A WRITTEN COPY OF THE LAW OF NATURE: AN UNTHINKABLE PARADOX?

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In the writings of Philo of Alexandria, we witness a major turn in the history of the concept of the law of nature. The law of nature becomes intimately linked to the written law revealed by God, the Law of Moses. Philo's recasting of both Greek philosophy and Jewish tradition sets the scene for centuries of development, not only within Judaism, but also within Christianity and Islam.

As with any conceptual revolution, it is all but impossible to bring the Philonic turn clearly into view. To those who inherit Philo's sense of God as creator, lawgiver and source of revelation, the unity of natural law and revealed law³ can seem obvious. But, if one tries to think oneself into the position of Philo's Hellenistic predecessors and contemporaries, such a

¹ In early Greek philosophy, nature and law were contrasting terms, whose competing merits were the subject of an important controversy. For an excellent discussion of this debate with extensive primary sources see R. D. McKirahan, Jr., 'Chapter 19: The NOMOS-PHYSIS Debate', in *Philosophy Before Socrates: An Introduction with Texts and Commentary* (Indianapolis and Cambridge 1994) 390–413. There is one reference to natural law in Plato's *Gorgias* 483A7– 484C3. See G. Striker, 'Origins of the Concept of Natural Law', in *Essays on Hellenistic Epistemology and Ethics* (New York 1996) 212. However, as Striker argues, Gorgias uses the term as a deliberate paradox, on the assumption that nature itself, of course, has no normative import for human actions whatsoever. H. A. Wolfson claims that Philo borrows Aristotle's concept of nature. See his discussion in *Philo: Foundations of Religious Philosophy in Judaism, Christianity, and in Islam*, 2 vols. (Cambridge, Massachusetts 1947) 1:332–347. However, it seems quite clear that Philo's concept of nature and of natural law is derived from later Stoic philosophy. On this point see Striker, 'Origins of the Concept of Natural Law', 209–220

² S. G. Sowers, *The Hermeneutics of Philo and Hebrews: A Comparison of the Interpretation in Philo Judaeus and the Epistle to the Hebrews*, Basel Studies of Theology 1 (Richmond, Virginia 1965) 44–49; M. Niehoff, *Philo on Jewish Identity and Culture*, TSAJ 86 (Tübingen 2001) 247–266; D. M. Hay, 'Philo of Alexandria', in D. A. Carson, P. T. O'Brien, M. A. Seifrid (edd.), *Justification and Variegated Nomism: Volume I, The Complexities of Second Temple Judaism.* WUNT 2.140 (Tübingen 2001) 357–379, esp. 373–378; H. Najman, 'The Law of Nature and the Authority of Mosaic Law', *SPhA* 11 (1999) 55–73; F. Calabi, *The Language and the Law of God: Interpretation and Politics in Philo of Alexandria*, South Florida Studies in the History of Judaism 188 (Atlanta 1998) 31–78, esp. 36–43.

³ În the case of Philo of Alexandria, revealed law is synonymous with the Law of Moses.

unity not only fails to be obvious, it seems incoherent, paradoxical. As I will explain, the revolutionary character of Philo's move seems to me to be one factor underlying the debate between Phillip Mitsis and Paul Vander Waerdt continued in this volume. If Philo's move is revolutionary, as I am suggesting, how is it possible, not merely to think in post-revolutionary or in pre-revolutionary terms, but to *clarify* Philo's move, to render it intelligible? I want first to explain more precisely why Philo's position seems paradoxical. Then I will seek, not to remove the paradox — for that, I believe, cannot be done — but rather to exhibit some of the inner logic of Philo's thinking.

