

Legal Documents in Ancient Societies (LDAS) 1

The Letter

Law, State, Society and the Epistolary Format
in the Ancient World

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Edited by
Uri Yiftach-Firanko

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Introduction

A: The Letter as a Genre in Mesopotamia (S. Démare-Lafont)

In the Ancient Near East, the earliest account of a letter dates to the end of the third millennium BCE. According to the Sumerian epic *Enmerkar and the Lord of Aratta*, dating to this period, Enmerkar, king of Uruk in archaic times, sent a series of messages, ultimatums, to his opponent, the king of Aratta (in Iran). The latter was to acknowledge Enmerkar's suzerainty. As the last message was too long to be memorized, Enmerkar decided to inscribe his words on a tablet which would be read by his emissary. Consequently, the text reports, "The Lord of Kullab (= Enmerkar) smoothed clay with the hand and set down the words on it in the manner of a tablet. While up to then there had been no one setting down words on clay, now, on that day, under that sun, thus it verily came to be; the lord of Kullab set down words on clay, thus it verily came to be!"¹ The epistolary genre was born.

Letters were in use in any literate or semi-literate society. They were understood as a written conversation. In Mesopotamia, letters are composed for utilitarian causes. Whether issued by kings, diplomats, administrative officers, merchants or women, letters are not drafted for gossip; they are meant to convey important pieces of information. The style of the letter can be informal and direct or plummy and literary, depending on its period, environment and authors: pedants in need of recognition flaunt their culture; housewives issue repeated reproaches to their husbands; zealous administrators give the king account of their management; traders call for their unpaid debts and humans promise the gods to honor them if they put an end to their sufferings. Regardless, however, of this great variety of styles and contents, cuneiform letters do exhibit several common features: they are usually written on a single tablet, are covered with an envelope and contain no date nor place of drafting; letters start with an address stating the names of the addressee and of the writer, sometimes also their titles, and a greeting formula. The standard pattern is as follows:

To PN (my Lord)

say:

thus (speaks) PN₂ (your servant).

May you have a long-lasting life! / May GN and GN₂ keep you alive / in good health for the sake of mine!²

In the past, scholars drew from the above formulae that letters were meant to be read aloud by the messenger to the addressee. This view has now been largely revisited:

1 See the edition by Kramer 1952: 36–9 ll. 504–6 and the translation by Jacobsen 1987: 312.

2 On the various forms of greetings in Mesopotamian letters, see Salonen 1971.

as a significant part of the population is now assumed to have been literate, we conclude that many senders probably wrote their correspondence in person, without resorting to the services of a scribe.³ At the same time, the oral background always remains manifested and pivotal; the heading formula shows that the letter is conceptualized as the written form of silent words. The first letter in Mesopotamian history, sent by Enmerkar to the king of Aratta, contains a message described as a "spoken word" (*inim-du₁₁-ga*).⁴

Indeed, epistolary style replicates sometimes everyday expressions, dialogues, fits of passion or endless sentences full of personal names and confused facts, just like in a desultory conversation. Such is the case for instance in the correspondence of the Assyrian merchants,⁵ at the beginning of the second millennium, or in the letters of the Syrian dignitaries from the kingdom of Mari,⁶ while the contemporary exchanges between Hammurabi and his officers in Babylonia focus on administrative rather than narrative aspects and testify to a certain sobriety in style and vocabulary.⁷ The spirit of the Mari letters reappears in the Middle-Assyrian administrative correspondence of the Great vizir Aššur-iddin, excavated at Dur-katlimmu.⁸ Later, in the 14th century BC, the abundant correspondence of the Egyptian pharaoh with the Mesopotamian royal courts meets complex language conventions based on allusions and insinuations typical of diplomatic speech,⁹ which can already be observed in the Mari documentation.¹⁰ In the first millennium, the curtness of the reports sent by the governors and the scholars (doctors, astrologists, exorcists ...) to the Assyrian king¹¹ contrasts with the petitions for comeback written by deposed courtiers, real pieces of literary works combining scholarship and flattery.

Legal historical study is naturally commonly based on evidence provided by laws and legal documents. Still, laws and legal documents are highly standardized and formulized and leave for this reason a variety of spheres and modes of legal activity unattested. This is where the epistolary documentation sets in. Letters convey precious insight into concrete and vivid situations that are not dealt with in laws and contracts¹²; they fill gaps and give the sociological background that is lacking in the

3 See Charpin 2008: 52–60 and his article in this volume.

4 Kramer 1952: 40–I, II. 540–I: *en-aratta^{ki}-ke₄ im-ma igi i-ni-in-bar, inim-du₁₁-ga* "The Lord of Aratta looked at the clay, the spoken word".

5 See lastly Veenhof 2008.

6 See Durand 1997–2000.

7 See for instance the correspondence of Šamaš-hazir, in charge with management of the fields belonging to the royal domain in Larsa under Hammurabi, partially studied by Pecha 1999; see also the letters of Sin-iddinam, former personal secretary of the king and governor of the province of Larsa, in particular the edition by van Soldt 1994: n° 5–48, 50, 52.

