

Origins of Legal Power and Authority: Divine Law in Early Human Cultures

<p>Framing Question:</p>	<ul style="list-style-type: none"> ▪ What is the source of governmental power? ▪ How is the exercise of power justified?
<p>Materials:</p>	<p>Role-Playing Scripts (attached) - 4 of each</p>
<p>Opening Activity (5 -10 Minutes):</p>	<p>Begin by asking the class:</p> <ul style="list-style-type: none"> ▪ Where did the first law come from? ▪ Why were laws needed?
<p>Class Activity (20 Minutes):</p>	<p>The students will participate in short mock arguments, with commentary from the judges, on a similar fact scenario presented under three different legal ancient regimes – Mesopotamian, Egyptian, and Greek.</p> <ul style="list-style-type: none"> ▪ Choose a role-playing script (attached) and ask for three volunteers to play each of the roles, or have the members of the Legal Team play the roles. ▪ Have student volunteers/Legal Team members act out each skit. <p>Each scenario is about a page long and should take about 5 minutes to perform.</p>
<p>Closing Activity (15 Minutes):</p>	<p>Conduct a discussion to connect the themes that they have seen in the scenarios.</p> <ul style="list-style-type: none"> ▪ Ask the class about the source of law in each skit. <ul style="list-style-type: none"> ○ What was the source of law in ancient Egypt? ○ In Mesopotamia? ○ In ancient Greece? ▪ Encourage the students to think critically about the difference between power and authority by posing the following questions: <ul style="list-style-type: none"> ○ Why does the Judge in the Mesopotamian skit introduce Hammurabi lawgiver and conqueror? ○ Why does the Pharaoh decide all criminal cases? ○ Why does the Greek jury need to justify itself by the legend that Athena invented the jury system? ▪ Contrast these themes with modern examples. Ask: <ul style="list-style-type: none"> ○ How and when do we call on deities today as a justification for exercising authority (e.g. “so help me God” in a typical witness oath and the reference to God in the Pledge of Allegiance (“One nation under God”))? ○ If a nation is conquered after war, whose law then governs? (Usually, the conquering nation.) ○ Why do we call English law “The King’s Law”? ▪ Wrap up by asking: <ul style="list-style-type: none"> ○ What are the positive and negative aspects of these systems? ○ Why did we choose a system of written laws, enforced by an unaccountable jury?

Enrichment Activity (For extended class periods):	Other interesting points of comparison include the absence of advocates in the ancient systems, the role of the judge in each scenario and in modern day, and the difference between a written legal system (Mesopotamia), an unwritten common law system (Egypt), and a free-form system of independent decisions (Greece).
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SCENARIO 1: ANCIENT MESOPOTAMIA (Hammurabi's Code)

Judge: I am here in Borsippa as a personal representative of our King, Hammurabi, who, by the will of the great gods Anu and Bel, the Lord of Heaven and Earth, conquered Borsippa, Kish, Sippar, Eshunna, Larsa, and Elam. Samsu the baker has accused Iluna the peasant of stealing a loaf of bread. The law presumes that Iluna is innocent unless evidence is presented that he is guilty. Samsu, if your accusation is false, you will be put to death. Come here and state your case.

Plaintiff (Samsu the Baker): I am Samsu, and I am a baker. I speak for myself, and I give my oath that all that I say is true, so that you will know that I am honest. Six weeks ago today, I was standing by the ovens in my bakery at noon, making bread. I laid some of the bread on my windowsill, but when I looked up, the bread was gone. I ran out into the street and saw a man wearing peasant outfit, walking down the street with a loaf of bread in his hand. The bread was the kind of bread that I had baked, and I did not see the peasant pay my clerk for the bread. I shouted at him, and he ran. I chased him down the street and around a corner, where I finally caught him when he ran out of breath, and I tackled him. The man that I tackled had a loaf of my bread in his hand, and I swear that the man is the same man who is sitting there, the defendant, Iluna.

Judge: Iluna the peasant, what is your answer?