Philo writes within the context of what is now called Middle Platonism,⁵ and his conception of the law of nature seems indebted to both Platonism and Stoicism.⁶ To see the paradoxical character of Philo's linkage of the law of nature with the written law revealed by God, we need to recall a presupposition that Philo's philosophically educated readers would very likely have made. The presupposition is that the law of nature, in accordance with which we should live, is necessarily an unwritten law, which transcends the written laws of any human *polis*.⁷ In his discussion of the exemplary legislator Lycurgus, Plutarch writes:

None of his laws were put into writing by Lycurgus, indeed, one of the so-called 'rhetras' forbid it. For he thought that if the most important and binding principles which conduce to the prosperity and virtue of a city were implanted in the habits and training of its citizens, they would remain unchanged and secure, having a stronger bond than compulsion in the fixed purposes imparted to the young by education,

⁴ See P. A. Vander Waerdt, 'Zeno's Republic and the Origins of Natural Law', in P. A. Vander Waerdt (ed.), *The Socratic Movement* (Ithaca and London 1994) 272–308 and J. G. Defilippo and P. T. Mitsis, 'Socrates and Stoic Natural Law,' in *The Socratic Movement*, 252–271. See also their essays in this volume.

⁵ For some helpful discussions on the relationship between Middle Platonism and Philo of Alexandria, see D. T. Runia, 'Was Philo a Middle Platonist? A Difficult Question Revisited' *SPhA* 5 (1993) 112–140; G. E. Sterling, 'Platonizing Moses: Philo and Middle Platonism' *SPhA* 5 (1993) 96–111; J. Dillon, *The Middle Platonists: 80 B.C. to A.D. 20* (Ithaca 1996); *idem*, 'A Response to Runia and Sterling' *SPhA* 5 (1993) 151–155; T. H. Tobin, 'Was Philo a Middle Platonist? Some Suggestions' *SPhA* 5 (1993) 147–150; D. Winston, 'Response to Runia and Sterling' *SPhA* 5 (1993) 141–146.

 $^{^6}$ H. Koester is surely incorrect when he suggests that Philo originated the notion of natural law. See his article, 'NOMOS $\Phi\Upsilon$

 $[\]Sigma E\Omega\Sigma$: The Concept of Natural Law in Greek Thought', in J. Neusner (ed.), *Religions in Antiquity: Essays in Memory of Erwin Ramsdell Goodenough*, SHR 14 (Leiden 1968) 540. For a refutation, see R. A. Horsley, 'The Law of Nature in Philo and Cicero' *HThR* 71 (1978) 35–59, especially 56ff.

 $^{^{7}}$ See my essay, 'Philo of Alexandria on the Law of Nature and the Law of Moses', 55–73.

⁸ On *rhetras* see *Lyc.* 13.6, where Plutarch says that Lycurgus understood the *rhetras* to be divine oracles.

which performs the office of a law-giver for every one of them \dots Indeed, he assigned the function of law-making wholly and entirely to education. 9

Already in Sophocles' *Antigone*, a sharp contrast is drawn between the written law of the *polis* and the unwritten law.¹⁰ Closer to the time of Philo, when the unwritten law has come to be called the law of nature, we find Cicero drawing the contrast as follows:

I see that because custom is so corrupted such behavior is neither thought dishonorable nor forbidden by statute and civil law. It is, however, forbidden by the law of nature. For there is a fellowship that is extremely widespread, shared by all with all (even if this has often been said, it ought to be said still more often); a closer one exists among those of the same nation, and one more intimate still among those of the same city. For this reason our ancestors wanted the law of nations and the civil law to be different: everything in the civil law need not be in the law of nations, but everything in the law of nations ought also to be a part of civil law. We, however, do not have the firm and lifelike figure of true law and genuine justice: we make use of shadows and sketches. I wish we would follow even those! For they are drawn from the best examples of nature and truth. ¹¹

Here, the law of nature is distinguished from the laws of particular nations. The distinction concerns both normative status and epistemic access. First, the law of nature has superior normative status. It constrains the laws of particular nations, but they do not constrain it. Second, there seems to be no special problem gaining epistemic access to the laws of particular nations, which are presumably embodied, not only in custom, but in written statutes. But gaining epistemic access to the law of nature is problematic. At best, we can know 'shadows and sketches' of the law of nature. Those are 'drawn from the best examples of nature and truth' — that is, presumably, from the exemplary lives of those who are virtuous and wise. But we do not know the originals. We know nature and truth only through those whose lives copy them. The reason for Cicero's epistemic contrast between laws of particular nations and the law of nature may perhaps be that natural virtue and wisdom can be exemplified by living actions, but

⁹ Plutarch, Lyc. 13.1-2.