8 Cancik-Kirschbaum 1996.

9 Moran 1987.

10 See Lafont 1992 and Sasson 2001.

11 See for instance Hunger 1992 and Parpola 1997.

12 Kraus 1977.

legal texts. Thus for instance, thanks to the letters excavated in the Anatolian trading station of Kaniš¹³ we can get a rather precise idea of the commercial law prevailing among the Assyrian merchants in the 19th century BC: the most frequent commercial contract, called *naruqqum*, is attested in two tablets only.¹⁴ Yet its current use is attested in numerous letters sent from Aššur to Kaniš. The same body of texts also repeatedly alludes to a commercial legislation inscribed on a stele that remains to be found.¹⁵

The use of letters among the average, ordinary population is rather restricted. With the exception of merchants, who regularly send letters because of their commercial activities, commons do not write to exchange private news. They resort to this means of communication only to convey a precise piece of information, usually in connection with a trial, wherefore the use of epistolary documentation (especially Old Babylonian) is particularly fruitful for the study of judgments and rules of procedure.¹⁶ But as a whole, letters concern the "public" area and deal with matters such as diplomatic, administration or political life.

The richness of this genre is made very clear in the articles of D. Charpin and E. Cancik-Kirschbaum here: both authors shed light on many technical aspects resorting to administrative or judicial practices. But beyond these data, which are essential to improve our understanding of law in practice, letters offer also a broader picture of the legal culture of a place or an area. For instance, the study of the metalanguages handled by the kings in the 14th century BC illuminates the political codes among the great powers in the middle of the second millennium (Egypt, Mitanni, Babylonia, Hatti and Assyria).¹⁷ The three articles presented in this volume focus on the judicial (E. Cancik-Kirschbaum, D. Charpin) and the administrative (S. Démare-Lafont) aspects contained in the Mesopotamian letter, a major genre in the legal culture of the Ancient Near East.

Charpin's paper reviews the various forms of letters during the Old Babylonian Period (first half of the second millennium): along with letter-orders for everyday administration, petitions to the king, royal edicts and rescripts, the letter is also a means of proof, acting as a substitute for the person of the witness. Cancik-Kirschbaum deals with a small group of Middle-Assyrian legal summonses, involving the narrow circle of royal officers during the reign of Tukulti-Ninurta I, and exhibiting a high degree of orality in their style, consistent with the oral nature of the arbitration procedure. Démare-Lafont discusses three examples of administrative letters in order to illustrate the three administrative patterns documented throughout the Meso-

13 See the analysis of Veenhof 1999 and Démare-Lafont 2008.

14 One of these tablets is unpublished, the other one was republished by Hecker 1999.

15 See Veenhof 1995.

16 For a preliminary approach, see Démare-Lafont 2003.

17 About language and metalanguage in the El-Amarna letters, see Liverani 1999: 314–8 and Liverani 2000.

potamian history: the bureaucratic management in use during the Neo-Sumerian empire (end of the third millennium); the family approach of the Amorite kingdom of Mari (18th century BC); the imperial type represented by the Neo-Assyrian kingship (8th–7th centuries BC).

B: Classical Greece and Persia (Michele Faraguna)

As for the Greek world, Edward Harris, Paola Ceccarelli and James Sickinger have sketched a coherent picture of the role and the statute of the letter from the archaic period until Hellenism emphasizing a number of generally accepted fundamental aspects. For our purposes, four points can be singled out as follows:

1. Letter writing is relatively poorly attested in archaic and classical Greece down to the second half of the fifth century.
2. The letter is not codified as an autonomous genre until the beginning of the fourth century: no epistolary language, no standard introductory and closing formulae appear until then; letters as a literary genre are also entirely a product of the fourth century. The earlier “letters” we possess are mere oral messages conveyed in a written form. In this respect, a typical example is provided by the letter of Achillodoros from Berezan, discussed by Edward Harris, where the use of pronouns is at first sight confusing and can be justified only on the assumption that the letter is actually conceived as an oral message addressed to Protagoras (hence the vocative ὦ Πρωταγόρῃ) and is meant to be read aloud by the addressee. It moreover incorporates a second message to Anaxagoras, where the sender is consistently referred to in the third person. The verb identifying the document as a “letter” is in this case ἐπιστέλλω, whose meaning is ambiguous for it can signify both “to command” and “to send a letter”. In Herodotus’ *Histories* letters are similarly introduced by a vocative and by formulae such as ὁ δεῖνα τάδε λέγει which are the same as those employed to introduce oral messages.
3. There is no attestation of the publication of “official” letters on stone until the end of the fourth century, although a royal chancellery existed in Macedonia since at least 343 BC, when Eumenes was active as γραμματεὺς (Nep. *Eum.* 1.5; cf. Plut. *Eum.* 1.4; Arr. 5.24.6; 7.4.6). Such Hellenistic documents, however, stemmed from kings and other dynasts. Leaving covering letters and a few other marginal cases aside, the use of the letter form to convey official decisions by Greek *poleis* can altogether be considered rather infrequent and does not at any rate start before the second half of the third century BC.
4. The situation outlined above is the product of the political and diplomatic style typical of Greek cities which enacted public decisions in the form of decrees voted by the *demos* and, if needed, had their contents disseminated by heralds and envoys, whereas letters as a type of document were perceived as having clear despotic associations and were typical of tyrants and autocrats.

