



Writing Laws: Hammurabi to Solon

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When and why do written laws emerge in ancient societies? This lecture considers these questions in light of evidence such as the law code of Hammurabi; the earliest attestation of written laws in Greek (found in Crete); and the full-blown commitment to written laws by the Athenian lawgiver Solon. It explores how writing relates to the functions of law more generally, in light of debates in contemporary legal philosophy.

Introduction

Nowadays, we speak of writing laws down – on paper or in electronic form, so that they can be ready to hand and widely circulated. But in ancient Near Eastern and Mediterranean societies, writing laws originally meant writing them up: engraving them in giant public inscriptions, on stone or wood, which were fixed in place for passers-by to see rather than available for circulation from hand to hand.

That contrast invites us to expand our imaginations, to think our way back into ancient worlds that differed from our own in many further ways: worlds in which bureaucracies were incipient, literacy was varied and not universal, and kings, officials and judges had long operated to settle conflicts by issuing oral decisions. Some striking commonalities emerged across these societies. For example, what the Romans would term the *lex talionis*: ‘an eye for an eye’, or more broadly, the principle that a punishment should precisely fit a given crime. This can be found in ancient Babylon, in the Hebrew Bible (Exodus 21:23-25), and in the Twelve Tables of ancient Rome (though monetary compensation could sometimes be accepted in lieu of an exactly similar wound, for example). Yet in these societies, we also find that writing laws could serve many very different functions: depending on the kind of polity in which it was operating, and on the particular form in which it was deployed.

To make sense of both the commonalities and the divergences, I propose that we consider writing as a tool for law. Law does not require writing; I showed in my previous lecture that some Greeks held that a practice of ‘singing the laws’ had arisen before laws could be written down. Nevertheless, once writing laws up (or down) became possible, it came to shape the nature of law in profound new ways.

Think of writing and law, on the model of blueprints and buildings.¹ Blueprints are not necessary to conceive or build a structure. In ancient Greece, for example, many buildings were likely constructed through verbal plans, sketches, or a crew of builders’ collective expertise. However, once the use of a blueprint became standard, it transformed the process. In particular, blueprints introduce uniformity and inflexibility:

- Uniformity:
 - Blueprints allow builders to replicate designs with precision and ensure uniformity across different projects.
 - Likewise, writing enables laws to be applied consistently across cases.
- Inflexibility:
 - Blueprints can also constrain innovation and adaptation on-site. Moreover, they usually depend on people who have significant skills/training as architects.

¹ I am grateful to Emily Salamanca for suggesting this comparison and for other contributions to the preparation of this lecture.

- Written laws, likewise, may become rigid and resistant to necessary adjustments in unique or unforeseen situations and might depend on people with extensive educated background (e.g. professional scribes).

As we consider a range of ways in which written laws could function in antiquity, these characteristic features will keep coming up.

From writing to written laws

Language is of course far older than writing; we cannot date the earliest lovesong, the earliest lullaby. By contrast, writing clearly had a beginning. It is an invention that punctuates human societies, introducing records that facilitate new kinds of interactions, and preserve a new kind of knowledge of the past. The scholar Harvey Yunis remarks that:

it is a fundamental fact of human history that, as a way of recording and transmitting language, writing established itself, over time and much of the world... (Yunis 2003: 1)

In fact, the use of writing is older than its use for writing laws. According to the British Museum, ‘as far as we know, the oldest form of writing in the world’ is the cuneiform script, which depicts syllables rather than individual letters, and as the Museum explains: ‘Originating in what is now Iraq before 3,200 BC...’ it was ‘[f]irst developed by scribes as a bookkeeping tool to keep track of bread and beer rations in ancient cities like Uruk (in the south east of modern-day Iraq)’.²

The oldest inscribed laws date from about a millennium later, around 2000 BCE: these are the laws known as the Code of Ur-Nammu (but probably actually authored by that king’s son and successor, Sulgi), written in cuneiform used to record the Sumerian language. Like the Code of Hammurabi some three centuries later, this so-called ‘code’ is actually composed of a prologue, then a list of laws, and then an epilogue. The laws are framed by an explanation of the intentions of their promulgator. They are also striking for their conditional and general form. As one scholar comments (Jany 2020: 30):

Sumerian laws were always formulated in conditional form applied to everyone (“if a man”).

