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Citation

Castelli, S. (2024). The language of the law: narratology and register variation in Josephus' Cultic laws and constitution. In C. Bay, M. Avioz, & J. W. van Henten (Eds.), *Supplements to the Journal for the Study of Judaism* (pp. 116-144). Leiden: Brill.
doi:10.1163/9789004693296_006

Version: Publisher's Version

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Downloaded from: <https://hdl.handle.net/1887/4249555>

Note: To cite this publication please use the final published version (if applicable).

The Language of the Law: Narratology and Register Variation in Josephus' Cultic Laws and Constitution

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1 Legal Discourse and Register Variation*

Legal discourse—in antiquity as now—distinguishes two categories of texts: texts of actual laws, such as legislation, arbitration, and contract—which in antiquity are mostly found in documentary sources—and texts *on* the laws. In both kinds of texts the narrative dimension is present, but in the lawgiving λόγῳ,¹ namely in texts *on* the laws, such as in Josephus' *Antiquitates Judaicae*, the narrative is more marked and therefore should be taken into consideration at the outset, before any analysis of linguistic variation. However, since narratological approaches have been widely explored in scholarship of Classics and biblical studies and recently have been used for Josephus as well,² while the analysis of linguistic variation is not common in Josephan studies, in this chapter I will mostly focus on the latter.

The analysis of linguistic variation in a specific, situationally defined discourse, is called register variation in modern functional linguistics.³ It considers, among others, the use of pronouns and other anaphoric devices, prepositions,

* This investigation has been carried out within the project “Anchoring Innovation,” the Gravitation Grant research agenda of the Dutch National Research School in Classical Studies, ΟΙΚΟΣ. It is financially supported by the Dutch ministry of Education, Culture and Science (NWO project number 024.003.012). For more information about the research programme and its results, see the website <https://www.anchoringinnovation.nl>. I would like to thank the audience of the conference *From Josephus to Josippon and Beyond*, the colleagues of the Department of Classics at Leiden University, and the anonymous reviewer for their feedbacks, comments, and insights.

1 On the distinction between lawgiving ἔργῳ (the real act of legislation) and λόγῳ (discourse *on* legislation), see Bartels, *Plato*, 151.

2 On law and narrative, Bartor, *Reading Law as Narrative*; Adam et al., *Law and Narrative*; Olson, “Narration and Narrative in Legal Discourse;” Berner & Samuel, “Biblical War Legislation.” On narratological approaches to ancient Greek literature, see de Jong et al., *Narrators, Narratees and Narratives*; de Jong, *Narratology and Classics*; an application of narratological perspectives to Josephus are found in van Henten “Josephus as Narrator;” and van Henten and Huitink, “Josephus.”

3 Biber and Conrad, *Register, Genre, and Style*.

definite articles, nominalization, tense, modality, length of the sentences, transitivity (passive/active verbs), verbal aspect, and lexicon. More generally, these features have been grouped into (a) morphology and syntax, (b) structural properties, and (c) lexical features. Among the lexical features, a key role is played by the semantic domain typical of the specific discourse⁴—that is technical vocabulary—which, for legal discourse, is legal terminology. Technical vocabulary, in general, is (a) recognized by native speakers as belonging to a specific technical field, and specialists in particular are self-conscious in employing a vocabulary which is specific to their discipline; (b) is not commonly used, even if it may be understood by non-specialists; (c) tends to be standardized, economic, and concise (that is, polysemy and synonymy are generally avoided in favor of monosemy); (d) tends to be systematic; and (e) it is expressively neutral.⁵

While the analysis of register variation has been applied especially in modern languages and modern translation studies, and recently also to legal discourse,⁶ it seems to be a promising field of research also in the study of the ancient world. In register analysis, “language variation according to use is captured ... as a recognition of how situational context affects language.”⁷ In New Testament studies, Stanley Porter has applied register variation analysis to Mark 13 and Chiaen Liu to the Petrine texts;⁸ in Septuagint studies, register variations have been highlighted by Marieke Dhont for the book of Job.⁹ With regard to ancient Greek, register variation has been investigated by Andreas Willi, initially in the language of Aristophanes and later in the language of tragedy; and by Alessandro Vatri, who has applied register variation to Greek oratory.¹⁰ To date, however, there is no major work on register variation in

4 See Langslow, *Medical Latin*, 7.

5 I refer here to the criteria proposed by Willi, *The Languages of Aristophanes*, 66; 69, reworked by Schironi, “Naming the Phenomena,” 246. One of the main problems faced when dealing with ancient technical language is what to consider as technical and what not.

6 Goźdz-Roszkowski, *Patterns*; Biber, “Multi-dimensional Analysis;” Berūkštienė, “Legal Discourse;” Simonnaes, “Legal Language;” Fanego and Rodríguez Puente, “Corpus-based Research.”

7 Porter, “Exegesis,” 207.

8 Porter, *Linguistic Analysis*, 219–236; Liu, *Register Variation*.

9 Dhont, *Style and Context*, 142–178.

10 Willi calls his 2003 monograph *The Languages* (plural!) *of Aristophanes*, to stress the different registers used in Aristophanes’ comedy; see also Willi, “Register variation,” for methodological issues on the application of register analysis to ancient Greek, and Willi, “Der Sprachraum der Tragödie” for the language of tragedy. Vatri, “Stilistica,” focuses on Demosthenes, Isocrates, Lysias, and Aeschines.

ancient legal Greek texts, except for an article by Alfred Bloch dated 1975, and that has made my attempt to compare Josephus' legal language with comparable texts more challenging.¹¹

An awareness of register variation, usually defined as “style,” formed an essential part of ancient theorizing about language in action.¹² Aristotle writes in his *Rhetorica*:

Δεῖ δὲ μὴ λεληθέναι ὅτι ἄλλη ἐκάστῳ γένει ἀρμόττει λέξις. οὐ γὰρ ἡ αὐτὴ γραφικὴ καὶ ἀγωνιστικὴ, οὐδὲ δημηγορικὴ καὶ δικανικὴ.

One must not forget that a distinct style is appropriate for each genre; for the style of writing is not identical with that of debating, and the style of assembly speeches is not the same as that of lawcourt speeches.

ARISTOTLE, *Rhet.* 1413b3–5

Such an awareness is found also in the Roman world. In the second book of *De legibus* Cicero describes as “the voice of the laws” (*legum voce*) the kind of language that he will use for his law code (*Leg.* 2.18): namely, some characteristically legal terms, not as antique as that of the Twelve Tables and the religious laws, but rather old fashioned compared to the language of ordinary conversation.¹³ In the case of Cicero, while his basic register is derived from the language, legal or non-legal, of his time, he consciously adds some elements of the language and style of the archaic laws for particular effect.¹⁴

In this contribution I follow Andreas Willi's theoretical framework and terminology, and define as “register variation” what is sometimes called as “variation in style/genre.” I indicate thus with “register” the linguistic code that is used in the creation of a text that belongs to a specific (sub-)genre, in this case legal discourse. Narratological considerations and register variation analysis will be here applied to two major portions of Josephus' legal discourse: the

11 Bloch, “Geetzesprosa.” There are, however, relevant articles on the Gortyn Code: Lallot, “L'opposition aspectuelle;” Minon, “L'aspect.” Moreover, Willi, *The Languages of Aristophanes*, 51–96, considers technical languages, including legal language; likewise, Willi, “Register variation,” 262–263. Other works concern rather legal discourse in Plato's *Laws* (Yunis, “Laws;” Bartels, *Plato*) and in Cicero's *De legibus* (Powell, “Cicero”).

12 Willi, “Register Variation,” 261. An analogous awareness is shown by ancient literary critics for characterization (e.g., Horace, *Ars Poetica* 114–118, and Lucian, *Hist. Conscr.* 58). See de Bakker and de Jong, *Speech*, 4.

