is clearly more important,<sup>238</sup> Philo does not reduce the law to its "inner"

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<sup>238</sup> Sandmel, A Jewish Understanding of the New Testament (New York: Ktav Publishing House, 1974), 66 says that Philo "has a feeling of condescension, bordering on contempt" for those who only perform the literal law. This may be too strong, but there is definitely a pronounced sense of the superiority of those who follow the law of nature. This problem will be

meaning. He fights against such a reduction (Mig. 92-93). One must follow the law.

The good fortune of the Jews is that they have a true copy of the law of nature (Mos. 2.13,51). For the vast majority of people, this copy would have been sufficient. Cicero could claim that "we can perceive the difference between good laws and bad by referring them to no other standard than nature" (De leg. 1.44), but this method was unavailable to most people. The Greeks and Romans had to perceive in each case what the content of the law of nature was, the average Jew simply had to follow the law of Moses.<sup>239</sup>

Yet, it is also true that there is a degree of elitism in Philo's thought: those who only follow the literal laws may do what is good, but they do not represent the best.<sup>240</sup> Better is to understand the "inner" sense of the laws; but it is best not even to need the laws. What people did

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discussed throughout this chapter.

<sup>239</sup> Cf. Vander Waerdt, Natural Law, 231-263. He claims that Antiochus had already begun to move in this direction by offering praecepta through which all could follow the law of nature. Cf. supra 45, n.91.

<sup>240</sup> Montgomery J. Shroyer, "Alexandrian Jewish Literalists" in JBL 55 (1936), 261-284 has an excellent discussion, especially 263,267,272. He also speaks of people (he terms them "literalists") who were unable to accept the law literally and who, therefore, rejected it (277-279,284).

not need the law in its written form? How did they fulfil the law? What role did the Mosaic law, after all, play?

## II) Higher Law and the Law of Moses

There are a number of ways to approach the relationship between the law of Moses and the higher forms of law. At no point is Philo explicit about the relationship, other than to call the law of Moses a copy of the law of nature, but in his descriptions of the higher forms of law and how people fulfil these forms of law there is information which illuminates his understanding of the relationships.

### A) The Law of Nature and the Patriarchs

As far as Philo was concerned, his discussions of those who followed the law of nature were factual. Philo could point to the past and name his sages, those who had followed the law of nature. Even better, he had a record of how they followed the law of nature in the Torah, something the Greeks and Romans, even the Stoics, could not claim.

The law of nature was Philo's answer to how the Patriarchs followed the law of Moses before the law of Moses was given; it was a problem which concerned Paul and the Rabbis as well. Philo's answer is somewhat different from theirs: the Patriarchs fulfilled the law of nature, which was given before the law of Moses. One could claim that this was simply Philo's way of worming out of a sticky exegetical corner, if the law of

nature were not so fundamental to his thought. It provided the answer to some difficult historical questions for Philo, but it also is, in many ways, the centre of his philosophy: his views of nature and law are integral to his philosophic system. The law of nature existed in the past, and this explains easily how the Patriarchs followed the law of Moses before it was given by God; but the law of nature exists still and is connected to other forms of higher law.<sup>241</sup> It can continue to be a way of guidance, and must in some sense co-exist with the law of Moses.

Philo is vague when he discusses the way in which the Patriarchs are said to have followed the law of nature. The Patriarchs followed nature and became the archetypes for the written law (Quod 62). If we want to know what they did, however, we are led into a kind of tautology: what they did, the law of nature, is found in the law of Moses, the copy of their lives. If so, how can the law of nature be a better way?

The answer seems to rest with how the law is done and how the law is understood. The law of nature, it seems, is not higher because it contains "better" laws, or different laws; the content seems to be the same, if draped in symbolic language in the Torah. The higher quality of the law of nature lies with the observer of the law: the Patriarchs follow the law

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<sup>241</sup> If Philo was interested only in using the law of nature to explain how the Patriarchs did the law of Moses, there would be little reason to connect it to these other forms of higher law.

guided only by reason, not a material code, and they follow the law because they perceive it is good and right. The content may not differ.<sup>242</sup>

Whether the Patriarchs follow the "inner" sense of the Mosaic law or the actual laws is not obvious. There is no doubt that Philo would have argued that they would have fulfilled the "inner" meaning these laws point to, but can one argue that the letter of these laws was also observed? The Mosaic law would not be contradicted by the actions of the Patriarchs, but could all its dictates have been followed?

It is possible, from the few clues that Philo gives us, that he might have argued that the Patriarchs actually observed the law of Moses.<sup>243</sup> The "originals" of the particular laws are the men who "lived good and blameless lives" (Abr. 4). They are "living and reasonable" laws (Abr. 5). Moses writes of them for two reasons: to show that the "enacted ordinances are not inconsistent with nature"; and to demonstrate that the written law is not difficult to follow because earlier generations followed the unwritten law (Abr. 5). The enacted laws, therefore, "are nothing else than

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<sup>242</sup> Helmut Koester, "Nomos Physeōs", 536.

<sup>243</sup> Goodenough, By Light, Light, 74 rejects the view that the Patriarchs were "bundles of commands which were written down by Moses...there is no thought of deducing the specific commands from the incidents of the lives of the Patriarchs". This sounds eminently sensible, but I believe that the opposite view may be exactly what Philo intended.

memorials of the life of the ancients," "preserving to a later generation their actual words and deeds" (Abr. 5).

For Philo, the Patriarchs, the actual embodiments of the law of nature, are the model for the enacted ordinances. The enacted ordinances are not only consistent with nature, they "preserve" the erga kai logous of the Patriarchs. This may imply only that the stories of the Patriarchs are preserved in the Torah, but the clear sense seems to be that the law of Moses contains the deeds and words of the Patriarchs. When the Patriarchs followed the law of nature, therefore, it seems that they also complied with the law of Moses. Their words and deeds are the basis for the enacted ordinances, which are, indeed, the Mosaic law. How this relationship can be said to function is difficult to comprehend, to say the least, but Philo intimates, in the following passages, that it exists.

Again, in Abraham 275-276, Abraham is said, following Genesis 26:5, to have done "the divine law and all the divine commands". The verb is significant: Philo says that Abraham did (epoiēsen) these laws, not that he somehow "fulfilled" them.<sup>244</sup> If we agree that Philo is here referring to

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<sup>244</sup> The verb used by the LXX, phyllassō, translates the Hebrew shamar. Both of these verbs can be translated as "watch", or "keep guard". Phyllassō does not have the same intimations of "performance" as poieō. That Philo is aware of the change in the verb is shown by his use of phyllassō in Her. 8, where he follows verbatim the text of the LXX. The verse is also discussed in QG 4.184, where it is found in an abbreviated form in Armenian. Panta is used in both Mig. 130 and Abr. 275 to describe the extent of Abraham's observance;

the law of Moses, and we know that Abraham has done the law of nature, it should also be clear that there exists no difference between them. Indeed, Abraham was not nomimos, he was a "law himself and an unwritten law" (Abr. 276); but being "lawful" and becoming a "law" are not contradictory: Abraham became a law because he did the things which the law required. The difference is, he followed them by nature, without having the written laws.

This interpretation is borne out by Mig. 130. Philo takes up his interpretation of Gen. 26:5 once again. Again, too, Philo says that Abraham "did (epoiēsen) all my law (panta ton nomon mou)." He replaces phyllassō with poieō in this instance too, and he is more explicit about Abraham's actions.

"Law" being evidently nothing else than the divine word enjoining what we ought to do and forbidding what we should not do, as Moses testifies by saying, "he received a law from His words" (Deut. xxxiii.3f). If, then, the law is a Divine word, and the man of true worth "does" (poiei) the law, he assuredly "does" (poiei) the word: so that, as I said, God's words are the wise man's doings (praxeis).

Here is Philo's clearest statement: the Patriarchs do the law of Moses.

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the word does not appear in the LXX or in the Hebrew text. Nomos is used to signify the "law" which Abraham follows in Mig. 130; nomos does not appear in the LXX.

Philo also contrasts the Patriarchs as "unwritten laws" with the written laws (Decal. 1). Philo does not state differences in content between the two forms of law. He stresses only that he has spoken of unwritten law and now must speak of written law. The way of the Patriarchs is a better way to observe the law, the way of reason and truth, but it is nowhere clear that in content it is a different way.

The difference between the written law and the law of nature, including the other forms of higher law, seems not to rest on the content of the law itself. It may be that the law of Moses "hides" its truths in the language of metaphor, but when the truth is revealed it does not differ from the higher forms. The one who follows the law of nature by the reason within him alone, without relying upon rewards and punishments, indeed without needing the guidance of a law code, has the ability to understand what one is truly obeying and why one ought to be obedient. That the content of what one obeys differs from the law of nature is not likely, at least not in Philo's scheme.

The transcendence of the written law by the Patriarchs does not seem to imply the transcendence of the contents of the written code, as it does in Greek and Roman natural law thought, it implies only the transcendence of the limited understanding of the one who must rely upon the written law. The Patriarchs, of course, provide the models and patterns

for the laws and indicate conformity and agreement with the law of Moses. The Jew, therefore, who does only the written law does to a limited degree an "inferior" law. This "inferiority" is not found in the Mosaic law, but in the literal-minded follower of the law who is unable to understand the truth of the law and to whom this truth points.

#### B) The Living Law and Present-Day Rulers

If, though, the Patriarchs followed the law of Moses, as the scanty evidence indicates, what of Philo's own day? Could one follow the law of nature without relying on the law of Moses? Our discussion begins with the living law ideal and the rulers of Philo's day. At a number of places, Philo seems to suggest that the rulers constituted the law of their given land, that they were, in fact, living laws.

Philo does in principle extend the living law ideal to Gentile states, for he claims that rulers are living tablets, contrasting them with the written law (Det. 141; cf. QE 2.6). This contrast is clear to us now: the King is the law, or the law is written. What, however, are the implications in Philo's thought? Moses, the true living law, lived his life in agreement with the law given to him on Mt. Sinai. And since Philo links the living law ideal to the law of nature, could a Gentile king fulfil the law of nature, in fact be a representation of the law of nature, and not observe the Mosaic law? Would the king of a Gentile land, who is himself the law, observe the

Mosaic law? Could a Gentile king contradict the law of Moses and still be lawful?

As odd as it seems the answer appears to be that a king who truly was the law would, indeed, do the Mosaic law. Philo may be stating the de facto truth when he says the king is the law in his land - but this is only half of the story. Any king may indeed be the law of his land, but this may only signify that he is a bad law, a tyrant. What constitutes "good" law, law in fact, is only the law of nature which has its copy in the law of Moses.

The truth of Philo's claim, that rulers are living tablets, is seen only when the proper law is in view. All future rulers, says Philo elsewhere, would find a law to guide them by looking to Moses as their archetype and model (Virt. 70). A true "living law" would do nothing which was not in agreement with the law of Moses. What this means in practice, probably, is that only a Jew could be a living law.

For when Philo does speak of the living law ideal in his own day, as E.R. Goodenough and Wayne Meeks have shown, he speaks of its perversion.<sup>245</sup> Gaius, who considered himself a law, is the model of perversity par excellence (Legat. 119), a model of perversity not only for

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<sup>245</sup> Goodenough, Politics, 103-113; Meeks, The Prophet-King, 49,51,61 #6.

Philo, but for the Roman historians as well.<sup>246</sup> Goodenough asks at one point why Philo did not grant that a Roman emperor was the living law, but surely the answer is obvious: no one fulfilled the requirements.<sup>247</sup> In principle they could have; in reality they did not; in all probability only a Jew would.<sup>248</sup> At any rate, Philo would have recognized the living law by his actions - they would have conformed with the prescriptions of the law of Moses.

Philo is to some degree saved by the unity of law in his thought. Whereas in Greek sources the law and the king are separate legal entities - if one rules, the other is not necessary - in Philo the separation between forms of law does not exist. The living law is the law of nature, and the law of nature is the original of the law of Moses: written and unwritten law are in this way one. Every king is the law of his land, it is true, but that does not imply that anything the king calls law is true "law," though it may function as such. In name it may be law, it may function as such, but unless

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<sup>246</sup> Dio Cassius 59; Suetonius 4. Barraclough, "Philo's Politics," 458-460 claims, however, that Philo's portrait of Gaius is exaggerated.

<sup>247</sup> Goodenough, Politics, 112-113.

<sup>248</sup> Goodenough, Politics, 112-113; cf. I. Heinimann, Philons griechische, 190 who points out that Deut. 17:15f forbids a foreigner from being king of the Jews. The implication of the living law ideal, for Philo at any rate, is that a true nomos empsychos would be king of all the lands, and therefore king of the Jews.

it compares favourably to the law of nature/law of Moses, it is in reality no law. For Philo, there is only one law, and the king is the law only insofar as he follows it.

One cannot, therefore, render the Mosaic law superfluous by being a living law, because the true living law would follow the Mosaic law. Moses was the living law, which means he lived in conformity with the law of Moses. Gaius' claims to be the law are ridiculed by Philo because they are unwarranted claims, not because Philo does not believe in the ideal itself.<sup>249</sup> A real nomos empsychos would be much like Moses (Virt. 70). This would be quite impossible for a Gentile ruler.

All forms of law, in Philo's work, combine to create a tightly woven system. While Greek and Roman writers on the living law ideal only attempt to grasp what such a ruler would be like, or how he may embody justice and equality, or how he would relate to the present written law, Philo knows what such a king would be like. He has an exemplar, the original as it were, of the living law. If everyone else is scrambling to find his footing, Philo can place his feet on solid ground.

A king may claim to be the living law, he may abolish the law of Moses, he may institute laws which mock the law of Moses, but his law would be a sham and the king would be a phoney. The true nomos

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<sup>249</sup> Goodenough, Politics, 107; Meeks, The Prophet-King, 51.

empsychos will not contradict the law of nature, and it is this law which supports the law of Moses. Philo is weaving the seamless garment: the law is of one piece.

### C) The Law of Nature in Philo's Day

Is it still possible that an individual could follow the law of nature without knowing of the law of Moses? If a Stoic wise man fulfilled the law of nature would he naturally do the law of Moses? Could a Greek do the things to which the law of nature points, but not perform the physical requirements of the Mosaic code? Could a Jew disregard the law of Moses for the higher law?

The question must have been a real one for Philo:

This theory about the unwritten Torah being available to the men of old before the legislation of Moses does not serve as merely a convenient stopgap for that period in history between Creation and Moses...It produces the extremely momentous insight that a true law of nature is in fact an ultimately superior criterion for the life of the truly wise man.<sup>250</sup>

And if the law of nature is still operative in Philo's day, does not the chance exist that it may, in fact, be followed (Quod 72-75)? Philo says that

these people often ask "Who have there been in the past, and who are there living now of the kind that you imagine?" An excellent answer is that in the past there have been those who surpassed their contemporaries in virtue, who took God for their sole guide and lived

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<sup>250</sup> Koester, "Nomos Physeōs," 535.

according to a law of nature's right reason, not only to free themselves, but communicating to their neighbours the spirit of freedom: also in our own time there are still men formed as it were in the likeness of the original picture supplied by the high excellence of sages (Quod 62).

The giving of the Mosaic law opened up the way for more to follow the requirements of nature's right reason - the Mosaic law is the codification of reason - but the law of nature still exists in its own right.

In the previous passage, Philo seems to imply that the law of nature is still being followed, and it seems that he intends to say that these special people are Jews. The Patriarchs surpassed their contemporaries in virtue; in Philo's own day such people existed too. Philo says of the wise men that "this small body though scanty is not absolutely non-existent" (Quod. 72; cf. De Mut. 35-37). The crux interpretum in Quod 62 is, how are these people formed in the likeness (eikōn) of the original picture (archetypou graphēs)? Indeed, what is the original picture? Does it imply people following the law of nature, or attempting to, or simply following the Torah?

The original picture must be the lives of the Patriarchs, the unwritten and living laws, the men who fulfilled the law of nature (Abr. 3-6). The copies are the written laws, the archetypoi are the Patriarchs. Do those who follow the Patriarchs, though, guide themselves by following the

right reason of nature, or does Philo simply mean that they follow the original picture preserved in the Torah, whose pages contain the lives and actions of the sages?

Philo is responding to a question of who in the past were virtuous and who now are most virtuous, so it seems likely that Philo is speaking of people in his own day who followed not merely the written ordinances, but the "original pictures," the embodiments of the law of nature, themselves.

Yet, even here, it is the Patriarchs who are taken as the measure of the law of nature, nature's right reason, and as we have seen repeatedly, they do not contradict the law of Moses. The law of nature is the model for the copy. Even if the people of Philo's day are following the law of nature, there is no indication that they oppose the law of Moses; in fact, the opposite is suggested. If Philo knows of sages in his own day, they are patterned after the Patriarchs, and one must suspect that their ability to follow the law of nature rests in their ability to understand what the law truly is, and to keep it through the dictates of reason.

There is still one distinction to be drawn. The follower of the Mosaic law should not abandon the literal commands of the Mosaic law (Mig. 92-93) and neither it seems should the Jewish sage (Quod. 62).<sup>251</sup> What of the Greek who follows the law of nature? Would he too observe the

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<sup>251</sup> Mendelson, Philo's Jewish Identity, 20-21.

law of Moses? The question is not as alien as it may initially appear (Quod 72-75). Philo is dependent upon Greek discussions of higher law, which he alters and supplements, and the question of how Gentiles might follow the law crosses his mind.

The Gentile, like the Jew, shares in the reasonableness of nature, having, as it were, the same natural ability to find God and to share in nature's right reason as the Jew. True, the Jew has the advantage of having the superior law of Moses (Jos. 29-31; Mos. 2.12-13,17,26-27,34,43-44,51) and proselytes to the law immediately achieve some higher level of virtue (Virt. 182), but the Greek is not a priori without hope, not if the universality of the law means anything.

Philo, in fact, admits that there exist Gentiles who follow the law of nature. The clearest case of Gentiles observing the law of nature comes in Spec. 2.42-48, in the midst of a discussion of the Sabbath. Philo begins his discussion of the fourth commandment, under which he includes a discussion of the festivals, the laws regarding the seventh year, and the year of the Jubilees, in Spec. 2.39.

Philo includes as a festival the feast of "every day" (hēmera pasa). This feast appears to be based on Numbers 28,29 and the instructions

regarding the "continual" offerings.<sup>252</sup> Philo understands these verses to mean that "every day" is a feast for the special few virtuous people (cf. Sacr. 111). By establishing this feast, the Mosaic law

accommodates itself to the blameless life of righteous men who follow nature and her ordinances (Spec. 2.42).

If vice had not wrought such destruction among the majority of humanity, Philo says, all would be able to celebrate this festival. As it is, only a few do celebrate it.

Surprisingly, some of the few who do celebrate this festival are Greeks and Barbarians (Spec. 2.44). Philo says,

they are the closest observers of nature and all that it contains...true cosmopolitans who have recognized the world to be a city having for its citizens the associates of wisdom, registered as such by virtue to whom is entrusted the headship of the universal commonwealth (to koinon politeuma) (Spec. 2.45).

These Greeks and Barbarians must be followers of the law of nature.

Philo says, these people "naturally make their whole life a feast. These are indeed but a small number left in their cities like an ember of wisdom to smoulder, that virtue may not be altogether lost to our race" (Spec. 2.46,47). If everyone was as virtuous as this small number of Gentiles, every day in the world would indeed be a feast (Spec. 2.48).

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<sup>252</sup> The LXX understands the sense of the "continual" offering. The word the LXX uses, e.g. Numbers 28:3, is endelechōs, "continually".

There is no doubt that in this passage Philo introduces us to Gentiles, a very few, who follow the law of nature. Could these Gentiles be said by Philo to follow the law of Moses? The discussion does take place within the context of a passage on Jewish festivals, and the festival these Gentiles are said to follow is a "Jewish" festival. But Philo, whether by chance or foresight, does not settle for us clearly the question of whether Gentiles who follow the law of nature also follow the law of Moses.

The festival which Philo claims they observe is vague and indeterminate in terms of performance. It is kept in the soul, it would seem, not through a body of practices enjoined by Moses or the Hebrew Bible. Would these Gentiles, for instance, follow the other festivals Philo has listed? It seems impossible that they could actually follow these festivals, but further on in the discussion Philo states that

those who are not of the same nation he describes as aliens, reasonably enough, and the condition of the alien excludes any idea of partnership, unless indeed by a transcendancy of virtues he converts even it into a tie of kinship, since it is a general truth that common citizenship rests on virtues and laws which propound the morally beautiful (Spec. 2.73).

This indicates that the virtuous Gentile can indeed follow the law of nature, and even the law of Moses. If Philo does not intend to say that the virtuous Gentile somehow follows the law of Moses, the way to superfluity is a real possibility.

There is limited confirmation elsewhere that virtuous Gentiles follow the law of Moses. When Philo speaks approvingly of the Stoic founder Zeno and of one of his laws, he later states that Zeno probably found this law in the Jewish law book (Quod 57). The same is said of Socrates and Heraclitus, as we have seen. Claiming someone else's, or some other school's, thought as one's own a common enough ploy among Greek thinkers, but for Philo it supports the centre of his thought: any law worth following must be from the Jews. If Zeno or Socrates knew something of the "right" law, it must be because they knew the Jewish law.

E.R. Goodenough has built a rather strong case that Philo has actually at times borrowed Gentile law: Greek, Roman, and Egyptian.<sup>253</sup> In doing so Philo sometimes even contradicts Jewish law. The significant point, however, as Goodenough himself admits, is that Philo would never have admitted to such borrowing.<sup>254</sup> Not because he wanted to hide the reality, but because he did not believe he was doing such a thing. If Philo

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<sup>253</sup> Goodenough, Jurisprudence, 75-76,100-102,106-107,111,155,193. These serve as examples, the book contains many more such examples. Cf. also Barraclough, "Philo's Politics", 517-518. I. Heinimann, "Jüdisch-hellenistische Gerichtshöfe in Alexandrien?" in MGWJ 74 (1930), 363-369 attempts to show that Goodenough's examples do not point to actual practice in the Jewish community; on this point, he convinces. He believes that Philo is drawing on ideal Greek or Roman legal forms. The case that Goodenough has built, though, that Philo draws on Gentile law, still holds, at least for our purposes.

<sup>254</sup> Goodenough, Jurisprudence, 214-215.

said he saw a law regarding poisoning in the Jewish scriptures, which in fact comes from Gentile law, he probably did see such a law.<sup>255</sup>

What this means is that the Greek who fulfilled the law of nature, or who knows part of it, borrowed it from Moses, in one way or another. Failing that, reason would not guide one against the dictates of the Mosaic law. As strange or unbelievable as it may seem, any sage, any "unwritten law," any "living law" must in the course of obeying the law of nature also obey the law of Moses. How this would have been accomplished is a mystery, as it is also for the Patriarchs, but Philo's thought leaves no alternative.

It seems clear that a Greek sage would resemble no one so much as a Hebrew Patriarch. A Greek audience would have, indeed may have, found this incredible, perhaps even insulting, but Philo is certain of it and saved to some degree by Stoic agnosticism: they are not certain of the content of the law of nature and they are not sure if anyone has followed it.<sup>256</sup> Philo's boldness is supported by Stoic timidity.

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<sup>255</sup> Spec. 3.93-98; Philo speaks of putting the poisoner to death in this passage, which appears to be based on the injunction in Ex. 22:18 to put a sorcerer to death. Cf. Goodenough, Jurisprudence, 106.

<sup>256</sup> This is not to suggest that the Stoics had nothing to say about the wise man and how he would live. As we saw in Chapter One, and as we will see in Chapter Six, the Stoics were quite willing to describe the sage and his life. The kathēkonta would also give us the ground rules whereby a sage would live, and could thereby be noticed. But the problem of Stoicism, if indeed they

He has no doubts. He knows of people who have followed the law of nature and he has a record of how they followed it. If there was a sage, Philo would recognize him. If the thought of the Greek sage being circumcised or following the dietary laws seems odd to us, it would not have seemed so to Philo. Philo was certain of the truth of Judaism, and this claim was necessary to his identity and to his community. Apart from that the scarcity of the sage meant that no one could truly contradict his claims, although if Gentiles read his work there would certainly have been enough people to dispute them. Philo's legal thought is driven, though, by his conviction that the Jew has a record of the law of nature: the Jews had the truth, for which the Gentiles were searching, and Philo invited those who wanted to know to follow the one, true law.

#### D) The Law of Nature and the Law of Moses

Greek discussions of the law of nature brooked no wholesale abandonment of the written law, even by the sage, but it was a possibility that certain laws could be overturned. If the material law did not reflect the higher law, why should one who knows the truth not abandon the transcended written law?

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considered it a problem, is that only the sage knows how he would act in a certain circumstance and only the sage can act correctly (according to the katorthōmata). Philo is willing to be much more definite and specific.

Goodenough believes that Philo is implicitly acknowledging the secondary status of the Mosaic law when Philo refers to it as a copy. He says it "would have been natural, in view of the general trend, for Platonists and Pythagoreans to have developed a theory that the written law was only a reflection or image of the Idea-Law."<sup>257</sup> Goodenough can find no such example from Philo's day and draws on the 5th century C.E. Neo-Platonist Proclus to explain Philo's view of the relationship. Goodenough insists that Proclus' view of the law shows how Philo regarded the written law as inferior. Apart from Proclus' late date, I am not convinced that Goodenough interprets Proclus correctly,<sup>258</sup> but there is far more damaging evidence against Goodenough's view: Cicero.

Cicero, whose view of the law of nature probably comes from the same source as Philo,<sup>259</sup> does preserve a statement on the relationship between the written law and the law of nature. In De Off. 3.69 Cicero says that the written law is a shadow (umbra) and appearance (imaginibus) of

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<sup>257</sup> Goodenough, By Light, Light, 87.

<sup>258</sup> See Goodenough, By Light, Light, 87-88 for his translation of the relevant passage. I am not sure the translation does justice to the text. Proclus calls true laws eikōn of the cosmic laws, and by this intends to speak of their superiority vis-a-vis bad laws and customs. Though Platonism regarded the copy as inferior to the original, that is not Proclus' intention here. See Proclus, In Rem Publican II (ed. W. Kroll; Amsterdam: Hakkers, 1965 repr.), 307, 11.15f for the Greek text.

<sup>259</sup> Horsley, "The Law of Nature in Philo and Cicero," 35-59.

true law (veri iuris); he states further that "we do not possess a whole (solidam) and distinct (expressam) copy (effigiem) of the true law." This is significant evidence.

Cicero says that there is no "whole and distinct copy" of the law of nature. Philo's claims that the Mosaic law is an eikon of the law of nature (Abr. 3; Mos. 2.51), or that the laws are mimēmata of the laws of nature (Mos. 2.11), or stamped with the seals of nature (Mos. 2.14,48) go far beyond Cicero's claims that the civil law is a shadow or mere appearance of true law. Whereas Cicero is preserving the consensus regarding the inferiority of the written law, Philo is arguing that in fact a true copy of the law of nature exists. Moses' laws

are firm, unshaken, immovable, stamped, as it were, with the seals of nature herself...secure from the day when they were first enacted to now, and we may hope that they will remain for all future ages as though immortal, so long as the sun and the moon and the whole heaven and universe exist (Mos. 2.14).

Therefore,

whoever will carefully examine the nature of the particular enactments will find that they seek to attain to the harmony and of the universe and are in agreement with the principles of eternal nature (Mos. 2.52).

Philo does not devalue the law of Moses by speaking of it as a copy; he is increasing its value.<sup>260</sup>

Philo may have heard the argument from Hellenistic Jews in Alexandria that the written law of Moses is only an inferior law, but he saves himself from the potentially antinomistic results to which the law of nature, and other forms of higher law, could lead without abandoning the higher forms of law. He does this by tying the horse more firmly to the cart. He claims his material law is the perfect copy of the law of nature.<sup>261</sup> The law of Moses cannot, therefore, be abrogated, even in part, or improved.<sup>262</sup> The divine origin of the law allows Philo to claim that the written law and the law of nature have the same source and the same content. This unity and continuity which Philo maintains without fail saves him from degrading the written law and at the same time allows him to affirm the existence of a "higher" law.<sup>263</sup>

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<sup>260</sup> Valentin Nikiprowetzky, Le Commentaire de l'écriture chez Philon d'Alexandrie (Leiden: E.J. Brill, 1977), 122.

<sup>261</sup> Brehier, Les Idées, 30 claims that this is the only argument with which Philo can defend the law of Moses.

<sup>262</sup> Mendelson, Philo's Jewish Identity, 53 says that "Philo must have held...that not every prohibition or command of the Torah is equally important." Theoretically, though, if not in practice, he maintained the unity of the Mosaic law.

<sup>263</sup> Philo protects the law of Moses in another way, which has not been noted by Philonic scholars. Philo devalues and downplays the role of the

How the two are related, however, still remains unclear; Philo is never explicit. Andre Myre affirms that the law of nature is primary and that of Moses secondary, but admits that the discussion is nuanced and

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adiaphora and kathēkonta in the life of the ordinary person; in their place he substitutes the law of Moses. The kathēkonta were those appropriate actions which were to be chosen among the indifferents (adiaphora). Not every kathēkon act, however, was always according to nature, and only the wise man could truly perform good acts, or perfectly virtuous acts (katorthōmata). This meant, in effect, that only the sage could live a life according to nature. Philo's claim that anyone who can follow the law of Moses is following nature is a much broader claim than the Stoics would make. Also, Philo would not claim that the actions prescribed by the law of Moses are only sometimes preferable. In this way the actions which the ordinary person is to follow are fixed and not given to deliberation. This is much different than the theory of the indifferents. Cf. Vander Waerdt, Natural Law, 231-263 who claims that the law of nature became the kathēkonta with the revisions of Antiochus. I do not see that such an argument is found in the work of Cicero. The move to make the law of nature applicable to the life of the ordinary person seems to have been underway, but I do not think the outlines of the law of nature were codified (cf. De Leg. 1.42,44; 2.11). If in fact they had been, it would give Philo more impetus to claim that the law of Moses was the law of nature; the urgency would have been real.

Philo does know of the Stoic theory of indifferents (Opif. 74; L.A. 1.56; 2.17; 3.165,210; Sacr. 19-20,99; Det. 122; Plant. 100; Quod 61,81). He knows of the division between good, indifferent, and bad acts (Quod 60). He knows, too, that it is the disposition of the sage which makes his acts truly good (L.A. 3.210). Philo even knows that not all kathēkonta are always appropriate in every circumstance (Cher. 14-15). But he never speaks of these acts in conjunction with the law of nature. His true feelings come to the fore in L.A. 3.126 when he links human virtue (kat' anthropous aretēs) and laws by convention (thesei nomimon) to kathēkonton and katorthōmaton (!). Philo labels these all "human opinions" and believes that knowledge of God transcends them all.

does not lend itself to generalizations.<sup>264</sup> What is the place of the law of Moses?

### III) Philo's Contribution: The Unity of Law

To answer this question finally, we need to ask two questions of Philo. We need to ask why Philo presents three discrete forms of higher law as one. In no other ancient source do all three forms of higher law appear, and in no ancient source are any two forms of higher law as tightly connected as all three forms are in Philo's work. Many sources which may have contributed to our knowledge of higher law in this period are missing or only partially extant, but this should not detract from Philo's contribution. A second question is closely related: whether Philo created this unity of law or borrowed it, was it used in order to protect the Mosaic law from superfluity? Every Greek notion of law which could potentially render the Mosaic law, or any form of written law, superfluous is not rejected and ignored but co-opted and altered. Why? Unwritten law, the law of nature, and the living law find a welcome home with Philo, but all with changed meanings.

#### A) The Living Law

The idea of the living law, as we know it from the fragmentary sources, is contained in full in Philo in the discussion of Moses, with one

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<sup>264</sup> Andre Myre, "La Loi de Nature," 176,180-181.

major exception: the king as the law is not contrasted with the written law. Instead of replacing the law, the king in Philo, preeminently Moses, is the pattern for the written law. Any other living law would also follow the law of Moses; there would be no disagreement. Philo also adds to the concept in two ways: he links the living law ideal to the law of nature; and he extends the concept to people in the past who were not actual kings.<sup>265</sup>

If Philo adopted the nomos empsychos ideal from the Middle Platonists, then it is possible that the link between the law of nature and the Hellenistic Pythagorean living law took place among them. The connection makes sense. If the king was to be just, by what measure was he to be just? The Pythagorean fragments offer no external measure,<sup>266</sup> they simply claim that the king is to be most just and the best man. The law of nature ideal may have seemed both obvious and necessary. Obvious because the king had to be just according to some objective, though admittedly unknown, measure; necessary because the measure could not be arbitrary.

More important, the ideas fit nicely together. In an age in which philosophical "unity" among the schools was claimed by some philosophers,

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<sup>265</sup> This is the pattern, of course, of the Stoic-Cynic view of kingship (every wise man is king: Diogenes Laertius 7.122), but not the Pythagorean.

<sup>266</sup> By that I mean they offer no code of law; the king is just by reference to his imitation of God. Archytas, Stob.4.1.135 offers that the unwritten divine law nourished the written law or the king, but this is not adopted by the other writers.

and without much alteration, the living law ideal could breathe real life into the Stoic maxim that the wise man, the best man, was king. The living law ideal provided an apologia for why, and how, this was so; the Stoics provided the claim that the king need not be, after all, a king. This could have influenced Philo. Though Moses is truly presented as a living law, even he was not a king in the true sense of the word. The other Patriarchs were even less so. Philo's use of the living law ideal often means, simply, sage-king: the Stoic wise man who follows the law of nature. This new understanding of the living law ideal would serve Philo's purposes perfectly.

The connections between the living law ideal and the law of nature could have come from elsewhere.<sup>267</sup> We have argued, however, in "Appendix 1: The Date of the Pythagorean Kingship Tractates" that Philo may be dependent on the Pythagorean texts themselves. Philo's own concerns supply us with motive enough to suspect that Philo is responsible for the synthesis of the law of nature and the living law. His purpose would seem to be to claim the Patriarchs as the true wise men, in every possible form, while at the same time eliminating claims that there are higher forms

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<sup>267</sup> In defense of Philo's originality on this point, Plutarch, another thinker influenced by the Middle Platonists, does not connect the law of nature to the nomos empsychos. It is true, however, that he calls the king a logos empsychos. It is possible that the term logos was influenced by the Stoic tradition through the Middle Platonists. Philo, who calls his wise men empsychoi kai logikoi nomoi, may borrow from both traditions: the Pythagorean nomos empsychos tradition and the Middle Platonists.

of law which threaten the written law. Even if the connection between the law of nature and the living law came from elsewhere, it is doubtful that the elimination of the contrast between the living law and the written law came from someone other than Philo. The law of nature in Graeco-Roman thought always maintained the contrast between the higher law and the written law; this was the raison d'être of the higher law. Only Philo could have eliminated the contrast, because only Philo had a written law whose protection mattered as much as the higher law.

#### B) The Unwritten Law

This is a more difficult category to consider. Unwritten law, after Aristotle, is not found in many Hellenistic discussions, and never in Stoic discussions, of law. The new discussions of the law of nature seemed to relegate this older and vaguer concept to the sidelines. Philo brings it back into play.

It is likely that this is Philo's own addition. The claim that the one who fulfils the law of nature is an unwritten law is found only in Philo; the claim is an odd one and does not readily suggest itself. The links between the living law ideal and the law of nature would have been easy to forge given the parameters of both discussions, specifically the concentration on the king/sage, but what in the unwritten law discussions suggests that someone who follows the law of nature is an unwritten law? The

explanation for the connection seems to require the need to account for all forms of higher law.