¹⁰ Sophocles, *Ant.* 450–460: 'For me it was not Zeus who made this proclamation, nor was it Justice who dwells with the gods below who established these laws among humans. And I did not suppose that your proclamations had power enough that you, a mortal, could prevail over the gods' unwritten and secure practices. For they live not just now and yesterday, but always forever. No one knows when they appeared. I did not out of fear of the will of any man intend to pay a penalty before the gods for transgressing them.' This translation is taken from R. D. McKirahan, Jr., *Philosophy Before Socrates: An Introduction with Texts and Commentary* (Indianapolis and Cambridge 1994) 409.

¹¹ This passage is cited from the translation of Cicero found in M. T. Griffin and E. M. Atkins, (edd.), *Cicero: On Duties*, Cambridge Texts in the History of Political Thought (Cambridge 1991) 125–126.

can never be reduced to any set of norms that might be transcribed into a written code of law.

Now, some passages in Philo might suggest that he shares this presupposed contrast between the unwritten laws of nature on the one hand and written laws on the other. Thus Philo emphasizes that the intelligible originals, through which God created the material world, can never be adequately represented in language (*Opif.* 4):

In celebrating the beauty of the thoughts contained in this creation account, no one, whether writing poetry or prose, can do them true justice. They transcend both speech and hearing, for they are greater and more august than what can be adapted to the instruments of a mortal being. ¹²

If the originals cannot be adequately represented in language, then of course, they cannot be adequately represented in writing. So it is no surprise to find that Philo says of the patriarchs, whom he portrays as living in accordance with nature, that they 'followed the unwritten law' (*Abr.* 4–6):

These (patriarchs) are such men as lived good and blameless lives, whose virtues stand permanently recorded in the most holy scriptures, not merely to sound their praises but for the instruction of the reader and as an inducement to elicit emulation; for in these men we have laws endowed with life and reason, and Moses extolled them for two reasons. First he wished to show that the enacted ordinances are not inconsistent with nature; and secondly that those who wish to live in accordance with the laws as they stand have no difficult task, seeing that the first generations before any at all of the particular statutes was set in writing followed the unwritten law with perfect ease, so that one might properly say that the enacted laws are nothing else than reminders of the life of the ancients, preserving to a later generation their actual words and deed. For they were not scholars or pupils of others, nor did they learn under teachers what was right to say or do: they listened to no voice or instruction but their own: they welcomed conformity with nature, holding that nature itself was, as indeed it is, the most venerable of statutes, and thus their whole life was one of happy obedience to law.

For it would seem that, if a life of virtue is a life in accordance with nature, and if the originals of nature cannot be adequately represented in writing, then the law followed by the virtuous is of necessity unwritten.

Now we are ready to hear how paradoxical Philo must sound to his contemporaries. For his central theme is that a unique status must be accorded to one collection of written laws, the Law of Moses, which is the law of a

¹² The quotations in English from the writings of Philo of Alexandria are taken from PLCL. The only exception are passages taken from Philo's essay *De opificio mundi*, are taken from D. T. Runia, On the Creation of the Cosmos: *Introduction, Translation and Commentary*, Philo of Alexandria Commentary Series 1 (Leiden 2001). I have, in certain cases, modified the Colson translation on the basis of the Greek in consultation with the critical edition of PCW.

particular nation. These laws are unique. They remain 'firm, unshaken, immovable, stamped as it were, with the seals of nature herself' (*Mos.* 2.14):

But Moses is alone in this, that his laws, firm, unshaken, immovable, stamped, as it were, with the seals of nature herself, remain 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 moon and the whole heaven and universe exist. Thus, though the nation had undergone so many changes, both to increased prosperity and the reverse, nothing — not even the smallest part of the ordinances — has been disturbed; because all have clearly paid high honor to their venerable and godlike character.

Now, in his account of creation, Philo uses the metaphor of stamping with a seal to express the relationship between original and copy (*Leg.* 1.47).

Before the particular and individual mind there subsists a certain original as an archetype and pattern of it, and again before the particular sense-perception, a certain original of sense perception related to the particular as a seal making impression is to the form which it makes.

