

## **Lycurgus to Moses: Thinking with Lawgivers in Legal and Political Philosophy**

The 2024 Isaiah Berlin Lectures, Faculty of Philosophy, University of Oxford  
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### Lecture V. Moses and Greek lawgivers in Philo, Josephus and Rousseau

#### *Introduction*

##### 1. *Moses among the lawgivers*

Text A. 'The laws of Solon, of Numa, of Lycurgus are dead; those of Moses, far more ancient, are still alive'. (Rousseau, 'On Laws', *Political Fragments* IV [On Laws], 24 [About the Jews])

Text B. Rousseau on three ancient figures of the 'lawgiver' (as vs modern 'lawmakers'): 'Moses, Lycurgus, and Numa'. (Rousseau, *On the Government of Poland*, 2.2)

Text C. Josephus similar point about Moses in contrast to Lycurgus. (*AJ* 4.225)

Text D. Lycurgus, Numa, Moses not just lawgivers but also 'founders' (a word he uses about Numa): those who have succeeded in forging a 'people' (*Poland* 2.3-6, with Numa in 2.6).

Di: on Moses: 'the astonishing enterprise of instituting as a national body a swarm of wretched fugitives' (*Poland* 2.3).

Dii: on Lycurgus: also 'undertook to institute a people', cultivating 'that ardent love of fatherland which was always the Spartans'...sole passion' (*Poland* 2.5)

##### 2. *Potted introductions of Philo and Josephus* (translations herein all from Loeb unless noted)

Philo of Alexandria (c. 20 BCE – c. 40 CE): read the Torah in Greek (Septuagint) and wrote works commenting on and interpreting the Five Books of Moses (including a study of Genesis; lives of Abraham (as well as Isaac and Jacob, both lost), Joseph, and Moses (*Vit. Moses*, 2 books); and commentaries on the Decalogue, on the Special Laws of the Jews, and other related works) –influenced by both Plato and Platonism and by Stoic philosophy.

Josephus [Joseph ben Mattathias; took up the name Flavius Josephus], 37/38 CE – c.100 CE): Jewish priest and general born in Jerusalem –read the Bible in Hebrew – who became an advisor to Vespasian and died in Rome; wrote *History of the Jewish War* (in which he had served); *The Antiquities of the Jews* [completed in 93/94 CE], of which the relevant volumes are I-IV, and *Against Apion* (rebutting a pagan who had attacked Judaism): both latter focus on Moses as lawgiver and his laws and constitution.

##### 3. *Moses as lawgiver at all? Moses as lawgiver extraordinaire?*

Text E: Rabbinic view: God as the giver of the Torah (*matan Torah*) 'by Moses' hand'; Moses the 'receiver' of the Torah (as in the opening of *Pirkei Avot*, a tractate of the Talmud), who wrote it down (apart from e.g. the Ten Commandments)

Text F: Josephus: God has 'given you the laws' (*AJ* 4.319); death of Moses 'the lawgiver' (*AJ* 4.322)

Text G: Philo: 'I purpose to write the life of Moses, whom some describe as the lawgiver of the Jews, others as the interpreter of the Holy Laws' (*Vit. Mos.* 1.1, Loeb trans. modified: 'lawgiver' instead of 'legislator'); the laws which Moses 'left behind him' (*Vit. Mos.* 1.2)

Text H: Philo: Three modes of relationship God-Moses (*Vit. Mos.* 2.183):

- i. God giving laws and teachings in his own person - Moses as his prophet/interpreter
- ii. Moses asking questions of God on his own initiative, to which God replies, a mode of 'combination and partnership'
- iii. Moses as being given divine foreknowledge through God's providence

Text I: Architecture metaphors

- i. Philo: God as the architect who as craftsman 'sketches in his own mind' (*Opif.* 1.17) 'as it were in wax' (1.18), the figures of the buildings he will construct in a city, resulting in this city being 'engraved in the soul of the artificer as by a seal' (1.20))
- ii. Rousseau: 'wise founder' (Minos, Plato) as 'architect, [who] before putting up a big building, observes and tests the ground to see whether it can bear the weight' (SC II.8)

Text J: 'Dependency thesis': Greeks (lawgivers) dependent on Jews (Moses) (Ridings 1995)

- i. Jewish historian Eupolemus fragment: Moses was 'the inventor of the first alphabet and the first to write laws' (fr. IB, cited in Westwood 2023: 141)
- ii. Numenius: 'What is Plato other than Moses speaking Attic [Greek]'?
- iii. Josephus: Plato's laws less difficult than Moses', which were nevertheless realized (*AJ* 4.223-224; see also *AJ* 4.257 on Plato) (and cf. conclusion of Plut. *Lyc.*)

