

# Rethinking Pharaonic Government: Constitutional Lessons from Ancient Egypt

Dr Alexandre Loktionov

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*Dr Alexandre A Loktionov is an Egyptologist, with a particular interest in ancient Egyptian justice of the third and second millennia BCE. He is the Principal Investigator of the AHRC-funded Early Constitutional Thought project at the University of Cambridge, where he is also a Fellow of Christ's College and the McDonald Institute for Archaeological Research. Dr Loktionov has a BA in Archaeology and Anthropology from Selwyn College, Cambridge, and an MPhil in Egyptology from St. John's College, Cambridge. His PhD was undertaken at Robinson College, Cambridge, where he investigated methods of reconstructing the legal system of Ancient Egypt from the Old to the Middle Kingdom through a mixture of textual, ethnographic, and wider theoretical approaches. His previous posts include serving as a Teaching Associate and Affiliated Lecturer in Egyptian language at the Department of Archaeology in Cambridge as well as working as an AHRC Fellow at the Library of Congress, Washington, DC.*

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Conventional wisdom tells us that the first civilisation to be governed in a manner comparable to our own was Ancient Greece—the world's first democracy.<sup>1</sup> Such discourse has contributed to popular belief that earlier civilisations, of which Egypt is probably the best-known example, might be interesting in myriad ways but surely have little to offer scholars of modern government. Egypt, according to established narrative, was an absolute monarchy, where Pharaoh did as he pleased and all else fell into place around this.<sup>2</sup> Yet was this really so? In this article, it will be demonstrated that the reality was not so simple, with the Ancient Egyptian framework for government and justice being based on far more than the will of one man. This argument for Ancient Egypt having what may be termed an early constitution—however embryonic it may have been—rests on four key premises: evidence for the distinction between the notion of 'State' and 'Government'; the rule of law; the right of appeal; and the separation of executive and judicial power. Each of these shall now be briefly discussed in turn, with the article then concluding with a discussion of the

implications of such observations for studies in constitutional history going forward.

## The distinction between state (Pharaoh) and government (Vizier)

Almost everybody knows that Ancient Egypt was reigned over by Pharaohs, but to what extent was it actually governed by them? In theological terms, the monarchy was indeed absolute—Pharaoh was a living incarnation of the god of kingship, Horus, seen by his subjects as the 'good god' (*ntr nfr*) occupying the middle ground between this world and the next and *ex officio* serving as the high priest of every cult in the land.<sup>3</sup> He was the supreme guarantor of right order (*M3:t*), tasked with defending Egypt from all enemies foreign and domestic. And yet, the practical task of overseeing the daily running of the country in fact fell to a different individual: the Vizier.<sup>4</sup> This high official was appointed by Pharaoh as a de facto head of government, not unlike the appointment of a Prime Minister by a modern-day head of state. According to the *Installation of the Vizier*, a text of the fifteenth century BCE setting out royal expectations at the time of a new vizierial appointment, a Vizier could expect to be told the following by his sovereign:<sup>5</sup>

1 For Greece as the 'first democracy', see for instance: Jóhann P Árnason, Kurt A Raaflaub, and Peter Wagner (eds), *The Greek Polis and the Invention of Democracy: A politico-cultural Transformation and its Interpretations* (Wiley-Blackwell 2013); Kurt A Raaflaub, Josiah Ober, and Robert W Wallace, *Origins of Democracy in Ancient Greece* (University of California Press 2007).

2 A typical illustration of this established narrative, as adopted by a popular news source, is available on the website of the *Independent* (<<https://www.independent.co.uk/news/world/world-history/power-pharaohs-how-mighty-civilisation-arose-egypt-1607595.html>>). For other examples, see public education resources such as the webpages of the History Channel (<<https://www.history.com/topics/ancient-history/ancient-egypt>>) and the Canadian History Museum (<<https://www.historymuseum.ca/cmcc/exhibitions/civil/egypt/egcr03e.html>>).

3 For more on Ancient Egyptian kingship, see David P Silverman, 'The Nature of Egyptian Kingship' in David D O'Connor and David P Silverman (eds), *Ancient Egyptian Kingship* (Brill 2007). For further references on Pharaonic divinity, see Andrew Collins, 'The Divinity of the Pharaoh in Greek Sources' (2014) 64(2) *Classical Quarterly* 841.