13 *Sunt certa legum verba ... neque ita prisca ut in veteribus XII sacratisque legibus et tamen ... paulo antiquiora quam hic sermo est.* Cicero's law code is found in *Leg.* 2.19–22 and 3.6–11.

14 So Powell, “Cicero,” 126.

cultic laws of *Antiquitates Judaicae* 3.224–286, which deal mostly with the laws of Leviticus, and the *politeia* of *Antiquitates Judaicae* 4.199–301, focused mostly on the laws of Deuteronomy. The choice of dealing with these two sections is not arbitrary. They are the most extensive legal sections of the *Antiquitates Judaicae* and are distinctively marked by Josephus: they are both introduced by the author/narrator in a specific way—as we shall see—and called by a different name: the cultic laws are defined as “legislation” (νομοθεσία; *AJ* 3.287), or simply as “the arrangements of the laws” (διάταξις τῶν νόμων; *AJ* 3.286); the laws of *Antiquitates Judaicae* 4 are called *politeia*—normally intended as “constitution”¹⁵ (*AJ* 4.195–196)—or “the arrangement of our laws that are relevant to the *politeia*” (διάταξις ἡμῶν τῶν νόμων τῶν ἀνηκόντων εἰς τὴν πολιτείαν, *AJ* 4.198).

How does Josephus organize his discourse in those sections? Do pervasive and frequent linguistic features¹⁶ occur in each section? What major differences are found between the way Josephus crafts the biblical cultic laws and the *politeia*, and how can they be explained? To provide a comprehensive answer on the use of register variation in Josephus’ legislation one should engage in a systematic (and quantitative) analysis of Josephus’ legal sections, and include *Contra Apionem* 2.145–286, notably the summary of the laws of 2.190–218. Such enquiry, however, goes beyond the scope of this contribution and would require a separate investigation. Here I shall limit myself to the two mentioned sections of *Antiquitates Judaicae* (3.224–286 and 4.199–301): I shall first point to the most prominent narratological aspects, stressing the major divergences with the correspondent biblical accounts, then highlight the most frequent linguistic features of each group, and stress their difference. Finally, I shall explain Josephus’ use of register variation in the larger framework of Greek discourse, notably ethnographic historiography for the cultic laws, and Plato’s *Laws* for the *politeia*. As argued by Sean Adams, Josephus did have genre awareness.¹⁷ This contribution will show that he was also aware of the linguistic code appropriate to a specific (sub-)genre.

15 On the complexity of the term πολιτεία in Greek literature, see Mulhern, “*Politeia*,” on πολιτεία in Josephus, see Rajak, “Josephus’s Political Thought,” and Troiani, “The πολιτεία of Israel.”

16 Register features should be frequent and pervasive according to Biber and Conrad, *Register*, 53–54.

17 Adams, *Greek Genres*, 229–239.

2 Cultic Laws (*AJ* 3.224–286)

Josephus organizes the biblical laws of Leviticus in three macro-sections, according to the topic: (1) laws concerning sacrifices and festivals (chapter ix and x: 3.224–257); (2) laws concerning purifications (chapter xi: 3.258–273); and (3) various laws (chapter xii: 274–286). Before pointing to the most recurring linguistic features in these sections, I shall set out some narratological considerations, starting with the laws on sacrifices and festivals.

2.1 *Narratological Considerations*

2.1.1 Sacrifices and Festivals

While Leviticus opens with God giving instructions to Moses on what to tell the Israelites,¹⁸ Josephus as author/narrator opens the section of sacrifices and festivals with an introduction in the first person singular (*AJ* 3.224)¹⁹ about his reasons for writing on the sacrifices; likewise, he closes the section with a remark in the first person plural (*AJ* 3.257) about his planned work on the reasons behind the laws.²⁰ The discourse is not only introduced and closed by the author/narrator, as well as organized according to topics, as we shall see in the *politeia*, but the author/narrator repeatedly makes editorial remarks in the first person singular or plural: for example, at *AJ* 3.225: “I shall speak about the former;” and a few paragraphs later (*AJ* 3.230): “But we shall speak more precisely concerning the sacrifices of these animals in the work about the sacrifices.” These copious metanarrative elements point to an overt narrator, such as Herodotus in his *Histories*.²¹

Moreover, Josephus categorizes and classifies the sacrifices, providing a higher level of abstraction compared to the Levitical legislation. In particular, he points to the two-fold agency of sacrifices and their two-fold typology. First, sacrifices are performed by individuals and by the community: The subject changes accordingly from an individual (ἀνὴρ ἰδιώτης) performing the sacrifice to a generic plural (“they sacrifice,” θύουσιν), which indicates the community.

18 Lev 1:1: “The Lord summoned Moses and spoke to him saying: Speak to the people of Israel and say to them: When any of you bring an offering of livestock to the Lord, you shall bring your offering ... If the offering is a burnt offering ...” Biblical translations are taken from the NRSV, unless otherwise stated.

19 *AJ* 3.224: “Now I shall mention some few of the regulations pertaining to the rites of purification and types of sacrificial ceremonies. For it happens that in my discussion is presently concerned with the sacrifices.” All the translations of Josephus are by L.H. Feldman for the Brill Josephus Project, unless otherwise stated.

20 *AJ* 3.257: “We shall later reveal (δηλώσομεν) more precisely the reasons for these things. Enough seems to be to have been said already even now about them.”

21 See de Jong, “Herodotus.”

Second, sacrifices are distinguished between sacrifices where the victim is completely burned and those where the victim is partly consumed by those who offer the sacrifice. Such classifications are marked by a calibrated structure of μὲν ... δέ.

Finally, and remarkably, in the section of sacrifices and festivals Moses is never explicitly mentioned and probably, except for one case (3.248),²² when no subject is found one should imply “the law” as a subject, and not Moses. In so doing, Josephus consciously pauses his narrative about Moses at *AJ* 3.223, and resumes it at *AJ* 3.258 with the purification of the Levites. From the narrative point of view, the section on the sacrifices and festivals is crafted very differently from the rest of the discourse.

2.1.2 Purifications

Moses re-enters the scene at *Antiquitates Judaicae* 3.258, which opens with a Μωυσῆς δέ, after Josephus’ editorial remark closing the section on sacrifices and festivals. Moses purifies the Levites and is the subject of most of the following purity prescriptions.²³ Unlike the previous sections on sacrifices and festivals, which are in the present indicative, most of the verbs here are in the imperfect or aorist indicative,²⁴ while the present indicative is less common, and therefore marked (e.g., at *AJ* 3.263 “likewise, they sacrifice”). For example, in *Antiquitates Judaicae* 3.261 Josephus says that Moses segregated until the seventh day women with menstruation: he uses μετέστησε, an aorist indicative. After seven days Moses permits them—with a present tense, ἐφήσιν—to associate with the community. Two laws follow which are not specifically related to Moses but are brought here by Josephus by association: by association with the prescription of the menstruating woman of Lev 15:19 Josephus mentions the segregation of people in contact with the dead from Num 19:11, which likewise lasts seven days. This logic of association is marked by the adverb ὁμοίως, which is found both at *AJ* 3.262 and 3.263. The verb of the associated law is in the present indicative. In this case, the present indicative marks a change

22 At *AJ* 3.248 Moses is the implied subject of ἐνόμισεν “prescribed:” in this case alone Josephus uses the aorist indicative instead of the present indicative, and makes an explicit connection with the liberation from Egypt: “in the month of Xanthicus ... because in this month we were liberated from slavery under the Egyptians, he prescribed ...”

23 E.g., *AJ* 3.258: ἡγνιζε, he purified; διέκρινεν, he distinguished; *AJ* 3.260: ἀπηγόρευσε, he prohibited (the use of all blood); *AJ* 3.261: ἀπήλασε, he expelled; μετέστησε, he secluded; *AJ* 3.264: ἐξήλασε, he banished. At *AJ* 3.262 however, we have the expression νόμιμον (ἔστι), it is lawful.