Within this framework, some elements still remain open to debate and require further elaboration building on Paola Ceccarelli’s fundamental point that “it is impor-

tant to differentiate between public and private communication, between type of letters and occasions, while at the same time bearing in mind the generic and socio-political context within which a reference to a letter is made” (cf. p. 85).

To begin with the quantitative aspect, it is correct to stress that, as far as archaic and classical attestations of letters are concerned, they are limited in number but we should not be over-pessimistic. The *corpus* of letters on lead tablets and *ostraka* from the Greek world is steadily increasing, as excavators are nowadays more aware of them, and has more than doubled over the past twenty years. Twenty nine texts, spanning, chronologically, from the mid-sixth to the fourth century BC and, geographically, from the Black Sea Region to the Western Mediterranean, are presently known (for an updated list see Dana 2007: 68–69; Eidinow & Taylor 2010: 50–61). Some of these are badly fragmentary, others have only been reported and still await publication but seven documents can be dated to the second half of the sixth century and six to the fifth century. This is rather striking.

As for their contents, these early letters usually convey instructions either for the administration of the household or for business and trade purposes. Some texts from the Pontic area are interesting because, among other things, they provide the first attestation of chattel slavery in the region. A letter from Phanagoria, in particular, is about the sale of a παῖς. Graffiti on potsherds from Attica bear instructions such as “Thamneus, put the saw under the threshold of the garden gate”, “Boy, bring other new couches for Phalantos”, “Eumelis, come as quickly as you can”. A fourth-century letter from Torone is about the shipment of a load of wood. They are generally short and do not seem to be the product of elite social groups.

Paradoxically, the first reference to writing in Greek literature, and the only reference to the use of writing in the Homeric poems, which, as is well known, portray the world of the heroes as a society where writing had no significance at all, is the famous Bellerophon episode (*Il.* 6.167–170). It revolves around a letter, written with σήματα (not γράμματα) λυγρὰ in a folded *pinax* bearing instructions for the death of the person who had to deliver it, a typically oriental theme. It can thus be suggested that when the Greeks learnt the use of the alphabetic script they did not simply learn to master a technique but also became familiar with the ways and the contexts in which it could be put to use and to which it belonged. *Deltos*, *byblos*, *arrhabon* and possibly *hababon* are, in different degrees, all words of certain or probable Semitic origin. We also have some examples of Phoenician letters, for instance a letter on a papyrus from Saqqara dated to the sixth century (Donner & Röllig 2002: no. 50). Against this background, it also needs to be stressed that some of the earliest texts in our *corpus* of letters appear to be fairly sophisticated documents employing technical language and reflecting the complexity of trading operations in archaic Greece.

The best examples are the two texts examined by Edward Harris in his paper. His main argument that Greek law did not develop the concept of agency is largely built on the testimonies provided by some archaic letters on lead. To strengthen his important point that there was little “vertical specialization” in the Greek economy and

that slaves and partners were sufficient to conduct overseas trade in an effective way a passage from Demosthenes' *Against Phormio* can be quoted to the effect that Chrysippos, having extended a maritime loan to Phormio, entrusted him a letter to deliver to his slave and to a partner (ἔχων ἐπιστολὰς παρ' ἐμοῦ, ἃς ἔδωκ' αὐτῷ ἀπενεγκεῖν τῷ παιδί τῷ ἐμῷ παραχειμάζοντι ἐκεῖ καὶ κοινωνῶ τινί) instructing them, as soon as the goods were unshipped, to inspect them and keep an eye on them (Dem. 34.8). Here, again, trade is carried out relying on a slave, permanently based in the Pontus, and a *κοινωνός*. There is no sign of an agent, for which there was no Greek word. The letter of Apatourios, in particular, referring to a legal case which could be solved by means of the consultation of *διφθέρια* seems to be the product of a surprisingly literate and to some extent document-minded society. Concerning its interpretation, it may well be that the role of Apatourios could simply be that of a ναύκληρος entrusted with the transport of a shipment of goods and that the part played by Meno in the affair has generally been overlooked, although the nature of the relationship between the three characters involved, Leanax, Apatourios and Meno, still remains obscure.

Another important testimony which deserves closer attention is a fragment of Euripides' *Palamedes*, one of the civilizing heroes, or *πρῶτοι εὐρηταί*, to whom Greek tradition assigned the "invention" of writing. In this fragment, probably in an *ἀγών* opposing him to Odysseus, Palamedes boasts about the benefits accruing from the use of alphabetic writing and singles out three functions and purposes for which his "invention" had proved useful, namely overseas correspondence, wills and the solving of legal disputes (Eur. fr. 578 Kannicht). In a recently published essay Paola Ceccarelli showed that the choice of the three functions performed by writing was functional to the plot of the tragedy – and that, according to the version of the myth accepted by Euripides, the reference to letter writing was somehow ironical since Palamedes' death was itself caused by the discovery of a forged letter (Ceccarelli 2002). Notwithstanding this, it is clear that in selecting such uses of writing Euripides could not refer to something which was not meaningful for his audience, as wills and legal disputes obviously were. Letter writing may not have been commonplace, as Christophe Pébarthe recently suggested ("banale") (2006: 81–88), but it must have been part of peoples' everyday experience.

