

# A Brief Etymology of Law

Emilio Abiusi\*

## Abstract

The English language of the law is marked by an absence. For centuries the words different cultures use for ‘law’ have had a dyadic nature, consisting of both *Lex* and *Ius*. *Lex* encompasses imposed law, and *Ius* cultural norms and principles of justice. English, however, separates the ideas of *Lex* and *Ius* into the words *law* and *rights*; leaving *Ius* absent from the single idea contained in the word *law*. In this paper, I explore the etymology of the words for law across historical languages and cultures, including Akkadian, Hebrew, Greek, Latin, French, and German. I then ask why English chose this etymological path compared to its linguistic contemporaries. From this inquiry, I argue that the organic interaction of *Lex* and *Ius* forms a culture’s macro understanding of ‘The Law’. I conclude by considering whether the absence of *Ius* in English leads to confusion, and ultimately a shallower conception of the law than is present in other Western legal languages.

## Keywords

language, legal theory, law, legal etymology

Submitted: 22 January 2024, accepted: 4 June 2024, published online: 30 July 2024

---

\* J.D. Peter A. Allard School of Law, University of British Columbia, [eabiusi@gmail.com](mailto:eabiusi@gmail.com). The author would like to thank professors Dennis Pavlich, Julen Etxabe, and Mary Liston for their encouragement and review of this work.

# 1. Introduction

## 1.1 Words, Normative Universes, and Difficulties in Translation

What is in a word? A word is more than a descriptor, it is a carrier of meaning, a nugget of cultural knowledge by which groups and societies understand and interact with one another. Words are the building blocks of language and language the scaffolding of culture. Without language a culture would not be able to understand its own idea of itself as ideas are limited by the words used to discuss them. Words can be said to define the boundaries of the normative universes in which a culture communicates (Cover, 1999).

Nowhere is this truer than in the field of law. In practice, advocates are armed with words instead of swords (White, 1973). In academia, written words form the basis for legal traditions spanning millennia (Goody, 1986). It has been said that words are fire; a powerful tool capable of incarcerating or freeing a life, destroying republics, and building empires.

How then does a society's words for law impact the culture's idea of their law? As suggested by Clifford Geertz, the words we use for 'law' – and the notions contained within – contain imaginative power which in-fact form the way a community or society understands the idea itself; law is local knowledge, understood intimately by the community (1983: 215). One cannot explain their culture without words and, accordingly, one cannot explain 'The Law', a creature of language, without resorting to one's words for *law*.<sup>1</sup>

Words being themselves tied to culture cannot easily be translated to another culture. From a 21<sup>st</sup> century vantage point it is almost impossible to truly understand how *law* was understood by those who used it (Bryen, 2013). Inevitably, every attempt at translating an idea from one normative universe to another – across cultures or across time – will result in an error of translation. A partial solution is to attempt to place oneself in the linguistic shoes of the culture in order to understand that society's usage of their words for *law* on its own merits, since a culture's idea of 'The Law' is shaped by the words used to describe it.

A single family of words shape the English legal normative universe (*law, lawful, legal, legislated*). In this sense, English is particularly restricted in its legal vocabulary compared to both contemporary and historical languages. French, however, contains two distinct but interrelated words for Law: *La Loi* and *Le Droit*. Both words translate as *law*, but each refers to different yet essential aspects of 'The Law'. By its continental nature French has inherited the linguistic dichotomy present in Latin. Latin contained two words making up the totality of what we call 'The Law': *Lex* and *Ius*.

---

<sup>1</sup> For clarity: I will use 'The Law' when referring to the macro idea and I will use *law* to refer to the word "law".

## 1.2 The Dyadic Language of Law

*Lex* and *Ius* translate in English as *law*. But under the surface *Lex* and *Ius* refer to wildly different categories of law. *Lex* broadly refers to law as regulation in the form of written statute, enactments, legislation, and other state-imposed law. *Ius* corresponds to ideas of private law developing from the people.

*Lex* is public law, declared from the state or created by the sovereign. *Ius* refers to law as unwritten self-evident rights, justice, order, and law as society chooses to organize itself. *Ius* refers to norms which the culture chooses to follow and likely will follow regardless of external coercion. *Lex* speaks of rules and regulations imposed under threat of force which people either adopt because they are valuable or reject because they do not correspond to *Ius*. *Lex* and *Ius* are two parts of a unified whole: ‘The Law’. Two words which refer to one macro-idea but engage distinct parts of the whole. Many languages feature this dyadic language of law.

**Table 1:** Words for law across Western cultures. See also Appendix C.

Language	<i>Lex</i>	<i>Ius</i>
Mesopotamian		Mīšaru
Hebrew	Mitsvâh	Tzédek
Greece	Nomos	Diké
Latin	Lex	Ius
French	La Loi	Le Droit
German	Gesetz	Recht
English	Law	

For much of history, Western cultures have used words for ‘law’ from the *Ius* category. Not so in English. When English discusses ‘The Law’ it is done in language which exclusively refers to *Lex*. The English language can describe *Ius* using words such as *justice*, *right*, or *order* but these ideas are not etymologically contained in the word *law* as they are in French, German, or Latin. It can be said that *justice* is something in English that ‘The Law’ does – or fails to do – but it cannot be said that the word *law* is linguistically wedded to *justice*.

Why did English in its etymological development jettison dyic words for *law*? What did the English idea of ‘The Law’ lose in the process? Answers to these questions are found when considering *law* etymologically over the course of western history.

## 2. An Etymology of Law

### 2.1 Mesopotamia: Sumerian and Akkadian Law (~4500 – ~1500 BCE)

The first cultures to make use of something approximating a modern legal system were found in ancient Mesopotamia. The earliest evidence of a Mesopotamian legal order is found in the private legal records of transactions between individuals contained on tablets, as well as publicly promulgated legal codes including *The Code of Lipit Istar* and *The Code of Ur-Nammu* (Van de Miroop, 1999: 17–20). The most famous of these codes being *The Code of Hammurabi*. It is in these codes where ‘The Law’ first develops as a distinct idea in the West. Interestingly, there is no explicit word for *law* contained in the Mesopotamian codes. However, there are words relating to an act of legal judgement (*dinum*, or *dianum*), indicating that at minimum there was a system designed for adjudicating disputes. Mesopotamian judges did not make decisions arbitrarily, they made decisions according to what was ‘right’ and ‘just’ – or, as the Mesopotamians would put it: *mīšaru* (Van de Miroop, 1999: 17–20).

*Mīšaru* was fundamentally a religious word, tied to the deity *Samas* (or *Shamash*) which means: ‘to establish just order, bring about justice’. The purpose of Hammurabi’s code is spelled out in the preamble which reads:

to cause *justice* (*mīšaru*) to prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak

na-'-dam | pa-li-ibili"ia-ti | *mi-sa-ra-am* | i-nama-tim | a-nasu-bi-i-im | ra-ga-amusi-nam | a-nabu-ul-lu-"ki-im | dan-nu-um | en-sa-am | a-nalaba-ba-"li-im (Harper, 1904)

*Mīšaru* is what King Hammurabi is attempting to do.<sup>2</sup> Hammurabi receives the code from the god Shamash and has undertaken the task of bringing justice. But more can be inferred looking at the root of *mīšaru*: *ešēru* meaning broadly ‘to make straight’, or ‘to order’. *Mīšaru* is about keeping the social structure ordered, even when that order is unequal (Roth, 1995).

The idea of *mīšaru* was innately tied to the people’s religion. Mesopotamian theology believed that order was established by the gods and that the gods had given authority to the ruling class to promote and promulgate that order. This religious connection is intimately built into the people’s language. There is a Hittite myth about two brothers one named NÍG.SI.SÁ, (the Sumerian form of *mīšaru*) who have a property dispute which they must settle in court. At court, the sun god Samash, rules for the brother named NÍG.SI.SÁ, justice or righteous or good (Leick, 2002). At a fundamental level we see an amalgamation of cultural ideas of justice as present in myth and religion reifying a legal conception of justice, and further that these connections are built into the language of

---

<sup>2</sup> Similar preambles indicating a value of justice are contained within the other codes. See also *Lipit Istar* (Steele translation, lines 40–55), and the code of *Ur-Nammu* (Kramer translation, at p. 46).

law. As *mīšaru* is tied to the religious ethos of the people, it can be said to correspond to law in the sense of *Ius*.