4. *Why Philo, Josephus and Rousseau?*Text K. Platonic and mutual influences:

- i. example: Philo: the 'enacted laws' (*tous tethentas nomous*) are nothing other than 'memorials' (Loeb trans.; or 'reminders') (*hupomnēmata*) 'of the life of the ancients, preserving to a later generation (*hois echrēsanto*) their actual words and deeds' (*Abr.* 1.5)
- ii. Rousseau (SC IV.8) referring to 'theocracy', a word coined by Josephus (*CA* 2.165)

Text L. Rousseau on the Legislator (Lawgiver) in the *Social Contract*:

- i. necessary as 'guide' to bring about 'public enlightenment' in enlightening 'the judgment that guides' the general will (II.6) = 'the founding of a people' (II.7).
  - ii. 'the mechanic who invents the machine' and who can '[transform] each individual...into a part of a larger whole...[by] substituting a partial and moral existence for the physical and independent existence we have all received from nature' (II.7)
  - iii. 'When Lycurgus gave his fatherland laws, he began by abdicating the Throne' (II.7).
- I. *'Wisely selective laying down' and the relationship between lawgiver and ruler*

Text M. Josephus on legislative virtue – and popular acceptance: 'the virtue of a legislator is to have insight to see what is best, and to persuade those who are to live under the laws (*peisai tous chrsomenous*) that he introduces; the virtue of the masses is loyalty to abide by the laws adopted and, in prosperity or in adversity, to make no change in them' (*CA* 2.153, trans. modified)

Text N. No ordinary selection: Josephus: 'Our lawgiver [Moses]...did not look at any of these [other Greek constitutions] ...' (*CA* 2.165)

Text O: Philo: distinct power/capacity (*dunamis*) of Moses as: lawgiver, king, high priest, prophet

Text P: Plato, *Statesman*:

- i. 305e2-6: the form of expertise 'most justly' called statecraft (*politikē*) in virtue of the fact that it 'rules over all of these [sc. other forms of expertise], and cares for the laws and all that is to do with the city, and weaves everything together in the most correct way'
- ii. the statesman as the 'legislator-king' (*nomotheou basileōs*) (305b5-6); 'the prescription of the legislator' (*tēn tou nomothetou taxin*) (305c2)
- iii. by contrast: the *dunamis* of the judge as 'a guardian of the laws' whose role is 'subordinate of that other capacity' (namely, kingship) (305c6-8).

Text Q: Rousseau: the 'science of the legislator' involves being able to manage the 'actual friction...in each concrete situation' (*Geneva Manuscript* (I.iv.8)

## II. Purpose

### Text R:

- i. Rousseau: 'It will always be great and difficult to subject the most cherished affections of nature to the fatherland and to virtue' (*Political Fragments* V [On Honor and Virtue], 8)
- ii. Josephus: 'To this cause above all we owe our admirable harmony [*homonoia*]. Unity and identity of religious belief, perfect uniformity in habits and customs, produce a very beautiful concord [*sumphōnia*] in human character' (CA 2.179)
- iii. Both Philo and Josephus refer to purpose with *gnōmē* (and sometimes *prohairesis*) (e.g. for Josephus, AJ 3.186 for *gnōmē*)

Text S: Rousseau: 'The same spirit guided all ancient Lawgivers and their institutions. All of them sought bonds that might attach the Citizens to the fatherland and to one another, and they found them in distinctive practices' including religious ceremonies, games, exercises, and spectacles which (speaking of the last) 'stirred their hearts, fired them with a lively spirit of emulation, and strongly attached them to the fatherland with which they were being kept constantly occupied'. (*Poland* 2.7)

### III. Tools: writing, custom, orality, and practice in inculcating ethical habituation

### Text T: Josephus, CA 2:

- i. 'All schemes of education and moral training fall into two categories; instruction is imparted in the one case by precept [or, more literally, 'word': *logos*], in the other by practical exercising of the character (*dia tēs askēseōs tōn ēthōn*). [Note: correction to typo in Greek spelling noted from Q&A and made after lecture.] All other legislators... selected the particular method which each preferred and neglected the other. Thus the Lacedaemonians and Cretans employed practical, not verbal, training; whereas the Athenians and nearly all the rest of the Greeks made laws enjoining what actions might or might not be performed, but neglected to familiarize the people with them by putting them into practice'. (2.171-2)
- ii. 'Our legislator...took great care to combine both systems. He did not leave practical training in morals inarticulate; nor did he permit the letter of the law to remain inoperative...he left nothing, however insignificant, to the discretion and caprice of the individual...'. (2.173).