It is not by chance that letters appear in the works of Herodotus and Thucydides and that, despite the rhetorical *topoi* emphasizing Spartan illiteracy, Spartan leaders are portrayed as communicating by means of *epistolai* and of the *skytale* starting from the early fifth century. For Athens, on the contrary, we apparently have to wait until the last quarter of the fifth century and we may assume that it was the Peloponnesian War and the continuously expanding geographical dimension of the war theatre that made written communication between *strategoi* and the assembly necessary.

The reason for the very limited use of private letters as a means of proof in the orators' speeches therefore probably lies in their ephemeral character and in their being easily prone to falsification or manipulation. To some extent, the same can be said about wills which have a rather ambiguous status in the Athenian courts as they

were usually deposited with a third party and their authenticity could only be certified by witnesses so that forgeries were not infrequent. A letter is for instance mentioned in Antiphon's *On the murder of Herodes* where the argument aims at showing that the document was unlikely to be authentic on two accounts: first, that the bearer, unlike in the situation described, was not usually informed of the contents of the message and, second, that letters were usually necessary when the message was too long to be remembered. It is however interesting to note that the latter statement does not seem to correspond to the evidence of our epigraphic letters and that we are probably confronted with a rhetorical *topos* of judicial oratory.

In the light of this, the absence of "official" letters as an instrument of communication at a political and interstate level is even more striking. A typical example of the diplomatic practices of Greek *poleis*, even within an imperial context, is offered by the Athenian decree enforcing the use of Attic coins, weights and measures in the cities of the Delian League. Here, after the decree had been voted, heralds, *κήρυκες*, one for each of the administrative districts of the empire, were to be selected to disseminate τὰ ἐψηφισμένα, the provisions of the decree, among the allied communities. Every city, even against the will of the local *demos*, was then to set up a copy of the decree in its agora (IG I³ 1453 = ML 45).

Considering that the Persian Empire was the only available model for the Athenians when they created their own *arche* (Raaflaub 2009)—and no doubt Persian procedures did work as a model for the modalities of the assessment and collection of tribute—their different approach to diplomatic relations becomes rather evident. The only possible explanation for this phenomenon lies in an ideological construct, the Greeks' deeply rooted belief that, in spite of more and more widespread literacy and written communication, politics and decision-making in a city-state could only be conducted orally in the assembly—Aristotle in the *Politics*, for instance, rejects the possibility that a city with a huge population, an *ethnos* or a megalopolis such as Babylon, could form a *polis* for, he observes, who could be the herald of such a community? (1326b2–7)—and that democracy entailed equality and open access to information, ἐς μέσον καταθεῖναι τὰ πράγματα, βουλευμάτων πάντα ἐς τὸ κοινὸν ἀναφέρειν in Herodotus' words (3.80.2 and 6).

On the contrary, as stressed by James Sickinger diplomacy conducted by means of letters, consistently with the etymology of the term *epistole*, was perceived as secretive and "private" and therefore had autocratic associations and overtones which made it unsuitable within a Greek context. There is thus a continuous thread connecting Herodotus' *Histories*, where letter writing belongs with autocratic rulers such as the Persian kings, the Egyptian pharaoh Amasis and Greek tyrants (Polykrates, Histiaios and Aristagoras) as well as ambiguous characters like Themistokles, down to Demosthenes, where Athenian freedom of speech, *παρρησία*, is contrasted with Philip's commands conveyed in the form of *ἐπιστολαί*, and to Hellenism, where letters were one of the most common means for rulers to convey instructions to their Greek subjects, to enforce constitutional changes, to arbitrate disputes, to grant privileges and, finally, to intervene in religious matters.

Ingo Kottsieper's contribution, analyzing the corpus of Aramaic letters under the name of the well-documented Persian satrap Arsames (late fifth century BC), provides a striking counterpoint to the Greek picture and illustrates the role of letters in the complex workings of the Achaemenid imperial administration. All documents are written on leather apart from one which is on papyrus. They can be divided on the basis of formal criteria into two groups. In the first group, the name of the sender and of the recipient are followed by a greetings formula, whereas in the second the latter is consistently missing and at the end of the document there is a note: "X knows this order, Y is the scribe". Notwithstanding such differences, the texts were in some cases written by the same hand and clearly were the product of the same chancellery.

By comparing the formal aspects and the contents of the two types of documents, the author shows that the differences reflected their different nature. The documents of the first group were letters addressed by Arsames to officials who were *not* under his authority and whose decisions the satrap was trying to influence. Thus, they were not legal documents nor were their contents legally binding. This was, however, the case for the letters of the second group, adjudicating legal disputes or authorizing expenditure or the supply of rations to officials in the satrap's administration. Unlike the others, these documents issued orders and the decisions they carried were legally binding. The person who "knew the order" and, presumably, had been responsible for issuing it and the "scribe" acted as witnesses and guarantors for the authenticity of the document. The formula at the end of the text also made it impossible to manipulate its contents, for example by introducing unauthorized additions after the seal had been broken.