Even though they come from the kings, the Mesopotamian codes cannot be said to have been ‘law from the state’ (*Lex*) but were rather principles of justice done by the king for the benefit of the people (Goody, 1986: 134–135). The king does justice, but conceptions of what is *mīšaru* are developed by the community, through the evolution of myth, economic necessity, and custom which rise to the level of legal enforceability (Goody, 1986: 131–132). The codes functioned to enshrine the people’s idea of *mīšaru* in writing. Here, there is no aspect of law approximating *Lex*. *Mīšaru* and ideas of law at this early stage can be seen as an emergent phenomenon: ‘The Law’ arising from the people. What the people – and thus the ancient codes – define as ‘right, proper, and just’ approximates something more akin to a publicly available customary law (*Ius*) than an imposed statute (*Lex*).

## 2.2 Jewish Law (~1500 BCE – ~500 BCE)

Thanks to millennia of Jewish academic tradition, the most complete ancient legal document we have today is the Hebrew Bible (*The Tanakh*). Like Mesopotamian legal history, Jewish law cannot be understood without an understanding of the religious context which built it. Israel was a theocracy unlike the Akkadians and Sumerians. God (*YHWH*) is the leader of Israel; spiritually, politically, and legally. The entire nation was subject to the rule of God, including leaders.<sup>3</sup> God’s rules include both religious rules and legal rules (Lev 16; Deut 19). Theocracy is apparent in the Jewish language of law, especially when considering the Hebrew in light of its Mesopotamian counterparts. Evolving from the Akkadian *mīšaru* is the Hebrew *yasar* (יָשַׁר), meaning ‘to be straight, or make right’ (Brown, 1966). However, *Yasar* is never used in a legal or moral sense like *mīšaru*.<sup>4</sup> Instead, when discussing ‘justice’, the word used in Hebrew is *tzédek* (צֶדֶק) “to be right, righteous, or religiously belonging to God” (Wigram, 1996; Deut 1:17). *Tzédek* is explicitly religious and encompasses legal and moral right, extending beyond purely legal justice (Chinitz, 2005). *Tzédek* is often accompanied by *mīšpāṭ* (מִשְׁפָּט) (‘a judgement or verdict pronounced judicially’) and attached to divine law. Justice is that which is eternally connected to and adjudicated by God alone: “keep the way of the LORD by doing righteousness (*tzédek*) and justice (*mīšpāṭ*), so that the LORD may bring to Abraham what he has promised him” (NIV, Genesis 18:19).

Righteousness and justice in Hebrew become both religious and legal terms. In Mesopotamia legal justice is something which the gods approve of and inspire. For the Jew-

<sup>3</sup> Interesting that for the first portion of its history Israel was not ruled by kings, but by judges.

<sup>4</sup> Similarly *Dianum* (‘judgement’) in Akkadian as a legal term and *Din* (‘judgement’), its Hebrew counterpart, are stripped of deeper significance and used to refer to the technical forms of judgement.

ish people, justice is something that God is. Consider Deuteronomy 6:25 “if we are careful to obey all this law (*mitsvâh*) (מצוה) before the LORD our God, as he has commanded us, that will be our righteousness (*tzédek*) (צדק).” The Mesopotamian kings codified law as it arose from lessons present in community myths, while the Jewish people believed that law came as a divine command from God.<sup>5</sup> The Law in the Hebrew conception is not attached to an abstract communal conception of justice, rather it the collection of commands directly from God. But are commands given by God *Lex* or *Ius*?

In the case of the Ten Commandments (perhaps the passage most akin to a statute), the Tanakh uses *dābar* (דבר) a ‘spoken word’ from God carrying the weight of law (Exodus 20:1). When referring to a body of law as a whole, it uses the word *tôwrâh* (תורה), meaning ‘instruction’, or ‘law’ (Brown, 1996). When discussing a particular regulation or command, it uses either *hōq* (חוק) ‘an enactment or statute’ or *mitsvâh* (מצוה). Consider the illuminating 18<sup>th</sup> chapter of Exodus, wherein Moses’s father-in-law Jethro inspires Israel’s entire judicial system (at verses 13–26). As the people’s representative to God, Moses is at the top of the judicial hierarchy. When he judges, he makes declarations in the power of God:

[T]he people come to me to inquire of God; when they have a dispute, they come to me and I decide between one person and another, and I make them know the statutes (*hōq*) of God and his laws (*tôwrâh*) (Exodus 18:15–16)

וַיֹּאמֶר מֹשֶׁה לְחֹתֶנְיוֹ כִּי־יָבֹא אֵלַי הָעָם לְדָרֹשׁ אֲלֵהֶם: כִּי־יִהְיֶה לָהֶם דְּבַר בָּא אֵלַי וְשִׁפְטֹתַי בֵּין אִישׁ וּבֵין רֵעֵהוּ וְהוֹדַעְתִּי אֶת־תְּהִי הָאֱלֹהִים וְאֶת־תֹּרֹתָיו:

Moses was the supreme judge of the people interpreting the laws of God *dābar*, *tôwrâh*, and *mitsvâh*. These words are used exclusively in the Tanakh in reference to religious laws. *Hōq* is the only word which adopts a semi-secular usage, and only in relation to commands by the Egyptian Pharaoh.<sup>6</sup> Aside from *hōq*, all legal words relating to a *Lex* idea of ‘statute, or regulation’ in Hebrew are explicitly a result of God’s action in the world either his commands, his rules, or collectively, his law.

The Hebrew words for ‘law’ as it relates to statute are exclusively within the religious realm. It would be a stretch to equate *hōq*, *mitsvâh*, or *tôwrâh* to modern legislation. Unlike modern statutes, these Hebrew commands are from ‘god’ not people, and, as such, fit more into a conception law emerging from the community’s perceptions of morality or justice. Such laws cannot be said to be enacted by the state if they are and believed to be explicitly from God. It is perhaps a quirk of the modern historical position that *hōq* and *mitsvâh* are translated into English as ‘statute’. Though they are not an exact analog to a modern statute, Israel’s language marks the beginnings of conceiving ‘law’ as some external regulation imposed on the political community enforced as legal authority.

<sup>5</sup> The difference between the two is not due to the religious origins, but rather how one viewed myth as inspiration and the other myth as command, divine and binding in its original mythological form.

<sup>6</sup> Later usage from the prophet Isaiah seems to indicate that *hōq* can be used to refer to ‘decrees’ of kings or other government officials as well. See Isaiah 10:1 for a proto-natural law maxim “woe to those who make unjust laws”.

### 2.3 Greece: Athenian Law (~600BCE – ~300BCE)

Much of the modern understanding of ancient Greek law is really an understanding of Athenian law, and much of our understanding of Athens – including Solon’s code – comes from Aristotle (MacDowell, 1978). When speaking of the law, Aristotle uses two words, *nomos* (νόμος) and *diké* (δίκη), translated in English as ‘law’ and ‘justice respectively’. Consider the following passage from Aristotle’s *Politica*

as man is the best of the animals when perfected, so he is the worst of all when sundered from *law and justice*

ὡσπερ γὰρ καὶ τελεωθὲν βέλτιστον τῶν ζῶων ὁ ἄνθρωπος ἐστίν, οὕτω καὶ χωρισθεὶς νόμου καὶ δίκης χείριστον πάντων

One would be tempted at first to consider *nomos* and *diké* as analogous to *Lex* and *Ius*. However, the plain meaning of both is ‘custom or usage, or practice’. Both words refer to ‘custom’ but custom in different forms. *Diké* was properly the name of a goddess and could be translated as; ‘right’, ‘in keeping with custom’, a ‘righteous judgement’, or a ‘private lawsuit’ (Smith, 1880: 1002). Homer uses *diké* in *The Odyssey* referring to death as “the way (*diké*) of mortals” when speaking to the dead at the edges of the earth (1919, 11.218). *Dike* fits nicely in the category of *Ius* words, harkening back to the Akkadian *mīšaru* as the ‘way’ or ‘order’ of things. *Diké* is an understanding of law arising from a cultural idea of what is appropriate, proper, or just. *Diké* can be seen as an articulation of a civil right, an idea which would grow to full force in the development of the twelve tables in Rome.