Since the law of nature is the over-arching form of higher law in Philo's work, what is the place of the unwritten law? It is, in fact, easy to understand why the concept of the law of nature would relegate the idea of unwritten laws to the sidelines in Greek thought in general: the law of nature offers a systematic explanation of what true law is. Law, even if not written, is not arbitrary and not simply one or two "unwritten" laws. The law of nature is inherent in the universe, not dependent on the unknown whims of gods. The impetus to take account of the unwritten law, instead of ignoring it, as most do in the Hellenistic period, must depend upon the need to leave no loose ends, no opportunity for someone to ignore their written law in the service of a higher law. It is probably Philo who connected the unwritten law to the law of nature, and probably Philo who claimed the one who does the law of nature is, in fact, an unwritten law.

Philo is, indeed, often an eclectic thinker, so it is possible these connections came from elsewhere. Still, since they serve his purposes so well, and since it is hard to imagine a purpose other than his that would lead to such connections, Philo was likely the one who created the links among these various forms of law.

The unity of the higher forms of law would seem to be Philo's contribution to Greek legal thought. There are a number of factors which suggest that this is the case. First, it is found nowhere else in the ancient sources. This is not decisive because of the fragmentary nature of the sources, but it is a weighty consideration. Second, the unity of the higher law demonstrates the unity of all law in Philo's thought, and supports his view of God's provident creation, both of the world and of the law of Moses. All forms of law are present and accounted for. Third, the unity of the higher law fits Philo's syncretistic philosophical style. It may be that the connections were more apparent to him than to a member of one of the rival schools. Finally, it helps Philo be rid of a thorny problem regarding the arbitrariness of the written law. This thorny problem dogged the Greeks since the time of the Sophists. Philo protects the law of Moses by claiming it is intimately related to all forms of higher law. These forms of law, therefore, cannot undermine the law of Moses.

In his hands, the disparate and discrete parts of Greek legal thought become the interlocking pieces of a cosmic puzzle. The law is a grand picture: the living law had to fit in this scheme, as did the unwritten law, because the pieces had to form a unity. Why did Philo put this puzzle together? He was probably the only one looking for the pieces.

### C) The Law of Nature and the Law of Moses

The tight connection between the law of nature, and by extension the other forms of higher law, and the law of Moses must be Philo's legacy too, though it could have come from another Jewish thinker.<sup>268</sup> Greek discussions obviously would not have made the specific connection between the law of nature and the law of Moses, but it is difficult to imagine a Greek thinker making the connection between the law of nature and any form of written law. Which law would they have chosen? Which law did the Greeks agree was the best: that of Athens or Sparta? Which law could claim to be from the hand of God? Cicero, whose natural law thought may have the same source as Philo, calls Rome's law, which he considered the best

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<sup>268</sup> On the general connections between the law of Moses and nature/virtue/wisdom see 4 Maccabees 1:8-9,15-18,28-30,34-35; 2:6,23; 3:17-18; 5:17-26; 6:31-35; 7:7-9; 13:1-6,16-18; 16:1-3; 18:1-3 and Wisdom of Solomon. On the purpose of the defense of the law of Moses in 4 Maccabees see Stephen Westerholm, "Law and the Rule of Reason: The Argument of 4 Maccabees", presented at Torah/Nomos Seminar Canadian Society of Biblical Studies Annual Meetings May 1987. He claims that the author was concerned with protecting the law of Moses by claiming in it the true embodiment of reason. In general, then, Philo did have predecessors.

In no other extant Jewish text, however, do we find such philosophically knowledgeable and mature (not to mention extensive) arguments as in Philo; I believe that in most particulars he is responsible for his synthesis. He was not, of course, the first to attempt to protect the law of Moses by linking it to Graeco-Roman thought, but I believe his thought is in large measure original.

possible written law, a "shadow".<sup>269</sup> This an evocative phrase, especially contrasted with Philo's "true copy", but it probably has a mundane source: the consensus view.<sup>270</sup> And why would this not be the consensus? Was this not the point of the law of nature? That there was an eternal law which transcended the sometimes arbitrary, sometimes bad law of the cities? This

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<sup>269</sup> Marcia L. Colish, The Stoic Tradition from Antiquity to the Early Middle Ages Vol. 1 (Leiden: E.J. Brill, 1985), 96-101 argues that, in fact, Cicero considers the law of Rome to be the law of nature in DeLeg. 2.26. But this he does, as far as I can tell, only for some specific instances. He would not, and does not, claim Roman law, in its entirety, the law of nature.

She is correct, however, in saying that Cicero begins the transformation of the law of nature as a cosmic law to that of a higher law case, Cicero starts what Philo finishes. Vander Waerdt, Natural Law, 231-263 has attributed this move to Antiochus, especially as it relates to the kathekonta. It may be, however, that it was indeed Cicero who was concerned with the relationship between the law of nature and the civil law. Antiochus was interested in finding a guide for all humans through the kathekonta, but Cicero, the lawyer, would have had abundant reason to wonder how the law of nature was to be related to the civil law and a system of law.

<sup>270</sup> John Dillon, The Middle Platonists, 81 says of the dispute over who is responsible for Cicero's view of the law of nature: "what the champions of the various views do not seem to recognize is that the theories of these three men {Panaetius, Posidonius, Antiochus} are almost bound to be identical." I am not certain that identity among the various views can be maintained, though there must have been similarity. Vander Waerdt, Natural Law, 234 clearly opts for Antiochus, but he too recognizes the probable changes wrought by Panaetius and Posidonius. In the specific instance of who introduced the move from katorthōmata to kathēkonta as a guide to the law of nature, Vander Waerdt is convincing in his claim that it is Antiochus, though it may too be influenced by Cicero himself. Nevertheless, I do not see, as he does, that there was a code of officia. A number of passages speak against such a move, as we have discussed earlier.

was the very point upon which the origin and the development of the law of nature rested.<sup>271</sup>

Only a Jew, one is tempted to say only Philo, could have tied their material law so tightly to the law of nature. Only the Jews could have wanted to.<sup>272</sup> If the law of nature was the salvation of the meaning of law for the Gentile, could it not easily become the undoing of the law of Moses? Would there not be, after all, a law which transcends the law of Moses? The divine character of the law of Moses, the importance of the law for the life of the community, could not allow the law of Moses to be simply another law.<sup>273</sup> While the idea of the law of nature, and other forms of higher law, may have posed no real threat to the law of Moses, theoretically it did, and some in the Alexandrian community might have argued for its transcendent nature. It may be that Philo's designation of the law of Moses as the "true copy" of the law of nature was a direct response to the consensus view, the

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<sup>271</sup> A. Reinhartz, "The Meaning of nomos", 344 says, "from the tenor of his arguments, it would seem that no such claims were being made for other specific law codes. For example, Philo does not find it necessary to argue that other law codes do not embody the law." In some way he does, but the point holds: no one else could have conceived the need to argue that their written law was the law of nature.

<sup>272</sup> Helmut Koester, "Nomos Physeōs," 533.

<sup>273</sup> Mendelson, Philo's Jewish Identity, 24.

view propounded by the Middle Stoics and their followers. But whether or not the term itself is a response, the ideas certainly are.

#### D) Conclusions

Why create this unity of law? Answers have already been suggested. First, Philo believed in the truth of the higher forms of Graeco-Roman law. He was convinced that truth could be found in Greek philosophy, in this case Greek legal theory, filtered through his Jewish perspective. He was convinced, that is, not only of the truth and reality of the law of nature, but of its connections to other, discrete forms of higher law. Philo was also convinced of God's provident creation, God's action in creation, and God's giving of the Mosaic law. There were many possibilities for contradiction in Philo's melding together of Greek and Jewish law, there was only one possibility for success: there could only be one, true law, to which the law of nature, the unwritten law, the living law, and the Mosaic law belonged.

There may be, of course, a second, more practical reason: the good of the community. Philo believed in the truth of the law of nature, but he probably realized, at the same time, the danger the notion could present to his community. Perhaps he even faced the danger from proponents of these higher laws. The law of nature, in the hands of Apostates or extreme Allegorists, could be used to undercut the written law: why should we follow

this national law of the Jews? We follow the one, universal law.

Paradoxically, then, the connection between the higher forms of law and the law of Moses, in the hands of Philo, probably saved the law of Moses from loss of status or non-observance. Philo rejected the possibility that the law of Moses might be transcended by higher forms of law; while he distinguished between the "inner" and the "outer" law, a "higher" and "lower" way to follow the law, the law of Moses remained untouched. The reality must be faced: the law of nature, except for its quality of preexistence, is contained in full in the law of Moses in Philo's work. The person with true understanding is able to see the law of nature in the law of Moses. The Greek sage in the work of Philo would act much like a Hebrew patriarch.

What then of the superiority of the law of nature in Philo's work? The Greeks and Romans do not offer us a valid comparison. They sought a superior law. Philo sought to protect his written law. The superiority of the law of nature in Philo is only relative: it goes to the heart of how people observe and understand the law, not the law itself.<sup>274</sup> The law of Moses is a guide for the weak and the ordinary, the majority of people, but it is not a

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<sup>274</sup> Nikiprowetzky, Le commentaire, 122f. Against, also, Yehoshua Amir, "Mose als Verfasser der Tora bei Philon" in Die Hellenistische Gestalt des Judentums bei Philon von Alexandrien (Neukirchen-Vluyn: Neukirchner, 1983), 96,100. He implies that the law of Moses is only quantitatively better than the laws of others.

weak and ordinary law. Philo attacks literalists, not for literally following the law, but for not understanding the law they follow.<sup>275</sup> The superiority of the law of nature tells us more about the state of those who fulfil it than about the relative merits or demerits of the Mosaic law in relation to it.<sup>276</sup>

If the written laws "hide" allegorical meaning, indeed, the true meaning, this does not imply a degradation, in principle at least, of the written law. The true nature of law could be found without these written guides, reason could guide the way; so technically a written code is not necessary. But without a written law, the results would be disastrous. The majority of people, ordinary and somewhat dull, could not observe the law.

Kleinknecht and Gutbrod have argued that Philo's attachment to the law of Moses was a contradiction because he would not give up the centrality of the law, even though it had nothing to do with the "sources of his religiosity."<sup>277</sup> Goodenough claims that finally the law of Moses is to be abandoned.<sup>278</sup> However close Philo comes to such conclusions by toying with Greek discussions of higher law, he never accepts them. He protects

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<sup>275</sup> Shroyer, "Literalists", 263-265. Mendelson, Philo's Jewish Identity, 4-5.

<sup>276</sup> As Barraclough, "Philo's Politics," 509 says, Philo wants people to live a life according to nature.

<sup>277</sup> H. Kleinknecht and W. Gutbrod, "Nomos" in TDNT, 1054.

<sup>278</sup> Goodenough, By Light, 54-71, 73-96.

the law of Moses so that all people have access to this great code of law, without which they would be lost.<sup>279</sup>

Philo, of course, could have ignored Greek discussions of the law, but that would have left the field to the extreme allegorists, a group who in fact could easily have become antinomists. Apart from that, Philo believed in the law of nature. He saw his chance to keep the Mosaic law strong by tying it to all forms of higher law so tightly that they became in practice, and almost in theory, one.<sup>280</sup> In attempting to protect the Mosaic law from superfluity, a real possibility, he produced a vision of law unique in the ancient world.

In the final analysis, Philo's unity of law seems to be not only a way to express God's creation of law and unity of purpose, but an attempt to protect the law of Moses from Hellenistic assaults, by Jews or Gentiles.<sup>281</sup>

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<sup>279</sup> Mendelson, Secular Education, 61 says that "Philo often speaks of the path on which progressive men find themselves as 'second best'. Yet he does not view this alternative pejoratively." Cf. Abr. 123, Somn. 1.44, Fug. 146, Mig. 171, Spec. 1.36-40.

<sup>280</sup> Myre, "La loi de la nature," 167. Myre says they are not identified, probably because the law of Moses is historically promulgated (Myre, "Les caractéristiques", 67) and so not pre-existent. The tension between the preexistence of the law of nature and the historical creation of the law of Moses cannot, I believe, be resolved. Nikiprowetzky, Le commentaire, 126, says, however, "Mais ce caractère temporel n'implique nullement dans la pensée de Philon que la Loi n'a qu'un caractère contingent."

<sup>281</sup> Shroyer, "Literalists", 281.

He recognized the danger to which allegorical understanding of law led, to which his own thought could have led. The way to superfluity was a possibility. In the famous passage in which Philo scolds the allegorists (Mig. 89-93), he has no more impressive argument to bring than that it is good for the community to observe the law.<sup>282</sup> Perhaps Philo had no other argument to bring, perhaps he believed that "true" knowledge leads to transcendence of the written law, but Philo was more than a theorist. If the "true" knower could ignore the law, who was to stop the lax follower?<sup>283</sup> Where do you draw the line? Philo drew the line at the observance of the law: it must be followed.

If Philo did see the Mosaic law as inferior, or not related to his chief source of religiosity, it is only in the sense that the law of Moses pointed beyond itself to the true nature of law and, therefore, his chief source of religiosity, namely, God. But as God was the author of all true law for Philo, we must be careful even in claiming that Philo believed the Mosaic law ought to be transcended. What, indeed, could that mean? To

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<sup>282</sup> Reinhold Mayer, "Geschichtsfahrung und Schriftauslegung - zur Hermeneutik des frühen Judentums" in Die hermeneutische Frage in der Theologie (eds. Oswald Loretz and Walter Stolz; Wien-Freiburg: Herder, 1968), 316-317. Mayer stresses the difficulty Philo faced in strengthening the role of the law of Moses. He points out "wie schwierig...die wörtliche Gebotserfüllung theoretisch zu fundieren war."

<sup>283</sup> Mendelson, Philo's Jewish Identity, 13.

transcend is to rise above, and in rising above the Mosaic law, Philo did not intend it to be superfluous, he intended the law to be truly understood. That did not mean leaving the law of Moses behind, it meant grasping it for what it truly was.

In taking over Greek views of law, Philo particularized a universal view of law, the law of nature, and universalized a particular law, the law of Moses.<sup>284</sup> Philo was intent on convincing the Hellenistic world that the law of nature had been uncovered, that the true law could be followed.<sup>285</sup> He extends Judaism to the world in Greek dress. In the words of André Myre:

Il y a comme une tendance chez les commentateurs à présenter Philon comme un Juif timoré, rempli de complexes d'infériorité, qui voyait s'écrouler le judaïsme dans la diaspora et voulait désespérement essayer de le sauver en l'hellénisant. Cette façon de voir ne peut tenir. D'abord Philon n'était certes pas conscient d'être hellénisé. Ensuite, il n'essayait pas de sauver le judaïsme. Au contraire, il voulait sauver le paganisme qu'il voyait se perdre dans une multitude mortelle de systèmes alors que la sagesse révélée.<sup>286</sup>

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<sup>284</sup> Helmut Koester, "Nomos Physeōs," 534.

<sup>285</sup> Wolfson, Philo Vol.2, 374-378 makes an important observation. Plato and Aristotle despaired of an ideal state because they had no ideal law; Philo had that law.

<sup>286</sup> Myre, "Les caractéristiques de la loi mosaïque selon Philon d'Alexandrie" in Science et Esprit 25 (1973), 66.

Philo is unique and often original in his thought on the law.<sup>287</sup> And far from becoming a subverter of the faith in his work on the law, he is, indeed, a protector.

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<sup>287</sup> John Dillon, The Middle Platonists, 143: "the work of Philo...deserves to be ranked as one of the more considerable tours de force in the history of thought."

## **CHAPTER FIVE: PAUL AND THE SUPERFLUITY OF THE LAW**

### I) PAUL AND THE PROBLEM OF THE LAW

Long after the churches to which Paul addressed his letters ceased to be living communities, the issues he raised in those letters continue to have a vibrancy which is sometimes startling. Could Paul have imagined how his statements concerning the Mosaic law would bedevil the minds of generations of scholars? That which Paul said has ended refuses to go away. That which for most Christians ceased being an issue on a day-to-day basis centuries ago continues to confound scholarship. Is scholarship confused? Or is Paul unclear?<sup>288</sup>

To enter the debate concerning Paul and the law, even in a limited sense, a debate into which some of the great Biblical minds of the past two generations have entered with renewed vigour, is to claim to bring something new. It is an implicit claim that there may be something more which can both clarify Paul's statements and reduce the confusion. This is a tall order. Its premise here, and its promise, lies in the fact that in the

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<sup>288</sup> See Stephen Westerholm, Israel's Law and the Church's Faith (Grand Rapids: Eerdmann's, 1989), 198 for the quip that he will consider Paul's view on the law confused when the sought-for scholarly likemindedness is found on other issues of comparable importance.

recent outpouring of literature on Paul, no one has seriously and systematically considered the possible Greek influences on Paul's view of the law.<sup>289</sup>

This study is not an attempt to pull Paul away from his Jewish roots, carefully studied by a generation of scholars, and argue for a Greek Paul. It is an attempt to argue for a more balanced view of Paul; a view which pays careful attention to the varied nuances of a complicated man, and the nuances of a complicated age.

This chapter looks at one aspect of Paul's view of the law: the notion that though the law has ended, its precepts no longer binding upon the Christian, Christians are still to "fulfil" the law, the whole law. The Mosaic law is superfluous for Christian behaviour, but the Christian alone fulfils it. Our aim in the coming chapters is to find out if there is in the Greek world precedent for and influence on Paul's view of the end of the law.

Before we seek insight into Paul's view of the law in the world of Hellenism, it is important to show both that Paul believes that the law for the Christian has come to an end - for this position has always been under

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<sup>289</sup> The desire to concentrate on Paul's Jewish background, to the detriment of possible Greek influences, may still be an overreaction to the excesses of the religionsgeschichtliche Schule. See D.H. Wiens, "Mystery Concepts in Primitive Christianity and in its Environment" in ANRW II.23.2, 1262-1263.

attack - and that there was no history of speculation in Jewish thought that the virtuous would no longer need the law at some ideal point in history. Following this, we will ask if there is any precursor in Hellenistic thought that the (written) law may be fulfilled by the virtuous without actually carrying out the precepts of a given body of law.

#### A) The Abolition of the Law

The question whether or not Paul meant that the law, the sum of the commandments and prohibitions given by God to Moses on Mt. Sinai, has ended for Christians, and in what sense (if any) he meant this, is still debated. Stephen Westerholm, in his recent monograph, Israel's Law and the Church's Faith, has maintained that the Mosaic law, in the writings of Paul, is clearly not binding upon Christians. Westerholm's is a major statement, but that the question is not resolved is clear from the appearance recently of the monographs of Frank Theilman<sup>290</sup> and Brice Martin.<sup>291</sup> Both argue for the continuing binding validity of the law upon Christians in the letters of Paul.

Theilman argues that Paul simply fights against life "under law" - under the curse which the law pronounces on sin", but still intends

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<sup>290</sup> Frank Theilman, From Plight to Solution (NTS LXI; Leiden: E.J. Brill, 1989).

<sup>291</sup> Brice Martin, Christ and the Law in Paul (NTS LXII; Leiden: E.J. Brill, 1989).

Christians to keep the law.<sup>292</sup> Martin argues that Paul sees the law as a norm of life, not as a way of salvation.<sup>293</sup> He also claims that Paul distinguishes between the moral and ceremonial law and insists that it is the moral law which enslaves those who are not Christians. The Christian follows the moral law as a guide for good behaviour, but is not a slave to it.<sup>294</sup> The ceremonial law is not abrogated, it is simply not valid for Christians.<sup>295</sup> C.E.B. Cranfield has also attempted to show that the law which has been abolished is only a perversion of the Mosaic law; the true law still stands.<sup>296</sup>

There is also Heikki Räisänen's contention that Paul, in his confusion, argues that the law is truly abolished, yet is unable to take his conclusions to their logical end.<sup>297</sup> Räisänen takes issue with claims such as Cranfield's, but adds a new twist to his position. Any claim that Paul only speaks of the abolition of a misunderstanding of the law (so Cranfield)

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<sup>292</sup> Theilman, Plight, 50.

<sup>293</sup> Martin, Christ, 53.

<sup>294</sup> Martin, Christ, 53, 144,156.

<sup>295</sup> Martin, Christ, 146-147, 154.

<sup>296</sup> "St Paul and the Law" in SJTh 17 (1964), 43-68; A Critical and Exegetical Commentary on the Epistle to the Romans. Vols. I-II ICC. Edinburgh, 1975-1979.

<sup>297</sup> Heikki Räisänen, Paul and the Law (Philadelphia: Fortress Press, 1986).

or that the Torah is now the "law of Christ" are wrong.<sup>298</sup> Paul really speaks of the abolition of the law: Christ is the end, not simply the goal, of the law.<sup>299</sup> Even this, however, is not - for Räsänen - the whole story.

There are "Pauline statements which have quite a different ring."<sup>300</sup> Räsänen believes that Paul retains some kind of "kernel law" and as a result maintains "two conflicting lines of thought": the law is both

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<sup>298</sup> Räsänen, Paul, 42-52. The continuing relevance of the Mosaic law in Paul's thought has been a concern largely of German scholarship. Gerhard Friedrich argued that the law, newly seen and understood through the act of Jesus Christ, continued to be relevant to Christians ("Das Gesetz des Glaubens Rom.3,27" in Th.Z. 10 (1954), 401-417). Friedrich bases his argument exclusively on Rom.3:27, claiming that the "law of faith" is the Mosaic law done under the guidance of the Spirit. Friedrich rejects this interpretation for other similar passages, such as Rom.8:2 and Gal.6:2, accepting the traditional understanding of nomos in these passages as "principle" or "rule".

Eduard Lohse, following Friedrich, expanded the argument ("Ho Nomos Tou Pneumatos Tēs Zōēs: Exegetische Anmerkungen zu Rom 8,2" in Neues Testament und Christliche Existenz: Festschrift für Herbert Braun zum 70. Geburtstag. (eds. H.D. Betz u. L. Schottroff; Tübingen: J.C.B. Mohr, 1973). He argued that both Rom.3:27 and Rom.8:2, with their respective references to the "law of faith" and "the law of the Spirit of life," spoke of the Torah, properly understood and done under the guidance of Christ. Hans Hübner (Das Gesetz bei Paulus: Ein Beitrag zum Werden der paulinischen Theologie. FRLANT 119. Göttingen, 1980). and Peter von der Osten-Sacken (Paulus und das Gesetz. Wegweisung. VIKJ 8, 59-66. Berlin, 1980) have more recently argued much the same position.

<sup>299</sup> Räsänen, Paul, 53-56.

<sup>300</sup> Räsänen, Paul, 62.

abolished and permanently normative.<sup>301</sup> Paul wants it both ways: he wants to uphold what he claims to destroy.<sup>302</sup>

These, then, are their claims: Paul declares invalid a misunderstanding of the law, or replaces the Mosaic law, either with the Torah properly understood or with the law of Christ; or, Paul does indeed abolish the law, but nevertheless, for inexplicable reasons, still maintains a "kernel" or partial law. One way or the other, Paul, according to these scholars, is hanging on for dear life to some kind of law. He cannot let go. But who, in fact, cannot let go?

Paul's claims about the law are not simple - difficulty in interpretation is due to the difficulty of the texts - but on the question of the Christian's relationship to the law of Moses, it seems that some degree of unanimity should be attainable. Paul does speak about the end of the law for Christian ethics and behaviour.

Paul believed that the coming of the Christ fundamentally changed the relationship of his followers to the Mosaic law. Righteousness, according to Paul, is to those who follow God in faith, not through the law

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<sup>301</sup> Räisänen, Paul, 64,67,69.

<sup>302</sup> Frederick C. Grant, Roman Hellenism and the New Testament (New York: Charles Scribner's Sons, 1962), 135 argued much the same thing years ago in a less developed form. See his Chapter Seven, "Paul the Pharisee."

(Rom.4:13-16; Gal.3:1-14). He writes further of being justified by faith in Christ, not works of the law (Gal.2:16-21).

Paul draws a contrast between the law and the Spirit, and between Jews under the law and Christians under the Spirit. In Rom.6:15 Paul states that the Christian is not "under law," but "under grace." In 2Cor.3:6 Paul argues that he is the minister of "a new covenant, not in a written code but in the Spirit; for the written code kills, but the Spirit gives life". Christians have "died to the law through the body of Christ" and now are "discharged from the law, dead to that which held us captive, so that we serve not under the old written code but in the new life of the Spirit" (Rom.7:4-6). The antithesis seems rather clear and obvious, but a number of commentators see a law which remains binding for Christians.

Theilman argues that Paul still derives moral commandments from the Torah, partially on the basis of the similarity between the Torah and Paul's ethical prescriptions for Christians; but this cannot be upheld.<sup>303</sup> There is, indeed, extensive overlap between Paul and the Torah, but Paul does not derive his standard of Christian moral behaviour from the Mosaic law. Sins against the Spirit may indeed be sins according

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<sup>303</sup> Theilman, Plight, 49-50; cf. E.P. Sanders, Paul, the Law and the Jewish People (Philadelphia: Fortress Press, 1983), 94-96, 105-114.

to the Mosaic law; Paul, after all, does not derive proper Christian behaviour by opposing it at each point to the demands of the Mosaic law.

But Paul's very real difficulty is that he cannot, or will not, rely on the Mosaic law to determine moral precepts (Rom.3:8;6:1,15; Gal.2:17;5:13; 1Cor.6:12;10:23). If he was deriving his ethical commands from the Mosaic law, he would have said so. If he was deriving them from a new law of Christ, why would he remain quiet about it? If Paul followed the law of Moses, would he concede that "all things are lawful to me" (1Cor.6:12; 10:23)?<sup>304</sup> That the ideal behaviour of Christians overlapped with behaviour prescribed in the Mosaic law is not proof that Paul derived his ethical teachings from the Mosaic law.<sup>305</sup> The abolition of the law did not imply the abolition of morality.<sup>306</sup>

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<sup>304</sup> Westerholm, Israel, 208.

<sup>305</sup> Westerholm claims that if Paul thought part of the Mosaic law was binding on Christians, he would have had to offer "detailed instructions" for his congregations on which parts they were to observe, Israel, 208.

<sup>306</sup> There is the related question whether Paul distinguished the ceremonial law from the moral law. Paul nowhere makes this division. The law for Paul was a unit. The division is modern. Statements such as Martin's: "keeping the commandments of God has nothing to do with such external matters as circumcision or uncircumcision" (Christ, 146-147); or Theilman's: "it is difficult to see any great difference between what Paul says in (Gal.) 5:14 and what Philo describes as the principle theme of sermons heard in the synagogues of 'every city'" (Plight, 52) are rather bizarre. Philo never questions the unity of the law, and neither does Paul. When Paul speaks of the abolition of the law, he knows how far he goes.

Paul's letters indicate, as Westerholm says, that the "Jew is under the law (1Cor.9:20); the Christian is not (Rom.6:14-15; 1Cor.9:20)."<sup>307</sup> Christians are not free from only a "curse" of the law or the law as understood before Christ.<sup>308</sup> The Christian is not free from a perversion of the law, any more than the Jew is necessarily under a perversion of the law, but free from the law itself. It must be added that Paul would be somewhat perverse himself if he both played at being under the law (1Cor.9:20) and at the same time demanded that Christians continue to do the law.

Christians have died to the law. Paul's statements in Gal.3:19-4:5 cannot "be restricted to the law's curse, to the law as a means of salvation, or to a misunderstanding of the law."<sup>309</sup> The law which is abolished must be the Mosaic law itself. Christians are to derive their ethical behaviour by

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<sup>307</sup> Westerholm, Israel, 205. Stephen Westerholm's work on the abolition of the law is to my mind persuasive (198-218). He examines carefully and systematically Paul's claims about the abolition of the law, Christian fulfilment of the law, and Paul's basis for Christian ethics without the law. He sees a coherence in Paul's claims that the law itself has been abolished, not merely its ritual commands, or curse. A Paul who demanded obedience to the law, even only to its moral commands, "would hardly be pressed to refute the charge of promoting iniquity"; but Paul was called upon to do so (199).

<sup>308</sup> See, for instance, Martin, Christ, 34; Cranfield, Romans Vol.II, 852-860; Friedrich, Gesetz, 409,415; Lohse, Ho nomos, 281, 287. See Räisänen's decisive refutation in "Das 'Gesetz des Glaubens' (Röm 3.27) und das 'Gesetz des Geistes' (Röm 8.2)" in NTS 26 (1979-1980), 101-117.

<sup>309</sup> Westerholm, Israel, 207; cf. also Räisänen, Law, 42-50.

discerning the Spirit of God, not by calling upon a law. The Christian must rely on the uncodified Spirit: if the way was clear to Paul, what he would find along the way was not (e.g., 1Cor.6,8). Paul could rely on no simple answers.

Up to this point, at least, Westerholm and Räisänen are agreed. It is here that, according to Räisänen, Paul draws back from his radical statements about the law. Paul tries to preserve some kind of law. This preservation is seen in statements such as Gal.5:14, Rom.13:8-10, and Rom.10:4. Räisänen believes that this attempt to preserve what Paul has thrown away is the product of unresolved tensions and problems which Paul has.<sup>310</sup> Paul has, in his letters and in practice, torn down the law (Gal.2:18), so how can he claim to fulfil it?

Paul's talk of fulfilment of the law does not imply that Christians are to follow the Mosaic code.<sup>311</sup> Surely Paul was aware that Christians were not "doing" the entire law. That Paul says Christians fulfil "the just requirement" (dikaiōma) of the law in Rom.8:4 suggests that Paul is aware that Christian behaviour is not based upon obedience to the precepts of the law. When Paul says that Christians fulfil the law in the love code

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<sup>310</sup> Räisänen, Law, 62-71, 82-83.

<sup>311</sup> Westerholm, Israel, 200.

(Rom.13:8-10; Gal.5:14), he has not forgotten that the one who abides by the law must keep the whole law (Gal.5:3).

Paul's claim that Christians fulfil the law is partially a polemical statement: if Jews transgress the law, then Christians must fulfil it.<sup>312</sup> The latter are not said to "do" the law.<sup>313</sup> Christian behaviour is never prescribed by the Mosaic law, but Christians somehow "fulfil" this law. Paul is, indeed, saying that Christian conduct is in some sense better than Jewish conduct.

To "fulfil" the law thus implies that the obedience offered completely satisfies what is required.<sup>314</sup>

Fulfilment does not imply, however, the complete "doing" of each of the law's requirements, nor does it mean that Christians are subject to this law. If such "fulfilment" strikes us as polemical, or - in light of Christian behaviour over two millenia - overly optimistic, this does not alter Paul's claim.

How Paul came to this view is another question. Are there other discussions in ancient thought where people are said to fulfil a law each of whose precepts they do not necessarily do? Are there other discussions

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<sup>312</sup> Westerholm, Israel, 201.

<sup>313</sup> Westerholm, "On Fulfilling the Whole Law (Gal.5:14)" in Svensk Exegetisk Årsbok 51-52 (1986-87), 229-237.

<sup>314</sup> Westerholm, Israel, 204.

where people are said to live without written law and yet remain lawful? How did Paul arrive at this admittedly odd formulation of Christian ethical behaviour? The search for antecedents will review the claim sometimes made that Judaism itself foresaw a Messianic age without the law, and then examine in depth Greek discussions concerning "higher," that is, non-material, forms of law, and how they relate to Paul's statements about the Mosaic law and Christian fulfilment.

#### B) Jewish Thought and the End of the Law

Two major strands of ancient Jewish thought will concern us here: the Old Testament and the Rabbinic tradition. Are there similar reflections about the end of the law and its fulfilment by other means? Some have suggested there are.

##### 1) Old Testament

There are a few OT passages which have been used to explain Paul's theology of the law, at least in part. The best known, and most significant, of these passages is Jer.31:31-34.<sup>315</sup> This passage speaks of a new covenant with the house of Israel. When this new covenant is made, says Jeremiah, the law will be placed within the Israelites, written on their

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<sup>315</sup> See Räisänen, Law, 240-245 for a discussion of the various views held on this passage, and his response, with which I am in almost total agreement.

hearts. This law written on the heart is said by some to have influenced Paul's view of a people without the law who nevertheless fulfil the law.<sup>316</sup>

There are a number of factors mitigating against Paul's use of this passage, however, for his theology of law. Though a new covenant will be made, Jeremiah does not speak about a new law. Rather he speaks of the law, the Mosaic law, written upon the hearts of the Israelites - the old law indelibly marked upon them. The "end" of the law, a life without law, is not envisaged in Jeremiah 31. The opposite, in fact, is seen: the beginning of a new ability and desire to follow the old law.<sup>317</sup> Paul does not speak of Christians possessing a better ability to do the precepts of the law; he says they will fulfil the law.

As Räisänen has also pointed out, Paul has in Jer.31 a built-in explanation for his view of the law if this is what he means to say.<sup>318</sup> Yet Paul does not cite the passage. It is strange that he would have avoided referring explicitly to this text if it was in his mind.

Ezekiel 11:19-21 seems similar as well to Paul's talk on the law. In this passage there is envisaged at some future time the promise of a new

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<sup>316</sup> H.-E. Eckstein, Der Begriff Syneidesis bei Paulus (Tübingen: J.C.B. Mohr, 1983), 156.

<sup>317</sup> Räisänen, Law, 241: "The point of Jeremiah 31:31-34 is undoubtedly the miraculous change in man's attitude to God's law."

<sup>318</sup> Räisänen, Law, 245.

heart and a new spirit. A new heart and a new spirit will be given so that Israel will be better able to keep the statutes and ordinances of the Mosaic law. There is no talk, however, of the end of the law, or the fulfilment of the law by some other means.<sup>319</sup> A changed or abolished law, much less a people who fulfil the law without the law, is not considered.

The major theme running through these two passages and others sometimes considered with them (e.g., Ezek.36:25-27; Deut.30:6-10) is the ability of Israel to better fulfil the law as it was given. The law does not pass away. There are some obvious similarities with Paul's thought in these passages, in terms of "newness" of heart or spirit, and Paul probably writes under their influence (i.e., 2Cor.3:3), but these do not directly impinge on his statements about the law. The law and the observance of the law are never doubted in the OT. Nowhere in the OT is Paul's radicalism regarding the law approached - its end is not considered.<sup>320</sup> Had Paul meant in his statements regarding the law what the OT says about the law, he would have used the OT passages.

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<sup>319</sup> Räisänen, Law, 244.

<sup>320</sup> Stephen Westerholm is correct when he claims that divine covenants had previously been declared void; Paul therefore might have had general precedent, but he does not have specific precedent from the OT: Israel, 163-164.

## 2) Rabbinic Thought

If the OT holds no promise as a source for Paul's theology of the end of the law, perhaps Rabbinic thought does. There has been much discussion whether or not Paul's view of the law in this respect had its roots in Rabbinic thought.<sup>321</sup> Heikki Räisänen says that "it has repeatedly been suggested that it was a common expectation in Judaism that the law would cease in the Messianic age."<sup>322</sup> On what is this suggestion based? Generally on a body of from 10 to 14 passages. These passages are taken from all forms of Rabbinic literature; some are late and some are not explicitly concerned with the abrogation of the Torah.<sup>323</sup>

The major study is W.D. Davies' Torah in the Messianic/ Age to Come. In his study Davies concludes that the evidence for a new Torah in the Messianic age (that is, for an abolition of the old Torah and its replacement) is not strong.<sup>324</sup> It is true that the cessation of certain enactments is foreseen, for instance in Leviticus Rabbah 9.7 and Yalqut on Proverbs 9.2, but not only are these texts late, these enactments are

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<sup>321</sup> See W.D. Davies, Torah in the Messianic/ Age to Come (Philadelphia: Society of Biblical Literature, 1952); H.J. Schoeps, Paul (trans. Harold Knight; Philadelphia: Westminster Press, 1961), 177-180; see Räisänen, Law, 237, for a discussion of the views of the proponents of this view.