Defendant (Iluna): I am Iluna. I speak for myself, and I give my oath that all I say is true. I am a peasant, and I have no farm of my own and no job now. I have a family, though, a wife and two children, both of whom are very young. Six weeks ago today, I was walking down the street, and I was looking for food for my family. I could find no work, and I had no money. I saw the bread sitting in the window of Samsu's bakery, cooling. I knew that if I did not get bread to my family, they could die. I did not want to be a thief, but I had no choice. I swear that I only wanted bread for my family, none for myself, and if I had a way to pay, I would have done that. But I did not, and I stole the bread. I am very sorry, and I will never do it again. All I ask is mercy, so that I can feed my family.

Judge: Our King, Hammurabi, was commanded by the Great God Marduk to give justice to all the people of the land. He wrote his laws down, so that anyone can see them. The law on stealing is clear. The twenty-second article of the Code says that "If anyone is committing a robbery, and is caught, then he shall be put to death." I am sorry for Iluna the peasant, because he does not seem like a bad person. But the law is the law, and there is no provision in the law for me to do anything except what the law says. I find that Iluna the peasant was caught committing a robbery. I therefore order that Iluna the peasant shall be put to death for his crimes. Iluna – you may choose to appeal my decision by going to Babylon and asking the King to hear your case. If he agrees with you, my decision will be reversed, and I shall pay you damages and be removed from the bench forever. That is all.

SCENARIO 2: ANCIENT EGYPT (Dynastic “Common Law”)

Vizier: I am Khufu, Vizier to Pharaoh Horemhab, child of the sun god, Ra, and ruler of the North and South Kingdoms. I am here to recommend a judgment and a punishment to our Pharaoh regarding the case of Hunanup, the peasant, who is accused of stealing bread. Hunanup, you have a choice. I can hear your case or I can let this statue of Ma’at, daughter of Ra, goddess of judgment, decide your fate. What is your choice?

Hunanup: I am Hunanup, a peasant. I choose to place my fate in the hands of your Lordship, for you are a wise and merciful man, and in the hands of our Pharaoh, may he reign for a thousand years.

Vizier: Very well. Dehuti, the baker, present your testimony.

Plaintiff (Dehuti the Baker): I am Dehuti, and I am a baker. Six weeks ago today, I was standing by the ovens in my bakery at noon, making bread. I laid some of the bread on my windowsill, but when I looked up, the bread was gone. I ran out into the street and saw Hunanup, the peasant, walking down the street with my bread in his hand. I shouted at him, and he ran. I chased him down and I tackled him. He had my bread in his hand. I have had bread stolen before, and it is very expensive.

Vizier: Hunanup, what do you have to say to that?

Hunanup: Oh great and merciful Vizier, I am indeed the one who took that bread, but I am guilty of no crime. What I did I did in order to feed my family, my wife and my children, who are very young. They are hungry and they cry out for food, pitifully begging their father to bring them something to eat. When I saw the bread sitting in the window of Dehuti’s bakery, I could not restrain myself. I thought only of my children, their tired, sad faces begging me to help them. I know that what I did was not right, but it was not wrong. I must feed my family, and if this is what it takes, then I must do it. There is no written law saying that I cannot do this, and I believe that a man’s duty to feed his family comes first.

Vizier: Very well. As you know, I do not decide criminal cases myself, but I make a recommendation to the Pharaoh. You are correct, peasant, that there is no written law, but many viziers and Pharaohs before me have said that it is wrong to steal, and that a person should not steal. Therefore, you should not have stolen the bread. However, there are many punishments for stealing. Some Pharaohs have decided that you should pay twice the price of what you stole. Some others say that you should have your hand cut off. Still others have said that a thief should be put to death. Because you were stealing to save your family and to protect your children, I think it is best that you should only have to pay twice the value of the bread you stole. If you cannot afford to pay, you shall be forced to work on projects to make the public better. I remind you that this is only your punishment in this life. When you die, your soul will be judged by Anubis and if you are found guilty, your soul will be eaten by Ammit, the crocodile beast.

SCENARIO 3: ANCIENT GREECE (Jury System)

Narrator: We are here in one of the great assembly spaces in Athens to hear the case of two citizens, Hector and Patroklos. Hector, a baker, has accused Patroklos, a peasant, of stealing a loaf of bread. You all are citizens of Athens, and you are part of a jury of 201 citizens called to decide the case. The citizens will make their speeches now, and then you will decide. When I tell you to, and only when I tell you to, you should hiss, to express your displeasure with a speaker. Each speaker has three minutes to speak, and time is kept with a clock.