*Nomos* secondarily refers to a ‘statute, or ordinance, made by authority’. *Nomos* can best be understood as ‘custom having the force of law’ (Freeman, 1963: 10–30). The Greek adjudicative system was a loose collection of citizens judging case by case on the basis of *nomos*; custom which by all accounts was vigorously defended and upheld in force. Athens was a singular polis, with 40,000 civilian voting men at its height. As a relatively tight and sociocultural homogenous city state Athens could resort to custom as valid ‘law’ (Vinogradoff, 1922: 11–12). Even though the Athenian democracy had the tools to democratically pass what could be considered ‘legislation’ any Athenian ‘legislation’ was subject to the normative force of custom (MacDowell, 1978; Freeman, 1963). Consider the imposition of the severe Draconian Constitution. This constitution would be reformed at the request of the Athenians by Solon for the regulations imposed did not correspond to the all-important *nomos* (Kenyon, 1891: 7.1). ‘The Law’ understood as the Athenians did in terms of *nomos* and *diké* was cultural drama and ritual or put another way; a *Ius* primary understanding of law (Berman, 1974).

### 2.4 Roman Law (~450BCE – ~600CE)

Though *Lex* and *Ius* as words and ideas emerged in Rome, the usage and understanding of *Lex* and *Ius* changed throughout Rome’s lifespan. It began with the XII Tables and the

*Ius civile* ended with the *Institutes* and Justinian's definition of *Ius*. As Rome evolved from a republic (450BCE – 27 BCE) to an empire (~27BCE – ~600CE), so too did the Latin language of law.

Rome began as a small backwater city state on the banks of the Tiber River. As legend states, Rome was founded by Romulus after killing his brother Remus. According to a different legend, Rome was established by Trojan refugees led by the exiled Aeneas after the destruction of Troy (Virgil, 1981). By the 6<sup>th</sup> century BCE Rome has been established as a *polis* with a king much like other *poleis* in the Mediterranean basin. From this independent *polis* came a set of customs, traditions and norms which would inform Roman law for the next 1000 years.

As Rome transitioned from a kingdom to a republic, Roman customary law, called the *Ius Civile*, was codified on the XII Tables. XII Tables were said to have taken their inspiration from Solon's code in Athens (Mousourakis, 2015). The XII Tables were similar to other historical 'legal codes', as customary law compiled and written down. The XII Tables comprised the Roman equivalent of *nomos*: *Ius*. *Ius* is law from the culture of the Romans, a fact which was explicitly encoded by the *Ius Civile*. As the Republic expanded and amalgamated neighbouring cultures and nations, the *Ius Civile* was reserved for Roman citizens (Etxabe, 2019: 3). The *Ius Civile* dealt with issues of private law, how individuals interacted with one another economically and socially. *Ius* – being tied to culture and community – could only impose obligation on those who shared the same cultural myths and norms. Conquered tribes did not share Roman culture, thus *Ius* as customary law could not apply.

As Rome grew, it became imperative to develop rules for interactions with non-Romans who were not subject to *Ius Civile*, thus *Ius Gentium* emerged to govern the interactions between Romans and non-Romans. The *Ius Gentium* was predicated on the stoic idea that all peoples should be governed by particular elements of private law such as the validity of contract and protections for certain property. *Ius Gentium* becomes tied intimately to the conception of *Ius naturale*, the law which is natural to all (Mousourakis, 2015: 75). This legal innovation was necessary to the development of Roman Law. In the 2<sup>nd</sup> century BCE, the Roman Republic would grow to encompass Greece, Spain, and North Africa (MacDonald, 1939). Rome had grown large, and shared law was necessary for proper governance. Many classical legal thinkers such as Gaius viewed the jurisprudence which emerged in the republic as the evolution of Roman customary law described as *Ius*. This included the *Ius Civile*, *Ius Gentium*, and *Ius Naturale*.

A true analog to modern legislation were the enactments passed by Roman democratic bodies: the *comitia* and the *plebiscite*. These enactments were labelled *Lex* (Mousourakis, 2015: 43). Cicero defined *Lex* as: "Quae scripto sancit quod vult, aut jubendo, aut vetando", a written statute or ordinance (Barham, 1842). Put another way, *Lex* is properly a rule or command of the sovereign power in a state, published in writing, and addressed to and enforced upon the members of such state (Smith, 1875).



*Lex* were actions, enactments, or statutes, passed by democratically elected bodies, debated, and reified by the senate. *Lex* concerned among other things, marriage, land usage, and protection of private property.<sup>7</sup> *Lex* was regulatory, top down, and imposed by the state. Originally *Lex* passed by the *plebicitia*, and *comitia* were only binding on their respective social classes. However, with the passing of *Lex Hortensia* (287 BCE), *Lex* passed by the *plebicitia* became binding on all. *Lex* was the birth of modern legislation.

Importantly, *Lex* was a massive linguistic change in how cultures in the West talked about ‘The Law’. Rome had *Ius* to refer to customary law and *Lex* to speak of legislation. In Rome, *Lex* was not an action by the king in accordance with a communal sense of order, nor is it a divine command. *Lex* was state regulation, binding on the populous by virtue of them being in the body politic.

Where *Ius Civile* was sufficient to regulate the private dealings between people, *Lex* was necessary to regulate the institutions of an incredibly large and cosmopolitan republic. *Lex* in the Roman Republic were the laws which were imposed on the society. Cicero’s famous line from *On the Republic*: “True law (*Lex*) is right reason in agreement with nature” seems to indicate as such (Keyes, 1928). Cicero’s discourse around law in *On the Republic* is concerned with the law from the state. Cicero discusses law in terms of *Lex* when he discusses law which is imposed. He goes on to draw a line between *Lex* and *Ius* saying: “law (*Lex*) is the standard of what is just (*Ius*)” (Asmis, 2008: 7). In the Roman Republic, a fluid, dyadic conception of law emerged. *Lex* as law imposed sets the standard for *Ius* which is law emergent in the idea of ‘justice’. The dyadic interaction of *Lex* and *Ius* interacting formed the total Roman understanding of ‘The Law’.

As the Roman Republic marched into the Roman Empire (~27BCE – ~600CE) it became more apparent that the maintenance of social order in the ever-expanding state required a strong imperial hand. *Lex* previously the product of democratically elected bodies became the prerogative of the emperor. Enacting *Leges* was a quick and swift way to regulate a diverse populous (Mousourakis, 2015: 84). While Caesar Augustus kept the illusion of first-among-equals by working with the roman senate, his successors made the senate little more than a rubber stamp on imperial decrees. *Lex* in all its forms became the tool by which emperors governed by fiat.<sup>8</sup> *Lex* passed during this time include the *Lex de imperio Vespasiani* (69 CE) – which granted law making power to the emperor Vespasian; *Lex Iulia de vicesima hereditatum* (5CE) – which instituted a tax on inheritances; and *Lex Hadriana* (117–138 CE) which enabled permanent tenants to develop land they resided on. *Lex* was a tool of rule, cold and unfeeling.

In the empire, *Ius* became subject to an imperial bureaucracy designed to facilitate the proper functioning of the society. The cultural glue that allowed *Ius* to have the force of law became adherence to the empire rather than to a specific ‘Roman culture’. *Ius* became more than private law; it begins to encompass administrative and criminal law as

<sup>7</sup> *Lex Canuleia* (445 BCE), *Leges Licinia Sextiae* (367 BCE), *Lex Aquila* (286 BCE)

<sup>8</sup> Consider the Constitutions *principis, edicta, decretal, rescripta* and *mandata*, see generally Mousourakis, 2015: 66.

well. This development of law was formed by jurists; scholars specialized in the study of law, who helped establish the imperial legal bureaucracy (Mousourakis, 2015: 70–84). The fusion of *Ius civile* and *Ius honorarium* was also facilitated by the jurists who, by developing both masses of law in common, gradually removed their boundaries. In the later imperial era, the resultant combination of these two sources of law was designated *Ius* (Mousourakis 2015: 63).

