

LAW (DEFINITIONS AND CODIFICATION) القانون (ما بين التعريف والتدوين)

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LAW (DEFINITIONS AND CODIFICATION)

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Sandra Lippert

Recht (Definitionen und Kodifizierung)

Droit (définitions et codification)

*When considering “law” in ancient Egypt, it is necessary to try to distinguish between our modern concepts and ancient aspects of Egyptian law. The word **hp** is most commonly translated as “law” and was used in the sense of “(single) law” throughout Egyptian history, but it also refers to any other type of binding rule. **Hpw** and, in Demotic, also **hp** can refer to the totality of laws and therefore come close to our modern understanding of “law.” Although *maat* is often translated as “justice,” it covered much more than legal justice, making it difficult to identify the Egyptian equivalent of “law” in its more general sense (cf. German *Recht*). The modern distinction between civil and criminal law is also hard to transfer to ancient Egyptian practice. There was no state prosecution for actions we would consider criminal such as theft or assault, but the injured party had to act as plaintiff. Only crimes against the pharaoh and gods, like conspiracies or theft from royal tombs or temples, were prosecuted by officials. There is no clear evidence for written laws before the Middle Kingdom and only indirect evidence for the period preceding the New Kingdom. The codification under Darius I may have been the first attempt at collecting all earlier laws still valid at that period in one single corpus. This collection of laws continued to form the basis for Egyptian jurisdiction even during the Ptolemaic Period.*

عند دراسة القانون في مصر القديمة، من الضروري أن نبدأ بمحاولة التمييز بين مفاهيمنا الحديثة والسمات القديمة للقانون المصري. إن الترجمة الأكثر انتشاراً للكلمة *hp* هي القانون، حيث استخدمت خلال التاريخ المصري بمعنى القانون الواحد، لكنها أيضاً تشير إلى كل أشكال الحكم الملزم، إن كلا من كلمة *hpw* وفي الديموطيقية أيضاً *hp* من الممكن أن يشيرا إلى مجمل القوانين، ولذلك فهما أقرب المصطلحات إلى فهمنا الحديث لمعنى القانون. وبالرغم من أن كلمة «*maat*» عادة ما تترجم بمعنى العدالة إلا أنها تشمل دلالات أكثر من مجرد العدالة القانونية، مما يجعل الأمر بالغ الصعوبة في العثور على مرادف مصري لمفهوم القانون بشكل عام (على سبيل المثال في الألمانية : القانون). إن الاختلاف الحديث بين القانون الجنائي والقانون المدني يعتبر أيضاً من الصعب نقله إلى الممارسات (القانونية) المصرية القديمة، فسلطة الاتهام العمومية آنذاك لم تختص بجرائم ترتكب ضد الأفراد كالسرقة والإعتداء، ولكن كان يتثنى على المجني عليه (الطرف المتضرر) مباشرة الدعوى القضائية. فقط كانت الجرائم ضد الفرعون والآلهة كالمؤامرات أو السرقات من المقابر الملكية أو المعابد هي التي تقاضي من قبل المسؤولين. لا يوجد أي دليل واضح يشير إلى وجود قوانين مكتوبة قبل الدولة الوسطى، فقط دليل غير مباشر في الفترة السابقة لعصر الدولة الحديثة. وربما كان تدوين القوانين تحت حكم داريوس الأول هو أول محاولة

لجمع كل القوانين السابقة التي كانت صالحة خلال تلك الحقبة التاريخية في مجموعة واحدة، حيث استمرت تلك المجموعة من القوانين تشكل أساس السلطة القضائية المصرية حتى خلال العصر البطلمي.

Although the times are long past when historians of law interested in ancient Egypt had to convince their colleagues that something like Egyptian law even existed (cf. Théodoridès 1971), the study of Egyptian legal history is still somewhat hampered by preconceived and dogmatic ideas of the superiority of Roman law and jurisprudence.

Definitions

The term *hp*, first attested in the late First Intermediate Period or early Middle Kingdom (Lorton 1986: 58), was used in the sense of “(single) law” throughout Egyptian history. Its meaning is, however, somewhat broader since it also encompassed regulations to be followed by priests or members of an association, in short, any rule of behavior that was considered obligatory and the disregard of which resulted in punitive action by the community or the state. Later on, *hp* developed the meaning “legal title,” the right obtained through, e.g., a legal document or a court decision (Nims 1948: 243 - 260; van den Boorn 1988: 167 - 168).