4 Christopher Eyre, *The Use of Documents in Pharaonic Egypt* (Oxford University Press 2013) 55–77.

5 Raymond O Faulkner, 'The Installation of the Vizier' (1955) 41 *The Journal of Egyptian Archaeology* 18.

Look to the office of the Vizier, be vigilant concerning all that is done in it, for it is the mainstay of the entire land. Now as for the Vizierate, it certainly is not pleasant; indeed it is as bitter as gall. See, he is copper enclosing the gold of his master's house.

Thus, this text paints a picture where Pharaoh appreciates the unpleasantness of the job of governing the country, and offloads it onto his Vizier—the metaphorical 'copper' which serves to protect the 'gold' which is Pharaoh himself. In so doing, Pharaoh presumably freed up time which could be spent on his other prerogatives, such as foreign conquest, building work, and religious observances. However, this did not mean that the work of Pharaoh and Vizier became disjointed, with the latter being duty-bound to regularly report to the former. Clear evidence for this can be found in another text of the same period, the *Duties of the Vizier*, which states that a Vizier was obliged to act as follows:<sup>6</sup>

He shall enter to greet the Lord [Pharaoh] each day when the affairs of the Two Lands [all Egypt—Upper and Lower Egypt] have been reported to him in his residence. He shall enter the Great House [royal residence] when the Overseer of the Treasury has drawn up at his position.

Here, one sees not only that the head of state was supposed to meet the head of government every day, but that this was done in the presence of the chief financial official too. Therefore, although Pharaoh was not running the government himself, he was effectively at arm's length from it and could presumably move to replace it if he so wished. While one must naturally highlight that the reality may not have been as strictly regimented as the text might suggest, the significance of this finding is nonetheless profound. It points to the Egyptians already distinguishing between the notion of state (and its head) and government (and its head): government was subordinate to state, but not synonymous with it. This observation is of profound importance, given that this distinction serves as a cornerstone of most constitutional regimes today.

## The rule of law

The idea of the 'rule of law'—society governed by strictly defined concepts rather than the arbitrary wishes of individuals—is often put forward as a bulwark of modern governmental principles.<sup>7</sup> An early form of this appears to have existed in Ancient Egypt, with the Egyptian language possessing a specific word, *hp*, denoting law as an abstract notion.<sup>8</sup> By the early second millennium BCE, this word was mentioned in numerous texts, with papyri exhorting litigants to act 'in accordance with the law' and stelae of royal officials emphasising how their owners upheld the law.<sup>9</sup> Breakdown of the law was

considered a symptom of societal chaos and indeed a manifestation of the collapse of the state itself: for instance, in the *Admonitions of Ipuwer*, a text of the mid-second millennium BCE which paints a fictitious picture of what the collapse of Egyptian civilisation might look like, the following lines can be found:<sup>10</sup>

The laws of the state bureau are thrown out; verily one passes over them in the public places and wretches are destroying [them] therein, in the middle of the streets.

Moreover, there is ample evidence to suggest that such laws were not simply ill-defined traditions or customs based wholly on precedent, but rather—at least in certain contexts—concrete provisions set down in writing. Particularly notable compendia of these are the decree stelae of Horemheb and Seti I, Pharaohs of the thirteenth century BCE who released sets of legislation that are preserved to this day, and which would have been accessible for reading by any literate Egyptian in antiquity.<sup>11</sup> These surviving examples are mostly associated with regulating the activities of state officials, and with curbing abuse of office. A representative example of a law found in these texts might be:<sup>12</sup>

As for any soldier regarding whom it is heard that he still continues to confiscate animal hides right up to the present day [ie after the promulgation of the decree], law will be enforced against him by smiting him with 100 blows and five open wounds, together with taking away the animal hide which he seized for himself by theft.

Here, one can see punishment prescribed in meticulous detail, and designed to combat a very specific offense—in this case, misappropriation of animal hides by the military—which leaves little room for informal interpretation. It should be noted also that there are numerous less sanguinary examples, for instance in relation to land apportionment, and these too are characterised by a high degree of prescriptiveness. They might be typified by this passage from the *Duties of the Vizier*:<sup>13</sup>

As for anyone who will make petition to the Vizier regarding fields, he will order him to him[self], in addition to listening to the overseer of farmlands and the judicial council. He should allow a delay for him consisting of two months for his fields in Upper and Lower Egypt. However, as for his fields which are near to the Southern City [Thebes] and to the royal residence, he should allow a delay for him consisting of three days, as that which is in the law. He should hear every petitioner in accordance with this law, which is in his hand.