By the time of Diocletian (286 CE), Rome had become fully subject to the emperor, dominant and imposing. This imperial force made space for the law to be edited and codified by Justinian (534 CE). Justinian saw that the *Ius* interpreted by the jurists was simply too big and commissioned the *Corpus Juris Civilis*, for the purposes of editing the *Ius Civile*. Unlike the codes of Mesopotamia or Greece, the *Corpus Ius Civilis* was a code in the modern sense of the term (Blume, 2016). It discarded some of the jurisprudence from the jurists (which had built up over a thousand years), and helpfully provided a definition for *Ius* at the beginning of the *Institutes*:

JUSTICE is the set and constant purpose which gives to every man his due.

Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust.

The precepts of the law are these: to live honestly, to injure no one, and to give every man his due. The study of law consists of two branches, law public, and law private. The former relates to the welfare of the Roman State; the latter to the advantage of the individual citizen. Of private law then we may say that it is of threefold origin, being collected from the precepts of nature, from those of the law of nations, or from those of the civil law of Rome.

Iustitia est constans et perpetua voluntas ius suum cuique tribuens.

Iurisprudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.

Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere. Huius studii duae sunt positiones, publicum et privatum. Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem pertinet. Dicendum est igitur de iure private, quod tripartitum est; collectum est enim ex naturalibus praeceptis aut gentium aut civilibus.

Justinian defines ‘law’ in terms of *Ius*, not in terms of *Lex*. ‘law’ is *Ius*: *Ius* is binding on all people Roman and non-Roman, while *Lex* is defined in the narrow sense, statutes practical for the proper functioning of the state, reflecting *Ius*. As Rome faded from empire into idea, *Ius* remained the dominant idea in the language of law.

## 2.5 Law in the European Middle Ages (~600CE – ~1300 CE)

For the next thousand years the most important documents in Western law would be written in *Latin*. It is no longer necessary to translate words for *law* across languages as *Lex* and *Ius* are still used, but upon closer examination, their usage changes over time.

During the reign of Justinian the western Roman empire had been splintered by invasions from Germanic tribes and had become exposed to a diverse collection of cus-

tomary law codes called the *leges barbarorum*. In the aftermath of the Rome's fall, the empire split under the rule of different 'barbarian tribes'; the Vandals on the Italian peninsula, the Ostrogoths in the east, and in Spain the Visigoths (Webster & Brown, 1997). From the Visigoths the *Visigoth Code* or *Forum Iudicum* emerged, one of the most complete examples of *leges barbarorum* we have access to today (Karl & Werminghoff, 1902). Written around 645 CE, the Visigoth Code combined aspects of Roman law, Catholic canon law, and Germanic law in one code written in Latin. This text marked the transition away from Roman law to Germanic law; a transition seen in the treatment of the words *Lex* and *Ius* (O'Callaghan, 1975). Opposite Justinian's Code, *Lex* in the Visigoth Code becomes the dominant word for 'law'. When the Visigoth Code contemplates law, it speaks of law in terms of *Lex* where Justinian spoke of law in terms of *Ius*. In the Visigoth Code, there is a short and revealing section defining *Lex*, which Cicero would likely approve of:

The law (*Lex*) is the rival of divinity; the oracle of religion; the source of instruction; the artificer of right (*artifex juris*); the guardian and promoter of good morals; the rudder of the state; the messenger of justice (*iustite*); the mistress of life; the soul of the body politic (Scott, 1910: Title II, Art II).

*Lex*, already understood as a form of regulation imposed from the empire of the state on the people, takes on this new deified form. *Lex* is understood to shape the society from the top down. *Lex* has decidedly taken over *Ius* as the primary word for law under Visigoth rule. *Ius* has become relegated to 'right or justice' and just as *Lex* is the rudder of the state, so does *Lex* drive the community's language of law (King, 1972).

*Lex* as the primary word for law would persist and inform Thomas Aquinas' language of law present in the *Summa Theologica*, 600 years after the Visigoth Code. Like the Visigoth Code Aquinas generally uses *Lex* when discussing law. However, he goes out of his way to define *Ius* by way of citing Cicero and gives us a brief history of *Ius* in the process:

[J]ustice (*iustitia*) took its start from nature, then certain things became customary because of their usefulness. Later the things which started in nature and were approved by custom were sanctioned by fear and reverence for the law (*Lex*) (I–II.Q91.A3.SC).

Aquinas' theory of *natural law* brings Cicero to the forefront of European legal thought once again. Aquinas' use of *Lex* and *Ius* is important: preferring to use *Lex* when referring to 'law' or 'The Law' broadly, while using *Ius* when referring to justice (II–I.Q95.A1.Arg2). However, Aquinas also used *Ius* to properly refer to 'law' when referring to categories of law: positive law, natural law, and the *Ius Gentium* (II–I Q95.A2.Arg2, Q95.A4.Arg1).

Aquinas, along with the rediscovery of Justinian's Code in the previous centuries, marked the end of the European Middle Ages and the beginning of the modern age of 'The Law'. Through the *Summa Theologica* Aquinas brings a dyadic conception of 'The Law' to the European *Ius Commune* and the development of national legal families present in modern Western Europe (du Plessis & Katz, 2009).

## 2.6 The Modern Age of Law (1300CE to Present)

As the Middle-Ages gave way to the Renaissance and modern European systems of law emerged, the words for ‘law’ in French, German, and English began to calcify, some carrying and others dropping the ideas of *Lex* and *Ius*.

In French, the ideas of *Lex* and *Ius* are rendered as *la loi* and *le droit*. Both *la loi* and *le droit* translate in English as *law*. *La loi* is used when discussing law as a statute, a rule, or a collection of the above by which a country is governed. Like *Lex*, *La Loi* refers to law as regulation. *Le Droit* is used when discussing law generally – for example *droit civil* – and is used specifically when referring to a right either legal or moral (Bach, 1998; *Code civil des français*, 1804, at 84 b1.t1.c1.art7). *La justice* and *l'équité* are the appropriate terms for justice in French (Bridge, 1994). By a quirk of etymological history, *le droit* does not descend from *Ius* but rather from the old French *droit*, *dreit* (right) in turn coming from the Latin *directus* meaning ‘straight’, the past participle of *dirigere* ‘to set straight’. *Le droit* is more than the ideological successor of *Ius*, encompassing both the idea of *Ius* and the category of law as a whole (Goody, 1986: 128). *Le droit* also returns to the Akkadian idea behind *mīšaru*, though *le droit* is not connected to religion in any sense, but instead is related to the community standard of ‘the right way of things’.

While *le droit* is a spiritual successor to *Ius*, the German *Recht* can draw a more direct lineage. *Recht* is the primary word for ‘law’ in German, referring specifically to ‘right’, and generally to the system of social regulations as a whole (*Deutsches Rechtswörterbuch* “Recht” DRW. XI: 261–302). When Germans speak of the ‘rule of law’, they speak of *Rechtsstaat* (Allan, 1998).<sup>9</sup> When speaking of justice, German uses *Gerechtigkeit*; unlike the French *le droit*, the conception of ‘justice’ is intimately connected to the language of law in German. When speaking of ‘statutes’, ‘enactments’, ‘regulation’, or other *Lex* words, modern German uses ‘*Gesetz*’ meaning ‘to set right (*recht*)’ (*Deutschen Rechtswörterbuchs*, DRW. IV: 519–520). *Gesetz* exists to make the state *recht*. *Recht* is law which conforms to custom or right, while *Gesetz* is the legislation which regulates the state to conform to *Recht*. Or put another way, *Gesetz* is *Lex* which regulates, *Recht* is *Ius* which is informed by culture.

What does it mean for the conception of law that the French consider law as both *la loi* (*Lex*) and *le droit* (*Ius*)? How does a *Recht* (*Ius*) centred understanding of law change how a German approaches her legal system? What does it mean for English to only have one word for law?

By nature of the British Isles being split from the rest of the continent, the English language of law developed in pseudo-isolation from continental civil law systems. From this linguistic position arose the unique English language of law.