It is more difficult to identify the Egyptian equivalent of “law” in its more general meaning; only a comparatively small aspect of *maat* is concerned with what we would call “legal justice.” *Hpw* in the plural and, in Demotic, also *hp* in the singular can be used for the totality of laws and therefore come close to our modern understanding of “law,” but with the reservations made above (Lorton 1986: 53 - 62). The proposition by Kruchten (1981: 217 - 219 and 231) that *hp* derives from a (not attested) word *hp*, “leather/papyrus scroll,” and therefore initially meant commands written on papyrus or leather as opposed to those written on stelae (*wḏ*, “decree,” “stela”) is not convincing.

The distinction between civil and criminal

law, something that seems obvious to modern societies, is hard to transfer to ancient Egyptian practice; we expect crimes to be prosecuted by the authorities and punished in a way that shows not only the victim but society as a whole was injured by the criminal. In ancient Egypt, however, there was no state prosecution for theft from or assault of private citizens. The injured party had to act as plaintiff, and the punishment was limited towards amendments for the victim (crime and punishment). Only crimes against the pharaoh and gods, such as conspiracies or theft from royal tombs or temples, were prosecuted by officials. A special oath of loyalty (*ḥn n sḏf tryt*) bound them to report and investigate suspicious incidents (Baer 1964: 179 - 180; McDowell 1990: 202 - 208). Since cases of manslaughter and murder against private persons are not well attested, it remains unclear how they were treated, but there are indications that local officials were expected to solve obscure deaths regardless of whether the families of the victims requested it or not (Ostrakon DeM 126).

The following discussions will assess evidence for codified law in chronological terms. A bibliography for the key primary sources treated in this entry is given at the end.

Old Kingdom and First Intermediate Period

There is no evidence for the existence of codified law either in the Old Kingdom or the First Intermediate Period, although Diodorus Siculus (I, 94) attributes the first Egyptian laws to the semi-legendary founder of the Egyptian state, king Mneves (i.e., Menes). The only sources from which any knowledge about legal norms of that period can be derived are legal documents, which are extremely scarce however. Royal orders (*wḏw*, “decrees”) could also be counted as acts of legislation, although often their purpose was

rather specific: those attested from the Old Kingdom concern the appointment of officials, foundations, exemptions from tax and corvée, and protection of temple and funerary domains (Lippert 2008: 20 - 21).

Middle Kingdom and Second Intermediate Period

Although no written laws are attested from the Middle Kingdom either, there is indirect evidence for their existence in the *Admonitions of Ipuwer*, which laments the destruction of the papyrus scrolls of *hḫw nw ḥnrt*, “the laws of the court/prison-cum-work camp.” Unfortunately, this literary text is not securely dated. An administrative text from the 13th Dynasty (Papyrus Brooklyn 35.1446 rto entry d) mentions several laws about deserters from forced labor, but their content, obviously well known to the officials, is not cited. There are also a few royal decrees from the Middle Kingdom; as in the Old Kingdom they do not contain laws as such but regulate particular circumstances such as offering foundations, protection of sacred areas, or the demotion of a criminal priest (Lippert 2008: 38 - 39).

New Kingdom and Third Intermediate Period

From the New Kingdom there are finally first direct citations of laws in connection with court proceedings (Papyrus Turin 2021 + Papyrus Geneva D 409, 2.11 and 3.4 - 5; statue Cairo CG 42208, c, l. 14; Papyrus Cairo CG 58092, rto 1.10 - 11). They are qualified as direct speech of the pharaoh and as “law of pharaoh,” respectively. It is likely that written records of laws were kept at the bureau of the vizier(s), to be consulted when local courts sent in their cases (*Instruction for the Vizier* R 18 - 19). The forty *šmw*, which, according to the *Instruction* (R 2), are to be laid in front of the vizier during his sessions (actually depicted in the Tomb of Rekhmira, cf. Davies 1943: pl. 24 - 25) are, however, not leather scrolls containing these laws but most likely leather whips or rods symbolizing the vizier’s punitive authority over the forty administrative regions of Egypt (for the discussion including further literature, see van den Boorn 1988: 29).