Philo's claim, then, is that the laws of Moses are copies of the laws of nature. Indeed, he says elsewhere that they are 'likenesses and copies of the patterns enshrined in the soul' (*Mos.* 2.11), and that 'the laws [are] the most faithful copy of the world-polity' (*Mos.* 2.51–2). But here lies the paradox. How is it so much as possible for the written laws of a particular nation to be copies of the laws of nature? Philo seems to share, in large part, a framework of thought with Cicero and others. Yet there is simply no room in Cicero's thinking for a written copy of the laws of nature.

The difficulty of finding conceptual room for Philo's position seems to be one factor underlying the debate between Mitsis and Vander Waerdt. According to DeFilippo and Mitsis, 'The Stoic theory of natural law ... assumes ... that the divine order of nature legislates a system of moral laws that provides a normative structure for human conduct.' However, Vander Waerdt sees here the risk of anachronism. He argues that,

the early Stoics clearly do not conceive of natural law as being constituted by a code of moral rules comparable, for instance, to Aquinas' code of primary and secondary precepts. To the contrary, they advance a dispositional rather than a rule-following model of natural law, and a correspondingly different account of the content of the moral conduct prescribed by it: in their theory, it prescribes not a determinate class of actions but a certain rational disposition with which one is to act, namely, the perfectly rational and consistent disposition which enables the sage to apprehend and act in accordance with the provident order of nature.¹⁴

¹³ Defilippo and Mitsis, 'Socrates and Stoic Natural Law,' 265.

¹⁴ Vander Waerdt, 'Zeno's Republic and the Origins of Natural Law,' 275–276.

Underlying Vander Waerdt's argument is the question: how could the early Stoic conception of the law of nature be expressed by a code of precepts, since the early Stoics conceive the law of nature as unwritten and as embodied in the life of the sage? The question is not, I suggest, only interpretive. It is also conceptual. For early Stoic texts seem to leave no room for the idea of a code of precepts, a code that could be enshrined in a written text, which has the authoritative status of a copy of the law of nature. Underlying the debate between Mitsis and Vander Waerdt, then, is the question of how to make sense of Philo's revolutionary move.

An initial answer to the question is that, for Philo, the law of nature and the Law of Moses have the same source. Both are legislated by God. Thus, for example, John Martens contrasts Philo's position with Cicero's:

Philo could not admit that the Mosaic law was only a shadowy sketch of true law. 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.¹⁵

Now, this answer certainly has some validity. It is clearly important to Philo to emphasize that God is the source of both the law of nature and the Law of Moses. He makes this point in two main ways. First, as we can see in the two passages below (*Opif.* 3 and *Mos.* 2.48) Philo sees it as one of the main reasons why Moses prefaces the law with an account of creation that might otherwise be out of place (*Opif.* 3):

The beginning is, as I just said, quite marvelous. It contains an account of the making of the cosmos, the reasoning for this being that the cosmos is in harmony with the law and the law with the cosmos, and the man who observes the law is at once a citizen of the cosmos, directing his actions in relation to the rational purpose of nature, in accordance with which the entire cosmos also is administered.

Mos. 2.48:

He did not, like any prose-writer, make it his business to leave behind for posterity records of ancient deeds for the pleasant but unimproving entertainment which they give; but, in relating the history of early times, and going for its beginning right to the creation of the universe, he wished to show two most essential things: first that the Father and Maker of the world was in the truest sense also its Lawgiver, secondly that he who would observe the laws gladly welcomes conformity with nature and lives in accordance with the ordering of the universe, so that his deeds are attuned to harmony with his words and his words with his deeds.

Second, Philo takes pains to show, not only that the laws of Moses have a moral purpose even when that purpose is not obvious, but also that the laws of Moses are structurally similar to the created cosmos. Hence, for

¹⁵ J. W. Martens, 'Philo and the 'Higher' Law', SBLSP (1991) 317.

example, the importance of numerological analyses, such as Philo's account of the role of the decad in both natural and Mosaic law.¹⁶

However, it is simply not enough to say, with Martens, that God is the source of both natural and Mosaic law. Martens himself infers only that 'the Law of Moses ... could in no way contradict the natural law.' But what needs to be clarified is how the Law of Moses could be a *copy* of the natural law, so that fulfilling the former is at the same time fulfilling the latter! We might say, perhaps, that the omnipotent creator can make it the case that the Law of Moses is a copy of the law of nature. But this is to say that God can do even what is — or seems to be — conceptually impossible. If we can say no more than this, then it would seem that we have located a point where communication simply breaks down between, on the one hand, Philo and those who believe in an omnipotent creator, and, on the other hand, those who do not believe in an omnipotent creator. Those on one side of the Philonic revolution have no standard of intelligibility in common with those on the other side.