Hector: Fellow citizens, you know me. I am Hector, who bakes bread down in the marketplace. I am not a man of these courts, and I speak simply. Six weeks ago today, I was standing by the ovens in my bakery at noon, making bread. I laid some of the bread on my windowsill, but when I looked up, the bread was gone. I ran out into the street and saw Patroklos walking down the street with my bread in his hand. He saw me, and he ran away, but I was faster than he was, and I tackled him. He had my bread in his hand. I ask that you find him guilty of stealing my bread. The law is clear: there is no excuse for stealing bread.

Narrator: Hector has just said something wrong about the law, and he has tried to tell the jury what to do. You should hiss at him.

Patroklos: I am not a man of these courts, and so I ask Glaucon, my friend, to speak for me.

Glaucon: I am Glaucon, a citizen, and I come before you to defend my friend, Patroklos, who is a father to two beautiful children, children who go hungry through no fault of their own, children who beg their father every night for even the tiniest scrap. I ask you, citizens, what would you do for your children? What could any man, any red-blooded Greek do, except feed them? Is this not the way of nature? Is this not the way it always has been? The goddess Athena, goddess of Wisdom, has shown us the path to voting, where each of you, citizens, puts a stone in the urn you choose – one urn for guilt, another for innocence. I urge you as you walk forward to imagine yourself poor, hungry, staring into the eyes of your children, weeping with hunger, crying out in pain. Would not you do as this man did and feed them? Would you deserve to be called a father if you did any less? Please, citizens, your verdict must be innocent, or your punishment light as a feather. Is not this man just like you?

Narrator: At this point, you all would come forward and vote by putting either a white stone (innocent) or a black stone (guilty) into a large clay pot. The party who got the most votes would be the winner. If the verdict was guilty, the prosecutor and the defendant would each suggest a punishment and you would vote for the one you thought was fairest. Again, majority would rule.

[At the end of this skit, ask for the remainder of the class to vote on guilt or innocence.]

BACKGROUND INFORMATION - *Origins of Legal Power and Authority: Divine Law in Early Human Cultures*

Looking Forward and Back

This lesson follows the conceptual introduction to law and is a critical thinking exercise about the different ways in which legal power is organized. It should introduce some different versions of ancient legal authority, which the Closing Activity will connect to the modern day. This leads into the jury exercise in Lesson 3, which is a hands-on view of one method of legal organization, and sets the table for Lesson 4's discussion of limited government and redress of grievances.

Historical Background

1. Babylonian Law

Hammurabi was the king of the ancient Babylonian empire, ruling from 1792-1750 BCE, a period of forty-two years. Hammurabi united the city-states of ancient Mesopotamia through conquest. Hammurabi established a written, unified code of laws to govern all of the city-states in his new empire. There are three critical features of Hammurabi's Code that are particularly important to discuss with the students. First, it was written, and thus it was able to be readily understood by the populace. Second, its 282 decrees covered a wide range of subjects, including witchcraft, criminal law, and trading, pricing, and workmanship standards. The Code even set some wages. Most of the laws were written in a basic "If . . . then . . . construction." For example, "If a son has struck his father, the son's hands shall be cut off." Enforcement of these laws was often very harsh, and could be symbolic, e.g. the hand that struck the father was cut off. The death penalty was also very common. However, the basic punishment was a fine, although it could be many times the value of the property in question. Most of Babylonian law appears to have been enforced by appointed judges, ruling upon the sworn testimony of those who appeared before them, and there appears to have been a system of provincial courts in smaller towns. However, there was a final appeal to the king allowed under the law. For the purposes of this lesson, it is also particularly important to note the beginning and the ending of the Code. The Code begins "The Great God Murduk commanded me to give justice to all the people of the land" and it ends "May the mighty gods in heaven and earth curse him," says the king, "and his children, and his land, his people, his nation."