Some royal decrees of the New Kingdom contain not only decisions and orders for special cases but veritable laws with general import, e.g., the *Decree of Horemheb* (Kruchten 1981: 209 - 210) and the *Decree of Sety II* from Karnak (Lippert 2008: 69).

Many details about the legislative process remain unknown: How exactly did the king pass laws? Did he have a staff of advisors who proposed laws or did he decide alone? Did laws remain in effect after the death of the legislating king or did they have to be renewed at the ascension of a new king?

Late Period (26th - 30th Dynasties)

The first unambiguous evidence for an official collection of laws is contained in the report of Papyrus Bibl.nat. 215 vso col. c 6 - 16. According to this text, Darius I ordered in his 3rd year that “the earlier laws of Egypt up to year 44 of Amasis” be collected. For this purpose he had priests, wise men, and military officials unite. The collection is said to have taken 16 years and was finally translated also into Aramaic (Lippert fc.). The implication is that there were written records of laws and perhaps even partial collections before this (e.g., of laws for specific groups like priests or of laws of certain kings), but the Darian collection seems to have been the first comprehensive one. The purpose of the Aramaic translation of the collection was obviously its use by Persian administrators (Frei 1995: 4 - 5). This is also suggested by Papyrus Berlin P 13540, which states that the candidates brought forth for the office of *lesonis* (temple administrator) had to conform to “what Darius the pharaoh has ordered”—a reference that the priestly laws set down in the Darian law collection were to be applied rather than a new law, which entrusted the selection to the *satrap* (provincial governor), as it is often interpreted (e.g., Martin 1996: 290 - 291; Seidl 1968: 2).

Although Rütterswörden (1995: 52 - 53) claims the report of Papyrus Bibl.nat. 215 vso col. c. l. 6 - 16 to be fictitious, a backward projection from the Ptolemaic Period, his explanation does not correspond to the

evidence. First, he assumes without explanation that the date of the composition of the text is identical to that of the manuscript (mid-Ptolemaic Period), which is not very likely considering the fact that the same manuscript contains another excerpt of clearly Persian Period origin (a report about income cuts for temples under Cambyses, Papyrus Bibl.nat. 215 vso col. d, l. 1 - 17). Moreover, well established Egyptian traits of royal representation (the king as benefactor and creator of order) are misinterpreted as Hellenistic innovations. Lastly, if the story had been a mere fabrication of the Ptolemaic Period in order to legitimize the Egyptian law in use at that time, as Rüterswörden suggests, it is not plausible that a Persian king would have been credited with its collection instead of an Egyptian pharaoh (Lippert 2010: 160 - 161).

Although no Persian Period manuscript of this collection survives, a number of fragments of later copies of the Demotic version, dating from the third to the first centuries BCE, have been identified (Lippert 2004a: 167 - 173): the longest is the so-called *Codex Hermupolis* preserving ten more or less complete columns (at least one column is missing between col. 5 and 6) and covering sections on leases of land and enterprises (col. 1 l. 1 - col. 4 l. 5), *sꜥnh* documents (a special type of annuity documents; col. 4 l. 6 - col. 5 l. 31), inheritance (col. 6 l. 1 - col. 9 l.), and miscellaneous subjects including addenda to the preceding sections (col. 9 l. 26 - col. 10 l. 30). Others are the so-called *Zivilprozeßordnung* and the much more fragmented manuscripts Papyrus Carlsberg 236 and Papyrus Berlin P 23890 rto. The layout throughout all these fragments is similar: the text is subdivided into chapters that sometimes have headings like “the law about leases, if someone makes them about a house or movable object” (*Codex Hermupolis* col. 2 l. 23) or “the law about *sꜥnh* documents” (*Codex Hermupolis* col. 4 l. 6). These chapters are usually subdivided into paragraphs, in some manuscripts set off with blank spaces or line breaks. The grammatical structure of a paragraph consists either of a frontal exposition and a main