### Text U: Writing on the heart – see Biblical and Platonic and Neo-Pythagorean texts in Lecture IV:

- i. Josephus: 'we have them as it were engraven on our souls' (CA 2.178)
- ii. Philo: 'Customs [the word is *ethē*, so better 'habits'] are unwritten laws, the decisions approved by men of old, not inscribed on monuments nor on leaves of paper which the moth destroys, but on the souls of those who are partners in the same citizenship', later specifying these as 'unwritten' (*Spec. Leg.* 4.149-50).
- iii. Philo: 'after writing out [the laws] he [a ruler] must endeavor every day to read and familiarize himself with what he has written, so that he may have a constant and unbroken memory of ordinances so good and profitable to all, and thus conceive an unswerving love and yearning for them by perpetually training and habituating his soul to companionship with holy laws. For prolonged associations produce a pure and sincere affection not only for men but for writings of such kinds as are worthy of our love. And this will be the case if the ruler studies not the writings and notes of another, but the work of his own pen, for everyone is more familiar with his own writing and takes in its meaning more readily. Further when he reads he will reason thus with himself. "I have written these words, I, a ruler of such eminence, without employing another though I have a host of servants. Have I done it to fill the pages of a book like those who write for hire or to train their eyes and hands, the first to sharpen the sight, the second to make themselves swift writers? No, surely not. I write them in a book in order to transcribe them straightway in my soul, and receive in my mind the imprints of a script more divine and ineffaceable' (*Spec. Leg.* 4.32)

- iv. Philo: the patriarchs, and Moses, as 'living law' (*nomos empsuchos*); cf. title of *On Abraham* which includes 'Unwritten Law'
- v. Rousseau: 'Lycurgus wanted to write only in the hearts of the Spartans' (*Political Fragments*, section On Law)
- vi. Rousseau: that in addition to political laws, civil laws and criminal laws, that are a 'fourth' kind of laws that are 'the most important of all': 'graven not in marble or in bronze, but in the hearts of the Citizens': these are 'morals, customs, and above all...opinion'; 'the great Lawgiver attends in secret' to these 'morals' which 'in the end form the immovable Keystone' (SC II.12.5) – compare Plato *Laws* 7.793a-c, in Lectures III and IV

Text V: preambles

- i. Philo explicitly enjoins these (*Vit. Mos.* 2.50-51)
- ii. Westwood 2023: 182-3: Josephus depicts Moses as issuing a preamble (*AJ* 4.199)

Text W: language and *nomos-phis* debate: Rousseau, *Essay on the Origin of Languages*:

- i. earliest human language 'would persuade without convincing and depict without arguing'; 'Plato's *Cratylus* is not as ridiculous as it appears to be' (both, 4.4)
- ii. 'the older and the purer languages are, the less arbitrary is their pronunciation' (7.8)

*IV. Rebellion and Acceptance*

Text X: Rebellion: Josephus – speech of Zambrias:

'Nay, do *thou*, Moses, keep these laws on which thou has bestowed thy pains, having secured confirmation for them (*to bebaion*) only through these men's simplicity...But *me* thou shalt not get to follow thy tyrannical orders; for thou hast done nought else until now save by wicked artifice, under the pretext of 'laws' and 'God', to contrive servitude for us and sovereignty for thyself, robbing us of life's sweets and of that liberty of action, which belongs to free men who own no master...I sacrifice to gods to whom I hold sacrifice to be due, deeming it right to get at the truth for myself from many persons, and not to live as under a tyranny, hanging all my hopes for my whole life upon one. And woe be to any man who declares himself to have more mastery over my actions than my own will [*gnōmē*]!' (*AJ* 4.145-9).

Text Y: Acceptance: Rousseau, *Social Contract* :

- i. 'It is not through laws that the State subsists, it is through the legislative power. Yesterday's law does not obligate today, but tacit consent is presumed from silence, and the Sovereign is assumed to confirm constantly the laws it does not repeal while having the power to do so'. (SC III.11)
- ii. 'Why then is so much respect accorded to ancient laws? Because of their very age. People must believe that only the excellence of these ancient wills could have preserved them for so long. If the Sovereign had not constantly recognized them as salutary, it would have revoked them a thousand times over. That is why laws, far from weakening, continually acquire force in every well-constituted State; the prejudice favoring antiquity renders them more venerable each day. In contrast, wherever the laws weaken as they grow older, it is proof that there is no longer any legislative power and that the State is no longer alive' (SC 3.11).

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