But I think that we can say more than this. One might think that there are two exclusive alternatives: either conceive the law of nature as a code of rules which can be written down, or else conceive it as exemplified by the disposition of the sage. But these are not exclusive alternatives for Philo. In two ways, the Law of Moses is more than a code of rules. First, it includes the lives of the patriarchs. Second, it is the Law of Moses, an expression of the life of Moses. Both the patriarchs and Moses are portrayed by Philo as sages living in accordance with nature. Thus, although to be sure the Law of Moses is written, it is not reducible to a code of precepts. For the precepts it contains must be understood in the context of the exemplary lives they express.

In Philo's view, the patriarchs exemplify the possibility of leading a virtuous life even if one does not have access to the written Law of Moses (*Abr.* 16):

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 self-taught.

In a striking phrase, Philo says that the patriarchs were not merely obedient to law; they were 'laws endowed with life and reason' (*Abr.* 5). Similarly, Philo says that Abraham was 'himself a law and an unwritten statute' (*Abr.* 276). The point is that the patriarchs are sages, who have

¹⁶ See Decal. 20-23.

¹⁷ This phrase should be compared with Plutarch's later interpretation of a verse from

fully internalized the disposition to live in accordance with nature. So the lives of the patriarchs *are* the law of nature and have the normative force of law

For two reasons, Philo says, did Moses include the lives of these living laws in the Pentateuch (*Abr*. 5):

First he wished to show that the enacted ordinances are not inconsistent with nature; and secondly that those who wish to live in accordance with the laws as they stand have no difficult task, seeing that the first generations before any at all of the particular statutes was set in writing followed the unwritten law with perfect ease, so that one might properly say that the enacted laws are nothing else than reminders of the life of the ancients, preserving to a later generation their actual words and deeds.

This last phrase is of great importance for my argument. Philo says that the enacted laws — that is to say, the laws given by God to Israel through Moses — may be properly regarded as reminders of the lives of the patriarchs, indeed as nothing else. In other words, if read in accordance with Philo's instruction, the lives of the patriarchs and the laws of Moses turn out to be equivalent. Now, since the lives of the patriarchs embody the law of nature, it follows that the enacted laws of Moses also embody the law of nature. But this implies that the status of the laws of Moses, as copies of the laws of nature, would have remained unclear if not for the fact that the laws of Moses are situated within the context of the lives of the patriarchs and their descendants. Thus, the laws of Moses cannot be reduced to a code. They are expressions of the 'actual words and deeds' of sages.

But this is not all. It is also of the utmost importance to Philo that God gave the laws to Israel through Moses, whose own life is also included in the Pentateuch.¹⁸ Philo wrote not one but two treatises on the life of Moses,

Pindar. When Pindar describes law as 'the king of all', Plutarch explains that law rules even a king: 'not law written outside him in books or on wooden tablets or the like, but reason endowed with life within him, always abiding with him and watching over him and never leaving his soul without its leadership.' See *Mor*. 780C. Compare Philo's description of a king in *Mos*. 2.4: 'the king is a living law and the law is a just king.'

¹⁸ See, e.g., Philo's explanation of Moses' description of his own death (*Mos.* 2.291–92): 'But most wonderful of all is the conclusion of the Holy Scriptures, which stands to the whole law-book as the head to the living creature; for when he was already being exalted and stood at the very barrier, ready at the signal to direct his upward flight to heaven, the divine spirit fell upon him and he prophesied with discernment while still alive the story of his own death; told ere the end how the end came; told how he was buried with none present, surely by no mortal hands but by immortal powers; how also he was not laid to rest in the tomb of his forefathers but was given a monument of special dignity which no man has ever seen; how all the nation wept and mourned for him a whole month and made open display, private and public, of their sorrow, in memory of his vast benevolence and watchful care for each one of them and for all. Such, as

and he clearly thought that the laws of Moses could not be fully appreciated without a proper understanding of Moses himself.¹⁹ As Philo sets out to show, Moses is the philosopher-king called for in Plato's *Republic* (*Mos.* 2.2; *Republic* 5.473D). Indeed, using the very terminology applied to the patriarchs, Philo describes Moses as 'a law endowed with life and reason' (*Mos.* 1.162). Again, the point is that Moses is a sage. So his life *is* the law of nature and thus, has the normative force of law.