24 On the use of aorist indicative, Beetham “Aoriste Indicative;” Nijk, “How to Control the Present,” and “Bridging the Gap.”

in focalization, from the action of Moses (and the Levitical legislation) to the author/narrator (and a law of Numbers).

The narrative about Moses continues at *Antiquitates Judaicae* 3.264: Moses banishes the lepers from the city. But that brings our author to another association: the apologetic excursus on the falsehood of Moses' leprosy (up to *AJ* 3.268). Such an excursus once again shows the author's perspective, ending in the same way with "but with regard to these things let each one judge as it seems best to himself" (*AJ* 3.268). The author's focal point is kept for the prescription of the purity of women in childbirth (*AJ* 3.269): Moses has forbidden women who have just given birth from entering the temple, but after the time of impurity has elapsed, women offer sacrifices—with a present indicative, *θυσίας ἐπιτελοῦσιν*. Probably also by association, although not marked linguistically with an adverb such as *ὁμοίως*, Josephus describes the law of the suspected adulteress, the *sotah*. The focalization is still that of the author/narrator, who uses the present indicative, and closes the entire section of sacrifices/festivals and purifications by saying: "Moses ordered these provisions for his fellow countrymen with regard to the sacrifices and the purification related to them, and he drew up the preceding laws for them" (*AJ* 3.273).

2.1.3 Various Laws

The subject of the rest of the prescriptions is mostly Moses, except for *ὁ νόμος ἀπέπειν* ("the law prohibited") of *Antiquitates Judaicae* 3.274. In this section, *ἐκώλυσε* "he forbade," in the aorist indicative, is a recurrent verb, followed by the infinitive. In several cases, however, the present tense is used, indicating a less marked feature.

2.2 Register Analysis

2.2.1 Morphology, Syntax, Structure

As pointed out by Biber and Conrad, typical register features should be frequent and pervasive.²⁵ In the cultic laws we do find some recurrent, although not systematic, linguistic features, but they do not point to a prescriptive text. That is remarkable, because it diverges from biblical legislation. Scholars have mostly related the priestly regulations of Leviticus and Numbers either to prescriptive "ritual texts,"²⁶ or to casuistic priestly law typical of the ancient Mediterranean context.²⁷ In either case, biblical legislation points to

²⁵ Biber and Conrad, *Register*, 53–54.

²⁶ Levine, "Tabernacle Texts;" "Ritual Texts."

²⁷ Darshan, "Casuistic Priestly Law." On law and narrative in Leviticus, see Bibb, *Ritual Words*; Carmichael, *Illuminating Leviticus*.

prescriptive texts. Josephus, on the other hand, chooses to craft the ritual laws in a full narrative dimension.

Use of the third person. In fact, the most frequent and pervasive feature of the cultic laws—sacrifices and festivals, purifications, and various laws—is the use of the third person, either singular or plural. To give but one example:

226 An individual (ἀνὴρ ἰδιώτης) who offers a whole burnt offering sacrifices (ὄλοκαυτῶν θύει) ... 228 In performing the sacrifices of thanksgiving they sacrifice (θύουσιν) the same animals.

AJ 3.226–228

Moods and tenses. In the section on sacrifices and festivals the most frequent mood is the indicative, and the most frequent tense the present. The use of the present indicative is not typical of actual laws, which generally prefer the use of the aorist.²⁸ The laws of purifications are mostly in the aorist indicative, as they are connected to Moses: as we have seen, in the purifications laws the present tense is used as a narrative strategy to mark the point of view of the author. *Antiquitates Judaicae* 3.269 uses the perfect indicative: Moses “has forbidden” (κεκώλυκε) puerperae from entering the temple. In this case, we may either suppose that Josephus follows the Hellenistic use of perfect as an aorist,²⁹ or that once again he comes closer to his own perspective by using the “present effect” of the perfect: in fact, after the time of impurity has elapsed, women “offer sacrifices” (θυσίας ἐπιτελοῦσιν, with present indicative). The final laws are mostly in the aorist indicative, as connected to Moses as with the laws on purifications.

Short sentences and parataxis. A frequent feature of the laws of sacrifices and festivals is also the use of short sentences and parataxis. This feature, however, is more frequent in the laws of sacrifices and festivals than in the other laws connected to Moses’ narrative. Other features, on the other hand, are recurrent but neither pervasive, nor used systematically.

Passive verbs. Passive verbs are recurrent, although not systematically used: AJ 3.225–226, 230 ὄλοκαυτεῖται “is offered as burnt-offering,” AJ 3.249 “two bulls, a ram and seven lambs are slaughtered (σφάζονται): these are used as

28 Lallot, “L’opposition aspectuelle,” 158 on the Gortyn laws; Willi, “Register Variation,” 267: “The present-tense used in manumission inscriptions from Boeotia instead of the aorist seems to be a regional peculiarity.”

29 Willi, “Register Variation,” 283, points out that in the Hellenistic use perfect and aorist tend to merge.

burn-offering (όλοκαυτεῖται), a kid being further added (προστιθεμένου) as sin-offering.”

Infinitive. The infinitive is mostly used together with impersonal expressions such as “there is a law, it is lawful” (AJ 3.231, 233), “the law does not allow” (AJ 3.236). However, it is not systematically used.

Use of the article. Josephus often refers to a law generally speaking “there is a law” (νόμος δέ, AJ 3.233; νόμος ἐστίν, AJ 3.237), for example for the offering of flour, oil and wine, and for the daily sacrifice, omitting the article before νόμος; in other cases he clearly mentions “the law” with the article, for example “the law forbids (ό νόμος κωλύει) us to sacrifice an animal on the same day and place with its parent” (AJ 3.236). In other cases again, he prefers the impersonal “it is prescribed” (νόμιμον, AJ 3.254).

Pronouns. At the morphological level, demonstrative pronouns are frequent, but not pervasive. It should be noticed, however, that demonstrative pronouns are sometimes placed in a marked position, at the end of the sentence: this is a relevant point, as we shall see in Herodotus below. For example,

καί ὁ μὲν τῆς ὀλοκαυτώσεως τρόπος ἐστὶν οὗτος ...

The manner of the whole burnt-offering is *this* ...

AJ 3.227

τὰ αὐτὰ μὲν ζῶα θύουσιν, ὀλόκληρα δὲ ταῦτα ... θύσαντες δὲ ταῦτα ...

They sacrifice the same animals, but *these* are unblemished ... Having sacrificed *these* ...

AJ 3.228

Adverbs. The adverb “likewise” (ὁμοίως) is recurrent, but not pervasive.

Structure. Finally, at the level of structure, the prescriptions on sacrifices and festivals do not follow a formulaic, stereotypical, or consistent structure. Only the festivals show some consistency: every festival, with the sacrifices taking place in it, starts with the time of the year in which it occurs, namely on the new moon (AJ 3.238), in the seventh month (AJ 3.239), on the tenth of the same lunar month (AJ 3.240), on the fifteenth of this same month (AJ 3.244). For the rest, there is no clear pattern or structure, neither for the prescriptions on purifications, nor for the final laws. In the section concerning the cultic laws, the rationale for the law is omitted, that is, the law is not explained.