As for the royal correspondence in the Hellenistic kingdoms, one of the questions posed by James Sickinger in his paper concerns the definition of the fundamental typological characters distinguishing a letter from other forms of royal commands such as the διαγράμματα. He is right in identifying Alexander's settlement concerning the territory of Philippi as a *diagramma*, a royal edict conveyed to the city either by Antipatros, Alexander's governor of Macedonia, or, perhaps, by Philippian envoys who had petitioned Alexander (hence, in this document, Alexander is always referred to in the third person) (*SEG* 34.664). In a similar way, Alexander's document concerning constitutional and military matters in Chios, which displays a remarkably authoritarian tone, and is defined as "strongly interventionist" by Rhodes and Osborne in their collection of *Greek Historical Inscriptions* (Oxford 2003, nr. 84), was again a *diagramma*, the prescript παρὰ βασιλέως Ἀλεξάνδρου Χίῳ[ν τῶν] δήμῳ having been added when the king's rulings were published on a stele in Chios.

The style and forms of royal *epistolai* thus developed at a slow pace in the last decades of the fourth century, although the difference between *epistolai* and *diagrammata* remained less clear-cut than we might expect. As a rule *diagrammata* were "general laws" promulgated by the king and covered different matters; they were formally divided into paragraphs (in our inscriptions, as a matter of fact, we

never find the whole text of a *diagramma* but excerpts of the provisions relevant for the community which published them). Elias Bickerman aptly defined the *diagramma* as a *lex satrura*. It had no prescript and no addressee and it was in force as soon as it had been promulgated. It was also a source of law in that all communities subject to the king had to conform to it and modify their civic laws accordingly. Commands were expressed with verbs in the infinitive. Royal letters, on the contrary, had a more limited scope and were usually addressed to a subject *polis* in response to a particular request and they were written in the first person in epistolary form with full use of the standard formulae.

That the contours of these different types of documents were sometimes blurred and that there was a sort of grey area of overlap is, however, shown for example by two Macedonian inscriptions dealing with religious matters. The first, quoted by James Sickinger, is a stele, dated to 248 BC, containing the texts of three letters from Demetrios II to Harpalos, the *epistates* of Beroia, ruling, among other things, that certain revenues of the sanctuary of Herakles which the city had misappropriated be returned to the sanctuary and granting the priest of the sanctuary *ateleia* (*EKM* I, 3, ll. 4–8 and 14–17). The second inscription, dated to 187 BC, is again a composite document preserving instructions concerning the property of Sarapis in Thessalonike. In the covering letter introducing the new provision the term *diagramma* is explicitly mentioned (Hatzopoulos 1996: no. 15). The two inscriptions are thus very similar in content but their typology is clearly different.

In spite of their more courteous, civilized tone, the provisions of an *epistole* were no less authoritative, nor authoritarian, than those of a *diagramma*. In a recently published letter of Eumenes II to the *katoikountes* of Tyriaion in Phrygia (post 188 BC) granting the community the status of a *polis*, king Eumenes openly underlines that the request of the petitioners is of no little consequence and that it is only in the power of his own word and decision νομίζεσθαι πᾶν, in other words to recognize their status as a *polis*, which, he points out, he has already done in another *ἐπιστολή* (*SEG* 47.1745). Along similar lines, in his second letter to the *tagoi* and the *polis* of Larissa Philip V made it clear that the enlargement of the citizen body had to be enforced κατὰ τὴν παρ' ἐμοῦ ἐπιστολήν and the ensuing decree that the Larisseans voted to comply stated that the *tagoi* were to have the names of the new citizens inscribed κατὰ τὴν ἐπιστολὴν τοῦ βασιλέως (*SGI*³ 543).

What is clear, however, is that a royal letter was generally part of an ongoing dialogue, and one should say, a subtle power game, between the king and a subject city. Greek cities voted honors (crowns, gilded statues, cults) for a king and sent envoys to announce the honors which they had decreed and, at the same time, to present some request in exchange. The king would reply in letter form accepting such honors and ruling over the matter of the petition. The publication of the king's letter by the city and the commemoration of the king's benefactions on stone would enhance his honor and dignity. It is important to stress, as noted by James Sickinger, that honors were always granted in the form of decrees and the contents were illustrated and glossed over orally to the recipient by ambassadors. In an article, first

published in 1985, J.-M. Bertrand (1990) brilliantly showed the different ways Greek *poleis* managed to integrate royal commands, conveyed in letter form, into their political discourse behaving as if they still enjoyed absolute independence and were not part of a more complex political universe. In a kind of game of pretence, the Greeks thus clung to their traditional political style and to their ideological constructs throughout their history, even when they had lost their freedom and had to live as subjects under powerful monarchies.

C: Greco-Roman Egypt and the Roman World (Uri Yiftach-Firanko)

As the preceding pages have shown, letters were used for the documentation of everyday activity in every literate society. This was also the case, naturally, in the Greco-Roman world.¹⁸ Now however we encounter a new phenomenon: in the Hellenistic period emerges in the Greek East a new type of legal document: *cheir*, or *cheirographon*. The lexical rendering of the adjective *cheiographos* / *cheirographon* is *written with the hand*, *holograph*, *manuscript*.¹⁹ It is commonly used to denote any autograph acknowledgment by a contracting party. This acknowledgment does not necessarily take the form of a letter: in the Delphic manumission inscriptions as well as in Roman Puteoli it probably does not.²⁰ Yet in Ptolemaic and Roman Egypt *cheirographon* becomes the *terminus technicus* for a contract drafted in a letter format. Just like every letter, the *cheirographon* is opened with the address clause: "A (debtor) to B (creditor) greeting". But the *cheirographon* contains in its final form none of the routine courtesies to be found in regular letters. It focuses, rather, on documenting an account, by the debtor, of the act that brought about the contractual bond, and encompasses also other clauses typical in contracts, in particular the execution (*praxis*) and validity (*kyria*) clauses.²¹ The *cheirographon* ends with the date clause. The greeting ἔρρωσο ("fare well"), which appears at the end of regular letters, is left out of the *cheirographon*.