At best, English has two ways to discuss law; 1) a law and 2) The Law. When attached to the indefinite article, ‘a law’ refers to a specific statute or rule (the *Lex* dimension of

---

<sup>9</sup> Though similar, *Rechtsstaat*, and the rule of law cannot be said to be analogous ideas.

law); with the definite article, ‘The Law’ refers to the general conception of law in its most macro sense. One could argue that ‘The Law’ contains both *Lex* and *Ius*, and this is probably true. However, it is clear that ‘The Law’ as an English unit of meaning does not etymologically contain *Ius*. Instead of descending from Latin like German and French, the English word *law* developed from the Scandinavian root meaning ‘to fix’ or ‘to lie’ (Goody, 1986: 128). This etymological difference may explain why the *Ius* conception is not built into the English *law*. Rather ‘justice’, ‘rights’, and ‘order’ are only part of ‘The Law’ to the extent that they are discussed in the same turn of phrase, such as *law and justice* or *law and order*. This is unlike the German language of law where *Recht* means both ‘The Law’ and ‘right’. Consider the difference between *Rule of Law* in English and *Rechtsstaat* in German. One invokes the rule of a top-down enforced system of regulation and rules (*Rule of Lex*), the other a bottom-up voluntary system bounded by rights and justice (*Rule of Ius*).

Without additional work the English language of law does not contain the rich diversity of ideas contained in contemporary conceptions of *Recht*, *droit*, *loi*, *Gesetz* or historical conceptions of *Ius* and *Lex*. *Lex* and *Ius* are two distinct aspects which inform the whole of ‘The Law’. This dyadic understanding has been abandoned in English but is retained in other languages.<sup>10</sup> Consider the natural law maxim in both English and Latin (St. Augustine, 1947: b.1,s5.,1.5.11.33)

An unjust law is not law at all.

*lex iniusta non est lex*

*Lex* not corresponding with *Ius* is not ‘The Law’ at all. In Latin, the phrase has more power as *Lex* and *Ius* are two halves of the same coin. *Lex* cannot exist without *Ius*; it is a statement of the very nature of law. In English, the maxim is more like an additional requirement on a ‘law’ to be ‘just’, which only seems like an addition to *Lex* because *law* lacks the etymological depth to communicate the necessity of *Ius*.

---

<sup>10</sup> Perhaps the linguistic abandonment of *Ius* from the language of law has provided space for ‘right and justice’ to be hived off from ‘law’ providing a way for conceptions of ‘justice’ to be changed and challenged. This may be why Rawls’ famous redefinition of *justice* as fairness stuck, and why what is ‘just’ in English is no longer related to order. In this sense *Ius* as ‘justice’ apart from ‘law’ provides the space to reconsider the nature of justice. It could be argued that this is a feature of English common law enabling ideas of law to more easily change.

### 3. A Dyadic Linguistic Theory of Law

Built into the etymology of *law* are two different, but related ideas of ‘law’ which can be broadly defined in terms of *Lex* and *Ius*. They are more than narrow descriptors; they are ways of speaking of aspects of ‘The Law’. Whether or not they are recognized, the interaction between these two aspects of law forms what a culture describes as ‘The Law’.

*Ius* describes the parts of ‘The Law’ which arises from the culture, becoming something more than etiquette or cultural rule. *Ius* is unwritten constitutional principles, what is ‘right’, what is straight, the way of the world, and the way things should be. *Ius* is cultural norms which have transcended past norms of religion and etiquette and become broadly binding in the minds of the people. *Ius* is fairness, and principles of fundamental justice, *Ius Gentium*, the casuistic private law binding the interactions between people without outside enforcement. *Ius* is primary rules and the rule of recognition. *Ius* is that which people willingly choose to follow. *Ius* is human rights, civil rights, and wearing clothes in public. *Ius* is the aspect of law which emerges from primordial soup of culture.<sup>11</sup>

*Lex* encompasses those aspects of ‘The Law’ which are imposed. Broadly, *Lex* is law imposed by the state on the people. But it is more than state power. *Lex* is ‘regulation’ or control or structure, it is ‘the rudder of the state’. *Lex* is arbitrary and enforced through exercises of power. *Lex* is the apodictic declarations of the pharaoh and emperors, the enactments of the legislature, the regulation of the administration. *Lex* is the infrastructure of a society’s normative universe, primary and secondary rules. *Lex* is the requirement to drive on the right side of the road and purchase parking tickets. *Lex* is public law, regulation, and taxes. *Lex* is the aspect of law imposed on the people by some higher power for the efficient functioning of a complex society.

*Lex* and *Ius* together make up ‘The Law’. To have one without the other, would be to have the day without the night, yin without yang, push without pull, destruction without creation. What can be properly understood as ‘The Law’ can be understood by consider-

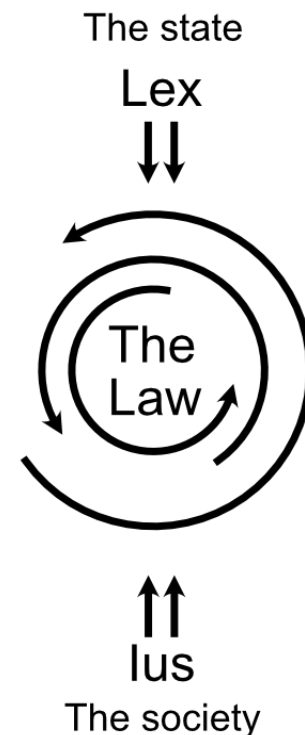


Figure 1: Legal Discourse

<sup>11</sup> Some sources indicate that *Ius* can also translate as ‘soup, or gravy’. This line could read the primordial *Ius* of culture, which is both a beautiful encapsulation of the meaning of the word, and a very silly idea.

ing the interaction between these two elements merging and swirling in complex societies. *Lex* and *Ius* are in tension, but do not compete. They inform one another, and through this alchemical process ultimately define what a society believes ‘The Law’ is. When *Lex* and *Ius* correspond fully, there is harmony. When *Lex* and *Ius* do not correspond, there is discord.<sup>12</sup> When *Lex* and *Ius* correspond mostly, but differ somewhat, there is legal discourse and ‘The Law’ changes. *Lex* is shaped by *Ius*, and *Ius* is shaped by *Lex*, through this discourse ‘The Law’ is formed.

In my neighbourhood there is a small fenced-in tennis court. The court occupies the southeast corner of a quaint community park, which mainly consists of benches for adults, an old wooden play structure for children, and a grassy clearing for dogs. In my city all parks are *de facto* dog parks. My dog is a small white scruffy rescue pup who thinks she can tussle with the big dogs; she cannot. For her own good my partner and I only let our dog off leash in the tennis court. We’re not the only ones who do this, in fact, it has become a neighbourhood norm that small dogs may play in the tennis court, provided there are no tennis players looking to use the space; it’s a small doggy utopia.

Casting a shadow over this neighbourhood doggy Elysium is *Lex* in the form of an old city park board sign which reads:

limit game time to 30 minutes;  
no swearing or profanity;  
and no dogs

Yet each day neighbourhood dogs run – performing fluffy acts of civil disobedience – in defiance of *Lex*. But can ‘The Law’ truly be said to be broken? The neighbourhood *Ius* has rejected the draconic dictates imposed by the park board and reached a harmonious compromise between tennis players and dog owners.

On the tennis court, dogs run free in the shadow of *Lex*, the *Ius Gentium* of the neighbourhood governs. United not by dictates, commands, or apodictic rules, *Ius* protects the right of the yorkies and dachshunds to run, free from the terror of the mastiffs and hounds, while *Lex* enforces the right of the tennis players to play. On a sunny fall day, when the golden sun rays warm the chilled autumn air, the big dogs play in the park, the small dogs in the tennis court, the children on the playground, adults chatting on their benches, knowing when to recognize that tennis players are arriving to claim their *rightful* place; the neighbourhood engages in the intricate, yet fully comprehensible dance of *Lex* and *Ius*.

---

<sup>12</sup> See figures in Appendix B.