2.2.2 Lexicon: Technical, Semi-technical, and Shared Language in the Cultic Laws

The semantic domain is mostly that of the cult/ritual, not what we would currently define as “legal,”³⁰ and we can hardly speak of technical vocabulary. While we find in Josephus’ cultic laws several *performative verbs* (“the law forbids/prescribes, [Moses] expelled, banished”), performative verbs are not exclusive to legal discourse. Performative verbs are also found, for example, in religious discourse, such as in prayer.³¹ Likewise, there are *modal verbs* “it is permitted (ἐφείται) to sacrifice oxen that are older” (AJ 3.226), “the law does not allow (οὐκ ἐᾷ) to keep it the next day” (AJ 3.231), although less frequent than in the πολιτεία, as we shall see. And there are *stance verbs*. For example, εἶσιν, γίνονται, ἐστὶ in the first two paragraphs (AJ 3.224–225). Although these lexical features are common in legal texts, they are not register-specific, that is, they are not specific of legal register. We find, however, occasional technical or semi-technical vocabulary. On the burnt-offering, Josephus writes in *Antiquitates Judaicae* 3.225 “in the one case all of the sacrifice is burnt whole and [precisely] for this reason it has acquired such a name.”³² The author does not introduce immediately the technical term ὀλοκαύτωσις, but he first explains it. The word ὀλοκαύτωσις does appear, but only at the end of paragraph 227: “the manner of the whole burnt-offering is this.” ὀλοκαύτωσις is a neologism of the Septuagint,³³ attested also in Philo, for the Hebrew הַלֵּב, yet is not found outside Jewish-Greek literature: that is probably the reason why Josephus finds it useful to explain it first.

In other cases we find medical terms, which are sometimes more precise than in the biblical models. At *Antiquitates Judaicae* 3.228, in describing the thank-offerings, in correspondence to Lev 3:3 Josephus says that “they lay upon the altar the kidneys and *the caul* and all the fat together with the lobe of the liver.” For the “caul,” that is the membrane enclosing the entrails, Josephus uses a technical term, ἐπίπλους. Unlike Lev 3:3 which uses the unclear periphrasis “the fat that covers the entrails and all the fat that is around the

30 A list of Greek legal words in *Wasps* and other plays of Aristophanes, in Willi, *The Languages of Aristophanes*, 73–76: e.g., ἀλίσκομαι, to be convicted; ἀποφεύγω, ἐκφεύγω, to be acquitted; ἀφίημι, to acquit; γραφή/αί, (bill/s of) indictment; γράφομαι, to indict; διαθήκη, testament; ὁ διώκων, the prosecutor. Rightly Willi does not consider those words as technical because they do not belong to an exclusive specialist discourse (79).

31 See Willi, *The Languages of Aristophanes*, 23–24.

32 AJ 3.225 τῆς μὲν ὀλοκαυτεῖται πᾶν τὸ θυόμενον καὶ διὰ τοῦτο καὶ τὴν προσηγορίαν τοιαύτην ἔλαβεν.

33 Daniel, *Recherches*, 249–254.

entrails”³⁴—one may wonder what is the precise difference between the two—Josephus is specific and differentiates between the membrane enclosing the entrails, that he calls the ἐπίπλους/ἐπίπλοος, and all the fat, which he calls πάντα τὰ πιμελή. In this case, the choice is exegetical insofar that it clarifies an unclear biblical periphrasis, but it also points to a known referent in the Greco-Roman world. While ἐπίπλους is not attested in other Jewish-Greek authors, it is found in Herodotus 2.47, in the description of the sacrifice of a pig in Egypt—a passage that we shall see below at Section 4. Moreover, it is strongly attested in Hippocrates and the *Corpus hippocraticum* (20×), as well as in Aristotle, notably the *Historia animalium* (8×) and *De partibus animalium* (7×). In other words, the term was technical, but widely attested in technical literature (on animals, sacrifices, and as a medical term) and probably well understood by Josephus’ audience.

Likewise, instead of the periphrasis of Num 5:27 on the suspected adulterous woman “the water that brings the curse shall enter into her and cause bitter pain, and her womb shall discharge, her uterus drop,”³⁵ Josephus (*AJ* 3.273) uses the technical medical term ὕδερρος, “dropsy,” a *hapax legomenon* in his work as such, although in *Bellum Judaicum* the corresponding verb is used: in *BJ* 1.656 Herod gets swollen feet as if he had dropsy (ὥσπερ ὕδρωπιώντος). Moreover, ὕδερρος is attested 32 times in Hippocrates and the *Corpus hippocraticum*. In other cases legal terminology is shared by non-legal texts, which means that, strictly speaking, it is semi-technical.³⁶ However, most language used by Josephus for the cultic laws is shared, common, or unmarked. Words such as θυσία for “sacrifice” or ἱερουργία for “religious service” were shared knowledge in the ancient world. It is also worth mentioning that in the cultic laws there are no Latinisms.

2.3 Summary on the Cultic Laws

Narratological considerations and register variation analysis in Josephus’ Levitical laws point neither to the (sub-)genre of legislation, nor to prescriptive

34 Lev 3:3 אֶת־הַחֵלֶב הַמִּכֶּסֶה אֶת־הַקֶּרֶב וְאֵת כָּל־הַחֵלֶב לֶבֶן וְאֵת עַל־הַקֶּרֶב: LXX τὸ στέαρ τὸ κατακαλύπτον τὴν κοιλίαν καὶ πᾶν τὸ στέαρ τὸ ἐπὶ τῆς κοιλίας.

35 Num 5:27 וַיִּבְרָא יְהוָה בְּהַמַּיִם הַמְאֻרָרִים לְמַרְיָם וְצִבְתָּהּ בְּטִנָּה וְנִפְלָה יְרֵכָהּ: LXX καὶ εἰσελεύσεται εἰς αὐτήν τὸ ὕδωρ τοῦ ἐλεγμοῦ τὸ ἐπικαταρῶμενον, καὶ πρησθήσεται τὴν κοιλίαν, καὶ διαπεσείται ὁ μηρὸς αὐτῆς.

36 For example, at *AJ* 3.232 ὁ ἄμαρτων, the sinner; συνειδώς, consciously; and ὁ ἐξελέγχων (in the accusative τὸν ἐξελέγχοντα), the accuser. E.g., συνειδώς is widely attested in the historians (Herodotus, Xenophon, Diodorus Siculus, Dionysius of Halicarnassus) and Plutarch; Josephus uses it also in *AJ* 1.45 to indicate Adam’s consciousness of his crime in the garden of Eden.

ritual texts. The laws on sacrifices and festivals are codified as a short essay, mostly in the present tense, pausing the narrative on Moses; the purification laws are openly connected to Moses, and thus mostly in the aorist; for the final laws Josephus displays a dynamic shift of perspectives from the narrative to his own point of view, especially on the laws about priests, which is linguistically translated with a shift from the aorist to the present tense.

The structure of each prescription is not formulaic, stereotypical, or consistent. The only consistent and pervasive feature seems to be the use of the third person. The use of technical terminology is likewise limited. When he uses technical terminology which may not be known to his audience, Josephus first explains it (such as in the case of *ὄλοκαύτωσις*); most technical terms, however, were probably common enough to be understood by his audience (such as *ἐπίπλους* or *ὑδερως*), since they are widely attested in Greco-Roman technical literature. Moreover, the limited technical vocabulary is used together with semi-technical or shared language. In the general conclusions I will point to Josephus' motivations for crafting this section of the Mosaic laws in the way he does. But first I shall turn to the analysis of the *politeia*.

3 The *Politeia* (AJ 4.199–301)

3.1 *Narratological Considerations*

Josephus introduces the *politeia* with a series of *caveats* for his audience: nothing has been added for embellishment, the order of the laws is different from the biblical order,³⁷ some laws will be covered by the work on “customs and causes.” Unlike the sacrifices and festivals which are codified as an essay in the third person (e.g., “there is a law ... the law forbids ...”) or the purification laws which are codified as part of Moses' narrative, likewise in the third person (e.g., “Moses prescribes”), from the narratological point of view the *politeia* is codified as a direct speech of Moses to the Hebrews, as it is in Deuteronomy.³⁸ This choice is significant, because the author could have provided another summary of the laws, as he did for the sacrifices, or use indirect speech. I will explain this choice in section 4. In following the narrative setting of the biblical account and embedding Moses' *politeia* in such narrative, traces of the

37 Order (*τάξις*, *ordo*) is a central concept in ancient rhetorical theory, both in the organization of arguments (*dispositio*) and in the treatment of expression (*elocutio*). See de Jonge, *Dionysius*, 252. On Josephus' rearrangements of the laws of the *politeia*, see Feldman, *Rearrangements*, 398–407; Avioz, *Legal Exegesis*, 83–86.