Texts of this sort point to the presence of a sophisticated body of law, available for consultation when required, and even the highest officials were apparently required to act in accordance with it. These laws, even if not well-known today for reasons of

6 After Guido PF van den Boorn, *The Duties of the Vizier: Civil Administration in the Early New Kingdom* (Kegan Paul International 1988) 55. The translation has been edited for clarity by the present writer.

7 See for instance José M Maravall (ed), *Democracy and the Rule of Law* (Cambridge University Press 2009) and Jean Hampton, 'Democracy and the Rule of Law' (1994) 36 *Nomos* 13.

8 For *hp* in earlier periods of Egyptian history, see Adeline Bats, 'La Loi-hp au Moyen Empire' (2014) 1 *Nehet* 95. For later periods, see Charles F Nims, 'The Term Hp, "Law, Right" in Demotic' (1948) 7(4) *Journal of Near Eastern Studies* 243.

9 Alexandre A Loktionov, 'The Development of the Justice System in Ancient Egypt from the Old to the Middle Kingdom' (PhD dissertation, University of Cambridge 2019) <<https://doi.org/10.17863/CAM.39378>> 121–124.

10 Translation based on Wolfgang Helck, *Die „Admonitions“ Pap.* Leiden I 344 recto (Harrassowitz Verlag 1995) 29, B53.

11 For the Horemheb text, see Jean-Marie Kruchten, *Le Décret d'Horemheb* (Éditions de l'Université de Bruxelles 1981). For the Seti I text, see William F Edgerton, 'The Nauri Decree of Seti I: A Translation and Analysis of the Legal Portion' (1947) 6(4) *Journal of Near Eastern Studies* 219.

12 Translation based on Kruchten (n 11) 83.

13 After van den Boorn (n 6) 146–47, R17–R19. The translation has been edited for clarity by the present writer.

limited preservation, seem to have covered a very wide variety of situations and provided a framework both for the consistent operation of the justice system as a whole and for accountability of holders of public offices specifically. While Egyptian society undoubtedly had mechanisms of informal conflict resolution too, it nonetheless seems clear that an early sense of the rule of law did exist.

## The right of appeal

Another important element of most modern judicial systems is the right to appeal,<sup>14</sup> and this too existed in Ancient Egypt, if in a somewhat basic form. If a plaintiff was dissatisfied with the justice dispensed at initial hearing, there was scope for going to higher authority. The most detailed recorded case is that found on the walls of the thirteenth-century-BCE tomb chapel of Mose at Memphis. The narrative tells of the tomb owner's family being dispossessed of their rightful land by judicial error at local level, with the case then being heard on appeal in a more senior 'great court' and ultimately taken up to the Vizier himself.<sup>15</sup> However, while the most detailed, that is not the best-known example of Ancient Egyptian judicial appeal. That distinction falls to the storyline of the *Tale of the Eloquent Peasant*. In this fictional account of the early second millennium BCE, widely accepted as one of the masterpieces of Ancient Egyptian literature, a righteous peasant is subjected to a quasi-judicial act of robbery by Nemtynakht, a corrupt official of the local governor.<sup>16</sup> After Nemtynakht impounds the peasant's donkey caravan of goods on a false pretext, the text describes subsequent events as follows:<sup>17</sup>

And so this peasant spent ten days making petition to this Nemtynakht, but he ignored it. This peasant then proceeded to go to Heracleopolis [the local capital] to petition to the Great Steward [local governor] Meru's son Rensi, and he found him emerging from the door of his house.

Thus, the peasant is allowed to appeal to higher judicial authority after his initial complaint is thrown out, and it appears that he is able to locate that higher authority with relative ease. While the composition is a work of fiction, an analysis of its content, work and terminology has demonstrated that it is highly likely to reflect genuine judicial practice at the time, thereby bolstering the evidence for appeals being an important part of the legal landscape.<sup>18</sup> In the story, the peasant ultimately wins his appeal—which may perhaps be taken as a literary highlighting of the importance of cases being reviewed for redress of grievance.

Moreover, there is evidence to suggest that the stakes could rise far higher in the appellate setting, addressing the right to life itself. In *Papyrus Amherst*, a twelfth-century-BCE summary of the trials of tomb robbers accused of desecrating royal and elite burials in the Theban necropolis, allusion is made to:<sup>19</sup>

Thieves of the pyramid of the god [ie royal tomb] who are missing, whom the chief priest ... is to transport as detainees in the great detention pen ... together with their fellow thieves until Pharaoh our lord determines their punishment.