<sup>322</sup> Räisänen, Law, 236-237.

<sup>323</sup> Räisänen, Law, 237-238; cf. also Davies, Torah, 5-6.

<sup>324</sup> Davies, Torah, 90.

individual.<sup>325</sup> Though a number of rabbinic sources suppose a modified Torah, none suppose an abolished Torah: obedience to the Torah remains a mark of the Messianic age.<sup>326</sup>

Davies' thorough study also stresses the lateness of many of the sources. The lateness of some texts, some dated to the third, fourth, even tenth centuries, makes claims of Paul's knowledge of their ideas even more unlikely. It may be better in some cases to argue for Pauline, or at least Christian, influence upon the Rabbinic texts.

The main point, however, is that even those texts which could possibly maintain traditions which date back to Paul's lifetime are not unequivocal. The law is nowhere said to come to an end in its entirety. Again, following Räsänen, if Paul is aware of such Rabbinic traditions, and we ought to suppose he would be, he would have exploited such information with the Jerusalem Christians or the Judaizers on the mission field to avoid criticism with regard to his stance on the law.<sup>327</sup> And if such traditions existed, the criticism from Judaizing Christians which Paul faces seems rather inexplicable.

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<sup>325</sup> Davies, Torah, 54-56; Räsänen, Law, 238.

<sup>326</sup> Davies, Torah, 66, 84.

<sup>327</sup> Räsänen, Law, 239.

Paul's idea was not common among Jews; it was shocking. Paul knows it is shocking. While he is not averse to speaking his mind bluntly, he is even less averse to using any ammunition that lies close to hand in building a defense or an attack. Rabbinic traditions about the end of the law are potent ammunition. As Samuel Sandmel bluntly says, Paul did not get his idea about the end of the law from the Rabbis.<sup>328</sup> From where then did his idea come?

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<sup>328</sup> Samuel Sandmel, "Parallelomania" in JBL 81 (1962), 4.

## **CHAPTER SIX: PAUL AND THE GREEK WORLD**

If Paul's views of the abolition of the law have no firm basis in Hebrew thought, do they perhaps have a basis in Greek thought? The path of Hellenism in this discussion is not often travelled these days, due both to the excesses of past scholarship and to the realization of the difficulty of disentangling what is "Greek" from what is "Jewish" in Paul. There is also the question of how deep Paul's Hellenism goes. There is a wealth of source material with which to compare Paul's thought, but how familiar was he with it? We know that he knows the OT, that he was a Pharisee, but how much Stoicism did he know? The difficulties of trying to locate Paul in a Hellenistic milieu are serious enough to warrant a preliminary investigation regarding the worth of the endeavour.

### **I) Paul's Hellenistic Environment**

How can we tell what is Greek and what is Jewish thought?<sup>329</sup>

How do we know whether Paul was aware of the technical nature of some of

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<sup>329</sup> See Saul Lieberman, "How Much Greek in Jewish Palestine" in Texts and Studies; Greek in Jewish Palestine; and Hellenism in Jewish Palestine; and Martin Hengel, Judaism and Hellenism (Tübingen: J.C.B. Mohr, 1973) for the interconnections between the two thought-worlds in the centuries preceding Paul.

his language? Did Paul know Greek thought, or texts, to any degree? Did he have any Greek education? Did he even grow up in Tarsus?<sup>330</sup> Is his Greek good enough to suggest awareness of Greek rhetorical tradition? Or is his knowledge of Hellenism limited to that which is "in the air," that which any normally bright person might ingest? The perils of examining Pauline thought and its connections to Greek thought are well-known, but the questions cannot be avoided.

There is no doubt that Paul's crackling intellect, self-confidence, and unique vision and sense of mission make him difficult to compare to others. He is a great original.<sup>331</sup> This should not dissuade us though from seeking possible influences on his writings and thought. Paul was a man of two worlds, and one of these worlds is routinely ignored on the matter of law.

With regard to Paul's theology of law, a deadend may be reached when we examine the Greek sources, but it is a road not travelled recently, and one which will, whichever direction it takes us, tell us much about Paul. Did the Hellenistic world influence Paul's belief that the Mosaic law

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<sup>330</sup> See W. van Unnik, Sparsa Collecta, I. (NTS 29; Leiden: E.J. Brill, 1973) for the view that he did not. This will be discussed in Appendix 2 to this chapter.

<sup>331</sup> Sandmel, "Parallelomania", 4-5; B.F. Meyer, Critical Realism and the New Testament (Allison Park, Penn.: Pickwick Publications, 1989), xiii speaks of Paul's "audacious" theology.

had come to an end, but was somehow still being fulfilled? As already stated, the question needs something of an overview of Paul's connections to the Hellenistic world. These connections prove nothing in themselves, however; the burden of proof can only lie with the exegesis of the relevant texts.

The excesses of the religionsgeschichtliche Schule have turned a generation of scholars from Hellenism and its ties to Paul. Though Paul is said to be a man of two worlds, it is demonstrably clear that the one which matters most today is Judaism.<sup>332</sup> Researchers point out that it is difficult to know what is Jewish and what is Greek in Paul's work because of the close ties between the two cultures for over two centuries before the common era. What this finding, correct as it is, has resulted in, however, is that Jewish concepts behind Paul's work have been uncovered, while Hellenistic concepts continue to lie buried. Surely, though, the Hellenistic environment and its effects on Paul, both general and specific, should not be judged wanting in advance of careful and focused study. The individual

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<sup>332</sup> D.H. Wiens, "Mystery Concepts" in ANRW.II.23.2 1262-1263; John Ziesler, Pauline Christianity (Oxford: Oxford University Press, 1983), 5-10. Dom Gregory Dix, Jew and Greek (Westminster: Dacre Press, 1953), 3, says, "S. Paul has by now stood his trial on the charge of 'Hellenising' Christianity to make it acceptable to the Greeks - and the verdict is decisively 'Not Guilty'. Have his advocates tried to prove too much? It would not be altogether surprising if in a few years' time he had to stand another trial, on a charge of 'Rabbinising' a Galilean Gospel and making it unintelligible to Greeks."

question is where the burden of proof lies. These are some general considerations.

Paul was a Roman citizen and a native of Tarsus in Cilicia.<sup>333</sup>

Paul was the Apostle to the Gentiles both by his own admission (Gal.1:16,2:8) and by that of Luke (Acts 15:6-35).<sup>334</sup> He was raised in the Greek world and spent much of his life after his conversion to Christianity in the Greek world. Paul wrote in Greek for Greek-speaking audiences.

Paul learned his Greek in Tarsus, a city of trade for the most part, but also containing a noted Stoic academy.<sup>335</sup> Strabo records a short survey of Tarsus in his Geography, in which he claims that the people of Tarsus outstripped those of Athens and Alexandria in their zeal for philosophy and learning.<sup>336</sup> Strabo also lists a number of Stoic teachers from Tarsus. J.B. Lightfoot, in his seminal essay "St. Paul and Seneca," lists six teachers from Tarsus, some others who may have come from Tarsus, and

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<sup>333</sup> Paul's citizenship and place of birth are discussed in Appendices 2 and 3.

<sup>334</sup> It is also recognized by Peter, James, and John in Gal.2.

<sup>335</sup> Max Pohlenz, "Paulus und die Stoa" in ZNW 42 (1949), 69.

<sup>336</sup> Strabo, Geography XIV, 683; but interestingly, see Philostratus, Life of Appolonius of Tyana, 1.7 for a different view of Tarsus. Tarsus is "little conducive to the philosophic life" and "nowhere are men more addicted than here to luxury." See also Dio Chrysostom, Orats. 33 and 34, for rather negative, and very funny, views of Tarsus.

others from neighbouring regions.<sup>337</sup> Max Pohlenz, after citing the passage from Strabo just noted, says:

no doubt a Greek speaker and one from an elevated class of people like the Jews, such as Paul, would have certainly in his youth there assimilated a degree of Hellenistic learning and, specifically, also come in contact with the Stoics.<sup>338</sup>

While the specific contact with Stoic thought need not concern us now, it is time to see what can be made of these supposed and alleged contacts with Greek thought.

## II) Paul's Relationship to the Language and Culture of Hellenism

We know that Paul writes in Greek, but how does Paul write in Greek? Does his use of the language give us clues as to his ties to Greek culture and learning? On any reading Paul is no learned classicist, but some have considered him a barbarian. F.W. Farrar, writing more than a century ago, quotes M. Renan as saying, "If the Apostle had ever received even elementary lessons in grammar or rhetoric at Tarsus, it is inconceivable that he would have written in the bizarre, incorrect, and non-Hellenic style of his letters."<sup>339</sup>

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<sup>337</sup> J.B. Lightfoot, "St. Paul and Seneca" in St. Paul's Epistle to the Philippians (London: Macmillan, 1881), 304.

<sup>338</sup> Pohlenz, "Paulus," 69. My translation.

<sup>339</sup> F.W. Farrar, The Life and Work of St. Paul (London; Cassell and Co., 1888), 693.

At the turn of the century and in the early twentieth century, this negative assessment of Paul's Greek was replaced by praise. Under the influence of Adolf Deissmann, who compared Paul's Greek to that of non-literary sources, specifically papyri, Paul's "incorrect" Greek became "natural" Greek.<sup>340</sup> As opposed to writing "artificial" literary Greek, Paul wrote for the common person.

Deissmann soon had dissenters. H.A.A. Kennedy claimed that there was an "unexpected purity" in NT Greek.<sup>341</sup> His study, too, had something to prove: "the New Testament was not mere hack-work."<sup>342</sup> Kennedy was intent on showing NT Greek in its relationship to the LXX and the common literary Greek of the day.

Years ago Greek figures of speech in Paul were standard knowledge among Biblical scholars. While that time has passed for most, they are still, or again, being considered today as indicators of Paul's connections to the Greek world. Scholars such as Duane Watson, David

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<sup>340</sup> Adolf Deissmann, Light from the Ancient East (London: Hodder and Stoughton, 1927), 62,69,72,143,234-240.

<sup>341</sup> H.A.A. Kennedy, Sources of New Testament Greek (Edinburgh: T&T Clark, 1895), 62.

<sup>342</sup> Kennedy, Sources, 71.

Aune, H.D. Betz and A.J. Malherbe, among others, are rediscovering Paul's use of Greek and what it tells us about Paul the thinker.<sup>343</sup>

Specifically, they are discovering Paul the rhetorician. David Aune argues that understanding classical rhetoric can help us understand Paul's letters.<sup>344</sup> Duane Watson applies Greco-Roman rhetoric to passages of Paul's letters.<sup>345</sup> H.D. Betz claims that Galatians can "be analyzed according to Greco-Roman rhetoric and epistolography."<sup>346</sup>

The claims being made for Paul as a rhetorician today, however, seem to have fallen into excess. The fact that Paul is being studied on the basis of classical rhetoric, according to the handbooks of Aristotle, Cicero, and Quintilian, implies an author who has been schooled in such writing.

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<sup>343</sup> See F.W. Farrar, Paul, for a review of Greek figures of speech in Paul. It remains an excellent introduction.

<sup>344</sup> David E. Aune, The New Testament in its Literary Environment (Philadelphia: Westminster Press, 1987), 158-170, 183-202.

<sup>345</sup> Duane Watson, "1Cor 10:23-11:1" in the Light of Greco-Roman Rhetoric" in JBL 108/2 (1989), 301-318.

<sup>346</sup> H.D. Betz, Galatians. Hermeneia (Philadelphia: Fortress Press, 1979), 14; cf. 14-23.

This seems an excessive claim.<sup>347</sup> Paul neither writes the Greek of the rhetoricians, nor betrays their precision in his thought.<sup>348</sup>

That Paul writes excellent koinē Greek is not in question, nor is his use of some figures of speech.<sup>349</sup> Paul may have had an elementary Greek education, though this is not certain.<sup>350</sup> Some of Paul's figures of speech may be accounted for by the fact that a speaker of Paul's capabilities would naturally employ them: not every powerful speaker or writer is a trained one.<sup>351</sup> Some figures of speech may be due to Paul's Jewish training.<sup>352</sup> Others may, in fact, be due to the work of Paul's

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<sup>347</sup> The claim is made by the aforementioned authors. See also Stanley K. Stowers, The Diatribe and Paul's Letter to the Romans (SBLDS 57; Chico, Calif.: Scholar's Press, 1981). See Nigel Turner, James Moulton's A Grammar of New Testament Greek. Vol.III. Syntax. (Edinburgh: T&T Clark, 1963), 2, for a negative assessment of the influence of classical rhetoric upon Paul's letters.

<sup>348</sup> For a similar assessment of Paul's Greek, albeit far more learned and extensive, see Eduard Norden, Die Antike Kunstprosa. II (Stuttgart: B.G. Teubner, 1958), 492-510. Norden says, for example, of G. Heinrici's attempt to connect Paul to the literature of the philosophers and rhetoricians, "muss ich laut Protest erheben" (493).

<sup>349</sup> Turner, A Grammar, 342-346.

<sup>350</sup> Farrar, Paul, 696. Paul himself seems to speak against his rhetorical skills: 1Cor. 2:1-4, 2Cor. 10:10.

<sup>351</sup> For instance, Litotes, "understatement so as to intensify, affirmation expressed by the negative of the contrary" (Farrar, Paul, 680), may occur naturally in any capable writer's work, as it does in Rom.2:28 or Phm.11, 18.

<sup>352</sup> Joachim Jeremias, "Chiasmus in den Paulusbriefen" in ZNW 49 (1958), 145-156 argues for the Semitic influence upon figures such as Chiasmus. See also Turner, A Grammar, 345.

amanuensis.<sup>353</sup> H. Böhlig's warning in Geisteskultur von Tarsos remains relevant: if one wants to discuss Paul's Greek one has to take into account his relationship not only with the classical Greek, but with Hellenistic Umgangssprache, with the Septuagint, with Hebrew literature, and with the Apocrypha and Pseudipigrapha.<sup>354</sup> The recent literature has not taken into account the many possible sources of and influences on Paul's Greek.

What we cannot ignore, of course, is Paul's command of the Greek language. Paul wrote in Greek and used Greek in his day-to-day life. Robert Grant says that "Paul uses the ordinary Greek of the Hellenistic world...but he makes everything his own."<sup>355</sup>

He can vary his words where repetition would produce greater clarity; he can repeat where repetition results in monotony. He can work out studied sentences almost

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<sup>353</sup> E. Iliff Robson, "Composition and Dictation in New Testament Books" in JThS 18 (1917), 288-301 argues that the role of the amanuensis may indeed be great. Though this is not true in every case, "we must be much more cautious than ever in using arguments from style. Between studied composition and rough viva voce extemporizing was a great gulf. One whole Epistle might be composed, another dictated; it would be difficult to ascribe them to the same author" (299).

<sup>354</sup> H. Böhlig, Die Geisteskultur von Tarsos im augusteischen Zeitalter mit Berücksichtigung der Paulinischen Schriften (FRLANT, NF 2; Göttingen, 1913), 155. How much Paul learnt from Hellenized Jewish compatriots is also not clear. Apollos was said to be learned in Greek thought. As well, he was from the centre of Jewish-Hellenistic thought, Alexandria.

<sup>355</sup> Robert Grant, A Historical Introduction to the New Testament (London: Collins, 1963), 176.

worthy of a rhetorician, or he can pile up clauses and synonyms in a completely unrhetorical way.<sup>356</sup>

That he is not a classicist does not render him, pace Renan, a barbarian: somewhere in between is Paul, a man at ease with the Greek language.<sup>357</sup>

That Paul is not a classically trained rhetorician is also indicated by the lack of any substantial body of quotations or allusions to classical literature. There are disagreements about how many references Paul makes to Greek literature and their importance. There are, though, three quotations which are generally acknowledged:

1) Krētes aei pseustai, kaka thēria, gasteres argai  
(Tit.1:12): attributed to the Cretan poet Epimenides.

2) tou gar kai genos esmen (Acts 17:28):  
found in Cleanthes' Hymn to Zeus.

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<sup>356</sup> Grant, Historical Introduction, 176.

<sup>357</sup> There are also in Paul Greek figures of sound. The most obvious use of sound is paronomasia, and this can be of several types. It may be dependent on the change of one or two letters: Rom.1:29,30;11:17. It may be dependent on words of similar sound or derivation: Rom.1:28;2:1;12:3; 1Cor.7:31;11:29; 2Cor.3:2;4:8;6:10; 2Thess.3:11; Phil.3:2,3. Or it may rest upon a play on names: Phm.11,20; Phil.4:3. These indicate Paul's comfort with and knowledge of the language. See Farrar, Paul, 695-701.

On a very few occasions I refer to Colossians or 2 Thessalonians as genuine letters of Paul. I am well aware of the debate which surrounds the authenticity of these letters (cf. John A. Bailey, "Who Wrote II Thessalonians?" in NTS 25 (1978-79), 131-45; I. Howard Marshall, 1 and 2 Thessalonians (Grand Rapids: Eerdmans, 1983); Werner Georg Kummel, Introduction to the New Testament rev. ed. trans. Howard Clark Kee (London: SCM, 1975), 335-48), but I am not convinced that they are not authentic. Nevertheless, at no point does an argument of mine depend on a passage from one of these two letters.

3) Phtheirusin ēthē chrēsta homiliai kakai  
(1Cor.15:33): from Menander's Thais.

These are certainly not decisive evidence, especially due to questions about the authenticity of Titus and about the usefulness of the Acts material as a source for knowledge of Paul. Of course, even if Paul did not utter either of these statements, it is noteworthy that two different authors found it plausible to have Paul say such words. The Menander quotation is simply a Sprichwort and does not signify a knowledge of Greek texts.<sup>358</sup>

Paul does utilize imagery, however, from Greek philosophy and culture. Philosophical concepts from the Greco-Roman world appear in Rom.1:18-21, 26-28; 2:14-16; 1Cor.8:7; 11:14; 2Cor.1:12; Gal.4:3; Phil.4:8; Col.2:8. Most of these passages will be discussed in the following chapter, so discussion will be deferred until then.<sup>359</sup> Suffice it to say that in these passages Paul shows an awareness of basic philosophical concepts in the Graeco-Roman world, particularly Stoic.

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<sup>358</sup> Of, at least, some interest is the fact that the version of the Hymn to Zeus found in Acts 17:28 is that of Aratus', a poet who hailed from Tarsus. Rom.8:28 may be influenced by a passage in Plato's Pol., 10.612-613 according to Hildebrecht Hommel, "Denen, die Gott lieben...Erwagungen zu Romer 8,28" in ZNW (1989), 127-129.

<sup>359</sup> The important passage Acts 17:16-33 will be discussed in Appendix 3 of this chapter.

The culture of the Graeco-Roman world is not foreign to Paul. He knows Greek athletics, as 1Cor.9:24; Phil.3:14; 1Thess.2:19 show.<sup>360</sup> Paul exhibits also a knowledge of Roman law (Rom.7:2; Gal.3:17-18,4:1-2,5).<sup>361</sup> Paul's passage in 2Cor.2:14-16 is based on a Roman victory procession in which sweet odours were burned as captives were being marched along the way. At some time during the march the captives were led to death and the victors celebrated. The sweet odours for the victors were death for the captives.<sup>362</sup>

Obviously none of this is meant to be decisive for a certain view of Paul's derivation of his thought on the law, or of any other topic for that matter. It is merely to indicate once again that Paul was also a man of the Greek world. Paul is aware of Greek culture and learning in a general sense

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<sup>360</sup> Oscar Broneer, "Paul and the Pagan Cults at Isthmia" in *HTR* 64 (1971), 186-187; T. Wilson, *St. Paul and Paganism* (Edinburgh: T&T Clark, 1927), 41; nevertheless, Victor C. Pfitzner, *Paul and the Agon Motif: Traditional Athletic Imagery in the Pauline Literature* (Leiden: E.J. Brill, 1967), is less optimistic. Paul's use of the imagery is very general and transformed for his own, unique purposes (187-194). Pfitzner, of course, does not deny Paul's use of the imagery, he simply sees Paul as borrowing common motifs of the day.

<sup>361</sup> Adolf Deissmann, *Light from the Ancient East*, 318-338. Francis Lyall, Professor of Law at the University of Aberdeen, has made it an ongoing project to study Roman law in Paul. See, for example, "Legal Metaphors in the Epistles" in *Tyndale Bulletin* 32 (1981), 81-95; "Roman Law in the Writings of Paul - Aliens and Citizens" in *EQ* 49 (1976), 3-14. These articles deal with concrete laws and Paul's knowledge of them; it is good to keep these in mind, however, especially when we think of Paul's possible knowledge of theoretical discussions of law.

<sup>362</sup> Dio Cassius, lxxiv; Horace, *Od.* IV.ii.50; Plutarch, *Aemil.*, 272.

and to such an extent that utilizing Greek ideas such as agraphos nomos, nomos physeōs, and nomos empsychos would not be at odds with what we know of him. But did he use them?

## CHAPTER SEVEN: PAUL, PHYSIS, AND LAW

In the following three chapters we will discuss Paul's view of the law in relation to Hellenistic ideas of natural law, unwritten law, and the living law. The first chapter will deal with Paul's statements regarding physis. The exegesis in this chapter will generally concentrate on Paul's use of the concept of nature and its relation to the Stoic concept of nomos physeōs. The second chapter will deal with Paul's important verses on the end of the law and its fulfilment. Paul's views on the fulfilment of an abolished law will be compared to Stoic concepts of nomos physeōs and the Stoic sage who fulfils the law of nature, as well as the general Greek idea of agraphos nomos. The third chapter will compare Paul's Christ-Torah antithesis to the Hellenistic idea of the King as nomos empsychos. Does Christ replace the Torah for Paul as the King replaces the written law in Hellenistic discussions?

### I) PAUL AND PHYSIS

Paul's problems with the law are notorious today; they were problematic in his own day too. Less notorious is Paul's view of nature. The idea of physis is neither a concept which dominates Paul's theology, nor a mere sidelight to it; rather, like so much of Paul's thought, it arises in

concrete instances in response to concrete problems. Nevertheless, Paul's remarks on nature should not be considered of secondary importance in advance of careful examination. They may well contain clues about Paul and his view of law.

A) Romans 1:26-27

Paul's use of physis in Rom.1:26-27 occurs in the context of the denunciation of sin in Rom.1:18-32. The main thrust of the passage is the overwhelming guilt of humankind, in particular the Gentiles. The guilt of the Gentiles in the presence of God, however, cannot be based, like that of the Jews, upon the non-observance or less than satisfactory observance of the Mosaic law. The Gentiles did not have this law. Paul is not going to charge the Gentiles with breaking the rules when they did not know they were playing the game.<sup>363</sup> So what game were they playing?

Paul convicts them on the same basis as he does the Jews: they broke the rules they were given, in their case, reason. Though the Gentile world did not have the law, it had the ability to know and perceive God through his creation (Rom.1:20). Paul states that the Gentile world abandoned reason. God was revealed to the Gentiles, but they did not

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<sup>363</sup> Westerholm, Israel, 187, points out that Paul here deliberately avoids using the law of Moses to convict the Gentiles. Cf. also Gunther Bornkamm, "Die Offenbarung des Zornes Gottes (Rom 1-3)" in Das Ende des Gesetzes: Paulusstudien: Gesammelte Aufsätze Band 1 (München: Chr. Kaiser, 1958), 18f.

acknowledge him (Rom.1:18-21). Since they could have known God without the law, they are also convicted without the law.

Paul has kept the Gentiles on the hook - they are morally responsible for their actions - but he has introduced a different standard in so doing.<sup>364</sup> Paul introduces another way of knowing God, albeit one that ended in sin and abject failure. C.H. Dodd, however, believes that here Paul "explicitly recognizes 'natural religion' as a fundamental trait of human nature."<sup>365</sup> C.K. Barrett disagrees:

it is not Paul's intention in this and the following verses to establish a natural theology; nor does he create one unintentionally. He is concerned with the moral principles of God's judgement.<sup>366</sup>

Yet Barrett himself admits that in setting the moral principles of God's judgement, Paul introduces ideas and terminology from elsewhere.<sup>367</sup>

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<sup>364</sup> C.H. Dodd, The Epistle of Paul to the Romans (London: Hodder and Stoughton, 1949), 19; cf. also with C.K. Barrett, A Commentary on the Epistle to the Romans (London: Adam and Charles Black, 1957), 35; Farrar, Paul, 465; and E.R. Goodenough, "Paul and the Hellenization of Christianity" in Religions in Antiquity (Leiden: E.J. Brill, 1968), 38; David Greenwood, "Saint Paul and Natural Law" in Biblical Theology Bulletin 1 (1971), 267, says that "St. Paul definitely acknowledged a kind of general revelation, and by implication the existence of a universal moral law."

<sup>365</sup> C.H. Dodd, Romans, 24.

<sup>366</sup> C.K. Barrett, Romans, 35.

<sup>367</sup> C.K. Barrett, Romans, 35-36; cf. also E.R. Goodenough, "Hellenization," 38; H.J. Schoeps, Paul, believes that the idea may be taken from Jewish sources, 34, 224, though this is difficult to accept. J.B. Lightfoot, "St. Paul and Seneca," 289, offers a quotation paralleling Paul's from Seneca (in Augustine, Civ. Dei., vi, 10; de Superst., Frag.31).

These Hellenistic ideas regarding the knowledge of God and how people know God have implications for Paul beyond his accusations against the Gentiles, whether he knows it or not.<sup>368</sup>

Paul has said that knowledge of God was available to the Gentiles. The result of turning from this knowledge leads to a Hellenistic commonplace: the perversion of nature.

The idea that nature is purposeful and moral, and that every thing has a proper nature, was a commonplace.<sup>369</sup> In Paul's day, the claim that one should live according to nature was even more common, through the influence of the Stoics. The Stoics spoke of the two categories of kata physin (according to nature) and para physin (against nature).<sup>370</sup> To live according to nature, or against nature, implied moral categories; it denoted the way one ought, or ought not, to live.<sup>371</sup>

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<sup>368</sup> A.D. Nock, "Early Gentile Christianity" in Essays on Religion and the Ancient World. Vol.I. (ed. Zeph Stewart; Cambridge, Mass.: Harvard University Press, 1972), 125-126.

<sup>369</sup> M.T. McLure, "The Greek Conception of Nature" in PhilRev 2/63 (1934), 123; John Burnet, "Law and Nature in Greek Ethics," 23-28; Felix Heinemann, Nomos und Physis, esp. 89-109.

<sup>370</sup> Long and Sedley, The Hellenistic Philosophers Vol.I 398-400 and the excerpts which precede this discussion in section 63.

<sup>371</sup> For all the talk of following nature and living according to nature, the Greek sources are never really clear on what this amounts to. Epictetus, for instance, gives a few "laws of nature," in I.29,19; III.17,6; and fr.51, but no one can give us the whole. Philo lists more "laws" than anyone else.

Evil practices in Rom.1:26-27 are, therefore, described as para physin. What is significant is not only Paul's casting of the language in terms of common Greek parlance and ideas - perhaps under the influence of Stoicism - but the fact that Paul continues to condemn the Gentiles on the basis of nature. Paul is, after all, under no compulsion to name these practices "unnatural." More to the point, for Paul, would be to call them evil and sinful.

Paul's further term for these deeds in Rom.1:28, ta mē kathēkonta, is a Stoic technical expression.<sup>372</sup> What Paul would usually

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Homosexuality, which Paul discusses here, was not necessarily regarded as against nature. Zeno seems to accept it, although the later Stoic Musonius Rufus rejects it. The language Paul uses to express this antipathy is Hellenistic, but it is possible that his antipathy to homosexuality was also influenced by Judaism. Here there is a confluence of both Stoic and Jewish concerns.

<sup>372</sup> That Paul is not an expert in Stoicism is shown by his slight mistake in his use of this term. More proper, according to Max Pohlenz, would be para kathēkon: "Paulus und die Stoa," 73. This is how Diogenes Laertius uses the term in 7.108-109. He describes the term in detail, including a suspect etymology for it, and attributes its technical usage to Zeno. (Philo, however, on one occasion uses the phrase to mē kathēkon in Cher. 14, so clearly it is not a grave error on Paul's part.) It should also be made clear that ideas which were kathēkonta were properly considered of the "indifferent" category. They were morally obligatory, but not "good." There were also times when the situation dictated that an act which was usually kathēkon should not be done. This is a difficult topic in Stoic ethics. See Johnny Christenson, An Essay on the Unity of Stoic Philosophy, 72; I.G. Kidd, "Stoic Intermediates and the End for Man," 150; "The Relation of Stoic Intermediaries to the Summum Bonum, with Reference to Change in the Stoa" in CQ n.s. 5 (1955), 181-194; "Moral Actions and Rules in Stoic Ethics" in The Stoics (ed. John Rist; Berkeley and Los Angeles: University of California Press, 1978), 247-258; John Rist, Stoic

call sins, he here stresses as being against nature.<sup>373</sup> Following this is a classification of vices, modelled on Hellenistic vice lists.<sup>374</sup> These are the deprivations to which God has delivered the Gentiles because they did not acknowledge him. God gave them over to adokimon noun (perverse reason) (Rom.1:28). Paul's claim that they were given over to "perverse reason," not to "sin" or law-breaking, indicates again that if Gentiles wish to be judged moral on the basis of reason, they will also be judged wanting on the same basis.

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Philosophy (Cambridge: Cambridge University Press, 1969), 97-111; Nicholas P. White, "Stoic Values" in Monist 73/1 (Jan.1990), 42-58; "Two Notes on Stoic Terminology" in AJP 99 (1978), 111-119; Brad Inwood, Ethics and Human Action in Early Stoicism (Oxford: Oxford University Press, 1985).

<sup>373</sup> There is yet another issue here which Paul may have confused. Actions which are kathēkonta in Stoic thought are not concerned with man's final nature, they are those things which should be chosen of the indifferents (adiaphora). See the articles listed in the previous footnote. More proper would have been to call these acts, from Paul's point of view, kakia.

<sup>374</sup> There is general agreement that the vice list here, and those found elsewhere in Paul's letters, owe something to Hellenistic vice lists. C.K. Barrett, Romans, 40; C.H. Dodd, Romans, 27; Matthew Black, Romans: The New Century Bible Commentary (Grand Rapids, Mich.:Eerdmans, 1989), 28-32, 42. Stanley Stowers, The Diatribe and Paul's Letter to the Romans, 89-90, 95-96 presents both formal characteristics and examples of Hellenistic vice lists, e.g., from Plutarch, Seneca, and Epictetus. Whether there exists direct Stoic influence, as Ulrich Wilckens, Der Brief an die Römer. Vol.I (EKK: Zurich: Benziger; Neukirchen-Vluyn: Neukirchner, 1978), 111-12, argues, is difficult to determine. E. Käsemann, Commentary on Romans (Grand Rapids, Mich.: Eerdmans, 1980), 49 believes that direct Stoic influence is not present.

Where does all this lead? Paul is intent on showing, as many have noted previously, that although the Jews have sinned in disobeying the law, the Gentiles too have proved themselves guilty. The Gentiles, however, have proved themselves guilty by ignoring God (Rom.1:19-20). In ignoring God, they ignored reason, and chose practices which, according to Paul, were unnatural (Rom.1:26,27) and numerous (Rom.1:28-32).

Does this imply that Paul maintains a kind of natural theology? A law of nature? It seems as if some scholars have been careful to ignore or underplay the Stoic terminology in these passages in order to save Paul from such a designation,<sup>375</sup> but Paul portrays himself neither as a Stoic nor as a natural law theorist. This does not mean that Paul has not drunk from that well. Paul is not simply stating commonplaces without understanding what he is doing.<sup>376</sup>

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<sup>375</sup> C.K. Barrett, Romans, 40; H.J. Schoeps, Paul, 224; A.D. Nock, "Early Gentile Christianity," 125-126.

<sup>376</sup> It is possible too that Rom.1:22 is a reference to the Stoics. The Stoics divided humankind into the wise and the fools. Paul seems to turn this on the Stoics: claiming to be "wise" (sophoi), they became "fools" (emoranthēsan). This may also explain the god in the shape of mortal man in Rom.1:23. Seneca, for instance, considered the wise man the equal to or superior of the gods. He is like a god because he becomes wise through perfect reason and obedience to nature (87.19). His soul is proper for the gods (92.3) and he is as happy as a god (73.14). And though Seneca argues that the wise man remains only a man (71.27), Marion Altman has pointed out that in some ways the wise man in Seneca is in fact superior to the gods (Marian Altman, "Ruler Cult in Seneca" in Classical Philology 33 (1938), 202). It is possible that Paul is simply referring to the statues and representations of gods throughout the Greek

It is too easy to forget how much could have been learned in the marketplace in discussion and how much was, in fact, discussed. Paul makes technical errors in his arguments, but his argument is well-designed. As Paul used the Torah to accuse the Jews, so he uses reason to accuse the Gentiles. It was the game they claimed to be playing.

Paul has, therefore, implicitly recognized that knowledge of God could have come through nature, and, it is true, to some extent acknowledged a law of nature, or (better stated) an order in nature. Its time, however, has passed: reason dissolved into perversion (Rom.1:19-23; cf. 1Cor.1:20-21,29-31; 2:5-6; 3:18-21).<sup>377</sup> Reason could have been sufficient to know God, Paul seems to argue, if it had been properly followed, just as the Torah could have been. There can be no doubt that what Paul has done in this passage is to parallel reason with the Mosaic law to find an equal measure of guilt for the Gentiles.

"Nature" in this passage is used in its common Greek sense, probably under the influence of the Stoics. Nature is purposeful and moral, and therefore actions may be taken which contradict nature. Paul, even if he denies the results, accepts the principle. Yet, given humankind's new

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world. See J.B. Lightfoot, "St. Paul and Seneca," 289.

<sup>377</sup> B.F. Meyer, The Early Christians (Wilmington, Delaware: Michael Glazier Inc., 1986), 200.

path to God through Christ, and the failure of the Gentiles to acknowledge God through nature, it seems that Paul views it as a past way to God. His acceptance of this way was not simply theoretical, however, as Rom.2:14-16 indicates.

#### B) Rom.2:14-16

After Paul finishes with the wilful sins of the Gentiles, he goes on to stress that no one has a defense: all are equally guilty. All, too, are equally open to punishment from God (Rom.2:1-7). Both Jew and Greek can suffer punishment or enjoy reward (Rom.2.8-10). At this point we reach one of Paul's more puzzling passages.

Paul states that those who sinned outside the law will perish there, and that those who sinned under the law will be judged by it. So far, so good, from a logical, if not human, point of view. This follows Paul's two-pronged condemnation of sinners.

Romans 2:13, however, claims that "it is not by hearing the law, but by doing it, that men will be justified."<sup>378</sup> Paul seems to grant here the efficacy, at least in theory, of the Mosaic law. Yet, as Westerholm argues, however real this option was, the Jews, in Paul's view, "simply have not attained that goal."<sup>379</sup> There is indeed tension in Paul's thought here:

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<sup>378</sup> Ulrich Wilckens, Der Brief an die Römer, 132.