## References

### Mesopotamia

- Avalon Project at the Yale Law School (n. d.): *The Code of Hammurabi*. Available at [yale.edu/lawweb/avalon/medieval/hammenu.htm](http://yale.edu/lawweb/avalon/medieval/hammenu.htm) (accessed 2 December 2022).
- Bergmann, Eugen (1953). *Codex Hammurabi: Textus Primigenius*. Rome: Pontificium Institutum Biblicum.
- Black, Jeremy, George, Andrew, Postgate, Nicholas & Breckwoldt, Tina (2000). *A Concise Dictionary of Akkadian*. 2<sup>nd</sup> Edition. Wiesbaden: Harrassowitz.
- Đedović, Boban (2021): *Electronic Hammurabi: A Digital Version of the Law Code of Hammurabi*. (OMNIKA Foundation, last updated July 30, 2022). Available at [ehammurabi.com](http://ehammurabi.com) (accessed 2 December 2022).
- Goody, Jack (1986). *The Logic of Writing and the Organization of Society*. Cambridge: University Press.
- Harper, Robert Francis (1904). *The Code of Hammurabi King of Babylon. About 2250 B.c. Autographed Text Transliteration Translation Glossary Index of Subjects Lists of Proper Names Signs Numuerals*. Chicago: University Press; Callaghan & Co.
- Huehnergard, John (2011). *A Grammar of Akkadian*. 3<sup>rd</sup> Edition. Winona Lake: Eisenbrauns.
- King, L. W. (2007). *The Code of Hammurabi*. NuVision Publications.
- Kramer, Samuel N. (1954). Ur-Nammu Law Code: Who Was Its Author? *Orientalia*, 23(1), 40–51.
- Leick, Gwendolyn (2002). *A Dictionary of Ancient Near Eastern Mythology*. London: Routledge.
- Roth, Martha T. (1995). *Law Collections from Mesopotamia and Asia Minor. Writings from the Ancient World*, vol. 6. Atlanta: Society of Biblical Literature.
- Steele, Francis Rue (1948). *The Code of Lipit-Ishtar*. *American Journal of Archaeology*, 52(3), 425–450. DOI: [10.2307/500438](https://doi.org/10.2307/500438).
- Van de Mierop, Marc (1999). *Cuneiform Texts and the Writing of History*. London: Routledge.

### Hebrew

- Brown, Francis (1996). *The Brown-Driver-Briggs Hebrew and English Lexicon: with an Appendix Containing the Biblical Aramaic. Coded with the Numbering System from Strong's Exhaustive Concordance of the Bible*. Peabody: Hendrickson Publishers.
- Chinitz, Jacob (2005). Ten Terms in the Torah for Teaching Commandments and Laws. *Jewish Bible Quarterly*, 33(2), 113–119.
- Sacks, Jonathan (n. d.). *Tzedek: Justice and Compassion*. Available at [chabad.org/parshah/article\\_cdo/aid/2269078/jewish/Tzedek-Justice-and-Compassion.htm](http://chabad.org/parshah/article_cdo/aid/2269078/jewish/Tzedek-Justice-and-Compassion.htm) (accessed 21 July 2024).
- Strong, James (1986). *Strong's Exhaustive Concordance of the Bible*. Nashville: Abingdon Press.
- Westminster Leningrad Codex*. Text courtesy of [www.tanach.us](http://www.tanach.us).
- Wigram, George V. (1996). *The Englishman's Hebrew Concordance of the Old Testament: Coded with the Numbering System from Strong's Exhaustive Concordance of the Bible*. Peabody: Hendrickson Pub.

### Greek

- Aristotle. tr Frederic G Kenyon (1891). *Aristotle on the Athenian Constitution*. London: G. Bell and Sons.
- Aristotle. ed. W. D. Ross (1957). *Aristotle's Politica*. Oxford: Clarendon Press.
- Berman, Harold J. (1974). *The Interaction of Law and Religion*. Nashville: Abingdon Press.
- Freeman, Kathleen (1963). *The Murder of Heroes and Other Trials from the Athenian Law Courts*. New York: W.W. Norton & Company.
- Homer (1919). *The Odyssey*. London, New York: W. Heinemann; G.P. Putnam's sons.



- Liddell, Henry G. & Scott, Robert (1940). *A Greek-English Lexicon. Revised and augmented throughout by Sir Henry Stuart Jones. With the assistance of Roderick McKenzie.* Oxford: Clarendon Press. Available at: [lsj.gr/wiki/Main\\_Page](https://lsj.gr/wiki/Main_Page) (accessed 21 July 2024).
- MacDowell, Douglas M. (1978). *The Law in Classical Athens.* Ithaca: Cornell University Press.
- Rhodes, Peter J. (1991). The Athenian Code of Laws, 410–399 B. C. *The Journal of Hellenic Studies*, 111, 87–100. DOI: [10.2307/631889](https://doi.org/10.2307/631889).
- Smith, William (1880). *A Dictionary of Greek and Roman Biography and Mythology.* London: John Murray.
- Vinogradoff, Paul (1922). *Outlines of Historical Jurisprudence vol. 2. The Jurisprudence of the Greek City.* London: Oxford University Press.
- Yunis, Harvey (2000). Politics as Literature: Demosthenes and the Burden of the Athenian Past. *Arion: A Journal of Humanities and the Classics*, 8(1), 97–118). Available at [jstor.org/stable/20163787](https://www.jstor.org/stable/20163787) (accessed 21 July 2024).

## Roman

- Asmis, Elizabeth (2008). Cicero on Natural Law and the Laws of the State. *Classical Antiquity* 27(1), 1–33. DOI: [10.1525/ca.2008.27.1.1.t](https://doi.org/10.1525/ca.2008.27.1.1.t).
- Blume, Fred H., Frier, Bruce W., Connolly, Serena & Kearley, Timothy (2016). *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text Based on a Translation by Justice Fred H. Blume.* Cambridge: Cambridge University Press.
- Cicero (1928). *On the Republic. On the Laws.* Translated by Clinton W. Keyes. Loeb Classical Library 213. Cambridge, MA: Harvard University Press.
- (1889). Latin text M. Tullius Cicero. *Librorum de Re Publica.* Leipzig: C. F. W. Mueller Teubner.
- Cicero (1842). *Treatise on the Laws.* tr. Francis Barham. London: Edmund Spettigue.
- (1879). *A Latin Dictionary.* Founded on Andrews' edition of Freund's Latin dictionary. Revised, enlarged, and in great part rewritten by. Charlton T. Lewis and Charles Short. Oxford: Clarendon Press.
- McDonald, A. H. (1939). The History of Rome and Italy in the Second Century B.C. *Cambridge Historical Journal*, 6(2), 124–146. Available at: [jstor.org/stable/3020713?seq=1](https://www.jstor.org/stable/3020713?seq=1) (accessed 21 July 2024).
- Mousourakis, George (2015). *Roman Law and the Origins of the Civil Law Tradition.* Cham: Springer.
- Peck, Harry Thurston (1898). "Ius". In Peck (Ed.), *Harper's Dictionary of Classical Antiquities* (p. 901). New York: Harper & Brothers.
- du Plessis, Paul & Katz, Stanley N. (2009). *The Age of Justinian: The Oxford International Encyclopedia of Legal History.* Oxford: University Press.
- Smith, William & Hall, Theophilus D. (1871). *A Copious and Critical English-Latin Dictionary.* New York, Cincinnati, Chicago: Harper & Brothers.
- Virgil (1981). *The Aeneid of Virgil.* Toronto; New York: Bantam Books.

## Middle Ages

- Aquinas, Thomas (1981). *Summa Theologica.* Vol. 4. Translated by Fathers of the English Dominican Province. Westminster: Christian Classics.
- King, Paul David (1972). *Law and Society in the Visigothic Kingdom.* Cambridge: Cambridge University Press.
- O'Callaghan, Joseph F. (1975). *A History of Medieval Spain.* Ithaca: Cornell University Press.
- Saint Augustine (1947). *De libero arbitrio voluntatis,* tr. Carroll Mason Sparrow. Richmond: The Dietz press.
- Scott, Samuel P. (1910). *The Visigothic Code (Forum Judicum).* Boston: Boston Book Company.
- Webster, Leslie & Brown, Michelle (1997). *The Transformation of the Roman World Ad 400–900.* London: British Museum Press.

Zeumer, Karl & Werminghoff, Albert (1902). *Leges Visigothorum*. Hannoverae et Lipsiae: Impensis Bibliopolii Hahniani.