38 In biblical legislation, the commands are given by God in Leviticus, by Moses in Deuteronomy.

direct speech remain in Josephus' text in the occasional "you" pointing to the Hebrews (*AJ* 4.205 "by you;" *AJ* 4.208 "none of you"), especially at the beginning of the speech, and even "I," pointing to Moses (*AJ* 4.205 "which I appointed").³⁹

3.2 Register Analysis

From the linguistic point of view, in contrast to what we have seen for the cultic laws, in the *politeia* pervasive linguistic features typical of legislation do occur. I will consider in the following sections some of the most frequent features.

3.2.1 Morphology

Imperative/infinitive pro imperative. Third person imperative. First, in the *politeia* there is a pervasive use of the imperative or of the jussive infinitive (infinitive *pro* imperative). Moreover, the imperative is mostly in the third person. We see it right at the outset, at *Antiquitates Judaicae* 4.200:

Let there be one holy city (ἱερὰ πόλις ἔστω μία) ... let there be one temple in it (καὶ νεὼς εἷς ἐν ταύτῃ ἔστω), ... and one altar (καὶ βωμὸς εἷς) of stones ... let the access to this be (πρόσβασις ἔστω) not by steps ... in another city let there be neither an altar nor a temple (ἐν ἑτέρῃ δὲ πόλει μήτε βωμὸς μήτε νεὼς ἔστω).

While for the first paragraph (*AJ* 4.199) Josephus, like Deuteronomy, uses the second person plural in the indicative (πράξετε, ἔξετε), marking thus Moses' direct speech, from *AJ* 4.200 onwards he mostly employs the third person imperative, either singular, as in the passage of *AJ* 4.200 above, or plural, as at *AJ* 4.203 "let them come together three times a year" (συνερχέσθωσαν). Only in very few cases is the second person kept either in a verb or in a pronoun. This is a major difference with Deuteronomy, where laws are often (although not always) directed in the second person plural.

Reduplications. In the first law of the *politeia*, which conflates Deut 12 on the holy city and the temple with Exod 20:14–25 on the altar, the imperative ἔστω is repeated four times; likewise, the motif of the unicity of temple and holy city is repeated four times, with no apparent need for lexical variation. Conjunctions are likewise frequently repeated.⁴⁰

39 On *AJ* 4.205, see below 3.2.2.

40 E.g., *AJ* 4.202 καὶ ... καὶ. *AJ* 4.201, 209 μήτε ... μήτε. Reduplication has been highlighted in legal Latin by De Meo, *La lingua giuridica*, 119.

Pronouns. In the *politeia*, indefinite negative pronouns such as “none, nobody” are recurrent,⁴¹ but also relative pronouns, especially the indefinite relative pronoun ὅσος.⁴²

Adverbs. Adverbs are frequent, although not pervasive: the blasphemer must be buried “both ignominiously and in obscurity” (*AJ* 4.202), and the adverb “likewise,” to indicate a similar case, recurs only seven times in the whole constitution.⁴³

3.2.2 Syntax

The syntax of the *politeia* is often complex, combining implicit and explicit hypothetical clauses or numerous relative clauses. For example, at *Antiquitates Judaicae* 4.220:

Ἄν δὲ πραχθέντος φόνου ἐν τινι χώρᾳ μὴ εὐρίσκηται ὁ δράσας μὴδ' ὑπονοῆται τις ὡς διὰ μίσος ἀπεκτονηκῶς, ζητείτωσαν μὲν αὐτὸν μετὰ πολλῆς σπουδῆς μήνυτρα προθέμενοι· μηδενὸς δὲ μηνύοντος αἱ ἀρχαὶ τῶν πόλεων τῶν πλησίον τῇ χώρᾳ, ἐν ἧ ὁ φόνος ἐπράχθη, καὶ ἡ γερουσία συνελθόντες μετρείτωσαν ἀπὸ τοῦ τόπου ὅπου κεῖται ὁ νεκρὸς τὴν χώραν.

If, when a murder has been committed in a certain place, the doer is not found, and no one is suspected of having committed the slaying because of hatred, let them seek him with much diligence, offering rewards for information. But if there is no informer, let the officers of the city near the place where the murder was committed and the council of the elders come together and measure the ground from the place where the corpse lies.⁴⁴

In this sentence, the main clause “let them seek him with much diligence” (ζητείτωσαν... μὲν αὐτὸν μετὰ πολλῆς σπουδῆς) is preceded by two subordinate hypothetical clauses with finite verbs: “if the one who did it is not found” (Ἄν δὲ ... μὴ εὐρίσκηται) and “if no one is suspected (μὴδ' ὑπονοῆται τις). The last hypothetical clause features itself a subordinate clause constructed with ὡς + participle, “of having committed the slaying because of hatred” (ὡς διὰ μίσος ἀπεκτονηκῶς). Moreover, there are a subordinate hypothetical clause

41 E.g., μηδεῖς, *AJ* 4.207–208; μὴδ' ... τις ... μηδενὸς δέ, *AJ* 4.220.

42 E.g., *AJ* 4.213, 260.

43 *AJ* 4.206, 231, 251, 274, 276, 288, 291.

44 Feldman's translation has been slightly modified in this passage. The translation of ὁ δράσας as “the doer” is by Thackeray, which I prefer here, as more technical. On Josephus' exegesis of this law, Avioz, *Legal Exegesis*, 90–91.

with participle (genitive absolute) at the beginning, “when a murder has been committed in any place” (πραχθέντος φόνου ἔν τινι χώρῃ), and a subordinate clause with participle at the end: “offering rewards for information” (μῆνυτρα προθέμενοι). Likewise, relative clauses are very often used in the *politeia*.⁴⁵ Let us read, for example, how Josephus renders the extensive narrative of Deut 14:22–26 concerning tithes (AJ 4.205):

Ἔστω δὲ καὶ δεκάτη τῶν καρπῶν ἐξαίρεσις ὑμῖν χωρὶς ἧς διέταξα⁴⁶ τοῖς ἱερεῦσι καὶ Λευίταις δεδόσθαι, ἢ πιπρασκέσθω μὲν ἐπὶ τῶν πατρίδων, εἰς δὲ τὰς εὐωχίας ὑπηρετεῖτω καὶ τὰς θυσίας τὰς ἐν τῇ ἱερᾷ πόλει· δίκαιον γὰρ εἶναι τῶν ἐκ τῆς γῆς ἀναδιδομένων, ἣν ὁ θεὸς αὐτοῖς κτήσασθαι παρέσχευεν, ἐπὶ τιμῇ τοῦ δεδωκότος ἀπολαύειν.

Let there be a selection by you of a tithe of fruits, apart from that which I ordered to be given to the priests and Levites, and (lit. “that”) let it be sold in its native regions and let it serve for the feasts and the sacrifices in the holy city. For it is proper to enjoy for the honor of the one who has given it, that which has grown from the land that God has granted them to possess.

The first part of the law is summarized in one single period with two relative clauses; the explanation (δίκαιον γὰρ εἶναι) features itself a relative clause.

To sum up so far. First, in contrast to what we have seen for the cultic laws, Josephus not only keeps most of the morphological and syntactic features of the biblical laws, but makes them more frequent, especially in terms of the use of the third person imperative and the complex syntax. Second, although from the narratological point of view Josephus keeps Moses’ speech, as in Deuteronomy, he goes a step towards the register of actual legislation. The use of the third person imperative or of the jussive infinitive, the use of reduplication, indefinite pronouns, and of a complex syntax are typical syntactic features of legislation nowadays and some of these features have been pointed out also for ancient laws,⁴⁷ as we shall see in the next paragraph.