The above scheme evolves in the course of the second century BCE (compare, e.g., P.Erasm. 12, 152 BCE—Kaine, Arsinoites), and reaches maturity in its last quarter, a period in which it is attested, in its mature form, throughout Egypt. P. Adler 4 (109 BCE—Ptolemais) exhibits its features:

"Psemminis, son of [...]os, to [Horos, son of Nechoutes, gr]eeting. [I acknowledge that I received from you three (?) talents of copper coinage (?), free of interest (?)]. The[se are] what is still owing to you according to the contract of Taisis, your daughter, which I shall repay to you up to Pachon 30

18 Cf., e.g., P.Mich. VIII 512 (early III CE—Alexandria (?)); CPR XXV 9 (late V-early VI CE—Herakleopolites).

19 LSJ⁹ s.v. p. 1985. Preisigke, WB II 733: *Handschriftlich*.

20 Cf., e.g., FD III 6.14 (20–46 CE); FIRA III no. 130 and Jakab, 221, n. 21.

21 Cf., e.g., P.Dion. 32.17–8 (*praxis*), 18–20 (*kyria*) (107 BCE—Hermopolites).

of the [year] 9 without trial and judgement. And if I do not return them by the fixed time, I shall give you the same twice over compulsorily. And you shall have the right of execution (*praxis*) both upon me and upon all my property as if in accordance with a legal decision. Dionysios, son of Archidemos, of the demos Berenike, wrote on behalf of Psemminis by his request as he is illiterate. Year 8 Tybi 24".²²

The emergence of the *cheirographon* is of far reaching implications, as for the first time a legal act (i.e. the act recorded in the *cheirographon*) was made evident without its attendance by witnesses or performance before a public organ. The actionability of the act was entirely based on the fact that the document recording it was drafted in theory by the debtor in person, in his own hand. This change reflects an entirely new attitude towards the concept of writing. Its social, cultural and legal consequences go beyond those studied in this book.

In the five centuries following the creation of the *cheirographon*, it exhibits, in Egypt at least, remarkable uniformity and popularity, in particular in documents recording credit and sale-related transactions. Accordingly, among 464 loan contracts dating to the Roman period before Diocletian, nearly one third, 153 in all, are structured as *cheirographa*. In some regions, such as the Oxyrhynchite nome, the *cheirographon* stands out as the routine format for the documentation of loans (45 of 68 early-Roman Oxyrhynchite loan contracts are structured as *cheirographa*).

Most early Roman *cheirographa* exhibit several common features: besides the structure already reported above, most of them are also drafted not by a professional scribe but, in theory at least, by the declaring party (i.e. the prospective debtor) in person; they are drafted in a single copy, which is kept by the creditor in the course of the contract and returned to the debtor or obliterated after the settlement of the debt; *cheirographa* also do not record witnesses, or the registration or deposition of the document in an archive²³ and their format is narrow, their width measuring around 15 cm. with between 25 and 30 letters a line.²⁴ This description applies to most early Roman *cheirographa*, in particular to those stemming from the Arsinoite

22 [Ψεμμίνης. . .]ου | [Ὁρωί Νεχούτου (?) χαίρειν. | ὁμολογῶ ἔχειν παρὰ σοῦ | [χαλκοῦ νομίσματος τάλ (?)][αν]τὰ [τρία ἀ]τ[ο]κα. (?) τ[αὐ]τα δέ | ἐστὶν ἃ προσωφιλήτο (read προσωφιλετό) | σοι πρὸς τὴν συγγραφὴν | [Τ]αι[σ]ε[ί]ως | (?) τῆς θυγατρ[ί]δος | [σο]υ, ἃ καὶ ἀποδ[ώ]σ[ω] σοι | ἕως Παχών Ἰ τοῦ θ' [(ἔτους)] | [ἀ]ν[ε]ν κρίσεως καὶ δίκης· ἐὰν δὲ μὴ ἀποδῶ[ι] σοι | ἕως τοῦ ἀφωρισμένου χρόνου | [ἀ]ποτίσω σοι τὰ προγεγραμμένα διπλᾶ ἐπ' ἀν[α]γκὴν | [ε]ἶναι δέ σοι τὴν πράξιν [ἐ]κ τε ἐμοῦ καὶ ἐκ τῶν | ὑπαρχόντων μοι πάντων | πράσσοντι καθάπερ | ἐγ δίκης. ἔγραψεν ὑπὲρ | τοῦ Ψεμμίnius Διονύσιος | [Ἀ]ρχεδήμου Βερενικεύς | [ἀ]ξιωθείς ὑπ' αὐτοῦ διὰ τὸ | μὴ εἰδέναι γράμματα. | (ἔτους) ἦ Τυβί κδ. Translation according to P. Adler p. 17.