<sup>379</sup> Westerholm, Israel, 129; cf. also 130, 145, 151-164.

the law which elsewhere led only to sin and condemnation (Rom.5:20; Gal.3:23-24; 2Cor.3:7,9) could here, and elsewhere (Rom.2:25), be said to lead to life. Paul does leave it as an option, but it is an option which seems in practice not to be available. Only Christ leads to righteousness and life.

Romans 2:14-16 would fit as the companion to 2:13 if it could be shown that Paul intends the passage as a difficult, if not impossible, option, that is, a theoretical option by which one could do the law. If so, it would parallel Paul's claims about the futility of the Gentile's strivings in Rom.1: they could have known God; but in fact their wisdom led only to folly. The problem of this passage, though, has always revolved around Paul's apparent knowledge of Gentiles who actually do the law by nature.<sup>380</sup>

Paul seems to say in v.14 that there are Gentiles who by nature, physei, do the law, and thereby become a law unto themselves (heautois eisin nomos).<sup>381</sup> Their guide is not a written code but nature and their

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<sup>380</sup> See Räisänen, Law, 25-26, 101-109.

<sup>381</sup> David Greenwood, "Saint Paul and Natural Law," 264 believes that this phrase is similar to Aristotle, NE 1128A. This is so, but the idea more generally relates to the Stoic idea of a law of nature, as I will argue shortly. Gunther Bornkamm, "Gesetz und Natur (Rom 2.14-16)" in Studien zu Antike und Urchristentum (München: Chr. Kaiser, 1959), believes the passage is "allein aus griechischen Denken verständlich" (104), but more specifically dependent upon the Stoic concept of the law of nature (101f).

conscience (syneidesis) (Rom.2:15).<sup>382</sup> The one who follows the law, derived from nature, may be acquitted on the day of judgement (Rom.2:16). If taken at face value, this flies in the face of Paul's claims that salvation is by Christ alone. It also contradicts his negative view of the capabilities of Jews and the law of Moses: if the Mosaic law cannot lead Jews to righteousness, how can physis lead the Gentiles?<sup>383</sup> And how can Paul then say that the Gentiles are under the power of sin (Rom.3:9)? There have been a number of attempts to solve the problems associated with this text.

Two things must first be clarified. One, the passage "fits" in this section. Rom.2:14-16 makes sense following Rom.2:13.<sup>384</sup> Though there is tension between Paul's claims here and those made elsewhere (Rom.1:28-32; 3:9), it does seem to be Paul's own composition. Second, the passage is

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<sup>382</sup> How nature is related to conscience is not clear: is conscience the manifestation of nature in the individual? The concept is discussed in full in Hans-Joachim Eckstein, Der Begriff Syneidesis bei Paulus, 164-179, 311-312. Eckstein sees conscience as necessary for the individual to understand "the law done by nature" (164). They are not, however, identifiable (168). Eckstein does not see syneidesis as only "schwerzendem moralischem Wissen" or "Ankläger" (175). For Paul, it is much more an objective and personified "Instanz," or Court (179). It is therefore "ein Beweismittel für das Vorhandensein des 'Gesetzes'" (179).

<sup>383</sup> Räisänen, Law, 106.

<sup>384</sup> Against Sanders, Law, 131, who sees it as unlikely that Paul actually composed this passage.

concerned with Greek claims of unwritten law and the law of nature, not Jewish claims of the law written in the heart.<sup>385</sup>

The first problem that the passage presents is the identity of the ethnē. Some have suggested they are Gentile Christians, but the text seems clear: they are simply Gentiles.<sup>386</sup> Paul never refers to Gentile Christians as Gentiles alone.<sup>387</sup> More problematic is what law these Gentiles are said to fulfil. Is it a law of nature, or moral law, or even a Gentile version of the Mosaic law?<sup>388</sup> None of these meet the challenge of the text; Paul must

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<sup>385</sup> Against Eckstein, Syneidesis, 154. See particularly Gunther Bornkamm's important article "Gesetz und Natur (Rom 2.14-16)," 93-118 for the argument that what is being discussed is the law of nature. Also David Greenwood, "Saint Paul and Natural Law," 262-279; W.L. Knox, Some Hellenistic Elements in Primitive Christianity, 32-33 misunderstands the nomos empsychos concept when he claims it is in play in these verses.

<sup>386</sup> Räisänen, Law, 105; Wilckens, 133; David Greenwood, "Saint Paul and Natural Law," 273; Gunther Bornkamm, "Gesetz und Natur," 209; Heinrich Schlier, Herders Theologischer Kommentar zum NT. Der Römerbrief (Freiburg: Herder, 1977), 75-80 argues that not all Gentiles are in view, "nur einzelne." Perhaps only one or two could achieve success, but Paul has in view all Gentiles.

<sup>387</sup> If Paul has in mind Gentile Christians in this passage, he is in danger of creating a true natural theology, one which would rival Christ and his Spirit in the Christian community. There would exist Gentile Christians who by nature, not the guidance of the Spirit, did the things of the law. They would also do these things by virtue of their own goodness, that is, through the nature inherent in them or through their ability to perceive the law of nature, not by virtue of their new status in Christ. These considerations weigh against Paul having Gentile Christians in mind in this passage.

<sup>388</sup> That it is only an individual concrete act or deed cannot seriously be maintained. Greenwood, "Saint Paul and Natural Law," 266f says that it is not

intend to say that the law which the Gentiles become is, or is the equivalent of, the Mosaic law.<sup>389</sup>

If this is the case, we have Gentiles who by nature do the law which Jews do not. If this is so, Paul's only purpose cannot be to condemn the Jews.<sup>390</sup> If the Gentiles in this passage are only a stick with which to hit the Jews,<sup>391</sup> it is a difficult stick to drop. Certainly Paul could have condemned the Jews without entertaining claims of natural law. Does his argument enter into contradiction? An answer must wait.

The final problem is that of the opening conjunction hotan in v.14. Could this render Paul's argument hypothetical? This has been rejected by most recent commentators.<sup>392</sup> Räisänen, for instance, claims that Paul

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the law of nature but a universal moral law. He calls this law the "law of the Gentiles." I think this is a problem of semantics. The law in Rom.2:14 fulfils the function of the law of nature. In terms of content, it is not clear of what this law consists, but, then, the same can be said of the law of nature.

<sup>389</sup> Räisänen, Law, 26-28. It is also possible that Paul considered the Mosaic law the law of nature, that is, the law which reason would have revealed, as did Philo. That is, the law which nature revealed to the Gentiles met the dikaiōma of the law of Moses. How the Gentiles would have done this law is another question. Nevertheless, however the Gentiles did the law, the law they did was sufficient to be considered simply "the law" for Paul.

<sup>390</sup> C.H. Dodd, Romans, 37; John Colet, An Exposition of St. Paul's Epistle to the Romans (trans. J.H. Lupton; repr. Ridgewood, N.J.: The Gregg Press Incorporated, 1965), 4-5; Pohlenz, "Paulus", 75.

<sup>391</sup> Räisänen, Law, 106.

<sup>392</sup> Räisänen, Law, 103-104; Pohlenz, "Paulus", 75.

could not accuse the Jews with a case which is not real.<sup>393</sup> Does hotan necessarily imply that there are Gentiles who actually do the law?

If Paul had used ean the case would be simpler: Paul would be arguing that if there were Gentiles who did the law, they would be reckoned doers of the law even though they do not possess the law. Can hotan be understood in the same way? If it can, it may answer Räisänen's claim that Paul could not accuse the Jews with a case that was not real. Even if there were in fact no Gentiles who actually did the law, Paul's claim that there could be was intended to counter Jewish claims of exclusivity.<sup>394</sup> It is accusation enough.<sup>395</sup> The question whether Paul went further than this, whether he thought he actually knew of Gentiles who did the law, rests upon our understanding of hotan.

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<sup>393</sup> Räisänen, Law, 103-104.

<sup>394</sup> James D.G. Dunn, "Paul's Epistle to the Romans: An Analysis" in ANRW II.25.4, 2850 says, "Not to be ignored is the fact that it is the law as ethical standard which is commended here, over against the law in its function as a boundary marking off Jews as an entity from the rest of mankind."

<sup>395</sup> We have lost our sense of awe over the inclusion of the Gentiles in the salvation plan. Ben F. Meyer, "Election-Historical Thinking in Romans 9-11, and Ourselves" in Ex Auditu 1989, 2 sees many of the problems associated with the interpretation of Rom.9-11 stemming from the fact that "among gentile Christians a generation or two later, there was no longer the sheer wonder that even Gentiles could be saved." Rom.2:14-16 ought to be approached as its first readers, and writer, would have viewed the inclusion of Gentiles over Jews, even theoretically: with wonder.

Paul could have meant something very close to "if" with hotan. For Bauer it can mean "wenn," "so oft als" or "jedesmal wenn."<sup>396</sup> For Liddell and Scott it means "whenever."<sup>397</sup> For both dictionaries the meaning can approach that of ean.

There is good reason to suspect that Paul meant something similar. In v.13 Paul states that the Jews, if they are doers of the law, could attain righteousness (elsewhere he stresses that they have not achieved this). Romans 2:14 then would be a comment to the Jews: even of the exclusivity of the law you cannot be certain, for whenever/if/everytime a Gentile does by nature what the law requires, they are themselves a law. By virtue of this law they will be judged. In light of Paul's previous statements on the ability of humanity to do the law, what are the chances of

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<sup>396</sup> Walter Bauer, William F. Arndt, and F. Wilbur Gingrich, Griechisch-Deutsches Worterbuch zu den Schriften des Neuen Testaments und der ubrigen urchristlichen Literatur. 4th German edition. (Berlin: Walter de Gruyter, 1952), 1069; cf. also F. Blass and A. Debrunner, A Greek Grammar of the New Testament (Chicago: University of Chicago Press, 1961), 192-93, # 380-81, #382,4b.

<sup>397</sup> Liddell and Scott, Greek-English Lexicon (Oxford: Clarendon Press, 1978), 1264.

the Gentiles?<sup>398</sup> The phrase e kai apologoumenōn (v.15) seems itself to suggest the unlikelihood of the event.

It is true that Paul now opens the option of doing the Mosaic law without access to the written code,<sup>399</sup> but the outlook of following this way is not optimistic. Not only do Paul's other statements on the law witness to this - so too does the Stoic tradition.

This is the key. Paul writes here under the influence of Stoic tradition, particularly the idea of a law of nature. The notion that one can do the law by nature, without a written code, is the Stoic notion par excellence, their one most famous idea. Paul is not only accusing the Jews, but he is doing it with a foolproof weapon. The hotan renders the passage conditional, but Stoicism renders it nearly impossible. Paul's Gentile, and probably Jewish, readers would have known that only the wise man does the natural law; they would have known something else too: according to

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<sup>398</sup> John Colet, An Exposition of St. Paul's Epistle to the Romans, 4 states that "in this place it must be remarked, that St. Paul means not that the Gentiles, or any Gentile man, had lived rightly without the Law." This may, indeed, be the case.

<sup>399</sup> C.H. Dodd, Romans, 35-37; C.K. Barrett, Romans, 52-53; A.D. Nock, "Early Gentile Christianity", 125.

both the Stoics<sup>400</sup> and their enemies<sup>401</sup> there had either never been a wise man, or only a handful.

The existence of the wise man was theoretically possible, the option was always open, but it was not likely.<sup>402</sup> Paul was on safe ground: if the Stoics could not claim a wise man, or only a pair, what was the likelihood of there being one in Paul's day? More to the point: what is the likelihood of Paul actually claiming that he knew people who did the law by nature? Paul does adopt the Stoic view of natural law, but though it is theoretically possible to do, it is practically out of the question. His readers would have known that.<sup>403</sup>

#### C) Rom.2:27

Paul's use of physis in Rom.2:27 is slightly different, and slightly less significant for our purposes, than the previous two examples. Paul is intent on proving Jews guilty in this passage too, but nature in this case refers to the physical condition of the Gentiles. Paul argues that circumcision matters not at all if the law is not kept (Rom.2:25). The

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<sup>400</sup> Cicero, De. Off., 3.16

<sup>401</sup> Especially Sextus Empiricus and Plutarch as we saw in Chapter Two.

<sup>402</sup> G.B. Kerferd, "What does the Wise Man Know?", 127.

<sup>403</sup> This is true even if Paul is claiming the Mosaic law as the natural law; after all, there was no Greek who could say what the law of nature was. Paul was on safe ground here too.

Gentile, on the other hand, though ek physeōs uncircumcised, is able to judge the Jew guilty by doing the precepts (dikaiōmata) of the (Mosaic) law (Rom.2:26-27). Here again is Paul's distinction between "hearing" and "doing" the law: it is the doing of the law which matters. The physical character of a person matters not at all.

This passage is similar in purpose to Rom.2:14-16. It too is used to accuse the Jews and stress not only that having the law is not enough, but that technically a Gentile could do the law.<sup>404</sup> Paul argues again that an uncircumcised Gentile could do the precepts of the law. The law in question must certainly be the Mosaic law, but the ean renders the passage conditional, like 2:14-16. Since the Gentile in question is akrobystia, the doing of the dikaiōmata tou nomou is spiritual (pneumati - 2:29) not literal. It is not clear whether Paul has in mind Christian righteousness or Gentiles doing the law by nature in this passage. At any rate, the Gentile does not possess the law, and the use of physis in this passage points to the physical character of circumcision.

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<sup>404</sup> Against Sanders, Law, 131-132. Sanders argues that the passage is un-Pauline and reflects neither Pauline nor Christian thinking. In fact, it may provide an answer to whether or not a Gentile who did the law by nature would need to be circumcised; the answer would seem to be no. Whatever the case, it fits well in this section. Cf. Ulrich Wilckens, Der Brief an die Römer, 121, 154.

## D) Rom.11:17-24

Paul, who earlier in Romans is committed to demonstrating Jewish and Gentile equality both before and after they enter the Christian community, explains God's faithfulness to the Jews in Rom.9-11. In Rom.11:1-36 he tells the Gentiles that they came to share in the blessings of God through faith. The Gentile is dependent upon faith to retain his favoured status, and can be lopped off if unfaithful, as the Jews were. There is to be no pride in their position, only thankfulness and wonder.

Paul then discusses the true wonder, and oddness, of the Gentile situation (Rom.11:17-21). The Jews, the branches kata physin, were cut off (Rom.11:21). So, too, the Gentiles were cut from their roots, where they too were kata physin, and joined para physin to the tree of Israel (Rom.11:24). They exist now in an unnatural state.

Paul uses these two terms, phrases which denote common Greek conceptions regarding morality, perhaps again under the influence of the Stoics, with care. What he tells the Gentiles is something which would ring falsely in the ears of even the most poorly educated. The Stoics were unanimous in condemning things which were against nature; they were to be avoided.<sup>405</sup> Paul knew how this would sound. It would both humble the Gentiles, for their position was weak, while at the same time undermine

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<sup>405</sup> Cicero. De Fin., 2.20; Tusc.Disp., 5.81-82; Epictetus, 3.6,4; Seneca, Epist. Mor., 68; Marcus Aurelius, 1.17,6; Diogenes Laertius, 7.87-89.

those who felt a life according to nature was the highest way.<sup>406</sup> Paul is using a Stoic antithesis, but, from a Stoic perspective, perverting it. Paul implies that there exists a higher goal than the kata/ para physin antithesis.

This stresses not only the oddness of the Gentile situation, but the precariousness of it. Are the Gentiles proud of their place? It is unnatural. This is meant of course to disarm any Gentile boasting, not to deny the goodness of their present condition. Against the Stoic view of living according to nature as the highest good, Paul says there is something which transcends the distinction. To live contrary to nature is to the benefit of the Gentile Christians. There can be no claim more contrary to the Stoic view of life.

E) 1Cor.11:14

Physis occurs again at the end of a section discussing the covering of a woman's head during worship, specifically while she prays or prophesies (1Cor.11:2-16). The first proof which Paul brings is from the creation story in Genesis 2. Since man was the source of woman, he is closer to God; therefore, a man must not cover his head while he prays, but

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<sup>406</sup> Grafting itself was considered an unnatural act. Cf. F.F. Bruce, The Epistle of Paul to the Romans (London: Tyndale, 1963), 220.

a woman must (1Cor.11:7-9). Connected to this argument is the claim that it is "because of the angels" that a woman covers her head (v.10).

Paul then asks the Corinthians to "judge for yourselves." Is it "fitting" (prepon estin) that a woman prays or prophecies with her head uncovered (v.13)?<sup>407</sup> Does not "nature itself teach" (physis autē didaskei) that long hair disgraces a man and brings pride to a woman (vv.14-15)? Finally, Paul, perhaps perceiving the weakness of his arguments, asks that the Corinthians not argue and understand that the custom in the congregations of God is that women wear long hair (v.16).<sup>408</sup>

The relation of vv.14-15 to the whole of the section is not immediately apparent. Paul has earlier spoken of a woman requiring a head covering. In vv.14-15, though, he speaks only of long hair disgracing a man and bringing pride to a woman. What is the connection between long hair and a head covering? E.P. Sanders finds the connection, and solution, in vv.5-6.<sup>409</sup>

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<sup>407</sup> Robert Grant, "Hellenistic Elements in 1 Corinthians" in Early Christian Origins (ed. A. Wilkgren; Chicago: Quadrangle Books, 1961), 61, calls this a "conventional moral judgement." It was, he says, "especially popular in the Middle Stoa."

<sup>408</sup> This passage is naturally a lightning rod today because of its subject matter. The role of women and men will not be considered, however, since our concern is with Paul's proof that "nature teaches" and not with what it teaches.

<sup>409</sup> Sanders, Law, 4.

Paul states in vv.5-6 that if a woman prays or prophecies bare-headed, it is as if her head were shaved; she might as well cut her hair off. Skip to v.13: is it fitting to pray to God bare-headed? Does not nature itself teach that long hair gives a woman pride? Paul has jumped back to vv.5-6, but the logic is present: an uncovered head equals a shaved head; since nature teaches that long hair glorifies a woman, a woman should pray with her head covered.

Paul brings, as previously mentioned, four arguments to prove his case. What concerns us is his argument from nature.<sup>410</sup> Paul first argues his case through the scriptures, but when he feels he must adduce more proofs, he calls upon nature. Here a number of commentators have missed the point.<sup>411</sup> Orr and Walther, for instance, write:

his reference must be to common custom, for there is no analogy in nature itself that bears out the argument.<sup>412</sup>

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<sup>410</sup> This argument must indeed concern us. Sanders, Law, 4, says that we must distinguish between Paul's reasons "for which he held a view" and the arguments "which he adduces in favour of it." This is a dangerous game to play. In this case, says Sanders, Paul's real reason was that he was Jewish. This is conceivable, but it transfers what Paul actually says to the periphery. Distinguishing between reason and argument is not exegesis, but psychology.

<sup>411</sup> William F. Orr and James Arthur Walther, The Anchor Bible: First Corinthians (Garden City, N.Y.: Doubleday and Co., 1976), 264; Grosheide, Commentary on the First epistle to the Corinthians. New International Commentary on the New Testament (Grand Rapids: Eerdmann's, 1953), 260.

<sup>412</sup> Orr and Walther, 264.

This misunderstanding of Paul's use of nature as either the natural world or common custom strays far from Paul's meaning.<sup>413</sup> Paul is using nature in the sense of the moral and purposeful order of things. While this includes the natural world, it is not limited to this.

Johannes Weiss says of Paul's use of nature:

diese Argumentationsweise, schon bei Plato vorgebildet..., ist echt Stoisch. Besonders aute ist Stoisch gedacht.<sup>414</sup>

We are dealing once again with Paul's use of nature as in Rom.1-2. This is a nature which is purposeful and moral, and which can, indeed, teach moral knowledge.

Why does Paul use physis in this context? He is indeed piling up proofs, which is not uncommon for him, and nature is not his only argument, but could he not as easily have said, "Does not the Spirit teach you?" Paul obviously feels that in attempting to find guides for Christian behaviour, nature may function as one.

Too much should not be made of this instance, but neither should too little be made of it. It is clear that the way was open to appeal to nature

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<sup>413</sup> Grant, "Hellenistic Elements," 62, hits the nail on the head: "Here 'nature' clearly means 'convention', or at least it means 'convention' to us. More probably, in Paul's mind there was something innately wrong about men who wore their hair long." It did not mean "common custom" to Paul.

<sup>414</sup> Johannes Weiss, Der Erste Korintherbrief (Göttingen: Vandenhoeck and Ruprecht, 1910), 276.

in other circumstances. It is not clear if its place in Paul's argument in 11:2-16 renders it a third best choice; it is in any case a choice.

Whatever the case, the ultimate guide for Christians is the Spirit. That Paul uses the idea of a purposeful nature should not come as a surprise. Paul's use of nature is Greek, but his view of the cosmos is Jewish. God created nature, but it is no contradiction that Paul saw in God's creation purpose and meaning.

#### F) Gal.2:15

The major textual question surrounding Gal.2:15 is whether Paul is still speaking to Peter, or whether he has already shifted his attention to the Galatian congregation. Is Paul still reporting his meeting with Peter or is he analyzing it? Hans-Dieter Betz, on the basis of Greek rhetorical analysis, concludes that the addressees are the Galatians.<sup>415</sup> Betz, however, claims too much for Galatians as a rhetorical letter, and the general consensus, that Paul is addressing Peter formally and the Galatians materially, seems most satisfactory.<sup>416</sup> This fits Paul's sense of nature in

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<sup>415</sup> Betz, Galatians, 114.

<sup>416</sup> Dom Gregory Dix, Jew and Greek, 45; Albrecht Oepke, Der Brief des Paulus an die Galater (Berlin: Evangelische Verlagsanstalt, 1973), 87; Hans Lietzmann, Handbuch zum Neuen Testament. An die Korinther I.II und Galater (Tubingen: J.C.B. Mohr, 1923), 15; Donald Guthrie, The Century Bible: New Series. Galatians (London: Thomas Nelson and Sons, 1969), 89; George S. Duncan, The Moffatt New Testament Commentary: The Epistle of Paul to the Galatians (London: Hodder and Stoughton, 1955), 63-64; Ernest deWitt

this passage too.

Paul's distinction in v.15 between "we who are by nature Jews" and not "sinners from Gentile (descent)" is a typically Jewish distinction.<sup>417</sup> Paul seems clearly to be addressing Peter. The contrast between "Jews" and "sinners" is not used by Paul ironically. Jewish birth is an advantage.

And "nature" in this passage refers to birth or origin, and as such harkens back to the root meaning of the word. Paul's intent is simple: to be Jewish by nature is an advantage, but only to an extent. Birth is no longer the deciding factor, only an advantageous one.<sup>418</sup>

G) Gal.4:8

This is a somewhat confusing passage because v.3 suggests that Paul is speaking to Jews, while vv.6-8 indicate that Paul is speaking to

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Burton, The International Critical Commentary. Galatians (Edinburgh: T&T Clark, 1921), 117; J.B. Lightfoot, St. Paul's Epistle to the Galatians (London: Macmillan and Co., 1892), 113; R.A. Cole, The Epistle of Paul to the Galatians (London: Tyndale, 1969), 78; John Bligh, Householder Commentaries.1. Galatians: A Discussion of St. Paul's Epistle (London: St. Paul Publications, 1969), 195-196, sees it not for Peter or for the Galatians, but for a meeting of Jewish-Christians from Jerusalem.

<sup>417</sup> Betz, Galatians, 115; Guthrie, Galatians, 89; Lightfoot, Galatians, 115; Lietzmann, 15, believes Paul is giving expression to Jewish pride only to destroy it, but this does not seem to be the case.

<sup>418</sup> This is more than Paul claims for Jewish birth in Rom.2:27, but Rom.2:25 does indicate that Jewish birth is an advantage if one keeps the law.

Gentiles.<sup>419</sup> While Paul conflates, perhaps even confuses, his two arguments, he has in mind Jews under the law and Gentiles under ta stoicheia and theoi.

Paul's argument here is actually quite subtle. Greek thought, and natural theology, held that there existed gods by nature. Only gods by nature were acknowledged as such.<sup>420</sup> Those gods which did not exist by nature, but rather by convention (thesei), existed, but they were demons, not gods.<sup>421</sup> The gods by nature were "the astral bodies of sun, moon and the stars," or ta stoicheia.<sup>422</sup> Paul has, therefore, connected ta stoicheia, generally considered the natural gods, with the gods who are by nature not gods.

Paul has once again taken a Greek argument and turned it on itself. The gods which the Greeks viewed as by nature, Paul calls false gods.

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<sup>419</sup> It is impossible, however, to accept with Bligh, Galatians, 365, that those under the elements and the gods are Jews under the angels.

<sup>420</sup> Betz, Galatians, 214.

<sup>421</sup> Betz, Galatians, 215; Lightfoot, Galatians, 170; Duncan, Galatians, 133; C.F. Hogg and W.E. Vine, The Epistle to the Galatians (Grand Rapids: Kregel Publications, 1921), 198.

<sup>422</sup> Betz, Galatians, 214; ta stoicheia were also, and more generally, the four elements. Cf. E. Schweizer, "Slaves of the Elements and Worshipers of Angels: Gal 4:3, 9 and Col 2:8, 18, 20" in JBL 107/3 (1988), 455-468.

For Paul there is only one true God.<sup>423</sup> The distinction which the Greeks have made between gods by nature and gods by convention is, for Paul, in principle correct. They have, however, chosen the wrong gods.

Nature in v.8 refers to the essential character or reality of something.<sup>424</sup> Oepke believes that physei has an "almost Stoic sound" in this passage, and this is correct.<sup>425</sup> Paul is aiming at a Stoic sound. Paul presents a Greek argument to condemn the Greeks. Do the Greeks believe in gods physei? They are correct in so admitting, but they are wrong in their designation. The gods are not the elements, they are not indeed plural; there is only one God, who is by nature God.

## II) The Meaning of Physis

That Paul's use of physis is wholly Greek ought to be self-evident: there is no equivalent term in Hebrew. That Paul's use of physis is often Stoic ought not to be surprising either: it was the dominant view of nature in Paul's day and it is in line with much Greek thought on nature since the ethnographers.<sup>426</sup> Paul uses "nature" to invoke a world order shot through with purpose and morality. This in itself contradicts no Hebrew notion of

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<sup>423</sup> Oepke, Galater, 138.

<sup>424</sup> Guthrie, Galatians, 122.

<sup>425</sup> Oepke, Galater, 138; cf. also Heinrich Schlier, Der Romerbrief, 201.

<sup>426</sup> McLure, "The Greek Conception of Nature," 115.

creation and is easily synchronized with such notions.

That Paul did not accept physis as the ultimate end, as did the Stoics, should also be obvious. He could accept the view of a purposeful nature without infringing upon his view of God, as did Philo. Nature is transcended by the one true God. But does Paul see nature as a replacement for the law? Is it a way to universalize the knowledge of good and evil? Does Paul create a law of nature?

Most of Paul's usages of physis do not impinge on his view of law. The term in Gal.2:15 speaks of origin or birth. Rom.2:27 carries the same sense. The essential character is the meaning of nature in Gal.4:8. In Rom.11:17-24, the term also bears the sense of essential character, which Paul then confounds. Only in three passages do we have Paul speaking of nature as a guide to behaviour.

In Rom.1:26 Paul uses nature as a norm for behaviour, a guide by which one can discern right from wrong. In 1Cor.11:14 Paul commends nature as a teacher. This is similar to Rom.1:26, but the stress here is placed on nature itself teaching, and not on human beings somehow perceiving what is and what is not natural. The most Stoic of all is Rom.2:14-16. Nature here appears to be able to reveal the Mosaic law, or its equivalent, to the Gentiles, which, without benefit of its material manifestation, can theoretically be followed by certain people. This mimics

the Stoic law of nature discussions upon which Paul must be dependent. Paul, in all of these passages, recognizes Greek claims regarding the role of nature.

What does it all add up to? A Paul who knows more about common Greek conceptions of a purposeful nature, with some indication in certain passages that he is dependent upon Stoic views, than many have been willing to grant. Most of Paul's uses of physis are innocent enough, but Paul has deft control of the concept and its many meanings. In Gal.4:8 Paul turns the Greek view of gods back on itself. The Gentiles are Christians against nature (Rom.11:17-24). Not only does Paul understand the concept, he plays with it.

But even where Paul uses physis positively, he is in no danger of basing Christian behaviour on a law of nature or unwritten law. In Rom.2:14-16 Christians are not in view. Even if Paul knows Gentiles who do the law, and this is to be doubted, the law of nature is not an argument for Christians to abandon the Spirit of Christ, any more than that they should return to the law. The law revealed by nature is a way relegated to the sidelines, just as the Mosaic law has been. This leaves only 1Cor.11:14.

According to this passage, nature can definitely guide the Christian, but Paul does not consider it the foundation of Christian ethics, or a reason for the abolition of the Mosaic law.

Paul has not abolished the Mosaic law to create an ethic guided by nature. Far more must we reckon with Paul's statements about the guiding role of the Spirit (Rom.8:4-14; 1Cor.7:40; Gal.5:16-25; 1Thess.4:7-8; Phil.3:3). That nature has a role to play in Paul's ethical system should not be a surprise. Nature is created by God and it is good. Paul perceived its limited role for Christians, but far more important is the guidance of the Spirit.

Nevertheless we must now ask if in Paul's claim that the law has come to an end (Rom.10:4), but that Christians still fulfil it (Rom.8:4; Gal.5:14), he has introduced a kind of law of nature through the back door. Was Paul influenced by Stoic discussions of the wise man who transcends the material law in order to fulfil the law of nature?

## **CHAPTER EIGHT: FULFILLING AN ABOLISHED LAW**

Paul believes that Christ is the end of the law, not in the sense of being its goal or fulfilment, though these are not a priori rejectable, but insofar as Christ, or the guidance of his Spirit, replaces the precepts of the Mosaic law as the ethical guide or norm for his followers. The law is not binding upon Christians. Nevertheless, Christians are meant to fulfil the law. Christians are to fulfil the "just requirement" of the law (Rom.8:4). According to Rom.13:8-10 and Gal.5:14, the love which they are to practise fulfils the whole law. But from where did Paul derive the idea that the law had no claim on the Christian in its material form, but was nevertheless fulfilled by them? There were discussions in the Hellenistic world which may be helpful in explaining Paul's thought about the law.

### **I) WHO FULFILS THE LAW IN STOIC THOUGHT?**

It is clear from what Paul says about the law in a number of passages that the material law is no longer binding on the Christian. Paul himself treats the law as an "indifferent" (1Cor.9:19-23). Nevertheless, Paul makes the seemingly contradictory statement that the Christian is to fulfill the law. Other Greek thinkers had previously claimed that there were certain people who transcended the written law of their city because of their

virtue.<sup>427</sup> The Stoics, however, brought the discussion to its flowering and made the "wise man" an integral part of their philosophic system.<sup>428</sup> The "wise man," because of his virtue and insight, was able to fulfil the law of nature. Such people were rare, as we have stressed previously, but the Stoics had no doubt that they could exist.

The "wise man" was a virtual god. According to Diogenes Laertius, there was nothing in common between the wise and the foolish, who constituted the great majority, if not all, of humankind.<sup>429</sup> The "wise man" was perfect.<sup>430</sup> And the "wise man" received his virtue, achieved his perfection, in an instant: one moment a fool, the next a "wise man."<sup>431</sup>

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<sup>427</sup> For example: Plato, Laws, 9.875c; Aristotle, EN, 4.8,10; Politics, 3.8,1-2; 3.11,4; 3.11,13. Cf. also the discussion in Chapter One.

<sup>428</sup> See, however, a variety of Cynic material which also addresses the question. Abraham Mahlerbe, The Cynic Epistles (SBL SBS; Missoula, Mont.: Scholar's Press, 1977), 53, 203, 211; Ragnar Hoistad, Cynic Hero and Cynic King: Studies in the Cynic Conception of Man (Uppsala: Lund, 1948), 187-195, specifically concerning the king; Kurt Deissner, "Das Idealbild des Stoischen Weisen" in Greifswalder Universitätsreden 24 (Greifswald: Ratsbuchhandlung L. Bamberg, 1930), 3-4. Cf. also Diogenes Laertius, who lists Antisthenes as the teacher of the Cynic leader Diogenes (6.15,21). Antisthenes claimed the wise man is not guided by the established laws, but by virtue (6.11).

<sup>429</sup> Diogenes Laertius, 7.127; cf. also Zeller, Stoics, 270,273; Kerferd, "What Does the Wise Man Know," 125.

<sup>430</sup> Rist, Stoics, 260; Zeller, Stoics, 270.

<sup>431</sup> Plutarch, On Moral Progress, 75c (SVF 3.539); On Common Conceptions, 1063 a-b (SVF 3.539); cf. also Zeller, Stoics, 275. In fact it was possible for a foolish person to become a wise man without even knowing the change had

Though the Roman Stoics later considered virtue teachable to some degree,<sup>432</sup> and the "wise man" a model for use in teaching,<sup>433</sup> the border between the wise and foolish was never torn down.

There are, of course, a number of attributes which stem from the wise man's perfection, but, for our limited discussion, of paramount concern is the perfect morality of the wise man. More to the point: our concern is the ability of the wise man to free himself from the restraints of material law through his ability to fulfil the higher law, the law of nature. The sources are not as clear and forthcoming as one would hope. There are, however, a number of clues and hints.

First, it is clear there was law which transcended the laws of cities and states.<sup>434</sup> While this law was first known by the Stoics as "following" nature or called the common law, it finally became the law of nature. This law was accessible through reason and, more specifically, right reason.<sup>435</sup> It was a problem of Stoicism, however, that the true law was

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taken place (Marcus Aurelius, 7.67).

<sup>432</sup> Diogenes Laertius, 7.92 (SVF 3.223).

<sup>433</sup> D.L. Thiede, The Charismatic Figure, 54.

<sup>434</sup> Epictetus calls upon his readers to obey the laws sent by God: "to these you ought to subject yourselves, not the laws of Masurius and Cassius" (4.3,11-12). Elsewhere, 1.29,19, the laws of God are called the laws of nature.

<sup>435</sup> Alexander, On Fate, 207, 5-21 (SVF 2:1003).

only known to the wise man and that the material law, any civil code, contained only the outlines of the law of nature. Cicero, no antinomian, claims that "the most foolish notion of all is that everything is just which is found in the customs and laws of nations."<sup>436</sup> Cicero reflects the struggles the Stoics had with the civil law:

But I ask, if it is the duty of a just and good man to obey the laws, what laws is he to obey? All the different laws that exist?<sup>437</sup>

This was not the answer, of course, for the law sufficient to all was the law of nature.

This was to be the law which the wise man obeyed and if it contradicted the laws of a given state, so be it. In theory this stance of the superiority of the law of nature over the written law was always upheld,<sup>438</sup> though the sources are careful not to preach anarchy or lawlessness. In any case, the rightful breaking of the law was not a common occurrence, simply because the wise man was not common.<sup>439</sup>

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<sup>436</sup> Cicero, De Leg. 1.42.

<sup>437</sup> Cicero, Rep. 3.18. Cf. also Leg. 2.13; and Off. 3.69 for further statements on the limited usefulness of the material law.

<sup>438</sup> Ludwig Edelstein, The Meaning of Stoicism, 83, calls this stand "the daring of Stoic ethics".