45 AJ 4.200, 203, 205, 207, 209, 210, 212.

46 With the *difficilior* reading of SPL, instead of διετάξατε.

47 The syntax of contemporary legislation is characterized by conditionals and hypothetical formulations, relative clauses, abundance of restrictive connectors and the density of subordination and parenthetical restriction; see Varo & Hughes, *Legal Translation*, 19–20. On the complex syntax as typical of “legalese” in Roman legal discourse, see Powell, “Cicero.” The use of pronouns is likewise recurrent in any genre of legal texts, past and

3.2.3 Third Person Imperative and Jussive Infinitive in Actual Legislation
Some examples of the use of the third person imperative or the jussive infinitive in actual legislation are found as early as in the Great Gortyn Code, an inscription from Crete from the fifth century BCE pertaining to private law.

Whoever intends to bring suit in relation to a free man or slave, shall not take action by seizure before trial (πρὸς δίκας μὲ ἄγεν); but if he does seize him, let the judge fine him (καταδικασάτῳ) ten staters for the free man, five for the slave, and let him release him within three days. But if he does not release him, let the judge sentence him (καταδικαδδέτῳ) to a stater for a free man, a drachma for a slave, each day until he has released him. But if he denies that he made the seizure, the judge shall decide (κρίνειν) with oath, unless a witness testify.⁴⁸

Gortyn Code, col. 1, ll. 2–12

Καταδικασάτῳ/καταδικαδδέτῳ are third person imperatives “let (the judge) fine/sentence (him).” In the same law, μὲ ἄγεν (“shall not take action”) and κρίνειν (“shall decide”) are jussive infinitives. In his 2017 article on register variation in ancient Greek, Andreas Willi highlighted that the use of the jussive infinitive is a typical feature of actual laws (legislation, decrees, proclamation), but is also used in discourse *on* the law, such as in a parody of legal discourse in Greek comedy.⁴⁹ In the *Birds*, for example, Aristophanes quotes a law of Solon, using two jussive infinitives (μὴ εἶναι, μετεῖναι):

Πε. ἐρῶ δὲ δὴ καὶ τὸν Σόλωνός σοι νόμον·
νόθῳ δὲ μὴ εἶναι ἀγχιστεῖαν παίδων ὄντων γνησίων.
ἐὰν δὲ παῖδες μὴ ὦσι γνήσιοι, τοῖς ἐγγυτάτῳ γένους
μετεῖναι τῶν χρημάτων.

(Peisetaerus:) But in addition I will quote to you the law of Solon: “The illegitimate child is not to have the right of next of kin as long as there are legitimate children; and if there are no legitimate children, those nearest of kin are to share in the inheritance.”

Av. 1660–1666

present; see Lallot, “L’opposition aspectuelle” on the Gortyn Code; pronouns are frequent also in biblical law.

48 The text of the inscription (1C IV 72) is found at <https://epigraphy.packhum.org/text/200508>.

49 Willi, “Register variation,” 262–265.

Latin actual laws likewise make large use of the imperative of instruction (also called “future imperative”) in the third person (in *-to*): in fact, since laws are meant to be obeyed whenever applicable, the normal verb-form found in them is the imperative of instruction.⁵⁰ Such imperative is purposely used by Cicero in his discourse on the laws (*De legibus*). The same goes for the use of relative clauses, typical of Latin legal syntax, likewise extensively used by Cicero.⁵¹ From the above examples I suggest that Josephus’ frequent use of the third person imperative for the *politeia*—more frequent than in the biblical account—is intentional, and speaks for his awareness of the register of legislation.

3.2.4 Lexicon: Technical, Semi-technical, and Shared Vocabulary in the *Politeia*

On the basis of the typical features of legislation pointed out so far, one would expect a very register-specific vocabulary, that is a large use of technical legal terminology. However, although some technical legal terms are found, Josephus often uses semi-technical words—that is words which are attested in the Greco-Roman world also outside legal discourse—and mostly shared, unmarked words. Moreover, he often departs from the vocabulary of the Greek Bible, confirming a tendency that I have observed elsewhere.⁵² Let us go back, for example, to the prescription on the holy city, the temple, and the altar. While the first part of the law on the holy city and the temple features plain, non-technical words, in the second part of the paragraph the prohibition to cut the stones for the altar (Exod 20:25), becomes in Josephus:

And one altar (βωμός) of stones, not hewn (μὴ κατεργασμένων) but chosen (λογάδην) and joined together (συγκειμένων), which, smeared with whitewash (κονιάματα), will be appealing and clean (καθάριοι) to the view.⁵³

The more common βωμός is preferred by Josephus to θυσιαστήριον used by the LXX. Moreover, Josephus adds details and more specific words: for example, κονίαμα “whitewash, stucco, plaster,” is a technical term related to constructions. It is a *hapax legomenon* in Josephus, well-attested in Greek Classical and

50 Examples in Powell, “Cicero,” *passim*.

51 Powell “Cicero,” 130.

52 Castelli, “Tabernacle.”

53 AJ 4.200. Feldman’s translation is here slightly adapted.

Hellenistic literature,⁵⁴ as well as in Jewish-Greek literature: it is found, among others, in Philo in similes (*De cher.* 104; *De agr.* 152, 160), as well as in the LXX at Dan 5:5.⁵⁵

As a matter of fact, we do find typical legal vocabulary, technical or “semi-technical,” according to the definition used provided in the introduction to this chapter.⁵⁶ At *AJ* 4.214–218 τὸ δίκαιον indicates justice, δικάζειν administer justice, ἀρχή the magistracy, ὑπηρέται the officers assigned to each magistracy, οἱ δικασταί the judges.⁵⁷ All these words are used in Greek legal discourse. For ὑπηρέται, in particular, Sarah Pearce has convincingly argued that the use of the term “would suggest to a Greco-Roman reader parallels with the term as employed in descriptions, both real and ideal, of Greek judicial administration:” for example, in Plato’s *Laws* (*Leg.* 9.873b), a text that we shall see later, capital sentences delivered by judges are executed by ὑπηρέται.⁵⁸ Another example is παρακαταθήκη, “deposit” (*AJ* 4.285–288), which has a very strong attestation in legal and economic texts.⁵⁹ The same goes for ὁ δράσας, “the doer” (*AJ* 4.220) in the law considered in section 3.2.2 above.⁶⁰ This last example is significant, since the use of participles with the article is a characteristic feature of Greek legal texts.⁶¹ A very peculiar case of the same passage is that of ἀπεκτονηκώς, “having committed slaying,” which seems to be a neologism of Josephus.⁶² As I pointed out for the cultic laws, Latinisms are likewise not found in the *politeia*.

54 Theophrastus 4.16; Diodorus Siculus 5.12.2; 20.8.3; Timaeus (Jacoby F3b, 566, F 164, l. 231); [Aristotle], *Col.* 791b, 794b, 899b Bekker.

55 Philo, *Cher.* 104, in a simile between the adornments of the building and the adornment of the soul; in *Agr.* 160 likewise in a simile “just as it is that plaster should become firm and fixed and acquire solidity, so too ... the souls ... should become more firmly settled.”

56 Willi, *The Languages of Aristophanes*, 66 and 69; Schironi, “Naming the Phenomena,” 246–250.

57 Similar considerations can be made for μάρτυς/μαρτυρέω of *AJ* 4.219 “witness, bear witness,” which is a de-terminologized term and thus synchronically no longer technical. On this law, Pearce, “Witness Laws.” Likewise, at *AJ* 4.220 the council of the elders is called γερουσία, as in the LXX (*Deut* 21:3), a word which is not exclusive of legal texts.