2. Dynastic Egyptian Law

Although relatively little is known about ancient Egyptian law during the dynastic periods, it appears that the ultimate arbiter of right and wrong was the Pharaoh, who was revered not only as a king, but also as a god. Thus, in Egypt, the law appears to have gained its authority from the divinity of the ruler. Indeed, there is evidence to suggest that certain other "divine" individuals were given law-making authority. For example, in the village of Deir El-Medina, disputes were decided by an icon of the village's founder and an oracle of Amun. The law was enforced by direct representatives of the Pharaoh, often his Vizier, a very high-ranking official. Later, during the reign of Horemhab (1319-1292 BCE), a Vizier was appointed for each of the Northern and Southern Kingdoms, and a more formal court system was established. Nonetheless, the Pharaoh retained responsibility for adjudicating and determining punishment in all significant criminal cases. This may be because criminal offenses were considered offenses against a universal harmony or appropriate "way of the universe." For similar reasons, the Egyptians believed that the Pharaoh's judgment was only for this life, but that ultimate judgment would be rendered by the god Anubis, who would weigh the offender's

heart against a feather. One whose guilty heart outweighed the feather would be eaten by a crocodile beast. An innocent spirit would go on to the afterlife.

3. Athenian Law

The legal traditions of ancient Greece, like those of the other cultures discussed, can only be summarized in an extremely brief fashion. One of, if not the earliest, written codes of law in ancient Greece is that of Draco, which dates until approximately 621 BCE. Again, this law was written so that any citizen could read it. In the next century, Solon revised the Draconian laws, greatly moderating many of Draco's punishments. Around 500 BCE, Athens completed its transition into a direct democracy, although it must be remembered that not every Athenian was a citizen, and thus that perhaps only 10% of the population actually was eligible to participate in governance. Athens maintained a formal, jury-based court system, with participating citizens chosen by lots from an annual pool of 6000 citizens. Only male citizens over the age of thirty could participate in the courts. Generally panels of 201 jurors sat for minor private disputes and panels of 501 sat for public ones. Particularly important public suits had panels of 1001 or 1501 jurors, and on at least one occasion, all 6000 jurors sat on a case. No judges presided, and no legal direction was given to jurors. Equal time was given to the prosecution/plaintiff and defendant, and voting was immediate, without any deliberation by jurors. The simple majority ruled. If the defendant was convicted, both he and the prosecutor proposed a punishment. The jury then voted a second time on the punishment, again with majority ruling. This system was justified by the myth of Orestes, who avenged his father by killing his mother, Clytemnestra, for murdering his father. In the myth, Athena was called on to decide the case, and she turned it over to the citizens.

Modern Connections

The general topic of how to organize legal power is timeless. There is almost no end to the comparisons and contrasts that can be drawn from these ancient civilizations (or those of the ancient Hebrews, Chinese, or many others) with the modern legal system. However, several specific modern connections are suggested in the lesson summary and extended activity sections above and are reflected in and suggested by the scenario scripts.

Scenario Summary: Twelve Lawful and Honest Men

In the Town of Great Peatling, Tom Ayckbourne and Becky Miller were dating. Margaret Cordwainer and her Granny Dunsmere were discussing the circumstances surrounding a mysterious fire which burnt down the Miller's home and their mill, destroying a quarter of the villager's harvested grain. Sarah Thatcher, the Miller's next door neighbor, chimed in that she saw Tom snooping around the Miller's house, waiting for Becky's father Sam Miller to leave, and that she'd even seen him the day of the fire.

However, there was speculation as to who set the fire. Mr. Miller didn't have very many friends due to his overcharging villagers for milling their grain. Tom and Becky had a huge fight right before the fire because Becky said she didn't want to marry Tom. Rumor had it that she'd met someone else. Or perhaps Mr. Miller forced Becky and Tom to part. And Tom had an alibi—he was out collecting fire wood (or possibly poaching—hunting illegally) when the fire erupted.

Or maybe it was that Tom shoved Becky and knocked her down, and then fought with Mr. Miller on the day of the fire. Either way, Tom was arrested deep in the forest a few days later, and claimed he hadn't been to Great Peatling since the afternoon of the fight.

While the ladies discussed the fire, a cloaked horseman rode over to them, asking for directions to town hall. The King of England, Henry II, had recently come up with a trial by jury system to determine if those accused of crime were guilty. The shire (judge) chose 12 freemen who knew something of the crime to hear the case and decide guilt or innocence. These men were known to be honest, and got together to discuss the case and make a decision, and swore in front of the sheriff and judge that his decision was the truth.