This kind of completely universal formulation is not always used in laws: by contrast, some later Akkadian laws (among which we find the so-called Code of Hammurabi, also written in cuneiform), would specify their application to particular groups of people with different social statuses. But even those Akkadian laws were written to apply generally: to anyone in a given group. That uniformity of law – its tendency to treat people and events and things in categories – is part of its distinctive blueprint-like potential.

By contrast to the earliest Near Eastern laws inscribed in cuneiform, the earliest Greek laws were inscribed in the Greek alphabet. That alphabet was adapted from the Phoenician alphabet which was the world’s first. The Greek alphabet is first attested around 750 BCE, and we find it first used in all kinds of settings that are not laws: it has been remarked that these settings included inscribed ‘dedications, epitaphs, and graffiti on cups and bowls’ (Yunis 2003: 3).

The earliest written Greek law dates to about a century later (c. 650 - 600), inscribed on stone in Dreros, on Crete. Solon laid down his laws for Athens in 594, in a period when other Greek cities also became busy writing up some laws. And the Romans would send a delegation to study the laws of Solon in shaping their own Twelve Tables, believed by later Romans to have been written down around 450 BCE.

Does this mean that no statutory laws existed before whatever date that they were first recorded in writing? This has been asserted in the case of ancient Greek laws by the historian Michael Gagarin. Gagarin points out that there is far more to a legal system than statutes alone. In fact, as he observes, in the case of Greece, we find accounts going back to Homer’s ‘Shield of Achilles’ describing oral procedures of justice, with judges rendering ad hoc verdicts (Gagarin 2003: 60). As later in English common law, judge made ‘law’ could develop through particular decisions, rather than having to be guided or determined by general statutes.

² ‘How to write cuneiform’: British Museum blogpost, 21 January 2021: <https://www.britishmuseum.org/blog/how-write-cuneiform>.

But while these points are important, Gagarin has gone too far in denying that ancient Greek societies had individual ‘laws’ before they had writing, as he asserted in claiming that ‘writing could be said to have created law for the Greeks – law, that is, in the sense of statutes’ (2008: 6).³ The earliest surviving Greek laws make piecemeal references to already existing offices and institutions, such as the ‘constitutional law’ in the *polis* of Chios. These are clearly part of an evolving set of legal practices. It begs the question to impose a modern definition of ‘statute’ in delineating only a very few of these practices as ‘laws’.

Anthropologists of law can help us here to think more broadly about laws as rules, encompassing both conflict regulation and institutional formation. Rules can be more or less general, more or less explicit. Formulating them in writing is likely to make them more general and more explicit, more uniform and more inflexible.

It is true, and important, that archaic Greece experienced a particular moment in its political and social evolution, when alphabetic writing arrived at a particular moment of legal evolution, and resulted very rapidly in the writing up of laws. But we can see that as a kind of coincidence, which proved to be a particularly fateful and fruitful one: what the social scientist Max Weber, following the poet Goethe, called an ‘elective affinity’. It doesn’t prove that laws did not exist before they could be written.

One final observation, before I lay out the functions of writing that this lecture will go on to explore. The observation is that the embeddedness of speech and song in human life means that even once writing begins to be introduced into a society, its advance is always piecemeal, and intertwined with continued oral practices. Across ancient Greece, some communities, such as the Cretan city of Gortyn referred to the laws themselves (in their inscription) as *ta grammata* (the writings). But in others, such as Sparta, a number of crucial laws issued by the lawgiver Lycurgus were each referred to as *hē rhētra* (lit. the spoken thing).

Moreover, even when laws were written, they regularly had to be given human voice. To take just one example from classical Athens: the laws were written up on wooden boards posted up in the city. Yet in court cases, someone would be called upon to read them out orally (which makes sense, given that the juries were sometimes 500 men strong, confined in a particular meeting place, without any readily available quick duplicating technology). Similarly, in medieval Iceland, an official ‘Lawspeaker’ was originally charged with periodic recitation of the (then unwritten) laws, but later continued to have a role for some time after the laws had been collected and written down (in the 13th century CE) (Stein-Wilckshuis 1986).⁴

This question of how to give laws voice will occupy me in February’s lecture. Meanwhile, the outline for tonight is to explore three of the major ways that writing could function in the ancient Near East and Mediterranean:

- first, to convey an impression of power and justice;
- second, to control power;
- and third (a special case of the second): to democratize power.