clause with aorist or future III or of a conditional protasis and a future III or aorist main clause as an apodosis. While the first is mainly used for simple or static situations (cf. *Zivilprozeßordnung*: Papyrus Berlin P 13621 and Papyrus Gießen UB 101.3 VIb col. 2 l. 11), the second type develops a hypothetical case, sometimes in a very elaborate way with possibilities branching off in various directions (cf. the section on litigation over unpaid maintenance, *Codex Hermupolis* col. 4 l. 6 - col. 5 l. 2). In both cases, the aorist or future III main clause contains the legal consequences, e.g., the necessary steps to be taken by the judges. The grammatical structure therefore clearly indicates the text’s character as mandatory regulations; comparable structures are common for the formulation of laws throughout the ancient world (e.g., in the *Codex Hammurapi*, the *Law Code of Gortyn*, or the *Law of the Twelve Tables*). Additionally, the exact same structures are to be found for laws cited in protocols of court proceedings (cf. Papyrus BM 10591 rto col. 10 l. 7 - 9 and Papyrus BM 10591 vso col. 3 l. 17 - 19, Papyrus Cologne 7676 col. 2 l. 21 - 23). The collection also contained model documents, e.g., for oaths (*Zivilprozeßordnung* P. Berlin P 13621 and P. Gießen UB 101.3 VIb col. 2 l. 1. 16 - 19, *Codex Hermupolis* col. 9 l. 7 - 9.), receipts (*Codex Hermupolis* col. 4 l. 1 - 2, col. 4 l. 30 - 31.), promissory notes (*Codex Hermupolis* col. 4 l. 20 - 25.), lease documents (*Codex Hermupolis* col. 2 l. 6 - 9.), *sꜥnh* documents (*Codex Hermupolis* col. 2 l. 28 - col. 3 l. 1, col. 3 l. 4 - 6.), public protests (*Codex Hermupolis* col. 3 l. 23 - 28), etc.

Unfortunately, Egyptologists have been discouraged to identify these texts as law codes by legal historians, who claimed that codified law simply could not have existed in ancient Egypt. The main argument for this is the unsubstantiated assertion that a systematic collection of laws had not been of interest to ancient Near Eastern societies (Hengstl 2001: cols. 813 - 814). In their eagerness to accept this claim as fact, some Egyptologists even invented a number of equally unconvincing arguments of their own: Assmann (2000: 181 - 182) asserts that the Egyptian and Near

Eastern royal ideology positively forbade to set down laws in writing because this would have diminished the king's role as embodiment of law (for a detailed refutation, cf. Lippert 2004a: 171). Others tried to play down the importance of the *Codex Hermupolis*, which looks so very much like a law code, by classifying it as a privately assembled collection, a commentary on exceptional regulations (Seidl 1979: 22, 24 - 25, 27), a collection of case law (Johnson 1996: 177) or customary law (Menu 1978: 72, 1985: 81, n. 8), or a legal manual with purely practical import (Pestman 1983: 15 - 16); the last example is especially significant since Pestman's description of the text actually matches the usual definition of codification, but he still avoids using the term.

If regarded objectively, the Darian law collection fulfills all the necessary criteria for a codification: it was ordered by state authorities (i.e., the king, albeit a Persian ruler), claimed to be comprehensive, and aimed to serve as the basis of future jurisdiction in the Egyptian *satrapy*.

The Aramaic version of the law code quickly became obsolete after the end of the Persian rule in Egypt; no manuscripts have hitherto been identified. But there is indirect evidence for its existence. The similarities in type, style, and phrasing between some Aramaic legal documents from fifth century Elephantine and Demotic documents suggest that the model documents contained in the Darian law collection, in their Aramaic translation, were used as prototypes (Lippert 2010: 163 - 164).

Ptolemaic Period

During the early Ptolemaic Period, the indigenous law courts were acknowledged as juridical institutions for the Egyptian population under the Greek term *laokritai*; in the same context, Egyptian law (*nomoi tēs chōras*) was sanctioned as the basis of their judgments (cf. Papyrus Tebtunis I 5, 216 - 217). The Demotic law code used by the Ptolemaic *laokritai* and cited in court protocols was likely none other than the one collected under Darius. Thus Egyptian law continued to

be applied during the Ptolemaic Period, with a few limitations: royal jurisdiction seems to have taken over the department of criminal law (except theft), and royal decrees (cf. Lenger 1980), which mainly concerned fiscal matters, could override Egyptian laws (and also Greek city laws). Instead of the obsolete Aramaic translation, a Greek one was produced for reference by the Greek officials, which was still copied in the second century CE (Papyrus Oxyrhynchus XLVI 3285).