58 Pearce, “Levitical servants,” 488.

59 On παρακαταθήκη, see Taubenschlag, *Law*, 349–352. The term, however, is also found in Philo, *Quaest. Gen.* 1.27, in an explanation of the law (“For [γάρ] man has a wife entrusted to him as a deposit [παρακαταθήκη] from her parents”).

60 Thucydides, *Hist.* 2.40; Euripides, *Rhes.* 875; Isocrates, *Loch.* 2; Demosthenes, *Arist.* 218; Plato, *Leg.* 869b; Arrian, *Anab.* 7.29.2.

61 Bloch, “Gezetzprosa.”

62 ἀπεκτονηκώς is the reading of RMSPL. The reading ἀποκτενηκώς of O is clearly an error, since the form is otherwise unattested.

3.2.5 Structure

Finally, in the *politeia* we observe a specific structure as a recurring feature, although not systematic for all laws: the law is first defined, then explained. The explanation is more often codified with γάρ and a finite verb: for example, “for God is one and the stock of the Hebrews one” (θεός γάρ εἷς καὶ τὸ Ἑβραίων γένος ἓν, *AJ* 4.200), “for it is good” (*AJ* 4.203), “for it is right ... for the deity ...” (*AJ* 205–206); sometimes a non-finite verb is used, such as in *AJ* 4.212 (“thanksgiving being a natural duty”). Explanations of the laws are found already in biblical legislation, but in Josephus they become more frequent.⁶³ I will come back to this last point in the following paragraph, where I shall explain Josephus’ reasons for crafting Moses’ laws in the way he does.

4 General Conclusions: Anchoring Moses’ Legislation in Greek Discourse

The combined application of narratological considerations and register variation analysis to two of the most extensive sections of Josephus’ biblical legislation brings some interesting results.⁶⁴ First, it shows that Josephus does not craft the cultic laws as legislation: in the entire section of cultic laws there are hardly pervasive linguistic features, except for the use of the third person (mostly) indicative, which is not typical of actual laws; even at the lexical level, while the vocabulary presents some technical and semi-technical terms, the overall picture points to a shared, unmarked lexicon. How can we explain this choice? Josephus was aware that the Mosaic cultic laws were a form of “legislation”—he calls it νομοθεσία or διάταξις τῶν νόμων (*AJ* 3.286–287). Moreover, as a proud priest of Jerusalem he describes Moses’ tabernacle with copious details, indulges in an ekphrastic excursus, and employs for that description technical terminology, as I have shown elsewhere.⁶⁵ Thus, his choice on the Levitical laws cannot be due to lack of interest in the cultic laws. The overall impression is that Josephus intentionally did not present the Levitical laws with the linguistic code of legislation. A first reason may be the fact that an extensive, prescriptive account of cultic laws was less engaging for both his non-Judean audience, as foreign customs, and his Judean audience, as they could no longer be performed. But there is an additional reason, which I find

63 Avioz, *Legal Exegesis*, 120–128.

64 On the limited scope of this investigation, which excludes the summary of legislation of Josephus, *CA* 2.190–218, see the Introduction to this chapter.

65 Castelli, “Tabernacle.”

more cogent in terms of Josephus' history writing, notably evident in Josephus' summary of Levitical sacrifices and festivals: presenting the cultic laws as a non-prescriptive text in the third person would anchor⁶⁶ the Mosaic constitution in Greek ethnographic historiography, where laws and customs of foreign people did find their place, yet from an outsider perspective.⁶⁷ Herodotus—to take but the most famous example surely known by Josephus—writes extensively about the Egyptians and the Scythians, and considers also their cultic laws and customs. On the sacrifices of the Scythians, he writes:

In all their sacred rites they follow the same method of sacrifice; this is how it is offered (θυσίη δὲ ἡ αὐτὴ πᾶσι κατέστηκε περι πάντα τὰ ἰρὰ ὁμοίως, ἐρδομένη ᾧδε). The victim (τὸ μὲν ἰρήιον) stands with its forefeet shackled together; the sacrificer (ὁ δὲ θύων) stands behind the beast, and throws it down by pulling the end of the rope; [2] as the victim falls, he invokes whatever god it is to whom he sacrifices. Then, throwing a noose around the beast's neck, he thrusts in a stick and twists it and so strangles the victim, lighting no fire nor offering the first-fruits, nor pouring any libation; and having strangled and skinned the beast, he sets about cooking it.

HERODOTUS 4.60; trans. Godley (emphasis added)

The ritual is described in the third person, which ensures cognitive distance.⁶⁸ In the first sentence we notice the attempt at generalization (περὶ πάντα τὰ ἰρὰ, “in all their sacred rites”), as we have seen in Josephus, and the marked position, at the end, of ᾧδε, “in this way,” as we found in Josephus (above, section 2.2.1). The same marked position of ᾧδε is seen in Herodotus a few paragraphs later (4.62): “This is their way of sacrificing to other gods and these are the beasts offered; but their sacrifices to Ares are of this sort (τῷ δὲ Ἄρει ᾧδε).”⁶⁹ I remarked above (section 2.2.2) that Josephus uses the technical term ἐπίπλους (*AJ* 3.228), the “caul”—that is the membrane enclosing the entrails—for Lev 3:3. The term is found, among others, in Herodotus' book 2, where the historian describes the sacrifice of a pig to the Moon.

But this is how they sacrifice (θυσίη δὲ ἥδε) swine to the Moon: the sacrificer lays the end of the tail and (καί) the spleen and (καί) the caul

66 On the concept of “anchoring” see Sluiter, “Anchoring Innovation.” On its application to Josephus, see Castelli, “Bronze Bases.”

67 So Skinner, *Greek Ethnography*, 6.

68 On “distance” in Herodotus, see Allan, “Distance and Immersion.” Tyrell, *Persuasion*, 105.

69 Herodotus 4.62: τοῖσι μὲν δὴ ἄλλοισι τῶν θεῶν οὕτω θύουσι καὶ ταῦτα τῶν κτηνέων, τῷ δὲ Ἄρει ᾧδε. The repetition of the demonstrative pronoun should also be noticed.

(ἐπίπλοον) together and covers them up with all the fat that he finds around the belly, then consigns it all to the fire; as for the rest of the flesh, they eat it at the time of full moon when they sacrifice the victim; but they will not taste it on any other day. Poor men, with but slender means, mold swine out of dough, which they then take and sacrifice.

HERODOTUS 2.47.3; trans. Godley

In this case, as noticed for description of the Scythians' cultic laws, there is an attempt at generalization and a marked position of the demonstrative pronoun (θυσίη δὲ ἦδε). Moreover, the use of the third person is pervasive, as well as the use of the present indicative (σιτέονται, θύουσι) or subjunctive (θύσωσι), and the polysyndeton, which we have observed in Josephus. Finally, Herodotus uses occasional technical or semi-technical terms, in this case the very word for "caul" used by Josephus, although in its ionic form (ἐπίπλοον). I have already remarked that the metanarrative elements used by Josephus for sacrifices and festivals point to an overt narrator, such as Herodotus is.⁷⁰ My point here is not to show how Josephus was indebted to Herodotus, but to show how Josephus was aware of the discourse of ethnographic historiography in the description of foreign laws, and intentionally used it.⁷¹ By crafting his summary of the Levitical laws in the way he does, Josephus intentionally embeds the Mosaic cultic laws in Greek ethnographic historiography.

How can we explain Josephus' way of writing Moses' *politeia*? As we have seen, Josephus deliberately chose to keep a partial conative function in presenting the legislation of Deuteronomy, even in a work of historiography. While the laws of *Antiquitates Judaicae* 4 are built as part of the narrative, using the biblical direct speech of Moses, and are meant for an audience who is expected to grasp from them the nature of the laws, although not to perform them, they are prescriptive in most of their formal characters: the use of the third person imperative or of the jussive infinitive, combined with reduplication, indefinite pronouns, and a complex syntax are pervasive features in Josephus' *politeia* and typical of legislation. In some of these formal aspects, such as the use of the third person imperative, Josephus moves more consistently than his biblical models towards what must have been perceived by his audience as the register of actual legislation.