Here, the missing thieves have already been found guilty and sentenced earlier in the trial, and they are to be rounded up and placed on what may be termed remand alongside other convicts. However, although there can be no doubt that these individuals have already been sentenced to death,<sup>20</sup> the case has now gone to Pharaoh for final review. The implication is therefore that Pharaoh had the power to commute sentence on appeal, effectively meaning that the Egyptians had a parole mechanism as early as the second millennium BCE. This adds further nuance to our understanding of the right to appeal in this ancient society, cementing its place in legal history as a pioneer in a form of judicial practice that is still clearly recognisable today.

## Separation of executive and judicial power

The last of the four strands of modern constitutional thought explored in this article is the weighty matter of the separation between judicial power and the executive branch, including law enforcement.<sup>21</sup> In Ancient Egypt, it appears that such a notion already existed, with the *Duties of the Vizier* addressing the issue as follows:<sup>22</sup>

It is not permissible that any official have power over dispensing justice in his own administrative office. If a major accusation emerges against one of the subordinate officials in his office, he [the chief official] will make sure that the accused is taken to court, it being the Vizier who will punish him in line with his transgression.

Thus, at least based on this text, it would appear that there was a clear separation between subordination at work based on obedience to executive authority, and due legal process. Simply belonging to the executive authority was not a valid reason to be a judge. Indeed, a similar view is attributed to Pharaoh himself in the *Turin Judicial Papyrus* of the twelfth century BCE, with Ramesses III expressly stepping back from involvement in a trial of conspirators who

14 See for instance: Marc M Arkin, 'Rethinking the Constitutional Right to a Criminal Appeal' (1992) 503 *UCLA Law Review* 503; Alex S Ellerson, 'The Right to Appeal and Appellate Procedural Reform' (1991) 91(2) *Columbia Law Review* 373.

15 Gaballa A Gaballa, *The Memphite Tomb-Chapel of Mose* (Aris & Phillips 1977) 22–25.

16 For an edition of the Egyptian text, complete with variants, see Richard B Parkinson, *The Tale of the Eloquent Peasant* (Griffith Institute 1991). For a convenient translation, see Vincent A Tobin, 'The Tale of the Eloquent Peasant' in William K Simpson (ed), *The Literature of Ancient Egypt* (third edn, Yale University Press 2003) 25–44.

17 Translation by present writer after transcription in Parkinson (n 16) 14, B1(62)–B1(66).

18 Nili Shupak, 'A New Source for the Study of the Judiciary and Law of Ancient Egypt: "The Tale of the Eloquent Peasant"' (1992) 51(1) *Journal of Near Eastern Studies* 1.

19 Translation by present writer after transcription in Jean Capart, Alan H Gardiner, and Baudoin van de Walle, 'New Light on the Ramesside Tomb-Robberies' (1936) 22(2) *Journal of Egyptian Archaeology* pl XVI, 4(10)–4(11). The translation given in the present article is abridged for clarity, with lengthy titles and location designations removed.

20 David Lorton, 'The Treatment of Criminals in Ancient Egypt: Through the New Kingdom' (1977) 20(1) *Journal of the Economic and Social History of the Orient* 2, 31–32.

21 For scholarship stressing the importance of this in modern societies, see for instance: Jeremy Waldron, 'Separation of Powers in Thought and Practice' (2013) 54 *Boston College Law Review* 433 and Eli M Salzberger, 'A Positive Analysis of the Doctrine of Separation of Powers' (1993) 13(4) *International Review of Law and Economics* 349.

22 After van den Boorn (n 6) 77–78, R8–R9. The translation has been edited for clarity by the present writer.

had attempted to overthrow his government.<sup>23</sup> Describing the proceedings, Pharaoh says:<sup>24</sup>

They [the judges] interrogated them [the conspirators] and put them to death by their own hands—but I do not know them. And they punished others too—and I do not know them either.