You twelve jurors have been chosen to try Tom's case. Tom has been charged with arson. He has pled not guilty, sticking to his story about gathering fire wood when the Miller's home burnt down.

Juror # 1 - Nicholas the Carter	Juror # 3 - Robert of Whalley
<p>You are Nicholas the Carter. Over the years, you have built up a prosperous business carrying food and animals around Leicestershire.</p> <p>You don't know Tom well. Occasionally, he hires you to cart grain. He always pays you on time, so you have no reason to dislike him.</p> <p>Just before the fire, you delivered a load of wheat to the mill at Great Peatling. On your way home, just at dusk, you saw a man coming down the road toward you. When you waved hello, the man looked up startled and ran into the forest. A few days later, you heard that Tom Ayckbourn burned down Great Peatling Mill. Suddenly, the encounter made sense. This man was about Tom's height. He didn't want you to see him going toward the mill.</p>	<p>You are Robert of Whalley, undersheriff for a village close to Great Peatling. Because of your important position, you live in Whalley Keep. You own good farmland and can afford serfs to farm it for you.</p> <p>You know Tom Ayckbourn is a poacher, but you haven't been able to catch him. This really bothers you. You want to bring him to justice.</p> <p>On the afternoon of the fire, you were at Peatling Manor on business. You were just leaving as the fire broke out. You rushed to organize the firefighting.</p> <p>At the mill you overheard a woman say that her daughter saw Tom Ayckbourn start the fire.</p>
Juror # 2 - John Grim	Juror # 4 - Hugh Peverill
<p>You are John Grim, a freeman. You have lived all your 18 years in Great Peatling. You are married to a woman from Whalley, the next village over, and you have two healthy children.</p> <p>You are the best carpenter in the village. You work hard and the people of Great Peatling respect you.</p> <p>You and Tom grew up together. You are as close as brothers. Tom is levelheaded and fair. In all your years together, he has only lost his temper once. That happened when you brought up the subject of his marrying someone other than Becky.</p> <p>On the day of the fire, you were in Whalley, helping your father-in-law mend a table. When you got back to the village, your wife told you Tom had come by and was very angry. She also told you that the mill had burned and people were saying Tom did it. You talked with Tom after his arrest, and he swore he didn't do it.</p>	<p>You are Hugh Peverill. You live in the village of Wykeham, but spend most of your time in the nearby abbey of Levern, where you study old manuscripts.</p> <p>You own good farmland, which is managed by serfs.</p> <p>You don't know Tom personally, but the monks at the abbey say he is devout.</p> <p>Last week a monk told you, in the strictest confidence, that Becky Miller had come to him for help. Becky told the monk that Tom did not burn the mill and she knows who did. Becky refused to name the arsonist. You hope she changes her mind.</p>