<sup>439</sup> Those who are not wise need the positive law and must follow it (Epictetus, 3.24,107). Marcus Aurelius calls the transgressor of ho nomos kyrios (cf. Pindar, frag. 169; and Cleanthes, Hymn to Zeus, SVF 1.537) a

There is no unanimity in the sources regarding the existence of the wise man.<sup>440</sup> The fact that there was a question about this put the Stoics on the receiving end of much ancient humour. Sextus Empiricus and Plutarch never tired of mentioning it.<sup>441</sup> Yet the Stoics never wavered in maintaining that there could be a wise man.<sup>442</sup>

The once and future wise man was free from error. He had all the virtues and no vices.<sup>443</sup> His perfect moral character allowed the sage to see what was truly just and virtuous, what was, in fact, truly law. In perceiving the law of nature, and in following it, they were able to perceive the truth which the framers of positive law could not.

Cicero stresses that just because Socrates and Chrysippus broke the laws of a given city, others do not have the right to ignore the laws of

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fugitive slave. While ho nomos kyrios may seem to refer to a "higher" law, in this case it is simply the written law; the sage at any rate did not break the law of nature.

<sup>440</sup> Cicero, Rep. 3.7; De Nat. Deor. 1.23. Johnny Christenson, An Essay on the Unity of Stoic Philosophy (Copenhagen: Munksgaard, 1962), 69.

<sup>441</sup> Sextus Empiricus, Outlines of Pyrrhonism, 2, 38-42; Against the Logicians, 1, 432; Against the Physicists, 1, 133.

<sup>442</sup> Long and Sedley, The Hellenistic Philosophers Vol.I, 383. Kurt Deissner, "Das Idealbild des Stoischen Weisen," 3, calls the Stoic sage "das Herzstück dieser Ethik."

<sup>443</sup> Diogenes Laertius, 7.123.

their city.<sup>444</sup> The crux is found in Cicero's claim about Chrysippus and Socrates: they earned the right to ignore aspects of the material law. For Plato, the ideal state would need no law.<sup>445</sup> For the Stoics, all members of the ideal state, at least following Zeno's model, would possess the law themselves.<sup>446</sup> Due to the unlikelihood of a Stoic ideal state - only wise men and women comprise the state - the positive law, flawed as it is, remains. Since it is not as perfect as the sage, the sage may at times disobey it. "For surely in breaking the rough and ready but rigid rules of morality the sage...is obeying the law of nature in a higher, but more flexible, sense."<sup>447</sup>

Only the Stoic sage knows this "perfectly correct law."<sup>448</sup> If he was to break a written law in the course of following the law of nature, he would be directed by reason : "it is obedience to the rationality imbedded in him" which guides his behaviour.<sup>449</sup> He has all authority over the written

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<sup>444</sup> Cicero, Off. 1.148; cf. Seneca, Epist. Mor., 14.

<sup>445</sup> Jerome Hall, "Plato's Legal Philosophy," 192.

<sup>446</sup> H.C. Baldry, "Zeno's Ideal State" in JHS 79 (1959), 3-15.

<sup>447</sup> Brad Inwood, "Commentary on Striker", 101.

<sup>448</sup> Rist, Stoics, 267.

<sup>449</sup> A.A. Long, "The Early Stoic Concept of Moral Choice" in Images of Man in Ancient and Medieval Thought, 92.

law.<sup>450</sup> He must be subject to the law of nature.<sup>451</sup> The sage could not possibly oppose a law of nature; it would contradict reason and this the sage cannot do.

## II) HOW DOES THE CHRISTIAN FULFIL THE LAW? A COMPARISON

Could Paul have had any of this in mind when he speaks of Christians fulfilling the law? There are a number of points of contact which are suggestive.

The immediate transfer from vice to virtue that the sage undergoes may have led Paul to draw a comparison between the Christian's transfer to a new life of virtue and the Stoic sage. The Christian's status is changed in an instant; with this change comes an ability to fulfil the law, an ability which is not available to anyone else.

Whereas previous to the coming of Christ, Paul believes humanity was consigned to sin (Rom.3:10), the coming of Christ means that those who follow Christ are justified by him (Rom.3:23f; 6:18-23). The transfer from the realm of sin to the realm of righteousness is complete when one is "justified" in Jesus Christ (1Cor.6:9-11). For Paul, this involves putting off "the old nature" and putting on "the new nature" (Col.3:9-10). A follower of

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<sup>450</sup> Diogenes Laertius, 7.125; Dio Chrysostom, 76.4; Cicero, De Fin. 3.75.

<sup>451</sup> Epictetus, 3.3,11-12.

Christ, therefore, is a new creation (2Cor.5:17). The transfer from "old" to "new" creation is total:

he has delivered us from the dominion of darkness and transferred us to the kingdom of the beloved son (Col.1:13)

Within the kingdom of Christ, the believer has new abilities to achieve virtue.

The new status allows the Christian to fulfill the law of Moses. Paul says that for Christians, "God has done what the law, weakened by the flesh, could not do" (Rom.8:3), with the result that, through Christ, not the law, the "just requirement of the law might be fulfilled in us, who walk not according to the flesh but according to the Spirit" (Rom.8:4). It is the Christian alone, therefore, who is able to fulfill the law through the love commandment (Rom.13:8-10; Gal.5:14; 6:2).

The Christian is not "under" the old, written code, the Mosaic law (Rom.7:6; 2Cor.3:6), yet Christians alone are able to fulfill this law. Those under the law, in the realm of the flesh, cannot fulfill, or do, the law (Rom.8:1-5; 2Cor.3:6; Gal.3:10-12; 5:16-24). Gentiles, who had the ability to know God, turned from him (Rom.1:18f). The law which Gentiles do by nature is not a real option (Rom.2:14-16). All, outside of Christ, are consigned to sin (Rom.3:10).

For the Stoics, the wise man who follows the dictates of reason embedded in nature, the law of nature, no longer requires a written code either. He alone can know the law of nature. He has "authority" over the law because he possesses virtue; his virtue guides him to do all that is good and just.<sup>452</sup> His law is to accept the dictates of nature and to reject those things in conflict with nature.<sup>453</sup> The Christian, who does not do the written law, in this case the Mosaic law, can nevertheless fulfil it.

Paul's talk of Christians fulfilling the dikaiōma of the law seems similar to talk of the Stoic sage who fulfils the true law while, perhaps, breaking parts of the material law. What the law requires, the Christian, like the sage, is able to do. How they may be able to do it is unclear - Paul points to the guidance of the Spirit (Rom.8:1-5) - but that they are now able to fulfil the law is not.

But even in the suggested areas of contact there are problems which cannot be solved; not to mention the areas where the two concepts are nearly antithetical. For instance, the Stoics never speak of the sage as "fulfilling" the law of nature, nor do they speak of the wise man "fulfilling" the "just requirement" of the law. While the absence of identical terminology cannot prove the case, there is evidence that a Stoic sage could in no way

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<sup>452</sup> Diogenes Laertius 7.125-26.

<sup>453</sup> Epictetus 1.26,1-2.

take a "short-cut" in the demands made upon him by the law of nature, that is, he could not "fulfill" the law. He would need in each instance to follow the dictates of reason.

The Stoic sage has perfect knowledge; his knowledge is "unerring apprehension" or a "state which in reception of presentation cannot be shaken by argument".<sup>454</sup> This knowledge is also moral knowledge. Because of his perfect knowledge, the sage refrains from "every action forbidden by the law common to all things".<sup>455</sup> He also performs every action which the law of nature bids him to do. The wise man, who followed the right reason of nature, could only do, or refrain from, what was required in every particular by the law of nature; he could not "fulfill" this law, if by fulfill we mean avoiding certain particulars of a given code but nevertheless achieving its purpose or spirit. He could only follow his reason, which would invariably follow the dictates of nature.

The Christian transfer to a new status is also somewhat different from that of the sage. The Christian's transfer is immediate, but it is not accompanied by perfection. Paul speaks often of the less than perfect Christian. Paul can speak of those who are weak in the faith (Rom.14:1f), of immorality among Christians (1Cor.5:1f), and of his desire to impart to

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<sup>454</sup> Diogenes Laertius 7.47.

<sup>455</sup> Diogenes Laertius, 7.88.

them a spiritual gift (Rom.1:11). He does not consider that he himself has attained perfection (Phil.3:12). Even then he seems sometimes astounded by the inability of his congregations to do what they ought (Gal.5:13-16; 1Cor.5:1f); their new status ought to lead to a virtuous life. The Christian, therefore, is saved, but flawed.<sup>456</sup> The wise man, as any number of passages in any number of authors bears witness to, is perfect.<sup>457</sup>

This is not, of course, an airtight case against Paul's adoption of the Stoic argument. If he did adopt the idea he was left with the sad case of applying perfection to flesh and blood, and was not able to allow the happy realm of Stoic theory to remain untouched.

There are other arguments, however, which seem stronger. There is a subtle difference between the law which the Stoics follow and the law which the Christians fulfil. It is not merely that one is the Mosaic law and the other is the law of nature; it is that the Stoic wise man does a higher law than the one he transcends and possibly breaks.

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<sup>456</sup> There are passages which seem to argue that the Christian is, or ought to be, somehow perfect (Rom.6:14,17-18,22; 8:14; 1Cor.6:11; 2Cor.5:17;11:2; Phil.1:10; Col.3:9-17), but they are not thematic, as in the Stoic literature, and Paul's acceptance of reality is an acknowledgement that the ideal has not been achieved.

<sup>457</sup> Diogenes Laertius 7.47,123,126; Epictetus 2.13,10; Plutarch, Moralia, 75d,1057e,1061e; Seneca, Epist. Mor., 71.27, 72.6, 73.14, 87.19; Cicero, De Fin., 3.26,71.

The material law is an outline sketch of the natural law.<sup>458</sup> To follow the law of nature, the Stoic sage goes beyond the material law, but it is not said that he fulfils the latter in the process.<sup>459</sup> Paul says something quite different. Though circumcision amounts to nothing, though all food is clean, though in both these ways the Mosaic law is "broken", it is not a higher law which the Christian fulfils, it is the very law which he has "died to" (Gal.2:18-19). Here there is a vast difference between the Stoic conception and Paul's: the Stoics go beyond the material law to fulfil a higher law; the Christian goes beyond the law of Moses but still fulfils it.<sup>460</sup>

Even if Paul is operating with a kind of "kernel" or "higher" law within the Mosaic law - which he would not have admitted to - the law which the Christian fulfils is still the Mosaic law. Cicero, by way of contrast, claims that his civil law is "confined to a small and narrow corner" when measured against the law of nature.<sup>461</sup> The law of nature subsumes all civil laws within it. The contrast, therefore, is not absolute, but it is

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<sup>458</sup> Cicero, De Off., 3.69.

<sup>459</sup> Epictetus 4.3,11-12.

<sup>460</sup> That it is the law of Moses which the Christian is said to fulfil in Rom.8:4 and 13:10 is clear from the antecedent verses in each case. Rom.8:3 and 13:8-9 clearly have the Mosaic law in mind.

<sup>461</sup> De Leg. 1.17; cf. 1.42,44.

present: the Stoic sage transcends written law when he fulfills the law of nature; a Christian fulfills the Mosaic law, a written law, under the guidance of the Spirit.

There is also the question of the programmatic abolition of the Mosaic law. The Stoic did not in practice - not even the sage - consider a code of law abolished. Every code of law, some more, some less, shared in the law of nature; parts of every law may be misguided, but a whole code was not likely to be abolished. The Stoic sage would still need to obey those laws which shared in the law of nature. This is somewhat different than Paul's abolition of the law. It is true, however, that even though the reign of the Mosaic law had ended, many Christian ethical demands could be compared to those found in the Mosaic law. Paul does not derive conduct from the law of Moses, but much of Christian behaviour corresponds to that behaviour which the law of Moses prescribes. Nevertheless, Paul says that a code of law is no longer binding.

The Stoic wise man is also said to follow the law through his own ability; his virtue was gained through his own accomplishments.<sup>462</sup> The perfection of the sage is complete. The Christian still needs exhortation,

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<sup>462</sup> Diogenes Laertius 7.126; Epictetus 1.29,4; 2.8,11-12; 13,10; Plutarch, *Moralia*, 441c; Seneca, *Epist. Mor.*, 88,19.

teaching, and the guidance of the Spirit.<sup>463</sup> The fact that Paul asks his churches to become imitators, either of him or of Christ, is proof of their "incomplete" moral status (1Thess.1:4-6). The sage needs nothing. The Christian, too, does not gain his ability to fulfil the law through his moral superiority; freedom from the law, and the subsequent ability to fulfil it, was gained through the saving act of Christ. It is the result of faith, not virtue.

There are also levels of Christians, the weak and the strong for instance.<sup>464</sup> There are no levels among the Stoic wise men; they are equally perfect. Though all levels of Christians could, theoretically, fulfil the law (Rom.8:3-14)<sup>465</sup>, only the wise man could do the law of nature.<sup>466</sup> Later Stoics introduced the level of those who were progressing between the fools and the sages - a sop for the masses - but the one who was progressing

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<sup>463</sup> Rom.1:11; 14:1-23; 15:1f; 1Cor.4:15; Col.1:9.

<sup>464</sup> Rom.1:11; 14:1f; 15:1f; 16:19; 1Cor.2:6; 3:1; 4:15f; 1Thess.2:11-12; 4:1-2.

<sup>465</sup> That Paul spoke of "levels" of Christian ability is clear; this passage, however, introduces a common "ability" in the Spirit to fulfil the law and to share in the fruits of the Spirit. The difference between Paul's claims and those of the Stoics are still quite pronounced.

<sup>466</sup> Diogenes Laertius 7.32; Plutarch, Moralia, 76a.

was still bound by the law of his city and unable to follow the law of nature.<sup>467</sup>

Then there is the question of number. The Stoics could not agree on whether there had been a wise man, while Paul could conceivably find churches full of people who fulfilled the law. Paul, it is true, holds out the fulfillment of the law by Christians as an ideal, not as an achieved reality by all Christians (Rom.8:2-4; 13:8-10; Gal.5:14; 6:2), but he must believe that some Christians fulfill the law. Christian life, after all, is a transformed life (1Cor.6:11; 2Cor.5:17; 11:2). All those who are Christians do have a real opportunity to fulfill the law; the Stoics could not claim such opportunity. Related to this is Paul's claim that the law no longer has a role in salvation.

If Paul had said that those who were not able to achieve Christian virtue should still follow the law, he would have been in line with Stoic concepts of law: all those without the ability of the wise man must observe the law, even though it is flawed and limited. Paul differs; he says that no one is bound by the law if they choose the Christian life. The Stoic wise man earned the right to live without the law,<sup>468</sup> and no one can

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<sup>467</sup> Plutarch, Moralia, 1062f; Seneca, Epist. Mor., 72.6; 75.8-14; Cicero, De Fin., 3.48.

<sup>468</sup> Marcus Aurelius, 7.67; Cicero, De Off. 1.148.

simply say he will now be a wise man and throw off the civil law. Paul claims something else: one does not earn the right to leave the material law behind, one must simply become a Christian, regardless of one's state of virtue. The Christian ability to fulfil the law was based upon participation in the Church and open to anyone who chose the way of Christ. The Stoic wise man was not able to invite others to participate in his freedom; they must earn it themselves.

Paul claims an egalitarian form of virtue and an ability to fulfil the law based on participation in Christ, not personal perfection. Everyone should leave the law of Moses behind and fulfil the law through Christ. This is far from the Stoic ideal: we are looking for one good man.<sup>469</sup>

Finally, there is the question of how Stoics and Christians are said to fulfil the law. The Christian fulfilment of the law through love (Rom.13:8-10; Gal.5:14) seems antithetical to the Stoic doctrine of apatheia, which the sage maintains.

We must, however, be careful on this point not to draw a caricature of the Stoic sage as someone divorced from human emotion. The Stoic wise man does feel emotions, but they are emotions guided by reason. The wise man rejects the irrational emotions of appetite, fear, distress, and

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<sup>469</sup> They would, of course, have welcomed many wise men and women, but the impossibility of anyone reaching their high standards was acknowledged even by the Stoics.

pleasure,<sup>470</sup> but accepts as reasonable the emotions of joy (chara), discretion (eulabeia), and "wishing" (boulēsis).<sup>471</sup> Important to our study is Epictetus' claim that, indeed, only the sage has the power to love (2.22,3).

Whether this love is the love of which Christians speak is one question, and, closely related, is whether the love of the wise man is directed to the good of the other. The love of which Paul speaks is the love of neighbour (Gal.6:2), a love upon which the Christian ethical life centres. There is some doubt that the Stoic sage "feels" this type of love. Martha Nussbaum says, "love of the intensely passionate sort (as opposed to the calm affection that is aimed at friendship, which Stoics approve and foster) feels uncertain, scary, unpredictable."<sup>472</sup> Such passionate love is not a desirable emotion for the Stoic sage, but Paul desires just such a passionate love if one is to fulfill the law (Gal.5:14).

There is even more evidence to suggest that the goal of the love of the Stoic sage is "self-directed". John Rist says,

our direct relationships with human beings are to be strictly subordinated to the making of our own moral excellence...The ethical theory depends on the

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<sup>470</sup> SVF 3.378,389,394.

<sup>471</sup> Diogenes Laertius 7.116; SVF 3.564,632; cf. the discussions of Nicholas White, "Two Notes," 115-119; and Martha Nussbaum, "Extirpation of the Passions," 172-173.

<sup>472</sup> Nussbaum, "Extirpation of the Passions," 166.

metaphysical claim that ultimately concern for one's own virtue is the only way in which we rational fragments can attain a state of harmony with external nature and God.<sup>473</sup>

Here we are far from the Christian ideal of the centrality of the love of the other. This is accentuated by Rist's claim that mercy is not a genuine virtue for the Stoic sage: mercy is "to treat some better than they deserve" and so conflicts with Stoic views of justice.<sup>474</sup> At the heart of Christian calls to love, is the contention that those who are not worthy are now deserving.

It is true that only the wise man loves, but it is love free from irrational emotion and grounded on reason. This is not to say Christian love is driven only by what the Stoics would term irrational emotions, but it is a formulation which the Stoic would probably shy from, if not wince at. Paul, at any rate, did not foresee a Christian life free from emotion, if his letters are any example.

Though we have argued earlier that Paul knows of the law of nature, and probably of the wise man who fulfils it, we must admit that if he used it in forming his idea of how the Christian fulfils the law, he has transformed it until it is almost unrecognizable.

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<sup>473</sup> Rist, "The Stoic Concept of Detachment," 265-266.

<sup>474</sup> Rist, "The Stoic Concept of Detachment," 268.

Paul could have received impulses from Stoic thought, but Paul's musing on the end of the law did not begin with his musing on the wise man's authority over the law, or with the wise man's transcendence over the material law. Paul forges a trail so unlike the Stoics that it cannot be followed, and then arrives at a different location. This is not a cartographer's dream. If Paul was influenced by Stoic claims regarding the superfluity of the law, then he has made them his own.

Chances are, however, that Stoic influence is minimal. Some similarities exist, but ultimately they do not convince. What is missing particularly in the ideal of the Stoic wise man who fulfils the law is the ideal of "participation" in Christ which leads to the end of the law for the Christian. It is the participation of the Christian in the Spirit which leads to his ability to fulfil the law. Our attention now turns to a concept which promises somewhat more in this important idea of participation.

## **CHAPTER NINE: THE KING WHO REPLACES THE LAW**

Another concept found in the Hellenistic period which may be helpful in determining whether or not Paul was influenced by Greek legal thought is the idea of the nomos empsychos or living law. It brings to fruition a number of common themes in Greek legal thought, such as the wise man having all authority over the law and the king as the best and most virtuous man, as well as adding a number of new themes. The most radical new theme is the concept of the king as the living law who functions as a replacement for the written law for his subjects.

Some years ago W.D. Davies, at the end of his study on possible Jewish influence on Paul's thought on the abolition of the law, suggested that the idea which may yield the most fruit in relation to Paul's law-Christ antithesis was the idea of the nomos empsychos.<sup>475</sup> He left the connections unexplored, and they have remained so. This chapter aims to build on Davies' suggestion.

### I) THE KING AS LAW

The term nomos empsychos is not found until the Hellenistic period, but the idea of the good and just king is found throughout much

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<sup>475</sup> W.D. Davies, Torah in the Messianic Age/ Age to Come (JBLMS 7; Philadelphia, 1952), 94,#11.

Greek literature. Connected with this is the idea of the lawgiver, which the king was sometimes considered.<sup>476</sup> The leap to the idea of the king as "living law" may not seem a great leap, it may even be implied in earlier sources, but it is in fact a momentous step.<sup>477</sup> In claiming the king as somewhat divine, or perfect, or just, our sources do not move much beyond other, earlier Greek claims, but in claiming the king as the living law, they oppose the king to the written law, and open the door to a powerful, new, and dangerous concept.

Throughout Greek history the idea of the king as a philosopher or wise man is present, but the king usually brings himself into agreement or conformity with the law, or more to the point, follows the written law. While the idea that the king is "lawful" by reference to some other measure is sometimes present in the Hellenistic living law sources, and the king does not necessarily contradict the law of his city, the new dimension is clear: the written law is superfluous for the king and his subjects, for the king is the law.

There are a number of aspects of the king as law which are

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<sup>476</sup> Plato, Pol., 300c; Rep., 425a-c; Aristotle, Pol., 3.11,13. Cf. also Jerome Hall, "Plato's Legal Philosophy", 183, 192.

<sup>477</sup> See Lucien Delatte's discussion in Les Traites, 123-163 for the development of the kingship ideal, with special attention to the nomos empsychos ideal, in Greek thought.

unique to the nomos empsychos ideal or particularly important to it. There are a number of ideas which it shares with all Greek monarchical thought, and though these are important, our concern is with what makes the living law ideal unique and instructive for Paul's own thought.

#### A) The King is the Law

The material of Archytas of Tarentum, we have argued, is the foundation of the living law ideal and perhaps genuine. Archytas' view of law is based on a distinction between the nomoi theon agraphoi, which are the pateres kai hagemones of the written laws, and laws of "wicked customs" (Stob. 4.1,132). Archytas makes a further distinction in the "written" law. The law is either the king, a living law (empsychos), or the inanimate, written law (apsychon gramma) (Stob. 4.1,135).<sup>478</sup> Diotogenes says that the king is the most just man and that justice is inherent in the law (Stob. 4.1,61). He then claims the king as the living law (nomos empsychos) or the "lawful leader" (nomimos archōn).<sup>479</sup> The term nomos empsychos is not used by Ecphantus, but the king is considered a law: the goodwill of the king is like that of a father for his son, a shepherd for his

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<sup>478</sup> Stob., 4.1, 132,135,136,137,138; 4.5,61; Goodenough, "Hellenistic Kingship", 59f; A. Delatte, Politique Pythagoricienne, 83-85; Holger Thesleff, Texts, 33-36.

<sup>479</sup> Stob. 4.7,61,62; Goodenough, "Hellenistic Kingship", 64-73; Thesleff, Texts, 71-75; L. Delatte, Les Traités, 37-45, 245-273.

sheep, and a law for those who use it.<sup>480</sup> Ecphantus contrasts law and the king elsewhere, saying that purification from sin comes from the subjects making themselves like their rulers (archontessin) "whether it be law or king who orders affairs where they are" (Stob.4.7,64).

The references to the king as law are not confined to the Hellenistic fragments. It appears in the Rhetorica ad Alexandrum, in which the author opposes democracy, whose final appeal is to law, and kingly rule, whose final appeal is to the reason (logos) of the king (1420a, 21-23). The term "living law" does not appear, but the term "living reason" (logos empsychos) does (1420a, 22-25).<sup>481</sup> Plutarch also calls the king the "living reason" (780c). This phrase becomes synonymous with the living law and has the same significance: one is either ruled by the written law or the king. The "living reason" did not entirely replace the "living law" though. Musonius Rufus, with little elaboration, calls the king a nomos empsychos, one who suppresses "lawlessness and dissension."<sup>482</sup>

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<sup>480</sup> Stob. 4.6,22; 4.7,64-66; Goodenough, "Hellenistic Kingship", 75-89; Thesleff, Texts, 79-84; L. Delatte, Les Traités, 25-37, 164-244. The oddity of this passage seems to be the affection that Ecphantus presumes people have for the law.

<sup>481</sup> The term logos empsychos may indeed be an indication of Stoic influence. The Logos was a far more important idea for the Stoics than for the Pythagoreans.

<sup>482</sup> Stob. 4.7,67; Lutz, Musonius, 64-65.

The idea appears in other sources, too, but the point is clear. The living law ideal replaces the written law with the king, known either as the living law or the living reason. This is no license for mayhem on the king's part; far from a license, the king is to be most just and, indeed, perfect. The written law is superfluous because the king functions in the role of law. It is true that not every discussion of the king as the living law opposes written law to the king; sometimes the king is said to be conformed to the law; but even then the written law is no longer necessary because the king fulfills its role. The king becomes law for his subjects and they need only follow him.

#### B) The King's Closeness to God

The ability to become the law for his subjects derives in part from the close relationship the king has to God. This close relationship, and the special status of the king, allows the king to function as a god to his subjects in some cases, and to recreate God's cosmic order in the political community. In Archytas' treatise, it is God's unwritten law which informs the king and enables him to become a living law. As the law, the king, through his closeness to God, brings harmony to the human soul and the political order, because the "law educates the soul and organizes the life."<sup>483</sup> Diotogenes claims that "it is right for the king to act as does God

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<sup>483</sup> Stob. 4.1,132; Goodenough, "Hellenistic Kingship", 59; A. Delatte, Politique Pythagoricienne, 83.

in his leadership and command of the universe."<sup>484</sup> By acting as God, the king brings the whole kingdom into harmony; this harmony mimics that of the cosmos. The king then becomes a "deity among men."<sup>485</sup>

For majesty, a godlike thing can make him admired and honored by the multitude;...he must separate himself from the human passions, and draw himself up close to the gods, not in arrogance, but in high-mindedness and in the exceeding greatness of his virtue.<sup>486</sup>

This closeness to the divine allows the king to affect the souls of his subjects. Ecphantus especially stresses the unique and high status of the king - the king is shaped, uniquely, in the image of God, and occupies a place between man and God.

He is like the rest [of mankind] indeed in his earthly tabernacle [skanos], inasmuch as he is formed out of the same material; but he is fashioned by the supreme Artificer, who in making the king used himself as an Archetype.<sup>487</sup>

Sthenidas, too, states that the king is a wise man and because he is wise "he will be a copy and imitator [zēlōtas] of the first God."<sup>488</sup> By imitating

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<sup>484</sup> Stob. 4.7, 61:263f; Goodenough, "Hellenistic Kingship", 67.

<sup>485</sup> Goodenough, "Hellenistic Kingship", 68.

<sup>486</sup> Goodenough, "Hellenistic Kingship", 72.

<sup>487</sup> Stob. 4.7,64; Goodenough, "Hellenistic Kingship", 76.

<sup>488</sup> Stob. 4.7,63; Goodenough, "Hellenistic Kingship", 73-74.

God, the king adopts God's many attributes: he is merciful, a support to his subjects, a teacher of beauty, and the lawgiver. Most of all, he is a father to his subjects.

Plutarch, too, speaks of the ruler as forming himself in the image of God, so as to become the law for his subjects (781b). Musonius Rufus stresses the importance of the king as an imitator of Zeus, and, therefore, a father to his people.<sup>489</sup>

This close relationship to God defines the king in the Hellenistic Pythagorean fragments, and among many of the authors who are dependent upon the concept. The king is an imitator of God. By virtue of the imitation, however, they become god to men, and are able to guide and, indeed, "save" their subjects. Their own function as divine being is related closely to their role as faithful subject.

### C) The King's Relationship to his Subjects

This last point leads directly to our next theme: the love between the king and his subjects. Since they are often like gods to their subjects, the king has a profound influence upon them and they in turn desire to follow the king.<sup>490</sup> The king must love his subjects, and desire to help

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<sup>489</sup> Lutz, Musonius, 65; Stob. 4.7,67. Compare to Sthenidas' use of zēlōtas in Stob. 4.7,63.

<sup>490</sup> Goodenough, "Hellenistic Kingship", 59.

them, to be a true living law.

Archytas says that the king must love his subjects and act only in their interest.<sup>491</sup> Diotogenes expresses more clearly how the king actually brings his subjects to good and virtuous lives: simply by looking at the king, their souls will be brought into harmony.<sup>492</sup> Sthenidas also claims that the king must be fatherly and merciful to his subjects,<sup>493</sup> but it is Ecphantus who supplies the most beautiful witness to the relationship between the king and his subjects. If the Logos of the king is accepted, says Ecphantus, it heals the corrupted, the sick, and the sinful; the king is able to cause his subjects to turn to the good.<sup>494</sup> Quite simply, he can make them better.

This is found in a number of other sources too. The author of the Rhetorica ad Alexandrum tells Alexander that he is a model for his subjects, a model which causes them to desire the virtues of the king (1420b,15-19). Plutarch considers this function of the king as the core of the king's purpose: the king is to make himself virtuous, and then lead his followers to virtuous lives (780b). Cicero, too, speaks of the king who protected the weak

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<sup>491</sup> Stob. 4.1,135; Goodenough, "Hellenistic Kingship", 60.

<sup>492</sup> Stob. 4.7,62:265f; Goodenough, "Hellenistic Kingship", 72.

<sup>493</sup> Stob. 4.7,63; Goodenough, "Hellenistic Kingship", 74.

<sup>494</sup> Stob. 4.7,65; Goodenough, "Hellenistic Kingship", 89.

from wrong (De Off. 2.41) and acted like a father to his subjects (De Rep. 1.54).

The king's love for his subjects and his ability to make them virtuous are found in a number of sources which echo the Hellenistic Pythagorean fragments. This is a central point of the living law ideal. No less central to the ideal is the king as a virtuous and just man.

#### D) Harmony (harmonia)

More significant is the distinctly Pythagorean ideal of the king who brings harmony to his subjects and to his state.<sup>495</sup> Archytas says that the law is to the soul and life as harmony is to hearing and speech.<sup>496</sup> Law brings harmony to the soul and life; so too does the king, who is the living law. Archytas further states that virtue arises from a harmony of reason (the king) and the irrational (the ruled) (Stob.4.1,135).

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<sup>495</sup> L. Delatte, Les Traités, 164f.

<sup>496</sup> Stob. 4.1,135 - 82,15-17; Goodenough, "Hellenistic Kingship", 59; A. Delatte, Politique Pythagoricienne, 83-84, says, "il est remarquable encore que la comparaison de la loi avec l'harmonie soit exprimée sous la forme d'un rapport:

Loi	=	<u>Harmonie</u>
âme et vie		ouïe et voix (84).

Diotogenes states that the goal of the king is to bring the same harmony to his kingdom that God brings to the universe.<sup>497</sup> In this regard, the king imitates God and the state imitates the universe. Ecphantus relates the harmony of the state directly to the king's role. But not only the harmony of the state rests with the king: "private matters of accord must be brought into accord with his single rule and leadership."<sup>498</sup> The harmony which the king brings knows no boundaries.

Ecphantus states that the nature of every being is in harmony with the cosmos (Stob.4.7,64). The function of the king is integral not only to his subjects, but to the order of the world itself. To follow the "law" is to take one's place in the cosmos.

Indeed, the state is "an imitation of the order and harmony of the world." Law is central to the king's rule and to the harmony of the state, because law is central, inherent, in the cosmos. This means that the king, in imitating God, becomes the living law, an "absolute" (anypeuthynon) ruler, and a god among men (theos en anthropois).<sup>499</sup> It also means that the harmony of the state and its subjects rests squarely with the king.

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<sup>497</sup> Stob. 4.7,61 - 264,11; 264,15; 264,18; 265,10; 4.7,62 - 268,12; 269,2; 269,3; L. Delatte, Les Traites, 37-45; Goodenough, "Hellenistic Kingship", 65-73.

<sup>498</sup> Stob. 4.7,61; Goodenough, "Hellenistic Kingship", 67.

<sup>499</sup> Stob. 4.7,61; Goodenough, "Hellenistic Kingship", 68.

The king knows "that the harmony of the multitude whose leadership God has given him ought to be attuned to himself," and so "the king would begin by fixing in his own life the most just limitations and order of law."<sup>500</sup> There is no harmony, therefore, if the king is not lawful, that is, just. If, however, the king meets the requirements of his position, merely looking at him brings harmony to his subjects (Stob.4.7,62) and to the political community (Stob. 4.7,62).<sup>501</sup>

It is not surprising to find this concentration on harmony in the Pythagorean fragments - it was a centre of Pythagorean thought<sup>502</sup> - but statements regarding harmony are found in the secondary witnesses as well. Musonius speaks of the king as effecting "good government and harmony."<sup>503</sup> Plutarch echoes the idea of harmony when he speaks of the subjects molding themselves to fit the king's pattern (780b).

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<sup>500</sup> Stob. 4.7,62; Goodenough, "Hellenistic Kingship", 71.

<sup>501</sup> L. Delatte, Les Traités, 271.

<sup>502</sup> See, for instance, Flora R. Levin, The Harmonics of Nicomachus and the Pythagorean Tradition (Amer. Class. Stud.1; American Philological Association, 1975), 1. She says: "that there is an intrinsic symmetry in the natural universe, founded on a mathematical necessity and expressible in the commensurable terms of a musical harmonia, is a conception consistently connected with Pythagorean doctrine."

<sup>503</sup> Lutz, 65.

E) Imitation (mimēsis)

The idea of imitation, in the classical sense of the term - forming oneself in the image of the original - runs throughout the kingship texts. The first occurrence is in the writings of Archytas. Archytas claims that "the law will be conformed to nature, if it imitates the justice (dikaion) of nature."<sup>504</sup> This Stoic-tinged sentence illustrates the degree to which the law was simply a part of the cosmic order; the king, in the same way, is to imitate the order and take his place in it: he, too, is the law.

The idea of imitation, however, comes especially to the fore in the work of Ecphantus. The beauty of the cosmic order, says Ecphantus,

is revealed straightway, if the one [the king] who imitates [God] in his virtue is beloved at once by him whom he is imitating and by his subjects.<sup>505</sup>

The greatness of the political, and cosmic, order is revealed through imitation, for when true imitation occurs, each element functions properly. The king is king not by virtue of his place, but by virtue of his actions; the same is true of the subjects of the king.

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<sup>504</sup> Stob. 4.1,136 - 83,19; My translation of the author; cf. with A. Delatte, Politique Pythagoricienne, 91-92.

<sup>505</sup> Stob. 4.7,64; Goodenough, "Hellenistic Kingship", 77.

Even God, though, would like the subjects of the king to imitate God and those who do imitate God do "all things better than other people."<sup>506</sup> The king who occupies a position between man and God is the true imitator of God, however, and he is the true focus of his subjects. For "the king alone is capable of putting good into human nature so that by imitation of him, their Better, they will follow in the way they should go."<sup>507</sup> The imitation of the king drives evil from his subjects' souls.

Sthenidas, too, calls the king an imitator (zēlōtas) of God (Stob.4.7,63). To be a king one must be an imitator of God, for the attributes of God must belong to the king if he is to be a true king. A true king is worthy of imitation.

Musonius, echoing Sthenidas, says the king must be zēlōtēs for God: a true imitator.<sup>508</sup> The author of the Rhetorica ad Alexandrum states simply that the king is to be the model upon which his subjects pattern themselves (1420b, 13-19).

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<sup>506</sup> Stob. 4.7,65; Goodenough, "Hellenistic Kingship", 89.

<sup>507</sup> Stob. 4.7,65; Goodenough, "Hellenistic Kingship", 89.

<sup>508</sup> Lutz, Musonius, 64. The expected translation of zēlōtēs, zealous, is not in view in this passage. See Liddell and Scott, Greek-English Lexicon (Oxford: Clarendon Press, 1978), 755; they offer this passage, and that of Sthenidas, as examples of the meaning "true imitator," or "emulator."