Here, the supreme executive authority—Pharaoh—is again shown to be separated from the judicial process. Clearly, this separation was not absolute, considering that—as shown earlier—Pharaoh could be involved in final reviews of cases in his capacity as head of state, but it does nonetheless lend further strength to the overall argument that in normal circumstances executive and judicial power were kept apart. Moreover, this interpretation is also backed up by an earlier text, from a somewhat lower social stratum that likely fell outside the immediate surroundings of the Pharaoh and Vizier. This text is a private letter dating from the nineteenth century BCE now known as *Papyrus El-Lahun 32200*, wherein the writer appears to be outraged at the mishandling of a legal matter. The core of the complaint is as follows:<sup>25</sup>

Look, what is being done in the Interior [ie at the royal court] is worse than anything. Is it not decreed that a thief is judged by all people except an overseer of disputes?

While the exact nature of the proceedings is unclear, what is apparent is that the unhappiness stems from a law enforcement official (an ‘overseer of disputes’) playing a part in judging a thief, even though such officials were expressly forbidden to do so.<sup>26</sup> Instead, thieves could apparently be judged by anyone—presumably a reference to local courts, which could indeed consist of a very wide range of individuals from the communities they served.<sup>27</sup> This example therefore demonstrates that evidence for separation of executive and judicial power exists in a lower-level context, as well as in relation to royalty and the Vizier. This can be interpreted as a sign of this principle percolating through the legal landscape of Ancient Egypt more broadly, it being respected in a variety of circumstances.

### Concluding comments: Ancient Egypt as a cradle of early constitutionalism?

This article has shown that Ancient Egyptian ideas of government and justice could, at least on occasion, resemble those of much later societies, including our own. While there was certainly no written constitution, this does not mean that society was not run along

lines which may be termed ‘constitutional’. Such a conclusion is supported by the evidence for the apparent distinction between the state itself and the government, an emerging conceptualisation of the rule of law, a right of appeal, and a separation of judicial and executive powers.

It is important not to rush from here to a conclusion that modern systems of government are evolutionary descendants of the Egyptian model: from a perspective of historical events, they are not. Once Egypt had been subsumed into the Roman Empire in 30BCE, the country lost all trace of constitutional and judicial independence, and these would not be restored for two millennia. It therefore cannot claim to have shaped the political systems which subsequently emerged in Europe, and indeed worldwide. In this regard modern constitutional scholars are quite justified in apportioning primacy to the Graeco-Roman tradition of democracy, law and government. The fact that Egyptian constitutionalism may have existed far earlier does not necessarily change the ontological origin of modern constitutional thought.

And yet, the possibility of Ancient Egyptian society and state having significant constitutional undertones matters profoundly, and its historical disconnection from what eventually transpired in Europe cannot be a valid excuse for not studying the phenomenon. Looking at Ancient Egyptian material brings to life the very realistic possibility of extending the chronological scope of constitutional studies by at least an additional two millennia, while at the same time demonstrating that such modes of thinking were not unique to the classical Mediterranean world. Observations of this sort might in turn spark further constitutional studies relating to other early literate civilisations, including Mesopotamia and China. They might also trigger a re-evaluation of current understandings of power in early antiquity, with greater emphasis on legal process rather than the status and executive capabilities of particular magnates. In short, by developing the Egyptological example—itsself a vast iceberg of which this work is but the tip—one might hope to one day profoundly reshape the entire discipline of constitutional history, diversifying it via forays in hitherto unprecedented directions.

<sup>23</sup> For a convenient English translation of the full document, see Alexander J Peden, *Egyptian Historical Inscriptions of the Twentieth Dynasty* (Paul Åströms Förlag 1994).

<sup>24</sup> Translation by the present writer based on Isidor M Lurye, *Ocherki Drevneegipetskogo Prava* (State Hermitage 1960) 299.

<sup>25</sup> See Loktionov (n 9) 124 for this papyrus and further references to its editions.

<sup>26</sup> For more on the ‘overseer of disputes’ title, see William A Ward, *Index of Egyptian Administrative and Religious Titles of the Middle Kingdom* (American University of Beirut 1982) 50. Based on attestations elsewhere, it is proposed that this title represents a law enforcement figure akin to a ‘chief of police’.

<sup>27</sup> For more on the composition of such law courts, see: Sandra Lippert, ‘Law Courts’, *UCLA Encyclopedia of Egyptology* <<http://digital2.library.ucla.edu/viewItem.do?ark=21198/zz002djg21>>; Schafik Allam, ‘Egyptian Law Courts in Pharaonic and Hellenistic Times’ (1991) 77 *Journal of Egyptian Archaeology* 110.