70 Above, section 2.1.1, with reference to de Jong, "Herodotus."

71 Awareness of Herodotus' ethnographic discourse has been noted also for Lucian's *De syria dea*; see Lightfoot, "Greek ethnography," 139–140. The description of laws and customs was still a matter of interest in Greek imperial historiography, as demonstrated by Dionysius of Halicarnassus' introduction of his Roman history (Dionysius of Halicarnassus 1.8.1–2).

On the other hand, the very structure of Josephus' *politeia*, with the extensive use of the rationale—more frequent than in biblical legislation—seems to point to legislation λόγῳ,⁷² that is to texts *on* the law. Although “motive clauses” are present in the biblical legislation, for example in the prohibition of pagan practices (Deut 14:2) or in the rules of warfare,⁷³ the rationale of the laws is mostly used in Jewish-Greek legal discourse in texts *on* the laws, not in actual legislation. For example, in Philo's treatise on the *Special Laws* on the borders (*Spec.* 4.149), or on the prohibition of mixing wool and linen (*Spec.* 4.207–208); it is also found in pseudo-Philo's narrative on the decalogue (*LAB* 11.9–13); and the apostle Paul in 1 Cor 9:7–10 provides an explanation similar to that of Josephus on the muzzling ox.⁷⁴ While that could certainly be explained as an elaboration of the biblical legislation itself, in Jewish-Greek literature the use of the rationale can also be explained as a strategy to embed Moses' legislation into the wider frame of Greek legal discourse. Josephus seems to go in that direction. In Plato's *Laws*, in particular, there are preambles to several laws of book IX and X, such as the law against temple robbing, murder, impiety, and adulteration (κιβδηλεία; *Leg.* 9.916d–917b):⁷⁵ in Plato those preambles are meant to preface, and ideally render superfluous, the imperative of the law in the narrow sense. To understand what Plato meant with preambles, let us consider *Leg.* 4.721b 1–3, where the Athenian first formulates a law without preamble (ὁ μὲν ἀπλοῦς [νόμος]) and then with preamble. The simple law reads as follows:

Γαμεῖν δέ, ἐπειδὴν ἐτῶν ἦ τις τριάκοντα, μέχρι ἐτῶν πέντε καὶ τριάκοντα, εἰ δὲ μή, ζημιουῖσθαι χρήμασιν τε καὶ τιμῆ, χρήμασι μὲν τόσοις καὶ τόσοις, τῆ καὶ τῆ δὲ τιμῆ.

A man shall marry when he is thirty years old and under five and thirty; if he fails to do so, he shall be punished both by a fine in money and by degradation, the fine being of such and such an amount, and the degradation of such and such a kind.

PLATO, *Leg.* 4.721b 1–3; trans. Bury

72 On the distinction between lawgiving ἔργῳ (the real act of legislation) and lawgiving λόγῳ (discourse *on* legislation), see note 1 and 2 of the introduction to this chapter, with references.

73 Bartor, *Reading Law as Narrative*, 14.

74 See also Philo, *Virt.* 145–146 and B. Meş. 7.1–3.

75 Bartels, *Plato*, 135. Yunis, “Laws,” 235–236 argues that Plato creates with *Laws* “a new rhetorical genre of legal-political discourse.” Plato's preambles, as well as the rationale of the laws in Jewish-Greek literature seem to obey to a need for an epistemic, as opposed to practical, authority; see Vroom, *Authority of Law*, 202–203.

The double law, instead, is preceded by a preamble, which runs as follows:

A man shall marry (Γαμείν δέ) when he is thirty years old and under thirty-five, bearing in mind that this is the way by which the human race, by nature's ordinance, shares in immortality (διανοηθέντα ὡς ἔστιν ἡ τὸ ἀνθρώπινον γένος φύσει τινὶ μετείληφεν ἀθανασίας), a thing for which nature has implanted in everyone a keen desire. The desire to win glory, instead of lying in a nameless grave, aims at a like object (τὸ γὰρ γενέσθαι κλεινὸν καὶ μὴ νώνυμον κείσθαι τετελευτηκότα τοῦ τοιοῦτου ἔστιν ἐπιθυμία). Thus mankind is by nature coeval with the whole of time, in that it accompanies it continually both now and in the future; and the means by which it is immortal is this: by leaving behind it children's children and continuing ever one and the same, it thus by reproduction shares in immortality.

PLATO, *Leg.* 4.721b6–c7; trans. Bury

The Platonic preambles, although keeping the law in its prescriptive form with a jussive infinitive—γαμείν δέ is found in both the simple and double law—places the act of the individual in a larger, cosmic framework. Thus, in Plato's *Laws*, persuasion is the best criterion for proper lawgiving λόγῳ: “the lawgiver must never omit to furnish preludes, as prefaces both to the laws as a whole and to each individual statute, whereby they shall surpass their original form by as much as the ‘double’ examples recently given surpassed the ‘single’” (Plato, *Leg.* 4.723b). This idea was still relevant to first-century Roman political and philosophic discourse: although the Platonic approach was contested by Posidonius, in his epistle 94 Seneca defends Plato, insisting that the introduction set the mind of the reader in the right philosophical direction, enabling them to perform the precepts with full intention.⁷⁶ Similarly, according to Philo's *Opif.* 1–2 the account of creation precedes the law code because “it was necessary to mold beforehand the minds (προτυπῶσαι τὰς διανοίας) of those who will use the laws,”⁷⁷ a line of thought followed by Josephus' introduction to *Antiquitates Judaicae* (1.19–21).⁷⁸

Josephus highlights in Moses' *politeia* the formal register of legislation for some aspects, pointing thus to real legislation (νομοθεσία ἔργῳ), yet he frames his discourse according to the tradition of Greek legal discourse (νομοθεσία

76 Seneca, *Ep.* 94.1–21, 25, 31, 38.

77 Niehoff, “Philo's Rationalization of Judaism,” 35.

78 Feldman, *Judean Antiquities*, 9n26 at *AJ* 1.21, with references. Barclay, *Against Apion*, LVIII–LIX, argues that in giving to the political concept of *politeia* a more “religious” dimension Josephus is indebted to Plato.

λόγω) that goes back to Plato's *Laws*, where lawgiving, although featuring some linguistic aspects of real legislation, is not imposition but persuasion.⁷⁹ Moreover, in designing the *politeia* within Moses' speech, Josephus not only is more faithful to the biblical account of Deuteronomy, but can use speech to highlight a decisive moment in the narrative according to the best models of Greek historiography, such as Herodotus and Thucydides.⁸⁰ Finally, the limited strictly technical legal language in both the *politeia* and the cultic laws in favor of semi-technical or common language points to Josephus' attempt to make Moses' legislation accessible and understandable to the wide Greek-speaking audience to which he refers in the preface to *Antiquitates Judaicae*. Not only by interpreting and making clearer the biblical laws, as an exegete would do,⁸¹ but also by "anchoring" his discourse in Greek discourse—ethnographic historiography, notably Herodotus, for the cultic laws, and legal discourse, notably Plato, for the *politeia*—and his language in the common, shared, or semi-technical vocabulary of the Greco-Roman age.

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79 Likewise Cicero goes back to Plato's *Law* as a model for *De legibus*. See Powell, "Cicero."
 80 On Herodotus, de Bakker, "Herodotus;" on Thucydides, Rood, "Thucydides;" on Josephus' speeches specifically, van Henten and Huitink, "Josephus."
 81 Josephus' exegetical project is stressed by Avioz, *Legal Exegesis*.

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