Impressing power and justice

I turn now to explore a first and distinctive way that law could function in the ancient societies that I have been discussing. This is quite different from the mundane ways in which we might think of law working, which is for its literal dictates to be read by citizens and applied by police officers and bureaucrats. That picture, of course, depends on pretty widespread literacy in order to work – and also on ways of diffusing and communicating writing that can get it to reach and be understood in detail by most people.

By contrast, one historian of ancient Greek law, James Whitley, has remarked of the so-called ‘Gortyn Code’ – a particular body of laws inscribed in the Cretan city of Gortys around 450 BCE – that ‘this law code...should be seen first and foremost as a monument, and not a text’; and he continues, ‘It was there to represent the majesty of the law to a population that was largely illiterate’ (both, Whitley 1998: 322). This calls our attention

³ Albeit that this was already a modification of his even starker view of 1986, that in Greece ‘[w]riting plays a crucial role in the transition from the pre-legal to the legal’ (Gagarin 1986:2).

⁴ I am grateful to Karen Margrethe Nielsen and Kaaren Slawson for calling my attention to the case of Iceland (also discussed by Pirie and others).

back to the importance of the earliest Greek laws being written not down, but up. It is the monumentality of the law, not its content, that mattered to its function most.

Whitley describes the Gortyn Code as being a monument to 'the majesty of the law'. By comparison, a number of scholars have interpreted the Code of Hammurabi as a monument to that Babylonian king himself, both to his power and his justice. Like the earlier Sumerian and Akkadian collections of laws, what has become known as the Code of Hammurabi (on the model of the *Code Napoléon*), consisted of a prologue, a set of laws, and then an epilogue. But the function of the laws themselves is somewhat puzzling – since despite the survival of a wealth of other Babylonian legal documents from that period, these laws seem scarcely ever to have been invoked in court cases.

The answer offered by the scholar Marc Van De Mieroop is to treat these monumental inscriptions (found in part on several stelai or monument stones) as a sign of Hammurabi's dedication to justice as king, rather than as a textual input to legal decisions. The king presents himself as a lawgiver as a way of presenting himself as a just ruler. While attributing his rulership to the gods, he calls what we call the laws, the 'just verdicts which Hammurabi the able king has established' (102). The laws are described as being intended to give confidence to litigants that legal verdicts issued by the king, or by others in the king's name, would be just.

In other words, the point of the laws is to exhibit the kind of justice that the king dispenses – not to regiment his decisions according to specific texts. In this case, the individual laws are less important for their actual enforcement as for their part in this overall mosaic of a commitment to justice: one which is intended to extend from Hammurabi's reign to the reign of future kings.

For some scholars, this reading of Hammurabi's laws can be related to a broader function of law to which anthropologists call attention. As the legal anthropologist Fernanda Pirie writes:

Legal rules and categories specify the way society ought to be; at their most basic, they are a public expression of moral order. (Pirie 2013: 10)

Thus a law can signal a general social standard or aspiration, rather than being regularly enforced (think of laws against jaywalking). In Hammurabi's case, some read the laws as articulating specific legal aspirations, while others focus instead on the overall symbolism of justice that the inscription embodied.

But conversely, in other contexts, historians have sometimes taken the fact of a law being written up (or down) as a sign that all was not well in a given domain of social life. It might be a sign of a problem that needed fixing, rather than a sign that all was well with existing justice. That leads me to the next function of written laws that I shall consider: namely, laws that seem to serve to fix problems, to control power (and by extension, to regulate social conflict over political power).