Additionally, a didactic commentary for the Egyptian legal code existed since at least the Ptolemaic Period. Manuscripts of this text survive in Papyrus Berlin P 23757 rto and the so-called *Legal Book of Tebtunis* of which fragments are preserved in Florence and Copenhagen. The text is divided into short sections, which are hardly ever thematically connected to each other. Each section consists of a question and an answer. Laws from the code are cited and, at least in the surviving passages, often identified by a year date, but without the name of a king—the same method of citation can also be found in Ptolemaic court protocols referring to Egyptian laws (see above). These citations therefore refer to a section of the code that was organized chronologically in the first place and thematically only in the second, if at all. As a result, it would have been difficult for someone to find the laws applicable to a given case without a vast knowledge of the code as a whole. The aim of the commentary was obviously just this: to quiz the (most likely priestly) students for the position of judge about their knowledge of the legal code, which they were supposed to have memorized to a large extent.

Roman Period

Indigenous (and Greek) courts in Egypt were entirely replaced by Roman officials soon after the Roman takeover. The “law of the Egyptians” (*nomos tōn Aiguphiōn*), which is mentioned occasionally in legal proceedings before Roman officials (Papyrus Oxy. IV 706 l. 7, Papyrus Tebt. II 488, Papyrus Oxy. II 237), might refer at least in part to the Greek

translation of the Egyptian legal code, especially since this was still transmitted in the second century CE (see above). Modrzejewski (1970: 323 - 333, 1988: 383 - 399) tries to argue that all legal rules thus labeled are purely Greek and not Egyptian, but this estimate is based partly on *argumenta e silentio*, partly on outdated interpretations. Therefore we have at least to consider that the Romans subsumed Greek and Egyptian law of Egypt under this heading. Regulations (*prostagma*) and ordinances (*diagrammata*) of Ptolemaic kings were also still referred to (Lenger 1980: 269 - 272), but neither seems to have been binding so that it was up to the Roman officials acting

as judges to consider them or not (Modrzejewski 1970: 318, 329, 333 - 334). Thus the relevance of Egyptian (and Greek) law diminished quickly although an outright ban never seems to have been enacted.

Since the *Constitutio Antoniniana* (212/213 CE) through which all free inhabitants of the Roman Empire became Roman citizens, a general acceptance of Roman law should be expected; however, local traditions seem to have been strong and vestiges of Egyptian (and Greek) law can still be found in legal documents from later periods.

Bibliographic Notes

An overview is given in Lippert (2008: 9, 32, 47 - 49, 85 - 88); cf. also Jasnow (2003a: 93, 2003b: 255 - 256, 2003c: 289 - 291, 2003d: 777 - 778) and Manning (2003: 819 - 821). Mersich (2005) covers the Old Kingdom to the Second Intermediate Period; non-Egyptologists using this book should, however, be aware of the fact that his conception of ancient Egypt is somewhat different from that of modern Egyptologists as well as of his tendency to create non-existing etymological connections in his translations. For the identification of manuscripts of the Darian law collection, cf. Lippert (2004a: 167 - 173).

Sources

Admonitions of Ipuwer
MK

Gardiner (1909), Helck (1995), Enmarch (2005)

Codex Hermupolis (P. Cairo JdE 89127 - 89130 + 89137 - 89143 rto)
third c. BCE

Donker van Heel (1990), Mattha (1975), Stadler (2004: 185 - 207)

Constitutio Antoniniana
212/213 CE

Kuhlmann (1994: 217 - 239)

Decree of Horemheb
18th Dyn.

Helck (1955: 109 - 136), Kruchten (1981)

Decree of Sety II from Karnak
19th Dyn.

Helck (1956: 82 - 86), Kitchen (1982: 263 - 266, § 18)

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18th Dyn.

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first c. BCE

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third/second c. BCE

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