23 The only exception to that rule are the *cheirographa* of the archive of Dionysios son of Kephalas, of late second century Akoris. Cf., e.g., P.Dion. 32 (107 BCE—Hermopolites) and Vandorpe below, 178.

24 Cf., e.g., P.Tebt. II 387 (73 CE—Tebtynis).

nome, but they are not valid everywhere. In a recent article (Yiftach-Firanko, 2009) I argued that in the early Roman period the scheme of the *cheirographon* was employed by professional scribes located in private scribal offices near the *Sarapeion* in the city of Oxyrhynchos. The scribes may have registered the contents of the document in their files. In both these respects, the Oxyrhynchite *cheirographa* are precursors of the 'new *cheirographon*', a scheme of the *cheirographon* applied by professional scribes called *tabelliones* throughout Egypt, starting from the reign of Diocletian.

The present volume contains six articles focusing on the use of the letter format as a legal document in the Greco-Roman world. Four, by Depauw, Jördens, Kovarik and Vanderpe, focus on Egypt; another two, by Jakab and Platschek, on Rome and Roman law. Depauw's article focuses on the Demotic epistolary format. Depauw first aims at clearing some methodological ambiguities, especially the identification as a contract of epistolary style of every contract that can not be formally identified as stemming from a notary office. Depauw discerns three types of documents: notary contracts (*sh*), contracts of epistolary format (*s't*), and a large group of hybrid contracts leaning in some respects upon the notary contracts. Depauw first offers a clear definition of the scheme of letters in the Persian period: (1) the location of the date formula at the end of the contract, (2) the absence of the designation of the ruling pharaoh but the designation of the day, (3) the opening formula *hrw A m-bzh B* 'the voice of A before B' or *A smz' r B (m-bzh G)* 'A greets B (before the god G)', (4) the frequent absence of witnesses. In three cases these letters are of legal contents, making just a tiny fraction of the extant corpus of legal documents of the Persian period.

Depauw then studies the evolution of the letter format in the early Ptolemaic period (most conspicuously the introduction of the formula *A p3 nty dd (n B)* 'A is the one who says to B', which also appears in this period in notary contracts). In this period too, contracts of epistolary format make just 1% of our finding. A relative popularity is only evident after 150 BCE, a period in which 14% of the contracts are written in the epistolary style. In this period, Depauw notes two significant developments, which coincide with similar changes in the Greek sphere: (1) the *s't* is expected to be written by the debtor in person, (2) witnesses generally become dispensable.

K. Vanderpe places the *cheirographon* in the broader context of types of documentation, Greek and Demotic alike, that were used for recording loans in the Ptolemaic period. Vanderpe's synopsis shows how the contents of each type of document prevalent in the Ptolemaic *chora* was offered security: she discusses witnesses, the existence of a *scriptura interior*, the types of clauses present in each type of contract, the format of the document (broad or narrow) and, in particular perhaps, how different forms of registration of the contents of the documents in a state or temple archive secured the terms of the contract. Vanderpe analyses, from the above viewpoints, first the older, more formal and more public types of documents that already emerge in the third century BCE: the double document, the Greek agoranomic document, and the Demotic temple contract. Then she moves on to the direct predecessor of the *cheirographon*, the 'informal *cheirographon*' as she terms it, to Demotic non-

notarial acknowledgements of debt of the third century BCE, and finally discusses the formal *cheirographon* and the Demotic autograph acknowledgment of the late Ptolemaic period.

Vanderpe shows how the registration of the contract as well as the types of clauses commonly incorporated in it affected the scopes of its application. The *cheirographon* was commonly registered in an archive (so Vanderpe, see however above 23), and absorbed all types of clauses originating from the more formal, older types of documents. Among these clauses it was especially the *praxis* clause that made the *cheirographon* valid, she argues, according to the Greek law of the *chora*, and encouraged contracting parties to use the *cheirographon* for the documentation of all types of transactions, cheap and expensive alike. Vanderpe compares this strong position of the *cheirographon* with that of the contemporary Demotic autograph contract: here the clause placing the debtor's property as security for the debt, that is the Demotic equivalent to the Greek *praxis* clause, was generally omitted, and the contract was therefore generally used for the documentation of less valuable transactions.

As indicated above, in the Roman period the *cheirographon* became one of the key types of legal documents in Egypt. Its key features, scopes of application, and treatment by the state have all been dealt with, in brief, by H.J. Wolff²⁵ but a more comprehensive study is required. At this stage it is sufficient to note several phenomena that anticipate two features of the later Roman *cheirographon* discussed by Jördens and Kovarik. The early Roman *cheirographon* is generally drafted by the debtor in person. Yet this is not always the case. The *cheirographon* is also consistently applied by professional scribes. This is the case in second century Arabia, as well as in first and second century Oxyrhynchos, and may thus account for the introduction of the *cheirographon* as the default format in legal documents issued by the *tabelliones* from the late third century CE onwards, a phenomenon discussed by Sophie Kovarik. The *cheirographon* was also drafted in a single copy that was kept, in the duration of the contract, in the hands of the creditor. As such, the *cheirographon* was suitable for the documentation of obligations entered upon by the debtor, but not those of the creditor. This state of affairs changed in late antiquity: from the third century onwards *cheirographa* are occasionally drafted in two, three and even four copies, and are as such also capable of documenting the obligations of multiple contractual parties, a phenomenon studied by A. Jördens.