It is in the act of imitation, by the king of God, and by the people of their king, that harmony is maintained and justice and good order reign, not only in the cosmos and the political order, but in personal lives.

F) "Communion" (koinōnia)

The most common concept in the kingship fragments, at least in terms of number of appearances, is the idea of "communion" or "fellowship" (koinōnia). The idea of communion between a king and his subjects has a special resonance in these texts. It speaks of a special, almost mystical, relationship which arises as a result of harmonia in the community. At times it seems to be a mystical or religious union between the king and his followers. It is confined to the Hellenistic texts.

The term can imply, of course, simply a community.<sup>509</sup> But even here the sense of community is that of a community harmonized by the proper function of each of the member parts. If the parts do not function, the community is in disarray.

More common, however, is the mystical nature of the term stressed by Ecphantus:

for the first and most necessary of all things for the human race is that communion shared in by the king over men as well as by the master who rules all things

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<sup>509</sup> As in Archytas, Stob. 4.1,135 - 82,19; the obvious choice for this meaning, however, is usually, to koinon.

in the universe. For apart from love and communion existence is impossible.<sup>510</sup>

This koinōnia is special because God and the king do not actually need ordinary communion. This koinōnia is necessary because it is "love which shares in a common purpose in a city {which} is a copy of the unanimity of the universe."<sup>511</sup> This koinōnia, among God, the king, and the ruled produces harmony. For the subjects, it produces obedience and love for the king. The king, in turn, loves and has communion with his subjects, just as God has with his kosmos (Stob.4.7,64).

One of the ways in which the king is just is through equal communion with all of his subjects (Stob.4.7,66). Because he loves them equally he can not treat any of them unjustly.

Diotogenes, too, links koinōnia to justice.

For justice bears the same relation to communion as rhythm to motion and harmony to the voice; for justice is a good shared in common between the rulers and the ruled and is accordingly the harmonizing principle in the political community.<sup>512</sup>

It is from this special relationship, this mutual koinōnia, between ruler and ruled that equity is established, and mercy and justice emerge.

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<sup>510</sup> Stob. 4.7,64; Goodenough, "Hellenistic Kingship", 83.

<sup>511</sup> Stob. 4.7,64; Goodenough, "Hellenistic Kingship", 83.

<sup>512</sup> Stob. 4.7,62; Goodenough, "Hellenistic Kingship", 72.

G) The Hellenistic Kingship Traits: Eunoia, Euergetēs, Sōtēr

This section is designed to stress the "Hellenistic" nature of the kingship treatises; though unique, these treatises were also part of a larger body of Hellenistic kingship speculation. The terms discussed here are also central to one or more of the Pythagorean writers in their discussions of kingship. They also appear in later writings in the nomos empsychos tradition.

Interestingly, most of the terms are specific to certain authors in the fragments we are examining. While Archytas, Ecphantus, and Diotogenes all use a form of sōtēr to describe the king, only Ecphantus uses eunoia and only Diotogenes uses euergetēs.<sup>513</sup> The terms we do have, however, are called by W. Schubart the "Hauptbegriffe, die...das Wesen des hellenistischen Königtums am reinsten ausdrücken."<sup>514</sup>

Archytas (Stob.4.1,138), Ecphantus (Stob.4.7,64), and Diotogenes (Stob.4.7,61) all refer to the king as the saviour. This is a pure expression of Hellenistic kingship speculation, and a pure expression of what people

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<sup>513</sup> Sthenidas contains no "Hellenistic" kingship terms, but his tractate is by far the shortest; it is difficult to know what is missing.

<sup>514</sup> W. Schubart, "Das hellenistische Königsideal", 13. He includes in his Hauptbegriffe sōtēr, eunoia, euergetēs, and boēthos. Only the last of these does not appear in the Pythagorean tractates.

wanted from a king.<sup>515</sup> Yet, the term does not generally refer to a spiritual saviour; more often than not it refers to the physical salvation of a given city or people by a king.

Goodenough is correct to see something more than simply the physical salvation of a body politic referred to in the Pythagorean fragments, particularly with Ecphantus, but a warning should nevertheless be sounded: the somewhat mystical personal/political ideal does not approach the religious heights of the spiritual salvation offered in the NT.<sup>516</sup>

An important concept is also that of the king as euergetēs or "benefactor" of his people.<sup>517</sup> This appears only in Diotogenes, and it is fundamental to his work. The king is to "do good" to his people, to "benefit" them. Though this becomes a title of great significance for Hellenistic kings, it is again grounded in practicality: the king is to physically benefit, bring boons, to his people. It is not clear whether the king who administers these

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<sup>515</sup> Goodenough, "Hellenistic Kingship," 85, 98; L. Delatte, Les Traités, 225-226, 249; A.D. Nock, "Soter and Euergetes" in Essays on Religion and the Ancient World II (ed. Zeph Stewart; Cambridge, Mass.: Harvard University Press, 1972), 720-735; Paul Wendland, "Soter" in ZNW 5 (1904), 335-353; Julius Kaerst, Geschichte des Hellenismus, II, 313, 318f.

<sup>516</sup> Goodenough, "Hellenistic Kingship," 98.

<sup>517</sup> Schubart, "Das hellenistische Königsideal," 13-15; L. Delatte, Les Traités, 138, 253; Goodenough, "Hellenistic Kingship," 98; A.D. Nock, "Soter and Euergetes," 720-735.

acts takes on a more intense, heightened mystical significance - it is possible - but the acts he administers never leave the realm of human actions.

The third major concept, eunoia, occurs only in Ecphantus. Eunoia is the "good will" which is to exist between the king and his subjects. In light of Ecphantus' concentration on koinōnia and mimēsis, eunoia conjures up images of a special, even religious, bond between ruler and ruled.<sup>518</sup>

All of these concepts speak of the functions of the good king, and sometimes the response of the subjects. They are all powerful concepts in the Hellenistic world and beyond. Some important Hellenistic kingship terms are not present, such as ktistēs (creator), but most of the most significant terms are found in the Pythagorean texts. Even some secondary terms occur.

Diogenes calls the king a misoaponēria (hater of evil). This is an important designation, and almost achieves the status of a title in the Hellenistic era.<sup>519</sup> Ecphantus' reference to the king as one who appears or manifests himself (epiphainesthai) is a central term of kingship. The idea of

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<sup>518</sup> Schubart, "Das hellenistische Königsideal," 5, 8-9, 13; L. Delatte, 227, 231-232.

<sup>519</sup> Schubart, "Das hellenistische Königsideal," 8.

the "appearance" of the king takes on mystical proportions in the Hellenistic period, with epiphanēs becoming a most popular title for a king.<sup>520</sup> Other, less important, Hellenistic kingship terms appear intermittently throughout the texts, such as eunomia (good government) and eusebeia (piety).

What all of these terms point to, of course, is the provenance of the texts, the early Hellenistic era, but also to the special nature of the nomos empsychos writings. Though these terms show them as part of Hellenistic speculation, it is the other terms, previously examined, which make them unique.

Interestingly, Hellenistic kingship terms abound in the work of Musonius Rufus as well. Derivations of sōtēr and sōzō abound, as do euergētēs, dikaios, and eunomia.<sup>521</sup> Similar terms occur in Plutarch, Philo, and in the Rhetorica ad Alexandrum.

#### H) The Just King (Ho Diakaios)

Though no less central, the idea of the just king is somewhat less important in the unique concept of the king as living law, because the ideal

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<sup>520</sup> A.D. Nock, "Notes on Ruler-Cult I-IV" in Essays on Religion and the Ancient World I, 152-159; Goodenough, "Hellenistic Kingship," 98.

<sup>521</sup> Lutz, Musonius, 60, 62, 64.

of the just king is found in almost all Greek sources on kingship.<sup>522</sup> Not many people desire an unjust king! Nevertheless the idea is integral to this concept, as well as to Hellenistic kingship.<sup>523</sup>

Archytas states that the most reasonable man should rule, for he is the best man.<sup>524</sup> Diotogenes agrees, claiming that "the most just man would be king, and the most lawful would be most just."<sup>525</sup> The king is the best in the earthly realm, as God is the best in the heavenly realm.<sup>526</sup> Sthenidas, too, designates the king a wise man, and links this with the king's imitation of God, but it is Ecphantus who tells us that the king is a unique creation, shaped in the image of God. And like God, the king is perfect in virtue (Stob. 4.7, 64).

What is unique about this common Greek theme in these sources is that the king is just because he is the law. He is also "conformed" to the

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<sup>522</sup> See Lester K. Born, "Animated Law in the Republic and Laws of Cicero," 131f, #26. Here he appends a list of attributes found among most Greek authors on kingship. Some of these are Justice, Virtue, and Wisdom. He lists these with references.

<sup>523</sup> Schubart, "Das hellenistische Königsideal," 7.

<sup>524</sup> Stob. 4.1,135; Goodenough, "Hellenistic Kingship," 59.

<sup>525</sup> Stob. 4.7,61; Goodenough, "Hellenistic Kingship", 65.

<sup>526</sup> Stob. 4.7,62; Goodenough, "Hellenistic Kingship", 68.

law. The idea of the just king who aligns himself with the law is found in Archytas,<sup>527</sup> Diotogenes,<sup>528</sup> Ecphantus,<sup>529</sup> and Sthenidas.<sup>530</sup>

Musonius says that for the king to arbitrate justice for his subjects, he must be just. The king, above all, must be trained in justice.

Plutarch expresses the same ideal, in perhaps its most elegant statement:

Now justice is the aim and end of the law (and) law is the work of the ruler, and the ruler is the image of God who orders all things...by his virtue he forms himself in the image of God (780e).

Cicero says that kings existed so that people would enjoy justice (De Off. 2.42-42). It seems true that the expression of the king who conforms himself to the law and becomes the law is found preeminently in the Pythagorean fragments, but the idea of the just and lawful king is found in all the witnesses.

The last element of the just king, already touched upon, is his affection and love for his subjects. Archytas says that the king must be a lover of men. Diotogenes claims that the king is occupied with doing well for and benefiting his subjects. Sthenidas concentrates on the king's mercy and

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<sup>527</sup> Stob. 4.1, 135-138.

<sup>528</sup> Stob. 4.7, 61-62.

<sup>529</sup> Stob. 4.7, 64-66.

<sup>530</sup> Stob. 4.7, 63.

fatherly attitude toward his subjects. Ecphantus says that the king "has the same love and communion with his subjects as God has with the universe and the things in it."<sup>531</sup> The king, according to Ecphantus, has complete good will for his subjects, and his subjects good will for him.

Goodenough, in fact, claims that in understanding the relationship between the king and his subjects, we have "grasped the meaning which lies behind the conception of the Animate Law."<sup>532</sup> What is this meaning?

The king is personally the constitution of his realm, that all the laws of localities must be ultimately molded by and express his will. But more, he is the saviour of his subjects from their sins, by giving them what the Hellenistic world increasingly wanted more than anything else, a dynamic and personal revelation of deity.<sup>533</sup>

The king as the law was the Hellenistic answer to a search for meaning and hope, and an escape from the arbitrariness of law and morality. The subjects under the nomos empsychos

will at last have achieved the dream...of all Greek ethical thinking...to live spontaneously by divine law

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<sup>531</sup> Goodenough, "Hellenistic Kingship", 84.

<sup>532</sup> Goodenough, "Hellenistic Kingship", 91.

<sup>533</sup> Goodenough, "Hellenistic Kingship", 91; see also Glen Chesnut, "The Ruler and the Logos in Neopythagorean, Middle Platonic, and Late Stoic Political Philosophy" in ANRW II. 16.2, 1312.

and dispense with the seriatim compulsion and injustice of the written code.<sup>534</sup>

In many ways they were free from the written law.

#### I) Conclusions

There are a number of points of contact with Paul's statements about the law which spring to mind, particularly in regard to how a whole community under the guidance of one ruler, Christ, can fulfill the requirements of a written law by which they are not bound (Rom.8:4, 10:4, 13:10; Gal.5:14), and what Paul may in fact mean when he speaks of something resembling a law of Christ (Gal.6:2; 1Cor.9:21; cf. Rom. 3:27, 8:2). Yet one cannot claim that Paul has read Cicero or Plutarch, let alone specific Hellenistic fragments.<sup>535</sup> On what basis can we compare Paul's thought with the idea of the king as a living law? A comparison rests upon the assumption that the kingship ideal was common enough currency in the Roman Empire for Paul to have dealt with it in his day-to-day life and to have heard about it in the marketplace or in discussions with acquaintances. It must, in some way, be seen to undergird claims of kingship in the Roman Empire, if not actually then theoretically. If it did support Roman imperial claims, there would be even clearer evidence that

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<sup>534</sup> Goodenough, "Hellenistic Kingship", 91.

<sup>535</sup> It is, however, always good to remember that what we have as fragments were not written as such!

an ordinary Roman citizen such as Paul would have known of the living law idea.

The evidence, as our earlier study showed, is not straightforward. There is some evidence that the idea was actually used to support claims of divine or absolute kingship in the Roman Empire, but not to the degree that some have argued. Nevertheless, the evidence that the ideal was known in Rome from these "historical" references is solid. Combined with our knowledge of the literary sources, especially Philo, Cicero, and Musonius Rufus, we can argue that the ideal was probably common enough for Paul to have known of it. Whether or not this concept influenced Paul can only be demonstrated through a comparison of the texts.

## II) PAUL AND THE LIVING LAW: AREAS OF AGREEMENT

If Paul was aware of the discussion, and it is probable that in its broad outlines he was, there are a number of ways in which it could have influenced his understanding of Christ's effect on the law and the subsequent fulfillment of the law by the Christian under the Spirit. These are the broad areas of agreement between the concepts.

### A) Christ the King

At a most basic level, Jesus was for Paul ho christos and ho kyrios, the Messiah and the Lord. The Messiah has, naturally, its own history in Hebrew thought; that Paul was aware of this history should be obvious.<sup>536</sup> Paul also had to make sense of the Messiah in Greek terms and for Greeks; the same is true of the term Lord.

Scholarship has moved away from Wilhelm Bousset's contention in Kyrios Christos that ho kyrios was a term borrowed from Hellenistic thought.<sup>537</sup> Instead, kyrios has for some time been recognized as a term bestowed upon Jesus by the earliest Christians in Palestine.<sup>538</sup> Scholars

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<sup>536</sup> John L. McKenzie, "Aspects of Old Testament Thought" in Jerome Biblical Commentary (eds. Raymond E. Brown, Joseph A. Fitzmyer, Roland E. Murphy; Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1968), 762-764; Joseph Klausner, The Messianic Idea in Israel from its Beginning to the Completion of the Mishnah (New York: The Macmillan Co., 1955).

<sup>537</sup> Wilhelm Bousset, Kyrios Christos (Nashville/New York; Abingdon Press, 1970).

<sup>538</sup> It survives in the prayer/confession maranatha. Oscar Cullman, The Christology of the New Testament (Philadelphia: Westminster Press, 1963), 208. Joseph Fitzmyer, "The Semitic Background of the New Testament Kyrios-Title" in A Wandering Aramean (SBLMS 25; Missoula, Montana: Scholars Press, 1979), 115-142; "New Testament Kyrios and Maranatha and their Aramaic Background" in To Advance the Gospel (New York: Crossroad, 1981), 218-235. Fitzmyer is convincing in his claim that the title has its roots among Palestinian Jews as a name of God. He says if his evidence is accepted, it seems likely that the title mare "was used of him {Jesus} as a means of expressing his transcendent and regal status" (223).

are generally agreed, too, that kyrios in the NT as used of Christ usually signifies a spiritual lordship, or kingship, over, first, the Church, and, second, the universe. It does not usually imply a political lordship.<sup>539</sup>

Nevertheless, kyrios continues to signify absolute rulership and authority; in this sense it maintains the language of kingship.<sup>540</sup> Lucien Cerfaux says of Paul's use of kyrios that

though he has filled it with the implications of his theology...we can still hear the primitive affirmation of the kingship of Christ.<sup>541</sup>

Though early Christian understandings of the nature of Jesus' kingship confounded Jewish expectations in many ways, Jesus was considered the king, and early Christians continued to use the language of kingship to describe him.<sup>542</sup> In the term kyrios the language of kingship resonates.<sup>543</sup>

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<sup>539</sup> Lucien Cerfaux, Christ in the Theology of St. Paul (Freiburg: Herder, 1962), 96-97.

<sup>540</sup> Lucien Cerfaux, "Le Titre Kyrios et la Dignité Royale de Jésus" in Revue des Sciences Philosophiques et Théologique 11 (1922), 40-71. Cerfaux presents in detail the royal applications of kyrios and marē. Cf. Joseph Fitzmyer, "The Semitic Background," 131-32. Fitzmyer says that "the entire tradition of the royal character of Yahweh in the OT would seem to be associated with the kyrios-title" (132).

<sup>541</sup> Cerfaux, Christ, 95.

<sup>542</sup> There is not, however, so great a gap between Jewish and early Christian expectations as many stress. Aage Bentzen, King and Messiah (London: Lutterworth, 1955), 77-78 points out that the elements of innocent sufferer and heavenly son of man were also Jewish expectations. Larry W. Hurtado, One God, One Lord: Early Christian Devotion and Ancient Jewish

Perhaps even older than "Lord" is the Christians' designation of Jesus as Messiah. Here, indeed, is the language of Jewish kingship. Again, however, it is language which is de-politicized in the hands of the early Christians.<sup>544</sup> The Messiah, whose claims in Judaism to universal kingship were rather "spiritualized" before the coming of Jesus, was nevertheless to exercise a temporal authority over all the nations; Jesus did not become a national or political king.<sup>545</sup> Yet, the terms of kingship

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Monotheism (Philadelphia: Fortress Press, 1988), stresses common motifs in Christian and Jewish belief in "divine agency." He also carefully considers the Christian "mutation," and, therefore, newness. The newness of the Christian conception lies in the acceptance of Jesus as an object of devotion. The disregard for the political functions of the Messiah in the temporal world was not new to Christianity, but it was stressed to an unprecedented degree. Dom Gregory Dix, Jew and Greek, 20 stresses, however, that the Gospels speak of an actual, not spiritualized, kingship of Jesus.

<sup>543</sup> For instances of its use in Paul, see Rom.8:34; 1Cor. 9:1; 16:22; 2Cor. 4:14; Col.3:1; Phil.2:6-11. The language of kingship resonates as well in Paul's use of "glory" to describe Jesus: 1Cor. 2:8; 2Cor. 3:18; 4:4; Col.3:4. See Cerfaux, Christ, 95.

<sup>544</sup> Though the distinction between religious and political was rather foreign to the ancients, it is fair to say that in a temporal sense Jesus' kingship claims were limited; in this way he is less "political." Not all Jewish messianic notions, however, were political, but John L. McKenzie, "Aspects of Old Testament Thought," 762, says, "nationalistic coloring was never absent from any stage of the pre-Christian development of Messianic thought." The idea of the Messiah by the time of Jesus was an amalgam of competing claims and definitions. He would be "almost by definition...a political savior," says McKenzie, but "his saving acts would never be merely political" (764).

<sup>545</sup> John J. Collins, "Messianism in the Maccabean Period" in Judaisms and their Messiahs at the Turn of the Christian Era (eds. Ernest Frerichs, William S. Green, Jacob Neusner; Cambridge: Cambridge University Press, 1987), 97-

continue to resonate among his followers, even in their "new" use of Messiah.<sup>546</sup> Jesus remained the king. Expectations may not always have been met, but this was a problem of false expectations for early Christians, not a false Messiah.<sup>547</sup>

The language of the "kingdom" (basileia) also occurs in Paul's letters, but only twice does Paul describe the kingdom of Christ (1Cor.15:25; Col.1:13). Only once does Paul speak of Jesus' coming reign (1Cor.15:25) and only once is Jesus called a king (1Tim. 6:15), and this in a Deuteropauline text.

The language of kingship is used to describe Jesus, but not often is this explicit; the terms used, such as Lord or Messiah, often have greater religious significance than political, at least in Christian hands.

We must reckon with the reality that Paul was not immune to understanding Christ the King in Greek terms. Paul could have reworked

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109; Shemaryahu Talmon, "Waiting for the Messiah: The Spiritual Universe of the Qumran Covenanters" in Judaisms and their Messiahs, 111-137; Irving M. Zeitlin, Jesus and the Judaism of his Time (Cambridge: Polity Press, 1988), 38f; Joseph Klausner, The Messianic Idea in Israel from its Beginning to the Completion of the Mishnah (New York: Macmillan Co., 1955).

<sup>546</sup> Cerfaux, Christ, 480-499, esp.488, 497; Cullman, Christology, 113-117.

<sup>547</sup> H. Clavier, "Theocratie et Monarchie selon L'Evangile" in The Sacral Kingship (Leiden: E.J. Brill, 1966), 458 speaks of how Jesus confounded secular, or Roman, views of kingship as well. His was a kingship based on love, it was not dictatorial, despotic, or totalitarian. Neither, of course, was the nomos empsychos, at least ideally.

Greek kingship notions as early Christians reworked Jewish kingship notions. First and foremost, Jesus was the Messiah and Lord. Paul may have been, consciously or not, open to an explanation of Jesus and his effect in terms of the kingship models at hand, including Greek models and explanations.<sup>548</sup>

#### B) Jesus ends the Law

More specifically, Paul was convinced that the arrival of Jesus heralded the end of the law for those subject to him. The law under Christ is powerless.<sup>549</sup> One is either under the law or under the guidance of the Spirit (Rom.7:6; 2Cor3:6).<sup>550</sup> Paul does not envision a community of Christians without guidance. Chief among these forms of guidance is the leading of the Holy Spirit (Rom.7:6; 8:1-11; 1Cor.2:14; 6:9-11; 12:4-13;

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<sup>548</sup> Arnold Ehrhardt, "Jesus Christ and Alexander the Great" in The Framework of the New Testament Stories (Manchester: University Press, 1964), 37-43 claims that Paul's view of Jesus in Phil. 2:5-11 is based upon a kingship tradition also found in Plutarch, Alex. Virt. s. Fort. I:8. I am not convinced. This article appeared some years earlier as "Ein antikes Herrscherideal: Phil.2,5-11" in EvT 1948-49.

<sup>549</sup> It may be better to say that Jesus' death and resurrection, not arrival, freed Christians from the law. This would be somewhat different than the kingship treatises. See Rom.7:4; Gal.2:19. It is not clear what Paul thought of Jesus' effect on the law before his passion. See Cerfaux, Christ, 111, 149.

<sup>550</sup> Stephen Westerholm, "Letter and Spirit: The Foundation of Pauline Ethics" in NTS 30, 229-248. If, as it sometimes appears, Gentiles are not under the law, but under natural reason (Rom.1:18f) or ta stoicheia (Gal.4:8f; Col.2:8f), it is nevertheless fair to say that everyone outside Christ is consigned to sin (Rom.3:10).

2Cor.3:4-6; Gal.5:16-25).<sup>551</sup> So profound is this guidance that Christians, though not under the law, fulfill its just requirement (Rom.8:4).<sup>552</sup>

This parallels the claims made in the kingship material that the king replaces the law by conforming himself to the law, becomes the law, and then guides his subjects. There is no doubt that the choice is between the king and the written law.

### C) One Fulfills the Law Under Christ

It is in this body of ideas that Paul and the nomos empsychos ideal find their most sympathetic agreement. The king as the living law replaced the law, but he then became the law. Though the subjects are without written law, they are lawful because they are under the dominion of the king and follow him. His life and reason guide them; and if the king is followed he is able to drive out sin from his subjects and save them. Paul does not call Jesus the law -though he perhaps comes close to doing so (Gal.6:2; 1Cor.7:19; 9:21) - but by following Jesus Christians are able to fulfill the law (Rom.8:4, 13:8-10; Gal.5:14). It is only Christians, under the

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<sup>551</sup> This is clearly different than the kingship treatises, but the pneuma is closely tied to Jesus himself. See Rom.8:10; 1Cor.2:10-16; 2Cor.3:17. Bousset, Kyrios, 160-163 identifies the Spirit with Christ. Most others see a close relationship, but two separate entities: Vincent Taylor, The Person of Christ in New Testament Teaching (London: Macmillan and Co. Ltd., 1963), 54; A. Schweitzer, The Kingdom of God and Primitive Christianity (London: Adam and Charles Black, 1968), 183.

<sup>552</sup> Cerfaux, Christ, 150.

guidance of the Spirit, who have the ability to fulfill the law (Rom.8:1-8).<sup>553</sup> Like the follower of the living law, they no longer "do" a code of law, they follow Christ and thereby "fulfill" the law.

#### D) Jesus and the Christian

Jesus, like the king, is not only the most just and the best, he also leads his followers into good;<sup>554</sup> he makes them righteous. All were formerly under sin (Rom.3:9; 1Cor.6:9-11; Gal.4:8; Col.2:9), but Christ's redemptive act frees all those who follow him from sin (Rom.6:12-22; 1Cor.6:9-11; Col.3:5-11). The one saves all from sin (Rom.3:23-26, 5:19). It is only through the act of Jesus under the guidance of the Spirit that a Christian is able to be righteous.

Paul speaks often of the life in Christ (Rom.6:11; Gal.3:27), or Christ living in Christians (2Cor.4:10; Gal.2:20; Phil.1:21), or of the body of Christ in which Christians participate (1Cor.12:12). This is the centre of the Christian life under Christ: union with Christ. On at least one occasion Paul speaks of koinōnia as a union with the body and blood of Christ (1Cor.10:16; cf. 1Cor.1:9).<sup>555</sup> These terms all speak of "union" or "participation" as the means of righteousness and salvation. It is through Christ that his followers

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<sup>553</sup> Cerfaux, Christ, 150, 235.

<sup>554</sup> Cerfaux, Christ, 235.

<sup>555</sup> Bousset, Kyrios, 159.

become "sons" of God (Rom.8:7,29; 1Cor.1:9; Gal.4:6,7; Col.1:13).

Likewise, it was through a mystical communion (koinōnia) with the king that the subjects desired to follow the living law; he, too, was able to make them virtuous. He was able to save them, if they would only gaze at him.

#### E) Jesus' Relationship with God

Jesus' relationship with God was that of son to father; he was the unique, only son of God (Rom.1:4; 9:5; 1Cor.8:6; 2Cor.5:19; Col.1:16; 2:19; Phil.2:9). While questions abound as to whether or not Paul actually called Jesus "God," it is clear that Jesus occupied a status like God.<sup>556</sup> This term expressed the "historical and qualitative uniqueness of his relation to his Father."<sup>557</sup> He is, like the king, "the heavenly man, the image of God."<sup>558</sup> For the Christian, "our likeness to God comes from our participation in the heavenly man. He is the true image of God."<sup>559</sup>

In the same way, the living law was a unique creation, the only person created directly in the image of God. Though not divine, he occupied a special status between God and the rest of mankind. He imitated God,

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<sup>556</sup> Cerfaux, Christ, 509f; Cullman, Christology, 237, 311-313.

<sup>557</sup> Cullman, Christology, 275.

<sup>558</sup> Cerfaux, Christ, 433. See Rom.8:29; 2Cor. 3:18, 4:4, 5:19.

<sup>559</sup> Cerfaux, Christ, 433-434.

and his subjects imitated him; in this way order was maintained, justice and goodness prevailed.

### III) THE LIVING LAW: A RECONSTRUCTION

There are some broad areas of agreement with Paul's thought on the law, but in order to see what the possible influence of the living law idea could be, it would be helpful to engage in a hypothetical reconstruction of how it could have specifically influenced Paul's thought. This is an attempt to see the positive information such a concept might yield.

#### A) Rom.10:4

The nomos empsychos ideal would offer further support that the proper understanding of telos in Rom.10:4 is "end"; Jesus terminates the law because he replaces the law.<sup>560</sup> The living law tractates see the king as the replacement of the written law. The king is also considered most lawful, or most just, and it is perhaps for this reason that the Christian can be said to fulfill the law or its just requirement even though he is no longer under the law. The replacement, Christ, equals or betters the law he replaces and so allows the Christian, who is not bound by the law, to fulfill its requirements. The living law ideal illustrates how Paul can say that the

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<sup>560</sup> Against Robert Badenas, Christ: The End of the Law. (JSOT Supplement Series 10; Sheffield: JSOT, 1988).

Mosaic law is ended, yet at the same time claim that the fulfilment of the law is to those who are not under the written law.

B) Rom.3:27; Rom.8:2; 1Cor.9:21; Gal.6:2

Some scholars have tried to find a "law of Christ" on the basis of one or more of these verses; these attempts have all failed.<sup>561</sup> Their critics point out that Paul does not explicitly divide the law into sections, only some of which the Christian fulfills; nor does he know the particulars of a law of Christ. If he had such a law, they say, he would use it. Paul does not refer to a code of Christ's law. The nomos empsychos ideal leads to a way out.

Of Gal.6:2 Westerholm says, "The phrase is used loosely, by analogy with the Mosaic code, for the way of life fitting for the Christian. No specific collection of commands is in view."<sup>562</sup> Räisänen calls the phrase ennomos christou in 1Cor.9:21 "accidental" and Sanders refers to it as "virtually untranslatable."<sup>563</sup> Apart from the attempts at seeing in

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<sup>561</sup> cf. infra, 194-198, nn. 298,308.

<sup>562</sup> Westerholm, Israel, 214, #38.

<sup>563</sup> Räisänen, Law, 79; Sanders, Law, 100. Erik Wolf, however, in Griechisches Rechtsdenken Band IV\Teil 2 (Frankfurt am Main: V. Klostermann, 1950-70), 151 says ennomos "bedeutet mehr als bloss 'gesetzmäßig' oder 'legal', eher schon 'ruling according to the law'." He contrasts ennomos with anomos. This lends credence to the interpretation here offered, namely, that life under the guidance of Christ was a life under the law.

Rom.3:27 and 8:2 a new Torah of Christ, most commentators agree that Paul is simply referring to nomos as "principle" or "rule."<sup>564</sup>

The problem with seeing a law of Christ in these passages is simple: Paul does not know of a code of law given by Jesus or based upon his words. The living law ideal allows us to consider all four of these verses as the law of Christ without maintaining that there is a code of law which the Christian must follow: Jesus is himself the law.<sup>565</sup>

The law of Christ is Christ; to be under the law of Christ is to follow Christ and the guidance of his Spirit. The law of faith is neither simply a "rule" nor a correct reading of the Torah, it is Christ and the ethic of behaviour revealed through the guidance of his Spirit. The law of the Spirit is Christ, revealed by following his Spirit.

If Jesus is the living law it is obvious why Paul claims all things are lawful and why he cannot lay down the law in advance of a given situation: though Paul knows the living law, he does not have a code of written law which one can apply indiscriminately for each given occurrence or for each situation. Even though Paul speaks of the law of Christ, it is not

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<sup>564</sup> See for example C.H. Dodd, The Bible and the Greeks (London: Hodder and Stoughton, 1954), 35-37; this had been the accepted view until Friedrich et al. and continues to win the majority of adherents.

<sup>565</sup> William Klassen, "The King as 'Living Law' with reference to Musonius Rufus" in SR 14/1 (1985), 71 believes that Jesus was considered the living law by early Christian communities.

a code, it is the guidance of Jesus or the Spirit. Paul knows the law, as anyone who follows the Spirit does, as far as it has been revealed, but no one, including Paul, is party to all of it. Christians are called to faith and to love; in the fulfilling of these requirements, they are following Christ and will fulfill the purpose of the written law.

The law of Christ which Paul sets as a standard is indeed a new law, but it has no codified requirements; it may be understood as the life of the Christian under the guidance of the Spirit. The old written code is abolished; the "new" law is alive.

C) Rom.8:4; Rom.13:10; Gal.5:14

The Christian fulfills the law of Moses (Rom.13:8-10; Gal.5:14) or its just requirement (Rom.8:4) not because he "does" the law, but because he follows Jesus Christ. Love and faith fulfill the law of Moses not because they fulfill the "core" of the Mosaic code, but because they satisfy the requirements of the replacement of the law, Christ, who allows his subjects to meet the requirement of the Mosaic law through him. To meet the requirements of the new law legally (dikaiōma)<sup>566</sup> fulfills the requirements of the old. The replacement, Jesus Christ, is superior to the law which he replaces.

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<sup>566</sup> C.H. Dodd, The Bible and the Greeks, 35 on dikaiōma.

#### IV) PROBLEMS WITH THE LIVING LAW IDEAL

While these explanations are rather tidy and solve a number of problems, they also create problems and leave unanswered numerous important questions. There are three major problem areas: no mention by Paul of the nomos empsychos title; omission by Paul of key concepts; departures in Paul's view of the law from the living law ideal.

##### A) The Title

This is not as decisive as it may first appear, but it must certainly be reckoned with. If the concept is present, even if the title is not, then the weight of the claim rests with the force of the ideas. We have encountered a number of texts in which the concept was present but the title was missing. Nevertheless, the concept must be there, if not in full, then in broad and deep strokes. Though later works and authors, such as Clement of Alexandria,<sup>567</sup> refer to Jesus as the law, Jesus is never called the law by Paul.

##### B) Omissions

There are important omissions from the nomos empsychos ideal in Paul's work. Paul never speaks of harmonia between Christians and Christ, though he does call for it among Christians, even though this is a central concept of the living law ideal. Even more important is the idea of

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<sup>567</sup> Clement of Alexandria, Strom. 2.4.18,3 - 19,4.

imitation, mimēsis, in the Kingship tractates. Though Paul speaks often of imitation, it is rarely of Christ (1Thess.1:6; cf. 1Cor.11:1), but of himself (1Cor.4:6; 11:1; 1Thess.1:6; 2:4; 2Thess3:7,9). The imitator is to imitate both Paul and Christ, with Paul most often being mentioned as the object of imitation. It is enough for our purposes to note that the kingship tractates see only one model worthy of imitation. The subjects of the king are to imitate the king; Paul calls on Christians to imitate him. This is a remarkable divergence.

A third important concept is that of koinōnia among the king and the followers of the king. Paul actually speaks of koinōnia often (1Cor.1:9; 10:16; 2Cor.13:14; Phl.2:1; 3:10), and, significantly, of the koinōnia pneumatos. Though Paul does, at times (1Cor.10:16), reflect the mystical nature of koinōnia, he does not reflect the cosmic or political aspects of the idea.<sup>568</sup>

The Christian, who is to enter into a "fellowship" with Christ or the Spirit, does so as an individual. There seems to be a "corporate" nature to this koinōnia among Christians, and the Spirit or Christ, it is true, but the cosmic nature of the koinōnia of the universe is not reflected in Paul's letters, that is, the koinōnia between the king and God which brings harmony to the city and universe.

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<sup>568</sup> L. Delatte, Les Traites, 219,223-226,229.

The Christian "fellowship" is also "spiritual," not political. It does not involve a political body, or even corporate body, i.e., the Church, living in harmony with the world. The fellowship seems to be of another world, or reign. The Pythagorean fragments reflect a spiritual, or mystical, fellowship, but the repercussions of such fellowship are felt in the present world, physical and political.

The status of the king in the kingship fragments is of God on earth, or greatest imitator of God; but unlike much of Hellenistic kingship, the king in the living law ideal is never referred to as God, or even called a divine being. Christ occupies a higher level in the work of Paul: he is the son of God or himself divine.

Paul, of course, does not speak of Christ in terms of the functions of kingship, that is, as priest, general, or lawgiver; the kingship tractates are practical pieces of writing. However remote the ideal is, the kingship texts are written for actual kings.<sup>569</sup> More than that, they are written for living kings with a temporal kingdom.