## Modern

- Bach, L. (1998). *Civil Law: Introduction to the Study of Law, Natural Persons, Family Property, Obligations, Security*, vol. 1, 13<sup>th</sup> edition, Paris: Sirey.
- Bridge, Frank H. S. (1994). *The Council of Europe French-English Legal Dictionary*. Strasbourg: Council of Europe Press.
- (1804). *Code civil des français*. Édition originale et seule officielle. Paris: Imprimerie de la République.
- Heidelberger Akademie der Wissenschaften & Preußische Akademie der Wissenschaften (Eds.) (1914). *Deutsches Rechtswörterbuch. Wörterbuch der älteren deutschen Rechtssprache*. Weimar: Böhlau.
- France (1827). *The Code Napoleo : Or the French Civil Code. Literally Translated from the Original and Official Edition Published at Paris in 1804*. London: William Benning. Available at: [oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2353/CivilCode\\_1566\\_Bk.pdf](https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2353/CivilCode_1566_Bk.pdf) (accessed 26 July 2024).
- Black, Henry C. & Garner, Bryan A. (2009). *Black's Law Dictionary*. St. Paul: West.
- Douglas, Harper (n. d.). Etymology of droit. *Online Etymology Dictionary*. Available at: [etymonline.com/word/droit](https://etymonline.com/word/droit) (accessed 2 December 2022).
- Allan, Trevor R. S. (1998). *Rule of law (Rechtsstaat)*. Routledge Encyclopedia of Philosophy. Taylor and Francis.

## General Sources

- Bryen, Ari Z. (2013). *Violence in Roman Egypt: A Study in Legal Interpretation*. Philadelphia: University Press.
- Cover, Robert M., Sarat, Austin, Ryan, Michael & Minow, Martha (1993). *Narrative Violence and the Law: The Essays of Robert Cover*. Ann Arbor: University of Michigan Press.
- Douglas, Harper (n. d.). Etymology of law. *Online Etymology Dictionary*. Available at: [etymonline.com/word/law](https://etymonline.com/word/law) (accessed 21 November 2022).
- Etxabe, Julen (2019). *A Cultural History of Law in Antiquity*. London: Bloomsbury Academic.
- Etxabe, Julen (2013). *The Experience of Tragic Judgment*. London: Routledge.
- Etxabe, Julen (2022). The Dialogical Language of Law. *Osgoode Hall Law Journal*, 59(2), 429–515. DOI: [10.60082/2817-5069.3783](https://doi.org/10.60082/2817-5069.3783).
- Geertz, Clifford (1983). *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: Basic Books.
- White, James B. (1973). *The Legal Imagination*. Boston: Little Brown.

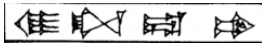
Note: JLL and its contents are Open Access publications under the [Creative Commons Attribution 4.0 License](https://creativecommons.org/licenses/by/4.0/).



Copyright remains with the authors. You are free to share and adapt for any purpose if you give appropriate credit, include a link to the license, and indicate if changes were made.

Publishing Open Access is free, supports a greater global exchange of knowledge and improves your visibility.

## Appendix A: Glossary



Primary Source: Code of Hammurabi (1755–1750 BC)  
Original Language: Akkadian Cuneiform  
Transliteration: **mi-ša-ra-am**, general form **mīšaru**  
Sumerian Form: **NÍG.SI.SÁ**  
Code of Ur-Nammu (2100–2050 BCE.), Code of Lipit-Ištar (1870 BC – c. 1860 BC),  
Meaning in Context:

- Justice or Righteousness, contrary to evil and violence
- of deity, esp. Samas; as DN 2. m. sakdnu(m) "1"; OB (royal decree promulgating justice)
- From the root **ešēru** meaning: to be well ; to be straight, fair ; to be a success ; to go straight ; to charge, attack Š. to put in order ; to prepare Št1. to be put in order ; to be guided straight Št2. to put in order ; to prepare ; to lead ; to carry out correctly

חֶקֶן

Primary Source: The TaNaK found by Josiah ~500BCE  
Original Language: Hebrew  
Transliteration: **ḥōq**  
Meaning in Context:

- An enactment;,
- an appointment (of time, space, quantity, labor or usage)
- appointed, bound, commandment, convenient, custom, decree(-d), due, law, measure, necessary, ordinance(-nary), portion, set time, statute, task.

מצוה

Primary Source: The TaNaK Or Tanakh - 8th/7th centuries BCE – 2nd/1st centuries BCE  
'Found' by Josiah 500BC  
Original Language: Hebrew  
Transliteration: **mišvâ / mitsvâh**  
Meaning in Context:

- a command, whether human or divine (collectively, the Law)
- which was commanded, law, ordinance, precept.

יָשָׁר

Primary Source: The TaNaK found by Josiah ~500BCE  
Original Language: Hebrew  
Transliteration: **yāšar**  
Meaning in Context:

- to be straight or even;
- figuratively, to be (causatively, to make) right, pleasant, prosperous:
- direct, fit, seem good (meet), please (will), be (esteem, go) right (on), bring (look, make, take the) straight (way), be upright(-ly).

תּוֹרָה

Primary Source: The TaNaK found by Josiah ~500BCE  
Original Language: Hebrew  
Transliteration: **tôwrâh**  
Meaning in Context:

- a precept or statute, especially the Decalogue or Pentateuch:
- law especially as it relates to religious ritual

צֶדֶק

Primary Source: The TaNaK found by Josiah ~500BCE  
Original Language: Hebrew  
Transliteration: **tzédek**  
Meaning in Context:

- meaning to be right, righteous, or just;
- religiously belonging to God (Deut 1:17).

דִּין

Primary Source: The TaNaK found by Josiah ~500BCE  
Original Language: Hebrew  
Transliteration: **din**  
Meaning in Context:

- judgment
- cause,
- plea, strife,
- administration of judgment

מִשְׁפָּט

Primary Source: The TaNaK found by Josiah ~500BCE  
Original Language: Hebrew  
Transliteration: **mišpāṭ**  
Meaning in Context:

- Justice. Properly, a verdict (favorable or unfavorable) pronounced judicially,
- a sentence or formal decree (human or (participant's) divine law, individual or collective),
- including the act, the place, the suit, the crime, and the penalty; abstractly, justice,
- including a participant's right or privilege (statutory or customary).

## דָּבָר

Primary Source: The TaNaK found by Josiah ~500BCE  
 Original Language: Hebrew  
 Transliteration: *Davar* / *dāḇar*  
 Meaning in Context:

- Word,
- command,
- direction from God

## νόμος / ΝΟΜΟΣ

Primary Source: Aristotle, *Athenian Constitution* ~328 - 322 BC.  
 Original Language: Ancient Greek (Classical Period) 500–300 BC  
 Transliteration: *Nomos*  
 Meaning in Context:

- that which is in habitual practice, use or possession.
- Where it is the custom... Alc.Supp.25.5; νόμος πάντων βασιλεύς custom is lord of all,
- κατὰ νόμον = according to custom or according to law, Hes.Th.417, Hdt.1.61
- statute, ordinance made by authority, [Σόλων] νόμους ἔθηκεν ἄλλους, τοῖς δὲ Δράκοντος θεσμοῖς ἐπαύσαντο χρώμενοι πλὴν τῶν φονικῶν Id.Ath.7.1
- custom having the force of law, law: νόμῳ ATT according to the law; νόμῳ καὶ δίκη ATT according to law and right

## δίκη / ΔΙΚΗ

Primary Source: Aristotle, *Athenian Constitution* ~328 - 322 BC  
 Original Language: Ancient Greek (Classical Period) 500-300BC  
 Transliteration: *Diké*  
 Meaning in Context:

- *custom, usage*, αὕτη δίκη ἐστὶ βροτῶν this is the custom of mortals, Od.; ἡ γὰρ δίκη ἐστιγερόντων id=Od.:—acc. δίκην as adv., after the manner of, c. gen., δίκην ὕδατος Aesch., Plat.
- *right* as dependent on custom, law, right, Hom., etc. δίκη ἐστὶ, like δίκαιόν ἐστι, Aesch.: —δίκη duly, rightly, Il., Trag.; κατὰ δίκην Hdt.; μετὰ δίκης Plat.; πρὸς δίκης Soph.
- *a judgment*, δίκην εἰπεῖν to give judgment, Il.: pl. righteous judgments, Hom.
- *a lawsuit*, properly, a private suit or action, opp. Το γραφή (a public suit or indictment), Plat., etc.