It follows that, although the Law of Moses certainly includes rules and precepts, it cannot be reduced to a code. The rules must be read as expressions of the virtuous lives of the patriarchs and of Moses. When they are read in this way, Philo claims, one will see that, just as the virtuous lives are themselves the law of nature, so are the rules. Indeed, one might argue that, if one were to abstract the rules from the lives of the sages, in order to form a code, then one would run the risk of obscuring the true significance of the rules.

At this point, one might say that only one aspect of the Philonic paradox has been addressed. The paradox is that Philo regards the Law of Moses as a written copy of the law of nature, but the law of nature is unwritten and so cannot be reduced to a code of rules that could be written down. I have argued that Philo does not regard the Law of Moses as reducible to a code of rules. Instead, the rules have weight insofar as they direct us towards the virtuous life of the sage who has internalized right reason. But it still remains the case, one might say, that the Law of Moses is supposed to be a written copy of the law of nature. Why does Philo think it is possible to have a written copy of a law that he himself calls unwritten?

Again, I do not think that this paradox can be entirely removed. But something can be said to illuminate the inner logic of Philo's revolutionary move. Just as the Pentateuch contains rules but is not reducible to a code of rules, so too the Pentateuch is written but is not reducible to a piece of writing. For it must be read within what we might call *an interpretive community*.²⁰ This is a community which inherits and transmits interpretive traditions — what Philo calls the 'traditions of the fathers' — and which is

recorded in the Holy Scriptures, was the life and such the end of Moses, king, lawgiver, high priest, prophet.'

¹⁹ E. R. Goodenough discusses the question of the intended audience for Philo's two essays on Moses in 'Philo's Exposition of the Law and His De Vita Mosis', *HThR* 26 (1933) 109–125. Although I disagree with Goodenough's claim that *De vita Mosis* is written for a gentile audience, I agree that these two essays on Moses should be considered as part of Philo's exposition of the Pentateuch. See also, G. E. Sterling, 'Philo and the Logic of Apologetica: An Analysis of the *Hypothetica'*, *SBLSP* (1990) 412–30.

²⁰ On the concept and development of interpretive community in Christian Ethics see J. Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids 1999) esp. 212–224; cf. also 187–244, 259–268, 303–318.

also actively engaged in producing new interpretations. Thus Philo says that scripture must be read along with the instruction of a priest or elder, and he says that he himself always combines his own ideas with the traditions he has heard. To abstract the Pentateuch from the life of the interpretive community of Israel, one might argue, would run the risk of obscuring the true significance of the Pentateuch. Indeed, part of the motivation for Philo's authorial productivity may be precisely to make more widely available the interpretive context within which he thinks the Pentateuch should be read, while emphasizing the importance of the Jewish community that provides that context through its interpretive life.

I hope that my emphasis on the intimate linkage between the laws of Moses and the lives of the biblical figures whom Philo considers sages, and on the intimate linkage between the written text of the Pentateuch and the life of the interpretive community of Israel, sheds some light on the inner logic of Philo's revolutionary move. As I have also suggested, however, the paradoxical character of that move cannot be entirely alleviated. Now what must seem paradoxical is the claim that precisely one written text can have exactly this significance, that a written text can be regarded as God's revelation to a community whose life should center around the reading, interpretation and implementation of that text. In short, what must seem paradoxical is the idea of scripture itself. For, although I have argued that neither the rules in the Pentateuch alone nor the writtenness of the Pentateuch alone are sufficient to explain the sense in which Philo thinks the Pentateuch gives us epistemic access to the law of nature, it is still revolutionary with respect to Greek thought to suggest that a written text should play a fundamental role in giving us that access.²¹

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