<p>Juror # 5 - William FitzStephen</p>	<p>Juror # 7 - Allen Langland</p>
<p>You are William FitzStephen, 19 years old, son and only heir to the land and wealth of Stephen of Wykeham.</p> <p>When you were 9 years old, your father married you to the daughter of a neighboring landlord. You don't like your wife. She and your two children live with her father and will do so until your father dies and you inherit his lands.</p> <p>You don't know Tom personally. Becky Miller says Tom is a good, honest, and dull man. You have been seeing Becky on the sly for three or four months. Because you are married, she won't take you seriously. She plans to marry Tom. Becky told you about Tom's fight with her father.</p> <p>You realized that if something happened to the mill, everyone would think Tom did it. You set the fire to get Tom out of the way.</p>	<p>You are Allen Langland, blacksmith in the village of Great Peatling.</p> <p>You own the best farmland in the village and have three serfs.</p> <p>You are only 21, but you make a good living for your wife and six children.</p> <p>Tom is a few years younger than you. You are not close friends, but you have always liked him. He is honest and hardworking, though he has not been very successful.</p> <p>On the afternoon before the fire, when you pulled Tom away from Sam Miller, you saw how angry he was. You also saw that he calmed down and left peacefully. Your forge is close to the mill, and you were working late into the evening. If Tom had returned to set the fire, you would have noticed him.</p>
<p>Juror # 6 - Peter de Neville</p>	<p>Juror # 8 - William Harrison</p>
<p>You are Peter de Neville, lord of Peatling Manor and overlord of the villages of Whalley and Great Peatling.</p> <p>You are 34 years old and have spent most of your life in France overseeing your lands and fighting wars. You don't like the Anglo-Saxon people. They seem brutish and lazy. You are sure they lead violent, ugly lives. Tom is one of the Anglo-Saxon freemen who lives in your villages. You only see Tom when he pays his rent and does his annual week of service. You don't pay much attention to what goes on in your villages.</p> <p>When you arrived from France a week ago, your servants told you that Tom burned down the mill. You are angry because though Samuel ran the mill, you owned it. Now the harvest won't be milled in time for the winter unless you pay one of the neighboring millers.</p>	<p>You are William Harrison, warden of the king's forest. You grew up in Great Peatling, but you left when you were 13 to make your way in the world. Last year, you returned with a commission from the king to act as warden and gamekeeper.</p> <p>You knew Tom as a child and didn't like him. Since you have been back, however, you've had some interesting talks with Tom. He seems to be in the forest a lot.</p> <p>Late in the afternoon on the day of the fire, you caught Tom trapping rabbits in the forest. You didn't arrest him, because he seemed upset. You talked to him for a while, and he fixed you a dinner of rabbit stew. It was quite dark by the time Tom left. He was heading deeper into the forest, not back toward Great Peatling.</p>

Juror # 9 - Duns Evesham	Juror # 11 - Geoffrey Cordwainer
<p>You are Duns Evesham, a farmer from Great Peatling. You live in a small cottage with your elderly mother. Though your father was fairly well-off, he died when you were still young. Since then, it has been hard to make ends meet.</p> <p>Your mother took a liking to Tom when he was a little boy. She saw him as the grandson she never had. Tom, in return, has always been kind to your mother. He stops to visit her often and sometimes brings small presents.</p> <p>You spent the afternoon of the fire working in the fields. When you saw the smoke, you came running to help. After it was all over, you heard about the fight Tom had with Sam and Becky. You sympathized. When you were young, a girl promised to marry you and then backed out of it. If you had thought to burn her house down, you would have.</p>	<p>You are Geoffrey Cordwainer, a farmer of the village of Great Peatling.</p> <p>You are 35 years old. Your wife, Margaret, bore you 10 children. Only six of them lived.</p> <p>Tom is a good friend of your second oldest son. You have always liked Tom and think he has been a good influence on your son.</p> <p>When people started saying that Tom set the fire, you thought they were crazy. But one evening Margaret told you that Sarah Thatcher said Tom had good reason to burn the house because Becky refused to marry him.</p>
Juror # 10 - Stephen of Wykeham	Juror # 12 - Hamon de Mascey
<p>You are Stephen of Wykeham, an important knight and close friend of the king. You have retired to Fyske Castle and have become involved in the life of the shire.</p> <p>Your wife died several years ago. Though she bore you five children, only one survived. His name is William. You don't trust him much.</p> <p>You know Tom well, though he isn't one of your villagers. He served under you during the last war. He was a loyal and courageous soldier, remarkably calm in battle.</p> <p>Sam Miller is a cheat. Everyone in the shire knows it. Miller gets away with it because his overlord, de Neville, won't do anything.</p> <p>Perhaps Tom set the fire, but it is just as likely one of Miller's victims finally decided to get revenge.</p>	<p>You are Hamon de Mascey, a freeman. Though your father was only a farmer, he was wealthy. You were his youngest son, so you didn't inherit the farm.</p> <p>Your father sent you to the household of the Earl of Leicester to be trained as a page. Through hard work, you are now a squire and will someday be knighted.</p> <p>You and Tom served under Stephen of Wykeham during the last war. Though you were serving a knight and Tom was only a foot soldier, you saw a good deal of him. He was always trying to better himself by playing up to the knights and lords. You think he is a pushy braggart.</p> <p>Robert of Whalley is a good friend of yours. He told you about the fire and that some girl in the village saw Tom set it.</p>