Controlling power

I turn now to the content and function of the earliest written law surviving from ancient Greece, which I mentioned briefly earlier. This is a Cretan inscription in Dreros from the mid-seventh century BCE. It imposes a ten-year waiting period before someone who has held the office of *kosmos* in the city can hold that same office again:

*This pleased the city: after someone has served as kosmos,
the same individual shall not be kosmos again for ten years.
If, however, he becomes kosmos (may the god destroy him),
whenever he delivers a judgment,
he himself shall owe a fine equal to double,
he shall be cursed and deprived of civic rights for as long as he lives,
and whatever he does as kosmos shall be nullified.
Sworn judges: the kosmos, the damioi, and the Twenty of the city.* (Trans. Emily Salamanca)

As the initial editors of this inscription observe, imposing a delay imposed on holding the same office again:

is understandable because civil actions against kosmes [i.e. these officeholders, in the plural] appear to have been suspended during their tenure. This immunity could not be extended indefinitely. (Effenterre and Demargne 1937: 342)

They observe further (same citation) that the extended period of delay in this case (longer than was required by a similar provision at Gortys):

suggests that political considerations may have been at the root of the law—perhaps to prevent a single individual, through repeated re-election, from accumulating excessive authority in the city. (Effenterre and Demargne 1937: 343)

This might sound like a proto-democratic idea. But in fact, the editors of the text saw it as an initiative of the aristocratic elite. They write, of the same law (same citation):

The aristocracy, recently victorious over monarchy, may have sought to guard against a possible tyranny supported by the populace. (Effenterre and Demargne 1937: 343)

The risk of a tyranny supported by the populace is becoming uncannily familiar again today.

Others interpret many early Greek laws as efforts to control power, often in intra-elite tussles. These laws often refer to institutions and offices that were evidently already in existence, showing how written laws advanced piecemeal and often in order to address particular problems within an already evolving socio-legal order. For example, a bit later than the Dreros inscription, an early sixth-century law usually taken to refer to the oligarchic constitution of Chios likewise sought to regulate the officeholders and referred to a ‘council of the people’ (Meiggs & Lewis 8). The historian John Ma has interpreted these early written Greek laws as evidence of what he calls a ‘network of institutionalization’ (2024a: 4 [pagination of preprint]).

So written laws are not necessarily democratic: they may be used by kings or by oligarchs for their own purposes. But what about the opposite connection? Can democracies flourish without written laws?

The scholar Paul Woodruff argued that they cannot:

Unless laws are written, people in power can declare the law to be whatever they wish it to be, and this power puts them plainly above the law. Before democracy could evolve, the Greeks developed statute law. Their statutes were a matter of public record, written down on wood or marble tablets and placed where everyone could see them, so that no one (or at least no citizen) would be denied the benefit of law. In order that written laws could serve their democratic purpose, ordinary people had to be able to read them, and so the rule of law leads to the need for public education for all. (Woodruff 2006: 113)

And many Athenians, living in a city that came to be the Greek world’s foremost democracy, agreed.

Democratizing power

The democratic power of written laws was most powerfully and paradoxically defended in words put by the Athenian playwright Euripides into the mouth of the legendary king of Athens, Theseus:

Nothing is more hostile to a city than a despot; where he is, there are first no laws common to all, but one man is tyrant, in whose keeping and in his alone the law resides, and in that case equality is at an end. But when the laws are written down, rich and weak alike have equal justice, and it is open to the weaker to use the same language to the prosperous when he is reviled by him, and the weaker prevails over the stronger if he has justice on his side. (Euripides, *Suppliants*, ll. 429-437, trans. E.P. Coleridge)

Euripides has Theseus go so far as to deny that there can be equal law, and perhaps thus any law, under a despot at all.

That Athenian ideal of written law has its roots before the advent of democracy proper. It goes back at least as far as Draco and Solon, two men who served as lawgivers in Athens' archaic period. Solon laid down a body of laws, that, as I discussed last year, aimed to regulate conflict between two social classes in Athens, the elite and the masses:

'I wrote laws for the lower and upper classes alike, providing a straight legal process for each person'.
(Solon, Frg. 36.18-20, trans. Gerber)

And he also authored poems (eventually written down themselves), in the course of which he declared that he had 'written' (*egrapso*) his laws (F 36.18-20 West, cited in Whitley 1998: 330 in n.25). Moreover, while it is not so ordered in any of the laws that have come down under Solon's name, the Athenians did write up Solon's laws and post them in the city. Plutarch's *Life of Solon* says that 'All his laws...were inscribed upon *axones*...', that is, specially constructed wooden boards (Plut. *Sol.* 25.1; in 25.2 he says that some of these were called *kurbeis*), and these were still visible in Athens to visitors centuries later.