## LEX

Original Language: Latin  
 Transliteration: *Lex*  
 Meaning in Context:

- legislation
- statute
- act
- passed by popular assemblies of the patricians and the plebs.
- In gen., a law, precept, regulation, principle, rule, mode, manner

## IUS

Original Language: Latin  
 Transliteration: *Ius*  
 Meaning in Context:

- Law,
- Right
- Just

## Iustitia

Original Language: Latin  
 Transliteration: *Iustitia*  
 Meaning in Context:

- Justice
- “is the set and constant purpose which gives to every man his due”(right)

## La Loi, Loi

Original Language: French  
 Transliteration: *Loi*  
 Meaning in Context:

- Law, act,
- statute, rule,
- measure,
- the collection of rules according to which people live or a country etc is governed

## Le Droit, Droit

Original Language: French  
 Transliteration: *Droit*  
 Meaning in Context:

- Law,
- "a right, a legal claim to one's due,"

## Gesetz

Original Language: German  
 Transliteration: *Gesetz*  
 Meaning in Context:

- “to set right”
- law, act, bill, statute
- individual law, or statute enacted by legislation

*Recht*

Original Language: German

Transliteration: *Recht*

Meaning in Context:

- Specific - right, law, justice
- General - Designation for a system of social regulations of different bindingness and completeness, the design of which ranges from the concrete conflict resolution between the parties to non-situational ideas of what is good, correct and thus binding, to the legal system developed in the modern state with usually formally defined conditions for origin and application; views of the nature of the law are made clear by evidence concerning

*Right*

Original Language: English

Meaning in Context:

- morally good, justified, or acceptable.
- a moral or legal entitlement to have or obtain something or to act in a certain way

*Law*

Original Language: English

Meaning in Context:

- the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision. Any written or positive rule or collection of rules prescribed under the authority of the state or nation, as by the people in its constitution. and order a system or collection of such rules.

### Appendix B: Figures

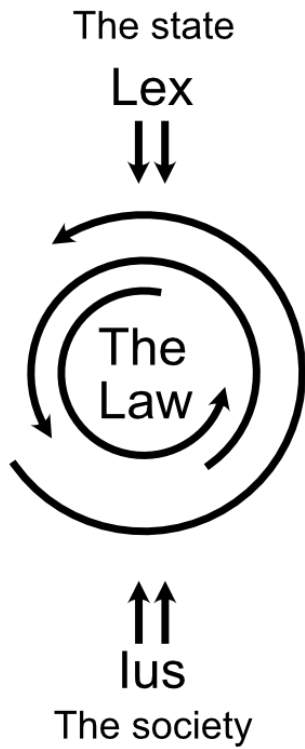


Figure 2: Legal Discourse

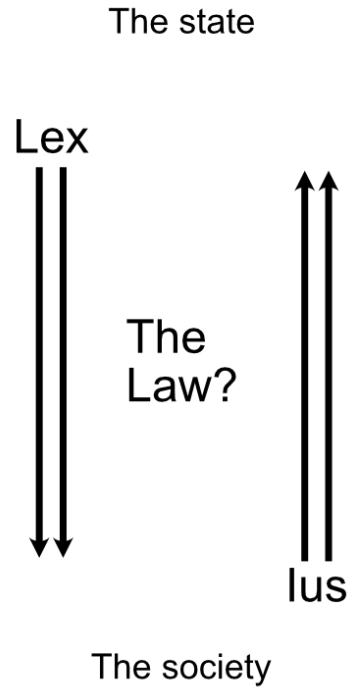


Figure 1: Legal Discord

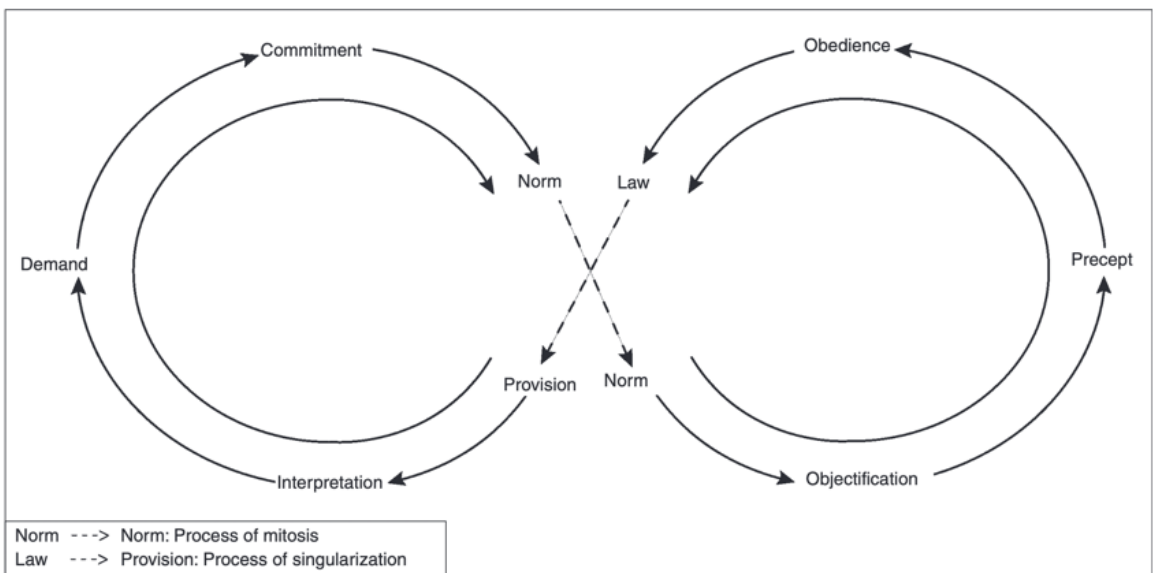


Figure 3: Process of Legal Meaning. From Julen Etxabe's 'The Experience of Tragic Judgment'



## Appendix C: Word Chart

Word Chart	<i>Lex</i>			<i>Ius</i>		
	Word meaning / rule / regulation / statute / enactment / law from the sovereign / positive law / politically made law / regulation / command / What must be done.			Word meaning the right way of being living and doing things / order / words for customary law / law from society common law / Interpersonal interaction / what should be done		
<b>Mesopotamian</b>	Og	T	Meaning in context	OG	T	Meaning in context
Code of Lipit-Ištar (1870 BC – c. 1860 BC)	-	-	-	Sumerian	NÍG.SI.SÁ	Justice, Righteous, Good
Code of Ur-Nammu (2100–2050 BCE)	-	-	-	Sumerian	NÍG.SI.SÁ	Justice, contrary to evil and violence
Code of Hammurabi (1755–1750 BC)	-	-	-	𒌦 𒍪 𒍪 𒍪 Akkadian	mīšaru mi-ša-ra-am	Justice or Righteousness
<b>Hebrew</b>	Og	T	Meaning in context	OG	T	Meaning in context
The TaNaK Or Tanakh  8th/7th centuries BCE – 2nd/1st centuries BCE - ‘Found’ by Josiah 500BC	מצוה	mišvâ / mitsvâh	a command, whether human or divine	משפט	mišpāṭ	Justice. Properly, a verdict
	חק	ḥōq	An enactment; hence, commandment, convenient,	ישר	Yāšar	to be straight or even; order
	תורה	tōwrâh	precept or statute, law especially as it relates to religious ritual	צדק	tzédek	to be right, righteous, or just; religiously belonging to God
<b>Greek</b>	Og	T	Meaning in context	OG	T	Meaning in context
Aristotle, Athenian Constitution ~328 - 322 BC.	νόμος NOMOS	Nomos	anything assigned, a usage, custom, law, ordinance	δίκη ΔΙΚΗ	Diké	Custom, usage. right, especially a judicial verdict
<b>Roman</b>	Og	T	Meaning in context	OG	T	Meaning in context
Various sources	LEX, Leges	Lex,	Legislation /statute / act	IŪS	Ius	Right, Law
<b>Modern</b>	Og	T	Meaning in context	OG	T	Meaning in context
French	La Loi Les Lois	Loi	Acts, Law, Statute	Le Droit	Droit	Law, "a right, a legal claim to one's due."
German	Gesetz	Gesetz	“to set right”, Law, act, bill,	Recht	Recht	right, law, justice,
English	Law	Law	Law	Right	Right	morally good, justified, or acceptable.