Kovarik's survey focuses on the evolution of the *cheirographon* from the fourth through the eighth century CE. In late antiquity, the format of the *cheirographon* became the routine scheme employed by professional scribes called *tabelliones*. However, the new *cheirographon* was differently structured from the early Roman one. The date clause, which formerly appeared at the end of the contract, was now placed at its beginning, and the contract also recorded the name of the *tabellio* in charge,

25 Wolff 1978: 106–14.

and eventually also recorded witnesses. The new format was eventually regulated by law, in four constitutions of the emperor Justinian in 528, 537 and 538 CE, but it was introduced much earlier, initially in the reign of the emperor Diocletian. Still, as Kovarik has shown, the formation of the sixth-century *cheirographon* was a long process, which took different pace in different regions, in the course of which it influenced, and was influenced by, other types of widespread schemes.

A. Jördens focuses on a unique phenomenon. The *cheirographon* is commonly formulated as a letter by the prospective debtor to the prospective creditor. As such it is especially suitable for the documentation of obligations of the former, rather than those of the latter. This unilaterality finds expression also in the formulation of the address clause: "A (debtor) to B (creditor) greeting". Yet in thirty-four or thirty-five *cheirographa* dating from the second century onwards we find a different formulation: "A and B to each other greeting". Jördens first discusses the regional and diachronic distribution of the mutual *cheirographon* alongside other types of legal documents expressing the parties' mutual obligations. Jördens argues that bilaterality was especially stressed where the parties were of equal social standing, and where the parties' family or community aspired at maintaining oversight of the transaction documented. With regard to the *cheirographon*, Jördens stresses the role the bilateral formulation played in contracts of association, barter agreements, and agreements relating to the delegation of liturgies.

Éva Jakab's contribution takes us into the field of Roman law and legal practice. The first section of Jakab's paper focuses on the application of the *cheirographon* in everyday practice, as documented in the writings of the jurists and in the *tabulae* stored in the files of the bank of the Suplicii in Puteoli (TPSulp.). The Roman *cheirographon* records the creation of debt. Its scheme is different from that of its Egyptian counterpart. It has no epistolary background: it contains no address clause, and is introduced by the formula *scripsi me acepisse*, vel sim. Yet the Roman *cheirographon* does share three important features of its Egyptian counterpart: its formulation is subjective (written in the first person singular); if the debtor is literate it is supposed to be autograph; the act is not attended by witnesses. The *cheirographon* was of Greek origin, and was integrated into the Roman contractual system, its composition creating an *obligatio stricti iuris*. If the *cheirographon* recorded a loan, the creditor could alternatively sue on account of the *numeration*. Very frequently the *cheirographon* also recorded the act of *stipulatio*, thus according the creditor a third procedural means of retrieving at least some elements of the debt.

Jakab's second section focuses on the *epistula*. Contrary to the *communis opinio*, which tends to view the *epistula* and the *cheirographon* as synonymous term, Jakab's analysis proves that the *epistula* was an actual letter with legal contents. Just as the letter, the *epistula* is written by the contracting party in person, and presumes common social background between the author and the addressee, the main difference being that the *epistula* documents legal acts or states of affairs (thus resembling the evidence discussed, e.g., by D. Charpin and E. Harris). The *epistula* does not focus on loans. In the cases discussed by Jakab stand out *depositum*, *mandatum*

and *manumissio*, but the *epistula* can be used for the documentation of any transaction whatsoever. Some of the transactions recorded in *epistulae* are very complex, involving three and more different persons. Unlike the *cheirographon*, the composition of an *epistula* also does not create an obligation; it is drawn up for evidentiary purposes only.

The paper of J. Platschek focuses on an issue already discussed by Jakab, the existence of two different forms of giving evidence of a debt, and assuming the commitment to its return. These two acts could be performed through a formal act of *stipulatio*. In that case the action for recovering the debt was *ex stipulatu* or a *condictio*, both remedies anchored in *ius civile*. Alternatively, if no *stipulatio* was undertaken but the debtor could give evidence of his commitment to return the debt differently, the creditor would not benefit from a civilian remedy, but the praetor would grant him an *actio de pecunia constituta*, which would allow him to be compensated for any damage he suffered due to the failed payment.

Certain liabilities involving debts could result both from the civilian and formal act of the *stipulatio* and informally, e.g., by means of a letter, yet the remedies of which the creditor could avail himself were rigidly set apart: a creditor who received *stipulatio* was not allowed to resort to the *actio de pecunia constituta*, say in the case that the *stipulatio* turned defective. This is a remarkable rule compared with the remedies placed at the debtor's disposal for defending himself against a claim of the debt after it has already been settled: if the debt was returned through an *accepilatio*—that is the formal act terminating a debt created through a *stipulatio*—and the *accepilatio* turned for some reasons defective, the debtor could still apply for his defense the remedies provided by the praetor in the case of informal defrayment.