That kind of publicity has been argued by a number of scholars to have been good for democracy. The idea is that having the laws be written down – and especially having them be written up, as in post-Solon Athens, or early Rome – would help prevent the usurpation of democratic power by anyone with more nefarious ambitions.

Now we have to be a bit careful here. Writing could also serve as a tool of tyrants (not necessarily just written laws, but bureaucratic record-keeping, secret instructions to ambassadors, and so on, as the classicist Deborah Steiner has pointed out. And publicizing written laws could be a tool for oligarchy as well as for democracy: it could help one elite faction control the tyrannical ambitions of their rivals, and vice versa.

Nevertheless, Athenian democrats themselves came to put their trust in written law as a means of preserving their democracy. We see this most starkly after the end of the Peloponnesian War, which had brought military defeat and a failed oligarchic takeover (actually the second of two). In reestablishing a democratic constitution in 403 BCE, the Athenians completed the project of codifying all of their laws in written form.

The aims of that codification included making all of the laws mutually consistent. As the orator Aeschines makes clear, post-403, 'it was impossible for two contradictory laws about the awarding of crowns to be valid at the same time' (Canevaro 2013: 160, drawing on Aesch. 3.37-40). Subsequent changes in the laws were tested for their consistency with existing laws. The orator Demosthenes refers to a law that 'forbids the introduction of anything repugnant to existing laws, except after the abrogation of the law previously enacted' (Dem. 24.34). The idea was to maintain the spirit of justice animating the laws that was attributed to the archaic lawgiver Solon.

Thus the fixity of written laws became celebrated as a democratic virtue. So too did consistency and generality. Retroactive laws were rejected in the post-403 Athenian legal code, just as they had also been rejected in the written laws of Gortyn (which referred to themselves as *ta grammata*: Gagarin 2003: 70-71).

But a virtue can always become an Achilles' heel. And this is what Plato would come to think of the fixity and generality of Athenian laws. He imagined in his dialogue *Statesman* what would happen if a city decided to extend the remit of written law to govern all of the arts and sciences – medicine, sailing, and the like:

'once there was a record, on kurbeis or blocks of stone of some sort, of what the majority had decided...then all our sailing and caring for patients for all future time would have to be done according to this ...' (Plato, *Plt.* 298aff., trans. Rowe)

Here Plato suggests that the uniformity and inflexibility of written laws (even tempered by unwritten customs), the codification of which the Athenians of his time prided themselves,⁵ risks leading to political disaster (albeit that the Visitor did add in the same sentence that the written laws in this scenario would be accompanied by 'certain other rules established as unwritten ancestral customs').

⁵ The relevance of the Athenian codification of law to this passage is drawn out by Sørensen 2018.

A similar aspiration – leading to a similar disaster – would be expressed by George Orwell’s characters in the political parable *Animal Farm*. Snowball and Napoleon, the two pigs who emerge as political leaders on the farm, proclaim that they have distilled the new political creed into seven commandments:

These commandments would now be inscribed on the wall; they would form an unalterable law by which all the animals on Animal Farm must live for ever after. (Orwell 1945: 22)⁶

And those fears – about the vices of the uniformity and inflexibility of written law – remain relevant to debates about law today, and how well it can – or cannot – respond to the new and varied challenges of modern society. Can laws be tailored to pinpoint individual circumstances, perhaps with the help of algorithms? How can people become imbued with shared values in a world in which writing is proliferating so dizzyingly and the resource of common attention is so scant?

For all the productivity of writing as a tool for law, it also has weaknesses: it might foster a certain kind of permanence, but at the cost of human memory, for example. Next time I’ll turn from written laws to unwritten laws, to explore the ways in which the latter have been taken to be essential to ethical habituation, from readings of ancient Sparta to readings of the lawgiver Moses and beyond.

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