### C) Departures

The departures in Paul's thought are even more numerous. One must be clear: there is no talk in the Pythagorean fragments of the subjects of the king "fulfilling" the requirements of the written law, though this is

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<sup>569</sup> Holger Thesleff, "On the Problem of the Doric Pseudo-Pythagorica", 85.

the obvious suggestion. There is no discussion of the role of the law which is replaced. Do the subjects of the king fulfill this old, written code? Is it abolished? Probably, for the king is a "higher" law, but it is not mentioned.

Neither is the contrast between law and Spirit, it is between the law and the king as the living law. The king, however, is alive and guiding his people. Christ is alive and his Spirit guides the Christians, but the kingship fragments do not speak of deified kings or the Spirit of the king. They are political tractates. The king is a better law, but he is still law, not Spirit.

Most of Paul's important catchwords are not found in the kingship fragments. There is a sense of pistis in these fragments, but the word never appears. Neither do the fragments speak of "love" as the important action of the subjects; the relationship between the subjects and the king seems to be one of love, but the term is not used to describe the core of their relationship. It is true, of course, that the relationship is described from the point of view of the king, not his subjects: the king's function is to bring harmonia and koinōnia, but love would seem to be more appropriately the response of the subjects. Nevertheless, the idea of love does not come to the fore.

Though the kingship fragments are somewhat mystic, even religious at times, they do not approach the depth of Paul's feeling or

religiosity. They remain, above all, political tractates. Paul's writing describes a relationship based on the death, suffering, and resurrection of Jesus Christ. Though Paul knows of Christ's majesty (Rom.8:29; Col.1:15f), "to be God's son meant to suffer and to die. Here again we are world's apart from Hellenism's 'sons of gods.'"<sup>570</sup> It is a relationship predicated on the promise of eternal life, but centred in the here and now on suffering, obedience, and faith. The kingship tractates do not approach the depth or the majesty of Paul's religious thought; moreover, and more importantly, they do not attempt to.

#### D) Conclusions

Much of what is missing in Paul is missing in other sources which took up the living law ideal. The question is, how much of it could Paul have known? How much of the ideal, in its fulness, was known? It seems unlikely that Paul read the works from which these fragments were drawn, but that does not mean the nomos empsychos idea was foreign to him. The idea was current and one could be expected from the general intellectual

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<sup>570</sup> Cullman, Christology, 293; See Rom.5:10; Gal.4:4; 1Thess.1:10. Aage Bentzen, King, 79 stresses that elements of the "divine kingship," a concept common through most of the ancient world, are also found in NT Christology. The pattern is to some degree seen in Jesus' suffering and death. S.G.F. Brandon, "The Effect of the Destruction of Jerusalem in A.D. 70 on Primitive Christian Soteriology" in The Sacral Kingship (Leiden: E.J. Brill, 1966), 471-477 admits to this pattern in early Christianity. Importantly, however, he sees it rising from the unique Christian experience and not a pattern borrowed from elsewhere.

atmosphere, from discussions on the street, perhaps even from official usage, to know of it. But this knowledge would be of the general outlines of the idea, not of the technical concept. This is all one could grant to Paul.

Paul could have known of the core of the concept, that the king replaced the law, or was another law, but this degree of knowledge would not allow much else. Without the appearance of the title, with the failure of most of the technical language and the appearance of so much indigenous technical language in Paul's work, the best that we can offer for the concept in general is the old verdict: not proven.

If Paul knew the concept of the nomos empsychos in full there is not much evidence in his work. The broad agreements between Paul and the living law ideal stand, but so do the numerous, too numerous, disagreements. It is not probable that Paul knew the full concept; if he did, he did not use it. It remains hidden, hazy, transformed behind the outlines of his "audacious" theology.<sup>571</sup> It is better to speak of parallel developments in two views of the written law.

The best we can hope to argue for is this: Paul was influenced by the concept to the degree that it gave impetus to him to give form to his growing conviction that the Christ, the king, was to replace the law. Why? How he answers this question is typically Pauline. Faith, love, the Spirit,

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<sup>571</sup> B.F. Meyer, Critical Realism and the New Testament, xiii.

and the Church in Christ are the dominating concerns. Paul does not seem to be dependent on any concept, other than that of his Christ.

Like so many attempts to understand Paul in the context of the history of religions, this one runs up against Paul's unique thought; met by his towering intellect and by his burning conviction that through the act of Christ all that came before Christ must be rethought. Thinking, for Paul, began anew in the presence of Christ, and all that came before is filtered through the person and act of Christ; neither Jewish nor Hellenistic, Paul spoke of a third way.

Clues to other, alien territory remain, but they are dead-ends: we are led back to Christ over and over by Paul. The conviction that Christ is unique and by terms other than himself inexplicable pulls Paul's thought tightly together. It is in the act of Christ that Paul's view of the law found its origin; it is inexplicable by other means.<sup>572</sup>

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<sup>572</sup> An opinion shared even by T. Wilson, St. Paul and Hellenism, 68.

## CHAPTER TEN: CONCLUSIONS

May we not finally agree with Max Pohlenz's assessment that Philo and Paul were "aus ganz anderem Holz geschnitten"?<sup>573</sup> This study indicates that this is indeed the case. In Philo the Graeco-Roman concepts of higher law are prevalent; not only are they prevalent, but Philo has mastered them. Paul shows knowledge of the concepts, certainly of the law of nature, perhaps of the living law, but they do not take us to the heart of Paul or of his thought. The heart of Paul's thought, as is clear from this study, is the person and action of Christ. Philo, on the other hand, though he has adopted the language and the conceptual framework of Greek legal thought which could potentially undermine the law of Moses, adapts these potentially troubling Greek concepts of higher law, and by so doing strengthens the place of the law of Moses. If there is any similarity at all in their conception of the law, it is that they both were spurred on by problems they had regarding the place of the law.<sup>574</sup> This leads to some general similarities, but many more differences in their reflections on the law.

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<sup>573</sup> Pohlenz, "Paulus und die Stoa", 69.

<sup>574</sup> Samuel Sandmel, Philo of Alexandria: An Introduction (New York, Oxford University Press, 1979), 135.

In terms of their respective views of the law, encompassing simply the law of Moses and more complexly the Greek forms of higher law, it would seem that one can safely answer that there are few similarities. There are some similarities, however, in more general terms between these two Jews of the 1st century C.E. May we not speak of similarities between two Diaspora Jews of the 1st century coming to terms with their faith and its law in the Hellenistic world, a world of universalistic tendencies?

These similarities serve as valuable indicators of the struggles and hopes of the Judaism of the day, as long as their importance is not exaggerated. Both Philo and Paul were apologists, though Paul is more often called a missionary. Philo's allegiance, far from being split with Hellenism, was with Judaism. The purpose of much of his writing is to convince wayward or unconvinced Jews, and Gentiles, of the truth of the Scriptures, Jewish monotheism, and the one, true law.

Andre Myre has pointed to the heart of Philo's mission: he wanted to reach out to a pagan world he considered sadly misguided and desperately in need of help.<sup>575</sup> It is for this reason that Philo identifies the law of nature with the law of Moses, and for this reason that Philo, though no Messianist, holds out hope that the entire world will one day follow the

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<sup>575</sup> André Myre, "Les caractéristiques," 66.

law of Moses.<sup>576</sup> Philo's adoption of Graeco-Roman higher law conceptions serves to protect the law of Moses; it serves the aims of Judaism, not Hellenism.<sup>577</sup>

Philo's subtle use of Greek legal terminology bears out his apologetic aims. Every form of Greek higher law which may threaten the law of Moses is considered. Philo's discussions are nuanced, yet Philo uses these forms of law to support his own aims, which are the aims of Judaism. Greek concepts of law come to serve the law of Moses. Philo is telling his readers, Jew and Greek, that the law they desire, whether the law of nature, the unwritten law, or the living law, is found in the law of the Jews. Far from removing the law of Moses from its place of significance, discussions of Graeco-Roman law serve to buttress its position.

Paul has the same universalistic tendencies as Philo, with far different implications and results. He was a true missionary, but more significantly the message he brought was a radical restatement of Judaism.

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<sup>576</sup> Goodenough, Politics, 105,110,115 sees in this a kind of Messianism. He believes that indeed Philo was awaiting a Messiah-King, a "living law." Richard D. Hecht, "Philo and Messiah" in Judaisms and their Messiahs, 139-168 rejects Goodenough's and Wolfson's conclusions regarding traditional Messianic beliefs. He believes that in Philo's work "the first line of meaning for Messiah and Messianic Era was the inner experience in which the soul was transformed" (162).

<sup>577</sup> See Herbert Oppel, "Kanon: zur Bedeutungsgeschichte des Wortes und sein Lateinischen Entsprechungen (regula-norma)" in Philologus Supplement Band 30\Heft 4 (1937), 57.

His abandonment of the law would have struck Philo as great apostasy. The depth of Paul's rejection of the law is not seen in any Jewish source prior to him. In place of the law, Paul offers Christ. His experience of Christ leads him to reject the law. Paul, unlike Philo, could not see his way to universalize the law; instead, he claimed it was abolished. This abolition of the law offered to each person the equal chance to meet Christ without special considerations. This abolition is not Jewish, and it goes further even than Greek discussions of the law of nature and its relationship to the written law. In contrast to Philo, the depth of Paul's rejection is somewhat surprising. Philo shows how far a Jew could go without abandoning the law.

This similarity, then, has limits. Both have universalistic tendencies, which for both were certainly conditioned by claims of Jewish exclusivity. For Paul, Jewish messianic thought and the coming of the eschaton also played a role. For Philo, the universalism of Hellenism had a profound effect on his thought, though one should not forget the impact of the Hebrew account of God's creation of the entire cosmos upon Philo's view of nature.<sup>578</sup> The roots of their universalism are different. The fulfilment

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<sup>578</sup> The impulse to missionize, to tell the world of the one true way - for Philo the law; for Paul, the Christ - was certainly due to Jewish claims of exclusivity: we have the one true way. It was, ironically, the universalism of Hellenism which may have given Jews such as Philo and Paul the impetus and confidence to reach out from this small, insignificant people to tell the world of the truth that rested with them.

of the law by Christians in Paul's letters is contingent upon the eschatological reality in which Christians lived. The Spirit had been given and by virtue of it Christians became a new creation (Rom.3:25; 1Cor.15:45; 2Cor.5:17). This new creation was not limited by Paul to special individuals or to Judaism. In Philo, the universalism stems from a Greek reading of the Hebrew account of creation. It was incumbent on the sage to follow the law of Moses, but this was available to all those with wisdom. The roots of their universalism are different: Philo encounters Hellenism; Paul encounters the eschaton.

While the encounter of the Jews with Hellenism was for sometime ignored by Greeks, it became fundamental to the Jews and how they saw themselves.<sup>579</sup> It called for evaluation, whether conscious or not. Such an evaluation took place in Philo's work on the law. He may not have been the first Jewish thinker to treat the law in this manner, but it is difficult to believe that anyone else approached the question with such depth and fervour. Philo is not a servant of Greek thought, however, and he has no difficulty in rejecting that which does not serve his purposes. In the meeting of Hellenism and Judaism, Philo's allegiance is firm.

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<sup>579</sup> Arnaldo Momigliano, Alien Wisdom: The Limits of Hellenization (Cambridge: Cambridge University Press, 1975), 92.

The truth of the Greeks supports the Bible, it does not undermine it. Philo dons the dress of Hellenism, but does it disturb the core of his thought? At least in the case of the law, the answer is no. Hellenism becomes part of his thought, but it does not undermine the Jewish centre.

Paul also met the Hellenistic world, though not as forcefully as Philo, and without his finesse. Most of Paul's meetings with Hellenism, when not marked by rejection, are marked with indifference. Paul met Hellenism, both in Tarsus and on his missionary journeys, and probably in Jerusalem too, but he remains remarkably untouched. Hellenistic language and thought, on the law among other concerns, appear throughout his letters, but the concepts are neither central nor developed. They are used and quickly abandoned. Paul could not avoid Hellenism - again, there is no indication he wanted to - but as a follower of Jesus Christ his criterion of consideration is the Gospel. He met Hellenism as far as possible on his own terms; that is, the terms of reference were determined by Christ and by the demands of the eschaton.

Convinced of the truth of Jesus, Paul's goal lay in convincing others of this same truth. Paul does not play the game of Hellenism on its own terms. According to Arnaldo Momigliano:

what constitutes the novelty of the Hellenistic age is that it gave international circulation to ideas, while strongly reducing their revolutionary impact. Seen in

comparison with the preceding axial age, the Hellenistic age is tame and conservative. Until St. Paul arrives on the scene, the general atmosphere is one of respectability.<sup>580</sup>

Respectability does not seem to have been Paul's strong suit. As far as Hellenism was concerned, it need only be considered to the degree that it aided the Gospel. That Paul could not avoid Hellenism is obvious: the language, the ideas, and the imagery he used often share in the common concerns of the Greek world. But in terms of the core of his thought, he could not even adapt the thought of Hellenism like Philo to his own needs. If Paul found the law unnecessary, it was not the result of his meeting with the thought of Hellenism as a Christian, but the result of his meeting with Christ as a Jew.

The similarities, the meeting of Hellenism and their status as missionaries and apologists, are general and conditioned by the fact of their Judaism. They know the one, true God, they are people of the covenant, and they want to tell others of the truth. But the differences between these two men, as seen in a study of the law, run to the heart of their thought and being: finally, their allegiances are different.

Philo has consciously woven Graeco-Roman legal thought into his work because his philosophical reflection has led him to the truth of its

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<sup>580</sup> Arnaldo Momigliano, Alien Wisdom, 10.

concepts, however misunderstood they are by their original creators and proponents. The higher law comes to the fore in Philo's thought because it is not alien to his thought, and it is not serving some higher goal: it is part of the goal. This goal is the supremacy of the Mosaic law and the truth of Judaism.

While both Philo and Paul see themselves as witnessing to the eternal nature of truth, their use, or lack, of Graeco-Roman law illustrates their divergence of concern. Paul may claim that he is supporting the law (Rom.3:31), that he does not destroy it, but he does not turn to the ready-made explanations which Greek legal theory would have offered him: the Christian is following a "higher" law and not bound by codified requirements, or Christ is the living law which has replaced the written law, and this is why the law of Moses has ended.<sup>581</sup> Paul's concern with the law was triggered not by Greek reflection on the law, and he did not turn to such explanations after the fact.

Philo, whose use of Greek language and concepts has led some to suspect he is something of a disloyal Jew, actually shows how far Paul has gone. Philo could easily have found philosophical justification for the

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<sup>581</sup> Though Sandmel, A Jewish Understanding, 67 says of Paul: "Now that he had the higher Law, did he still require the written Laws?" This formulation of higher\written laws only works for Paul in a kind of vague, modern antithesis; Paul never contrasted the written law with the higher law, as we have seen.

abandonment of the law of Moses; instead, he adapts Graeco-Roman legal theory, which could have led to such abandonment, to protect the law of Moses.<sup>582</sup> The potential destruction of the law of Moses does not take place; Philo protects the law through his use of Hellenistic concepts.<sup>583</sup>

The differences in their ultimate allegiance drive them apart. Paul, one suspects, always felt he was a loyal Jew, but it is clear that the central role of Jesus in his religious convictions moved him far from the convictions of the vast majority of his people. Philo, for all of the Hellenism in which he was so deeply steeped, remains a loyal Jew: loyal to the law, to his people, and to the Temple.<sup>584</sup>

Unlike Philo, Paul did not meet Hellenism, use it, and adapt it for his own purposes; the challenge to Paul was much greater because it rose out of Judaism. The attractions of foreign wisdom were great, but Philo is convinced of the truth of Judaism. Paul, however, was led to decide between what amounted to a Messianic movement within Judaism and

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<sup>582</sup> Barraclough, "Philo's Politics", 444.

<sup>583</sup> The difference in Paul's and Philo's views of freedom points to the radically different place the law occupies in their thought. Freedom is through the law for Philo and from the law for Paul. See Federico Pastor's excellent discussion in "Libertad helénica", 230,232,235. Both of them, Pastor says, differ from Hellenism, and show their Jewish roots, in stressing God's role in the process of liberation (235). Cf. also Sandmel, A Jewish Understanding, 50-51.

<sup>584</sup> See A. Mendelson, Philo's Jewish Identity, especially Chapters Two and Three for a nuanced discussion of Philo's allegiance.

normative, or established Judaism. He made his choice. Why this choice had to lead to the end of the law is a question which scholars continue to stumble over. There is no antecedent for the choice, either in the Jewish or in the Greek world.

It was, of course, a practical decision. The importance of the law, the whole law, for even so Hellenized a Jew as Philo has become obvious in the course of this study. The law separated Jew from Gentile, as it was supposed to. Philo in all earnestness invited the Gentile world to follow the law of Moses - it was necessary because it was the best law. However many accepted the offer, it was a minimal number. Not only did most Gentiles not care, or think, about the law of the Jews, it was not an easy burden to carry. It is true, Paul could have decided that all Christians, as the members of the new Israel, ought to observe the law of Moses; this, too, would have broken down distinctions among Jews and Gentiles. But the success of the message among Gentiles would have been lost, and the message was Christ, not the law.

This leads to the second, more important, factor, a factor which goes to the heart of both Paul and Christianity. Can we not speak of Paul's religious insight? The search for Jewish antecedents to Paul's thought, the search for Greek antecedents to Paul's thought, does not lead us to a dead-end, it leads us back to Paul's own thought. Practical considerations, which

one can also speak of as sociological considerations, doubtless played a role in Paul's thought on the law, but then there is the question of religious insight.<sup>585</sup>

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<sup>585</sup> There have been, of course, a number of attempts to solve the antithesis. Most recently Terence Donaldson, "Zealot and Convert: The Origin of Paul's Christ-Torah Antithesis" in *CBQ* 51 (1989), 685-682 and Klyne Snodgrass, "Spheres of Influence: A Possible Solution to the Problem of Paul and the Law" in *JSNT* 32 (1988), 93-113. Their papers are important not only for their own positions, but for their summaries of the other major attempts to solve the antithesis. They reject, for example, claims that the antithesis grew from Paul's Jewish upbringing, or from Jewish expectations, or from the Damascus experience, or that it developed later. Most of these claims have been discussed in the course of the dissertation.

Their own claims are somewhat similar. Donaldson speaks of a "paradigm" shift that the persecutor Paul underwent. He initially saw the way of Christ as a way which threatened the one, true way, the way which followed the law of Moses. When he became a Christian, he was unable to cast off his "exclusionary" outlook. That is, if this way which threatened the law of Moses is actually the right way, the law of Moses must be wrong. He shifted allegiances, but the "paradigm" shifted as well. Frederick C. Grant, *Roman Hellenism*, 141 argued much the same thing thirty years ago when he claimed that "his words about the Law are more serious, and here one must fall back upon the findings of religious psychology for a clue to Paul's conversion, its antecedents, its course, its results. Like all converts, he now 'adored what once he had burned, and burned what once he had adored'".

Snodgrass argues that the law for Paul switched "spheres" of influence. The law was either under Christ or a part of Judaism. Its efficacy and worth depend on the "sphere" it is under.

Snodgrass' position begins to sound remarkably like those who argue that there are two laws, however, one which the Christian does properly and the other which the Jew perverts. Paul never speaks of the "spheres" of the law.

Donaldson's position is nuanced. The law did not undergo change, Paul did. He shifted to another sphere of influence. His shift to the way of Christ, however, did not enable him to cast off his exclusionary way of looking at the law. Where once it was the only way, now it was simply in the way. There is truth in this position, it seems to me, but not the whole truth. This psychologizing of Paul seems to get to some truth about Paul, but it does not take seriously what Paul himself says of the law and Christ. Paul claims they are different entities, that they perform different functions, that their

Paul's thought on the law took shape in his meeting with and his life in Christ. Paul perceived that the law for the Christian was not necessary not because of his own problems with the law,<sup>586</sup> not because of his problems with his people, but because of the way of Christ, a third way, neither Jewish nor Greek.<sup>587</sup>

The conversion experience which Paul underwent has been pinpointed as the key to understanding Paul's Christ-Torah antithesis, but for a variety of reasons. Donaldson, for instance, sees in it a "paradigm-shift," a shift from zealousness for the law to zealousness for Christ. Donaldson's explanation, however, while compelling, roots the problem in Paul's psyche and not in soteriology, or the Gospel itself. The conversion experience is the crux, I believe, for it was in this experience, and subsequent experiences, that Paul received, and came to understand, his Gospel.

Paul's reasons as to why the law has come to an end with the coming of Christ, therefore, grow out of his conversion experience. It was in this process of revelation, the revelation of the Gospel, and subsequent

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historical roles are different. It is not simply a psychological "shift" that Paul undergoes, he claims it is a shift in the way one gains salvation. This must be taken seriously.

<sup>586</sup> Cf. for example Frederick C. Grant, Roman Hellenism, 142: "what he says of the Law is often like the twitching of a very deep old wound".

<sup>587</sup> Sandmel, A Jewish Understanding, 70; C.G. Montefiore, Judaism and St. Paul (London: Max Goschen Ltd., 1914), 122,129,167.

understanding of the fullness of the Gospel,<sup>588</sup> that Paul comes to a series of insights about the law: the way of Christ was to be a new way; and that in light of this new way, the law has come to an end because the law is the way of a separate people; and, finally, the law is not only the way of a separate people, but ultimately a failed way, historically (the promise to Abraham was first and it was by faith), soteriologically (the way to God must be open to all), and inherently (its function was limited).

Paul does not claim that his Gospel - which entails the division between Christ and Torah - is his creation. Rather he claims in Gal.1-2 that the Gospel which he preaches, which is the only Gospel, was revealed to him. What was revealed to Paul in his Gospel? The Gospel was revealed to Paul by Christ (Gal.1:12). God called Paul in order to reveal his son to him, so that Paul could witness to the nations (Gal.1:16). Paul went to Jerusalem kata apokalypsin (Gal.2:2) and there laid his Gospel before the Jerusalem Church, the same Gospel, the only Gospel, which he preached among the Gentiles.

Paul, therefore, does not see the Gospel growing out of his own problems, or his own troubled psyche. His own view is that the Gospel was revealed to him by God or by Christ, or even by tradition. If we root the

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<sup>588</sup> Räsänen, "Review of Westerholm" in Biblica 71/2 (1990), 269-272 and J. Beker, Paulus: Apostel des Volkes (Tübingen: J.C.B. Mohr, 1990), 109-117.

conversion process itself in the psyche then, it is true, we are free to understand Paul's conversion, and subsequent Gospel, as rooted in a psychological phenomenon. If we take seriously what Paul himself says about his conversion, and his Gospel, then we must be reluctant to root Paul's thinking about the law in Paul's psyche.

The common response to this is to ask why Paul alone arrived at this conclusion. B.F. Meyer asks, if, indeed, there was another Gospel that demanded obedience to the law. Meyer believes that such a Gospel did not exist, that Paul's Gospel was the only Gospel. The conclusions he drew about the Gospel were not, perhaps, apparent immediately, but when the Gospel came to its thematic fullness, it was clear that there was no place for the Torah.

Paul's own thinking reveals a number of pertinent themes which touch upon the development of the understanding that the law had no place in the Gospel mission. The cross is the starting point. "The challenge to Paul was to discover how the cross made sense."<sup>589</sup> The reality was clear: the cross did not make sense in the context of the Torah, or of Judaism, but the experience of Christ was decisive.<sup>590</sup> What was decisive about Christ?

The experience was decisive to begin with, not only for Paul, but

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<sup>589</sup> Meyer, Early Christians, 162.

<sup>590</sup> Meyer, Early Christians, 163,167.

for other Christians (Gal.3:2; Rom.1:5). Decisive, also, was the salvation which Christ revealed: it was not based upon nationality. The famous passage in Gal.3:28 stresses that national, and personal, distinctions no longer apply, "for you are all one."<sup>591</sup> Paul later claims that what matters is "neither circumcision nor uncircumcision," but "faith working through love" (Gal.5:6). In Gal.6:5, Paul again says that it is "neither circumcision nor uncircumcision," but "a new creation." In Rom.1:16, 2:10-11, Paul speaks of grace which is available to all those who do good, both Greek and Jew, for there is no partiality with God; those with and without the law will perish, and be saved.

Paul's offer of salvation on even terms is momentous,<sup>592</sup> for since God is the God of both Jew and Gentile, then faith justifies (Rom.3:28-29). There is no difference between Jew and Greek, all who call on him shall be saved (Rom.10:12-13). This offer of salvation to all contains inherent in it the core of a new, third way: "the assembly of God's people" (1Cor.10:32). Here, "the ruling distinction between Jew and Greek...has been sublated in a higher unity."<sup>593</sup>

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<sup>591</sup> Meyer, Early Christians, 182.

<sup>592</sup> Meyer, "Election-Historical Thinking in Romans 9-11, and Ourselves" in Ex Auditu 1989, 1.

<sup>593</sup> Meyer, Early Christians, 182.

Paul's way is a way which transcends national distinctions, such as Jew and Greek, circumcision and uncircumcision, and Torah and Wisdom. As Rom.1:18-3:20 makes clear, all are under sin, both Jew and Greek. This means, too, that the way of the Greeks, wisdom or reason, has also been transcended.<sup>594</sup> Christ revealed wisdom as a sham (Rom.1:20; 1Cor.1:21,29-31; 2:14; 3:18). The way of wisdom was a failed way to know God; so, too, was the law. This is clearly the important antithesis, however, not only because of the previous exclusivism of the Jewish covenant, and the profound shock engendered by Gentile inclusion, but because Paul agrees the Mosaic law was the way sanctioned by God.

What went wrong with the law? Where did it fail? The law did not truly fail Paul, insomuch as he believes it was not the ultimate end, that is, it was not Christ. Paul stresses that the law has been superseded. In Phil.3:1-11, Paul speaks of his zeal for the law (5-6), which he now considers rubbish (8). Important now is not the law, but righteousness from God through faith (9-10). If righteousness were from the law then Christ died to no purpose (Gal.3:21). A true Jew, therefore, is one who is a Jew inwardly (Rom.2:29). The follower of Christ is the minister of a new covenant (2Cor.3:6). In concluding that salvation was to be for all on the same basis, Paul comes to understand the Torah as a failed way.

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<sup>594</sup> Meyer, Early Christians, 200.

It is only in light of the new way of Christ that we can begin to make sense of the law as a failed way. Paul finds, when he goes to the scripture, that the law is secondary to the promise which God made to Abraham.<sup>595</sup> The promise to Abraham preceded the law and was based upon faith (Rom.4:13; Gal.3:15-25). This understanding makes sense not only of the scriptures, but also of Christian experience of the saving act of Christ. Faith is the means by which one comes to salvation. The law, says Paul, is necessarily a temporary way, a way whose function encoded its own demise (Gal.3:21-25). Most importantly, its end led to God's true purpose: the inclusion of the Gentiles (Gal.3:13,14).

What is most important, however, is not the delineation of the Torah as a failed way, though it is a necessary outcome of Paul's thought, but the realization that the way of Christ is a new way to God, a way which breaks down the boundaries of previous distinctions. What this means is that the way of Christ, by definition, is a way of inclusion.<sup>596</sup> This is Paul's great insight: the addition of the law would make the way of the Christ the way of the Jews.

Paul, therefore, stresses the uniqueness of Christ's action for humankind. Righteousness is through faith in Christ, not through the law

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<sup>595</sup> Meyer, Early Christians, 167.

<sup>596</sup> Meyer, Early Christians, 182-184.

(Phil.3:9). This is why the law nullifies the cross (Rom.3:29-30): it reduces the way of the Christ to the way of the Jews. Paul wants the followers of Christ to be a new creation, individually, but also corporately. This is not only a practical decision, more profoundly it is a deep religious insight: a way which is not related to a particular nation is a way of inclusion.

The Gospel, therefore, is the power of salvation to all who believe (Rom.1:16). The righteousness of God is to all who have faith, for there is now no discrimination (Rom.3:22). Indeed, if the heirs to God's promise are such through the law, faith is made invalid (Rom.4:14). It was faith, Paul says, which gave the Gentiles righteousness (Rom.9:30-32), and it is through grace that Christ is offered to every person (Rom.5:15,18).

For a Gentile to follow the law was to become a Jew. Paul understood that the Gospel and the law were separate entities. Paul's antithesis grows out of the realization that this was the true purpose of the Gospel, it was to define a new way. The law could not be that way because it was the way of a separate people. This insight leads Paul to reflect on God's saving act in Christ, its purpose, and the purpose and function of the law.

Whether Paul properly represented the Judaism of his day is an important question for modern scholarship, but it ought not cloud our perception of Paul. Whether or not the law was a way of salvation among

Jews of Paul's day, it was a way which did not aid the new way of Christ. For Paul, whose life centred upon the experience of the grace of the Messiah, this was only bad news for the Torah. Need it have been? If there was to be a Church, yes. Paul's antithesis allows Christianity to become what it truly was: neither Jewish nor Greek, it was a third way, open to all. It was based upon a thematic development of understanding of the Easter event,<sup>597</sup> inherent in the event itself.<sup>598</sup>

Paul's insight was not without tensions or problems. The question of Christians fulfilling the law, the whole law, is one such point of issue. How was a Christian to fulfil the law? Heikki Räisänen's suggestion that Paul could not take his rejection of the law to its proper conclusion is tempting.<sup>599</sup> There would be every reason for Paul to feel ambiguity about claiming that this gift of God is now abolished. But there is no such ambiguity in Paul's thought. If he could preach the end of the law (Rom.10:4), if he could say that it leads to sin (Rom.7:7-11), if he could live without the law in his life (1Cor.9:21), he could also admit what he had done, and he did. Paul is surely playing the apologist when he claims that Christians fulfil the law, not Jews, but modern scholarship ought not accept

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<sup>597</sup> Meyer, Early Christians, 190-191,203-204,206.

<sup>598</sup> Meyer, Critical Realism, 188-190.

<sup>599</sup> Räisänen, Law, 82-83.

the shallows for the depths: Paul believed that the new life in Christ allowed the Christian alone to fulfil the just requirement of the law.

If Christ has come and opened a new way of salvation for humankind, and if this way has replaced the law, as it did for Paul, then surely God had a purpose in replacing the law and his purpose could not have fallen below the dikaiōma of the law. The coming of Christ would not bring moral anarchy, or antinomianism, it would bring the fulfilment of the law. This fulfilment of the law was to be found in the life of Christians. There is also truth in E.P. Sanders' contention that Paul devised an "in" group and an "out" group: Christians did not always fulfil the law, but under the umbrella of Christ was the only place it could be fulfilled.<sup>600</sup>

Philo, whose thought rests upon the truth of his tradition, not upon the earth-shattering appearance of a savior, clearly had no reason to abandon the Mosaic law, though the temptations of Graeco-Roman law led him to defend its importance. He would have found Paul's thought on the law laughable, or worse, treacherous.

Philo would have found Paul's claims about the law problematic, if not anarchic. Philo's door was opened wider than the Stoics. There was indeed a brotherhood of man in this world, the megalopolis, under the

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<sup>600</sup> Compare to Stoic claims: the actions of the wise man were no "better" than anyone else's, though they always knew what the proper action was to be in a given circumstance, it was simply their "intent" which made them better.

universal law of nature, and it was not only the home of the wise man. Philo offered the ordinary person a way to follow the law of nature: the law of Moses. The Mosaic law had to be followed, though, there was no question of its abandonment; and for those who had the ability to follow nature or right reason there was not a transcendence of the Mosaic law, there was a "transference": transference from a limited understanding to a full understanding of the law.<sup>601</sup>

Those who truly fulfilled the law were those who followed the law, and who in following it without compulsion or thought of reward, through their superior nature and the grace of God, saw its true glory and truth. In this claim, Philo mimics Stoic claims regarding the autonomous virtue of the sage. But unlike the Stoics, those who followed the Mosaic law literally, however, were not hopeless, they too had a place in the megalopolis, because of the status of the Mosaic law. This is a loosening of the entry requirements from a Stoic perspective, but a maintenance of Jewish claims.

Moses and the Patriarchs are described as nomoi empsychoi and agraphoi nomoi; they seem to be Greek sages, not Jewish leaders. From Philo's perspective, the two options were not contradictory. What must not

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<sup>601</sup> Klyne Snodgrass, "Spheres of Influence", argues that this transference takes place in Paul's work; but a true "transference", as Philo shows, does not involve ignoring the commands of the law.

be forgotten is that in Philo's scheme the "unwritten law" is the model in human form for the law of Moses, the "living law" a Jew. The one who follows the law of nature is the one who observes the law of Moses. Hellenism's mark is suspiciously faded.

Philo's synthesis, like Paul's radical claims, may appear unconvincing, forced, or artificial, but Philo's writings bear evidence not only of his sincere commitment to the unity of law - Greek (properly understood) and Jewish - but to the effortless manner in which he presents his case. The lasting impression is of a man reaching out to a world which has the truth but cannot correctly interpret it.

Paul abolished the law, in order to fulfil it, Philo joined it together with Greek law, in order to save it and bring it to wavering Jews and the Gentile world. The roots were strong, and ran deep, but finally, for Paul, the roots were not strong enough to withstand his meeting with Jesus Christ. We know what happened with his unique brand of Judaism; it was replanted and grew apart. It could not have been otherwise, although Paul remained hopeful (Rom.9-11). The law's demise, though, in the work of Paul was not due to the meeting of Hellenism and Judaism; one must stress, once again, that it was due to the meeting of Paul and Christ.

The law could withstand the meeting with Hellenism, as Philo shows. It is a truism to say that Philo was lost to Judaism and had no effect

on Judaism and how it grew; historically, in the narrowest sense, this is true. But there is a sense in which he remains an example, though lost for so long. He met, as a Diaspora Jew, a minority in a vast empire, the thought of his time. He said "yes" to Hellenism, but on his terms. In the face of persecution and misunderstanding he argued and presented his case. Finally, he remained a loyal Jew, true to his people and to the law.

The results of this study may seem rather conservative. Paul is after all, in his view of the law, untouched by Hellenism. Philo remains after all a loyal Jew faithful to the law. The results are not, I hope, the result of a loss of nerve. Rather, they are the result of the nerve of two Jews, one of whom blazed a third way, one of whom stayed the course, both of whom claimed to be in the service of the living God.

## **Appendix 1: The Date of the Pythagorean Kingship Tractates**

A. Delatte was the first to discuss the date of the Pythagorean texts in his book Essai sur la Politique Pythagoricienne.<sup>1</sup> He claimed that all these textual fragments relating to kingship were genuine. The consensus today has turned to A. Delatte's conclusion regarding Archytas, but away from his conclusions regarding the other three authors. Willy Theiler was the first to take issue with Delatte in Gnomon 2 (1926), 147-156. He argued for a Hellenistic date, specifically in the 3rd century B.C.E.

E.R. Goodenough was the next to take up the challenge in his ground-breaking and still significant article "The Political Philosophy of Hellenistic Kingship" in Yale Classical Studies 1 (1928), 55-102. He argued for a Hellenistic date for all of the fragments, including Archytas, and rejected their attribution to actual students of Pythagoras. The next major work was that of Lucien Delatte, the son of Armand, who in a display of independence proposed a radical solution in his 1942 work Les Traités de la Royauté d'Ecphanté, Diotogéné et Sthenidas.<sup>2</sup> He combined a critical text of

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<sup>1</sup> Bibliothèque de la Faculté de Philosophie et Lettres de l'Université de Liège, 1922.

<sup>2</sup> Bibliothèque de la Faculté de Philosophie et Lettres de l'Université de Liège 97, 1942.

the fragments, a French translation of the texts, a close study of the language, an overview of kingship in Greek thought, and a commentary on the Pythagorean texts to produce what remains the most important work on the topic. His radical solution? He argued for a 2nd or 3rd century C.E. date, and Philonic influence on the texts, especially those attributed to Ecphantus.

The next major contribution was that of Holger Thesleff, whose An Introduction to the Pythagorean Writings of the Hellenistic Period accepted the dating of Goodenough for the kingship fragments, with the exception of Archytas, which he accepted as earlier, though not genuine (4th century B.C.E.).<sup>3</sup> Thesleff considered not only the kingship fragments, but all of the Pythagorean texts, which gives his work an authority which the other writings lack. He took L. Delatte to task for what he believed was an untenable position in dating the kingship texts. In this regard, he challenged the conclusions of L. Delatte's study of the language, while generally praising the study itself. Thesleff himself published a critical edition of all the Pythagorean texts which he judged to be Hellenistic in The Pythagorean Texts of the Hellenistic Period.<sup>4</sup>

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<sup>3</sup> Åbo: Åbo Akademie, 1961.

<sup>4</sup> Acta Academiae Åboensis. Ser.A: Humaniora, v.30, no.1; Åbo: Åbo Akademi, 1965.

Walter Burkert, without reference to Thesleff, published two articles in Philologus 105 (1961), 16-43; 226-246 titled "Hellenistische Pythagorica". In these two articles, without much specific reference to the kingship fragments, he too argued for a Hellenistic date for the whole of the Pythagorean pseudepigrapha, giving 3rd century B.C.E. as a terminus a quo.

In the meantime, Francis Dvornik, in a large work entitled Early Christian and Byzantine Political Philosophy: Origins and Background 2 Vols., agreed with Goodenough and Theiler in opting for Hellenistic dates for all of the kingship tractates, including Archytas.<sup>5</sup> He relies for the most part on Goodenough's work and does not seem to be aware of the work of Thesleff.

The next major work was a re-examination by Holger Thesleff and Walter Burkert of their previous work in Fondation Hardt: Pour L'etude de L'Antiquité Classique (1972),<sup>6</sup> a volume dedicated to pseudepigrapha in the ancient world in general. Burkert, in "Zur geistesgeschichtlichen Einordnung einiger Pseudopythagorica," gives a revised position. For the terminus a quo he suggests 150 B.C.E. and for the

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<sup>5</sup> Washington, D.C., 1966.

<sup>6</sup> Fondation Hardt: Pour L'Etude de L'Antiquité Classique Entretiens: Tome XVIII Pseudipigrapha I. Genève: Fondation Hardt 1972.

terminus ad quem 3rd century C.E. In response, Thesleff, in "On the Problem of the Doric Pseudo-Pythagorica: An Alternative Theory of Date and Purpose," maintains a Hellenistic date for the fragments, but modifies it by giving a lower border of 2nd century B.C.E.

The last major discussion is that of Glenn Chesnut, "The Ruler and the Logos in NeoPythagorean, Middle Platonic, and Late Stoic Political Philosophy" in ANRW II.16.2, 1310-1332. He too opts for a Hellenistic date, pre-Ciceronian, though he does not present many new arguments for the date. He does, however, take account of a number of articles published in the late 1920s which argued that the living law ideal was present in a number of other authors, such as Cicero and Seneca, and so gives more of a sense of the continuity of the idea.<sup>7</sup>

It is clear that there are two trends in the dating of these texts which are still current. These are the various Hellenistic dates (Thesleff, Goodenough) and the 2nd/3rd century C.E. dates (Burkert, L. Delatte). The two major works are those of Thesleff and L. Delatte, and to them must go pride of place.

Both of them rely on arguments from the nature of the Greek for dating the texts, because the texts are embedded in the anthology of John

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<sup>7</sup> William Klassen, "The King as "Living Law" with reference to Musonius Rufus" in SR 14/1 (1985), 67 also dates the texts in the Hellenistic period. He is entirely reliant upon E.R. Goodenough's article.

Stobaeus. External criteria for dating are extremely hard to come by. On the basis of the language and syntax, Delatte and Thesleff come to radically different conclusions.<sup>8</sup>

L. Delatte argues that the language of the texts is artificial, namely, it is a mixture of Doric, with elements of Attic, Ionic, and Lyric poetry (85-87). As a result, Delatte concludes that when the texts were written Doric was no longer spoken. Thesleff maintains, however, that the Doric features are essentially consistent and that the archaisms which lend the language its artificiality "are insufficient to prove that the texts belong to an age when Doric was not used in conversation" (Intro., 66). Delatte's study of vocabulary (88-109) and syntax (110-117) convince him that the texts cannot have been written before 1st century C.E. Thesleff maintains that Delatte's study "confirms my impression that the texts are Hellenistic", but states "we do not know Hellenistic prose practices sufficiently well to be able to make chronological inferences from matters of style" (Intro., 67).

Thesleff's comments strike me as convincing, but Delatte uses the same syntactical and linguistic arguments to argue for quite another period. As a result, it is difficult on the basis of textual research alone to date the texts.

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<sup>8</sup> Thesleff, An Introduction, for instance, finds most of Delatte's work on the language of the fragments convincing; he rejects the interpretation which Delatte bases on his findings.

The other method of dating is a comparison of ideas with those found in other texts. Delatte has, to some degree, depended upon such comparisons, but his conclusions seem weak and he has not considered all the evidence. His claim that these authors are influenced by the Middle Stoics (cf. 284f) are not convincing, and Thesleff is correct to point out (Intro., 68-69), as did Goodenough, that none of the Stoic ideas are foreign to the early Stoa. I am convinced, however, that a close study of the ideas in the Pythagorean texts makes the Hellenistic period the only possible period in which these texts could have been produced.

The Ptolemaic-Seleucid period was the period from which the cult of Alexander the Great stemmed, the beginning of the Hellenistic cult of the emperors.<sup>9</sup> Though the initial impulses came from Alexander the Great, the actual development of the cult was left to his followers. Not only did a cult

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<sup>9</sup> W.W. Tarn, Hellenistic Civilization (Cleveland and New York: Meridian Books, 1964), 48-57; W.S. Ferguson in The Cambridge Ancient History VIII: The Hellenistic Monarchs and the Rise of Rome (eds. F.E. Adcock; S.A. Cook; M.P. Charlesworth; Cambridge: University Press, 1954), 17-18; Lily Ross Taylor, The Divinity of the Roman Emperor (Chico, Calif.: Scholars Press; a reprint of the 1931 Ed., Middletown, Conn.: American Philological Association), 17-31; Cuthbert Lattey, "The Diadochi and the Rise of King Worship" in The English Historical Review 32 (1917), 321f; Julius Kaerst, Geschichte des Hellenismus. Band II (Leipzig and Berlin: B.G. Teubner, 1926), 380f, esp. 385; Francis Dvornik, Early Christian and Byzantine Political Philosophy: Origins and Background. Vol. I (Dumbarton Oaks Center for Byzantine Studies; Locust Valley, N.Y.: J.J. Augustin, 1966), 210-233.

of emperors grow, but so too did literature concerning them.<sup>10</sup> This literature had a wide-ranging effect, influencing even a number of Jewish tractates.<sup>11</sup> Most of this literature is lost to us, but such terms as euergetēs, sōtēr, and philanthrōpia began to appear in the early Hellenistic period.<sup>12</sup> The Pythagorean kingship fragments, while only a portion of Hellenistic kingship thought, contain many of these terms. In general, then, the Hellenistic period, due to actual monarchical developments and the presence of a flourishing literature of kingship in general, make the climate ripe for a literature which supports the claims to divinity and perfection and absolutism of the emperors, and no external reasons to doubt such a development.

When we consider the ideas in the texts, and compare them to other such texts, the case becomes even stronger. Delatte believed that

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<sup>10</sup> See Goodenough, "Hellenistic Kingship," 58.

<sup>11</sup> Dvornik, Early Christian. Vol.I, 261; Gunther Zuntz, "Aristeas Studies I: 'The Seven Banquets'" in JSS 4 (1959), 21-36; Oswyn Murray, "Aristeas and Ptolemaic Kingship" in JTS n.s.18 (1967), 337-371; James M. Reese, Hellenistic Influence on the Book of Wisdom and its Consequences - Analecta Biblica (Rome: Biblical Institute Press, 1970), esp. 71f.

<sup>12</sup> See Wilhelm Schubart, "Das Hellenistische Königsideal nach Inschriften und Papyri" in Archiv für Papyrusforschung und verwandte Gebiete. Band 12 (Leipzig and Berlin: B.G. Teubner, 1937), for the appearance of these and other terms in non-literary settings.

Philo influenced Ecphantus,<sup>13</sup> and so, it would appear, was the originator of the nomos empsychos ideal. Others have suggested that Philo uses Ecphantus,<sup>14</sup> or that Ecphantus and Philo have a common source.<sup>15</sup>

Before considering any of these possibilities, we need to establish Philo's connections to this Pythagorean literature. That Philo knows Pythagorean thought in general is not in dispute, as his use of Pythagorean numerology bears witness (e.g. Opif. 90-127). Philo also knows, however, specific Pythagorean writings, as his references to writings which he has read by Philolaus (Opif. 100) and Okkelos (Aet. 12) show. Both of the writings attributed to these authors are dated to the Hellenistic period by Thesleff.<sup>16</sup> Finally, Philo knows of the term nomos empsychos (Mos. 1.162;2.4; Abr. 5) and shares the ideas and the language of the concept (Mos. 1.148-162). But could he be responsible for these ideas? The ideal appears in Philo's work, clearly and in full, but is it possible that Philo could have been the source for this ideal?

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<sup>13</sup> L. Delatte, Les Traités, esp. 177-180, 285-288, but cf. 183,200,216,224,235.

<sup>14</sup> Emile Bréhier, Les Idées philosophiques et religieuses de Philon d'Alexandrie (Paris: Librairie Philosophique J. Vrin, 1950), 18-19.

<sup>15</sup> Thesleff, An Introduction, 50.

<sup>16</sup> Thesleff, An Introduction, 16-17,114-115; Texts, 124-138,147-151.

Delatte's suggestion is fraught with problems, even impossibilities. First, one must overlook the clear evidence of the Rhetorica ad Alexandrum and the evidence of Cicero that the ideal existed prior to Philo. If we suspend disbelief on this score, we are met by further problems.

Delatte believes, for instance, that Ecphantus' view of the king as a special creation in the image of God is actually an adoption of Philo's view that humanity in general was created in God's image, which was then altered by Ecphantus.<sup>17</sup> Delatte believes that evidence of this is found in the Eurysos fragment in Clement of Alexandria (Strom. 5.5.29), a passage which is in most respects identical to the passage in Ecphantus. In the Eurysos passage, however, the king is not different from the rest of humanity, humanity is different from the rest of creation, that is, from the animals.

Delatte's suggestion that Ecphantus is dependent upon Philo meets improbability after improbability. Delatte would have us believe that Ecphantus borrowed an idea of the creation of humanity from Philo and altered it to refer to the unique creation of the king. Following this, Ecphantus borrowed the nomos empsychos descriptions from Philo, which he used to describe Moses and the Patriarchs, and built a model of ideal

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<sup>17</sup> Both Delatte, Les Traites, 177-180 and Thesleff, An Introduction, 69,n.4 seem to overlook that this idea of humanity created in the image of God is not Philo's own idea. Cf. Gen.1:26.

kingship based upon these borrowings. Ecphantus' modified model of the king was worked into a subsequent political tractate which influenced other Pythagorean pseudepigrapha (the work of Sthenidas and Diotogenes). This was then disseminated to a wider audience and adopted by authors such as Plutarch and Musonius Rufus.

In addition, another Pythagorean author, Eurysos, borrowed a section from Ecphantus and altered it to agree with the accounts of creation in Gen.1:26. This is the fragment which Clement used.

It does not seem probable that the Jewish writer Philo could have influenced entirely the development of the concept in the Greek world. Philo is, first of all, a borrower of Greek philosophical concepts, not a creator. More significantly, however, it seems unlikely that Gentile writers would have fastened upon a concept used to describe the Jewish patriarchs in an ideal context, and then developed the concept to support a view of absolute monarchy in the Graeco-Roman world. But it is impossible that Philo could have influenced writers who wrote before him.

Let me propose a more probable scenario. Philo had access to these Pythagorean writings, as he did with Philolaus and Okkelos, and used them to present Moses and the Patriarchs as types of Graeco-Roman wise men, nomoi empsychoi. The passage of Eurysos which Clement used was altered by Clement to agree with Gen.1:26 and to protect the figure of

Jesus, elsewhere described as the nomos empsychos (Strom. 2.4, 35-40). The claim that humanity is not like the animals was not the point of the Eurysos passage. We may be certain his point was the one made by Ecphantus: the king is the unique creation of God.<sup>18</sup> Clement's point is related to his polemic against idolatry, specifically worship of animals.<sup>19</sup> The choice is clear: Philo and Clement adapt a pagan concept which was quite widespread by "Judaizing" and "Christianizing" it; or pagan authors borrow a Jewish concept, alter and recreate it in political tractates, and disseminate it to a wide audience.

As to Thesleff's contention that Ecphantus and Philo share a source, this seems to multiply probabilities. One could argue that both Philo and Ecphantus were influenced by other, earlier writings which are now lost to us. Ecphantus could then be dated late without it impinging directly upon his relationship with Philo: both would have other, earlier sources. Why is it likelier though that Philo used a source earlier than Ecphantus?

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<sup>18</sup> Thesleff, An Introduction, 69 n.4.

<sup>19</sup> He glosses Gen.1:26 in the context of a polemic against idolatry elsewhere and makes much of the fact that only humans are made in the image and likeness of God (Exhortation, 10.79-84; cf. 12.93). Clement also shows anger at Alexander's supposed deification (Exhortation, 10.77) and claims that man sui generis was made by the Supreme Artist (ho aristōtechnas patēr) as a living statue (agalma empsychon) (10.78).

The ideas which Philo presents are present in the work of Ecphantus, Diotogenes, and Sthenidas, so why should we propose an earlier source?

I am not certain who Philo is dependent upon as his source, but his use of Okkelos and Philolaus, both of whose writings are considered Hellenistic, leads me to suspect both that Ecphantus, Diotogenes, and Sthenidas are Hellenistic writings and that Philo could have had access to them.

The Pythagorean texts themselves speak for a Hellenistic date and against a late date in two ways: they are not influenced by the syncretistic, philosophical ideas which one expects if they are from the 1st century C.E. \ 1st century B.C.E.; and they give the impression that they are working with a concept in its infancy and developmental stages, not of a fully grown concept which was adopted by them.

The writings of Ecphantus, Diotogenes, and Sthenidas do not show any of the syncretism common to the philosophy of the period from the 1st century B.C.E. and beyond. The ideas and expressions are almost always consistently Pythagorean. The Stoic influence, which L. Delatte sees as an important element in the writings, is not to be seen, except in rare instances, as Goodenough and Thesleff have both noted. If indeed the texts are influenced by Stoic texts, it seems unlikely that the kings in the fragments would not be touted as wise men. It also seems unlikely that a

Stoic influenced text would not mention the law of nature in any context; if the kings were Stoic wise men, the law which they represented could only have been the law of nature. All of this is especially unlikely if Philo had any influence on the texts as Delatte claims. For, in Philo's thought, the nomos empsychos is related closely to the law of nature.

The texts also seem to be situated in the developmental stage of the concept. All the texts are working with the same ideas, but they express them in unique ways. The ideas, therefore, are not systematized; they are being created and developed. As a result there is very little similarity among these texts. The ideas do not seem to be in their infancy in the work of Philo or Musonius Rufus, who present finished topics which they have clearly borrowed. One can see fully developed topoi in their writings.

Finally, the Hellenistic Pythagorean fragments seem to be aimed at actual kings.<sup>20</sup> This again points to the nascency of the concepts, and also their origin. The texts appear to be written to influence the behaviour of existing kings. There is an urgency and freshness about them, which is not apparent in authors such as Cicero, Philo, or in the Rhetorica ad Alexandrum, which in fact purports to be written to an actual king. The Hellenistic period supplies us with the most likely period in which such texts could have been written.

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<sup>20</sup> Holger Thesleff, "On the Problem of the Doric Pseudo-Pythagorica," 85.

The concept was widespread in the 1st century B.C.E. and 1st century C.E. It seems unlikely that an idea which Musonius Rufus calls "ancient" could have stemmed from a 1st century B.C.E. source, let alone a 1st century C.E. source, and have been disseminated so quickly and with such success. The influences of the concept are found in Plutarch, Musonius Rufus, Cicero and the pseudo-Aristotelian Rhetorica ad Alexandrum. Both Cicero and the Rhetorica ad Alexandrum must be dated to the 1st century B.C.E., but in the case of the Rhetorica ad Alexandrum the date usually given is 2nd or 3rd century B.C.E. The fragments should be placed firmly in the Hellenistic period, either at the end of the 3rd century B.C.E. or the beginning of the 2nd century B.C.E.

And yet, these fragments do not seem to have exercised their influence directly upon Musonius Rufus, Plutarch, or the others, except for Philo. It appears that there is a stage missing in the transmission of these ideas. It is probably no accident that the authors who preserve this idea are the heirs or followers of Middle Platonism, such as Plutarch, Cicero. Richard Horsley has argued that Cicero and Philo have a common source for their view of the law of nature, Antiochus of Ascalon, and it could be that Plutarch, Musonius Rufus, and Cicero, among others, also have a common source for their concept of the living law.<sup>21</sup> If this is the case, and it is only

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<sup>21</sup> Richard Horsley, "The Law of Nature in Philo and Cicero," 35-59.

a supposition, Middle Platonism could be the missing stage in the transmission of the idea.

There is no way to tie the texts to the early stages of Middle Platonism or to a particular author, such as Antiochus of Ascalon or Eudorus of Alexandria, but we can, I think, see evidence of transmission from the Hellenistic authors to another stage of Pythagorean writers. Two fragments of Eurysos exist (in Clement, Strom. 5.5.29 and in Stob. 1.6.19), but there is no biographical information concerning him. As a result, a couple of possibilities present themselves.

Thesleff believes that Eurysos is simply a citation mistake for Eurytos.<sup>22</sup> We know a fair amount about Eurytos (Diogenes Laertius 8.45; Iamblichus, vit. Pyth., 146,148,267-269), so the suggestion is appealing. There is, however, a problem. If Clement really meant to cite Ecphantus, as Thesleff supposes, then Clement not only made a citation mistake, he also misspelled Eurytos' name. To compound the problem, the same misspelling was made by Stobaeus. Is Eurysos really the creation of two chance misspellings and one citation mistake?

I tend to believe, therefore, that Eurysos was a student of the Hellenistic Pythagorean writings and responsible to some degree for the transmission of the texts. (To suppose that Eurysos is a citation mistake for

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<sup>22</sup> Thesleff, An Introduction, 69 n.4; Texts, 87-88.

Eudorus, a Pythagoreanizing Academic, and someone who might have been responsible for the transmission of the texts, runs into the same problems, more acutely, as with Eurytos.) He is dependent upon Ecphantus in the fragment located in Clement,<sup>23</sup> but what has not been noted is his dependence on Diotogenes (Stob. 4.1.133 - Peri Hosiōtētos) in the fragment preserved by Stobaeus. The Stobaeus fragment of Eurysos has numerous Doric elements, but both in language and ideas he is dependent on the passage attributed to Diotogenes. Both texts are concerned with fate and the things generated by fate, and both claim that fate produces nothing orderly or good. The Eurysos fragment also refers to the nature of the king.

In Eurysos, therefore, we do have a follower of the tractates - his dependence on Ecphantus and Diotogenes points to this<sup>24</sup> - and an indication that these Hellenistic tractates were transmitted, but we are still missing, it seems to me, another stage in the transmission.

The first stage would be Archytas' development of the Greek concept of ideal kingly rule. The development of this idea, under the influence of actual claims of absolute kingship, would have been undertaken by Pythagorean authors of the Hellenistic period. The development of this

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<sup>23</sup> In Strom. 5.5,29 (2-3) (also found in Mullach, FPG Vol.II, Eurysos, frag.1, p.112) Clement quotes a passage which is found in Ecphantus word for word. The only differences that I can see are two case endings.

<sup>24</sup> cf. Burkert, "Zur geistesgeschichtlichen," 52. If Diotogenes and Ecphantus were dependent upon Eurysos one would expect them to have language in common, but this is not the case.

ideal might have been a response to absolute rulership not in order to support such absolutism blindly, but to see that the rulers in question became just rulers. The missing step would be the development of the concept among philosophers of the 1st century B.C.E., the Middle Platonists.<sup>25</sup> Here the concept would have come into contact with Stoicism and the actual topoi would have been systematized. This stage is difficult to reconstruct because there is simply no evidence, but the concept as found in Musonius Rufus and Plutarch does not seem to be dependent upon the actual Hellenistic fragments. The fourth stage would have been the passing down of the concept to the followers of Middle Platonism, men such as Cicero, and Plutarch. From here the idea would have reached out to other authors, such as Clement of Alexandria and Themistius.

The missing step between the Hellenistic Pythagoreans and men such as Musonius Rufus and Plutarch is difficult to retrace with certainty - it remains possible that the Hellenistic Pythagoreans were themselves read. Whether the transmission of the idea took place in this manner, therefore, is debatable, though there is some evidence, in Eurysos, that the Hellenistic

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<sup>25</sup> On the need for care when speaking of the Middle Platonists, see D.T. Runia's article, "Redrawing the Map of Early Middle Platonism" in Hellenica et Judaica: Hommage à Valentin Nikiprowetzky. eds. A. Caquot, M. Hadas-Lebel, and J. Riaud. (Leuven-Paris: Editions Peeters, 1986), 85-104. Cf. also Glucker, Antiochus and the Late Academy; and H. Tarrant, Scepticism or Platonism.

Pythagoreans were being transmitted. More probable, if not certain, is that the texts of the Pythagorean fragments are Hellenistic.

## **APPENDIX 2: Paul's Roman Citizenship**

That Paul was a Roman citizen, as stated a number of times in Acts, is generally accepted by scholars. One recent doubter is Wolfgang Stegemann. Stegemann, in "War der Apostel Paulus ein romischer Bürger?" in ZNW 78 (1987), 200-229, doubts that Paul was a Roman citizen on three counts: Paul does not mention his own citizenship; he was a labourer from a low social class; and the passages in Acts (16:37f; 22:25f; 23:27) which deal with his citizenship are the creation of Luke.

The claims of Stegemann have been answered in two recent works. Gerd Lüdemann, "Zum römischen Bürgerrecht des Paulus" in Das frühe Christentum nach den Traditionen der Apostelgeschichte (Göttingen: Vandenhoeck & Ruprecht, 1987) and M.W. Tjara, The Trial of the Apostle Paul (Tübingen: J.C.B. Mohr, 1989), 3f, 24f, 86f both take issue with Stegemann's conclusions.

Ludemann says that though Paul does not mention his citizenship in his letters, this does not preclude him having citizenship. Perhaps the opportunity to mention it did not arise. And though Paul was whipped three times, a punishment which was not lawful to impose on a Roman citizen, this law was often broken, especially in the provinces. Furthermore, it is possible that Paul, for a variety of reasons, did not mention his citizenship

until after his punishment. Finally, Ludemann says that Paul's occupation need not denote his social class, since all rabbis were to have an occupation to support themselves; but if it does, this social class does not rule out Paul's Roman citizenship, inherited perhaps from his father or grandfather.

Positive evidence for Paul's Roman citizenship, according to Ludemann, are his Roman name; his transport to Rome from Caesarea following his earlier arrest in Jerusalem; his travels through Roman colonies (Philippi, Corinth); and his desire to travel in the Roman protectorate of Spain. Ludemann concludes: "Paulus war höchstwahrscheinlich römischer Bürger" (250).

Tjara fully agrees with Ludemann. He, too, points out that Paul's profession is probably not a sign of low social status, but a product of rabbinical training and of a desire not to financially burden his churches (87-88).

Tjara answers Stegemann's other claims against citizenship (i.e., the silence of Paul regarding his own citizenship and the fact that he uses only one name of what should be the Roman *tria nomina*) but feels that the argument against Paul's citizenship really collapses on one point: Paul's transfer from Caesarea to Rome.

Stegemann does not adequately explain on what legal basis Paul was able to appeal to the Emperor's court at Rome for protection against the decision of a governor

*sedens pro tribunal* if he were the inconsequential Jewish manual labourer and peregrine that Stegemann says he was. (89)

This transfer can only be explained if Paul was a Roman citizen.

How Paul became a citizen is not clear.<sup>26</sup> It could have been bestowed for extraordinary or military service on his father or grandfather.<sup>27</sup> At any rate, this will remain a mystery, but it is not to be doubted that Paul was, indeed, a Roman citizen.

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<sup>26</sup> A.N. Sherwin-White, Roman Society and Roman Law in the New Testament (Oxford: Clarendon Press, 1963). He is not certain how Paul became a citizen, but finds nothing to contradict the claim.

<sup>27</sup> A.N. Sherwin-White, The Roman Citizenship (Oxford: Clarendon Press, 1973), 225 explains how the Roman citizenship was increasingly given to provincials under Caesar and Augustus. It was often a reward for military (235) or other (244-245, 291-292) services rendered.

### **APPENDIX 3: Tarsus or Jerusalem?**

W.C. van Unnik, in his essay "Tarsus or Jerusalem: The City of Paul's Youth" in Sparsa Collecta 1 (NTS 29; Leiden: E.J. Brill, 1973), argues against the common belief that Paul was born and raised in Tarsus until old enough to study in Jerusalem. On the contrary, says van Unnik, Acts 22:3, an important piece of evidence for Paul's birthplace and subsequent home, demonstrates that Paul came to Jerusalem as a small boy (266).

In fact, the triad of verbs used in Acts 22:3 is a fixed literary unit, a topos, in Greek literature (274,281). van Unnik brings a great deal of evidence to show that from Plato to Philo, Epictetus to Eusebius these three verbs (appearing in Acts 22:3 as gegennemenos, anatethrammenos, and pepaideumenos) form a unit which comprise the life of a person from birth to adulthood. The verb anatrephein in particular denotes the life of the child up to the time of mental maturity.

This important second verb in Acts 22:3 indicates that Paul was raised in Jerusalem and only born in Tarsus. The importance for Pauline research is great:

Paul's main knowledge of Hellenism was gathered in his second period, that is to say, after his conversion.  
(306)

This means that Paul was not "drenched through with Hellenism unconsciously in his early years" (306), rather he "consciously learned to see it first with the eyes of a Jew learned in the law and after that with the eyes of a Christian" (306).

Apart from the fact that van Unnik does not take seriously enough the other references to Tarsus in Acts (9:11, 18:3, 21:39, 23:16), he does not take seriously Luke's possible aims in 22:3.

For one, van Unnik does not consider that Luke has simply borrowed this topos, a nice literary unit linking Paul to other Greek and Roman figures and to Greek literary tradition. The use of this subtle topos in the context of Paul facing a fiery mob in Jerusalem indicates that Luke borrowed it not that Paul said it. It is hard to imagine that in the face of an angry mob this nuanced Greek topos would seem to Paul the best way to defend himself. Rather it seems to be an attempt by Luke to defend Paul's ties to Tarsus, but stress his status as a Jerusalemite. Luke would not be sharing falsehoods, for Paul was indeed a member of both cities and the topos is to some degree equivocal: it does not specify the years spent in one city or the other.

There would be good reason for Luke to use the topos, for it maintains Paul's links to Tarsus, but stresses Paul's ties to Jerusalem. This is important for Luke's theology (from Jerusalem to Rome, not Tarsus to

Rome) and important to the text itself (Paul is defending himself in Jerusalem and is trying to gain the sympathy of the locals). If it is historical, if Paul actually said this, there would be good reason for it: Paul may want to overplay his ties to Jerusalem when faced by a hostile audience in Jerusalem.

One way or the other, however, this does not dissuade from the very real ties that the Lukan Paul feels for Tarsus. He calls himself, in a phrase burned into the minds of English speakers by the King James version, a citizen "of no mean city" (Acts 21:39). This does not make sense if he left Tarsus as an infant, which van Unnik suggests. He considers himself a man of Tarsus and he is proud of his city.

There are a number of other problems. Paul's reliance on the LXX does not make sense if he was raised in Jerusalem. Even if he studied Greek thought in Jerusalem, a real possibility, he would have studied and known the Torah in Hebrew. Paul's text, however, is clearly the LXX.<sup>28</sup> Gal.1:22 also indicates that Paul was unknown by face in Jerusalem, as does Acts 22:3. Could this be possible if Paul was raised there?<sup>29</sup>

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<sup>28</sup> Dietrich-Alex Koch, Die Schrift als Zeuge des Evangeliums (Tübingen: J.C.B. Mohr, 1986), 48f.

<sup>29</sup> Räisänen, Paul, 235,#29.

Two further comments are in order. The sharp divisions between "unconsciously drenched" and "consciously learned" in Hellenism ought to be laid to rest after all the work done on the effects of Hellenism in Palestine. If Paul was raised in Jerusalem, his Greek shows he was no mean speaker of the language. He could easily have taken in Greek thought in Jerusalem, though to a lesser degree than in Tarsus.

We can be more specific. We must reckon with Saul Lieberman's work on the Greek of the Rabbis.<sup>30</sup> We need to take into account the numerous claims that the son (R. Gamaliel) of Paul's putative teacher (R. Gamaliel the Elder) taught Greek wisdom in his home to 500 students (BT Sota 49b; BT Baba Kama 83a; BT Gittin 58a; PT Ta'anith 4.8, 69a).<sup>31</sup> While there may be reason to doubt the number, there is no reason to question the substance of the tradition.<sup>32</sup> We must admit that Hellenism had penetrated Rabbinic schools of learning, and that this was not limited

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<sup>30</sup> Saul Lieberman, Greek in Jewish Palestine; Hellenism in Jewish Palestine; "How Much Greek in Jewish Palestine?" in Texts and Studies.

<sup>31</sup> Lieberman, Greek, 20-21; Hellenism, 104-105.

<sup>32</sup> Lieberman, Greek, 20; Hellenism, 104-105.

to one teacher.<sup>33</sup> Even if Paul was raised in Jerusalem, he could have learned Greek thought.<sup>34</sup>

That Paul was born and raised in Tarsus is still the most likely hypothesis. It is possible that after he reached a certain age, he would have gone to Jerusalem to study.<sup>35</sup> Luke portrays him speaking fondly of Tarsus, which is puzzling for someone who left a city in his infancy. Luke's use of the topos will only mislead us, however, if we do not take into account the context and the other statements regarding Tarsus made by Paul.

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<sup>33</sup> Lieberman, Greek, 21.

<sup>34</sup> See W.L. Knox, Some Hellenistic Elements in Primitive Christianity, 30-31. He, too, sees the real possibility of Paul learning his Greek wisdom at the foot of Gamaliel.

<sup>35</sup> Though I reject H. Bohlig's proposal in Geisteskultur von Tarsos, 166 that this was "only an incident" in Paul's life.

#### **APPENDIX 4: Acts 17: 16-33**

Acts 17:16-33 would be an important passage for establishing Paul's knowledge of Greek philosophical traditions, and his willingness to enter into debate with their proponents, if we could establish a degree of historicity for this passage. What can we claim for this passage?

First, it must be said that this passage fits Luke's programmatic plan of moving Paul, and Christianity, from Jerusalem to Rome. In this passage he moves equally well among Jews and Gentiles (Acts 17:17). Second, no great claims of authenticity can be made for Paul giving the speech as it stands. Almost every commentator acknowledges this. Nevertheless, this does not render the historical value of this passage worthless. A core of historical data would mean much.

V.17 would certainly fit Paul's own view of his mission as well - to the Jews first, and then to the Gentiles - and it would place him as a member of both worlds. It is also quite likely that Paul went to public places to dispute the gospel of Jesus Christ with the learned people of whatever city he came to.

It is also not odd that Paul speaks the language of the people to whom he is speaking (Acts 17:23,27-29), as Chapter Six made clear. If among the Jews a Jew, is it so odd that among the Greeks a Greek (cf.

1Cor.9:20)? Paul, as his letters show, tailors his praises, his rebukes, his exhortations, and the issues which he raises to the congregation with which he is engaged. Like a good politician, Paul only works the crowd he is with.

Finally, Paul's speech is not overly successful (Acts 17;18-20, 32-34). It does not seem to be the type of story that one would concoct to throw a good light on Paul. If Luke, in fact, created the story, it is a strange one.

Most commentators, especially German commentators of this century, have rejected the speech outright.<sup>36</sup> Their rejection usually centres around the argument which Paul expresses in Acts 17:27-29, an argument attributed sometimes to Dio Chrysostom (e.g. Dibelius) or Posidonius (e.g. Pohlenz). Most see considerable Stoic influence on the speech. But while Paul may not have been capable of creating this speech, he certainly was capable of using Stoic ideas. Even if Luke created the speech, does it necessarily follow that the incident has no historical base?

Bertil Gärtner sees in this passage a core of truth. He says it would be difficult to see all of this chapter as Luke's handiwork.<sup>37</sup>

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<sup>36</sup> Rejected, for example, by Martin Dibelius, Aufsätze zur Apostelgeschichte: Paul auf dem Areopag (Göttingen: Vandenhoeck & Ruprecht, 1968), who calls it a "Fremdkörper"; Hans Conzelmann, Handbuch zum Neuen Testament. Die Apostelgeschichte (Tübingen: J.C.B. Mohr, 1963), 102-104; Max Pohlenz, "Paulus," 97.

<sup>37</sup> Bertil Gärtner, The Areopagus Speech and Natural Revelation (Uppsala: C.W.K. Gleerup, 1955), 49; see also Wilhelm Schmid, "Die Rede des Apostels Paulus vor den Philosophen und Areopagiten in Athen" in Philologus 95 (1943),

Why should Luke reproduce the unsuccessful delivery of a message providing associations with the pagan world of ideas, if it was not a typical missionary sermon? How are we to explain the many similarities between the Areopagus Speech and the Epistles if the speech did not exemplify Paul's customary sermons to Gentiles?<sup>38</sup>

Why doubt the core historicity of this speech?

If Paul spoke to all manner of Gentiles it is obvious Paul, whose texts show a basic knowledge of philosophic ideas, would have spoken to the philosophers among them in their own language.<sup>39</sup> If this is the case, Luke is probably drawing on any number of memories to create this speech, and, probably, honing the speech philosophically. While the final form of the speech may not be Paul's, must we really call into question the likelihood of Paul disputing with Stoics and Epicureans?

The rejection of the basic outlines of Acts 17:16-33 seems arbitrary and overly sceptical. If we cannot accept this of the Apostle to the Gentiles, then what? It is not strange that Paul spoke with the philosophers of the day, in their own language, to win them to the Gospel. Luke preserves the memory of one such instance.

79-120; Henry J. Cadbury, The Book of Acts in History (London: Adam and Charles Black, 1955), 45. None of these authors claim that the speech is the work of Paul.

<sup>38</sup> Gärtner, Areopagus, 52.

<sup>39</sup> W.L. Knox, Some Hellenistic Elements in Primitive Christianity, 28 considers this a "genuine record" and believes that the speech "embodies the kind of philosophical commonplaces that he [Paul] was likely to know and use".

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